

COUNCIL REFERENCE: 3A10/1003  
CONTACT PERSON: Elizabeth Downing

1 September 2017

Industry Assessments  
NSW Department of Planning and Environment  
By Email: Joanna.Bakopanos@planning.nsw.gov.au

Attention: Joanna Bakopanos

Dear Ms Bakopanos

**West Culburra Mixed Use Subdivision - SSD 3846  
West Culburra Concept Plan  
Supplementary Response to Submissions**

Thank you for your email of 20 July 2017 inviting Council to provide comment on the applicant's supplementary response to submissions for the abovementioned development application.

Council staff have reviewed the applicant's submission and generally support the application and its intention. There remains, however, a number of issues in the detail that need to be resolved. These are summarised in the Attachment 1: Summary Table and explained in detail below:

**1. Change from Subdivision to Concept Plan**

**1.1. The application and proposed works**

We note that the applicant has clarified that the application is a concept plan rather than a subdivision. It is unclear, however, if the application still seeks consent for the carrying out of works as a first stage under s83B(4)(b) of the Act.

The works listed in Table 1 are identified on the concept plan. It is unclear what, if any, of these works are still included in this development application. This should be clarified prior to the grant of any consent or concept approval.

In preparing this submission we have assumed that no works are proposed to be approved under the current application. If there is to be a first stage approved additional details relating to those works should be provided to Council for comment.

Location	Works
The proposed new intersection on Culburra Road	The construction of the intersection The "WSUD" southeast of the proposed intersection
The land between the Culburra STP and Canal St East	The clearing to create the road view corridor The viewing platform
The road view corridor to Curleys Bay	The clearing to create the road view corridor
The road view corridor to Coolangatta Mountain	The clearing to create the road view corridor
The part of the site fronting onto the Crookhaven River and Curleys Bay	The cycleway/walkway

Table 1. Works Identified on the Concept Plan

## 1.2. The Concept Plan

The concept plan has generally been corrected to reflect the application being a concept approval rather than a subdivision. However, there are a number of inconsistencies on the plan in its amended form. In particular:

- The legend refers to "residential lots", "industrial lots" etc. There are no new lots proposed in this application and so these should be amended "residential areas", "industrial areas" and so on. Additionally, there is still a legend entry for "mixed use site" even though there are no mixed use sites proposed.
- The plan includes 2 tables titled "Areas". The first (left hand side) refers to stages that are not otherwise represented on the concept plan. These stages should be overlaid on this plan to make clear the order in which the development is to be undertaken. All other area identifiers ("area", "zone" etc) that relate to staging should be removed to avoid confusion.
- The second (right hand side) table titled "Areas" relates to reserves. We consider that this table can be deleted if the Yield table is appropriately updated.
- The plan includes a table titled "Yield". That table refers to numbers of lots including mixed use sites that, according to the RTS, are no longer proposed.
- The table "Yield" refers to numbers of residential lots but not numbers of dwellings or lots for medium density or tourist sites. This is an inconsistency that should be corrected to reflect that the proposal is now a concept plan and not a subdivision. We consider it appropriate for the table to be structured as shown below (numbers are fictitious):

Type	Area	Indicative Yield
Medium Density	1 hectare	X dwellings
Tourist Site	2 hectares	2,000m <sup>2</sup> GFA 20 beds
Small Lot Residential	3 hectares	X lots
Low Density Residential	4 hectares	X lots
Aged Care Residential	6 hectares	60 persons
Industrial	7 hectares	5,000m <sup>2</sup> GFA
Reserves	8 hectares	N/A

Table 2. Example Yield Table

### **1.3. Concept Plan Specifications**

The applicant has deleted the detailed subdivision layout from the application. This is appropriate in the context of the application being a concept approval. We note, however, that no concept details have been provided. Instead, an example subdivision has been provided for consideration.

This approach is not considered to be satisfactory. A set of specifications should be provided with the concept plan to guide future development of the site. This is necessary to provide clarity around the application of s83D(2) of the Act. Without this, there is a risk that uncertainty and confusion will be created by the interaction of the DCP and the concept consent when the subdivision DAs are subsequently lodged.

Council should be consulted on the details provided in these specifications, particularly where they are inconsistent with Shoalhaven DCP 2014.

## **2. Statutory Planning Matters**

### **2.1. LEP 1985, Zone 7(a) Environmental Protection “A” Ecology Zone**

The revised concept plan retains the proposed removal of vegetation within the 7(a) zone under LEP 1985 to create view corridors for the development. This clearing is inconsistent with the objectives of the 7(a) zone, specifically:

- (a) to protect and conserve important elements of the natural environment, including wetland and rainforest environments,*
- (b) to maintain the intrinsic scientific, scenic, habitat and educational values of natural environments,*
- (c) to protect threatened species and habitats of endangered species,*
- (d) to protect areas of high biodiversity value, and*
- (e) to protect and enhance water quality in the catchment.*

It is considered that the amenity benefits from this clearing are not sufficient to justify the loss of environmental land and the fragmentation of this environment. These view corridors should be deleted from the concept plan.

### **2.2. Draft LEP 2013, Zone E2 Environmental Conservation**

The revised concept plan retains the proposed removal of vegetation within the E2 zone under Draft LEP 2013 to create view corridors for the development. This clearing is inconsistent with the objectives of the Draft LEP zone, specifically:

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

It is noted that this is generally a continuation of the provisions under LEP 1985 and demonstrates an ongoing planning intent to conserve these lands. It is considered that the amenity benefits from this clearing are not sufficient to justify the loss of environmental land and the fragmentation of this environment. These view corridors should be deleted from the concept plan.

### **2.3. Draft LEP 2013, Zone RU4 Primary Production Small Lots**

It is noted that the area variously denoted Zone 3, Site “B” and Stage 1 in the plans accompanying the application was proposed to be zoned RU4 Primary Production Small Lots under Draft LEP 2013. It is submitted that the planning intent for this

land was that it not be developed for urban residential purposes. This is consistent with the following broader planning objectives:

- a) The conservation of Lake Wollumboola
- b) The avoidance of urban residential development in a mixed industrial and commercial precinct containing, inter alia, a sewage treatment plant.
- c) Providing a clear entrance point for the village on Culburra Road
- d) Avoiding fragmented small areas of urban residential development which are isolated from community infrastructure in village centres

It is considered appropriate to require the deletion of this site from the concept plan.

It is further noted that there are no concept plan details proposed for this site. That is, the concept plan simply refers to the existing zoning without providing any infrastructure details or other details on how the land should be developed. The removal of this site from the concept plan will not prejudice a future development application if the owner wishes to proceed on that basis. If, however, the land is included in the concept approval it may make it difficult for Council to refuse a future development application for subdivision on this site notwithstanding the strategic intent in the draft LEP and the merit issues listed above.

It is considered appropriate to delete this site from the concept plan and to allow a future subdivision DA on this site to proceed without prejudice from the more substantial concept approval for development of the north western portion of the land.

### **3. Open Space**

#### **3.1. Proposed SCC Playing Fields**

It is noted that the playing field design has been amended to reflect Council's specification. The development of this facility should require further development consent and it will be necessary at that time for the applicant to demonstrate satisfactory arrangements to ensure no negative impacts occur on Lake Wollumboola.

#### **3.2. Principal Public Open Space**

In our 2013 submission, Council raised concerns relating to a lack of principal area of public open space for the development. The proposed playing fields are sized to accommodate active recreation only and there is no provision for a single core passive open space within the development. The concern remains that there is no core public open space for the development.

Council's Community Infrastructure Strategic Plan provides that a local recreation park should be provided in accordance with Appendix E to that plan. It is considered that this should be planned for at the concept approval stage and the concept plan should be amended to show a suitable location for this piece of infrastructure.

#### **3.3. Avoiding Small Pocket Parks and the like**

In our 2013 submission, Council raised concerns regarding a number of proposed pocket parks and drainage "parks". These have been deleted in the process of changing the application to reflect that it is a concept approval.

The concern, however, remains and the detailed specifications for the development should give clarity that pocket parks and drainage "parks" are not acceptable.

### **3.4. Embellishment of the Crookhaven River Foreshore**

The embellishment of the Crookhaven River foreshore should encourage public enjoyment of the space while ensuring the conservation of this important environment. It is considered that embellishment should be limited to the proposed cycleway and walkway which should be constructed as a raised walkway to the same standards that are applied by NPWS for this type of coastal environment. The land should otherwise be dedicated to Council on the same basis as the nearby Billy's and Crow Islands, that is, as a nature reserve.

## **4. Commercial Areas**

It is noted that the proposed "The Circus" precinct has been deleted from the plans. The revised RTS also provides that there will not be a commercial precinct within the development area.

The issue of the potential impacts of this residential expansion on the infrastructure supporting the existing commercial centre at Culburra has not been addressed in sufficient detail. It is considered, however, that appropriate conditions and a future VPA could potentially address this on a subdivision by subdivision basis.

## **5. Aged Care Facilities**

Council's 2013 submission raised concerns that there was no provision in the proposal for aged care facilities in the concept plan. It is considered that the provision for new residents to age in place is necessary given the demographics of this area and the scale of this proposal. This has not been adequately addressed in the RTS and revised plan.

This is a matter that is best addressed in the concept planning stage for the land. It is submitted that the applicant should be required to amend the plan to identify an area for aged care facilities with an anticipated yield in population (persons).

## **6. Industrial Areas**

### **6.1. Lake Wollumboola and Industrial Development**

The concept plan has been amended to reduce the industrial area by approximately 50%. The industrial area proposed for retention straddles the catchment boundary between Lake Wollumboola and the Crookhaven River. It is considered more appropriate to develop the part of the industrial zoned land closest to the STP which will also ensure all industrial development occurs outside of the Lake Wollumboola catchment. (If industrial land is to be retained.)

### **6.2. Utility in the Concept Plan**

It is noted that, with the deletion of the subdivision layout and local roads there is no longer any concept detail for the industrial part of the site. Given that the concept plan is principally a residential development it is suggested that this land should be excluded from the plan. There is no utility in retaining this land in the concept plan when there is no infrastructure proposed and all the plan does is restate the land zoning that applies.

## **7. Flora and Fauna and Biodiversity**

### **7.1. Biodiversity Banking and Current Legislative Reforms**

Since Council's 2013 submission, we note that the applicant has undertaken an assessment using the BBAM. The use of this methodology for this application is supported and should be retained under the transitional arrangements for the current reforms affecting this legislation.

### **7.2. Crookhaven River Foreshore Vegetation**

It is noted that clearing is proposed within the Crookhaven River foreshore. The clearing relates to proposed tourism development sites, the creation of view corridors and a proposed cycleway and walkway.

It is considered that a single tourism precinct in the western part of the site is appropriate and clearing of foreshore land for this should be limited as far as possible.

The amenity benefits from the proposed view corridors are not sufficient to justify the loss of environmental land and the fragmentation of this environment. These view corridors should be deleted from the concept plan.

The proposed cycleway and walkway are supported from an educational perspective and as a way to encourage community ownership of the environmental asset. This infrastructure will need to be an elevated walkway to avoid damage to this environment and should be constructed to the same standard that are used by the NPWS.

## **8. Lake Wollumboola**

### **8.1. The Halloran Trust Lands Planning Proposal**

The applicant has asserted in their RTS that the Minister has supported development in the Lake Wollumboola Catchment by endorsing a land zoning plan as part of the gateway process. This is incorrect. The gateway determination was subject to a number of conditions, which required to protection of Lake Wollumboola, including a requirement for land within the catchment to be zoned E2 - Environmental Conservation.

### **8.2. Groundwater Impacts**

The gateway determination requires a groundwater investigation of Lake Wollumboola to be undertaken and that investigation is currently underway. It is recommended that any concept approval for the subject concept development application be subject to condition requiring that no development (except public roads) shall occur within the Lake's catchment until this investigation is complete.

## **9. The Proposed Tourism Precincts**

### **9.1. Access Point to the Crookhaven River**

The site has limited opportunities for recreational users to access the Crookhaven River. The ecological constraints and adjacent oyster aquaculture mean that access is limited to the northwestern corner of the site between the property boundary and the sewer outfall. The concept plan should include a requirement for a recreational access point in this location as part of the T1 tourism development of this part of the site.

## **9.2. Oyster Aquaculture**

The proposed T1 tourism development is immediately adjacent a number of oyster aquaculture leases. The concept approval should include measures to address potential impacts of this tourism development on these leases.

## **9.3. Identification on the Concept Plan**

It is submitted that there is too much detail on the concept plan for the proposed T1 tourism development. The current plan appears to show significant public open space and an internal road layout. This is premature given the limited information currently available. It is submitted that this precinct should instead be identified as a single coloured polygon with no internal road layout with a specification as to what development is intended to be accommodated in that area.

## **9.4. The T2 Tourism Development Site**

It is considered that the T2 tourism development site is unsuitable for the following reasons:

- a) The site is subject to bushfire hazards and the clearing required to achieve asset protection zones is excessive compared to the relatively small amount of floor space that will be yielded.
- b) The site is in the immediate vicinity of the STP and an industrial area. These developments are incompatible with tourism and are likely to reduce the amenity of the site.
- c) The site is adjacent to a mangrove environment that, while ecologically significant, has limited amenity from a tourism perspective.
- d) The site will be more than 1km from the main tourism development at T1 which will be provided with the river access point and other facilities.

It is recommended that this be removed from the concept plan.

## **10. Planning for Bushfire Protection**

### **10.1. Perimeter Roads**

Planning for Bushfire Protection, 2006, requires perimeter roads for residential development. The concept plan does not currently have perimeter roads shown in the following locations:

- a) Between the residential land (formerly "The Circus" precinct) and the adjacent 4(a) and 7(d2) zoned land to the east.
- b) Along the western boundary of the development
- c) Along the southern boundary of the development in the south western corner of the land.

These perimeter roads should be secured at the concept plan stage and the plan should be amended in show them.

### **10.2. Secondary Access**

The development will need two access points to comply with Planning for Bushfire Protection (and to otherwise facilitate evacuation if it is required). The applicant has proposed to achieve this through an emergency fire trail that is approximately 1km in length. It is understood that fire trails are generally not supported by the RFS. It is recommended that DP&E consult with RFS on this matter (if they have not already done so). In the event that the fire trail is supported it is advised that Council will require it to be constructed to public collector road standard before accepting dedication of the asset. Alternatively, it could remain in private ownership.

### **10.3. Tourism Developments**

The T2 tourist development does not appear to comply with planning for bushfire protection. For the reasons outlined at point 9.4 this site is recommended to be removed from the plan.

## **11. Bus Route**

As previously noted in Council's 2013 submission, it is considered that the bus route should be extended to the proposed T1 tourism development. It is recommended that the concept plan be amended to nominate a suitable bus route.

## **12. Stormwater Management**

Stormwater management on site is likely to be a significant complication for this application. The time of concentration for the site is short and the receiving waterway is ecologically and aquaculturally significant. In our submission a preliminary plan is needed to address the following matters:

### **12.1. Discharge Points**

It is imperative that the development discharge water at appropriate locations and with an appropriate spread across the river frontage of the site. The preliminary plan should identify discharge points having had appropriate regard to nearby aquaculture and the ecological constraints of the river.

### **12.2. Detention and Treatment Devices**

Given the proximity to aquaculture and sensitive mangrove wetlands it is considered that in-pipe and start-of-pipe stormwater detention and treatment devices are unsuitable for this development. The reason for this conclusion is that there is too great a risk of failure for individual treatment devices across the development, any one of which could have a significant impact on the river and its aquaculture.

Consequently, it is considered that end-of-pipe solutions are preferable in this case. The locations of the detention treatment devices should be shown on the concept plan along with an indication of the catchments they are intended to serve. The individual lines to reticulate stormwater in the treatment devices are NOT required to be shown at this stage.

The preliminary plan should also present high level calculations for the volumes to be detained and treated in the devices to ensure that adequate land is set aside for this purpose at this stage. Land within the foreshore area must not be used for this purpose.

## **13. Road Network and Access**

The collector road network proposed is generally supported subject to a development application for the works and a satisfactory set of specifications being provided.

## **14. Pedestrian Access and Mobility**

It is noted that there is no cycleway/walkway identified on the north to south running collector roads through the development. This is not satisfactory from a pedestrian mobility perspective. The concept plan should be amended to show cycleway connections along all collector roads and along the western side of Canal Street East.

If you need further information about this matter, please contact Elizabeth Downing, Planning, Environment and Development Services Group on (02) 4429 3317. Please quote Council's reference 3A10/1003.

Yours faithfully

A handwritten signature in cursive script, appearing to read "Phil Costello".

**Phil Costello**  
**Director Planning, Environment and Development Services**

## Attachment 1

### Shoalhaven City Council - Summary of Submission - West Culburra Mixed Use Subdivision - SSD 3846 – August 2017

Item	Description	Recommendation
Stage 1 of the Concept Plan	It is unclear if there is a stage 1 of the proposal under s83B(4)(b).	1 The applicant be asked to advise what, if any, works are proposed to be approved under the concept approval.
Stormwater	There is insufficient planning for stormwater management.	2 The applicant be asked to provide a stormwater concept plan as described in item 12 of Council's submission.
The Concept Plan Drawings	There are a number of inconsistencies in the revised plan	3 The applicant be asked to amend the plan in response to items 1.2(a)-(d) of Council's submission.
	The yield table is misleading and unclear	4 The applicant be asked to amend the yield table generally in accordance with Council's submission, item 1.2(e).
	The plan does not include adequate perimeter roads under BFBP, 2006.	5 The applicant be asked to amend the concept plan to provide perimeter roads in the locations identified in Council's submission at 10.1
	There is no principal area of public open space proposed	6 The applicant be asked to include a 5,000m <sup>2</sup> park in the concept plan at a suitable location.
	The clearing of land in the Crookhaven River foreshore area is not supported.	7 The applicant be asked to amend the concept plan to remove all clearing from the foreshore area.
	There is no land identified for aged care facilities to allow the population to age in place.	8 The applicant be asked to include a suitable site for aged care facilities in the concept plan.
	The T2 site is constrained and unsuitable.	9 The applicant be asked to amend the concept plan to remove the T2 site and to identify the land as foreshore reserve.
	The T1 site should be more broadly described and should include an indicative location for recreational access to the Crookhaven River.	10 The applicant be asked to amend the concept plan to identify the T1 precinct as a single colour without a road network or any public open space. These design elements are to be determined at the DA stage.
		11 The applicant be asked to amend the concept plan to identify an access point for recreational users of the Crookhaven river on the site west of the existing sewer outfall.
	There is no proposed bus access to the tourism precinct	12 The applicant be asked to amend the concept plan to nominate a suitable bus route.
There are no north to south pedestrian access connections.	13 The applicant be asked to amend the concept plan to show cycleway links on all collector roads and on the western side of Canal Street East.	
There are insufficient stormwater details.	14 The applicant be asked to amend the concept plan to detail the results of the stormwater concept plan.	

## Attachment 1

### Shoalhaven City Council - Summary of Submission - West Culburra Mixed Use Subdivision - SSD 3846 – August 2017

Item	Description	Recommendation
Concept Plan Specifications	There are no specifications provided which may lead to confusion regarding the correction application of s83D(2) of the Act for future DAs.	15 The applicant be asked to provide a schedule of specifications for the proposed development.
	There remains a risk of pocket parks and drainage parks may be proposed that is unacceptable.	16 The applicant be asked to include provisions in the specification that prevent the establishment of pocket and narrow drainage parks.
	The Crookhaven River Foreshore Cycle and Walk Way needs to be constructed to a high standard and as an elevated walkway.	17 The applicant be asked to include provisions in the specification for the foreshore cycleway and walkway to ensure that it is an elevated walkway constructed in accordance with the best practices of NSW NPWS for coastal areas.
Redundant Precincts	Stage 1, Land Between Culburra Road and Longbow Point should not be included in the concept plan.	18 DP&E include a condition that removes Stage 1 from the concept approval.
	Stage 5, Industrial land should not be included in the concept plan.	19 DP&E include a condition that removes the industrial land from the concept approval.
Lake Wollumboola	The development of land in the Lake Wollumboola Catchment should be delayed until more information is available on the impact of that development on the lake.	20 DP&E include a condition that requires that development (other than public roads) not proceed in the Lake's catchment until the groundwater investigation is complete.
Infrastructure Planning	The development will have an impact on the adequacy of infrastructure at the Culburra village centre.	21 The applicant be asked to include in their undertakings a commitment to enter into a VPA for additional parking and other infrastructure in Culburra's village centre as needed to address the additional demand created by their development.
Biodiversity and Offsetting	The proponent has undertaken an assessment under the BBAM. This should be adopted for the development application.	22 DP&E confirm that the development is subject to the transitional arrangements for the changes in native vegetation legislation in NSW.
Consultation with RFS	The proposed fire trail as a secondary access is not preferred.	23 DP&E consult in RFS in this regard. If the fire trail is to proceed it should be conditioned to be constructed to public road standards as a collector road prior to dedication to Council or to be retained in private ownership.