



Our ref: DOC21/139914
Senders ref: SSD-3846

Mr Patrick Copas
Senior Environmental Assessment Officer
Energy Resource Assessment
Department of Planning, Industry and Environment
email: patrick.copas@planning.nsw.gov.au

Dear Mr Copas

State Significant Development – West Culburra Mixed Use Subdivision (SSD-3846)

Thank you for the opportunity to provide comment on the above State Significant Development application for the proposed West Culburra Mixed Use Subdivision development.

While the revised Concept Plan was not formally referred to Heritage NSW we have taken this opportunity to review the material available on the Major Projects Website. We note that in 2018, the NSW Independent Planning Commission (IPC) refused the original application. The applicant has now prepared a revised Concept Plan for the development and is appealing the refusal in the NSW Land and Environment Court.

We note that the revised Concept Plan:

- Removes the western part of the development including at Cactus Point.
- Removes development within the Lake Wollumboola catchment.
- Increases the foreshore set back to provide a 100m wide buffer between the development and the Crookhaven River that will increase the distance between the development footprint and recorded Aboriginal cultural heritage sites.

We have prepared the following advice in relation to the Aboriginal cultural heritage assessment and matters under the *National Parks and Wildlife Act 1974*. Please note that if you are seeking advice in relation to matters under the *Heritage Act 1977* then a separate referral needs to be submitted to Heritage NSW with that request by emailing: heritagemailbox@environment.nsw.gov.au.

In preparing our advice we have reviewed information available on the Major Projects Portal, including the:

- 'Environmental Impact Statement' (EIS) prepared by Allen Price & Scarratts Pty Ltd dated 4 November 2020 (APS 2020).
- Comparison of revised Concept Plan and original application.
- 'Aboriginal Cultural Heritage Assessment, Proposed Mixed Use Subdivision at West Culburra Shoalhaven City, South Coast of New South Wales', prepared by Peter Kuskie, South East Archaeology Pty Limited, dated May 2012 (Kuskie 2012).
- 'Seaklark Supplementary Report to Aboriginal Cultural Heritage Assessment', prepared by Dr Johan Kamminga and dated 14 April 2020 (Kamminga 2020).

We support some aspects of the revised Concept Plan

We support the commitment in the EIS (APS 2020, p.35) to placing protection of Aboriginal cultural heritage at the forefront of the development design. We also support the reduced size

of the development, especially removing that portion close to Cactus Point and the Aboriginal cultural heritage sites on the Lake Wollumboola shoreline.

There are risks in proceeding with the revised Concept Plan

There are risks in proceeding with the revised Concept Plan without having first conducted formal Aboriginal community consultation and archaeological test excavations. If future Aboriginal community consultation and test excavation at the development application stage identified sites of conservation value, Heritage NSW may not be in a position to issue an Aboriginal Heritage Impact Permit (AHIP) for the development.

To manage this risk, we recommend comprehensive archaeological test excavation and formal Aboriginal community consultation be undertaken to inform the revised Concept Plan. Comprehensive assessment at an early stage of development planning provides the best opportunity to identify and protect subsurface Aboriginal cultural heritage sites and provides greater certainty for all parties about future management requirements.

Summary of Heritage NSW Aboriginal Cultural Heritage Regulation advice

Our review of the revised Concept Plan has identified several key issues. We recommend that these be addressed before the revised Concept Plan is further considered. We have suggested recommended actions to address these issues.

Our key concerns and recommendations are that:

1. The applicant has not demonstrated that any consultation has occurred with the Aboriginal community about the revised Concept Plan. It is therefore not known what impact the revised Concept Plan may have on Aboriginal cultural heritage values.

Recommendation: We recommend the applicant conduct formal consultation with the Aboriginal community in accordance with clause 60 of the *National Parks and Wildlife Regulation 2019*. This must include consultation with the Jerrinja Local Aboriginal Land Council.

2. Archaeological test excavation has not yet been conducted within the Concept Plan area.

Recommendation: We recommend the applicant conduct archaeological test excavation to inform the Concept Plan design.

3. The risk of both direct and indirect harm to recorded Aboriginal cultural heritage sites along the Crookhaven River has not been adequately addressed. As identified previously by the Office of Environment and Heritage (OEH), we do not support any harm occurring to these sites. The risks of impact to these sites that are posed by the proposed shared pathway and by increased visitation to the foreshore have not been adequately addressed in the revised Concept Plan.

Recommendation: We recommend that the proponent prepare an Aboriginal Conservation Management Plan (CMP) as recommended by Kuskie (2012). The CMP must demonstrate how adequate protection of Aboriginal cultural heritage values (including archaeological sites) adjacent to the Concept Plan footprint will be appropriately managed in the context of the proposed development.

We have attached additional detailed comments at Attachment A.

If you have any questions about this advice, please contact Rose O'Sullivan, Archaeologist, Aboriginal Cultural Heritage Regulation – South, at Heritage NSW, on 4224 4177 or email rose.osullivan@environment.nsw.gov.au.

Yours sincerely



Jackie Taylor
Senior Team Leader, Aboriginal Cultural Heritage Regulation – South
Heritage NSW
12 March 2021

Encl: Attachment A – Detailed Aboriginal Cultural Heritage Regulation comments for West Culburra
Mixed Use Subdivision SSD-3846

Attachment A – Detailed Aboriginal Cultural Heritage Regulation comments for West Culburra Mixed Use Subdivision SSD-3846

As outlined above, Heritage NSW has identified several key concerns with the revised Concept Plan proposal. This attachment provides additional detail and context to the above advice.

We support the commitment in the EIS (APS 2020, p.35) to placing protection of Aboriginal cultural heritage at the forefront of the development design. We also support the reduced size of the development, especially removing that portion close to Cactus Point and the Aboriginal cultural heritage sites on the Lake Wollumboola shoreline. However, we suggest additional assessment work is required to adequately inform the revised Concept Plan.

OEH provided previous Aboriginal cultural heritage advice on this development

The then the Office of Environment and Heritage (OEH) provided advice in 2013 and 2017 on the Aboriginal cultural heritage impacts of the previously proposed Concept Plan. Heritage NSW reiterates key elements of this previous advice that:

- We do not support impact to the Crookhaven midden complex.
- We recommend test excavation is conducted to inform the Aboriginal cultural heritage assessment (as recommended by Kuskie 2012).
- We support the development of a Conservation Management Plan to address the risk posed by increased visitation and recreational use of the Lake Wollumboola shore line as a result of this development.

The applicant has not conducted additional Aboriginal community consultation

We are concerned that the applicant has not consulted directly with the Aboriginal community about the revised Concept Plan. We note that Jerrinja LALC expressed a particularly strong desire to be involved in the assessment process during the work by Kuskie (2012). The submission by Jerrinja LALC to the current proposal reiterates the very strong cultural connection of Jerrinja people to the land subject to the revised Concept Plan.

We recommend that the applicant be required to restart the consultation process given the break in consultation since 2012. In order to seek any Heritage NSW approvals, the consultation process needs to comply with clause 60 of the *National Parks and Wildlife Regulation 2019* and relevant Heritage NSW guidelines. These guidelines provide a robust and consistent framework within which to conduct Aboriginal community consultation and must be followed for any future Aboriginal Heritage Impact Permit (AHIP) applications.

The updated consultation process must provide the Aboriginal community with an opportunity to comment on:

- The potential Aboriginal cultural heritage impacts of the revised Concept Plan.
- Any Aboriginal cultural heritage management work required to inform the proposed revised Concept Plan.
- The recommendations in the supplementary report (Kamminga 2020).

We also support Recommendation 4 of Kuskie (2012) for additional research into oral history records held by AIATSIS, and reiterated in the EIS (APS 2020, p.54). We suggest that this research would be best undertaken at an early stage to inform the Concept Plan design.

We do not accept statements in the Supplementary Report to Aboriginal Cultural Heritage Assessment (Kamminga 2020, p.3) regarding the absence of significant Aboriginal cultural heritage values within the land subject to this Concept Plan. Such statements need to be based

on an adequate understanding of Aboriginal cultural significance and supported by evidence from an Aboriginal community consultation process.

Detail of how the Crookhaven Site Complex will be protected is required

We are concerned that no detail has yet been provided on how increased visitation to the lake foreshore will be managed to avoid harm to the Crookhaven midden complex. It may be that both direct (e.g. the proposed shared path) and indirect impacts will occur harm to this significant heritage complex. The Concept Plan needs to demonstrate how this complex of sites will be protected from increased visitation to the area created by the proposed development.

We recommend archaeological test excavation is conducted to inform the Concept Plan

We recommend comprehensive archaeological test excavation is conducted to provide accurate information about subsurface archaeological potential across the revised Concept Plan area. Kuskie (2012) recommended archaeological test excavation in parts of the proposed development footprint, including the revised Concept Plan.

We suggest an archaeological test excavation program be expanded from Kuskie's recommendation to include excavation within the predicted areas of low potential to confirm the archaeological modelling. This is consistent with Requirement 15b the Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales (DECCW 2010) to 'confirm areas of low potential'. Comprehensive test excavation would provide the opportunity to test the model of low potential for archaeological deposits that is presented by Kamminga (2020).

We note Kuskie (2012) suggested that test excavation could be undertaken at the development consent stage. However, given the significant Aboriginal cultural heritage values in this region we support test excavation conducted at this earlier Concept Plan stage. This would provide greater certainty to all parties about the likely harm of the development on Aboriginal cultural heritage.

An AHIP is required if harm to Aboriginal objects cannot be avoided

It is our understanding that SSD-3846 relates only to the Concept Plan stage of this development and that development consent from Shoalhaven City Council is required for future construction. This means that where harm to Aboriginal objects cannot be avoided, an Aboriginal Heritage Impact Permit (AHIP) is required. Information about applying for an AHIP is available in *Applying for an Aboriginal Heritage Impact Permit guide for applicants* (OEH 2011).

Please note that any works that may be proposed along the riparian corridor including revegetation, fencing, signage, footpaths, sea wall revetment and erosion control measures that will harm Aboriginal objects will also require an AHIP.