

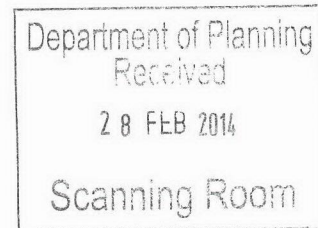


**Office of
Environment
& Heritage**



Your reference: MP 06_0135
Our reference: DOC141465
Contact: J Lemmon

Sally Munk
Industry, Key Sites and Social Projects
Department of Planning and Infrastructure NSW
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SYDNEY NSW 2001
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Dear Ms Munk,

RE: PRELIMINARY REVIEW OF MP 06_0135 TOURIST DEVELOPMENT, COMBERTON GRANGE

I refer to your letter dated 8 January 2014, requesting the Office of Environment and Heritage (OEH) review the Response to Submissions (RtS) and Preferred Project Report (PPR) for the residential and tourist development, Comberton Grange, South Nowra. The review of the material provided highlights that there are a number of key issues that have not yet been adequately addressed, most of which have been discussed in previous correspondence. Please accept the detailed comments (attached) on biodiversity, Aboriginal Cultural Heritage, and flood risk management matters.

Key issues include:

- The proposed E4 zoning for the eastern section of the site is objected to by OEH.
- Permanent conservation measures need to be identified for protection of an appropriate offset area.
- Biodiversity survey effort remains inadequate, and lacks sufficient detail on methods, and techniques to enable full assessment of the impacts.
- Assessment of the indirect impacts of proposed infrastructure is inadequate.

OEH recommends that the BioBanking Assessment Methodology is used to quantify the impacts of the proposal, to ensure an Improve or Maintain outcome is reached to offset the proposed impacts. This should include, for example, the establishment of a BioBanking agreement for the conservation offset lands.

If you have any enquiries regarding this matter, please contact Jedda Lemmon on 42 244 176.

Yours sincerely

Chris Page
Senior Team Leader
Planning (Illawarra)
South Branch, Regional Operations Group

25 February 2014

BIODIVERSITY

Biodiversity Assessment Report

It is considered the biodiversity report response (Mills 27 Nov 2013) has not adequately addressed the matters raised by OEH in the letter dated 4/12/2012. To defer the detailed consideration on these matters to “development application detailed design stage” is not acceptable and inconsistent with the DGs requirement for Major Projects issued. In summary, the Applicant;

- has not provided the recommended supplementary biodiversity report,
- has not undertaken additional surveys have been undertaken, and
- has only provided limited additional information regarding survey effort/techniques.

As such, assessment of the direct and indirect impacts of the proposed development (including reduction of the corridor width on the western edge), and appropriate actions to offset any such impacts remains inadequate.

An updated map of the proposed development footprint overlain with the mapped vegetation communities has not been provided – the Applicant continues to acknowledge difficulties with scale differences between the two layers. This constrains OEH’s ability to adequately assess the potential impacts of the proposed development, and presumably DoPI’s ability to assess as the consent authority. The Applicant’s response states that the Residential Precinct C and the Hotel are located on the cleared land and not in the nearby forest. However, this remains unclear to OEH in the absence of adequate mapping.

OEH acknowledges provision of the threatened species records (noting however that it is not overlain with the proposed development footprint but rather the development site). OEH further notes that the location of survey sites has not been provided in Figure 3 (nor Figure 7 in the *Biodiversity Assessment*), as has been suggested – this Figure shows the records for threatened species’ locations but not the survey locations *per se*. The statement on s4.3 Ecology and Native Vegetation Page 43 that “there are no threatened flora and fauna located within the development footprint of the site” is incorrect. Page 5 of the Mills Report 2013 clearly shows threatened fauna records within the footprint of development.

There remains insufficient detail regarding survey effort, methods and location of survey sites to properly assess the adequacy of the surveys. No additional surveys have been undertaken and the Applicant has provided minimal additional information relating to survey effort. OEH does however note the additional information supplied regarding orchid survey effort and the methods used (as per those approved by OEH), and the area surveyed. No additional surveys specifically for *Calochilus pulchellus* (listed since the original orchid surveys) have been undertaken – the Applicant deems there to be no suitable habitat on the development site and probably none on the whole property. OEH notes the Consultant’s comment relating to ‘good habitat’ adjacent to the pine area having been surveyed with no rare orchids being detected, and the area’s dominant dense shrub growth reducing the likelihood of orchid presence. OEH notes that Table 10 provides only some information on the number of transects, hours of observation, traps, spotlighting and hours of observation – it does not comprehensively detail survey effort for all fauna species. The number and location of transects is not provided for all species, nor the number and type of traps and/or trap nights. As such, OEH cannot properly assess the adequacy of the surveys.

No additional surveys have been undertaken, therefore OEH’s request for additional information (4 December 2012) regarding surveys for the Green and Golden Bell Frog, Giant Burrowing Frog, Glossy Black Cockatoo and Gang-gang Cockatoo has not been met. OEH does not agree with the Applicant’s response that the development area is very unlikely to support the Glossy Black Cockatoos and the Gang-gang Cockatoo – Figure 7 of the *Biodiversity Assessment* indicates both species have been identified both within and adjacent to the development site. As such, OEH requested appropriately timed surveys for both species. Similarly, there have been no additional surveys (transects) to adequately assess whether old growth forest is present or not. As a precautionary measure, those species not specifically targeted in surveys (whose presence therefore cannot be ruled out) should be assumed to be present on-site, allowing appropriate offsets to be determined.

OEH continues to request a survey to identify all hollow-bearing trees (as potential roost/nest/den sites for threatened species such as bats, cockatoos and owls) and Yellow-bellied Glider feed trees within the development footprint, specifically the pine plantation area and golf course area where vegetation is to be affected by the proposed development. Identification of significant nest or roosting hollow-bearing trees and/or feed trees within these areas would identify significant constraints that would need to be avoided or mitigated by alteration of the development footprint. For example, it enables informed negotiations for any modifications needed to the siting of the proposed golf course holes such that the hollow-bearing trees can be retained within the golf course footprint, and for appropriate offsets for impacts on corridor width due to the access road's intrusion into the Jervis Bay REP Habitat Corridor.

Context

The Independent Review Panel for the South Coast Sensitive Urban Lands Review (the Panel) and the Department of Planning's South Coast Regional Strategy (the Strategy) identified development of certain parts of the site would be considered acceptable provided adequate measures were taken to address several environmental measures (see p.16 of the Part 3A Project Application, May 2008). OEH acknowledges the Applicant's responses regarding: protection and rehabilitation of riparian vegetation; management of the saltmarshes and mangroves along the Currumbene Creek's banks; commitment to maintaining and enhancing the Endangered Ecological Communities (EECs) on the site, and to maintaining the water quality of Currumbene Creek through appropriate safeguards. With respect to sufficient natural vegetation being retained within habitat corridors on the site to maintain their integrity, OEH seeks additional information regarding the proposed access road (e.g. size, materials), and details of the hollow-bearing trees that may be impacted by the access road and the golf course (see Biodiversity Assessment Report section below for further comments regarding hollow-bearing trees).

Western Corridor

The development footprint is unchanged, so the proposal will still impact on the western choke point area of the habitat corridor. DoPI should consider seeking a redesign to minimise impacts on this area to achieve the objectives of the Jervis Bay Regional Environment Plan. The Western forest remains an important corridor for species movement along the riparian corridor. While it may be reduced in size because of the proposed Residential Precinct C and the Hotel Precinct the corridor functionality should be ensured in perpetuity. An offset to development within the western forests should include corridor enhancement around the proposed development (zones of no disturbance).

Eastern Portion / Zoning

Aspects of the proposed re-zoning and development remain inconsistent with previously agreed positions. It remains OEH's view that whilst the Panel and the Strategy's original recommendation for an E1 zone and transfer to National Park may not be feasible, the eastern section of the site (within the vegetated habitat corridor identified in the *Jervis Bay Regional Environment Plan 1996*) should be zoned E2, with a minimum lot size that prevents future subdivision. The proposed E4 Environmental Living zoning for the eastern section of the site is objected to by OEH.

The Consultant's response regarding issues raised in DoP&I and agencies' submissions notes that for any future managed facilities within the eastern portion of the site, "Should the camping facilities proceed, it would require an investigation of the impacted portions of the site". OEH does not support future managed facilities within the eastern portion of the site – it is inconsistent with the recommended E2 zoning and objectives of permanent protection of this area.

The *Response to Submissions* notes that other riparian zones of wetlands and riparian corridors *could* be zoned E2 Environmental Conservation, not that they *will* be zoned E2 – OEH continues to recommend that

these areas be firmly committed to an E2 zoning. OEH does not concur with the Applicant's response that zoning is of secondary importance with respect to the eastern section of the site. Irrespective of the permitted uses under the Draft Shoalhaven LEP for E2 zoned land, OEH's position is that the SEPP14 wetlands and the identified eastern portion of the land require comprehensive protection. This would require, in addition to an E2 zoning, some form of legally binding agreement, listed on title, to ensure the areas identified are managed to protect the natural values and not managed for tourism. This is in line with the Panel's recommendation that the wetlands receive full protection. It is anticipated that DoPI would also agree that the proposed E3 and E4 zoning fails to meet the required level of protection, and represents a departure from the South Coast Regional Strategy.

Offsetting / Plan of Management

In the letter of 4 December 2012, OEH acknowledge that the Panel and Strategy recommendation for an E1 zone and transfer of the eastern lands to National Park may not be feasible. However, given the important conservation values of that land, it is essential to offset the direct and indirect impacts of the project. It was also stated that permanent protection of those lands with an E2 zoning and a binding management agreement was the preferred outcome. It is noted however, that the Response to Environmental Assessment Submissions (Conybeare Morrison 2013) does not adequately address this. Instead it is suggested (page 21) that a Plan of Management can be prepared at the development application stage. OEH seeks up-front commitment of permanent conservation measures for the eastern portion of the site to offset the proposed development's impacts. A Plan of Management is not a binding agreement, and does not adequately meet this recommendation.

OEH recommend that the Applicant engage an accredited BioBanking assessor to apply the BioBanking Assessment Methodology to assess and quantify the impacts of the proposal, and establish a BioBanking agreement over the offset area to be retained. This will satisfy multiple objectives including;

- clarification of an adequate offset for 34.5 hectares of proposed impacts to the Jervis Bay Corridor,
- assessment of the impacts arising from infrastructure including those arising from the proposed water main going to Forest Road, and the access road through State Forest,
- result in a binding management agreement for the offset area.

In the absence of applying the BioBanking methodology at the site, an alternative management agreement that is binding on title such as a Property Vegetation Plan is also an option, but not preferred. OEH or NPWS may be able to provide advice on appropriate agreements, however it is noted that the responsibility for the preparation of a management agreement rests with the proponent and is not a shared responsibility with OEH or NPWS.

It is also noted that there is inconsistency with applicant's response (Page 2) that the retained forested lands may be used as a "biobanking credit" site for impacts elsewhere. OEH notes that the BioBanking agreement that is sought is to offset impacts from the current proposed development within the subject site, unless there is a surplus of offset credits as determined by the BioBanking assessment.

Environmental Setbacks

OEH acknowledges that the proposed development provides for a minimum 50m setback from Currumbene Creek and a minimum 30m setback on either side of the other creeks on the site.

ABORIGINAL CULTURAL HERITAGE

OEH has been engaged on Aboriginal Cultural Heritage matters with the Applicant's consultant Navin Officer. The statement of commitments regarding Aboriginal Cultural Heritage is endorsed by OEH with the exception that it is noted that further archaeological investigation following ground disturbing works as recommended by Navin Officer (2012:47) applies to the locations of Comberton Grange 1 (former pine plantation) and Isolated Find 1 [as identified in Figure 8.1 (Navin Officer 2012:46)].

It is noted that in the NSW OEH comment to Conybeare Morrison of 23 September 2013 the attention of the Applicant was drawn to the presence of several Aboriginal archaeological sites in the area surrounding the development footprint which are to be excluded from impact. As listed by Navin Officer (2012:42-43, 47) and in the comment by OEH of 23 September 2013 these sites include:

- Scarred trees Georges Creek 1 (AHIMS 52-5-0367), Comberton Grange 1 (AHIMS 52-5-0365) and Comberton Grange 2 (AHIMS 52-5-0366)
- Artefact scatters Comberton Grange 3 (AHIMS 52-5-0408), Comberton Grange 4 (AHIMS 52-5-0407), Comberton Grange 5 (AHIMS 52-5-0414), Comberton Grange 6 (AHIMS 52-5-0406), Comberton Grange 8 and Potential Archaeological Deposit (PAD)
- Reported Aboriginal burial/burial ground Comberton Grange 7 (AHIMS 52-5-0402)
- Isolated Finds CGIF 1, CGIF 2, CGIF 3 (AHIMS 52-5-0403), CGIF 4, CGIF 5, CGIF 7
- Isolated Finds 1 and 2 Bid Bid Creek
- Rockshelter Beecroft 27
- Archaeologically sensitive areas CGSA 1 – CGSA 4

While these sites are not subject to direct impact, they are nevertheless at potential risk from indirect development impacts. Such impacts may include installation of utilities, heavy vehicle traffic, stockpiling and trampling. OEH seeks advice on mitigation and management measures by the Applicant to ensure protection of these sites. If it is established indirect impacts pose a risk to sites, OEH recommends the preparation of an Aboriginal Cultural Heritage Management Plan to guide development and ensure impacts to sites are avoided. OEH relayed this advice to the Applicant Conybeare Morrison at a meeting on 24 September 2013. It is unclear why this has not been addressed.

OEH requests DoPI seek clarification from Conybeare Morrison's heritage consultants as to whether site cards for the following sites have been submitted to OEH Aboriginal Heritage Information Management System (AHIMS) administrators. It would appear from inspection of site records that site data for the following sites are not included in AHIMS as yet:

- Comberton Grange 1 (former pine plantation) artefact scatter
- Comberton Grange 8 artefact scatter and Potential Archaeological Deposit (PAD)
- Isolated Finds CGIF 1, CGIF 2 CGIF 4, CGIF 5, CGIF 7
- Isolated Finds 1 and 2 Bid Bid Creek
- Rockshelter Beecroft 27
- Archaeologically sensitive areas CGSA 1 – CGSA 4

References

Navin Officer 2012, Shaolin Temple and Academy Comberton Grange, Jervis Bay, NSW: Aboriginal Cultural Heritage Assessment. A Report to Conybeare Morrison International Pty Ltd for the Shaolin Temple Foundation (Australia). Navin Officer Heritage Consultants Pty Ltd, July 2012.

WATER QUALITY AND ESTUARY HEALTH

In order to meet minimum water quality objectives and provide adequate protection of the environmentally sensitive Jervis Bay Marine Park receiving waters and SEPP14 wetlands, it is recommended that:

- locally derived stormwater pollution control targets be determined by the proponent that reflect the sensitivity of the waterway to pollutant loads,
- the proponent demonstrates how the proposed water quality management measures meet the targets derived above, and
- DoPI seek review and approval of the Jervis Bay Marine Park Authority.

FLOOD RISK MANAGEMENT

It is noted that several specific requirements relating to flooding were incorporated in the DGR's dated October 2010. In response to the DGR's a site specific flood study by Brown Consulting dated 21 May 2012 has been conducted to support the Preferred Project Report in response to the DG's environmental assessment requirements.

From the information available to OEH, it is suggested that the DoPI as the approval authority for this development be satisfied that, as a minimum, the following matters have been adequately addressed with regard to floodplain risk management:

- consistency with the NSW Government's Flood Prone Land Policy and the Flood Development Manual 2005;
- consistency with the existing Currumbene Creek Flood Study conducted for Shoalhaven City Council including influence of flooding behaviour for the full range of flood events on the tributaries within the site;
- the impact of the development on flood behaviour (particularly landform modifications through the use of fill and creek crossings and consideration of fully mature riparian vegetation through sensitivity testing of roughness parameters to determine the impact on flood behaviour) including any management measures to mitigate adverse flood impacts;
- the impact of flooding on the safety of people/users of the development including an assessment flood hazard on access routes and potential impact on access requirements in times of flood for the full range of flood events to the PMF;
- emergency management considerations for floods greater than the design flood in the absence of a post developed flood analysis;
- determination of flood planning levels (FPL) in accordance with NSW Government's FDM 2005 given the lack of post developed flood modelling. Note that this would generally require the FPL to be set at the post developed 1% AEP flood level + freeboard (typically 500mm), not the PMF level where this is less than 500mm above the 1% AEP as suggested in the flood study;
- the implications of climate change (including sea level rise and increased rainfall intensity) and estimated flood planning levels; and
- the development control plans and policies of Shoalhaven City Council in relation to the management of flood risk (including freeboard provisions).

Whilst it is noted that a site specific flood study has been submitted to support the development, it is unclear as to how a study of this nature is consistent with the requirements of the NSW Government's Floodplain Development Manual (FDM) 2005, particularly with regard to rezoning of land and the process contained in the FDM.

OEH wishes to clarify that flood risk management is primarily a local government responsibility and as such in considering this proposal it is recommended that DoPI liaise with Council on flood risk related matters and the NSW SES on flood emergency management considerations. This would assist the DoPI as the

approval authority in obtaining the best available information in considering flood related issues for this proposal prior to final approval.