

5 September 2014

**MAJOR PROJECT APPLICATION – CONCEPT PLAN FOR COMBERTON GRANGE TOURIST FACILITY
(MP06_0135)**

1. INTRODUCTION

The Shaolin Temple Foundation (Australia) Limited (“the Proponent”) has submitted a Part 3A application for concept plan approval for an integrated tourist and residential development for the Shaolin religious order. The site is located within the Shoalhaven Local Government Area on partly cleared and partly vegetated land close to the Jervis Bay Marine Park.

The proposal is a major project under the repealed Part 3A of the *Environmental Planning and Assessment Act 1979* (the Act), because it includes tourist related development with a capital investment value of more than \$100 million and employment for more than 100 people. The Secretary’s Environmental Requirements were issued prior to the repeal of Part 3A in October 2011, meaning the application is a transitional project under Schedule 6A of the Act.

2. BACKGROUND

The Environmental Assessment was publicly exhibited from 5 November 2012 until 4 December 2012. 64 submissions were received, comprising 15 submissions from public authorities and 49 public submissions, including special interest groups (34 submissions objected, 9 raised concerns and 6 were in support).

In response to issues in submissions, a Response to Submissions Report was submitted on 7 January 2014 and a copy placed on the Department of Planning and Environment’s website. A further 15 submissions were received from public authorities.

The Response to Submissions Report made minor changes to the concept plan and accompanying statement of commitments.

The concept plan as amended seeks approval for:

- Buddhist Temple Sanctuary (including Pagoda) with associated residential accommodation for up to 50 monks
- Shaolin Martial Arts Training Centre/Kung Fu Academy for up to 300 students and associated residential accommodation for students and staff
- Health and Wellness Precinct comprising a traditional Chinese and fitness centre
- 4 star Hotel Precinct comprising up to 250 rooms (500 beds) as well as tourist cabins and associated staff accommodation
- Village Centre Precinct comprising retail, commercial and dining facilities, convention centre for 300 people, amphitheatre and serviced apartments for short term accommodation use
- 18-hole golf course, driving range, putting greens and clubhouse
- 300 residential dwellings
- Visitor information centre
- Traditional Chinese gardens
- Car and coach parking spaces for visitors and residents
- Agricultural Precinct for agricultural and herb farms
- Heritage Precinct

The Response to Submissions report indicated that the project will be staged as follows:

- Stage 1 will include site clearing, infrastructure works and bulk earth works
- Stage 2 will comprise construction of the temple and limited supporting tourist and residential development
- Stage 3 will include the remaining tourist facilities and residential development.

3. DELEGATION TO THE COMMISSION

On 4 July 2014 the application was referred to the Planning Assessment Commission (the Commission) for determination under Ministerial delegation as more than 25 objections were received. Ms Gabrielle Kibble AO nominated Ms Donna Campbell (chair), Mr Richard Thorp and Mr David Johnson to constitute the Commission to determine the project.

4. ASSESSMENT REPORT

The Secretary's Assessment Report prepared by the Department considered the following key issues:

- Water quality
- Biodiversity impacts
- Traffic and access
- Zoning
- Height, visual amenity and urban design
- Bushfire
- Social and economic issues

A number of other issues were considered in the report including property ownership and subdivision, quantum of residential development, impacts/implications of quarry, Aboriginal cultural heritage and flooding.

The Department's assessment report found that while there are some residual issues associated with traffic, biodiversity and water quality impacts, overall it is satisfied that the impacts of the project are acceptable and can be adequately mitigated and managed. The Department's assessment recognised the significance and need for the proposal in terms of promoting development within the region and noted that the project is consistent with the objectives of the South Coast Regional Strategy and South Coast Sensitive Urban Lands Review.

5. SITE VISIT AND MEETINGS

The Commission visited the site on 12 August 2014.

5.1 Meeting with Council

Following the site inspection the Commission met with Shoalhaven City Council. The Council indicated its strong support for the project, noting that it would generate significant employment and economic benefits for the region. It also indicated general support for the conclusions and recommendations in the Department's assessment report but recommended that proposed Conditions 5(c), 8, 20(g), 21, 22, 23 and 28 be amended for the following reasons:

- Subdivision of commercial/retail development parcels should be allowed to facilitate financing of the development (draft Conditions 5(c) and 8)
- Further biodiversity assessment should not be required as the biodiversity assessment done for the Environmental Assessment Report is adequate and has satisfactorily addressed issues (draft Condition 21)

- The requirement for traffic impact assessment and modelling should only be required prior to submission of the development application for Stage 2 as the level of construction traffic for Stage 1 works does not warrant this level of assessment (draft Conditions 22 and 23)
- The site is not highly visible from other areas and is not within important view corridors and therefore a visual impact assessment is not warranted (draft Condition 20(g))
- A flood impact assessment should only be required where development of flood affected land is proposed (draft Condition 28).

Council also noted that the project would not be able to connect to its Reticulated Effluent Management Scheme (REMS) for non potable water use, as suggested in the Department's report. However, connection to Council's water and sewer services is feasible and there is adequate capacity.

5.2 Meeting with Proponent

The Commission also met with the proponent. The proponent outlined the background to the project and the Shaolin organisation, noting that it was a registered not-for-profit organisation and was aiming to establish a "place of benevolence" and religious retreat on the site. The employment and economic benefits of the project were also reiterated.

The proponent further advised that the residential component was integral to the overall development and that the dwellings would be available for permanent occupancy on a full time basis. It was suggested that the dwellings could be occupied by retirees or others with a direct affiliation with the Shaolin organisation.

The proponent requested a number of changes to the draft conditions in the Department's assessment report as follows:

- Allowing for subdivision of non-residential parcels to facilitate investment and development of the project
- Traffic modelling and assessment should only be required at Stage 2
- Comberton Grange Road should be a secondary public local road managed by Council
- The flood assessment should be confined to relevant development applications and not the whole site
- Development in the area of the abandoned pine forest should be allowed to proceed without further biodiversity assessment as this area has limited biodiversity value
- Sufficient provision has been made by the proponent to offset the loss of 34.5 hectares of forest vegetation
- The proponent does not support entering into any legally binding measures to protect the eastern conservation area prohibiting further action in the future.

5.3 Public meeting

On 13 August 2014 the Commission held a public meeting to hear the community's views on the Department's assessment report and recommended conditions. 12 speakers registered to speak at the meeting (refer Appendix 1) and a number of non-registered speakers also spoke at the end of the meeting.

Key issues raised by speakers included:

- Impacts on biodiversity, adequacy of the biodiversity assessment and survey methodology
- Impact on water quality (including impacts on groundwater), ability of project to "maintain or improve" water quality, risks to water quality associated with golf course management
- Transparency of process and potential conflict of interest for Council

- Lack of evidence in support of estimated employment generation and economic benefits of the project
- Lack of adequate community consultation
- The value of the quarry resource and associated impact of the proposal on the ability to extract the resource in the future
- Adequacy of physical and human services to support the project
- Ability to effectively monitor environmental impacts during construction and operation
- Impacts on Aboriginal cultural heritage
- Potential employment and economic benefits of project to Aboriginal community.

A number of written submissions for and against the proposal were received by the Commission after the public meeting. The submissions reiterated issues raised in the earlier submissions and in the public meeting.

6. COMMISSION'S ASSESSMENT

The Commission has reviewed the Department's assessment report and associated documents, submissions from the Council, government agencies and the community, views expressed at various meetings including the public meeting and written submissions received after the public meeting.

The Commission's assessment of key issues is provided below.

6.1 Water Quality

In the Commission's view it is critical that the water quality of Jervis Bay is not adversely affected by the proposed development. Given the sensitivity of the receiving environment (being within the Sanctuary Zone of the Jervis Bay Marine Park), the development must be able to achieve a Neutral or Beneficial Effect (NorBE) outcome for water quality.

A number of agencies and public submissions questioned the ability of the development to achieve a NorBE outcome.

The main impacts on water quality will be from construction works in the shorter term, and from urban development and management of the golf course in the longer term. While the Commission is satisfied that the water quality impacts of the construction works and urban development can be adequately mitigated and managed through effective implementation of stormwater management plans, it is concerned that the golf course use represents a significant risk to water quality over the longer term. In view of the critical sensitivity of the receiving environment, the Commission considers a precautionary approach must be taken and therefore that the golf course should be deleted from the project.

More generally, the Department has recommended the preparation of detailed stormwater management plans as well as a long term Stormwater Monitoring and Adaptive Management Plan (SMAMP) (draft Conditions 20 (d) and (e)) to be submitted with each development application. However, the Department of Primary Industries (Marine Parks Authority and Fisheries NSW) has advised that it does not support the preparation of a SMAMP for each development application, stating that the NorBE outcome needs to be assessed against the whole development. It has also recommended that independent audits of the detailed stormwater management plans should occur during project works. The Commission agrees with the recommendations of the Department of Primary Industries and the terms of approval have been amended accordingly.

6.2 Biodiversity

The proposal involves the removal of 34.5 hectares of habitat corridor as defined under the Jervis Bay Regional Environmental Plan (now a “deemed State Environmental Planning Policy”). This vegetation is being removed to accommodate the golf course, club house and associated facilities and potentially part of the hotel complex. The golf course is also intended to act as a buffer for bush fire purposes.

With respect to habitat corridors, the Jervis Bay REP requires that development must:

- be designed to minimise disturbance to the existing structure and species composition of native vegetation communities
- allow native fauna and flora to feed, breed, disperse, colonise or migrate (whether seasonally or nomadically)
- regenerate and revegetate degraded lands with local native species
- be designed to enhance the retention and augmentation of vegetation native to the area.

Both the South Coast Sensitive Urban Lands Review and the Office of Environment and Heritage (in its letter dated 28 February 2014) indicate that sufficient natural vegetation needs to be retained within the habitat corridor to maintain its integrity and functionality.

In the Commission’s view, there appears to be a fundamental conflict between the requirement to maintain some level of functionality in the habitat corridor with this area’s role as a bushfire buffer which would require it to be predominantly cleared.

The Commission considers that the integrity of the habitat corridor under the Jervis Bay REP must be protected. Along with the removal of the golf course, the Commission considers that the Hotel Precinct should be located sufficiently away from the habitat corridor to avoid the need for vegetation removal in this precinct. The removal of the golf course and relocation of the Hotel Precinct will ensure the protection of the habitat corridor.

As a result of these proposed changes, loss of vegetation on the site will be limited to within the abandoned pine forest area. The Commission considers that this area must still be subject to detailed survey and assessment to determine the extent of any impacts on biodiversity. Depending on the significance and extent of loss of native vegetation, it may be necessary to offset impacts.

In relation to the identification and long term management of any offsets should they be required, the Commission notes that the Department’s Assessment Report states that any offset should be determined utilising the Biobanking Assessment Methodology and any associated Biobanking Agreement should be in place prior to the submission of the first development application. However, draft Condition 21 does not reflect this conclusion and is ambiguous as to how any offset will be determined and secured. The Office of Environment and Heritage has advised the Commission that draft Condition 21 should be revised to provide certainty to the use of the Biobanking Assessment Methodology and offset calculation and that a Biobanking Agreement be the identified mechanism to legally protect conservation values. The Commission agrees with this view and the terms of approval have been amended to this effect.

6.3 Land Uses

The Commission considers that the development of the Shaolin Temple and associated health and educational facilities will bring cultural and economic benefits to the area and is therefore worthy of support. However, along with the impact of the golf course, the Commission has concerns regarding some other aspects of the development which are discussed below.

The South Coast Sensitive Urban Lands Review undertaken in 2006 by an independent review panel on behalf of the then Minister for Planning assessed the suitability of the site for development. The Review made a number of recommendations with respect to development of an integrated tourist facility on the site, including that:

- The design must be physically integrated so that it is not possible to sever the residential component from the tourist component
- The amount of residential development should be limited to 200-300 dwellings
- The land developed for tourism and residential purposes should be retained in one ownership
- The development should include adequate human services to meet the needs of the future community, whether permanent residents or tourists/visitors.

The South Coast Sensitive Urban Lands Review did not support the development of a stand-alone residential settlement on the site for the following reasons:

- it would conflict with the objective of the South Coast Regional Strategy that no new towns or villages be supported
- there would be potential impacts on the delivery of essential services.

The Commission is concerned that the amount of residential development associated with the proposal together with other proposed facilities (for example, Village Precinct), could result in the creation of an urban settlement in its own right contrary to the South Coast Regional Strategy and the South Coast Sensitive Urban Lands Review. It is noted that the concept plan provides for significant residential accommodation in the form of:

- 300 self-contained dwellings for permanent occupancy
- Residential accommodation for up to 50 monks
- Residential accommodation for up to 300 students and staff
- 1, 2 and 3 bedroom serviced apartments (number unknown)
- 250 room hotel (500 bed)
- 16 self contained tourist cabins (max 6 people per cabin)

The proponent has not provided clear evidence to show how the 300 residential dwellings will be integrated with the tourist development. Although the Department has recommended a condition requiring the residential and tourist development be held in one lot, the Commission is not convinced that this is sufficient to ensure integration of these uses. It is also evident to the Commission that Residential Precinct C is not physically integrated with the development and there could be pressure in the future to sever this area from the rest of the development.

The Commission therefore considers that the residential dwellings in Precincts A, B and C should be deleted from the proposal. In its view, there is sufficient residential accommodation provided for elsewhere in the development to cater for the visitor and tourist demands of the facility.

With respect to the proposed Village Centre Precinct, the Commission is concerned to ensure that the uses within this precinct are clearly integrated with the core tourist/temple functions and do not result in a de facto stand-alone shopping centre. The Commission therefore considers that future development applications for this precinct must clearly demonstrate that the proposed uses will be limited to:

- meeting the day to day convenience needs of visitors to the site which may include a small supermarket, chemist, bakery, newsagent and the like and/or

- providing retail and entertainment experiences directly linked to the tourist experience which may include Asian arts, crafts and herbal outlets as well as restaurants, cafes and the like.

Total development in the precinct, including retail and commercial floorspace, serviced apartments and the convention centre should not exceed 20,000m². Buildings should also not exceed the 11 metre height limit under the Shoalhaven Local Environmental Plan 2014.

Additional conditions have been included to address the above modifications, including a requirement that the concept master plan be revised to reflect the changes.

6.4 Bushfire

The NSW Rural Fire Service (RFS) has advised in its letter dated 18 February 2014 that it cannot determine whether the proposal meets the requirements set out in *Planning for Bushfire Protection 2006* (PBP). The RFS has noted that to achieve the necessary level of bushfire protection, it is expected that large areas of the site will be maintained in such a state where little or no vegetation will be present. The RFS has also advised that Asset Protection Zones will be required in excess of what is proposed on submitted plans. Accordingly, the RFS has recommended the imposition of a series of detailed conditions be imposed on the Concept Plan approval.

As the site is located within the Vegetation Category 1 bushfire zone and is proposed to be developed for Special Fire Protection Purposes (for example, schools and tourist accommodation), compliance with the PBP is critical. While the Department's draft conditions require the preparation of a bushfire risk assessment and management plan with each development application, the Commission considers that additional matters raised in the RFS letter should be included and has amended the terms of approval accordingly.

6.5 Subdivision

The proponent has indicated that the proposed condition prohibiting subdivision and requiring that the site must be kept in single ownership is onerous. Instead, the proponent has argued that there is a need to excise non residential parcels to facilitate investment and because the Buddhist sanctuary cannot co-exist on the same parcel of land as the proposed hotel selling alcohol.

The Commission acknowledges these constraints but considers that the overriding objective is the achievement of an integrated tourist development and that allowing for subdivision, albeit of non residential parcels, has the potential to undermine this objective. There is a risk that by subdividing off precincts such as the hotel and village precincts, these could be developed by separate entities in a way that does not integrate with the core facilities. No change is proposed to the conditions restricting subdivision.

6.6 Road Improvements

Draft Condition 22 requires an independent audit to be undertaken to assess the Princes Highway/Forest Road intersection upgrade requirements. This includes a traffic analysis and traffic modelling as well as the development of a concept plan for the new interchange. The audit is to be undertaken prior to the lodgement of the first development application.

Both the proponent and Council have indicated that the analysis and interchange concept design are only needed for the Stage 2 development application relating to the tourist development, not for early site clearing and civil works. They have therefore requested that this condition be reworded to require that the independent audit be undertaken prior to the submission of the Stage 2 development application not prior to the first development application.

Roads and Maritime Services in its letter dated 14 February 2014, has indicated that it does not object to the grade separated interchange being provided at Stage 2 provided that the appropriate level of assessment is undertaken prior to determination of the Stage 2 development application

The Commission agrees that this approach is reasonable and the proposed condition has been amended accordingly.

The Commission notes that the environmental impacts of the proposed new northern access road into the site from Forest Road as well as the Forest Road/Princes Highway intersection have not been assessed as part of the subject concept plan application. Environmental impact assessment and planning approval either under Part 4 or Part 5 of the EP&A Act still needs to occur prior to these road works proceeding.

6.9 Other Issues

Flooding

The proponent and Council have raised concerns regarding the draft condition requiring a flood assessment of the whole site prior to the submission of the first development application, arguing that all development has been demonstrated to be well above the 100 year ARI and (PMF) Probable Maximum Flood. Instead, they have argued that the requirement for a flood assessment should be confined to relevant development applications applicable to the detailed design of the development. The Commission agrees with this view and the condition has been amended accordingly.

Visual Impact Assessment

The Department's draft Instrument of Approval requires preparation of visual impact assessments prior to the submission of each development application. The Council has argued that this is excessive as the area is not within a view corridor and is not highly visible. As an 11 metre height limit is to apply to the site (apart from the temple) and the site is not readily visible from major view corridors, the Commission agrees that visual impact assessments are not warranted.

Assessment of Future Development Applications

The Commission considers that all future development applications for the project should be independently assessed to ensure transparency and allay concerns in the community regarding potential conflict of interest regarding Council's interest in the project. The Commission notes that future development applications will be determined by the Southern Joint Regional Planning Panel which is an independent body. In the Commission's view, the assessment reports to the JRPP should similarly be prepared by an independent assessor to ensure Council's involvement remains at arm's length.

Zoning

The Commission notes the discussion in the Department's Assessment Report regarding future zoning of the site and considers that the eastern conservation area, SEPP 14 wetland and riparian corridors should be zoned E2 Environmental Conservation to ensure their protection.

The Commission also considers that an SP3 Tourist zone should apply to the development footprint. The SP3 Tourist zone is ideally suited to the project as it would permit the range of land uses suitable to a fully integrated tourist facility.

7. COMMISSION'S FINDINGS AND DETERMINATION

The Commission has carefully considered the Secretary's Assessment Report and the recommended conditions of approval, submissions on the concept plan, issues raised at the public meeting as well as supplementary information and public submissions received after the public meeting.

After detailed consideration of the evidence, the Commission has determined to approve the concept plan excluding the golf course and the Residential Precincts A, B and C. The golf course is to be deleted due to the potential risk this use poses to water quality in the longer term. The residential precincts are to be deleted as they are not considered integral to the tourist development and could lead over time to the creation of an urban settlement contrary to the recommendations of the South Coast Sensitive Urban Lands Review.

Approval is also not granted to the removal of the 34.5 hectares of habitat corridor as defined under the Jervis Bay Corridor REP. With the deletion of the golf course and relocation of the Hotel Precinct there is no need to remove vegetation within the corridor.

While the residential dwellings and golf course are not supported, the Commission considers that the development of the Shaolin Temple and associated health and educational facilities will bring cultural and economic benefits to the area.

The Commission has amended the terms of approval to reflect this determination, in particular via the imposition of the following conditions:

- Condition 7 (modifications required to the concept plan)
- Conditions 19(d) and 20 (changes to further protect water quality to the required standard)
- Condition 19(h) (further detail to be addressed in bushfire risk assessment and management plan)
- Conditions 21 and 27 (protection of biodiversity)
- Condition 22 (limiting the scale of the village centre and linking it to the tourist development)



Donna Campbell
Commission Chair



Richard Thorp
Commission Member



David Johnson
Commission Member

Appendix 1

List of Speakers

Planning Assessment Commission Meeting

Comberton Grange Concept Plan for Tourist and Residential Development, Shoalhaven

Date & Time: 10 am Wednesday, 13 August 2014

Place: Archer Resort, Corner Princes Highway & Kalandar Street, Nowra

1. The Australian Orchid Council
Alan Stephenson
2. Judith Gjedsted
3. David Phelps
4. The Lake Wollumboola Protection Association
Frances Bray
5. Graeme Gibson
6. The Jervis Bay Regional Alliance
Leslie Lockwood
7. Roger Hart
8. Angus Bishop
9. Daniel Joseph Mcconnell
10. Maureen Webb
11. Peter Cumes
12. CCI Murring Centre Project
Darren McLeod