



Planning Assessment Report

Application to Modify Development Consent

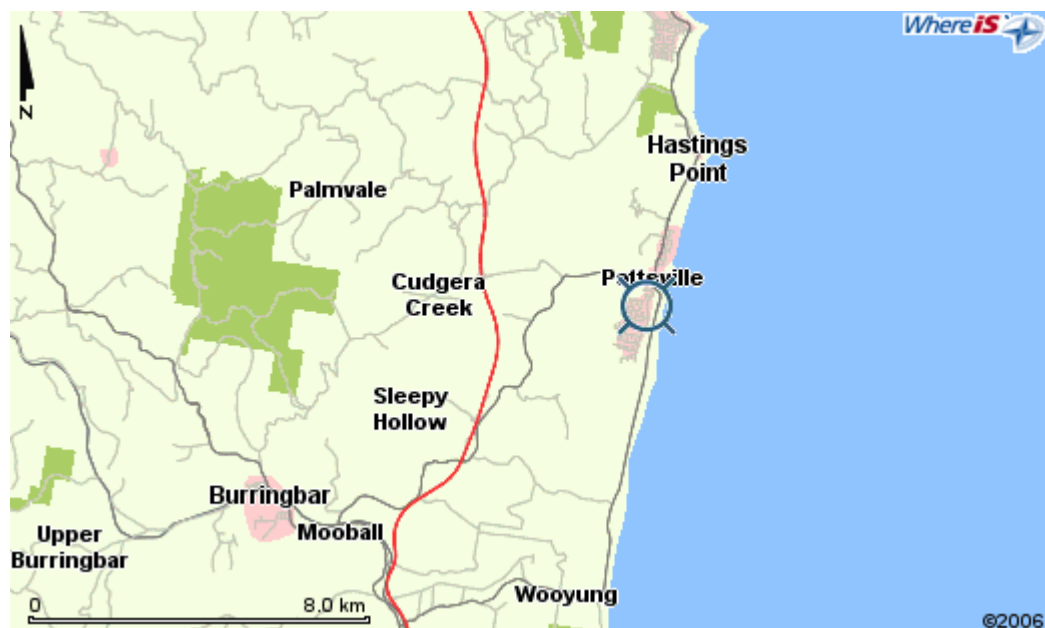
MOD 76-6-2006 modifying DA 243-10-2004

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application Modification number MOD 76-6-2006 modifying DA 243-10-2004 under section 96(1A) of the Act lodged by R.L. Cowan of Black Rocks Estate Pty Ltd on 29th May, 2006.

The application seeks to modify Development Application DA 243-10-2004 approved under delegation from the Minister on 9th January, 2006.

The site is located at Lot 232 DP 1072665 and Lot 183 DP 1034824 Overall Drive, Pottsville in the Tweed Shire local government area. A site location is shown below and a zone plan is attached at Tag B.



Under the instrument of delegation dated 5th April, 2006 and having regard to the Guidelines for Delegates, it is considered appropriate that the application be determined under delegation by the Executive Director, Major Project Assessments.

It is recommended that the modification application be **approved**.

1.1 Relevant approvals / modifications:

DA 243-10-2004 approved on 9th January, 2006 for the creation of 68 residential lots encompassing the final 2 stages of a 14 stage residential development to create the Black Rocks Estate at Pottsville, Northern NSW.

2 THE PROPOSED MODIFICATIONS

The applicant is seeking to modify conditions of consent of the approved development as follows:

- Condition B6 (b) (i)
'The engineering plans and specifications to accompany the construction certificate application shall provide for :
 - i) The cycleway is to be located on top of the batter adjoining proposed residential allotments.'*
- Condition B9 (g)
'The cycleway is to be provided on the top of the batter.'

The applicant is of the view that the conditions were imposed because Council officers did not want any infrastructure (other than the fill batters) within the 50m wide foreshore buffer (because it could encourage people to use the sensitive foreshore area) and as a means of defining the boundary between the public land and private lots.

The Department is requested by the applicant to modify these conditions to enable the pathway to be constructed at the toe of the batter for the following reasons:

- o The existing cycleway/walkway for previous stages north of the Black Rocks Bridge was constructed at the toe of the batter in accordance with the then requirements of Tweed Shire Council. This location does not affect the privacy of existing lot owners and to date there have been no known security or amenity issues.
- o Locating the cycleway/walkway at the top of the batter will adversely impact on the privacy and amenity of the rear yards of the abutting properties and may also give rise to security risks to those properties.
- o Delineation of the property boundaries between the private lots and the public land (foreshore reserve) at the top of the batter can be achieved by the installation (by the developer) of an appropriate fence at the subdivision stage.
- o The proposed cycleway/walkway is considered by the applicant to have negligible impact on the foreshore area if located at the toe of the batter. The erection of a post and rail fence on the eastern side of the walkway along with appropriate signage is proposed to discourage informal use of the foreshore area.

The applicant proposes the above conditions be modified as follows:

'The cycleway is to be located at the toe of the batter where it adjoins proposed residential lots. An open type fence shall be erected on the common boundary of the residential lots and the Mooball Creek foreshore buffer. A low post and rail fence shall be erected on the eastern edge of the cycleway together with appropriate signage to discourage pedestrians and cyclists from using the foreshore buffer area. Details of the

open type fence, the low post and rail fence and the signage shall be approved by Tweed Shire Council prior to construction of the relevant fencing and signs.'

- Condition G2

'The applicant, or any party acting upon this consent, shall submit to the Department a three monthly report addressing compliance with all relevant conditions of this consent.'

Part G is Post Occupation which does not apply to subdivision. The applicant suggests the condition be deleted or relocated to Part A of the consent and that it apply up to when the subdivision certificate is issued.

- Condition H2

'The application of an asset protection zone to a distance of 25m, shall be maintained as an inner protection area (IPA) and then an additional 10m shall be maintained as an outer protection area (OPA) as outlined within Section 4.2.2 in Planning for Bushfire Protection, 2001. The APZ shall be applied to the full length of the western boundary including that area that is proposed as an infiltration basin. The APZ shall be fully contained within the proposed development area.

The application of a 20m wide APZ as outlined within Section 4.2.2 in Planning for Bushfire Protection, 2001. The APZ shall be applied to the full length of the southern boundary and be contained fully within the proposed development area. The 20m APZ shall be managed as an inner protection area.'

Tweed Shire Council has agreed in writing to maintain the asset protection zone in respect of that part of the development site which is to be transferred to Council and as such the asset protection zone may and does extend beyond the urban footprint.

The applicant has requested that the condition be amended to clarify the meaning of *'the APZ shall be fully contained within the proposed development area.'*

Section 6 of this planning report describes how the above matters have been resolved.

3 CONSULTATION / PUBLIC EXHIBITION

Consultation of the proposal was not considered necessary given the minor nature of the modification.

The application was referred to Tweed Shire Council on 21 June 2006. Minutes of Tweed Shire Council's meeting of 26 September 2006, which included recommendations to amend conditions B6(b)(i) and B9 (g) were sent to the Department in a letter from the proponent dated 3 October 2006. The recommendations are discussed in Section 5 of this report. A copy of the minutes of the meeting are attached as Tag **C**.

The application was referred to the Rural Fire Service (RFS) on 21 June 2006. The RFS provided comments dated 11 July 2006 generally endorsing the amended conditions as proposed by the applicant. A copy of RFS submission is attached as Tag **D**.

4 SECTION 96

The application is considered to meet the prerequisites of Section 96(1A) of the Act in that the proposed modifications are considered to be of minimal environmental impact, and that the development as modified is considered to be substantially the same development as that to which consent was originally granted.

5 SECTION 79C ASSESSMENT

Section 79C(1) of the *Environmental Planning and Assessment Act, 1979* requires a consent authority to consider prescribed matters as are of relevance to the development the subject of the development application.

5.1 Section 79C (1)(a)

the provisions of:

- (i) any environmental planning instrument, and*
- (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and*
- (iii) any development control plan, and*
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates.*

5.2 Instrument of Consent

The development is state significant development under Schedule 2 of SEPP 71 Pursuant to Clause 10(2) the Minister is the consent authority. The proposal was originally assessed under the provisions of SEPP 71 which has now been considered to the extent of the proposed modifications.

5.3 Statement of Permissibility

The site is zoned 2(a) – Low Density Residential; 7(d) – Environmental Protection (Scenic/Escarpment) and 7(l) - Environmental Protection (Habitat) under the provisions of Tweed Local Environmental Plan 2000.

Consent has been issued for the cycle/walkway to be in the 7(l) zone and the proposed modification seeks to relocate the cycle/walkway within that zone. The modification does not propose to change the Asset Protection Zones under consent but to clarify the intent of the condition.

The proposed modifications are permissible subject to development consent.

5.4 Integrated Development

The original application was integrated under the Fisheries Management Act, Roads Act 1993 and Rural Fires Act 1997.

The application for modification was referred to the NSW Rural Fire Service on 21st June 2006. The NSW Rural Fire Service responded on 11th July 2006 and they agreed to modify condition of consent H2 and remove the sentence '*The APZ shall be fully contained within the proposed development area.*' A copy of the RFS submission is attached as Tag **D**.

5.5 Relevant Planning Instruments

- o SEPP No.71 – Coastal Protection
- o Coastal Protection Act 1979
- o NSW Coastal Policy 1991
- o North Coast Regional Environmental Plan 1988

The following Development Control Plans apply to the site and have been assessed as relevant to the proposed modification of consent:

- o Tweed Development Control Plan 16 – Subdivision
- o Tweed Development Control Plan 5 – Flooding
- o Tweed Development Control Plan 39 – Energy Smart Homes
- o Tweed Development Control Plan 44 – Dual Occupancy
- o Tweed Development Control Plan 45 – Socio-Economic Impacts

The proposed modifications are considered to be in accordance with the relevant Environmental Planning Instruments.

5.6 Section 79C(1)(b)

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

Environmental Impact

The proposed modifications of the development consent reflect the intended planning outcomes of the original development consent. The relocation of the cycleway from the top to the toe of the batter will bring the proposal in line with the previous stages 1-12 of the Black Rocks Development. Locating the cycleway further away from residential properties will ensure the residential amenity of future occupiers is maintained through increased visual privacy and increased security to properties.

The rewording of the condition with regard to the proposed APZ will ensure the development will comply with the recommendations of *Planning for Bushfire Protection*.

Social and Economic Impacts

The deletion of condition G2, which required a three-monthly report addressing compliance with conditions, will lessen the overall cost of development and save resources.

5.7 Section 79C(1)(c)

The suitability of the site for development

The suitability of the site for development was assessed under the previous development application. The proposed modifications are consistent with the original consent.

5.8 Section 79C(1)(d)

Any submissions made in accordance with the Act or the Regulations

The application was not formally exhibited. Submissions received from Tweed Shire Council and the RFS have been considered in this assessment.

5.9 Section 79C(1)(e)

The public interest

The proposed modifications to conditions are in the public interest.

6 ISSUES

6.1 Location of Cycleway/Walkway (Conditions B6(b)(i) and B9)

- Issue:* Modify conditions B6(b)(i) and B9 to require the proposed cycle way to be located at the toe of the approved batter rather than along the top.
- Consideration:* Council's reasoning for the imposition of the conditions was to prevent any infrastructure being within the 50m wide foreshore buffer, with the cycleway a means of defining the boundary between public land and private lots. The applicant proposes the installation of an appropriate fence to delineate between the public and private lots. Council's minutes of meetings (Tag C) reflect the proponents recommendations by proposing amendments to the conditions to include the imposition of a 1.2m high fence and specifying design standards for the cycleway. The relocation of the cycleway would bring stages 13 and 14 in line with the previous stages of the development and would provide for greater privacy and security to the adjoining private residential lots and will not result in any significant impact on foreshore areas.
- Resolution:* Part (b)(i) of Condition B6 and part (g) of Condition B9 have been deleted. Condition B6A has been inserted to reflect the above recommendations as indicated in the attached modified conditions of consent.

6.2 Compliance Report (Condition G2)

- Issue:* Delete Condition G2
- Consideration:* Part G of the consent refers to post occupation and Condition G2 requires a three monthly compliance report. This is an application for subdivision and as such Part G Post Occupation is not relevant.
- Condition B13 of the original consent requires that prior to a Construction Certificate a report addressing compliance with all relevant conditions of consent be submitted to the Department. Condition G2 is therefore considered to be superfluous and should be deleted.
- Resolution:* Delete condition G2 as indicated in the attached modified conditions of consent.

6.3 Clarification of Proposed Asset Protection Zone (Condition H2)

<i>Issue:</i>	Clarify condition H2 to reflect the location of the Asset Protection.
<i>Consideration:</i>	The applicant contests the wording of condition H2, which requires: ' <i>...the APZ to be fully contained within the proposed development area</i> '. The original application proposed to locate 20m of the APZ outside the development area within Council owned land. Council's Recreation Services Unit confirmed in a letter dated 10 November 2005 (Tag E) that they were prepared to manage this parcel of land in accordance with the <i>RFS Planning for Bushfire</i> protocol. The imposition of Condition H2 prevents the development being carried out as intended and would result in non compliance with the <i>RFS Planning for Bushfire</i> . The RFS was consulted with regard to the proposed amendment to the condition, which they endorse (Tag D).
<i>Resolution:</i>	Modify condition H2 by deleting the wording (<i>The APZ to be fully contained within the proposed development</i>) as indicated in the attached modified conditions of consent.

7 CONCLUSION

The Minister for Planning is consent authority for modifications to consents he has granted.

The proposed development as modified is considered to be substantially the same development as that originally approved.

The application has been considered with regard to the matters raised in section 79C of the Act.

The application has been notified in accordance with the Regulations. All submissions received in the period prescribed by the Regulations have been considered.

On balance, it is considered that the proposed development as modified is acceptable and should be approved.

8 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The applicant was asked to comment on the draft conditions of consent on 9 October 2006. The applicant responded on 9 October 2006 and was satisfied with the draft conditions.

9 RECOMMENDATION

It is recommended that the Executive Director, Major Project Assessments, as delegate for the Minister for Planning, pursuant to Section 96(1A) of the *Environmental Planning and Assessment Act, 1979* **approve** the application to amend the conditions in the manner shown at Tag **A**.

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