

DEPARTMENT OF PLANNING & INFRASTRUCTURE

Development Assessment & Systems Performance

TATHRA-BERMAGUI ROAD, MURRAH (BEGA VALLEY SHIRE LGA) - DA311-12-2004 MOD 1

PURPOSE

To determine a modification application for a rural residential subdivision at Tathra-Bermagui Road, Murrah.

BACKGROUND

On 15 October 2005, the Deputy Director-General as the Minister's delegate granted conditional consent for a 5 lot subdivision, including 1 residue lot, ranging in area from 8 to 10 hectares.

The proposal was State Significant Development and Integrated Development; and the Rural Fire Service (RFS) was an integrated approval body. The RFS, Office of Environment and Heritage, and Council made submissions on the original application. There were no public submissions.

PROPOSED MODIFICATION

The application proposes to delete the following condition:

B2 Construction works

The following subdivision work shall be designed (plans submitted to Council for approval) and constructed in conformity with Council's Subdivision Guidelines and Technical Specifications (or other documents formally adopted by Council for the purpose of specifying standards for subdivision works, DCP No.2) as current at the date of the relevant Construction Certificate, and sound engineering practice:

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- g) construction of **electricity reticulation** works and associated facilities to service every lot."

The proponent's justification is:

- to enable use of sustainable energy, such as solar and wind; and
- to avoid vegetation clearing costs in connecting to an existing electricity line bisecting the site.

The application proposes to amend the following to correct an error in the land description.

Schedule 1, Part A – Table – Land comprising the application.

The application proposes to amend the following condition to correct a reference to Nambucca Shire Council to Bega Valley Shire Council:

E4 Services

Documentary easements for services, drainage, maintenance or any other encumbrances and indemnities required for joint or reciprocal use of part or all of the proposed lots as a consequence of the subdivision, must be created in favour of Nambucca Shire Council over the appropriate lots in the subdivision pursuant to Section 88B of the Conveyancing Act 1919.

CONSULTATION

In accordance with s 75X of the EP&A Act and cl 8G of the EP&A Regulation, the modification application was made available on the Department's website. Due to the minor nature of the proposed modification, the application was not otherwise exhibited.

The application was referred to Essential Energy (formerly Country Energy) and Bega Valley Shire Council for information. Essential Energy raised no objection to the proposal.

Council did not object but requested the following:

- additional justification for not providing an electricity supply, for example, unreasonable costs or environmental impacts;
- a standard condition requiring notation on the contracts of sale of purchasers' responsibility for electricity supply with such evidence submitted to Council prior to subdivision certificate release;
- Condition E10 be modified in conjunction with Condition B2(g) because it relates to easements for electricity service connection; and
- Condition E4 be modified to change the reference to Nambucca Shire Council.
- On 29 August and 14 September 2011, Council advised the Department that it raised no objection to the modification and the draft conditions satisfied its requirements.

No public submissions were received on the modification request.

DELEGATED AUTHORITY

On 25 January 2010 (confirmed 28 May 2011), the Minister for Planning and Infrastructure delegated his powers and functions under s 75W of the EP&A Act to Directors in the Major Projects Assessment Division in cases where there are less than 10 public submissions (not including submissions from public authorities) in the nature of objections in respect of the modification request.

No public submissions were received and Council's submission was provided by way of comment. Moreover, Council's comments about justification for modification of Condition B2(g) have been addressed in the modification application. Hence, it is considered the Director can determine the modification request under delegation.

KEY ISSUES

Electricity reticulation

Condition B2(g)

The proposed deletion of the requirement to connect all lots to electricity will enable the proponent to provide alternative, environmentally sustainable power sources. This is consistent with ESD principles and is in the public interest.

The Department considers the proponent's justification is sufficient and that no further justification is warranted, particularly given Essential Energy did not object to the proposed modification. It is further recommended that Condition B2(h) be renumbered accordingly.

Condition E10 Easements for services

E10 Easements for services

The plan of subdivision shall establish easements for services as necessary to provide for the connection of electricity services to lots.

The Department considers that Condition E10 does not need modification as solar and wind power provide electricity, and the condition requires easements only 'as necessary'. The proponent envisages individual, self sustaining systems for each lot, avoiding the need for easements.

Condition E19 Energy supply

Modification of the consent to add Condition E19 was not part of the application but the Department recommends a requirement for notation on the title to indicate owners' responsibility for electricity supply and the absence of reticulated electricity services to the site, in order to address Council's comment.

Land comprising the application

Schedule 1, Part A – Table

The proposed modification of the land description will correct a typographical error.

The Table to Schedule 1 also contains several minor, typographical errors which were not included in the modification application but which should be corrected.

Condition E4 Services

The Department considers that a correction is required to change the reference from Nambucca Shire Council to Bega Valley Shire Council.

Condition H1 Rural Fire Service

The condition reads as follows:

H1 Rural Fire Service

The proposed road shall comply with the road widths, curve and grade requirements of section 4.3.2 of Planning for Bushfire Protection 2001.

Modification of Condition H1 was not included in the application but is recommended in order to refer to the current *Planning for Bushfire Protection Guidelines 2006* (instead of 2001).

Council and the proponent did not object to the draft modification instrument.

RECOMMENDATION

It is RECOMMENDED that the Director:

- note the information provided above;
- approve the modification request, subject to conditions; and
- sign the attached modifying instrument (**Tag A**).

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