



Magenta Shores Integrated Tourist Facility

*Development Consent
Modification
Assessment
(DA 32-1-2003 MOD 6)*

February 2020

© Crown Copyright, State of NSW through its Department of Planning and Environment 2020

Disclaimer

While every reasonable effort has been made to ensure this document is correct at time of printing, the State of NSW, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance or upon the whole or any part of this document.

Copyright notice

In keeping with the NSW Government's commitment to encourage the availability of information, you are welcome to reproduce the material that appears in this report. This material is licensed under the Creative Commons Attribution 4.0 International (CC BY 4.0). You are required to comply with the terms of CC BY 4.0 and the requirements of the Department of Planning and Environment. More information can be found at: <http://www.planning.nsw.gov.au/Copyright-and-Disclaimer>.



Glossary

Abbreviation	Definition
Commission	Independent Planning Commission
Council	Central Coast Council
Department	Department of Planning, Industry and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPI	Environmental Planning Instrument
Minister	Minister for Planning
Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy



1. Background

1.1 Background

This report provides an assessment of a request to modify the development consent (DA 32-1-2003) for the Magenta Shores integrated residential and tourist development at 300 Wilfred Barrett Avenue, The Entrance North.

The proposal seeks to correct a drafting error in the reference to the approved subdivision plan in Condition 1B and delete Condition 7A of the modification instrument (DA 32-1-2003 MOD 5).

The request has been lodged by Magenta Shores Development Pty Ltd (the Proponent) pursuant to section 4.55(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 Subject site

The Magenta Shores masterplan site (the site) is located on the North Entrance Peninsula, east of Tuggerah Lake and west of Tuggerah Beach, within the Central Coast Local Government Area (**Figure 1**). It fronts Wilfred Barrett Drive (also known as the Central Coast Highway) and shares its eastern boundary with the sand dunes of Tuggerah Beach and its northern boundary with the Wyrabalong National Park. The site is located approximately 5.2 kilometres (km) south of Toukley, 4.7km north of The Entrance and approximately 100km north of the Sydney CBD.



Figure 1 | Magenta Shores masterplan site outlined in blue and Stage R07 outlined in red (Nearmap)

The site contains the tourist resort, golf course and permanent residential dwellings divided into 13 stages, as approved under the development consent (DA 32-1-2003).

This modification application relates to the lots within Stage R07 (outlined in red in **Figure 1**). The site (Stage R07) is located east of the golf course (18th hole) and north of the Coastal Protection Zone.

The site does not contain any significant vegetation, is relatively flat and does not currently contain any roads or other supporting infrastructure.

1.3 Approval History

On 3 February 2004, the then Minister for Planning granted development consent for a masterplan for an integrated tourist facility (DA 32-1-2003), comprising:

- a resort with maximum gross floor area (GFA) of 10,000 m²
- an 18-hole golf club and ancillary facilities
- a maximum of 611 tourist and permanent residential accommodation, comprising:
 - 93 resort suites
 - 120 resort accommodation villas and recreational facilities
 - 398 permanent residential dwellings
- vehicular and pedestrian access and circulation arrangements
- subdivision and landscaping.

As a masterplan, the approval requires separate development consent(s) for all individual components of the development, including the subdivision.

The development consent has been modified on five occasions as outlined in **Table 1**.

Table 1 | Modifications to the Masterplan Approval (DA 32-1-2003)

Mod	Summary of Modifications	Approved
MOD 1	Deletion of 93 resort suites, reduction of 46 permanent dwellings, increased of 43 resort villas and modifications to landscaping, subdivision and building heights and locations.	10 February 2005
MOD 2	Modification to Rural Fire Service conditions	4 October 2006 by the Department
MOD 3	Modification permitting the ownership of small dogs	22 May 2007 by the Department
MOD 4	Increase of 15 permanent residential lots, reconfiguration of lot layouts and size, removal of pedestrian access to the golf course and realignment of roads including removal of pocket parks.	23 December 2016 by the Department
MOD 5	Increase the number of lots in the “R07A Release Area”, amend the lot orientation, change the road layout, and remove pedestrian access to the golf course.	10 January 2019 by the Independent Planning Commission (Commission)



2. Proposed Modification

On 12 December 2019, the Proponent lodged a request to modify the development consent (DA 32-1-2003) under section 4.55(1) of the EP&A Act.

The proposal seeks to correct a drafting error in the reference to the approved subdivision plan in Condition 1B of the modification instrument (DA 32-1-2003 MOD 5), as shown below:

No.	Drawing Title	Issue
17036	<i>Proposed Subdivision in a Plan of Subdivision of Lot 24</i> <u>Lot 30</u> D.P.270492 <i>Magenta Shores Magenta</i> <i>Stage R07A</i>	<i>A (10.01.19)</i> <u>(20.11.18)</u>

The proposal also requests the deletion of Condition 7A which requires the road layout in Stage R07 be amended to reflect the approved plan 17036, as shown below:

~~7A. The road layout within Stage R07 shall be amended to provide an additional pocket park within the roadway at the southern end of White Haven Avenue. The revised drawing(s) shall be generally in accordance with plan 17036 and shall be submitted to and approved by the Secretary prior to the submission of a development application for Stage R07, as modified by DA 32-1-2003 MOD 5.~~

The Proponent contends that the subdivision plan (17036) provided to the Commission during the determination of MOD 5 provided the amended road layout as required in Condition 7A, and this plan was incorrectly referenced in the list of approved plans. The revised plan incorporates the additional pocket park within the roadway at the southern end of White Haven Avenue. Condition 7A is therefore no longer required.



3. Statutory Context

3.1 Part 4 Development Consents

Development consent was granted for the masterplan under Part 4 of the EP&A Act. While the development consent has been previously modified as a transitional Part 3A project under the former section 75W of the EP&A Act, it remains a development consent issued under Part 4. The development consent can therefore be modified under section 4.55 of the EP&A Act.

3.2 Modification of Approval

Section 4.55(1) of the EP&A Act requires the consent authority to be satisfied that the following matters are addressed in respect of all applications that seek modification approvals:

Table 2: Matters for consideration

Section 4.55(1) matters for consideration	Comment
A consent authority may, on application being made by the application or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation.	The application seeks to amend Conditions 1B and 7A to correct a minor error in the existing consent.
Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.	Noted.

3.3 Consent Authority

Minister's delegate as consent authority

The Minister for Planning is the consent authority for the application under section 4.5(a) of the EP&A Act. However, the Director, Regional Assessments may determine applications under delegation as:

- the relevant local council has not made an objection
- a political disclosure statement has not been made
- there are no public submissions objecting to the proposal.



4. Engagement

The Department made the modification application report available on its website from 8 January 2020. As the application is seeking to correct a drafting error (under section 4.55(1)), the Department is not required to and did not notify the application by any other means.



5. Assessment

In assessing the merits of the proposed modification, the Department has considered the:

- the modification and associated documents (**Appendix A**)
- the Environmental Assessment and conditions of approval for the original project (as modified), and in particular MOD 5
- requirements of the EP&A Act.

The proposal seeks to correct a drafting error in the approved subdivision plan referenced within Condition 1B. The approved modification instrument refers to Plan 17036 - Lot 24 in DP 270492 with a date of 10.01.19 however this plan does not exist.

The Department notes that prior to the determination of Modification 5, the Commission requested an amended plan showing the location of two additional pocket parks (**Figure 2**). It is this plan, with the same reference number but referring to Lot 30 and a date of 20.11.18, that should have been referenced in the list of approved plans (in Condition 1B).

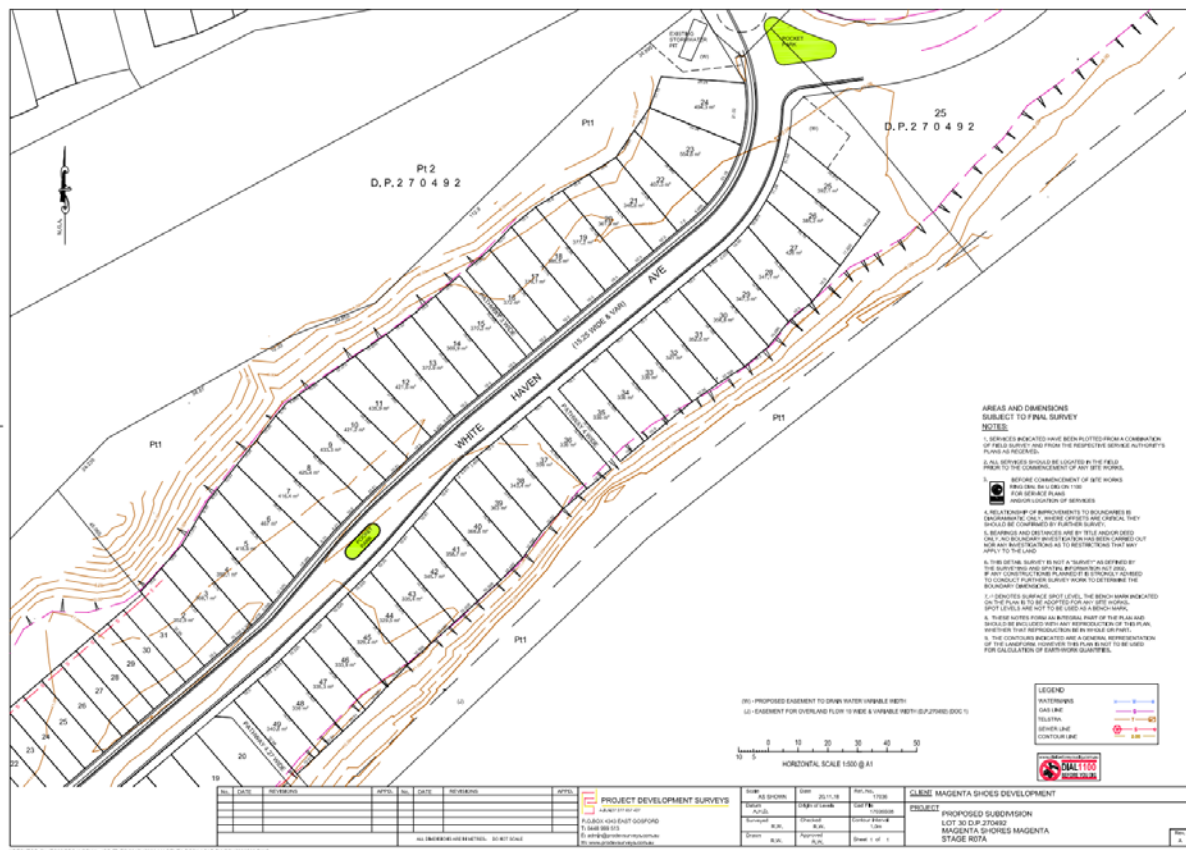


Figure 2: Subdivision plan dated 20.11.18

The Department also notes that the Commission's request for an amended subdivision plan followed the Department's recommendation, in Condition 7A, that amended subdivision plans be provided showing an additional pocket park to the west along White Haven Avenue. As this plan was provided to the Commission prior to determination and listed as an approved plan, Condition 7A no longer has a function.

The Department is therefore satisfied that the proposal to update the reference is acceptable and accurately reflects the intended subdivision plan to be approved. The Department is also satisfied that Condition 7A is not required as the plan intended to be approved by the Commission (**Figure 2**) shows the location of the pocket parks.



6. Evaluation

The Department concludes that the proposal is acceptable as it involves correcting a minor drafting error in the date and title of the subdivision plan intended to be approved by the Commission and deletes Condition 7A as the approved plan shows the location of the pocket parks required in this condition.

The Department's assessment therefore concludes the modification request is recommended for approval.



7. Recommendation

It is recommended that the Director of Regional Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report
- **determines** that the application DA 32-1-2003 MOD 6 falls within the scope of section 4.55(1) of the EP&A Act
- **modify** the consent DA 32-1-2003
- **signs** the attached Modification of Development Consent (Attachment B).

Recommended by:

Ellen Nicholson
Planning Officer
Regional Assessments

Silvio Falato
Team Leader
Regional Assessments



8. *Determination*

The recommendation is: **Adopted by:**

17 February 2020

Brendon Roberts

A/Director

Regional Assessments



Appendices

Appendix A – List of Documents

<https://www.planningportal.nsw.gov.au/major-projects/project/26571>

Appendix B – Modification of Development Consent

<https://www.planningportal.nsw.gov.au/major-projects/project/26571>