

## ASSESSMENT REPORT

### Residential Subdivision, Bilambil MP 05\_0198 MOD 2

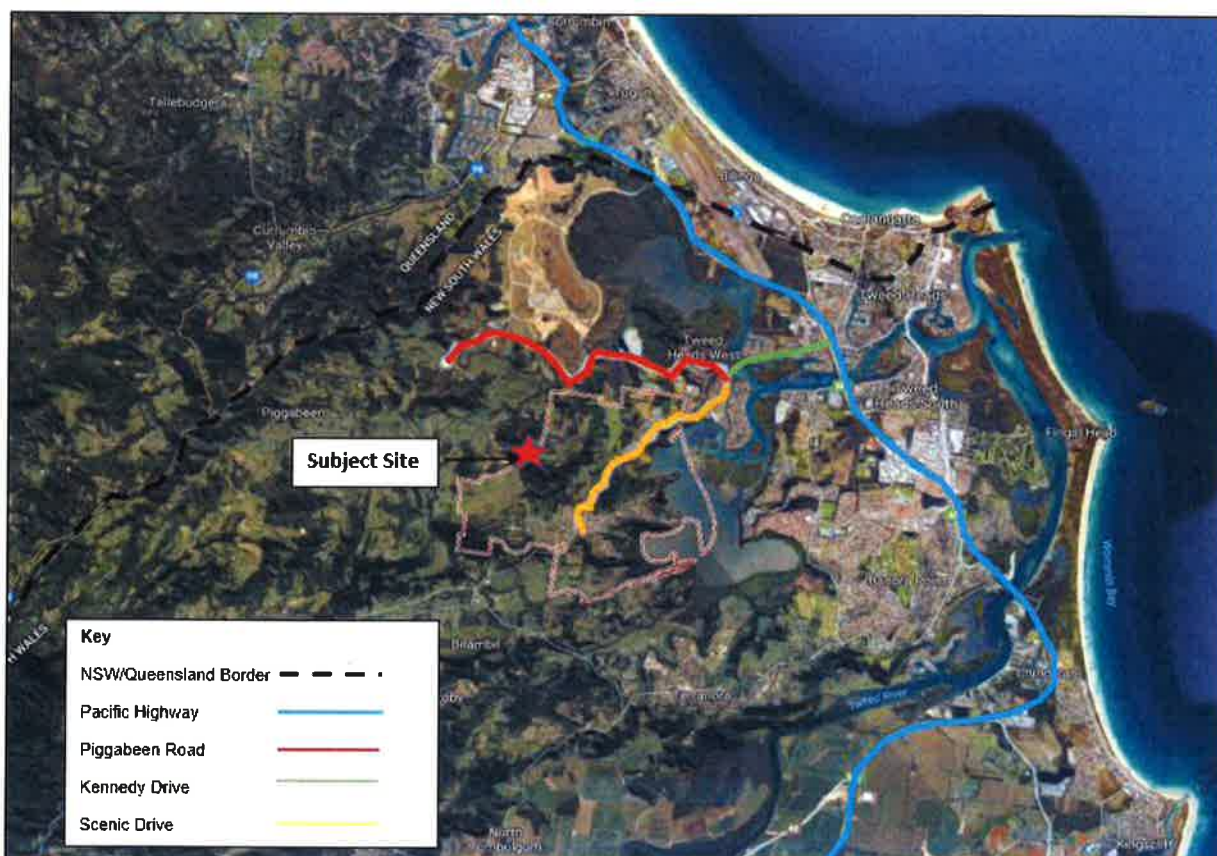
#### 1. INTRODUCTION

This report is an assessment of a request to modify the Project Approval for an 85 lot residential subdivision at Bilambil Heights in the Tweed local government area (LGA).

The request has been lodged by DAC Planning Pty Ltd, on behalf of the property owners (WDLC Pty Ltd, ATF Dickinson Superannuation Fund, M and R Walmsley, H Mabbutt and D Miller) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to extend the lapse date of the Project Approval by one year.

#### 2. SUBJECT SITE

The site is located on Walmsleys Road and Stott Street, Bilambil Heights, approximately six kilometres (km) south-west of the Tweed CBD and 3 km south of the New South Wales/Queensland border (refer **Figure 1**).



**Figure 1: Regional Context** (source: Google Maps)

The site is characterised by its hilltop location and steep slopes. A north-south ridgeline forms an escarpment along the highest part of the site from which the land slopes steeply to the east and west. Site elevations range from 72 metres (m) to 85 m AHD along the ridgeline, to approximately 54 m AHD in the western and eastern parts of the site.

The majority of the site is cleared of vegetation, however, one Endangered Ecological Community (EEC) and eight rare and/or threatened plant communities are located adjacent to the southern and western boundaries of the site. A single row of Camphor Laurel trees also runs between the eastern and western boundaries of the site (see **Figure 2**).



**Figure 2:** Existing Site Features (Source: Residential Subdivision Bilambil, Director-General's Report)



### 3. APPROVAL HISTORY

On 2 August 2012, the Planning Assessment Commission (the Commission) granted Project Approval for an 85 lot residential subdivision comprised of 77 Torrens Title lots, a six lot Community Title scheme (five residential lots and one neighbourhood property lot), one public reserve, one lot to accommodate a sewage pumping station, and associated infrastructure works.

The Project Approval has been modified on one occasion to permit changes to the sewerage servicing infrastructure for the site, and the removal of trees to facilitate site survey works (MOD 1).

### 4. PROPOSED MODIFICATION

On 19 July 2017, the Proponent lodged a section 75W modification request (MP 05\_0198 MOD 2) seeking approval to extend the lapse date of the approval by one year from 2 August 2017 to 2 August 2018. The proposed extension has been requested to provide the Proponent sufficient time to commence subdivision works.

### 5. STATUTORY CONSIDERATION

#### 5.1 Part 3A and Transitional Provisions

The project was originally approved under Part 3A of the EP&A Act. Although Part 3A was repealed on 1 October 2011, the project remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act, and hence:

- the project lapses in accordance with any condition in force under the former section 75Y (clause 11 of Schedule 6A)
- extensions to the lapse date are permitted, provided a modification request is made before the date on which the approval would otherwise lapse (clause 11A of Schedule 6A)
- any modification to this approval must be made under the former section 75W of the Act (clause 3C of Schedule 6A).

In satisfaction of the above clauses, the Department notes:

- Condition A6 of the Project Approval, which was imposed in accordance with the now repealed provisions of section 75Y, specifies the approval lapses five years after the date of determination (2 August 2017), unless the Proponent commences work prior to this date
- As the modification request was lodged prior to 2 August 2017, it is possible to extend the lapse date of the approval
- The Department is satisfied the proposed changes are within the scope of section 75W of the EP&A Act, and the proposal does not constitute a new application.

#### 5.2 Section 75Y

The former section 75Y of the EP&A Act provides that a condition specifying a lapse date on an approval may be modified to extend the lapse date, provided the Minister reviews the approval before granting an extension. The Department has reviewed the original approval, consistent with the terms of the former section 75Y, at **Section 7** of this report.

#### 5.3 Approval Authority

The Minister for Planning is the approval authority for the modification request. However, the Director, Modification Assessments, may determine the request under delegation as:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there are no public submissions in the nature of objection.

## 6. CONSULTATION

The Department made the modification request publicly available on its website, and consulted with Council. Due to the minor nature of the request it was not notified by any other means.

**Council** raised no objection to the proposed modification.

No **public** submissions were received in relation to the modification request.

## 7. ASSESSMENT

As previously outlined, the modification request seeks approval to amend Condition A6 to extend the lapse date of the Project Approval from 2 August 2017 to 2 August 2018.

As the proposal is a transitional Part 3A project, the provisions of the former section 75Y of the EP&A Act apply to the assessment of the modification request. The former section 75Y of the EP&A Act enables the Minister to modify the lapse date of an approval granted under Part 3A of the EP&A Act, subject to a review of the approval before extending the lapse date.

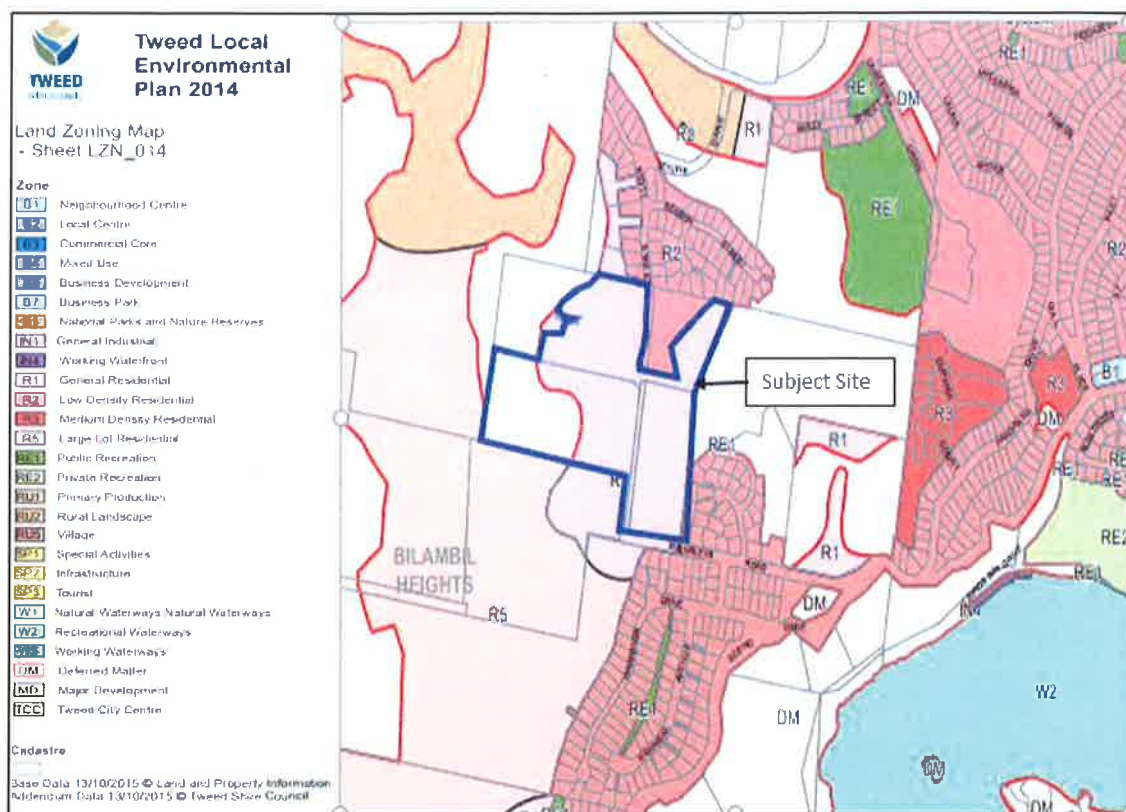
The Department has reviewed the original approval and is satisfied there are no circumstances which have materially changed since the approval that would result in a different determination of the application today. In particular:

- *The strategic planning context of the site has not materially changed:*

The original application was considered against the *Tweed Local Environmental Plan 2000* (TLEP 2000). The Department notes at the time of determination the site was zoned 2(c) Urban Expansion and 7(d) Environmental Protection (Scenic/Escarpment). In addition, a minimum lot size of 450 m<sup>2</sup> applied to the subdivision of land within the 2(c) zone, and a minimum lot size of 40 ha applied within the 7(d) zone.

The TLEP 2000 has been replaced by the *Tweed Local Environmental Plan 2014* (TLEP 2014), and most of the site is now zoned R1 General Residential. A minimum lot size of 450 m<sup>2</sup> applies to the subdivision of land within this zone. It is important to note the land adjacent to the south-eastern boundary of the site is identified as a Deferred Matter (see **Figure 3**), and pursuant to clause 1.8 of the TLEP 2014, the provisions of the TLEP 2000 continue to apply to these lands. The Department considers the new planning controls are consistent with the planning controls in place at the time of the original assessment and would not alter the Department's assessment of the original application.

In addition, the Department notes the proposal is consistent with the recently approved *North Coast Regional Plan 2036*, which seeks to deliver new housing in the Bilambil urban growth area, including on the subject site. The Department's assessment therefore concludes the Project Approval remains consistent with the strategic planning context for the site.



**Figure 3: TLEP 2014 Zoning Map (Source: TLEP 2014)**

- *The physical context of the site has not materially changed:*

There have been no substantial changes to the site's physical surroundings.

- *No changes are proposed to the development itself:*

The only aspect of the proposal to be modified under this request is the lapse date in Condition A6.

However, the Department notes since the initial determination of the project, six Fine Leafed Tuckeroo trees not previously identified, have been found near Roads 3 and 5 on the site. These trees are listed as vulnerable under the *Biodiversity Conservation Act 2016 (NSW)*.

The Department notes the removal of these trees has been authorised under the existing approval and the potential impacts associated with their removal can be appropriately addressed under the existing conditions of approval, including:

- Condition A2, which requires a Tree Removal Plan (TRP) to be submitted to and approved by the Secretary
- Condition B23, which requires a Vegetation Management Plan (VMP) to be submitted to and approved by Council.

Accordingly, the Department is satisfied the existing conditions of approval provide appropriate safeguards to mitigate and manage potential impacts on native vegetation. The Department is therefore satisfied an extension to the lapse date would not result in any change to the approved development.

Overall, the Department considers an extension to the lapse date is acceptable as the site remains suitable for the approved development and the approval remains consistent with the strategic planning framework for the site. Furthermore, the proposed modification would not

alter the overall nature of the approval or change the Department's original assessment. In addition, Council did not object to the proposal and no public submissions were received.

Consequently, it is recommended that the modification be approved subject to the recommended conditions.

## 8. RECOMMENDATION

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

- **considers** the findings and recommendations of this report
- **determines** that the application falls within the scope of section 75W of the EP&A Act
- **approves** the modification request subject to conditions
- **signs** the attached notice of modification (**Appendix A**)

Recommended by:



**Jane Flanagan**  
**Senior Planner**  
**Modification Assessments**

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## DECISION

Approved by:

 12/10/17

**Anthony Witherdin**  
**Director,**  
**Modification Assessments**  
as delegate of the Minister for Planning.

## **APPENDIX A: NOTICE OF MODIFICATION**

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A copy of the notice of modification can be found on the Department of Planning and Environment's website at:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8632](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8632)

## **APPENDIX B: SUPPORTING INFORMATION**

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The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website, as follows:

1. Modification request

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8632](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8632)

2. Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8632](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8632)