



ASSESSMENT REPORT

Section 75W Modification Riveroaks Residential Subdivision, Ballina Local Government Area MP 06_0118 MOD3

1. INTRODUCTION

This report is an assessment of a request to modify the Project Approval (MP06_0118) for the Riveroaks residential subdivision in Ballina. The request has been lodged by Northern Rivers Land Solutions on behalf of Rayshield Pty Ltd (the Proponent), pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (the Act). The request seeks approval to convert two duplex allotments and one courtyard allotment to three traditional allotments, increase the number of development stages, change lot numbers, and undertake administrative changes to the conditions of approval and the Statement of Commitments to reflect the proposed changes.

2. SUBJECT SITE

The subject site is located in the town of Ballina. Tamarind Drive (previously Pacific Highway) bounds the site to the north, North Creek is to the east, the town of Ballina is to the south and the new Pacific Highway is to the west (**Figure 1**). The site is approximately 44.2 hectares in area.

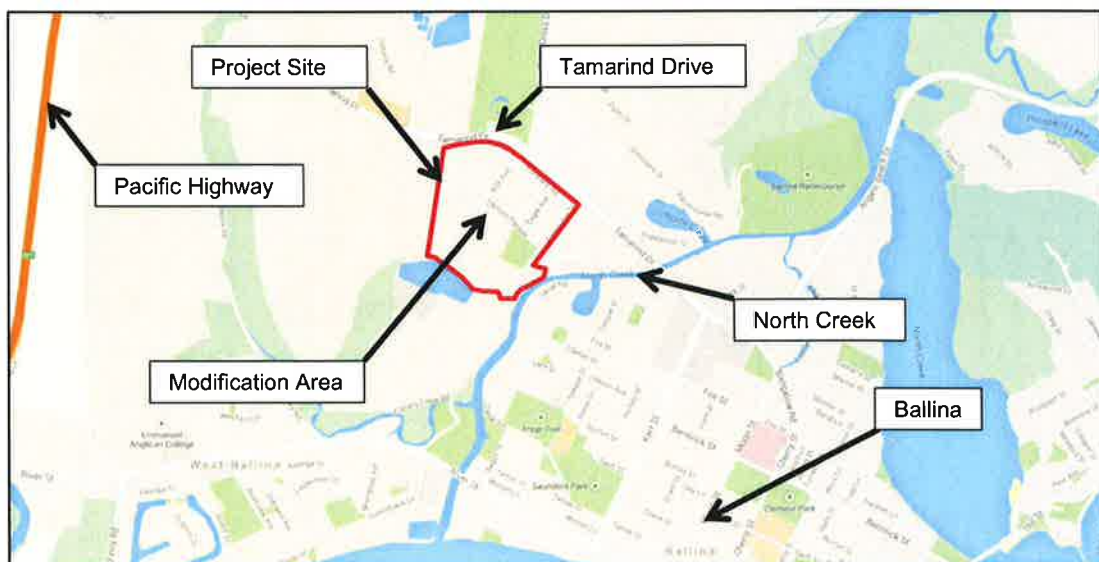


Figure 1: Site Location.

3. APPROVAL HISTORY

On 14 December 2008, the then Minister for Planning granted Project Approval (MP06_0118) for a residential subdivision comprising 237 residential lots, one open space reserve, one lot for a future child care centre, supporting road, pedestrian and cycleway infrastructure, and minor re-contouring for drainage.

Two previous modification requests have been made in relation to the approval:

- MOD 1 was lodged on 6 April 2010 to make a boundary adjustment between 2 lots, however was subsequently withdrawn on 23 April 2010; and
- MOD 2 was approved by the Manager, Industry Assessments on 6 May 2015 to:
 - convert four duplex and two courtyard lots to six traditional residential lots;
 - amended the staging description in Condition A2;
 - revise the lot numbering in Stage 3A; and
 - amend conditions and Statement of Commitments to reflect revised lot numbers.

Development Consent (DA2013/328) to subdivide an allotment (identified as land for a future child care centre under the Project Approval) into 3 residential lots was issued by Ballina Shire Council on 17 October 2013.

The Proponent has commenced the development and has sold Stages 1 and 2. Stage 3 is under construction.

4. PROPOSED MODIFICATION AND JUSTIFICATION

On 14 September 2015, the Proponent lodged a section 75W (MP06_0118 MOD 3) seeking approval to:

- amend the staging of the development by increasing the number of stages from 5 to 10 and changing the number of lots within each of the stages;
- revise the lot numbering; and
- amend plans, conditions and Statement of Commitments to reflect revised lot numbers and stage numbers.

The Proponent subsequently advised that the modification request also seeks to change three allotment types, converting two 'duplex' allotments and one 'courtyard' allotment into three 'traditional' allotments.

The proposal does not propose any changes to the number of lots, the overall subdivision layout or any other physical changes to approved development.

The Proponent has advised that the modifications are required to ensure the installation of infrastructure occurs in an orderly manner, and to ensure construction is financially viable and in line with market demands.

The proposed modifications are depicted in **Figures 2 and 3** below.



Figure 2: Approved Staging Plan (note: minor changes to the above layout were approved as part of MOD 2)

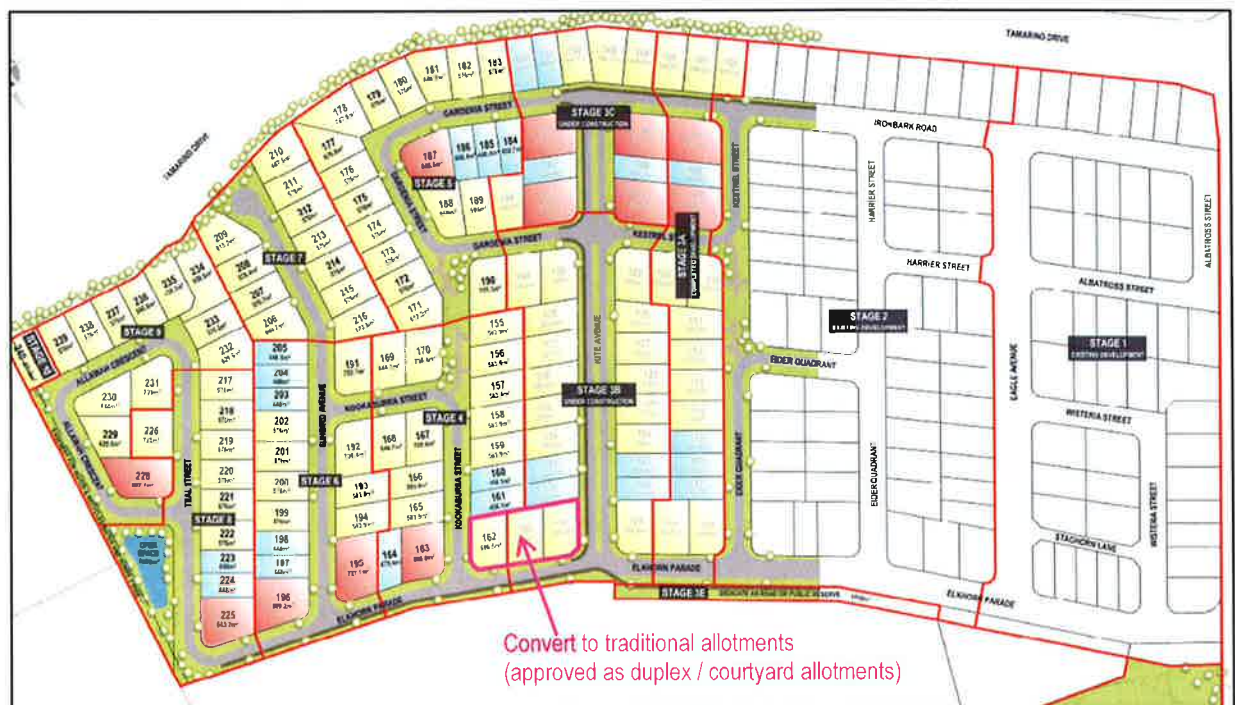


Figure 3: Proposed Staging Plan

5. STATUTORY CONSIDERATION

5.1 Section 75W

The project was originally approved under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Although Part 3A was repealed on 11 October 2011, the project remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act, and hence any modification to this approval must be made under the former Section 75W of the Act.

The Department is satisfied that the proposed changes are within the scope of section 75W of the EP&A Act and do not constitute a new application.

5.2 Approval Authority

The Minister for Planning is the approval authority for the application. However, the A/Director, Regional Assessments may determine the application under delegation as:

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

5.3 Owner's Consent

In accordance with Clause 8F(1)(e) of the *Environmental Planning and Assessment Regulation 2000* (Regulation), owners consent is required unless the application relates to a project on land with multiple owners designated by the Secretary for the purpose of the clause. In this case, Stages 1 and 2 have been developed and sold to new multiple owners. As such, the project has been designated as having multiple owners for the purpose of Clause 8F(e). A copy of the designation is included at **Appendix C**.

Owners consent has been provided for the parts of the site affected by the proposed modifications, and all other remaining land owners were notified of the proposed modification, as outlined in **Section 6** below. The Department is therefore satisfied that the requirement for owners consent has been met in this case.

6. CONSULTATION

The Department:

- made the modification application publicly available on its website;
- notified all landowners within the Project Approval site of the proposed modification in writing; and
- consulted with Ballina Shire Council (Council) on the proposed modification.

Council advised it was supportive of the proposed modification and did not raise any concerns.

There were no public submissions received on the proposal.

7. ASSESSMENT

The Department has assessed the key modifications associated with the proposal, being:

- changes to allotment types;
- changes to staging; and
- administrative modifications to conditions and Statement of Commitments.

7.1 Allotment Types

The proposal seeks to change three allotments within the site from 'duplex' and 'courtyard' allotments to 'traditional' allotments (**Figure 3**). There are no changes proposed to the allotment sizes or layouts.

The plans approved under MOD 2 adjusted the boundaries between these three allotments, to a size typical of traditional allotments, but did not change the allotment types.

The proposed modification is therefore sought to ensure that the type of future residential development on the site is suited to the approved allotment size and layout. The proponent advises that the modification is also sought in response to a perceived drop in demand for both duplex and courtyard allotments and an increased demand for traditional allotments.

The Department considers that the proposed change to the allotment types would not result in any additional environmental impacts beyond those assessed under the original Project Application. In addition, the Department is satisfied that the overall subdivision would continue to provide an appropriate range of lot sizes and types (including duplex and courtyard allotments) to ensure the development delivers a diversity of housing choice.

7.2 Staging

The proposal seeks to amend the staging of the development by increasing the number of development stages and reducing the size of future stages as depicted in **Figure 3** above and **Table 1** below.

Table 1: Approved and proposed staging

Stage	Approved Staging Residential allotments	Proposed Staging Residential allotments
1	45	Completed – no change
2	57	Completed – no change
3	51	49
4	46	16
5	38	20
6	-	15
7	-	11
8	-	11
9	-	12
10	-	1
Total	237	237

The Proponent has advised that the modifications to the staging are proposed to ensure the installation of infrastructure occurs in an orderly manner, and to ensure construction is financially viable and in line with market demands.

The Department considers that the proposed staging is set out in a logical sequence, with each stage being developed around each new roadway as it is constructed.

However, the Department is concerned with the proposed final stage (Stage 10) of the development, which consists of a single allotment, lot 240 in the north-west corner of the site, refer to **Figure 4** below.

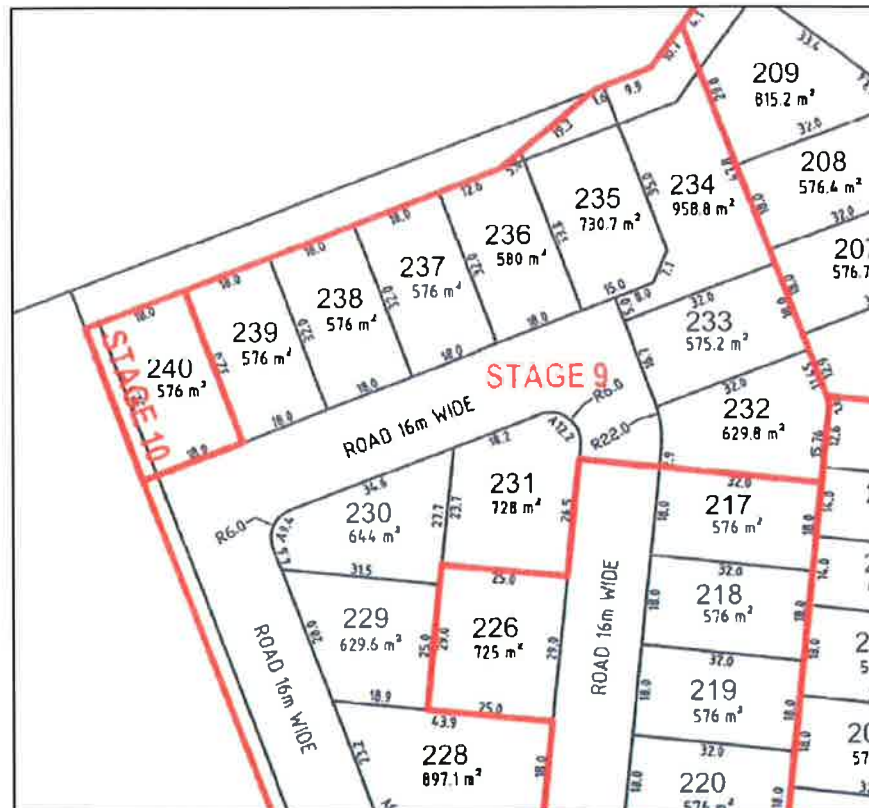


Figure 4: North-east section of site showing proposed Stages 9 and 10

The proponent has advised that due to a Council requirement to increase the width of an easement along the western boundary of the project application site, in conjunction with a required retaining wall, there may be potential issues with the suitability of Lot 240 for residential development. For this reason the proponent seeks to identify the allotment as a separate and final stage, to allow the remainder of the development to proceed whilst the issues surrounding Lot 240 are investigated.

However, the Department considers that isolating the lot as a separate final stage may restrict the resolution of the issues associated with the allotment if Stage 9 is already developed. In order to resolve issues with the suitability of the allotment, it may be necessary to make a boundary adjustment, either resulting in deletion of the allotment (with adjoining lots in Stage 9 increasing in size); or increasing the size of the allotment (by reducing the size of adjoining lots in Stage 9). It is therefore considered that Lot 240 / Stage 10 should be developed in conjunction with Stage 9 to ensure there is an opportunity to resolve any outstanding issues as necessary. Conditions to this effect have therefore been included in the recommended instrument.

Subject to Stage 10 being developed in conjunction with Stage 9, the Department considers that no adverse impacts would arise from developing the site in smaller stages as proposed.

clarify that the allotments shown as both red and green require a covenant restriction to ensure appropriate future noise attenuation.

8. CONCLUSION

The Department has assessed the modification request and considers that the proposed amendments are acceptable as:

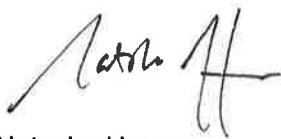
- the proposed changes to three allotment types will result in future development better suited to the lot sizes;
- the subdivision will continue to provide an appropriate range of lot sizes and types to ensure the development delivers a diversity of housing choice;
- subject to Stages 9 and 10 being developed as a single stage, the proposed changes to staging are considered appropriate and will not result in any environmental or amenity impacts;
- the proposed modifications to the conditions of approval are required to ensure that the consent requirements are consistent with the new lot and stage numbering .

Accordingly, the proposed modifications are recommended for approval.

9. RECOMMENDATION

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

- consider the findings and recommendations of this report;
- approve MP 06_0118 MOD 3 under section 75W of the EP&A Act; and
- sign the attached Instrument of Modification (**Appendix A**).



Natasha Harras
Team Leader
Regional Assessments



Anthony Witherdin
Acting Director
Regional Assessments

APPENDIX A: NOTICE OF MODIFICATION

A copy of the Notice of Modification can be found on the Department of Planning and Environment's website at the following address:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7281

APPENDIX B: SUPPORTING INFORMATION

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

1. Modification Request:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7281

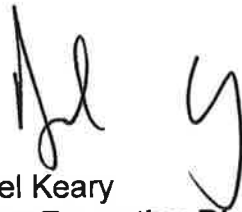
2. Submissions:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7281

APPENDIX C: DESIGNATION AS LAND WITH MULTIPLE OWNERS

DESIGNATION AS A PROJECT ON LAND WITH MULTIPLE OWNERS UNDER CLAUSE 8F(1)(e) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

I, Daniel Keary, Acting Executive Director, Key Sites and Industry Assessments, under delegation from the Secretary dated 1 December 2014, designate for the purpose of clause 8F of the *Environmental Planning and Assessment Regulation 2000*, the project described in the approval listed in Schedule 1, approved under Part 3A of the *Environmental Planning and Assessment Act 1979*, to be a project on land with multiple owners within the meaning of clause 8F(1)(e).



Daniel Keary
Acting Executive Director
Key Sites and Industry Assessments

Dated, this 27th day of OCTOBER 2015

SCHEDULE 1

- Project Approval for Riveroaks Subdivision, Pacific Highway, Ballina (MP06_0118) approved by the then Minister for Planning on 14 December 2008, and as subsequently modified.