

30 May 2014

**PROJECT APPLICATION FOR RESIDENTIAL SUBDIVISION, 'ALTITUDE ASPIRE', AREA E FRASER DRIVE, TERRANORA (MP09\_0166), TWEED LOCAL GOVERNMENT AREA**

**1. PROJECT APPLICATION**

Metricon Queensland Pty Ltd ("the Proponent") seeks project approval for a 261 lot community title residential subdivision comprising 250 residential lots, four medium density lots, four public reserve lots, one drainage reserve lot, one reservoir site lot and one Community Title scheme lot. The proposal includes associated roads, stormwater, utility infrastructure and bulk earthworks.

The project has been subject to extensive ongoing negotiations between the proponent, the Department of Planning and Environment ("the Department") and Tweed Shire Council ("the Council") regarding the final subdivision layout and final landform. Significant revisions have been made to the project since lodgement of the original Environmental Assessment report in 2011, primarily to ensure the project substantially complies with the structure plan adopted by the Council for Area E Urban Release Area. A Preferred Project Report (PPR) and Response to Submissions was lodged in 2013 and further refinement to the project was detailed in addendum to the PPR which were submitted in August and October 2013.

**2. DELEGATION TO THE COMMISSION**

On 17 December 2013, the Project Application was referred to the Planning Assessment Commission ('the Commission') for determination under Ministerial delegation dated 14 September 2011, as more than 25 objections were received.

Ms Gabrielle Kibble AO nominated Ms Donna Campbell (chair) and Mr David Furlong to constitute the Commission to determine the project.

**3. ASSESSMENT REPORT**

The Director-General's Assessment Report prepared by the Department considered the following key issues:

- Subdivision layout and structure plan
- Landforming and earthworks
- Infrastructure provision and water cycle management
- Traffic and access
- Ecological issues and SEPP 14 wetland
- Open space, public domain and visual impact
- Voluntary Planning Agreement
- Land contamination

Other issues considered in the report are:

- Cultural heritage
- Bushfire
- Acid sulphate soils and groundwater

- Soils and geological stability
- Acoustic impacts

The Department's assessment report concluded that the project as amended will provide benefits in assisting housing supply on the North Coast of NSW while achieving other priorities such as protecting native vegetation, biodiversity, sensitive lands and coastal waterways. The Department concluded that the site is suitable for the proposed development, that the project is in the public interest and that it should be approved subject to recommended conditions.

#### **4. SITE VISIT AND MEETINGS**

The Commission visited the site and surrounds on 6 February 2014.

##### **4.1 Meeting with Proponent**

Following the site inspection the Commission met with the Proponent. The Proponent provided some background on the project and requested amendment of a number of conditions proposed in the Department's recommended conditions of approval. In particular, the Proponent raised concern that the conditions relating to earthworks, retaining walls and landforms (Conditions A9, B9 and E13(h)) do not result in best practice outcomes for development on sloping sites. The Proponent argued that the proposed scheme would deliver a better built form/urban design outcome than that provided for under the controls contained in Tweed Development Control Plan 2008 (Tweed DCP).

The proponent also sought changes to conditions relating to the sewer upgrade as well as minor administrative matters.

##### **4.2 Meeting with Council**

The Commission also met with Council officers. Council advised that it was generally satisfied with the Department's assessment report and that all of the critical engineering issues had been appropriately addressed, including:

- Limiting bulk landforming and interallotment retaining walls
- Establishing a lawful point of discharge for the development
- Road connectivity and promotion of public transport.

However, Council requested that a number of changes be made to draft conditions B2, B3, B8, B32, B42.3(d) and B40 and Statement of Commitments Nos. 12, 18.1, 18.2 and 25. Key recommended changes included the following:

- Voluntary Planning Agreement (VPA) - requiring that the VPA be entered into prior to the issue of the construction certificate and contributions payable and/or other actions be undertaken prior to the issue of subdivision certificate. Other clarifications regarding the VPA were also sought.
- Park on Lot 819 - requiring that the final configuration does not contain excessively steep slopes.
- Vegetation Management and Rehabilitation Plan - requiring clarification regarding sign off of the final plan and timing of works.
- Maintenance of open space/drainage reserve – requiring that agreement be sought with Council regarding the timing of commencement of maintenance by the developer.

##### **4.3 Public meeting**

On 6 February 2014 the Commission also held a public meeting to hear the community's views on the Department's assessment report and recommended conditions. Eight speakers registered to speak at the meeting although only six people spoke (refer Appendix 1).

Key issues raised by speakers included:

- Traffic impacts and access through surrounding areas
- Access to the subdivision (should be from the proposed Broadway Parkway and not existing roads)
- Adverse impacts on adjoining property (Lot 227).
- Stormwater management and water quality impacts
- Terms of the VPA, its implementation and potential costs of new infrastructure to ratepayers
- Adverse impacts on existing rural residential lifestyle
- Loss of views, visual impact of proposed reservoir
- Non-compliance of cut and fill/retaining walls with Council's DCP
- The need to retain existing dams

The general view expressed in the meeting was that speakers felt the proposed development would generate adverse traffic impacts and would significantly change the existing large lot rural residential character and lifestyle of the area. There was also concern expressed that ratepayers would have to pay for infrastructure instead of the developer.

The owner of Lot 227 raised concerns regarding the role of this property as a "lawful point of discharge" for stormwater generated by the proposed development. Reference was made to the Proponent's legal advice regarding this issue which had not been made available to the owner of Lot 227. A copy of this advice was later provided to the owner by the proponent.

## **5. FURTHER DEPARTMENT ADVICE**

Following the public meeting and meetings with the Council and Proponent, the Commission sought clarification from the Department on a number of issues as detailed below:

- (a) Timing of public notice of VPA – A number of speakers at the public meeting raised concerns regarding the terms of the VPA which has not yet been made public, and suggested that a determination should not be made before this has occurred. The Commission sought the Department's advice on whether the VPA should be exhibited in accordance with clause 25E of the *Environmental Planning and Assessment Regulation 2000* before the Commission makes its determination.
- (b) Lot 227 and lawful point of discharge – Given the concern expressed by the owner of lot 227 that his consent should be obtained before water is discharged across his land, the Commission sought the Department's confirmation that it agreed with legal advice obtained by the Proponent that his consent is not required.
- (c) Other issues – In response to requests from the Proponent and the Council to change some conditions, the Commission sought the Department's response on whether these changes were appropriate. The Department's views on the safety of the intersection at Fraser Drive and the need for road access through Market Parade/Lane were also requested.

The Department responded to the Commission's request by letter dated 20 February 2014 (refer copy at Appendix 2), advising as follows:

### *Timing of public notice of Voluntary Planning Agreement (VPA)*

*If the Commission is satisfied that the Proponent has made an adequate offer to enter into a VPA and the offer is in terms of a commitment made by the Proponent in a statement of commitments made under Part 3A, then under section 93I(3) of the Environmental Planning and Assessment Act 1979 it would be open to the Commission to determine the project application*

*and impose a condition on any project approval that the proposed VPA be entered into by the Proponent. The proposed VPA could then be exhibited before being executed by the Council.*

Lot 227 and lawful points of discharge

*The Department agrees with the Proponent's legal advice dated 13 May 2013 that consent from the owner of Lot 227 is not required prior to determination of the project application, provided the PAC is satisfied that the hydrological assessment shows that post development runoff from the site will be no more than minimal.*

Further issues addressed in the Department's response include:

- Proposed retaining walls - The Department reiterated its continued objection to the construction of the retaining walls which create terraced lots and recommended that Conditions A9, B9 and E13(h) be retained. The basis for the Department's objection is detailed in its letter at Appendix 2.
- Connection to Market Parade from proposed subdivision – The Department notes that the proposed through road connection to Market Parade is an important public transport link designed to ensure connectivity in the local area. The Department does not support the view that the through-road connection will be a 'rat run' as traffic from the development is more likely to link with Fraser Drive.
- Intersection of Fraser Drive and Proposed Road No 1 – Given concerns expressed that the proposed intersection of Frasers Drive and proposed Road No 1 may adversely impact on driveways to existing residences on the eastern side of Fraser Drive, the Department has suggested that Condition B39 be amended to retain existing vehicular access arrangements for affected residential properties.
- Connection of Market Parade with Road No 9 – The Department raised no objection to modifying the configuration of Road No 9 to a cul-de-sac provided there are no changes to the lot layout such that non-conventional lots would be created and Council does not raise any objections. (Council has indicated it does not support modifying Road No 9 to a cul-de-sac.)

The Department also advised it concurs with the requested amendments by Council to Conditions B2, B3, B8, B32, B42.3d and B40 and Statement of Commitments Nos. 12, 18.1, 18.2 and 25. The Proponent's requested changes to conditions A9, B9 and E13 are not supported by the Department although no objections are raised in relation to proposed changes to condition A3.

## **6. COMMISSION'S CONSIDERATION**

The Commission has reviewed the Department's assessment report and associated documents, submissions from the Council, government agencies and the community, views expressed at various meetings including the public meeting and written submissions received before, during and after the public meeting, including submissions from the owner of lot 227 regarding the legality of the point of discharge. A number of issues emerged from this consideration which are discussed below.

### **6.1 Site Drainage**

The questions of whether Lot 227 is a lawful point of discharge and whether the overall hydrological regime for the proposed development is adequate have been carefully examined by the Commission. As identified in the Department's assessment report, for the discharge point to be lawful it must satisfy two criteria:

1. That the drain is a watercourse or waterway to which the development naturally drains, and

2. In discharging to the watercourse or waterway, the project will not adversely impact on the capacity of the watercourse or the receiving land.

With regard to the first criteria, the Commission accepts the Department and the Council's view that Lot 227 is a lawful point of discharge. This view is based on legal advice provided to the Proponent which, amongst other matters, concludes that the point of discharge on Lot 227 is a natural watercourse and that it is not necessary for an easement to be obtained for the water to be lawfully discharged.

In relation to the second criteria, the Commission determined that independent expert advice should be sought. The purpose of the independent expert advice was to clearly ascertain:

1. Whether the project will result in an adverse impact on Lot 227 (hydrological or ecological); and
2. Whether any further works on the site or on Lot 227 are required to mitigate any such impact.

BMT WBM was engaged to undertake the independent review (refer Appendix 3). The review concluded that in the case of question 1, given the information so far provided, and given the extent of the SEPP14 wetland and the current condition of the Freshwater Wetland EEC, *it is unlikely that the development will result in a significant adverse impact on Lot 227 and as such, answering question 2, further works are not likely to be required.* However, BMT WBM identified a number of items that required further assessment prior to a final determination:

- Confirmation of peak regional flood levels from the Terranora Broadwater need to be provided to ensure that they will be the dominant flooding process for the Freshwater Wetland EEC
- An assessment of the impact of climate change on downstream flows into Lot 227 be conducted
- The proponent assess the loads of the existing case (using a rural land use description and parameters) to ensure that the development results in a "no-worsening" of pollutant loads into Lot 227 and the SEPP 14 wetlands.

These issues were addressed by the Proponent's hydrology consultants, Gilbert & Sutherland (refer Appendix 4). BMT WBM advised that the response provided by Gilbert & Sutherland satisfied the requirements.

BMT WBM also made a number of recommendations for further assessment and monitoring to be undertaken during subsequent stages of the development process. The Commission has included additional conditions in the conditions of approval to address these recommendations.

Having regard to the independent hydrological assessment, the Commission accepts the Department's advice that a lawful point of discharge onto Lot 227 has been established and that there will be limited additional impacts to the downstream property in terms of water quality and quantity. The Commission also accepts the advice of BMT WBM that impacts on the Freshwater Wetland EEC and SEPP 14 wetland are likely to be minimal.

As an aside, the Commission notes that in the longer term it is Council's objective to acquire Lot 227 for environmental purposes although no negotiations with the landholder have been held to date.

## **6.2 Landforming and Earthworks**

As noted above, the Proponent has requested that recommended conditions relating to earthworks, retaining walls and landforms (Conditions A9, B9 and E13(h)) be amended or deleted, arguing that the development as proposed would deliver a better built form/urban design outcome than that achievable with the Department's recommended conditions.

A detailed response to the Proponent's submission on this issue was provided in the Department's letter dated 20 February 2014 (copy at Appendix 2). The Council has also continued to oppose the extent of cut and fill and terracing proposed by the Proponent. Its view is that the vision, aims and objectives for Area E, which are clearly articulated in the Tweed DCP 2008, promote subdivision, building design and structural systems which reduce the need for benching and significant cut and fill.

The Commission has carefully considered the Proponent's submission and proposed Design Guidelines, as well as the arguments put forward by the Department and Council against the proposed approach to landforming. The Commission accepts the arguments put forward by the Department and Council that the proposed retaining walls and terraced lots are inconsistent with the objectives and provisions of the DCP and does not reflect generally accepted best practice for greenfield subdivision which aims to minimise landform changes.

While the Proponent has argued that the retaining walls are critical to the project, the Commission notes that Tweed DCP 2008 came into force prior to the project application being lodged and that the objectives and controls in the DCP aimed at reducing the need for benching and significant cut and fill are clearly articulated. The Commission considers that compliance with the DCP is achievable.

## **6.3 Road Layout**

In general, the Commission agrees with the Department's assessment that the proposed road layout is clear and logical.

In relation to the intersection of Fraser Drive and proposed Road No 1, the Commission notes the potential for this intersection to adversely impact on the driveways to existing residences on the eastern side of Fraser Drive. Condition B39 (now B43) is therefore amended to address this concern.

Public submissions have expressed concern regarding traffic impacts associated with the proposed road connection (Road No 2) from the subdivision through to Market Parade. The Commission agrees with the Department's assessment that this link is critical for public transport and connectivity purposes and is unlikely to be a 'rat run' as most traffic is likely to link with Fraser Drive through other proposed new roads.

With respect to the connection between Market Parade and Road 9, the Commission considers that this is not necessary to achieve appropriate connectivity and legibility. As such, it considers that Road 9 can be reconfigured to a cul-de-sac in this location provided there are no changes to the lot layout such that non-conventional lots would be created.

The Commission notes that the Broadwater Parkway is the primary road for Area E and that provision has been made in the draft VPA for dedication of the road reserve to council as well as monetary contributions towards the cost of its construction. However, construction is not expected in the short to medium term. In the meantime, the Commission is satisfied that the proposed road layout is satisfactory to accommodate traffic associated with the development without undue adverse impacts on the surrounding areas.

#### **6.4 Draft Voluntary Planning Agreement**

As noted above, the Department has provided advice regarding the timing of the public notice of the draft VPA which indicates that finalisation and public exhibition can occur following determination of the project application subject to appropriate conditions being attached to any project approval. The Commission accepts this advice.

The Commission understands that the draft VPA between Council and the Proponent is close to being finalised but is still to be formally endorsed by Council and publicly exhibited.

Council has recommended amendments to the proposed conditions requiring that the VPA must be entered into prior to the issue of the construction certificate and that contributions payable and/or other actions in the VPA must be undertaken prior to the issue of the subdivision certificate. The Commission agrees with these changes and the conditions are amended accordingly.

In general, the Commission considers that the draft VPA and section 94 contributions make adequate provision for appropriate infrastructure to support the development.

#### **6.5 Vegetation Management and Dam Removal**

The proposed development will result in the loss of some Endangered Ecological Communities ('EECs') and other vegetation. It is noted that the loss of EEC vegetation is proposed to be offset through the provision of additional planting at a replacement ratio of 6:1 in the case of Freshwater Wetland EEC removal and 4.4:1 in the case of Lowland Rainforest EEC.

The rehabilitation and replanting of areas within the site is to be guided by the Vegetation Management and Rehabilitation Plan (VMRP) to be prepared and implemented by the Proponent, as detailed in proposed Condition B40. Council has raised concern regarding sign off of the final plan and timing of works under the VMRP. It has therefore recommended the condition be amended to clarify these matters. The Commission agrees with the proposed amended condition and Condition B40 (now Condition B44) is amended accordingly.

With respect to retention of the dams, the Commission accepts the Department's advice that retention of the dams (as well as EEC vegetation) would significantly restrain compliance with the Structure Plan.

Overall, the Commission is satisfied that with the implementation of the VMRP and stormwater management strategy, the ecological outcomes for the site will be improved.

#### **6.6 Sewer Upgrade**

The Proponent has sought changes to Conditions B8(a), B8(b) and B8(i), primarily on the basis that Council has already allocated Section 64 Contributions for these works. It is also argued that backup power generation, as required by Condition B8(i), is redundant given that other emergency measures are in place.

Council's advice in response to the changes sought by the Proponent is provided at Appendix 5. The Commission accepts Council's advice on these issues and the conditions have been amended accordingly .

#### **6.7 Other Issues**

The Commission agrees to the requested amendments by Council to Conditions B2, B3, B32 (now B36) and B42.3(d) (now B46.3(d)) and Statement of Commitments Nos. 12, 18.1, 18.2 and 25.

No objection is raised to the proposed change by the Proponent to Condition A3. Other proposed changes to conditions as requested by the Proponent are not supported, as detailed above.

## **7. COMMISSION'S FINDINGS AND DETERMINATION**

The Commission generally agrees with the Department's conclusions and recommendation subject to additional and amended conditions as discussed above to provide for:

- assessment and monitoring of hydrologic impacts to be undertaken during subsequent stages of the development process (Conditions B32, B33, B34 and B44(8));
- redesign of the intersection between Fraser Drive and Road No 1 to ensure safe access for residential driveways in the vicinity (Condition B43);
- the reconfiguration of Road No 9 as a cul-de-sac rather than connecting through to Market Parade (Condition B10);
- the finalisation of the VPA prior to issue of the construction certification and the payment of contributions and/or undertaking of actions as required by the VPA prior to the issue of subdivision certificate (Conditions B2 and E3)
- clarification regarding sign off of the Vegetation Management and Rehabilitation Plan and timing of works (Condition B44);
- appropriate slope conditions for the proposed park on Lot 819 (Condition B46(3)(d));
- other minor changes to conditions and Statement of Commitments as requested by the Council.

In the Commission's view, the project application will allow for the provision of housing and housing choice in the region and provide construction employment opportunities. It will also ensure the protection of sensitive vegetation and species habitat and enable the rehabilitation and restoration of wetland areas.

Accordingly the Commission has determined that approval be granted to the project application as contained in the attached *'Instrument of Approval'*.



Ms Donna Campbell  
**Commission Chair**



Mr David Furlong  
**Commission Member**

**APPENDIX 1**  
**List of Speakers**

Planning Assessment Commission meeting

Date & Time: Thursday 6 February 2014, 4 pm

Place: The South Tweed Sports Club, 4 Minjungbal Drive, Tweed Heads South

Speakers at the meeting:

1. Leslie Zahn
2. John Bolster
3. Basil McLaughlan
4. Trevor Wilson
5. Robin Miyaguchi
6. Friends of Terranora  
Greg Burgis, President

**APPENDIX 2**  
**Department of Planning and Environment Letter to PAC**  
**dated 20 February 2014**