

Council Reference: DA09/0701.03 LN35979
Your Reference:



19 June 2019

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Attention: Emma Butcher

Email: emma.butcher@planning.nsw.gov.au

Dear Sir/Madam

Development Application DA09/0701.03 - amendment to Development Consent DA09/0701 for a 251 lot residential subdivision (Department of Planning Application MP09_0166 MOD 3) at Lot 1 DP 169490 & Lot 1 DP 175235 & Lot 1 DP 304649 & Lot 1 DP 781687 & Lot 1 DP 781697 & Lot 40 DP 254416 & Lot 43 DP 254416; No. 37 Fraser Drive TERRANORA; Lot 2 DP 778727; Parkes Lane TERRANORA

I refer to your email of 8 May 2019 in which you notify Tweed Shire Council of the Proponents' Response to Submissions regarding the subject Modification.

The Response has been reviewed by Council Officers and the following comments are provided for your consideration during assessment of the application.

SCHEDULE 1 AND SPECIFIC CONSENT CONDITIONS

Condition A2: Enlargement of Lot 701 is noted and accepted, however there does not appear to be any other alterations to reduce the number of Stages, as stated in the submission.

Also, minor amendments are recommended to clarify Stages 4B and 8B.

Recommended amendments:

- In the first line, reference **15** (not 14) Stages.
- Stage 4B comprises 26 residential lots 428 – **453** inclusive, public reserve on Lot 454 and incorporating roads and infrastructure.
- Stage 8B comprises **4** residential lots 815 – **818 and** 820, public reserve on Lot 819 and incorporating roads and infrastructure.

Condition A3: The proposed amendment of this condition is supported, but further amendments are required to address Council's prior concerns per dot points 1 and 2 from prior correspondence (repetition of referenced plans).

Also, the 'Landscape Drawings' table should include the first two sheets of that plan set.

Also, noting that Council now supports the inclusion of SK3617 (per TSC email advice to DPE of 14.2.2019), associated amendment of Conditions A10 and B18 have not been nominated – although agreed to. This is addressed hereunder.

Recommended amendments:

- 'Engineering Drawings' table:
 - Amend 2nd item ('Drawing No.' column) to read **SK3586 – SK3590, SK3595 – SK3608, SK3612 – SK3616** (inclusive).
 - Delete 22nd item (SK3626).
- 'Landscape Drawings' table to include:
 - Cover sheet
 - Introduction

Condition A4:

(Item 10) Bushfire Hazard Assessment (BHA) Lot 610 Drainage Reserve (Rev. D): most of the changes are endorsed by Council, except for the altered 'Recommendation 1' for Design Fire 1 (p.17/18).

This now requires NSW RFS to approve the Landscaping Plan, whereas the prior version of the BHA required 'Bushfire Certifiers' to review the Landscaping Plan to ensure compliance with the BHA.

This aspect requires acceptance / endorsement by NSW RFS (as they rarely accept this type of responsibility), prior to the amended BHA being accepted.

(Recommended Item 23) Previously Item 25 was BIOME's Bioretention Basin and Drainage Design Report, which is now excluded from mention. As this Report has been satisfactorily amended, it needs to be reinstated.

(Recommended Item 24) The Biodiversity Development Assessment Report (BDAR), once endorsed (per further comments hereunder) should be included in this list also.

Condition A10 - Limits of Approval: due to the accepted inclusion of SK3617, this Condition also requires amendment as follows:

This approval does not approve the construction of any dwellings, medium density developments. Separate approvals must be obtained, if required by the EP&A Act.

This approval also does not approve the construction of the proposed retaining walls proposed to create terraced lots in the eastern portion of the site bounded by Proposed Road No 8 to the north, Road 5 to the east, Road 1 and a small section of Road 2 in the south and Road 8 to the west, ~~including any inter-allotment retaining walls to create terraced lots~~, as outlined on SK3617 'Retaining Wall Layout Plan' Revision H prepared by Bradlees Civil Consulting dated 26 May 2019.

Condition B8 – proposed amendments to address the 'Other Matters requiring attention' from the previous TSC RFI.

Two new items are proposed for inclusion in Condition B8 – however the numbering as proposed - B8(j) and B8(k) - are not relevant, as this appears to reflect the numbering pre-MOD 2 approval.

However no objections are raised to inserting the two proposed items as B8(a) and B8(b).

Condition B10 – deletion of this Condition is supported.

Condition B15 – no objections are raised to retaining this Condition as is.

Condition B18 - Retaining Walls: due to the accepted inclusion of SK3617, this Condition also requires amendment as follows:

Subject to other conditions of this approval, all retaining walls and batters shall be designed in accordance with Tweed Shire Council's Development Design Specification D6 - Site Regrading. Permissible retaining wall and batter heights are specified in Table D6.1. Boundary retaining walls and batters shall be constructed with a minimum boundary setback of 0.9m in accordance with clause D6.05.6(c) of Development Design Specification D6 - Site Regrading.

The only locations where a setback variation is permitted are Lot 701 and the road frontage boundaries of Lots 812, 918 and 1001.

Condition B22(1)(j) – no objections are raised to the proposed amendment of this condition.

Condition B35 – no objections are raised to retaining this Condition as is.

Condition B38 - deletion of this Condition is supported.

Condition B39 - no objections are raised to the proposed amendment of this condition.

Condition B46 - no objections are raised to the proposed amendment of this condition, however Item 3(a) of this Condition also needs amendment to change 'Lot 712' to 'Lot 713'.

Condition B49 – Council will accept the proposed amendment of this Condition, once NSW RFS accepts the subject Bushfire Hazard Assessment (Rev. D).

NEW Condition B51 - Council will accept this new Condition, once NSW RFS accepts the subject Bushfire Hazard Assessment (Rev. D).

However it is noted this new Condition imposes a requirement for some boundary fencing, which is no longer a consideration or requirement of the BHA.

While no objections are raised to retaining this fencing requirement, the applicant is currently under no obligation to erect boundary fencing (as far as Council is aware), but will be required to comply if fencing is referenced in the Condition.

Condition E6 - deletion of this Condition is supported.

Condition E13 - no objections are raised to the proposed amendment of Items (e), (f) and (g), however proposed new Item (n) needs to be divided as it combines two different aspects – easement requirements (1st sentence) and landscaping requirements (2nd sentence). The latter is not appropriate for inclusion in the 'Prior to Issue of Subdivision Certificate' section of the Consent.

It is recommended the second sentence be inserted as an extra item within Condition B46.

Also - a further item is recommended for inclusion: the 5m setback needing to be applied to Lot 701 as per the amended BHA.

Extending the depth of Lot 701 was only to exclude Council of IPA-related maintenance responsibilities, not to void the need for a specific setback being imposed over the Lot.

It is requested that an appropriate condition be inserted accordingly.

Condition E14 - Council will accept the proposed amendment of this Condition, once NSW RFS accepts the subject Bushfire Hazard Assessment (Rev. D).

Condition E30 - no objections are raised to the proposed amendment of this condition.

SPECIFIC DOCUMENT REFERENCES

Engineering submission & amended engineering plans by Meinhardt Urban

The comments provided are generally accepted, except for the following sewer related concerns hereunder. Any other minor unresolved concerns are able to still be adequately addressed during the construction certificate application and assessment process.

It is noted that the long. section in SK 6978 does show that the stormwater culverts should not impact the sewer gravity main. However the sewer appears to be located directly below the proposed 1.5 meter retaining wall in the south east corner of lot 701 and between a stormwater pipe. This is very unlikely to meet TSC works in proximity policy.

Therefore, it is recommended that conditions be added to ensure it is clear that the proposed plans may need amendment and easements may need to be increased. Also, it is recommended that a condition is imposed to ensure that no structures (rocks or trees or otherwise) are located over the sewer infrastructure.

Accordingly, the following extra conditions are recommended for inclusion:

Condition B8: the following sub clauses to the condition are requested for insertion in this Condition:

- # Where retaining walls are proposed on boundaries parallel to proposed sewerage infrastructure, sewer easements shall be a minimum of 4.0 meters wide, or larger if other services are also proposed within the easement.
- # The proposed water and sewer infrastructure on the Civil Works Plans submitted are considered to be preliminary and are subject to change to meet Council requirements.
- # Prior to Construction Certificate plans shall be provided to the Water Authority to demonstrate that the retaining wall structures meet the Tweed Shire Council Development Design Specification D15 – Work in Proximity. Plans shall show that the existing footings are located a minimum of one metre from the proposed sewer infrastructure.
- # Works in the vicinity of public infrastructure must comply with the following requirements;
 - a) No portion of any structure may be erected within any easement or within one metre where no easement exists for public infrastructure over the subject site. All structures shall be designed and sited such that all structure loads will be transferred to the foundation material outside of the zone of influence of any public infrastructure.
 - b) Retaining walls are only permitted over the public sewer at the site boundaries. The structure must be designed to provide structural bridging over the pipe, as specified by Council, so as not to impose load on the pipe and to facilitate maintenance of the pipe without adverse effects on the wall's structural integrity and stability.

- c) Surface treatment over the sewer pipe shall be limited to soft landscaping, noninterlocking paving, asphalt or similar treatments as specified by Council officers, to allow ready access to the pipe for excavation. Council will not be responsible for the reinstatement of plantings, unauthorised structures or decorative surfacing in the vicinity of the pipe in the event of pipe excavation or other maintenance works.
- d) Trees and other landscaping that will grow to over one metre in height at maturity are not permitted to be planted within the sewer easement or within one metre of the sewer if no easement exists, to prevent the tree roots intruding into sewer mains and internal sewer pipes. Landscaping over the sewer shall be of a minor nature designed to ensure they do not damage or interfere with any part of the pipeline.

Furthermore, because of the way construction staging has progressed, it is requested that another condition is added to ensure there is access to the Sewer Pump Station lot. This can also be incorporated within Condition B8:

- # To ensure adequate access to the SPS lot, construction of any stormwater infrastructure adjacent to the SPS in Lot 610 shall not commence until the completion of the SPS Control Building works.

'Bioretention Basin and Drainage Reserve Design Report' by Biome

The amended report is generally accepted, although the planting densities and associated information may still need to be better resolved. The Landscape plans call for "Floodplain Grasslands" and "sedges and marginal planting zone". Biome use a manning's "n" value of 0.06 which represents "light brush and trees". There is some discussion on this in section 5.1.4 of Biome's report. This is certainly debatable considering the area slopes at roughly 6% (a "floodplain" is generally flat) and the uncertainty of final layout/vegetation.

Nevertheless it is considered any other minor unresolved concerns are able to still be adequately addressed during the construction certificate application and assessment process.

The amended report is accepted.

'Landscape Master Plan'

The revised plans dated 1.5.2019 are accepted.

Bushfire Hazard Assessment (BHA) Lot 610 Drainage Reserve

As previously referenced above, Council will accept the amended BHA once NSW RFS have endorsed it.

Revised Vegetation Management and Rehabilitation Plan / *Macadamia tetraphylla* Translocation Plan / Revised Ecological Assessment / BDAR

The following comments reference the *Macadamia tetraphylla* Translocation Plan (JWA July 2018), the related Revised Vegetation Management and Rehabilitation Plan (JWA April 2013) and Revised Ecological Assessment (Burchills August 2017).

Since Council's previous submission, and in response to submissions by OEH, the applicant has changed their proposed approach to assessment and mitigation of impact on *Macadamia tetraphylla* and now proposes to address this and other threatened species requirements under the Biodiversity Conservation Act. The

revised documentation includes a Biodiversity Development Assessment Report (BDAR) (JWA December 2018).

In relation to *Macadamia tetraphylla*, the BDAR concludes that 8 species credits are required to be purchased or retired as an offset for the removal of 4 individual plants. Translocation of these plants is no longer being proposed. The applicant has indicated an intention to satisfy the credit requirement through payment to the Biodiversity Conservation Trust.

As a result of this approach, Council's previous comments on the above plans are no longer relevant at this time, as translocation is not being considered in the current proposal. The following comment is provided in relation to the new information contained in the BDAR and accompanying letter at Annexure G:

- It is noted that OEH has already provided comment on the BDAR and identified a number of issues that need to be addressed in order for the BDAR to be considered adequate, including consideration of additional threatened species and vegetation communities.
- We note that under Biodiversity Offsets Scheme the DPE is required to be satisfied that all attempts to avoid and minimise impacts on threatened species and communities have been explored prior to considering offset mechanisms.
- The BDAR does not adequately consider measures to avoid and mitigate impact on the *Macadamia tetraphylla* or other impacted species. The BDAR should be amended to do so.
- Translocation of the affected individual *Macadamia tetraphylla* may still be an appropriate approach to minimise impact on the threatened species, and provide a better biodiversity outcome, while also potentially meeting requirements to avoid and/or minimise impact.
- Given the considerable revisions that will be required to address OEH requirements, an opportunity for Council to review the revised BDAR, when it is submitted, would be appreciated.
- The Revised Ecological Assessment (Burchills Nov 2018) still refers to translocation of *Macadamia tetraphylla* and the Translocation Plan. References to revised plans will require updating in line with the outcomes of the above.

For further information regarding this matter please contact Denise Galle on (02) 6670 2459.

Yours faithfully

Lindsay McGavin
Manager Development Assessment and Compliance