

Council Reference: DA09/0701.03 LN35979
Your Reference:



6 September 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, and Lots 40 & 43 DP 254416: No. 37 Fraser Drive TERRANORA; Lot 2 DP 778727: Parkes Lane TERRANORA

I refer to your email of 6 August 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.

SPECIFIC CONSENT CONDITIONS

Condition A2: amendments are accepted.

Condition A3: amendments are accepted, subject to the following:

- Within the package of re-submitted engineering plans, it is noted that drawing SK 3608 has been amended and is now Rev.C, although there is no reference to this in the commentary. The amendment reflects the shortening of this road to become a cul-de-sac, as required by DA Condition B10, so is therefore supported. However this amended plan number has not been included in the amendment drawing list.

Associated comments:

- SK 3608 is the longitudinal section for Road 9, and has been satisfactorily amended to accord with DA Condition B10, however no other associated plans have been changed to reflect Road 9 becoming a cul-de-sac – eg: the separate list of 'Local Office Architecture' plans; engineering plans for 'Road Hierarchy', stormwater, sewer and water provisioning.
- While the Surveyor's subdivision layout plans have been amended to reflect this road change, the supporting engineering drawings were not correspondingly changed. This occurred as part of MOD #2 so will not be further pursued (now).
- It is not considered necessary to amend all other engineering drawings that show Road 9 as a 'through road', provided Condition B10 is retained.

- Also, a correction of minor mis-numbering of engineering drawings (third line of the amended engineering drawing table) is required.

A3 summary, the following further amendment of Condition A3 is requested, being the 'Engineering Drawings' table, third line:

SK3659 – SK3608	B	Road Plans – road longitudinal, long and cross sections	7 January 2013
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Change to:

SK3595 – SK3607	B	Road Plans – road longitudinal, long and cross sections	7 January 2013
SK3608	C	Road 9 Longitudinal Section	9 July 2019

Condition A4: amendments are accepted – subject to also including the BIOME Bioretention Basin and Drainage Reserve Design Report as previously requested. This document is considered to be a significant component of the MOD #3 application and warrants specific referencing.

Please include the **BIOME Bioretention Basin and Drainage Reserve Design Report Ver.4 dated March 2019** as a specific item in Condition A4.

Condition A10: amendments are accepted.

Condition B8: amendments are accepted.

Condition B10 (changing Road 9 to a cul-de-sac): Council withdraws its prior recommendation and support for deletion of this condition, as per comments under Condition A3. This Condition needs to be retained to explain the differences between the Surveyor's subdivision layout plans and the inconsistently amended engineering drawings, relative to Road 9.

Please retain this condition.

Condition B18: amendments are accepted.

Condition B46: amendments are accepted.

Condition B49: this was not referenced in the latest submission as Council have previously accepted the proposed amendment – however please ensure the latest version of the Bushfire Hazard Assessment (BHA) is nominated – being **Rev. F dated 19.7.2019**.

New Condition B51: this was not referenced in the latest submission, although Council queried the inclusion of a fencing requirement (for Lot 316) in the prior RFI comments of 19.6.2019 – which the applicant is under no obligation to construct. It is unknown what the applicant's intentions now are regarding fencing.

Also – please ensure the latest version of the BHA is referenced - being **Rev. F dated 19.7.2019**.

Condition E13: amendments are accepted – subject to (reiterating the request for) inclusion of a further item to nominate the 5m boundary setback for Lot 701 as required by the BHA.

In this regard Council does not agree with DAC comments that this setback is unnecessary for nomination. The prior Council acceptance of extending the depth of Lot 701 by 1m (and losing 1m of Drainage Reserve) was only to exclude Council from any IPA-related maintenance responsibility, not to void the need for a nominated setback.

The setback inclusion can be facilitated by either:

- Incorporating the setback requirement as part of sub-section (g), (TSC preferred option), or,
- Creating an extra item (o).

Condition E14: this was not referenced in the latest submission as Council have previously accepted the proposed amendment – however please ensure the latest version of the BHA is nominated – being **Rev. F dated 19.7.2019**.

SPECIFIC DOCUMENTS

- Amended 'Bushfire Hazard Assessment Lot 610 Drainage Reserve' Rev.F dated 19.7.2019:

In consideration of the NSW RFS comments listed on the DPIE web site, this amended document is accepted.

- The following comments cover:
 - Amended Biodiversity Development Assessment Report (BDAR) dated 24.7.2019 and the attached Revised *Macadamia Tetraphylla* Translocation Plan dated 24.7.2019
 - JWA letter dated 24.7.2019
 - Revised Ecological Assessment Report dated 22.7.2019

Following a conversation with Rachel Lonie (A/Senior Team Leader, Biodiversity and Conservation, DPIE) on 28.8.2019, it is likely that the applicant will be required to provide further information and amend their application and BDAR to meet offset requirements for the *Macadamia* in accordance with the BC Act, hence potentially making redundant any detailed comment on that or the translocation plan we have at this point.

The following history should be noted:

- The original application identified impact on one individual of this species, and intended to translocate the individual in accordance with a *Macadamia* Translocation Plan. Council provided comment on the *Macadamia* Translocation Plan, noting a number of required amendments.
- A subsequent amended application proposed to address the impact on *Macadamia tetraphylla* through offsetting under the Biodiversity Conservation Act (BC Act). Council again provided comment (19 June 2019), noting that additional information had been requested by OEH in relation to the BDAR contained in that application.
- Since Council's previous submission, the most recent application has again changed its approach to dealing with the matter of impact on the threatened plant species *Macadamia tetraphylla*. The currently proposed approach reverts back to the use of translocation under a *Macadamia* Translocation Plan (most recent version July 2019).

The application now identifies four individuals to be removed, and a site inspection completed by Council's ecologist on 28 August 2019, identified at least one additional individual within the footprint of proposed bulk earthworks. The original application related to the translocation of one isolated individual, whereas it is now clear that it is a small population of the species. There is no discussion in the documents on the significance of this population locally or regionally, nor is there any detailed information on the maturity or health status, or a feasibility analysis of translocation of these individuals.

As noted in Council's previous submission, the BDAR does not adequately consider measures to avoid and mitigate impact on the population of *Macadamia tetraphylla*. It is strongly preferable to retain the population on site.

It is unclear at this point whether translocation of the affected individuals will form part of the final application, or whether offsets will be pursued under the BC Act, therefore detailed review of the documents has not been undertaken. As noted in Council's previous submission, translocation of the affected *Macadamia tetraphylla* as proposed in the Translocation Plan may still be an appropriate measure to help reduce impact, even if offsets are conditioned. If this is the case, it is expected that works would be carried out under an approved Translocation Plan and that matters raised previously in relation to the Plan be addressed prior to approval.

Council welcomes the opportunity to provide further comments once the approach to addressing these issues has been determined.

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

Yours faithfully

Lindsay McGavin

Manager Development Assessment and Compliance