



Altitude Aspire Residential Subdivision

State Significant
Modification Assessment
(09_0166 MOD 4)

January 2020

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Glossary

Abbreviation	Definition
Council	Tweed Shire Council
Department	Department of Planning, Industry and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces



1. Introduction

1.1 Background

This report is an assessment of a request to modify the project approval for the Altitude Aspire residential subdivision (MP 09_0166) at Fraser Drive, Terranora.

The application seeks approval to amend Condition E5 (Section 94 Contributions) to reflect the updated staging approved under MOD 3. The request has been lodged by Metricon Queensland Pty Ltd (the Proponent) pursuant to section 4.55 (1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 Site

The subject site is located at Fraser Drive, Terranora in the Tweed Local Government Area (LGA). It is approximately six kilometres south-west of Tweed Heads and six kilometres south of the Gold Coast Airport (Figure 1).



Figure 1 | Regional Context (Base source: Google Earth)

The site is irregular in shape and is approximately 37 hectares in area (Figure 2). It is bound by agricultural land uses to west, and Fraser Drive and residential land uses to the east. Residential uses also border the southern edge of the site along Parkes Lane and Market Road.

The site is relatively steep, with a change in elevation of approximately 86 metres from the southern boundary adjacent to Parkes Lane down to the wetland located adjacent to the northern boundary. Gradients are in excess of 25 per cent in parts, particularly adjacent to the natural watercourse. A SEPP 14 wetland adjoins the northern boundary of the site.



Figure 2 | Site Context

1.3 Approval History

On 30 May 2014, the then Planning Assessment Commission, as delegate of the then Minister for Planning and Infrastructure granted project approval for a community title residential subdivision under Part 3A of the EP&A Act (MP 09_0166). Project approval was granted for:

- 250 residential and 4 medium density lots
- 4 public reserve lots, 1 water reservoir site, 1 drainage reserve lot, 1 community lot
- landforming and earthworks
- community recreation facility on Lot 713
- associated roads, stormwater and utility infrastructure.

The project approval has been modified on three occasions (see **Table 1**).

Table 1 | Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Type	Approval Date
MOD 1	• convert the site's community title lots to torrens title • remove the community recreation facility on Lot 713 • embellish and dedicate Lot 713 to Council as 'public open space' • change the use of Lot 712 from 'public open space' to 'medium density residential'.	Department	75W	6 May 2015

MOD 2	delete the water reservoir site on Lot 501 and convert it to a residential lot	Department	75W	26 November 2015
	reconfigure the water supply, sewer system and easement arrangements			
	adjust the Section 64 and Section 94 contributions			
	other minor administrative amendments.			
MOD 3	increase the extent of bulk earthworks into Lot 1 DP 175234 (adjoining lot to the west) to enable construction of a new roundabout	Department	75W	26 November 2019
	amend the subdivision layout to include a new roundabout			
	amend the central drainage corridor layout and landscaping			
	amend the staging of the development for residential lots and provision of roads and infrastructure			
	amend the Acoustic Report and Structural Systems Plan.			



2. Proposed Modification

On 14 January 2020, the Applicant lodged an application (MP 09_0166 MOD 4) seeking approval to amend Condition E5 (Section 94 Contributions) to reflect the updated staging approved under MOD 3.

MOD 3 amended the staging to include nine new stages: 4A, 4B, 6A, 6B, 7A, 7B, 8A, 8B and 11. Condition E5 includes a table outlining the contributions required for Stages 1 to 10. However, it was not updated as part of MOD 3 to reflect the new stages. It is therefore proposed to amend Condition E5 to include contributions calculations for all stages.



3. Statutory Context

3.1 Part 3A Transition to State Significant Development

The project approval (MP 09_0166) was originally granted under Part 3A of the EP&A Act. This means the project satisfied the definition of a 'transitional Part 3A project' under clause 2(1) Schedule 2 to the Environmental Planning & Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (ST&OP Regulation), which came into effect on 1 March 2018.

Under the ST&OP Regulation, projects the subject of existing Part 3A approvals remain transitional Part 3A projects until they are transitioned to State significant development (SSD) (clause 3(1)-(2), Schedule 2). As of 1 March 2018, new proposals to modify existing Part 3A project approvals can only be determined once the project has been declared to be SSD by the Minister for Planning, and the relevant provisions to modify an SSD consent under Part 4 of the EP&A Act apply.

On 13 December 2019, an Order was published in the New South Wales Government Gazette transitioning the Part 3A project approval (MP 09_0166) to SSD. The application has been lodged under section 4.55(1) of the EP&A Act for a modification to correct a minor error.

3.2 Modification of Approval

Section 4.55(1) of the EP&A Act requires the consent authority to be satisfied that the following matters are addressed in respect of all applications that seek modification approvals:

Table 2: Matters for consideration

Section 4.55(1) matters for consideration	Comment
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation.	The application seeks to amend Condition E5 (Section 94 Contributions) to reflect the updated staging approved under MOD 3.
Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.	Noted.

3.3 Consent Authority

The Minister for Planning and Public Spaces is the approval authority for the modification request. However, the Director, Regional 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 objections.

3.1 Environmental Planning Instruments

The original project (MP 09_0166) was assessed against the provisions of the following Environmental Planning Instruments (EPIs):

- State Environmental Planning Policy (Major Development) 2005
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No. 71 – Coastal Protection
- State Environmental Planning Policy No. 55 – Remediation of Land

- State Environmental Planning Policy No. 14 – Coastal Wetlands
- State Environmental Planning Policy (North Coast Regional Environmental Plan)
- Tweed Local Environmental Plan 2000
- Draft Tweed Local Environmental Plan 2010.

Given the minor nature of the proposed modifications, the Department is satisfied that the proposal remains acceptable having regard to the above EPIs.



4. Engagement

4.1 Department's Engagement

The modification request was made publicly available on the Department's website. As the modification is administrative in nature, the Department did not notify the application by any other means.

The Department notes that Council raised the requirement to update the staging in Condition E5 with the Department and the Applicant, and provided updated calculations for Condition E5.



5. Assessment

In assessing the merits of the proposed modification, the Department has considered the:

- the modification and associated documents (**Appendix A**)
- the Environmental Assessment and conditions of approval for the original project (as modified), and in particular MOD 3
- submissions received on the proposal
- relevant environmental planning instruments, policies and guidelines
- requirements of the EP&A Act.

The Applicant proposes to amend Condition E5 to reflect the amended staging approved under MOD 3, for the delivery of contributions.

MOD 3 amended the staging to include nine new stages. However, Condition E5 was not updated to reflect the new staging. It is therefore proposed to amend Condition E5 to ensure contributions calculations apply for all stages. The Department notes that Council has provided the updated calculations as recommended in Condition E5.

The Department is satisfied the proposal is acceptable as it would simply amend Condition E5 to accurately reflect the development stages approved under MOD 3 and require the payment of contributions for all stages of the development.



6. Evaluation

The Department has assessed the merits of the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department considers the proposed modification is appropriate, subject to the recommended conditions, on the basis that it would ensure Condition E5 reflects the approved stages and development contributions are required for all stages of the development.

Consequently, the Department considers the modification request is in the public interest and should be approved.



7. Recommendation

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

- **considers** the findings and recommendations of this report
- **determines** that the modification request MP 09_0166 MOD 3 falls within the scope of section 4.55(1) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application
- **modify** the consent 09_0166
- **signs** the attached Modification of Development Consent (**Attachment B**).

Recommended by:

Emma Butcher
AI/ Senior Planner
Regional Assessments

Recommended by:

Silvio Falato
Team Leader
Regional Assessments



8. Determination

The recommendation is **adopted** by:

28 January 2020

Brendon Roberts

A/Director

Regional Assessments



Appendices

Appendix A – Relevant Supporting Information

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

Modification request

<https://www.planningportal.nsw.gov.au/major-projects/project/26906>

Appendix B – Modification of Development Consent

A copy of the Modification Request can be found on the Department's website at the following link:

<https://www.planningportal.nsw.gov.au/major-projects/project/26906>