

ASSESSMENT REPORT

Section 75W Modification Catherine Hill Bay Residential Development MP10_0204 MOD 6

1. INTRODUCTION

This report is an assessment of a request to modify a Project Approval (MP10_0204) for a residential subdivision at Catherine Hill Bay within the Lake Macquarie local government area (LGA). The request has been lodged by ADW Johnson on behalf of Coastal Hamlets Pty Ltd (the Proponent), pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The request seeks approval to make changes to the road and subdivision layout of Stage 7 of the development.

2. SUBJECT SITE

The Catherine Hill Bay Residential Development (Catherine Hill Bay) is located on a 72-hectare site south of the Catherine Hill Bay village on the South Wallarah Peninsula. The site is approximately 26 kilometres south of Newcastle. The site adjoins the Catherine Hill Bay Cultural Precinct (Cultural Precinct), which is listed on the State Heritage Register, and Munmorah State Conservation Area.



Figure 1 - Location of Catherine Hill Bay Residential Development (source: Google Maps)

3. SITE HISTORY

On 13 May 2011, Project Application (MP 10_0204) was approved by the Planning Assessment Commission, as delegate of the then Minister for Planning and Infrastructure, for a residential subdivision comprising 540 residential lots, 1 retail lot and associated open space at Catherine Hill Bay.

The Project Approval (MP 10_0204) has been modified on four occasions:

Table 1: Previous Approved Modifications

| MOD | Modification | Date Approved |
|-----|---|-------------------|
| 1 | <ul style="list-style-type: none"> minor changes the subdivision layout and administrative amendments to conditions | 27 May 2013 |
| 2 | <ul style="list-style-type: none"> minor changes to the number and configuration of lots, road access and administrative amendments to conditions | 25 September 2014 |
| 4 | <ul style="list-style-type: none"> changes to the stormwater management strategy, configuration of lots in stages 4 to 7, public works and administrative amendments to conditions | 24 April 2015 |
| 5 | <ul style="list-style-type: none"> changes to a condition to reduce the landscape maintenance period | 10 August 2015 |

The approved subdivision layout is shown in **Figure 2**.



Figure 2: Approved subdivision layout with Stage 7 outlined (source: Mod 4 approved plans)

4. PROPOSED MODIFICATION

On 24 August 2017, the Proponent lodged a section 75W modification request (MP10_0204 MOD 6) seeking approval to modify the road layout in Stage 7.

As approved, Stage 7 incorporates a perimeter road for bushfire access purposes and a central roadway for general public access to the lots (**Figure 2**).

The proposal seeks to move the perimeter road inward, away from the site boundary and upgrade it to a wider road, providing full public access to the lots. It also seeks to delete the central road as it would no longer be needed.

The Proponent advises the change is due to engineering constraints arising from the very steep slope at the site boundary which would currently require the provision of retaining walls up to 6.5 metres in height in order to provide the roadway.

On 15 November 2017, the Proponent submitted a slightly revised road layout to address concerns raised in agency submissions. The proposed Stage 7 layout, as revised, is shown in **Figure 3**.

The revised proposal would require less retaining walls with a lower wall height (of less than 3 metres). The Proposal would not result in any change to the number of lots within Stage 7.



Figure 3: Proposed Stage 7 layout (source: Proponent's updated Response to Submissions)

5. STATUTORY CONSIDERATION

5.1 Section 75W and Modification of a Minister's Approval

The project was originally approved under Part 3A of the EP&A Act. The project is a transitional Part 3A project under Schedule 2 to the EP&A (Savings, Transitional and Other Provisions) Regulation 2017. The power to modify transitional Part 3A projects under section 75W of the Act as in force immediately before its repeal on 1 October 2011 is being wound up – but as the request for this modification was made before the 'cut-off date' of 1 March 2018, the provisions of Schedule 2 (clause 3) continue to apply. Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove the carrying out of the project under section 75W of the EP&A Act.

5.2 Approval Authority

The Minister for Planning is the approval authority for the request. However, the Director, Modification Assessments may determine the request under delegation as:

- Council has not made an objection;
- a political donation disclosure statement has not been made; and
- no public submissions were received objecting to the proposed modification.

6. CONSULTATION

6.1 Consultation and Submissions

The Department made the modification request publicly available on its website and consulted with Lake Macquarie City Council (Council), the Office of Environment and Heritage (OEH) and the Rural Fire Service (RFS) about the proposed modification.

Council advised it does not have any concerns with the proposal providing the following matters are addressed:

- all retaining walls be located outside the public road reserve and made of decorative masonry.
- appropriate provision of stormwater treatment in Stage 7, noting stormwater is proposed to be discharged directly to the adjoining National Park without treatment or provision of easements on National Park lands.

RFS raised concerns with the modified perimeter road, noting the road would have a length exceeding 500 metres from where it links with the internal road system, contrary to the requirements of Planning for Bush Fire Protection 2006. It also requested advice regarding the proposed front building alignments and expected bushfire attack levels for future dwellings.

OEH advised it does not object to the proposal, noting it would not impact on biodiversity, European or Aboriginal cultural heritage.

No **public** submissions were received.

6.2 Response to Submissions

On 15 November 2017, the Proponent submitted a Response to Submissions (RTS) to address the issues raised by Council and RFS and modified the proposal by amending the road layout. An updated version of the RTS was submitted on 18 December 2017 which incorporated additional information on to respond to information requested by RFS.

The RTS was referred to Council, RFS and OEH (National Parks and Wildlife Service(NPWS)).

Council did not object to the proposal and suggested a condition in relation to the design of any retaining walls within Council road reserves and suggested the Department consult with NPWS on the impact of stormwater runoff to its property.

RFS initially advised the RTS did not address its original request for information, but following the Proponent's updated RTS, advised it raises no objection to the modification subject to a condition relating to the detailed design and width of the roadway.

OEH raised concerns about stormwater discharging to its land leading to a small lagoon. The proposal could result in additional sediment entering the lagoon with associated environmental impacts. OEH advised it supports additional stormwater detention and water quality controls.

7. ASSESSMENT

The Departments assessment of key issues is set out in **Table 2**.

Table 2: Assessment of Issues

| Issue | Consideration | Recommendation |
|---------------------------|--|---|
| <i>Subdivision Design</i> | <ul style="list-style-type: none"> The proposal seeks approval for a revised subdivision layout which includes a perimeter road in place of a central road. The overall number of lots would remain the same as approved however, the lot sizes would be reduced, ranging in size from 565m² to 1051m². Lot orientations would remain similar to those already approved and all lots would have direct road frontage. The Department considers the proposed changes are minor and the revised layout provides a logical subdivision pattern which will integrate with the adjoining stages. Further the Department is satisfied the revised lots sizes exceed the minimum lot size of 450m² applicable to the site and would still be capable of accommodating houses with sufficient setbacks, landscaping and amenity. Finally, the Department supports the provision of a perimeter road instead of a central road as it would improve permeability and provide an acceptable interface to the adjoining National Parks land. The Department therefore supports the revised subdivision and road layout. | No additional conditions or amendments necessary. |
| <i>Ground Levels</i> | <ul style="list-style-type: none"> The Department raised concern about the approved ground levels increasing in height and requested that the Proponent provide additional information to assess the proposed changes. The Proponent submitted Section Plans of Stage 7 and advised that variations to the approved ground levels are required to balance the import and export of cut/fill throughout the site, to meet Council road requirements, inter-lot drainage and street stormwater guidelines. The submitted sections identify that the proposed ground levels to the northern portion of Stage 7 remain generally consistent with the approved levels and in some cases, are lower than the approved levels. However, the Department notes that levels in the southern portion of Stage 7 are up to 2.25m higher than the approved levels. The Department considers the proposed ground level changes are minor and acceptable as they remain generally consistent with the approved levels and are required to meet road design, drainage and stormwater requirements. The Department also considers the proposal would not result in any adverse visual or heritage impacts given the site is located approximately 500m west of the Cultural Precinct. Additionally, the Department notes there is a ridgeline between the Cultural Precinct and the site, which obscures views between the two sites. On this basis, the Department is satisfied that the proposed ground levels are acceptable and would not result in any significant impacts on the setting or character of the Cultural Precinct. | No additional conditions or amendments necessary. |
| <i>Bushfire Safety</i> | <ul style="list-style-type: none"> RFS initially raised concerns that the proposal would result in a perimeter road with a length exceeding 500 metres before joining the remainder of the internal road system, contrary to the requirements for road design in <i>Planning for Bushfire Protection 2006</i>. To address these concerns, the Proponent redesigned the | A condition is recommended requiring the proposed road to comply with Planning for Bushfire |

| Issue | Consideration | Recommendation |
|-------------------------------------|---|---|
| | <p>road layout so the perimeter road length would be 479 metres. The Proponent also provided a bushfire assessment which found that the revised layout maintains satisfactory egress arrangements in accordance with <i>Planning for Bushfire Protection 2006</i> as:</p> <ul style="list-style-type: none"> ○ it provides a widened two-way perimeter road around the development area, with hydrants at regular spacing ○ the road provides increased separation between the hazard interface and the residential lots. <ul style="list-style-type: none"> ● The bushfire assessment also advised that Asset Protection Zones (APZs) would be provided in accordance with the Bushfire Management Plan for the site previously endorsed by the RFS, and the proposal would not alter APZs, construction standards, emergency management, or landscaping requirements. ● RFS subsequently advised it raises no objection to the modification subject to a condition ensuring the road be designed in accordance with <i>Planning for Bushfire Protection 2006</i> and have a carriageway width of at least 8 metres. ● The Department is satisfied the revised subdivision and road layout can comply with the requirements of <i>Planning for Bushfire Protection 2006</i> and has included RFS's suggested conditions. The Department also notes existing conditions of approval require the establishment of APZs and the preparation of a Bushfire Risk Management Plan. Future development applications for new dwellings will also be required to be assessed against bushfire safety requirements. ● The Department is therefore satisfied the revised proposal would not result in any unacceptable bushfire risks, subject to the inclusion of RFS' recommended conditions. | <p>Protection and have a minimum carriageway width of 8 metres.</p> |
| <p><i>Stormwater Management</i></p> | <ul style="list-style-type: none"> ● Council raised concern with the stormwater design, noting stormwater would be discharged directly to the adjoining National Park without treatment or provision of easements on the adjoining land. ● The stormwater plans indicate the majority of stormwater would be directed east to Stage 6 where it would then be treated. Only part of the site, which cannot discharge to Stage 6 due to the site topography, would flow onto the adjoining National Parks land after first passing through a gross pollutant trap. The majority of this water would originate from NPWS land upslope of the site and would be redirected by the drainage system back on to NPWS land. ● The Department referred the modification to OEH (which incorporates NPWS) which advised it had concerns that discharge to its land could impact on sediment entering a nearby lagoon with associated environmental impacts. As such OEH advises it supports additional stormwater detention and water quality controls. ● The Department considers the proposed modification would not significantly alter the extent of stormwater runoff to the adjoining NPWS land compared to the approved layout, which also includes provision for stormwater runoff to the adjoining land in a similar arrangement. ● The Department also notes existing condition B8 of the approval requires the final design of the stormwater system to be submitted to Council for approval. It also requires the development of a Stormwater Management Strategy which outlines how stormwater is to be contained within the site prior to discharge and ensure any discharge from the site | <p>Condition B8 is recommended to be updated to specifically ensure stormwater management strategies are applied to the discharge from Stage 7.</p> |

| <i>Issue</i> | <i>Consideration</i> | <i>Recommendation</i> |
|------------------------------|---|--|
| | <p>meets OEH and Council treatment targets. Other conditions also require water quality testing and monitoring.</p> <ul style="list-style-type: none"> • The Department considers the existing conditions would provide adequate safeguards to ensure stormwater is appropriately treated before discharging from the site. However, to remove any ambiguity about the need to demonstrate appropriate detention and treatment before discharging onto the adjoining land, a minor change to Condition B8 is recommended, to specifically refer to the stormwater discharges in Stage 7. • On this basis, the Department is satisfied the proposed modification would not result in any additional stormwater impacts beyond those already assessed and approved. | |
| <i>Retaining Wall Design</i> | <ul style="list-style-type: none"> • Council initially advised all retaining walls for the perimeter roads should be located outside the public road reserve and made of decorative masonry. • The Proponent advises retaining walls for the perimeter road must be within the Council road reserve, as it is not possible to provide the walls on the adjoining land owned by NPWS. This is consistent with the approach taken in other stages of the development. The Proponent also advises material selection and design would be based on various criteria including structural requirements and visibility from the public domain. • Subsequently Council did not raise any further concerns about the provision of retaining walls in the road reserve but requested a condition requiring the retaining walls to be constructed of decorative masonry and of a colour that minimises visual impacts. • The Department considers the proposed modification results in a substantial design improvement as the extent of retaining walls along the perimeter road would be reduced from approximately 75% of the road length to 20% and also significantly reduced in height. • Notwithstanding, the Department supports Council's suggested condition requiring the retaining walls to be constructed of decorative masonry and of a colour that minimises its visual impacts for any part of the wall that is visible from public roads. | <p>A condition is recommended requiring the retaining walls in the road reserve of Stage 7 be constructed of decorative masonry when viewed from public roads and of a colour approved by Council.</p> |

8. CONCLUSION

The Department has assessed the modification request and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is appropriate on the basis that:

- the proposal would not change the number of lots on the site and would provide an appropriate subdivision layout
- the proposed design can comply with Planning for Bushfire Protection 2006 and therefore would not result in any unacceptable bushfire risk impacts
- the proposal would not result in any significant impact on the State Heritage Listed Cultural Precinct
- the proposal does not result in any additional environmental impacts, including impacts related to stormwater runoff compared to those already assessed and approved
- the proposal results in an improved outcome in terms of the the height and extent of retaining walls necessary to develop Stage 7.

Consequently, the Department recommends the modification request be approved in accordance with the modification instrument at **Appendix A**.

9. RECOMMENDATION

It is RECOMMENDED that the Director, Modification Assessments, as delegate for the Minister for Planning:

- **considers** the findings and recommendations of this report;
- **determines** the request can be determined under section 75W of the EP&A Act
- **approves** the request, subject to conditions; and
- **signs** the notice of modification (**Appendix A**).

Recommended by:



Michelle Niles 6/4/18
Senior Planner
Modification Assessments

DECISION

Approved by:



Anthony Witherdin
Director
Modification Assessments
as delegate of the Minister for Planning

APPENDIX A: NOTICE OF MODIFICATION

The Notice of Modification can be found on the Departments website at the following address:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8694

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 as follows:

1. Modification request

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8694

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8694

3. Response to Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8694