

DEPARTMENT OF PLANNING

Development Assessment and Systems Performance

For decision

SUBJECT: "PEARL" RURAL RESIDENTIAL SUBDIVISION, VALLA

PURPOSE

To determine a modification request for the "Pearl" rural residential subdivision at Valla in the Nambucca local government area (DA 234-08-01 MOD 1).

BACKGROUND

On 25 July 2002, the Minister for Planning determined to approve DA 234-08-01 for a 44 lot rural residential subdivision at Lot 2 DP 848520, Pacific Highway, Valla in the Nambucca local government area pursuant to a section 88A of the EP&A Act direction (as was in force at the time). Figure 1 shows the site in a local context. Figure 2 shows the general subdivision layout.

Since the subdivision was approved, new guidelines have been published which guide development near railways and rural land. This includes new guidance on buffers between dwellings and these land uses. The proposed modification seeks to bring the subdivision in to line with the new guidelines. This will also enable more flexibility in the positioning of future dwellings on some of the lots within the subdivision.

As the subdivision is nearing completion, with a number of lots already sold, the applicant is also seeking to amend a condition which is considered not in keeping with Council policy and does not fit within the subdivision.

PROPOSED MODIFICATION

The applicant seeks a number of modifications to the approved development. In particular, the applicant proposes to:

- reduce the nominated buffers/ setbacks required to the adjoining North Coast Railway (from 60 metres to 40 metres) and the agricultural land to the south of the site (from 80 metres to 40 metres); and
- delete condition 29 which requires that the 4 detention basins are fenced with a 1.8 metre cyclone-wire fence.

The applicant also submitted new plans to reflect the proposed changes to the buffers/ setbacks. During the course of the assessment, it was agreed with the applicant to not amend any plans and to instead deal with the proposed new setbacks through specific conditions that modify the plans. This is because there are numerous references throughout the conditions of consent to the old plans (some of which have already been acted upon) and it will create unnecessary confusion at this time to update all plan references.

CONSULTATION

Pursuant to Clause 8J(8)(c) of the EP&A Regulation, any modification to the development consent is to be dealt with as a s75W of the EP&A Act modification.

In accordance with section 75X of the EP&A Act and clause 8G of the EP&A Regulation, the modification request was made available on the Department's website. Due to the minor nature of the proposed modification, the modification request was not exhibited by any other means. No submissions were received on the modification request. However, the request was referred to Nambucca Shire Council for comment.

Council responded on 8 June 2010 stating that it had no objection to the modification in general (see Tag B), however, requested that the reduced rural buffer also comprise a minimum 20m wide vegetation buffer planted on Lot 4, and any other necessary lots as per its Development Control Plan. Council also recommended that the indicative building envelope shown for Lot 4 also be relocated closer to the internal ring road, consistent with other building envelopes shown on the plans, to ensure there is no conflict with it and the rural setback/ vegetation buffer.

DELEGATED AUTHORITY

On 25 January 2010, the Minister delegated his powers and functions under section 75W of the EP&A Act to Directors in the Major Projects Assessment Division in cases where there are less than 10 public submissions (not including submissions from public authorities) in the nature of objections in respect of the modification request. As no public submissions were received, the Director may determine the modification request under delegated authority.

KEY ISSUES

Rural Buffer

The subdivision is bordered by rural land to the south and north. To address potential land use conflicts between rural land and rural-residential development, the development consent required that buildings could not be constructed within 80 metres of the rural land to the south and within 30 metres of the rural land to the north. The 80 metres buffer was based on Council's policy at the time. In respect of the northern buffer, it was recognised that the existing dense vegetation and topography already provided substantial buffering between the two land uses and so a reduced buffer was considered acceptable. No change is proposed to this buffer.

Since development consent was granted, a new government handbook, prepared by the then Department of Primary Industries (now Industry and Investment NSW) and the Northern Rivers Catchment Management Authority, has been developed to help manage and avoid land use conflicts in rural areas. In relation to this development, *Living and Working in Rural Areas, A handbook for managing land use conflict and disputes in rural areas 2007* now recommends a buffer of 50 metres between grazing of stock (as is the case to the south of the site) and residential areas, but notes that site specific circumstances may alter this buffer distance.

The applicant has argued that this new handbook provides the basis for reducing the buffer distance from 80 metres to 50 metres, but in order to reduce it further to 40 metres (as proposed), site specific factors are provided as justification. These include:

- the adjoining rural land is not identified as Regionally Significant Farmland;
- the rural land to the site is fragmented and below the minimum rural lot size of 40 hectare and is therefore unlikely to sustain any intensive form of agriculture;
- the existing requirement for a fence between the rural land and the development serves to provide a permanent separation between these land uses;
- noise generation from the rural property is minimal given the paddock is only used periodically, through rotation, for cattle grazing with slashing and weed spraying sporadic; and
- retention of native vegetation within a 30 metre wide buffer along the southern boundary of the site provides further effectiveness as a buffer and provides visual screening.

Overall, a reduction in the buffer from 80 metres to 40 metres will provide for more flexibility within the identified building envelopes to site a dwelling.

Nambucca Council's Development Control Plan 16 – Rural Buffers (2005) recommends a separation distance between grazing land and rural dwellings of 80 metres, or 60 metres if a 20 metre vegetation buffer is incorporated within. The buffer may be reduced further depending on the specific circumstances of the proposal. As noted above, Council is supportive of the reduced buffer, although requests that it also comprise a minimum 20m wide vegetation buffer planted on Lot 4, and any other necessary lots.

The Department agrees with the applicant's assessment of site specific circumstances which warrants a reduction in the separation buffer. To ensure that conflicts are further minimised, the Department supports Council's requirement that a 20 metre vegetation buffer be incorporated within the 40 metre setback. Council's DCP also specifies the type of species to be planted and the timing for its establishment as well as a requirement that the clearing of this native vegetation be prohibited through a section 88B instrument. The Department has reflected this in its recommended modifying instrument.

Railway Buffer

When development consent was granted, there was limited guidance on appropriate buffers to railways from rural land. Since that time, a number of policies and guidelines have been published to assist in this regard. This includes *State Environmental Planning Policy (Infrastructure) 2007* (I SEPP) which, amongst other matters, sets internal noise limits that are to apply to noise-sensitive developments near busy roads (such as freeways) and rail corridors.

A supporting interim guideline was also published by the Department in 2008, *Development near Rail Corridors and Busy Roads – Interim Guideline* which provides guidance on the level of noise impact assessment required for new dwellings depending on the distance from the railway track and the type of rail service (passenger or freight) and speed of the service (greater or less than 80km/h). The guideline specifies that dwellings that are to be constructed more than 40 metres from the centreline of the railway (regardless of type of rail service or its speed) do not need a specialist noise impact assessment undertaken and that standard noise mitigation measures could be applied in order to achieve appropriate internal noise levels.

The applicant is proposing to reduce the 60 metre buffer distance currently specified in the development consent to 40 metres and to require that the internal noise limits in new dwellings meet the noise limits specified in the I SEPP.

The Department supports the applicant's request to link the noise limits specified in the I SEPP to future dwellings constructed on the site. The Department also agrees that the buffer can be reduced, having regard to the new guidelines and the assessment methodology outlined therein. This is reflected in the modifying instrument.

Detention Ponds

The development consent requires that the 4 detention ponds located on the site be fenced with cyclone wire or similar, to a height of 1.8metres with access limited to a locked gate. The reason cited in the consent was to ensure the safety of residents. The Applicant has sought to remove this condition on a number of grounds, including:

- it is impractical to effectively fence two of the detention ponds as they are located on running creeks. In the case of the other two ponds, it is not practical to fence the spillway as it would affect its functioning (eg. through build up of vegetation);
- the basins function similar to farm dams, which aren't typically fenced;
- the fencing of the dams may lead to the assumption of safety, which may not be occurring if, for example, the gates are left opened or a fence has collapsed. It is considered that while the dams remain unfenced, there is a permanent presumption of danger, which is better from a child safety perspective;
- the dams provide a source of drinking water for local fauna;
- the dams provide a source of water for fire fighting purposes. If fenced, access to water in times of emergency will be limited;
- the fencing of dams will be visually unattractive in a semi-rural setting;
- fencing of dams is not currently part of any Council policy or guideline. Fencing of detention basins on a subdivision to the south of the site has not been required, nor is it required for the existing detention pond at the entrance to the site.

Council does not object to the deletion of this condition.

The Department acknowledges that it is not practical to fence the two detention ponds located on-stream within lots 20 and 21/22. As the basins are situated within or adjacent to a permanent creek, fencing part of a water body would potentially obstruct its flow. Furthermore, it would be difficult to appropriately site the fence to enclose the entire detention pond. The Department also recognises that these ponds provide a source of drinking water for local fauna.

Whilst the Department does not agree with all the arguments put forward by the applicant to delete the condition in its entirety, the Department does recognise that there may be some difficulty in practically achieving this condition as it is currently worded. Ultimately, the purpose of the condition is to ensure the safety of residents. To this end, the Department notes there may be other ways to discourage access to the ponds, such as through use of vegetation and low fencing. This has been reflected in the recommended modifying instrument. The applicant has been consulted on this proposed change and has agreed to the recommended wording.

RECOMMENDATION

It is RECOMMENDED that the Director:

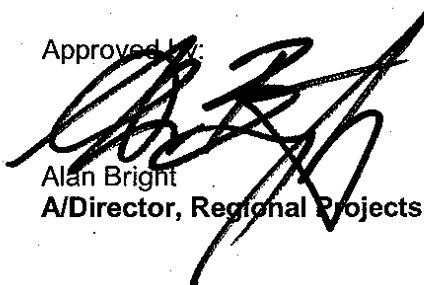
- note the information provided in this briefing;
- approve the modification request, subject to conditions; and
- sign the attached modifying instrument (Tag A).

Prepared by:

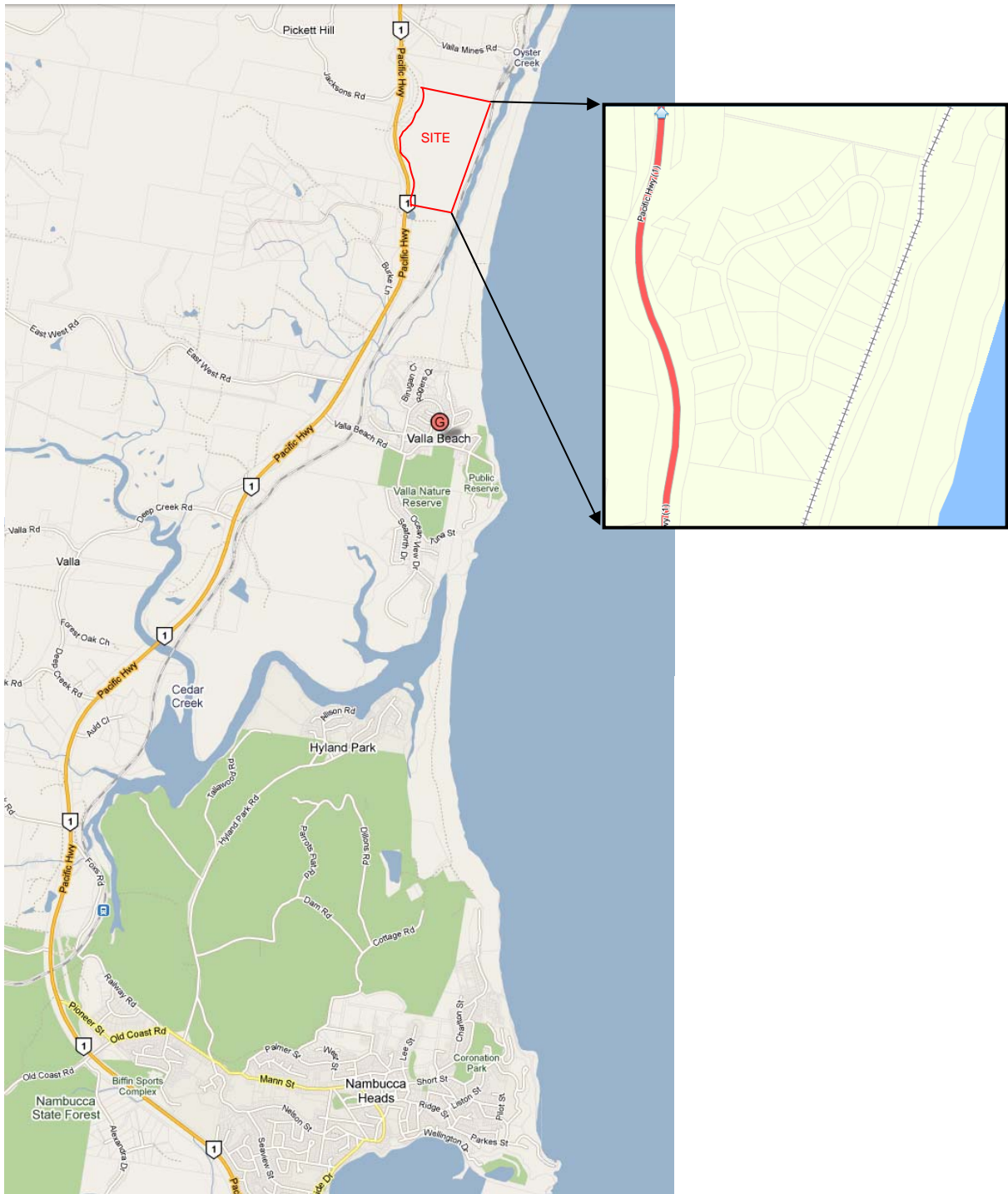


Joanna Bakopanos
Team Leader-North, Regional Projects

Approved by:



Alan Bright
A/Director, Regional Projects



**Figure 1. Location of site in local context (inset showing subdivision layout).
(Source: Google Maps and Whereis)**

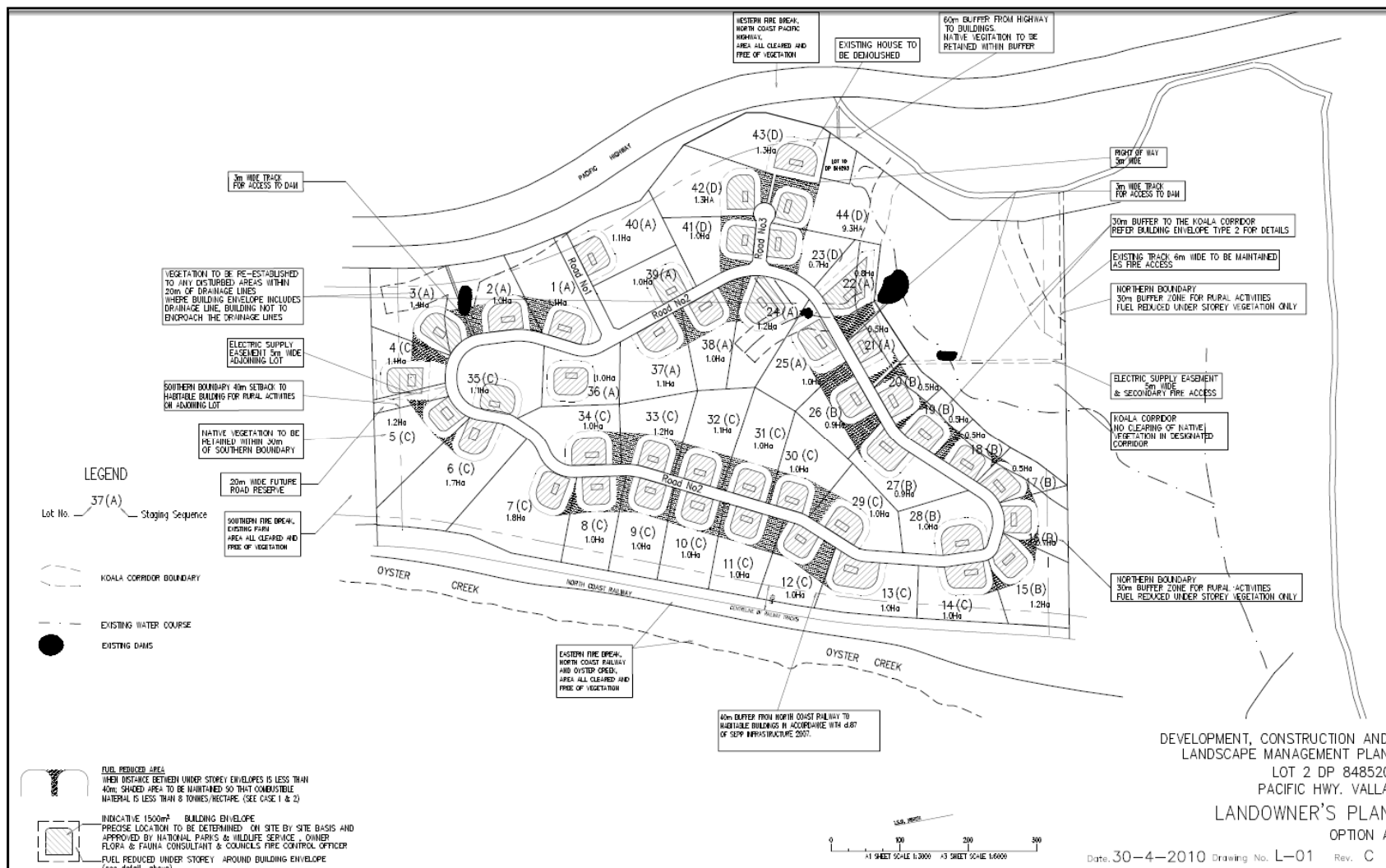


Figure 2. General Subdivision Plan (Source: Modification Report)