

**MODIFICATION REQUEST:
Residential Subdivision
Wuru Road and Dolphin Point Road, Dolphin
Point/Burrill Lake
05_0016 MOD 1**



Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

February 2013

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1. BACKGROUND

This report is an assessment of a request to modify the concept plan approval for Major Project 05_0016 involving a 164 lot residential subdivision, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification request seeks to extend the date on which the concept approval is liable to lapse.

The site is formally described as Lot 11 DP 1104789 and Part Lot 72 DP 1073600, Wuru Road and Dolphin Point Road, Dolphin Point/Burrill Lake, in the Shoalhaven local government area.

Concept approval for the site was granted by the then Minister for Planning on 12 March 2008, in accordance with Part 3A of the EP&A Act. Approval was granted for the carrying out of:

- a staged subdivision into 164 residential allotments;
- creation of roads to service the subdivision;
- creation and embellishment of one allotment as a neighbourhood park in Precinct A;
- creation and embellishment of an informal neighbourhood park in Precinct B;
- construction of pedestrian/cycle paths through all precincts;
- landscaping;
- revegetation works to riparian zones in all precincts;
- provision of services and infrastructure; and
- identification of development parcels within Stage 5.

Project approval for the site was granted concurrently with the concept plan approval. The only aspect of the concept plan not covered by the project approval involves three parcels of land within Stage 5 where future development may occur. The concept plan restricts the future development of this land to consist of community facilities and structures for educational and recreational purposes, subject to development consent under Part 4 of the EP&A Act. **Figure 1** on page 4 shows the approved concept layout.

Site Location and Surrounding Land Uses

The site is located on the border between Burrill Lake and Dolphin Point, approximately 5km south of Ulladulla. The site is bordered to the south and west by the Barnunj State Conservation Area. To the north-west is Stage 1 of the subdivision comprising 71 residential lots, many of which have recently constructed dwellings or duplexes. The north-east is an area of undeveloped land, and a caravan park. The eastern boundary of the site borders an area of forested land which has project approval for 104 residential lots (major project 05_0024 – approved on 8 August 2009).

The site is currently vacant and has previously been used as a dairy farm and for cropping activities.



Figure 1: Approved Subdivision Layout – 05_0016 (Stages 2, 3 and 5)

Site History

Stage 1 of the development consists of 71 residential allotments and was granted approval by Shoalhaven City Council (council).

Stage 4 was approved by council on 21 February 2008 involving a 7 lot subdivision which created super-lots for each subsequent stage of the development, and a 99 lot community title subdivision for tourist, residential and commercial uses.

The super-lots for Stages 2 and 3, and the residue lot referred to as Stage 5 were created as part of the previous subdivision approved by council. Concept approval for the future development of Stages 2, 3 and 5 was granted by the then Minister for Planning on 12 March 2008. Subdivision of Stages 2 and 3 consisting of 164 residential allotments was granted concurrent project approval, refer **Figure 1** above.

2. PROPOSED MODIFICATION

2.1 Modification Description

On 20 December 2012, G A Beasley Pty Ltd t/a Rygate and West, on behalf of Australian Property Growth Limited (the proponent) submitted a section 75W modification request to the project approval of 05_0016 (refer **Appendix B**). On 24 January 2013, the proponent requested an amendment to the submitted modification request seeking to amend only the concept plan approval of 05_0016, as opposed to the project approval (refer **Appendix C**).

The concept approval is liable to lapse on 12 March 2013. The modification request involves an extension to the timeframe in which the approval is liable to lapse.

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

Concept plan approval for 05_0016 was granted approval under section 75O of the EP&A Act. Section 75W of the EP&A Act provides for the modification of the Minister's approval.

In accordance with clause 3 of Schedule 6A of the EP&A Act, section 75W of the Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Pursuant to section 75W(2) of the EP&A Act, the proponent may request the Minister to modify approval of a project. Any request is to be lodged with the Director-General. A copy of the proponent's modification request is included at **Appendix B**.

Section 75W(3) of the EP&A Act provides that the Director-General may notify the proponent of environmental assessment requirements (DGRs) with respect to the proposed modification. Given the relatively minor nature of the modification request, DGRs were not considered necessary.

3.2 Delegated Authority

The Minister has delegated his functions to determine section 75W modification requests to the Director, Metropolitan and Regional Projects North, whereby:

- the relevant local council has not made an objection to the proposal;
- a political disclosure statement has not been made; and
- there are less than 10 public submissions in the nature of objections.

Council did not make an objection to the proposal, and the proponent has not made a political disclosure statement. No public submissions in the nature of objections were received. The Director, Metropolitan and Regional Projects North, is therefore delegated to determine the modification request.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under section 75X(2)(f) of the EP&A Act, the Director-General is to make publicly available requests for modifications of approvals given by the Minister. In accordance with clause 8G of the Environmental Planning and Assessment Regulation 2000, the request for modification was made publicly available on the department's website.

Shoalhaven City Council

The modification request was referred to council for comment. Council advised that there is no objection to an extension of the approval (refer **Appendix D**).

5. ASSESSMENT

A concept plan for the site was approved by the then Minister for Planning on 12 March 2008. Term A4 of the concept plan approval outlines the lapsing date of the approval as being 5 years from the date of determination unless Precinct A has physically commenced. The proponent has advised that no physical works have commenced on the site. The concept approval is therefore liable to lapse on 12 March 2013.

Project approval was provided concurrently with the concept approval. The project approval, however, does not lapse until 1 October 2016. The discrepancy in lapsing dates between the approvals (despite being determined concurrently) is a result of the project approval not prescribing a lapsing date pursuant to section 75Y of the EP&A Act. Lapsing of the project approval is therefore, by default, bound by Section 11 of Schedule 6A of the EP&A Act, which states that *“an approval to carry out a transitional Part 3A project lapses on the day that is 5 years after the repeal of Part 3A”*.

The repeal of Part 3A took effect from 1 October 2011, therefore, the project approval will not lapse until 1 October 2016. It is noted that the proponent's ability to carry out any works associated with the project approval would be unaffected should the concept plan lapse. However, to achieve a degree of consistency and avoid potential confusion should the proponent wish to lodge a future application for works not covered by the project approval, it is considered appropriate to extend the concept plan lapse date to 1 October 2016.

The department considers the proposed extension will not introduce any detrimental environmental, social or economic impacts upon the site or surrounding locality. The proposed modification request to extend the concept approval lapse date is therefore supported.

Also as part of the modification request, the department recommends amending a misdescription within the heading under Part B of Schedule 1 which makes reference to an incorrect project number. The proponent supports amending the misdescription as part of the modification (refer **Appendix C**).

6. CONCLUSION

The department considers the proposal, as modified, achieves the same objectives as assessed under the original approval. The department's original assessment of the application considered the proposed development would allow for the provision of additional residential land to allow for future growth in the region. The proposed modification ensures this objective can still be achieved. It is therefore recommended that the modification request be approved.

7. RECOMMENDATION

It is recommended that the Director, Metropolitan and Regional Projects North, as delegate of the Minister for Planning and Infrastructure, under section 75W of the EP&A Act approve the proposed modification to 05_0016, as detailed in **Section 2** of this report; and vary the terms of approval as set out in the modifying instrument included at **Appendix A**.

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