

DEPARTMENT OF PLANNING

Development Assessment

SUBJECT: BANYULA DRIVE, OLD BAR, GREATER TAREE LGA MP05 0106 **MODIFICATION 1**

PURPOSE

To determine a modification request for a residential subdivision of Lot 7 DP 1069956, Banyula Drive, Old Bar.

BACKGROUND

On 8 April 2009, the Minister issued project approval for a 98 lot residential subdivision of the site, as follows:

- Subdivision into 98 residential lots (and one residual lot) in 8 stages;
- Construction of internal roads 1 – 8;
- Infrastructure to service the lots;
- Landscaping and public path/cycle ways;
- Bushfire APZs; and
- Restoration of degraded wetland.

PROPOSED MODIFICATION and ASSESSMENT

The proposed modifications are outlined and assessed in Table 1 below. In summary, the application provides inadequate justification for the proposed modifications and a lack of certainty particularly regarding dedication of the residual allotment.

TABLE 1: Proposed Modifications

| Approved Condition | Proposed modification | Assessment |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>A2 Staging The project is to be undertaken in the following consecutive stages, with each stage subject to separate Construction and Subdivision Certificates:-</p> <p>a) Stage 1: Lots 1 – 19 (19 lots) and construction of Road No 2 and partial construction of Roads 1a and 3a; b) Stage 2: Lots 20 – 28 (9 lots), partial construction of Road 3a and 3b, wetland restoration works and dedication of residual allotment to the Council; c) Stage 3: Lots 29 – 47 (19 lots) and construction of Road No 4a and partial construction of Road 1a; d) Stage 4: Lots 48 – 67 (20 lots) and construction of Road No 5a and partial construction of Roads 1a and 3b; e) Stage 5: Lots 68 – 80 (13 lots) and construction of Road No 6 and partial construction of Road 1a and 1b; f) Stage 6: Lots 81 – 86 (6 lots) and construction of Road No 7 and partial construction of Road 1b; g) Stage 7: Lots 87 – 94 (8 lots) and construction of Road No 8a and partial construction of Road 1b; h) Stage 8: Lots 95 – 98 (4 lots).</p> | <p>1) To dedicate portions of the open space with each stage.</p> <p>2) To amend the condition to allow one construction certificate to be issued for a number of stages.</p> | <p>1) Generally the stages of the development progress from south to north. The adjacent open space acts as a buffer to a SEPP 14 wetland in the northern portion which requires restoration arising from the consent. The Department does not support the proposed modification - dedication of the open space commensurate with development staging - as uncertainty would arise as to completion of the wetland restoration.</p> <p>The best environmental outcome is for the restoration works and land dedication to occur at an early stage to ensure those works are complete and functional prior to the final stage release. This approach was envisaged and acknowledged in the Director-General's assessment of the original application as in the public interest and in accordance with the relevant plans of management, including a landscape management plan.</p> <p>2) Permitting the issue of one construction certificate for a number of stages could delay or affect the delivery of infrastructure for the site. It could also delay the land dedication.</p> <p>It is recommended that Condition A2 not be modified in the manner sought.</p> |
| <p>A7 Subdivision Certificates A Subdivision Certificate pursuant to Section 109C(1)(d) of the Act must be obtained from the Certifying Authority for each stage of the subdivision before the registration of a plan of subdivision under Division 3 of Part 23 of the Conveyancing Act 1919 for any allotments in that stage of the subdivision.</p> | <p>Amend the condition to allow: one subdivision certificate to be issued for a number of stages.</p> | <p>See discussion above (2).</p> <p>It is recommended that Condition A7 not be modified in the manner sought.</p> |
| <p>A10 Dedication of Public Open Space / Conservation Lands The Public Open Space (lands zoned 6(a)) and Conservation Lands (lands zoned 7(a)) are to be dedicated to the Council in accordance with the conditions of this approval.</p> | <p>Change of wording to:</p> <p>The Public Open Space (lands zoned 6(a)) and Conservation Lands (lands zoned 7(a)) are to be dedicated to the Council or an alternate entity approved by Council in accordance with the conditions of this approval.</p> | <p>Council has advised (see letter dated 5 Nov 2010) that the land is subject to a Deed of Agreement (dated 1 July 2004) between the developer and council requiring the dedication of land to Council. Council advised that its position has not changed since entering into the Deed.</p> <p>Council is the appropriate land manger to ensure the ongoing maintenance of the wetland, and any associated infrastructure, including retention basins.</p> <p>It is recommended that Condition A10 not be modified in the manner sought.</p> |
| <p>B1 Dedication of Residual Allotment The dedication of the residual allotment, including Wetland No 571 listed under <i>State Environmental Planning Policy No 14 – Coastal Wetlands</i>, to the Council in accordance with the Statement of Commitments is required prior to the issue of a Construction Certificate for Stage 2 of the Project.</p> | <p>Change of wording to:</p> <p>The dedication of the residual allotment, including Wetland No 571 listed under <i>State Environmental Planning Policy No 14 – Coastal Wetlands</i>, to the Council or an alternate entity approved by Council in accordance with the Statement of Commitments is required prior to the issue of a Construction Certificate for Stage 2 of the Project.</p> | <p>As per comments for the proposed modification to Condition A10. It is recommended that condition B1 not be modified in the manner sought.</p> <p>The proponent is unsure about the location of the residual allotment. It is recommended that the consent be modified by inserting a definition of residual allotment in Schedule 1 as follows:</p> <p><i>Residual Allotment</i> The residual allotment comprises land zoned RE1 Public Recreation and E2 Environmental Conservation being part of SEPP 14 Wetland No. 571 and land identified as open space, swale and 'Basin A' on Lot 7 DP 1069956, adjacent to Banyula Creek within the eastern and northern areas of the site as per the approved plans (Drawing No. 01).</p> |
| <p>B13 Civil Works The following civil works and services are to be carried out by Council approved contractors in accordance with the approved plans:-</p> <p>a) Construction of roads in the subdivision to the following Auspec standards:</p> | <p>Change of wording of Table at B13(a) to:</p> | <p>The modification is required to ensure compliance with the most recent AUSPEC road design standards, and is supported by Council.</p> |

| Road No | Hierarchy | Carriageway Width (metres) | Road Reserve Width (metres) |
|---------|--------------|----------------------------|-----------------------------|
| 1a | Collector | 11 | 20 |
| 2a | Local Street | 8 | 16 |
| 6a | Local Street | 8 | 16 |
| 3a | Access Place | 5.5-7 | 13.5-15 |
| 4a | Access Place | 5.5-7 | 13.5-15 |
| 5a | Access Place | 5.5-7 | 13.5-15 |
| 7a | Access Place | 5.5-7 | 13.5-15 |
| 8a | Access Place | 5.5-7 | 13.5-15 |
| 4b | Shareway | 5 | 8.5 |
| 5b | Shareway | 5 | 8.5 |
| 8b | Shareway | 5 | 8.5 |

| Road No | Hierarchy | Carriageway Width (metres) | Road Reserve Width (metres) |
|---------|--------------|----------------------------|-----------------------------|
| 1, 1a | Collector | 11 | 19 |
| 1b | Local Street | 9 | 18 |
| 2 | Local Street | 9 | 18 |
| 3a | Local Street | 8 | 16 |
| 3b | Shareway | 5/7.5 | 12 |
| 4, 4a | Access Place | 7.5 | 15 |
| 4b | Shareway | 5/7.5 | 12 |
| 5, 5a | Access Place | 7.5 | 15 |
| 5b | Shareway | 5/7.5 | 12 |
| 6 | Local Street | 9 | 18 |
| 7 | Local Street | 8 | 16 |
| 8, 8a | Local Street | 8 | 16 |
| 8b | Shareway | 5/7.5 | 12 |
| 9 | Local Street | 8 | 16 |
| 10 | Local Street | 8 | 16 |

Where the road widths on the approved plans differ from those in this condition, roads are to be widened without encroachment into the public open space (residual allotment).

E4 Subdivision Plan

The Plan of Subdivision for each stage of the project shall not be registered in the Office of the Registrar-General, for subdivision works undertaken in each phase until:

- All Council contributions in respect of Section 94 of the Act have been paid for the relevant stage;
- The subdivision works have been completed in accordance with the plans approved by MP 05_0106; and
- A Subdivision Certificate has been issued pursuant to S109C of the Act.

The proposed modification relates to the change in number of subdivision certificates as per Condition A7 above.

See comments for Conditions A2 and A7 Above.

It is recommended that the Condition E4 not be modified in the manner sought.

E17 Public Open Space / Conservation Lands

The Public Open Space / Conservation Lands are to be dedicated to the Council prior to the issue of the Subdivision Certificate for Stage 2 of the Project. The open space areas and bio-retention basins are to be dedicated as Public Reserve.

Change of wording to:

The Public Open Space / Conservation Lands are to be dedicated to the Council or an alternate entity approved by Council prior to the issue of the Subdivision Certificate for Stage 2 of the Project. The open space areas and bio-retention basins are to be dedicated as Public Reserve.

The proposed modification of this condition relates to the proposed change to Condition B1 above, see above for comments.

It is recommended that the condition not be modified in the manner sought

CONSULTATION

In accordance with s75X of the *EP&A Act 1979* and cl8G of the *EP&A Regulation 2000*, 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 notified to adjoining owners or agencies, apart from Council.

Council supported the changes to the road widths but not the rewording of conditions relating to open space dedication. Council considers dedication to "an alternate entity approved by Council" is a commercial arrangement. Moreover such arrangement was not presented to a Council meeting and could not be agreed to in principle.

DELEGATED AUTHORITY

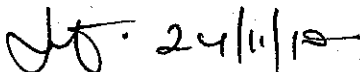
On 25 January 2010, the Minister delegated his powers and functions under s75W of the Act to Directors in the Major Projects Assessment Division where there are less than 10 public submissions (not including submissions from public authorities) being objections to a modification request. No public submissions were received and the Acting Director may determine the modification request under delegation.

RECOMMENDATION

It is RECOMMENDED that the Acting Director:

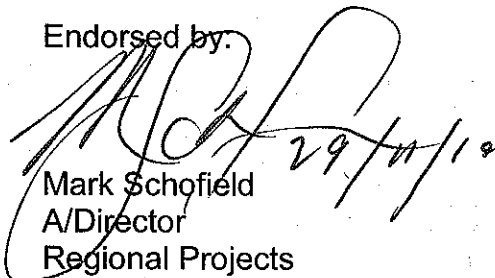
- note the information provided in this report;
- approve the modification request, subject to conditions; and
- sign the attached modifying instrument (Tag A).

Prepared by:

 24/11/10

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Endorsed by:

 29/11/10

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