

COFFS HARBOUR CITY COUNCIL



Your ref: MP05_0129 MOD 1
Our ref: 5248442 (DA 0698/09)

26 August 2014

NSW Planning & Environment
Attention: Ms Jane Flanagan
GPO Box 39
SYDNEY NSW 2001

Dear Ms Flanagan,

RE: Exhibition of Section 75W Modification, Lakes Estate Residential Subdivision, North Boambee Road, North Boambee Valley (MP05_0129)

Reference is made to the modification application described above.

Appended to this letter is a list of issues relevant to this proposal. This advice should be taken as Council's submission to the Department. In this regard, it is recommended that the Department contact Council to discuss the issues raised in the attached document further.

For further information please contact Gilbert Blackburn on 6648 4652.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Renah Givney'.

Renah Givney
A\Team Leader, Development Assessment

Land Dedication and Acquisition:

Section 2.0 - Modified Proposal

- Council refutes the applicant's statement that Development Consent no. 575/03 is operational and that the current modification application is required to allow Development Consent no. 575/03 to be finalised. Any reference to this consent in the conditions and plans is, therefore, not supported. In this regard, there is reference to this in the wording for a number of the proposed modified conditions and on all the plans lodged with the application. These references should be removed.
- Proposed Lot 162 (land zoned E2 Environmental Protection) was not proposed to be dedicated to Council under Development Consent no. 575/03. It formed part of a future development parcel, as shown on the approved plans.

In this regard, the proposed modification appears to seek changes to the development approved under MP 05_0129 and then apply the modified lot layout to Development Consent 575/03.

Council's position is that all matters have been addressed under that consent or "satisfactory arrangements made" such as bonding arrangements for outstanding works and maintenance issues.

The inclusion of Proposed lot 141 in the original Major Project application and associated comments clearly indicates that it was the applicant's intention to address the dedication issue as part of that application and not Development Consent no. 575/03.

- Council's records indicate that there are several pieces of correspondence in which the applicant clearly state that proposed Lot 162 (lot 164 under Development Consent no. 575/03) is to be retained by them as part of the "future development lot".
- In 2011 the applicant requested that Lake 5 (hatched area on Stage 3 final subdivision certificate attached) be retained in private ownership to which Council did not agree.
- In 2010 the applicant received a Controlled Activity Permit from the NSW Office of Water to undertake works within the creek area located on Lot 163 of the final subdivision Certificate (shaded Area.). It was the applicant's contention that the land and the works did not form part of Development Consent no. 575/03 and, therefore, dedication of the land was not required. Council required the land to be dedicated with the Stage 3 subdivision Certificate as Council would ultimately be responsible for ongoing maintenance and the lands contained works that are an essential component of the stormwater drainage system. Agreement was reached on this basis and a Deed was entered into in 2011 that allowed the applicant to undertake works on this dedicated land.
- In 2012 Council and the applicant engaged in negotiations and agreements to facilitate the release of the subdivision certificate for stage 3, noting that it was to be the final subdivision certificate. As part of this process, Council

ensured that all matters pertaining to the Development Consent no. 575/03 had been satisfied. In this regard, all matters were settled, including transfer of all lands agreed to, and all conditions of consent satisfied, with some conditions being addressed by way of bonding arrangements.

Council's position of Development Consent no. 575/03 being completed is supported by the applicant's proposal to create Lot 162 under MP05_0129.

Condition 1 of Development Consent no. 575/03, as amended states:

"Acquisition of Land for Public Purpose:

- The applicant must transfer or dedicate the lands set aside for acquisition within the approved plan of subdivision the subject of the development application, being those lands identified in the North Boambee Valley Stage 1 Release Area Developer Contributions Plan for koala management, traffic management, water quality and community facilities.

The lands must be transferred or dedicated to the Council in fee simple free of encumbrances, other than those acceptable to Council at or prior to the registration of the plan of subdivision.

The Council must compensate the applicant for the lands. The value is to be determined at the date of transfer or dedication in accordance with Section 54(1) of the Land Acquisition (Just Terms Compensation) Act 1991 with the relevant matters to be considered as set down by Section 55 of the Act.

- Acquisition of public land by Council is to occur on a staged basis. The staging is to coincide with the release of adjoining land by the developer unless other arrangements have been made to the satisfaction of Council.
- Additional lands proposed by the developer for public ownership not detailed in the North Boambee Valley Stage 1 Release Area Developer Contributions Plan are to be dedicated at no cost to Council at the time of linen plan registration.
- Lands being dedicated to or acquired by Council for a public purpose being improved by the removal of dead and dangerous trees, weeds, rubbish and all plants on Council's list of undesirable species and left in a usable and mowable condition to the satisfaction of Council."

Dot point two above states that land is to be dedicated on a staged basis and further states "...unless other satisfactory arrangements have been made to the satisfaction of Council."

All lands required to be dedicated have been dedicated or satisfactory arrangements made.

Further, the applicant did not seek dedication of lot 164 under Development Consent no. 575/03 as subdivision layouts for future development had not been finalised. This is supported by the plans submitted as part of MP 05_0129 that included lots encroaching onto the lands zoned E2 Environmental Protection.

That application sought to retain the lands zoned E2 Environmental Protection in private ownership in the original application for MP05_0129 (refer Section 6.3.1 pg 157 in the Environmental Assessment Report prepared by Habitat Planning dated August 2009).

Dedication of part lot 164 was not proposed by the applicant, not required by Council under Development Consent no. 575/03 and the current approach does not accord with the intentions and spirit of negotiations in relation to Development Consent no. 575/03.

Condition A4 – Staging:

Any arrangement for offset of contributions would only be considered by Council after transfer of those lands. Having regard to the comments made above, this would occur progressively under MP05_0129. It is unclear as to what contributions are proposed to be offset. Council would not normally permit contribution offsets against contributions payable under plans that do not include infrastructure that is to be provided in the release area. That is, Council would only consider offsets for items included in the North Boambee Valley (East) Contributions Plan.

It is considered that the value of the lands should be established prior to offsets being made available in order to fairly establish the quantum of contributions to be offset. Should this not occur, then no offset would be agreed to, having regard to S94 (5) of the EP & A Act that states a consent authority **“may” accept**

(a) The dedication of land....

This does not compel Council to accept the dedication in lieu of contributions. Any arrangement for offset of contributions would only be considered after transfer of those lands.

Condition B1 – Subdivision Design Modifications:

The same issues as raised above for Section 3.2.3 would apply in this condition. It should be noted that Council has an adopted Works in Kind Policy that can be viewed at:

<http://www.coffsharbour.nsw.gov.au/Coffs-And-Council/Documents/Approved%20Policies/Works%20in%20Kind%20Policy.pdf>

Open Space/Biodiversity:

Condition B1 - Pathways and Connections:

- Council does not support the proposal to modify part b) of Condition 'B1 – Subdivision Design Modification', which requires the provision of a 3 metre wide corridor to the north of Lot 120 to allow for a future pathway link to Halls Road.

It is considered that this pathway provides an important pedestrian link to an established residential area.

- The road layout on the northern side of the proposed lots on Barrington Close has been changed in a way that reduces the parkland areas around those lots to sizes that are not functional. The alteration to the access to that land from

Barrington Close is also compromised by changes to the lots, making this reserve impracticable as a pedestrian linkage.

Condition B1 - Additional Lots:

The additional lots and resized lots proposed for stage 3 (required by Condition B1 a), in what was to be public reserve, are not supported.

The vegetation forms an important local koala movement corridor and the current lot layout is not consistent with the Environmental Assessment undertaken for the Project Approval and no longer reflects the negotiated mitigation strategies in accordance with the prescribed environment impacts. The current proposal does not include mitigation measures for the loss of movement corridors and the additional loss of habitat resources and, therefore, fails to comply with Coffs Harbours Koala Plan of Management.

Condition B11 - Vegetation Management & Landscaping:

The proposed changes to Condition B11 are not supported by Council. The Vegetation Management Plan should apply to all conservation lands being acquired by or dedicated to Council and include the requirement to mitigate in accordance with the environmental impacts proposed.

As outlined above, it is not considered that proposed Lot 162 formed part of Development Consent no. 575/03. This consent created a residue lot being Lot 164. Council refutes any suggestion that there are lands still to be transferred under this consent. The current application references Lot 141, which does not appear to exist on the plans, submitted with the current application.

Condition E11 - Transfer of Lot 141:

The removal of Condition E18 is not supported by Council. The subject land forms part of a minor corridor and watercourse. The land should be managed and enhanced in perpetuity as a natural feature either through dedication to Council or by ongoing management by the developer in accordance with an approved Vegetation Management Plan.

Subdivision Design:

Condition B1 - Road link:

- Council does not support the proposal to modify part e) of Condition 'B1 – Subdivision Design Modification', which requires the provision of a road link from Amadeus Place to the adjoining residentially zoned lands to the northeast of the site.

The justification provided by the applicant is noted, however, the connection to the adjoining land is considered important in providing an alternative egress from Amadeus Place. For example, in the event of a bushfire that cuts off the southern portion of the road.

Condition B2 - Cut and Fill:

In relation to the applicant's proposal to modify Condition 'B2 – Cut and Fill' Council provides the following comments:

- Paragraph one should include the wording 'plans to be submitted to and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate'.
- Paragraph two should include the wording '...proposed cut and fill depths and levels ...'

Condition B6 - Road Design:

In relation to the applicant's proposal to modify Condition 'B6 – Road Design' Council provides the following comments:

- Paragraph two proposes the deletion of the words 'in consultation with the owner(s)' and the addition of the words '.... with consideration of the adjoining site'

Council does not support this, as this removes the responsibility of coordinating road design between adjoining developments from the developers to Council (by default).

- Paragraph three proposes the addition of the words '..... consistent with the design of existing roads in the estate'

Council does not support this as the addition of this wording may remove Council's ability to apply design standards and specifications that are relevant at the time of design.

Fire trails:

Fire trails are proposed to be located within the middle of individual blocks, which is likely to result in addition clearing requirements and duplication of management areas for public and private. The functionality of a fire trail transecting multiple lots is problematic, particularly under emergency conditions, due to high likelihood of multiple gating/fencing by various individual landowners and questions around the long term management of the trail as it will no longer be under Council management. Both fire trail relocations are not supported. In addition Council will need to duplicate a management trail at the Reserve/allotment interface