



Coastal Assessments, Major Project Assessments

## **Director-General's Report**

### **Application to Modify the Minister's Approval for the 'Alterations and Additions to Pottsville North Holiday Park'**

#### **Major Project MP 05\_0192 modified by MOD 40-5-2007**

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## **1 SUMMARY**

This report is an assessment of Modification number 40-5-2007, modifying Major Project MP 05\_0192 to modify the staging of the development, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (the Act).

The Minister for Planning approved the Major Project for alterations and additions to Pottsville North Holiday Park on 14 December 2006. Under the instrument of delegation dated 7 June 2007, it is considered appropriate that the application for modification under consideration be determined under delegation by the Acting Executive Director, Major Project Assessments.

The site is located at Lots 1 and 2 DP 731761, Lot 7016 DP 1055269, Lot 522 DP 822808 Tweed Coast Road, Pottsville in the Tweed Local Government Area.

MP 05\_0192 granted approval to the development described as alterations and additions to the Pottsville North Holiday Park as follows:

- The creation of an additional 20 long term (LT) sites and the deletion of 8 short term (ST) sites resulting in a total of 61 LT and 88 ST sites.
- Eighteen of the additional 20 LT sites will revert to ST sites once the initial tenants vacate the sites (the 18 sites are described as Area 'G').

## **2 THE PROPOSED MODIFICATION**

On 5 May 2007, Tweed Coast Holiday Parks Reserve Trust (the Proponent) submitted to the Director-General a request for modification of the MP 05\_0192 to permit the following changes:

- 1) Modify the approval to permit staging of the development to enable Areas A - F to be developed as Stage 1 and Area G to be developed as Stage 2 (See Tag 'B'). This is to respond to demand for long term sites in Area G.
- 2) The proposed staging of the development gives rise to modification of Condition 4 regarding the Section 68 approval to operate, to take into consideration the staging arrangements.
- 3) The Department of Lands, as land owner has requested that the proponent include a request to modify Condition 8 to provide constraints on the eligibility of persons taking up residence of the 18 long term sites within Area 'G'.

- 4) Modification of Condition 35 such that the requirement for Level 3 construction for all habitable buildings in Areas E and F applies only to new habitable buildings as there are existing buildings in Areas E and F.
- 5) Modification of Condition 37 to provide details of the Section 94 and Section 64 contributions payable for each stage.

### **3 ASSESSMENT PROCESS**

On 8 March 2006, the Director-General delegated his assessment functions under Part 3A of the *Environmental Planning and Assessment Act 1979* (the Act) to Tweed Shire Council. The delegation allowed Council to formulate the Director-General's Environmental Assessment Requirements (DGRs) and undertake exhibition and assessment of the proposal. The Director-General's Report was prepared by Council and endorsed by the Department.

The approval for Major Project 05\_0192 was granted, subject to conditions, in accordance with Part 3A of the Act Section 75J Clause (2) on 4 June 2007.

Section 75W of the Act provides for the modification of the Minister's approval. Under Section 75W(2) of the Act, a Proponent may request the Minister to modify the Minister's approval for a project. This section also states that the Minister's approval is not required if the project as modified will be consistent with the existing approval under this Part.

It is concluded that the proposed modifications (as listed above) are not consistent with the Minister's approval and are therefore the subject of an application for modification.

Section 75W(3) of the Act provides that the Director-General may notify the Proponent of Director-General's Requirements (DGRs) with respect to the proposed modification that the Proponent must comply with before the matter will be considered by the Minister. Following an assessment of the modification request, it is considered that DGRs are not necessary for the modification application.

Under Section 75W(4) of the Act, the Minister may modify the approval (with or without conditions) or disapprove the modification. The following report describes the Department's assessment of the requested modifications and supporting documentation as provided by the Proponent.

### **4 CONSULTATION AND EXHIBITION**

Under Section 75W of the Act, a request for a modification of an approval does not require public exhibition. However, under Section 75X(2)(f) of the 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 the modification was placed on the Department's website.

The modification application was also referred to Tweed Shire Council, as the local authority, and the Rural Fire Service on 7 May 2007.

Council responded by email on 21 May, 19 and 20 June 2007 and recommended that Conditions Nos. 37A and 38A, with reference to Section 64 and Section 94 contributions, be revised to ensure that contributions are paid prior to construction, use or occupation of structures.

The subject site is identified as Bush Fire Prone Land. The RFS responded on 18 May 2007 and commented on the conditions subject to the modification application and also recommended that some of the conditions of approval relating to bushfire management be modified.

## 5 DESCRIPTION OF PROPOSED MODIFICATIONS

### 5.1 Staging

The original application sought to rationalise the layout of the holiday park and provide additional long term accommodation on site. The proposed modification is to permit staging of the development to enable Areas A - F to be developed as Stage 1 and Area G to be developed as Stage 2. (See Tag 'B').

Areas A - F are essentially upgrading the existing sites and facilities to comply with the existing regulations, improve efficiency and achieve better quality accommodation for future residents. The 18 long term sites in Area G are to house residents relocating from Tweed Water Caravan Park. Due to uncertainty of demand this proposed modification is required to divide the development into two stages to support the development of Sites S12-S29 when they are required.

Staging of the project gives rise to a requirement for consequential modifications to Conditions 2, 4, 37 and 38 of the original approval. This includes staging the payment of Section 94 and Section 64 contributions, as requested by Council.

Without the modification, it will not be possible for construction certificates to be issued in a staged manner.

### 5.2 Use of the Long Term Sites

The Department of Lands, provided land owners consent to lodge the proposed modification application on the proviso that Condition No.8 be amended as follows (refer underlined bolded text):

*'The eighteen long term sites contained within Area 'G' are to revert to short term sites once each individual long term tenant vacates these sites. Once the entire initial tenants of Area 'G' have vacated these sites the number of approved sites in the park shall not be greater than 42 long term 106 short term and 35 camp sites. **Only** residents relocating from Tweed Waters Caravan Park, also known as Banora Point Caravan Park, will be offered the long term sites in Area 'G'. Such an offer will be on a "whole of Life" basis. **Where such an offer is not taken up by a resident from the said Tweed Waters Caravan Park the Area 'G' sites will automatically revert to short term sites.***

*The tenancy agreements for the Area "G" sites will stipulate that the tenancy does not include any right of sale and/or assignment or sub-letting in keeping with the provisions of Sections 41(4)(b) and 80(2) of the Residential parks Act 1998.'*

The Department of Lands wishes to have a mechanism to ensure that permanent residents are not generally permitted in the tourist park.

### 5.3 Bushfire Management

Condition 35, which relates to bushfire management, reads as follows:

*'Habitable buildings within the areas E and F are to fully comply with the requirements of Level 3 construction as required by Australian Standard AS3959-1999 – Construction of Building in Bushfire Prone Areas.'*

The proponent requested that this condition be modified to apply to new habitable buildings only as there are existing buildings in Areas E and F.

## 6 CONSIDERATION

### 6.1 Staging

The proposed staging of the project requires modification of a range of conditions including the Section 68 approval to operate and the Section 64 and Section 94 contributions. The Major Development Assessment Unit of Tweed Shire Council requested that the conditions relating to Section 64 and Section 94 contributions (Conditions 38 and 39) be revised to ensure that contributions applicable for each site are paid prior to construction, use or occupation of each site. Council did not raise any other objections regarding the proposed staging.

It is recommended that this aspect of the modification be **approved**. Conditions 4, 38 and 39 have been modified accordingly.

### 6.2 Use of Long Term Sites

The application for modification under consideration includes owners consent from the Department of Lands, conditional on a requested amendment of Condition 8. The proposed amendment of Condition 8 is included in the application as an item for modification.

Condition 8, as approved, is considered to generally fulfil a planning purpose in the provision of an urgent social need in the Tweed community which is providing low cost housing for tenants of the Tweed Waters Caravan Park in a difficult situation.

Future use of the caravan park is considered to be a matter between the Department of Lands and Council and not a matter relevant to the development approval. In any case, the proposed modification reiterates a requirement expressed in the first sentence of the existing Condition 8, that is, that the long term sites will revert to short term sites in the event the long term sites are vacated.

It  
It is not considered that the amendment as proposed adds to or changes the intent of the existing condition. It is recommended that the application to modify Condition 8 be **disapproved**.

The Department of Lands has been informed of the Department of Planning's recommendation and accepts that the condition will not be modified.

### 6.3 Bushfire Management

On review of the requested modification to Condition 35 regarding construction requirements for existing and new habitable buildings, the RFS also undertook a review of the proposal in relation to the recently gazetted *Planning for Bushfire Protection 2006*. The

RFS recommended that a revised set of bushfire management conditions be incorporated into the modified conditions of approval.

The proponent was given the opportunity to review the proposed modified conditions and only queried the proposed modifications to Condition 32 and Condition 35. The proponent's concerns are discussed in Sections 6.3.1 and 6.3.2 below.

### 6.3.1 Construction Requirements

The RFS recommended that the original Condition 35 be divided into two conditions to delineate between construction requirements for existing and proposed buildings within Areas 'E' and 'F', as follows:

- '35A. *Any new habitable buildings installed after the date of approval of Major Project Application No. 05\_0192 within Areas 'E' and 'F' are to fully comply with the requirements of Level 3 construction as required by Australian Standard AS3959-1999 'Construction of buildings in bushfire-prone areas'.*
- 35B. *Existing habitable buildings within Areas 'E' and 'F' should be upgraded to improve ember protection by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen. This may include all sub floor areas and eaves.'*

Area E contains two existing structures over three long-term sites. The reconfiguration of these sites will conform to the two existing structures, resulting in a net loss of one long-term site. Area F contains one large cabin which accommodates three units for short-term accommodation. The approval given under Major Project Application MP05\_0192, removes the existing cabin and creates two new long-term sites.

The proponent requested that Condition No. 35B be deleted as it imposes a significant financial burden on the owners of the two existing long-term mobile dwellings in Area E. The owners of these existing dwellings are tenants only of the existing caravan park as they lease the long-term sites from the proponent (Council) for their mobile homes.

The reconfiguration of the caravan park, as approved under Major Project Application MP05\_0192, is cognisant of the potential adverse social and economic impacts that would result if these existing tenants were displaced. It is therefore not considered to be in the public interest to require the owners of these dwellings to upgrade their mobile dwellings as described in proposed Condition 35B due to the significant economic burden that this would place on these residents.

Furthermore, *Planning for Bushfire Protection (2006)* does not specify that existing buildings must be upgraded and there is no requirement on the Building Code of Australia in this regard. The proposed condition 35B, as worded, is also not considered to be enforceable.

The proponent's request for modification of Condition 35 is recommended for **approval**. However, only 35A of the modified condition is recommended to be applied as an enforceable condition of approval.

Proposed Condition 35B has been applied as an advisory note to the approval as it is not considered to be reasonable to require the existing tenants to modify their dwellings. The advisory note has been amended to include a recommendation that the proponent advise

the existing tenants of the bushfire risk and the potential means of upgrading their mobile homes to improve the level of protection from the existing bushfire hazard.

### 6.3.2 Access

In reviewing the modification, the RFS also requested that Condition 32 be modified to be in keeping with *Planning for Bushfire Protection 2006*. Condition 32 relates to access to Area G, which is generally underdeveloped land and will contain the 18 additional long term sites. The original Condition 32 was as follows:

*'32. Access to Area 'G' is to comply with Section 4.3.1 of 'Planning for Bushfire Protection 2001' or an alternative arrangement to the satisfaction of the NSW Rural Fire Service.'*

The RFS recommended the following modification to the condition:

*'32. Access to Area 'G' is to comply with Section 4.2.7 of 'Planning for Bushfire Protection 2006'*

The proponent requested that Condition 32 remain as in the original conditions of approval to provide greater flexibility in the application of this condition with regards to access to Area G.

The revised '*Planning for Bush Fire Protection 2006*' permits a performance-based approach which is designed to allow flexibility in achieving certain performance criteria. As such the modified condition is considered acceptable as it provides a flexible outcome based approach that allows for alternative arrangements for access to Area G and therefore meets the intent of the original condition.

Condition 32 has therefore been modified as recommended by the RFS.

## 7 CONCLUSION

No other concerns regarding the proposed modifications were raised by the Department or Tweed Shire Council. The proposed modifications appear to be minor in detail and result in little or no amendments to the overall scale and appearance of the development as approved.

It is considered that the proposal, as modified, still achieves the same objectives as assessed for the originally approved proposal under Major Project MP 05\_0192 and does not alter the overall nature, need or justification of the approved project.

It is therefore recommended that the proposed modifications as outlined in Section 2 of this report be determined as follows:

- |   |                      |
|---|----------------------|
| 1) Staging                                    | - <b>approved</b>    |
| 2) Modification of Condition 4 (s68 approval) | - <b>approved</b>    |
| 3) Modification of Condition 8 (LT sites)     | - <b>disapproved</b> |
| 4) Modification of Condition 35(bushfire)     | - <b>approved</b>    |
| 5) Modification of Condition 37 (s94 and s64) | - <b>approved</b>    |

It is recommended that conditions of approval as attached at **Tag A** apply to the proposed modifications.

## 8 DELEGATION

Under the instrument of delegation dated 7 June 2007, the Minister has delegated to the Executive Director, Major Project Assessments, his functions relating to modifying the Minister's approval under section 75W of Part 3A of the *Environmental Planning and Assessment Act 1979*.

## 9 RECOMMENDATION

It is recommended that the Chris Wilson, Executive Director, Major Projects Assessments, pursuant to Section 75W of the Act:

- **disapprove** the modification of Condition 8;
- **approve** all other modifications as recommended in Section 7 of this Report; and,
- vary the conditions of approval as set out in the attached Modification Approval.

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**Appendix A – Request for Modification to  
Major Project MP05\_0192 for project description**