



MODIFICATION REQUEST:
"Coastal Grove" Survey Street
Residential Subdivision
1 Survey Street, Lennox Head
(06_0002 MOD 2)

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

July 2011

© Crown copyright 2011
Published July 2011
NSW Department of Planning & Infrastructure
www.planning.nsw.gov.au

Disclaimer:

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

EXECUTIVE SUMMARY

A project approval for a residential subdivision referred to as “Coastal Grove” at Survey Street, Lennox Head in the Ballina local government area was approved by the then Minister for Planning on 23 August 2007. This approval comprised 39 residential lots, one residential lot for open space and two residue lots for vegetation conservation. This is a report on a request seeking to modify the project approval for this subdivision.

On 12 April 2011, SAKE Development Pty Ltd on behalf of the proponent submitted an application to modify the Part 3A approval pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The proponent is seeking to delete and modify the conditions of approval relating to the preparation of a site specific DCP prior to release of the subdivision certificate.

The modification is considered to be minor and will not result in any changes to the proposal that was originally approved. Council has now developed controls that have a similar aim.

It is recommended that this modification request be approved.

1. BACKGROUND

This report is an assessment of a request to modify Major Project 06_0002 involving a residential subdivision at Lot 2 DP 622475 – 1 Survey Street, Lennox Head, in the Ballina local government area, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

On 23 August 2007, the then Minister for Planning approved a 42 lot residential subdivision, referred to as 'Coastal Grove'. Project Approval was granted for:

- 39 residential lots;
- one residential lot for open space; and,
- two residue lots for vegetation conservation.

The subject site is shown in **Figures 1 and 2** below.

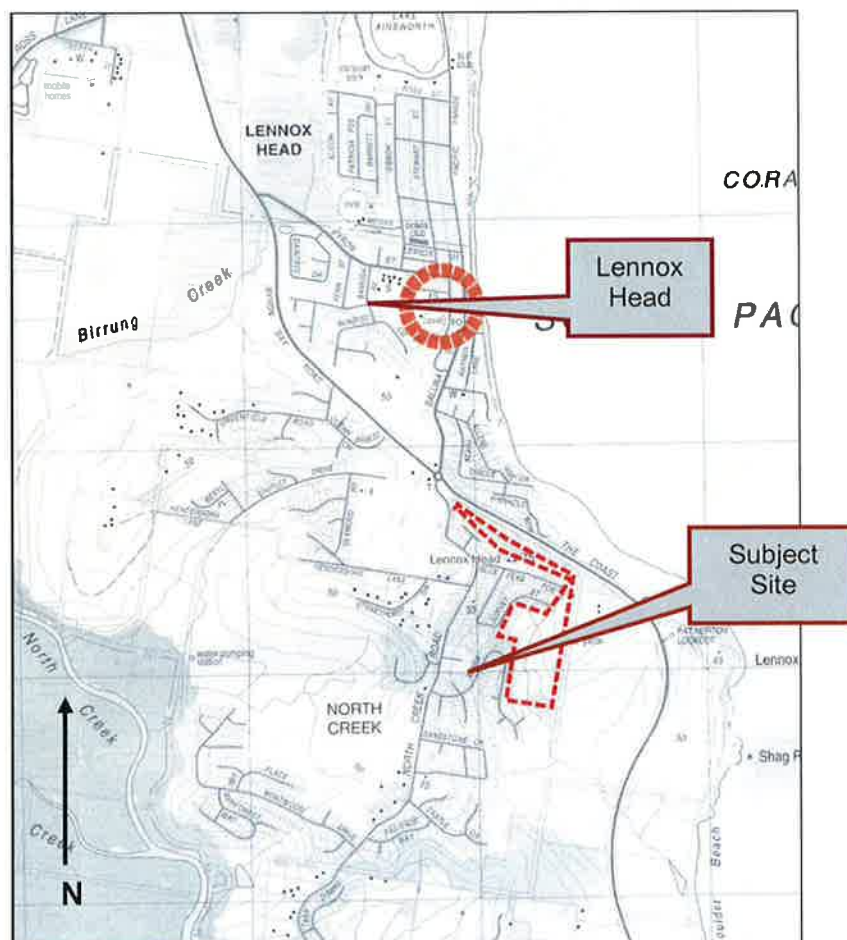


Figure 1 - Subject site in relation to Lennox Head



Figure 2: Subject Site – 1 Survey Street, Lennox Head

The subject site covers a total area of 14.7ha, however the approved subdivision covers only 10ha consisting of the southern portion of the irregular shaped lot. The site is located on the southern outskirts of the Lennox Head coastal township.

On 31 July 2009, the then Acting Executive Director – Major Projects Assessment approved a modification to the proposal involving realignment of the approved cycleway and sewer infrastructure, and deletion of the requirement to enter into a Voluntary Planning Agreement with Ballina Shire Council (Council).

2. PROPOSED MODIFICATION

2.1 Modification Description

On 12 April 2011, SAKE Development Pty Ltd (on behalf of the Proponent – DM and RD Dossor) submitted a request for modification of Major Project 06_0002. The modification request involves deletion of the requirement to provide a site specific development control plan (DCP) for the site; and removal of the requirement to incorporate mosquito management recommendations as part of the site specific DCP.

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

Section 75W of the EP&A Act provides that a proponent may request the Minister to modify the approval of a project. The Minister's approval is not required if the project as modified will be consistent with the original approval. In this instance the proposed modification seeks to change the terms of the Minister's determination through amending the conditions of approval, the modification requires formal application and approval.

3.2 Environmental Assessment Requirements

Section 75W (3) of the EP&A Act provides the Director-General with scope to issue environmental assessment requirements (DGRs) that must be addressed with respect to the proposed modification. As the modification relates to the removal of the requirements relating to the site specific DCP only, it was considered unnecessary to notify the proponent of any further environmental assessment requirements.

3.3 Delegated Authority

Under the Instrument of Delegation dated the 28 May 2011 from the Minister for Planning and Infrastructure to the Planning Assessment Commission (PAC), the PAC is the determining authority for Section 75W modification applications. However, the delegation also works in conjunction with the delegations given to senior Department staff under the Ministerial delegations issued on 25 January 2010. This allows the Deputy Director-General to determine a modification request under Section 75W where there are fewer than 25 public submissions in the nature of objections to the modification request. The delegation is not exercised where the local council has made an objection. Whilst the request was not formally exhibited, the Department received a submission from Ballina Shire Council raising no objections to the modification request (refer Section 4.0). The Deputy Director-General may thus determine the modification request under delegated authority.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition and consultation

Under Section 75W of the Act, it is at the discretion of the Director-General as to whether a request for a modification of an approval is publicly exhibited. Due to the minor nature of the modification, public exhibition was not undertaken. 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 provided on the Department's website.

The modification request was also referred to Council, inviting any issues or requirements that Council may have. Council responded in a letter received by the Department on 25

May 2011, and advised that there were no objections to the proposed modification as Council was (at time of writing) in the process of completing an annexure to its Development Control Plan (DCP) which integrates site specific development controls for the subject site.

This Policy Statement and annexure to the DCP was adopted by the Council on 23 June 2011 and a copy has been provided to the Department. Given the current status of this amendment to the DCP, the Council raises no objection to removing the conditions relating to the provision of a site specific DCP.

In regards to the incorporation of mosquito management recommendations into the site specific DCP, the Council considers that the existing Combined DCP Chapter 11 Mosquito Management provisions will suffice for residential development, post construction.

Council raises no objections to the proposed modifications to the project approval.

The Department has considered the issues raised in this submission in its assessment of the proposed modification.

5. ASSESSMENT

Site Specific Development Control Plan

The proponent seeks to delete and modify the conditions of approval relating to the preparation of a site specific DCP prior to release of the subdivision certificate.

Specifically the proponent seeks to delete Condition E11 – Site Specific DCP which states the following:

E11 Site Specific DCP

Prior to the release of the subdivision certificate, Council is to approve and adopt the Coastal Grove Lennox Head DCP. This may require additional consultation by the proponent.

In the event that the DCP hasn't been adopted by the time the subdivision certificate is issued, all controls in the draft DCP are adopted as conditions of this approval. The Draft DCP appears at Schedule 4 of this approval.

There are also a number of other related conditions that will require amendment to update the approval accordingly if the above condition is deleted from the approval. There are no material changes to the conditions other than to remove references to the Site Specific DCP and appropriate updating. These conditions are listed below.

- Condition A2 – *Development in Accordance with Plans*
- Condition A3 – *Development in Accordance with Documents*
- Condition A5 – *Statement of Commitments*

It is also proposed to delete the Statement of Commitments U in Schedule 3 and Schedule 4 in its entirety as these matters also relate to the draft DCP.

Statement of Commitments U reads as follows:

U. The proponent will work with Ballina Council in finalising the draft Development Control Plan for the subdivision to ensure that appropriate controls are put in place to guide the design and construction of future housing. Matters to address include:

- *Vertical building lines for Lots 34-39 and 11-12*
- *Enhanced sustainability measures including shading and screen devices, and landscaping to the western facades to reduce any potential for glare.*
- *Terminology for duplex lots*
- *Appropriate measures to protect against mosquitoes, as recommended in the Mosquito Impact Assessment Supplementary Report dated May 2007.*

Schedule 4 contains the previous draft DCP.

A draft DCP was submitted in support of the original application in recognition that the site was naturally constrained, primarily due to its steep slope. The site specific draft DCP provided controls for future dwellings to minimise visual impacts and provide controls for future dwellings such as siting, setbacks, height and design of roofs, garages and driveways and also to provide specific controls for buildings on sloping areas of the site.

At the time of the original assessment Council supported the adoption of a site specific DCP for the development and requested that ongoing consultation occur between the proponent and Council to facilitate the implementation of this DCP. The condition also required Council's approval and adoption of this DCP.

Since that time, the proponent has been working with Council in developing a Policy Statement for the site, known as No. 20 "Coastal Grove" Lennox Head. This statement is an annexure to Chapter 1 of the Ballina Shire Combined DCP which deals with "Urban Land". This Coastal Grove Policy Statement was adopted by Council on 23 June 2011 as amendment no. 13 to the "Ballina Shire Council Combined DCP".

The proponent argues that this Policy Statement is more consistent in style and approach to other developments in the locality such as Skennars Head and Pacific Pines where unique and site specific controls are necessary. This is because the Project Approval was issued almost four years ago and the style and approach to site specific DCP's has changed.

The proponent also advised that at a meeting with Council officers on 1 April 2011 that it was Council's preferred position that this and other conditions in the Project Approval relating to the site specific DCP be deleted and that the Policy Statement relating to Coastal Grove, for inclusion in the combined DCP, be finalised with continued consultation with Council. This is consistent with Council's submission on the modification.

The proponent seeks these amendments to avoid confusion and to ensure that the subdivision certificate can be issued in a timely manner. It also advised that the draft policy statement is currently attached to the sales contract as an annexure to make future owners aware of the current planning requirements and special conditions for development.

The Department notes that whilst the policy statement is in a briefer format, it appears to establish controls and requirements similar to the draft DCP. The policy statement specifically provides a number of controls relating to building lines and setbacks, building height, slope sensitive design, screening underfloor space of buildings and duplex lots.

The proponent has advised however that a key change between the two documents has been the removal of the 11 metre setback for lots 26-32 (these were previously lots 34-40) to provide an overall uniform front setback of 6 metres.

These lots have now been finished and the finished landscape and terrain have been reviewed. The proponent considers that a 6 metre setback from the street will provide an adequate buffer and frontage and that there were no tangible benefits in setting these blocks back a further 5 metres. It was also considered that further design and visual impact could be assessed at the development application stage. The Department consider this to be a reasonable alteration as it appears that these matters have been further considered after work has been carried out on the site and it is acknowledged that any impacts can be assessed at the dwelling DA stage and Council has not raised any objection to this alteration. These dwellings are also required to be single storey which is set out in the Policy Statement which will serve to mitigate greater impacts.

There are also a number of other requirements that are covered in other sections and chapters of the Ballina Combined DCP, including a number of references to Chapter 16 of the DCP which relates to Lennox Head. Landscaping, setbacks and building height plane specifically refer to this Chapter for further details.

There are also detailed requirements in the Policy Statement relating to slope sensitive design which covers the intent of the previous requirements of the approved draft DCP. The proponent also advises that sustainability will be addressed via BASIX and there are requirements in the adopted policy statement for screening.

It is considered that the intent of the original condition requiring a site specific DCP has been fulfilled. It should be noted that the original requirement was that Council was to approve and adopt the DCP prior to the release of the subdivision certificate. If this was not carried out then the original draft DCP was to be adopted. Whilst the policy statement is not a DCP in name, this is due to the current format and layout of the Ballina Shire Combined DCP. This Policy Statement has been prepared in consultation with Council, as required, and the original issues raised in the original assessment have been addressed.

Therefore, this proposal is considered to be a reasonable request. As indicated above, the matters that were proposed to be managed through a site specific DCP are being managed by alternative means after consultation with the Council. The Department has no objections to this modification.

Mosquito Management

In relation to mosquito management the proponent also seeks to delete Condition A9 - Mosquito Management which states the following:

A9 Mosquito Management

The recommendations in Section 5.4 of the Mosquito Impact Assessment Supplementary Report prepared by Mosquito Consulting Services Pty Ltd, dated May 2007 must be incorporated into the Draft Development Control Plan prior to its finalisation.

Section 5.4 of the Mosquito Impact Assessment Supplementary Report prepared by Mosquito Consulting Services dated May 2007 states that:

5.4 Risk Management Recommendations

- *No specific buffer zones or other controls are recommended to minimise exposure relative to adult populations of Ae. vigilax or Cx. annulirostris from off-site sources.*
- *The balance of risk management lies in favour of enhancing ecological buffering for conservation of threatened grass species on this site.*
- *Standard type mosquito screening should be fitted to residential unit windows and external doors to restrict entry of mosquitoes during occasional periods of high mosquito numbers.*
- *Rainwater tanks included (potentially) within the development should be protected by having mosquito proof screens fitted to openings including inspection openings and overflows. Such screens should be made of durable material such as brass, copper or stainless steel. The mesh size should not provide an aperture of more than 1mm.*

The proponent committed to including these requirements in its draft DCP and a condition was thus included reflecting this commitment.

Chapter 11 – Mosquito Management of the Ballina Shire Combined DCP addresses the health issues associated with mosquitoes by recommending and requiring various measures to reduce human contact with respect to existing and proposed residential development. These measures include screening of windows and doors to the design of outdoor living spaces. It does not specifically address the design of rainwater tanks. The proponent advises that it is considered standard practice to have durable coverings to rainwater tanks and appropriate screening.

The *Mosquito Impact Assessment Supplementary Report* referred to above was prepared as a part of the original assessment. In the original assessment it was concluded that the site has a very low exposure to mosquitoes. The species of most concern that was recorded on the site was *Aedes vigilax* which is noted as a significant risk species for public health and amenity. This species was recorded in low numbers and it was determined that the proposed development would not enhance the potential harbourage of this species due to the site's distance from the nearest saltmarsh breeding habitat.

As the proponent is proposing to replace the proposed draft DCP with a Policy Statement that will be incorporated into the Ballina Combined DCP which also

contains the requirements of Chapter 11- Mosquito Management, it is considered that the specific requirements are no longer necessary. The intent of the original requirement will be fulfilled by Chapter 11 – Mosquito Management of the Ballina Combined DCP or included as a part of the development.

Council has also advised that it considers that the existing Combined DCP Chapter 11 Mosquito Management provisions will suffice for future residential development.

It is apparent that the intent of the condition has generally been covered by Chapter 11 in the Council DCP and that the outcomes will effectively be the same as the original proposal in this regard. As such, the Department does not raise any objection to the proposed modification in relation to mosquito management.

6. CONCLUSION AND RECOMMENDATIONS

The Department has reviewed the proposed modification in the context of the original application. The Department is satisfied that the modifications are acceptable and will achieve the same objectives as assessed under the original approval. The modifications do not alter the overall nature of the approved project nor introduce any detrimental impacts on the site or surrounding locality. The Department therefore recommends that the modification be approved subject to the amended conditions.

Endorsed by:



Joanna Bakopanos

Team Leader

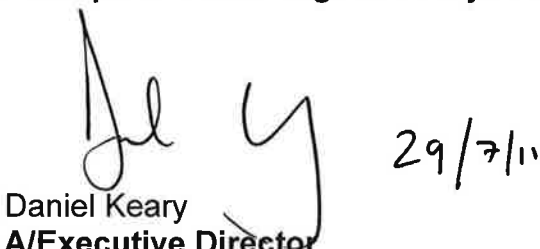
Metropolitan and Regional Projects North



Heather Warton

Director

Metropolitan and Regional Projects North



Daniel Keary

A/Executive Director

Major Projects Assessment

APPENDIX A MODIFICATION REQUEST

See the Department's website at

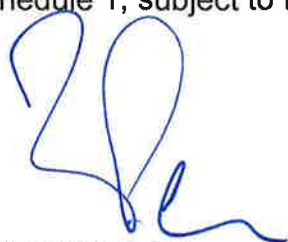
http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=4671

APPENDIX B RECOMMENDED MODIFYING INSTRUMENT

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning & Infrastructure under delegation executed on 25 January 2010, I approve the modification of the project approval referred to in Schedule 1, subject to the conditions in Schedule 2.



Richard Pearson

Deputy Director-General

Development Assessment & Systems Performance

As delegate of the Minister for Planning and Infrastructure

Sydney, 3rd August 2011

SCHEDULE 1

Project Approval:	06_0002 granted by the then Minister for Planning on 23 August 2007.
For the following:	42 lot subdivision comprising 39 residential lots, one residue lot for open space dedication and two residue lots for vegetation conservation at Lot 2 DP 622475 – 1 Survey Street, Lennox Head.
Modification:	Removing the requirement to provide a site specific Development Control Plan.

SCHEDULE 2

The above approval is modified as follows:

- (a) **Deleting the first sentence of Condition A2 and replacing with the following sentence:**

A2 *Development in Accordance with Plans*

The project shall be in accordance with the plans and associated documentation lodged by or, on behalf of, the proponent including plans and documentation prepared by SAKE Development, including the Statement of Commitments, and amendments prepared by SAKE Development Pty Ltd dated May 2009 and April 2011; and in accordance with the following:

- (b) **Deleting Condition A3(b).**
(c) **Inserting new Condition A3(n) immediately after condition A3(m) as follows:**

n) Modifications to Coastal Grove – Residential Subdivision (MP06_0002) – 1 Survey Street Lennox Head – Section 75W Application prepared by SAKE Development and dated April 2011.

- (d) **Immediately after the words “Waste Management Plan” and before the period in Condition A5(1) deleting the words as follows:**

and Draft Development Control Plan

- (e) **Deleting the note in Condition A5(1).**
(f) **Deleting Condition A9 – Mosquito Management.**
(g) **Deleting Condition E11 – Site Specific DCP.**
(h) **Deleting Statement of Commitment U in Schedule 3.**
(i) **Deleting Schedule 4.**