

## 06\_0143 Mod 1: Glades Estate Subdivision, Moonee Beach – Modification of Staging

The subject site, comprising Lots 1 & 2 DP 725785 Pacific Highway, Moonee Beach has a total area of 95.9ha and is within the local government area of Coffs Harbour. It is located on the eastern side of the Pacific Highway approximately 13km north of Coffs Harbour CBD and approximately 1km north of the existing Moonee Beach village area and shopping centre. Moonee Creek and Skinners Creek form the western and northern boundaries of the site. The site is owned by Rothwell Boys Pty Ltd (Winten Property Group), the proponent (refer **Figure 1** for site context).

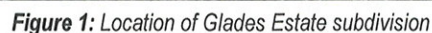






Figure 2: Aerial photograph

## 2 APPROVED PROJECT

The Minister approved the development of Glades Estate on 5 March 2009. The approval provided for the creation of 524 residential allotments over 11 stages, site earthworks (cut and fill), provision of roads and other infrastructure, open space, playing fields and a pedestrian/cycleway network.

## 3 PROPOSED MODIFICATION

Amendments are being sought in order to:

- facilitate the issue of a Construction Certificate to permit bulk earthworks on-site in advance of the creation of any easements or instruments of title previously required to begin work on constructing the northern collector road;
- permit the staging of the project to proceed in an orderly fashion, but providing for greater flexibility in the timing of nominated stages; and
- provide for appropriate temporary construction fencing during the bulk earthworks.

Significant cost savings and economies of scale will be realised if this modification is approved as essentially it allows for the construction of the collector road to occur concurrently with bulk earthworks across the site. Providing for greater flexibility in the timing of nominated stages will enable the development of the site to respond to changing circumstances throughout the project life.

## 4 STATUTORY CONTEXT

### 3.1 Assessment process

Section 75W of the *Environmental Planning and Assessment Act 1979* (the Act) provides for the modification of the Minister's approval. As the Proposal is not consistent with the existing approval, the Proponent has sought the approval of the Minister for Planning (pursuant to Section 75W(3) of the Act) to modify the original approval (refer to '**TAG B**'). Section 75W of the Act does not limit the circumstances in which the Minister can modify an approval under Division 3 of Part 3A of the Act, nor does it limit the ability of the Minister to change the terms of approval of a determination made under Division 3 of Part 3A of the Act.

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

### 3.2 Approval Authority

The Minister was the approval authority for the original project application, and is consequently the approval authority for this modification application. However, under current delegations dated 25 January 2010, the Director – Regional Projects in the Major Projects Assessment Division has the power to determine an application to modify a project approval pursuant to Section 75W of the Act if there are less than 10 public submissions received in the nature of objections with respect to the modification request. There have been no submissions received regarding the proposed modification (see section 5 of this report below).

## 5 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.

Additional consultation was undertaken with Coffs Harbour City Council on 30 November 2009 and 12 January 2010, and responses were received on 10 December 2009 and again on 28 January 2010. Council was generally supportive of the intention of the proposed modifications but suggested minor amendments to the wording of the proposed conditions. These suggestions have been incorporated into the proposed amendments to conditions of approval as outlined in the modification instrument at '**TAG A**.'

## 6 ASSESSMENT

Key issues considered in the Department's assessment of the proposed modifications included the following:

- Construction of the Northern Collector Road;
- Staging; and
- Temporary Construction Fencing.

It is important to note that the nature and scale of the issues assessed here have been assessed with regard to the nature and scale of the original approved project.



## 6.1 Proposed Modification Relating to Construction of the Northern Collector Road

### Background

Access to the site will be via a proposed collector road identified in the Moonee Development Control Plan and Moonee Developer Contributions Plan 2007 (refer Figure 3). This collector road avoids the need for direct access to Glades Estate from the Pacific Highway, and will connect the site with Moonee Beach Road and its intersection with the Pacific Highway. The existing approval contains a requirement for permanent access to be established via the proposed northern collector road to Moonee Beach Rd, prior to release of any lots. A temporary construction access to the subject site from the Pacific Highway has also been approved. The temporary access shall not be used for access to future allotments or dwellings on the site.

The following is an extract from Schedule 2 of the project approval for 06\_0143 Glades Estate:

### Notes:

- i) *Release of construction certificates requires finalisation of arrangements for the construction of the northern collector road at Moonee Beach including agreements being signed by respective landowners of neighbouring lots to the south of the site. Refer to condition **B1**.*
- ii) *Release of subdivision certificates requires the construction and completion of the northern collector road at Moonee Beach and the removal of temporary construction access to the Pacific Highway. Refer to conditions **B1, B2 & E3**.*
- iii) *Release of subdivision certificates for lots beyond the 149<sup>th</sup> lot is subject to either the completion of the planned Moonee Beach interchange (as set out in the RTA highway upgrade project) or a traffic study being undertaken for the intersection and implementation of any required improvements as approved by the RTA. Refer to conditions **E3** and **E4**.*

### Proposal

It is now proposed to allow bulk earthworks for the subject site to be undertaken in advance of, or in conjunction with construction of the remainder of the collector road – and in advance of appropriate legal instruments being finalised upon affected lots. The collector road is currently constructed and dedicated as public road up to Tidal Crescent - the edge of Lot 5 DP252223.

The Proponent has secured legal agreements with the three affected landowners to the south to facilitate the construction of the collector road across their properties (refer Figure 3, and 'TAG B' for copies of the legal agreements). The construction of the northern collector road across these allotments will also enable their development. It is noted that the Department is currently in receipt of two major project applications for the development sites immediately south of the subject site - Lot 5 DP252223 (08\_0242 – currently awaiting completion of an adequate environmental assessment); and Lot 1 DP1097743 and Lot 6 DP252223 together (09\_0067 – DGRs were issued on 19 January 2010).

### Effect of the Modification

It is the intention of condition B1 of the existing approval to only allow development to occur on the subject site if it is certain the collector road will be constructed. This condition requires appropriate legal instruments to have been created in order to dedicate the road to Council, any further statutory approvals to have been obtained, and appropriate legal agreements to have been signed with affected landowners to the south – prior to any construction certificate being issued for the development of Glades Estate.

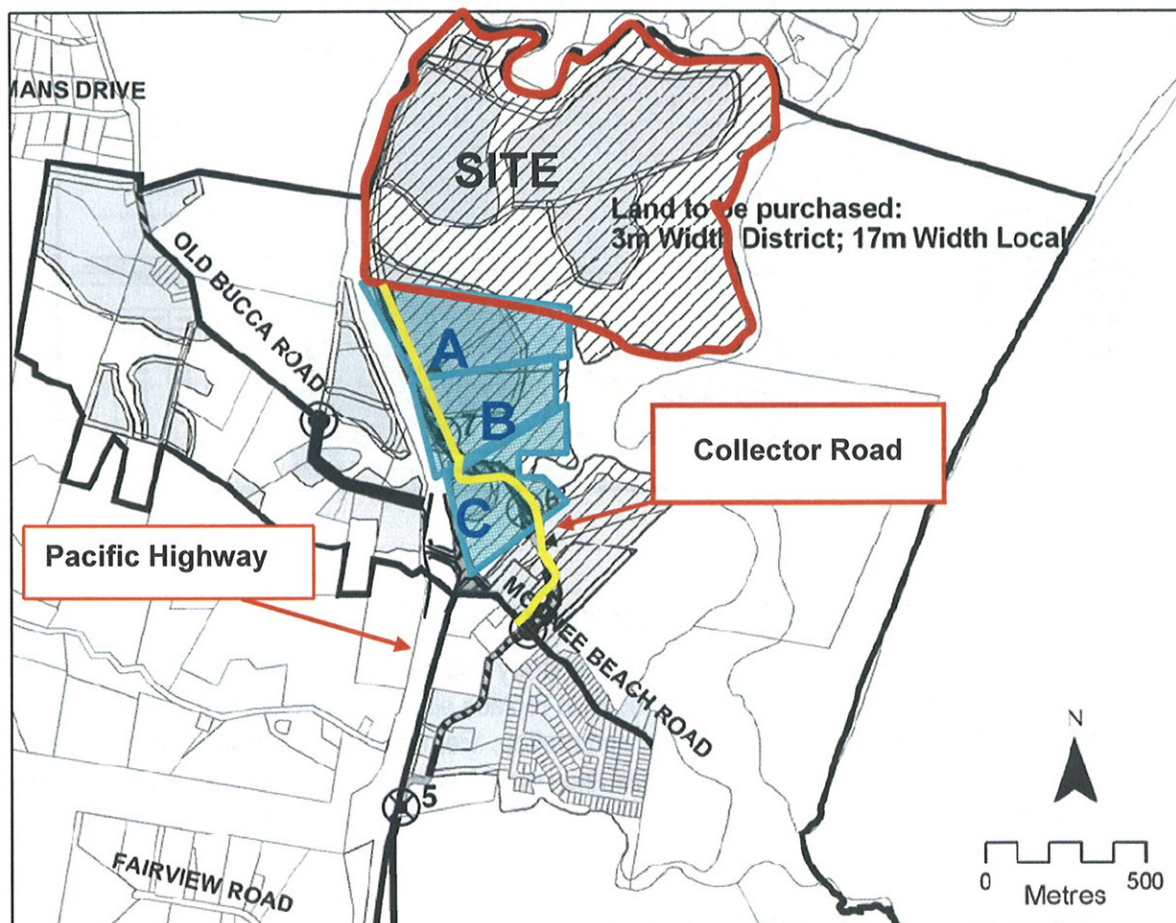
The proponent has obtained all necessary legal agreements that clearly state provision has been made for the collector road to be built across the neighbouring lots. These written approvals provide no obstacle to the construction of the collector road across the affected properties. However it must be noted that the construction of the collector road (while having written approval of the affected landowners) is contingent upon further approvals under the Act and also the *Roads Act 1993*. Correspondence with the Proponent has confirmed that an environmental assessment of the proposed route is currently being undertaken and will form the basis of a Development Application for the road's construction in the near future.

Furthermore, condition E3 of the original approval retains additional control at subdivision certificate stage by requiring the collector road to be completed to the satisfaction of Council and dedicated as a public road prior to the issue of any subdivision certificate. This condition retains suitable control ensuring no subdivision occurs at Glades Estate until the collector road can service the site.

### Earthworks

Allowing bulk earthworks to be undertaken across the whole site at Glades Estate at the same time or before construction of the collector road begins poses no risk as there are appropriate controls in place. A construction certificate will need to be issued for the bulk earthworks that will be separate to the staging of development. Bulk earthworks across the site will still be managed by relevant conditions set out in PART B of the original approval - including the development of an appropriate Construction Management Plan, Traffic and Pedestrian Management Plan, Acid Sulfate Soil Management Plan, Stormwater Design and Monitoring, the design of roads, causeways, culverts and bridges and any other matters that may be affected by the commencement of bulk earthworks. Further construction certificates will still need to be issued for all other works constructed to develop any stage as part of any approved staging plan.

Allowing bulk earthworks across the entire site provides gains in efficiency and cost effectiveness by minimising the time taken for these activities. This will further reduce the potential for adverse construction effects on neighbours and will allow the site to be stabilised and established prior to subdivision and construction of individual dwellings.



**Figure 3:** Extract from Moonee Developer Contribution Plan showing land to be developed and dedicated for the collector road. The descriptions and owners of the following parcels of land immediately south of the subject site are:

- A – Lot 1 DP1097743: Matcove Pty;
- B – Lot 6 DP252223: Barker; and
- C – Lot 5 DP252223: Bateman.



## 6.2 Proposed Modification Relating to Staging

The original approval was granted comprising a total of 11 stages of varying size and was to be carried out in numerical order commencing with Stage 1. The proponent has proposed that the development of the site not be subject to the approved staging as shown (Figure 4) and that the condition be modified such that the approval allows for flexibility in the sequence of development on site, subject to approval by Council. This will allow the developer a degree of flexibility in its response to factors such as servicing and market demand when developing the subject site. Council will retain control in ensuring the orderly staging of development on-site through the issue of Construction Certificates. This is considered a reasonable approach and will have no additional environmental impacts other than those already considered and approved.

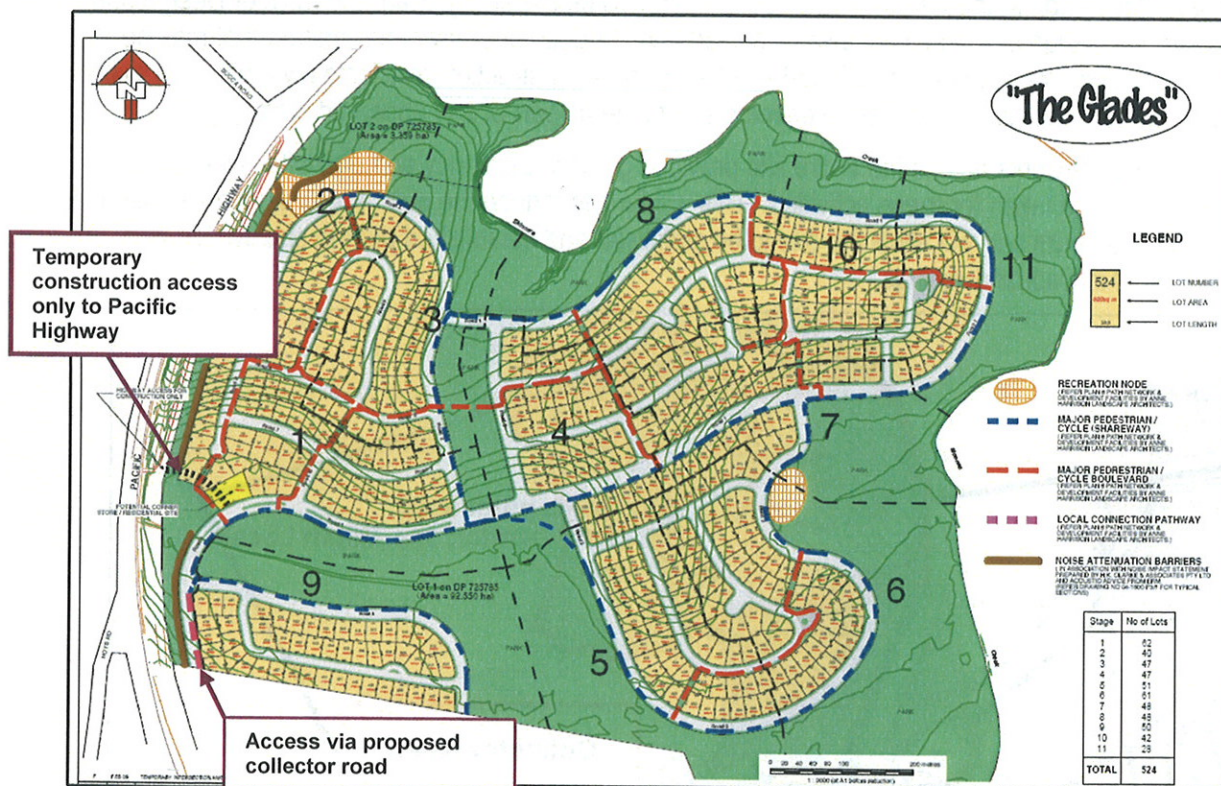


Figure 4: Approved Subdivision Layout

## 6.3 Proposed Modification Relating to Temporary Construction Fencing

Condition C10 of the original approval requires both temporary and permanent fencing to be erected prior to construction works commencing. It is now proposed to replace all permanent fencing as indicated with temporary fencing while bulk earthworks are being undertaken. Permanent fencing will be constructed to the perimeters of riparian buffer zones, habitat areas and corridors as part of the construction certificate issued for each stage. There are no additional environmental effects from this proposed modification. Council has raised no objection to the modification of this condition.

## 7 MODIFICATIONS TO CONDITIONS OF APPROVAL

The Department recommends that conditions of approval apply to the proposed modifications. These are included at 'TAG A'.

## 8 CONCLUSION

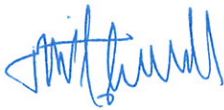
The Department has assessed the modification application in accordance with the relevant requirements of the Act. As there is no intention to modify the environmental requirements of the project approval, only the

sequence in which they are delivered, there are no material changes to the approval sought. Therefore the proposed modification will not cause any additional environmental impacts other than those already considered. Consequently the Department believes the modification to be in the public interest, and recommends the application to modify the project be approved, subject to conditions.

## 9 RECOMMENDATION

It is RECOMMENDED that the Acting Director – Regional Projects:

- **consider** the findings and recommendations of this report;
- **approve** the proposed modifications under Section 75W of the EP&A Act; and
- **sign** the attached Instrument of Modification (refer to 'TAG A').



Tom FitzGerald  
A/Senior Planner



Stuart Withington  
A/Team Leader – Regional Projects North



Alan Bright  
A/Director  
Regional Projects

## **APPENDIX A. MODIFICATION TO PROJECT APPROVAL (06\_0143 MOD 1) - INSTRUMENT OF MODIFICATION**

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# Modification of Major Project Approval

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

I, the Acting Director - Regional Projects, Major Projects Assessment, as delegate for the Minister for Planning modify, under s.75W of the *Environmental Planning and Assessment Act 1979*, the Project approval referred to in Schedule 1 in the manner set out in Schedule 2.



Alan Bright  
**Acting Director – Regional Projects**  
**Major Projects Assessment**

Dated this 1st day of Feb. 2010

### SCHEDULE 1

|                           |   |
|---------------------------|---|
| <b>Project Approval:</b>  | Granted by the Minister for Planning on 5 March 2009.<br>Rothwell Boys Pty Ltd  |
| <b>In respect of:</b>     | Major Project 06_0143 made by the Rothwell Boys Pty Ltd for land described as Lots 1 & 2 DP725785, Pacific Highway, Moonee Beach (Coffs Harbour LGA)  |
| <b>For the following:</b> | A Project Application to subdivide land into 524 lots, site earthworks (cut and fill), the provision of roads and associated infrastructure, open space, recreation facilities and playing fields, and a pedestrian/cycleway network. |
| <b>Modification:</b>      | Modification of the Project Approval to facilitate the construction of the collector road, allow flexibility in staging, and provide appropriate temporary construction fencing during bulk earthworks                                |





## SCHEDULE 2

The above approval is modified as follows:

### PART A—ADMINISTRATIVE AND GENERAL CONDITIONS

(a) Amend Condition A2 by deleting the words struck out as below:

#### **A1      *Staging***

The project is to be constructed in eleven (11) stages, generally as follows:

1) Stage 1

- i) 62 residential lots
- ii) 1 lot for a potential corner store.
- iii) Construction of noise mitigation measures for road traffic noise.
- ~~iv) Construction of temporary access to the Pacific Highway, for construction purposes, (only for construction of the subdivision development and northern collector road).~~
- ~~v) Site earthworks (cut and fill).~~

(b) Amend Condition A6 1) by adding the following text at the end of that condition:

This approval relates to the subdivision of 524 allotments and is not bound by the sequence of staging shown in the approved plans; however any changes to the sequence of staging in the approved plans must be agreed to in writing by Coffs Harbour City Council.

### PART B—PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

(c) Amend Condition B1 by deleting the words struck out as below:

#### **B1      *Access via Northern Collector Road***

- 2) Prior to the issue of any Construction Certificate for the project the proponent shall provide to the satisfaction of Council and the Certifying Authority evidence of appropriate legal agreements being signed with landowners of Lot 5 DP 252223, Lot 6 DP 252223, and Lot 1 DP 1097743, ~~as well as creation of any relevant easements or instruments on title,~~ for the construction of the northern collector road and associated project infrastructure works, over the respective lots.

(d) Add the following condition:

#### **B1A      *Construction Certificate for Bulk Earthworks***





Notwithstanding any other conditions in this approval, a construction certificate to undertake bulk earthworks (cut and fill) across the site can be issued at any time provided that satisfactory arrangements have been made to deal with all relevant impacts associated with these bulk earthworks, including but not limited to matters set out in conditions B2, B4, B5(7), B8, B9, B10, B11, and B12.

**NOTE:** In this instance the requirements of conditions B2, B4, B5(7), B8, B9, B10, B11, and B12 as listed above relate only to what is required to be completed prior to the issue of a construction certificate for bulk earthworks. All conditions listed in PART B of this approval are relevant for the issue of construction certificates for each stage of the Glades Estate development in its entirety.

## **PART C—PRIOR TO COMMENCEMENT OF WORKS**

- (e) Amend Condition C10 by adding the following underlined words:

***C10 Fencing of riparian buffer zones, habitat areas and corridors.***

Prior to commencement of any works on the site (except for bulk earthworks where only temporary construction fencing is required to be erected) permanent and temporary fencing shall be erected to the perimeters of the riparian buffer zones, habitat areas and corridors for that relevant stage (in particular Open Space Category 1 'Natural Areas' as identified in the approved plan prepared by ERM 'Broad Scale Open Space Types' dated December 2008), generally as provided for in the Landscape Staging Plan Annex H Plan 8 prepared by ERM, dated December 2009.

