

## ASSESSMENT REPORT

### Section 75W Modification

#### “Glades Estate” Residential Subdivision, Moonee Beach, Coffs Harbour Local Government Area MP 06\_0143 MOD 3

## 1. BACKGROUND

This report is an assessment of a request to modify the Project Approval (MP 06\_0143 MOD 3) for a residential subdivision at Moonee Beach in the Coffs Harbour local government area. The request has been lodged by Rothwell Boys Pty Ltd (Winten Property Group) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks to amend the monetary contribution rates contained in Condition B1 (3) and Condition E18 to reflect the *Moonee Release Area – Development Contributions Plan 2014*.

## 2. SUBJECT SITE

The subject site is located approximately 13 kilometres (km) north of Coffs Harbour and approximately 1 km north of the existing Moonee Beach village area and shopping centre (see **Figure 1** and **Figure 2**). Moonee Creek and Skinners Creek form the western and northern boundaries of the site. The site is described as Lots 1 and 2 DP 725785 Pacific Highway, Moonee Beach.



Figure 1: Site Location



**Figure 2: Subject Site**

### 3. SITE HISTORY

On 5 March 2009, the then Minister for Planning granted Project Approval MP 06\_0143 for a residential subdivision permitting the creation of 524 lots, site earthworks, provision of roads and infrastructure, open space, recreation facilities and playing fields and a pedestrian/cycleway network.

The proposal has been modified on two occasions to:

- allow bulk earthworks to be undertaken prior to finalisation of arrangements for the construction of the northern collector road;
- permit greater flexibility in the timing of the nominated stages;
- provide for temporary fencing during bulk earthworks; and
- allow installation of a sewer main prior to other approvals or certifications required for the development.

To date, the sewer rising main has been constructed.

Under the Project Approval, the proponent is required to pay monetary contributions prior to endorsement of a Subdivision Certificate for each stage of the subdivision. The monetary contributions for the development were calculated in accordance with the *Moonee Release Area – Developer Contributions Plan 2008*. Subsequently, Council adopted the *Moonee Release Area Development Contributions Plan 2014* on 23 October 2014 in which the monetary contributions applicable to the development were revised. To date, development at the site comprises construction of the sewer main only and therefore, monetary contributions are yet to be paid.

## 4. PROPOSED MODIFICATION

On 27 November 2014, the Proponent lodged a section 75W modification application (MP 06\_0143 MOD 3) seeking to amend Condition B1(3) and Condition E18 to delete the references to the *Moonee Developer Contributions Plan 2008* and the associated development contribution table, and replace it with the contributions applicable under the recently adopted *Moonee Release Area Development Contributions Plan 2014*.

The modification is requested on the basis that Council recently revised the contribution rates associated with the Moonee Release Area, as detailed in the *Moonee Release Area – Development Contributions Plan 2014*. The development falls within the ‘Moonee Precinct’ of the Moonee Release Area and the revised contributions rates are applicable to the development.

## 5. STATUTORY CONSIDERATION

### 5.1 Section 75W

Part 3A of the EP&A Act, as in force immediately before its repeal on 1 October 2011, and as modified by Schedule 6A to the EP&A Act, continues to apply to Section 75W modification applications to Part 3A projects.

The modification request has been lodged with the Secretary pursuant to section 75W of the EP&A Act. The Minister’s approval is not required if the project, as modified, remains consistent with the original approval. As the modification request seeks to modify the conditions of the approval, the Minister’s approval is required.

The proposed changes constitute a modification, are within the scope of section 75W of the EP&A Act, and do not constitute a new application. Therefore, the Minister (or her delegate) has the ability to determine the modification application.

Consequently, this report has been prepared in accordance with the requirements of Part 3A of the EP&A Act and the EP&A Reg. The Minister (or her delegate) may approve or disapprove of the modification of the project under section 75W of the EP&A Act.

### 5.2 Approval Authority

The Minister for Planning delegated responsibility for the determination of section 75W modification applications to directors and managers who report to the Executive Director, Infrastructure and Industry Assessments where:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there are no public submissions in the nature of objections.

The proposal complies with the terms of the delegation as Council did not object to the proposal, a political disclosure statement has not been made in relation to the application, and no public submissions were received objecting to the application. Accordingly, the Manager, Industry Assessments may determine the application in accordance with the Minister’s delegation.

### 5.3 Consultation

Under section 75X(2)(f) of the EP&A Act, the Secretary is to make publicly available requests for modifications of approvals given by the Minister. In accordance with clause 8G of the EP&A Reg, the modification request was made publicly available on the Department’s website on 11 December 2014 and input was sought from Council. Given the minor nature of the modification request, it was not publicly exhibited or notified to other agencies.

One submission of support was received from the Council. The Council’s comments are discussed in greater detail in **Section 6** of this report. It should be noted that no public submissions were received in relation to the modification application.

## 6. ASSESSMENT

In its assessment of the modification application, the Department has considered the following:

- the EA provided to support the proposed modification (see **Appendix A**);

- all submissions received by the Department (see **Appendix B**); and
- the Director-General's assessment reports for the original development application and earlier modification approvals.

Based on the above, the Department considers the key issue for assessment is development contributions. This issue is discussed in detail below.

## 6.1 Development Contributions

Condition B1(3) outlines the funding requirements for site access via a northern collector road. The condition currently states that funding is subject to the provisions of the *Moonee Developer Contributions Plan 2008*.

In addition, Condition E18 requires the Proponent to pay development contributions in accordance with the *Moonee Developer Contributions Plan 2008*. This plan has been superseded by the *Moonee Release Area - Development Contributions Plan 2014*, which was adopted by the Council on 23 October 2014.

The Council raised no objection to the proposed modification and has provided the Department with a revised contributions schedule which reflects the rates adopted under the *Moonee Release Area - Development Contributions Plan 2014*.

The Department has reviewed the revised schedule of developer contributions and considers it acceptable on the basis that the revised schedule of contributions will ensure the Proponent pays contributions for the development in accordance with the correct development contributions plan (*Moonee Release Area – Development Contributions Plan 2014*).

The Department has incorporated the revised contributions in the recommended Instrument of Modification.

## 6.1 Consequential Administrative Changes

As the project must be undertaken generally in accordance with the documents listed in Condition A4, this condition is proposed to be modified to incorporate the additional documents submitted to support the modification application. These documents have been included in the Instrument of Modification provided at **Appendix C**.

## 7. CONCLUSION

The Department considers the proposed modification appropriate on the basis that:

- it is administrative in nature and will facilitate the payment of section 94 contributions in accordance with the Council's current section 94 plan; and
- the development will remain consistent with the current approval as the Proponent will still be required to pay section 94 development contributions prior to the issue of a Subdivision Certificate.

Consequently the Department has concluded that the proposed modification should be approved subject to the conditions recommended in the Instrument of Modification at **Appendix C**.

## 8. RECOMMENDATION

It is recommended that the Manager, Industry Assessments, as the delegate of the Minister for Planning, approve MP 06\_0143 MOD 3, subject to the conditions recommended in the Instrument of Modification at **Appendix C**.



Evelyn Craigie  
Planning Officer

2/2/15



Chris Ritchie  
Manager  
Industry Assessments

2/2/15.

## **APPENDIX A: MODIFICATION REQUEST MP 06\_0143 MOD 3**

---

Refer to [http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=6837](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6837)

## **APPENDIX B: SUBMISSIONS RECEIVED**

---

Refer to [http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=6837](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6837)