

Director-General's Report

Application to Modify the Minister's Approval for the Residential Subdivision at Fraser Drive, South Tweed

Major Project 06_0243 MOD 1

1.0 BACKGROUND

On 4 November 2008, the Minister for Planning approved Project Application 06_0243 for a residential subdivision at Part Lot 2 DP 1000385 and Lot 9 DP 1039569, Fraser Drive, South Tweed, in the Tweed local government area (refer *Figure 1* and *Figure 2*). Approval was granted for:

- Boundary adjustment of Lot 2 DP 1000385 and Lot 9 on DP 1039569;
- Subdivision of Lot 9 on DP 1039569 into two Master Lots (Part A and Part B of the subdivision);
- Subdivision of Master Lot Part A into 77 residential lots in 3 stages;
- Subdivision of Master Lot Part B into 73 residential lots in 3 stages;
- Creation of a 1.57 hectare "superlot" for a future integrated housing development for strata or community titled subdivision;
- Creation of open space lots for artificial wetlands for the purposes of stormwater management;
- Creation of an open space lot for the retention of SEPP14 Wetland and buffer area;
- Dedication of a 10m wide buffer to allow for future upgrade (widening to 4 lanes) of Fraser Drive;
- Site rehabilitation works to stabilise current land slip hazards; and
- Construction of roads, revetment structures and drainage infrastructure.

On 24 May 2010, Darryl Anderson Consulting Pty Ltd, on behalf of Greenview Developments Pty Ltd, submitted a modification request pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (the Act) to modify the original Part 3A approval.

Further information supporting the modification request was received by the Department on 20 September 2010.



1.1 APPROVED LAYOUT

The approved layout drawing no. 29034-5 Revision 0 dated 1 October 2008 (refer *Figure 3*) shows the 6 development stages (Stages 1A, 1B, 2A, 2B, 3A and 3C) which includes provisions for 151 freehold title lots including one 'superlot' for a future integrated community title housing subdivision, open space, the SEPP14 wetland area, a 10m wide reserve for the future widening of Fraser Drive, and associated road and drainage infrastructure.

2.0 PROPOSED MODIFICATION

The request to modify the approved proposal was received from Greenview Developments Pty Ltd (the Proponent), a different proponent to that which received the original project approval in November 2008. It is intended that the modification request resolve a number of anomalies and issues identified in the original approval. The proposed modification layout is attached (refer *Figure 4*) drawing 17900B Rev E dated 29 October 2010.

2.1 Proposed modifications to approved layout

A detailed list of proposed modifications is contained in the Proponent's request in Appendix B. The key proposed modifications to the subdivision layout are summarised as follows:

- amendments to reduce the total number of residential lots to 145 (was 151 lots). The modified subdivision layout will provide for a total of 158 dwellings (was 164 dwellings);
- re-numbering of allotments including future integrated housing "superlot" and all open space areas;
- amendments to include the local shop site (proposed Lot 2), to accord to the requirements of Condition B1;
- amendments to provide an overland flow path connecting the SEPP14 wetland and Fraser Drive, to accord to the requirements of Condition B18;
- amendments to provide for new footpaths to link internal roads (adjacent proposed Lots 80/81, 97/98, 107/108 & 114/115);
- amendments to provide a new overland flowpath/drainage reserve between proposed Lots 152 and 153; and
- amendments to create a separate lot over the battleaxe handle between proposed Lot 156 and adjoining owner in Ocean Avenue. Under the approved layout, the battleaxe handle forms part of Lot 156.

Other proposed modifications to the approved layout include:

- the identification of bin pad locations;
- the siting of duplex lots on Fraser Drive (proposed Lots 22/23);
- a reduction in the size of the future integrated housing 'superlot' from 15.7Ha to 15.4Ha;
- a reduction in the size of Stage 3A open space of 50m², to accommodate the required cul-de-sac head size;
- an increase in size of 73m² of Stage 2B open space; and
- an increase in size of 1533m² of Stage 3B open space.

2.2 Proposed Modifications to Staging

The modification request proposes changes to project staging to reflect the proposed layout modifications above. The key changes to staging are summarised as follows:

- The re-naming of 'Master Lot A' and 'Master Lot B' into 'Master Lot 1' and 'Master Lot 2', respectively;
- The 10m widening of Fraser Drive to be removed from each stage. The widening of Fraser Drive will now be undertaken by Council at a future point in time; and
- Minor changes to each stage to reflect the proposed layout modifications. Includes changes to details regarding stage size, number of allotments, areas of open space, inclusion of lot for Local Shop, inclusion of drainage works etc.

2.3 Proposed Modifications to Conditions of Approval

In order to facilitate the proposed modification, the following Schedules and Conditions of Approval are proposed to be amended. These will be further discussed in the Assessment Section of this report:

- Schedule 1 – Part A Table
- Condition A1 – Project Description
- Condition A2 – Staging
- Condition A3 – Project in Accordance with Plans
- Condition A4 – Project in Accordance with Documents
- Condition B1 – Local Shop
- Condition B2 – Noise Attenuation
- Condition B16 – Signalised Intersection
- Condition B30 – Park Adjacent to Seaview Street
- Condition B34 – Asset Protection Zones
- Condition E33 – Section 94 Monetary Contributions
- Condition E34 – Section 64 Contributions
- Schedule 3 – Statement of Commitments

3.0 ASSESSMENT PROCESS

Under Section 75W(2) of the Act, a proponent may request the Minister to modify the Minister's approval for a project. Section 75W(3) of the Act provides that the Director-General may notify the proponent of environmental assessment requirements (DGRs). Following an assessment of the modification request, it is considered that DGRs are not required for this application.

4.0 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 request was also referred to Tweed Shire Council and the Rural Fire Service for comment.

4.1 Tweed Shire Council

Council raised no objections to the modification proposal, provided that further clarification and detail was submitted regarding engineering and infrastructure matters. In this respect, Council raised the following concerns:

- Regarding the signalised intersection at Fraser Drive, the engineering design would need to be compatible with both stormwater drainage (an overland flowpath connecting the SEPP14 wetland and Fraser Drive is located at this junction) as well as future upgrade proposals to widen Fraser Drive. Council was satisfied that drainage related engineering requirements could be met however further investigation was needed to demonstrate that the engineering design could accommodate future road upgrade proposals;
- Regarding the proposed location of the Local Shop directly on Fraser Drive, further investigation was required to demonstrate the acceptability of this location with respect to its traffic impact including access and servicing arrangements; and
- The modification proposal would reduce the size of the public park at proposed Lot 57 by 50m² which is over 283m² smaller than the minimum size acceptable to Council.

4.2 Rural Fire Service

The RFS raised no objection to the proposed modification to Condition B34 which relates to asset protection zones. The RFS was satisfied that Fraser Drive itself could comprise the asset protection zone to protect the subdivision from fire hazard risks on the eastern side of Fraser Drive.

5.0 ASSESSMENT

The proposed modifications are considered separately below.

5.1 Proposed Modifications to Approved Layout and Staging

The proposed modifications to the subdivision layout are considered minor and will not significantly alter the original project approval 06_0243. The proposed subdivision design, density and layout essentially remain unchanged (refer *Figure 3* and *Figure 4*) and the subdivision remains in accordance with the *Tweed DCP 2008* including *Section A5 – Subdivision Manual* and *Section B3 – Tweed Heads South*.

The key change to the layout is a reduction of overall lots (from 151 to 145) as a result of the inclusion of a 2,500m² lot for a local shop (as required by Condition B1). The overall configuration of the layout is not affected. Other changes include the inclusion of additional pedestrian footpaths to connect internal streets, the inclusion of an overland flowpath and the creation of a separate lot over the battleaxe handle at Lot 156. These changes do not cumulatively or in isolation alter the design or character of the approved subdivision layout and are considered acceptable as modifications to the original project approval.

The proposed modifications to staging reflect the proposed changes to the layout and the associated re-numbering of lots. In general, the construction stages remain as per the original approval, that is, to be completed in seven (7) stages. The re-naming of Master Lots A and B to Master Lots 1 and 2 respectively will have no bearing on the overall staging program.

Therefore, with respect to the above, the proposed textual modifications to Schedule 1 and Conditions A1, A2, A3 and A4 are considered acceptable and would ensure a consistent and implementable planning approval. These changes are reflected in the modifying instrument.

5.2 Signalised Intersection

Under approval 06_0243, details of the signalised intersection are required in accordance with Condition B16. Council has requested this condition require further engineering detail to ensure compatibility in the intersection engineering design with stormwater drainage requirements and the future upgrade of Fraser Drive.

Suggested wording of this condition was provided by Council. The proponent has been consulted and has not raised any objections. The Department notes Council's suggested wording provides further certainty to ensure that the intersection will be compatible with changes in Fraser Drive in the future. The Department agrees with this recommended condition and this is included within the modifying instrument.

5.3 Location of Local Shop

The modification requests the inclusion of a Local Shop at proposed Lot 2 at the main entrance of the subdivision at Fraser Drive. The inclusion of a Local Shop is a requirement of the *Tweed DCP 2008 Section B3 – Tweed Heads South* and enforceable under Condition B1 of the original project approval.

In accordance with *Tweed DCP 2008 Section B3 – Tweed Heads South* the Local Shop is to provide a retail facility that can service the entire development with appropriate pedestrian access. Whilst the shop is located at the northern end of the subdivision, it is located adjacent to the higher density areas of the development and hence provides good access to the majority of future residents.

The initial concerns raised by Council regarding the location of the shop on the grounds of traffic impact were resolved through the use of a left in/left out access onto Fraser Drive. The accompanying proposal for access and servicing arrangements was endorsed by Council. The Department is therefore satisfied with the location of the shop and the corresponding amendments to the subdivision layout. The shop will be subject to further detailed assessment regarding layout and urban design in subsequent development applications to the Council.

It is therefore appropriate that Condition B1 be deleted as the proponent has fulfilled its obligation to identify a suitable local shop site.

5.4 Noise Attenuation

Condition B2 of the approval requires the submission of an acoustic assessment prior to the issue of a Construction Certificate to demonstrate that traffic noise from Fraser Drive may be satisfactorily ameliorated without the use of dwelling construction standards for noise affected lots along the eastern boundary of the subdivision. The Proponent has carried out a noise assessment and seeks to incorporate the assessment results as part of this modification request.

The noise assessment included noise modelling for the year 2019 to consider the noise impacts from the future widening of Fraser Drive to four lanes. The noise assessment concluded that a 6-7m high noise barrier along Fraser Drive would be required for strict compliance with the specified noise levels in Condition B2 at ground and first floor level facades.

As a noise barrier of such a height would clearly be inappropriate, the proponent proposes a combination of noise mitigation measures as follows:

- the provision of a 2m high acoustic barrier along the eastern boundary of the site; and
- higher construction/building standards for noise affected lots (Lots 22-30, 71, 125-134).

In light of the findings contained within the noise assessment, the Department considers that a combination of noise mitigation measures including a noise wall and building acoustic treatments is acceptable. Given its visual impact, the Department agrees with the proponent that a 6-7m high noise wall would be unacceptable in this location and that building treatments to noise affected lots would need to be utilised to achieve the required noise standards. In this respect, the Department accepts that modifications to Condition B2 are required that permits the use of noise limiting building treatments on noise affected lots.

Planning conditions are therefore recommended to ensure that an acoustic wall is constructed prior to the issue of a Subdivision Certificate with details of engineering plans required to be submitted to Council prior to the issue of a Construction Certificate. Refer to the Modifying Instrument for changes to Condition B2, new Condition E7a and Condition E13 relating to restrictive covenants under Section 88B of the *Conveyancing Act 1919*.

5.5 Park Adjacent to Seaview Street

Condition B30 requires the submission of a landscape plan that provides a land connection to the Champagne Drive road reserve including a minimum width of 20m. Landscape drawing no. 248 titled 'Landscape Concept Plan' prepared by Boyds Bay Environmental Services dated 10 September 2010 submitted with the modification request provides for this connection and is considered acceptable. Condition B30 has been amended accordingly.

5.6 Reduction of Open Space at Lot 57

The modification request proposes a 50m² reduction of the size of the public open space within Stage 3A from 2,267m² to 2,217m². Council does not support this reduction in the Stage 3A open space as it would be 283m² smaller than the Council's minimum size requirements.

Overall, the open space provision of the subdivision comprising Lots 57, 165 and 166 is over 5500m². Tweed Council's Subdivision Manual seeks a provision of 4300m². Even taking into consideration land required for landscaping and stormwater management, the overall provision of open space well exceeds the open space requirements set by the *Tweed DCP – Section A5 Subdivision Manual* and the Department considers that overall provision is sufficient for the future occupants of the subdivision. The higher density areas of Stage 3A are in close proximity to the open space provided in Stage 1A and the good accessibility to open space is not impacted upon.

Details provided by the Proponent reveals that the reduction of open space in Stage 3A resulted from road engineering requirements with respect to minimum cul-de-sac radii and verge widths as set by the *Tweed DCP – Section A5 Subdivision Manual*. On the basis that the modification request does not significantly detract from the approved subdivision layout and that good accessibility to open space from Stage 3A remains unhindered, the Department considers the minor reduction of open space in Stage 3A to be acceptable.

5.7 Asset Protection Zones

Condition B34(2) requires that asset protection zones in Stages 1B, 2B and 2A fronting the fire risk hazards on the eastern side of Fraser Drive be provided on private land. The modification request proposes that Fraser Drive itself should form part of the asset protection zone.

Both the Rural Fire Service and Council are satisfied that the modification request is acceptable. Condition B34(2) and related Condition E13(5)(g) will be deleted accordingly, refer to the modifying instrument for textual changes.

5.8 Section 94 and Section 64 Contributions

Condition E33 and Condition E34 set out the respective payment schedules for Section 94 Contributions and Section 64 Contributions attributable to the subdivision approval. The modification request seeks to alter this schedule in accordance with the changes to the subdivision layout and staging as outlined in Section 2.1 and Section 2.2 of this report.

The Department received confirmation from Council that the proposed changes are satisfactory. Conditions E33 and E34 will be amended accordingly.

5.9 Statement of Commitments

A revised Statement of Commitments was submitted as part of the modification request and was considered acceptable by the Department. Changes to the original document related generally to changes in lot numbers and staging details and a Revised Statement of Commitments is included in the Consolidated Approval.

6.0 MODIFICATIONS TO CONDITIONS OF APPROVAL

The Department recommends that conditions of approval apply to the proposed modifications. These are included within **Appendix A**.

7.0 PROPONENT'S COMMENTS ON CONDITIONS

The Proponent has not raised any concerns with the wording of the modified conditions.

8.0 CONCLUSION

The proposed modification achieves the same objectives as assessed under the original approval and does not significantly differ from the original approval in terms of subdivision layout or staging. The modification request includes details of a separate lot containing a local shop and provides a noise assessment from road traffic required by planning conditions of the original approval. The modifications do not alter the overall nature of the approved project, nor does it introduce any detrimental environmental, social or economic impacts upon the site. The modification request is therefore recommended for approval.

RECOMMENDATION


It is recommended that the Acting Director, Regional Projects, as delegate for the Minister for Planning under delegation issued on 25 January 2010, approve under Section 75W of the Act the modifications to the Project Approval as detailed in **Section 2** of this Report by varying the conditions of approval as set out in **Appendix A**. A full version of the approval as modified (consolidated approval) is included at **Appendix B**.

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9/12/19

