

ASSESSMENT REPORT

RESIDENTIAL SUBDIVISION BELLE O'CONNOR STREET, SOUTH WEST ROCKS MP 08_0167 MOD 4

1. INTRODUCTION

This report is an assessment of a request to modify the Project Approval (MP 08_0167) for a residential subdivision at Belle O'Connor Street, South West Rocks, in the Kempsey local government area (LGA).

The request has been lodged by Land Dynamics Australia (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to amend conditions of approval to clarify that manufactured homes can be installed on the seniors living development (SLD) lot, change the timing of certain conditions and amend other obligations relating to the SLD.

2. SUBJECT SITE

The subject site covers an area of approximately 28 hectares (ha) and is located at South West Rocks. South West Rocks is located on the New South Wales mid-north coast approximately 28 kilometres (km) to the north-east of Kempsey and 65 km to the south of Coffs Harbour (refer to **Figure 1**).

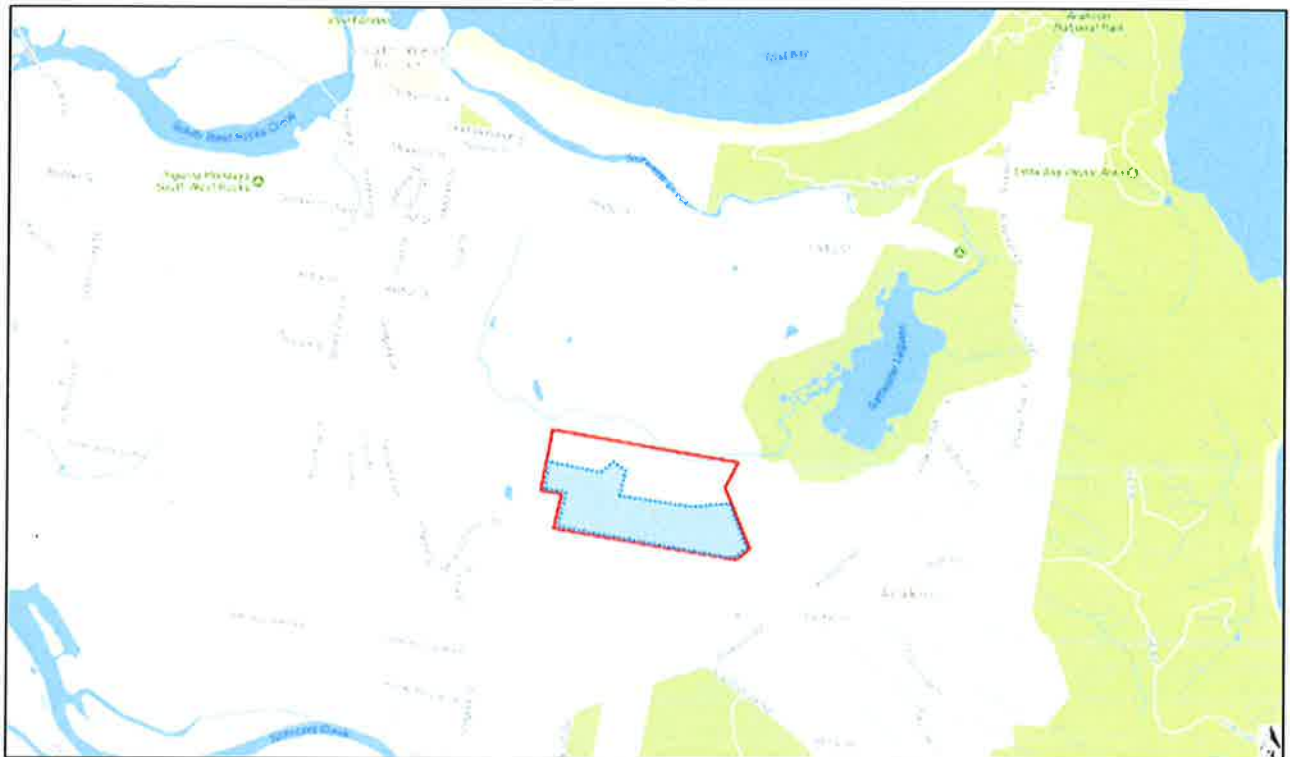


Figure 1: Site location (outlined in red) and subdivision boundary (highlighted blue and outlined in a dashed line) (Base source: Nearmap)

To the north of the site is a future residential development site known as Saltwater. To the north-east is the Saltwater Lagoon and an extensive area of coastal wetlands which borders the lagoon and extends into the north-eastern portion of the site. The South West Rocks Sewage Treatment Plant adjoins the north-western corner of the site, and the South West Rocks Golf Course is situated along the site's western boundary. A small number of rural-residential properties are located directly to the east and south-east. A Crown road acts as the site's southern boundary, with low-density residential housing development located to the south-west (refer to **Figure 2**).



Figure 2: Aerial view of the site location (outlined in red), its surroundings and the subdivision boundary (outlined in blue dashed line) (Base source: Nearmap)

3. APPROVAL HISTORY

On 3 June 2011, the then Planning Assessment Commission (the Commission) approved a Project Application (MP 08_0167) for a residential subdivision (the Project Approval), comprising:

- 269 residential lots constructed in 11 stages
- one medium density lot
- an internal public road network
- public open space areas with recreation facilities
- a network of pedestrian and cyclist pathways
- a 14.9ha conservation zone
- two storm water treatment areas
- on-site landscaping works.

The Project Approval has been previously modified on two occasions.

- Modification 1 was approved under delegation on 6 August 2013 for provision of four additional residential lots, reduction of a bushland exercise park, enlargement of the central open space, modifications to the stormwater treatment system, road network layout, project staging and section 94 contributions.

- Modification 3 was approved under delegation on 19 December 2017 for the creation of a SLD lot over the eastern portion of the site, amended road and lot layout, relocation and reduction in size of the public park and a boundary adjustment.

The Department is also assessing the following separate modification requests:

- MOD 2 seeks approval to reconfigure the layout and number of residential lots in stages 5 and 6 of the approved subdivision
- MOD 5 seeks approval to extend the SLD further to the west into Stage 3 and part of Stage 2.

Since the Project Approval, Kempsey Shire Council (Council) has issued Construction Certificates relating to bulk earthworks for Stage 1A of the project.

4. PROPOSED MODIFICATION

The proposal seeks to modify the conditions of approval outlined in **Table 1** below. The amended conditions would clarify that manufactured homes can be installed on the seniors living SLD lot, change the timing of certain conditions and amend other obligations relating to the SLD.

Table 1: Conditions proposed to be modified

Condition	Modification
A1 Project Description	<ul style="list-style-type: none"> • to clarify that a dwelling can include a manufactured home.
A7 Staging	<ul style="list-style-type: none"> • to remove the reference to Stage 1B as being required to be carried out first, and to allow Stage 1B (the Seniors Living Development) to be undertaken concurrently with other stages.
A8 Seniors Living Development	<ul style="list-style-type: none"> • to remove the requirement for all future applications to comply with <i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</i> and <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i>.
D13 Building Code of Australia Compliance	<ul style="list-style-type: none"> • to specify when the Building Code of Australia is applicable.
E10 Section 94 Monetary Contribution	<ul style="list-style-type: none"> • to change the timing for payment of contributions and the obtainment of a Certificate of Compliance.
E11 Restriction of Use	<ul style="list-style-type: none"> • to change timing for the creation of restriction as to user for the Seniors Living Development.
F5 Plan of Management (Senior Living Development)	<ul style="list-style-type: none"> • to change to timing for the preparation of the Plan of Management.

5. STATUTORY CONSIDERATION

5.1 Section 75W

The project was originally approved under Part 3A of the EP&A Act. The project is a transitional Part 3A project under Schedule 2 to the EP&A (Savings, Transitional and Other Provisions) Regulation 2017. The power to modify transitional Part 3A projects under section 75W of the Act as in force immediately before its repeal on 1 October 2011 is being wound up – but as the request for this modification was made before the ‘cut-off date’ of 1 March 2018, the provisions of Schedule 2 (clause 3) continue to apply. Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove the modification under section 75W of the EP&A Act.

The Department is satisfied that the proposed changes are within the scope of section 75W of the EP&A Act.

5.2 Approval Authority

The Minister for Planning is the approval authority for the request. However, the Director, Regional Assessments may determine the request under delegation as:

- 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.

6. CONSULTATION

6.1. Consultation

The Department made the modification request publicly available on its website, and consulted with Kempsey Shire Council (Council) about the proposed modification.

Council did not raise any objection to the proposal.

No **public** submissions were received.

7. ASSESSMENT

In assessing the merits of the proposal, the Department has considered:

- the modification application and associated documents
- the Environmental Assessment and conditions of approval for the original project (as modified)
- all submission received on the proposal and the Proponent's response to the submissions
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act.

An assessment of the proposed modification to each condition is provided in **Table 2** below.

7.1 Assessment Issues

Table 2: Assessment of Proposed Modifications

Condition	Consideration	Recommendation
Condition A1 – Project Description	<ul style="list-style-type: none"> • The proposal seeks to modify Condition A1 to clarify that a future dwelling can include a conventional dwelling house or a manufactured home. The modification is requested to clarify that manufactured homes would be permitted on the SLD lot. • The Department notes that pursuant to <i>State Environmental Planning Policy No 36- Manufactured Home Estates</i> (SEPP 36) a manufactured home estate means <i>land on which manufactured homes are, or are to be, erected</i>. This means the erection of two or more manufactured homes on the site would meet the definition of a MHE. • SEPP 36 also states that '<i>development for the purposes of a manufactured home estate permitted to be carried out by this Policy may be carried out only with the development consent of the council</i>'. • Development for the purpose of a MHE requires development consent under SEPP 36, and approval to operate a MHE must also be obtained under section 68 of the <i>Local Government Act 1993</i> (Local Government Act). • The Department notes the proposed wording of Condition A1, which describes a SLD which may also include manufactured homes, would likely authorise a MHE on the site without the need for a further DA. • The Department also notes that further development consent for manufactured homes (if the development is not characterised as development for the purpose of a MHE under SEPP 36) may not be required, as the installation of 'a manufactured home, moveable dwelling or an associated structure on land' can be approved by Council under section 68 of the <i>Local Government Act 1993</i>. Further, section 89 of the Local Government Act, (which outlines the matters to be considered for the approval of installation of a MHE under section 68 the <i>Local Government Act</i>) does not require <i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</i> (Seniors Living SEPP) to be considered. • The Department has carefully considered the proposal and does not support the proposed amendments to Condition A1 as the original approval and subsequent modifications have not considered or approved a MHE (or the installation of a manufactured home) to be constructed on the SLD lot. • The Department therefore considers that separate development consent is 	The Department recommends amending condition A8 to clarify that the seniors living development can proceed, by either conventional dwellings or a manufactured homes estate subject to a separate Development Application.

Condition	Consideration	Recommendation
	<p>required for a MHE. This would ensure any future proposal for a MHE is subject to a detailed merit assessment. It would also ensure any manufactured homes to be used for seniors housing are considered against the accessibility, amenity and servicing requirements of the Seniors Living SEPP.</p> <ul style="list-style-type: none"> To clarify this position the Department recommends amending Condition A8 to include a note advising that the seniors living development may proceed, by either conventional dwellings or a MHE, subject to a separate Development Application. 	
Condition A7 – Staging	<ul style="list-style-type: none"> The proposal seeks approval to modify Condition A7 to delete the reference to Stage 1B (the Seniors Living Development) as being required to be carried out first, and to state that Stage 1B may occur concurrently with the other stages of the overall development. The modification is requested to clarify the Seniors Living Development is not required to be completed before Stages 1C, 2 and 3 can commence, so as not to delay these stages due to the size of the Seniors Living Development. The Department notes staging was a key issue considered as part of MOD 3, and Council raised concern about the timing of the provision of the north-south road. Council have since advised that they raise no objection to the proposed modification to staging. The Department considers the proposed modification is acceptable as it would not impact on the provision of the north-south road, as Stages 1A, 1C, 2 and 3 are still required to be developed first. It would also ensure other stages are not delayed by the completion of the Seniors Living Development. 	The Department has recommended a modified Condition A7 as proposed by the Proponent, to delete the reference to Stage 1B as being required to be carried out first, and to state that Stage 1B may occur concurrently with the other stages of the overall development.
Condition A8 BASIX	<ul style="list-style-type: none"> Condition A8 requires future development applications for dwellings to address <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i>. The proposal seeks to modify Condition A8 to remove the requirement that all future development applications must address the requirements of <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i>, as future development on the site may include manufactured homes, which do not require BASIX certificates. The Department considers it is unnecessary to specify that BASIX shall be addressed, as it would be captured as part of future development approvals where required anyway. Therefore, the Department recommends the condition be updated to remove the reference to BASIX. 	The Department has recommended amending Condition A8 to remove the reference to BASIX.
Condition D13 – Building Code of Australia Compliance	<ul style="list-style-type: none"> The proposal seeks to modify Condition D13 to state that only work to which the Building Code of Australia (BCA) is applicable is required to be carried out in accordance with the provisions of the BCA. The current condition states that <u>all</u> building work shall be carried out in accordance with the BCA. The Department considers the modified condition is acceptable as it would clarify that the BCA should only be applied where relevant. 	The Department has recommended a modified Condition D13, to state that only work to which the BCA is applicable must be carried out in accordance with this Code.
Condition E10- Section 94 Contributions	<ul style="list-style-type: none"> The proposal seeks to modify Condition E10 to change the timing for the payment of contributions from prior to the endorsement of a Subdivision Certificate for each stage to prior to: <ul style="list-style-type: none"> the endorsement of a Subdivision Certificate for any stage of the residential subdivision, and in proportion to the additional lots created by that stage; or the issue of a Construction Certificate for any conventional dwelling house in the Seniors Living Development; or the installation of any manufactured home within each stage in the Seniors Living Development. Similarly, the proposal seeks to change the timing of the issue of a Compliance Certificate under section 305 of the <i>Water Management Act 2000</i>. The Department considers the proposed triggers referencing a dwelling house and manufactured home are not appropriate as they are not permitted by the current approval. Further, the Department considers the current timing of the condition remains appropriate as it provides a clear trigger for the requirement to be met. 	The Department has recommended Condition E10 to state that timing for the payment of contributions may be varied if agreed to by Council in writing.

Condition	Consideration	Recommendation
	<ul style="list-style-type: none"> However, the Department notes Council would be responsible for future development applications for dwellings on the site, and the payment of contributions in proportion to the dwellings or lots approved on the site maybe acceptable, subject to Council's agreement in writing. The Department has recommended that Condition E 10 be modified accordingly. 	
Condition E11 – Restriction of Use	<ul style="list-style-type: none"> The proposal seeks to alter Condition E11 to modify the timing of the creation of a restriction as to user, relating to occupation of the dwellings by Seniors, from prior to the issue of a Subdivision Certificate for the Seniors Living Development to prior to: <ul style="list-style-type: none"> the issue of a Construction Certificate for a conventional dwelling home in the Seniors Living Development; or the issue of an approval to install a manufactured home in the Seniors Living Development; or the issue of a Construction Certificate for the clubhouse or amenities building in the Seniors living Development. The Department considers the proposed triggers referencing a dwelling house and manufactured home are not appropriate, as they are not permitted by the current approval. Further the Department considers the current timing of the condition is the most appropriate time for the restriction to be created, as it provides a clear and more certain trigger for the requirement. The Department therefore recommends Condition E11 remains unchanged. 	No additional conditions or amendments necessary.
Condition F5 – Plan of Management	<ul style="list-style-type: none"> The proposal seeks to amend Condition F5 to modify the timing for preparation of a Plan of Management from prior to the issue of any Occupation Certificate for the Seniors Living Development to prior to: <ul style="list-style-type: none"> the issue of a Construction Certificate for a conventional dwelling home in the Seniors Living Development; or the issue of an approval to install a manufactured home in the Seniors Living Development; or the issue of a Construction Certificate for the clubhouse or amenities building in the Seniors living Development. The Department considers the current timing of the condition is the most appropriate time for the Plan of Management as it would be clearly linked to the operation of the Senior Living development. Further, the Department considers the proposed triggers referencing a dwelling house and manufactured home are not appropriate, as they are not permitted by the current approval. The Department therefore recommends Condition F5 remains unchanged. 	No additional conditions or amendments necessary.

8. CONCLUSION

The Department has assessed the modification request and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is appropriate on the basis that:

- it seeks make administrative changes to the conditions of approval and does not propose any physical changes to the approved development
- it would ensure that separate development approval is required for future dwellings or a MHE
- council raised no objection to the proposed modifications.

Consequently, it is considered that the proposal is in the public interest and it is recommended that the modification be approved subject to the recommended conditions.

9. RECOMMENDATION

In accordance with section 75W of the *Environmental Planning and Assessment Act 1979*, it is recommended the Director, Modification Assessments, as delegate of the Minister for Planning:

- **consider** the findings and recommendations of this report;
- **determine** that the request falls within the scope of section 75W of the EP&A Act;
- **approve** the modification request MP 08_0167 MOD 4; and
- **sign** the attached notice of modification (**Attachment A**).

Recommended by:



Emma Butcher
Planning Officer
Regional Assessments

DECISION

Approved by:



Anthony Witherdin
Director
Regional Assessments

APPENDIX A: NOTICE OF MODIFICATION

A copy of the notice of modification can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9078

APPENDIX B: SUPPORTING INFORMATION

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9078

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9078