

ASSESSMENT REPORT
Section 75W Modification
280 Residential Lot Subdivision, Pacific Highway and Pine
Crescent Sandy Beach, MP05_0083 MOD 3

1. BACKGROUND

This report is an assessment of a request to modify the Concept Plan Approval for the Sandy Beach residential subdivision (MP05_0083 MOD 3) which is located in the Coffs Harbour local government area. The request has been lodged by Gadens Lawyers, on behalf of Elite Constructions Pty Ltd, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The request seeks approval to modify Condition A6 of the Concept Approval to extend the lapse date by two years from 20 December 2015, to 20 December 2017.

2. SUBJECT SITE

Sandy Beach is located on the NSW mid north coast approximately 450 kilometres (km) north of Sydney and 22 km north of Coffs Harbour. It is a small coastal town of approximately 2,125 people.

The site is located adjacent to the Pacific Highway and Pine Crescent, Sandy Beach and is comprised of Lot 22 in Deposited Plan 1070182 and lots 497 and 498 in Deposited Plan 227298 (see **Figure 1**).

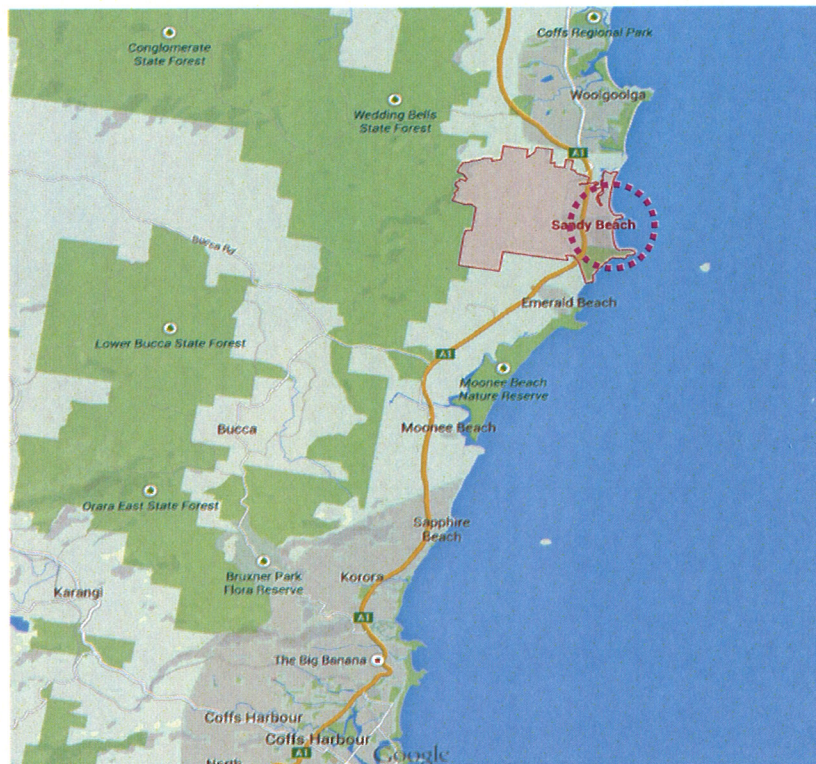


Figure 1: Site Location

The site is around 49.56 hectares (ha) in area, is irregular in shape and currently contains various native and introduced plant species. It is bounded by Coffs Harbour Regional Park to the east, the village of Sandy Beach to the south, the Pacific Highway to the west, and Hearn's Lake and Double Crossing Creek to the north (see **Figure 2**).



Figure 2: Subject Site

3. SITE HISTORY

On 20 December 2010, the then Minister for Planning approved MP05_0083 for a 280 lot Community Title subdivision which is comprised of:

- residential lots ranging in size between 400 m² and 2,000 m²;
- road, cycle and pedestrian traffic routes;
- indicative architectural concepts for six building types;
- noise attenuation barriers;
- recreational open space;
- ecological buffers and environmental protection areas; and
- vegetation, landscape, habitat, bushfire foreshore management and stormwater management concepts.

The previous land owner sought to modify the Concept Plan on two occasions. In this regard, MP05_0083 MOD 1 sought to clarify the name of the Proponent in the Instrument of Approval, this application was withdrawn on 19 September 2012.

MP05_0083 MOD 2 sought approval to amend Condition A2 and delete Conditions B1, B4, C6, C8, C11 and C13. This application is currently on hold pending the payment of outstanding fees.

4. PROPOSED MODIFICATION

On 17 March 2015, the Proponent submitted a section 75W modification request seeking approval to modify Condition A6 of the Concept Plan Approval to:

- extend the lapse date by two years from 20 December 2015, to 20 December 2017; and
- specify that the Concept Plan will lapse unless the Proponent lodges a development application with the Council for works within the Concept Plan area by 20 December 2017.

The Proponent has advised the Department it is seeking to extend the lapse date on the basis that the current landowner only acquired the site in February 2015, and it is unlikely that the Proponent will be able to obtain development consent for the subdivision of the site prior to the current lapse date (20 December 2015).

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 Concept Plan approval. As the modification request seeks to modify Condition A7 of the Concept 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 his 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 *Environmental Planning and Assessment Regulation 2000* (EP&A Reg). The Minister (or his delegate) may approve or refuse of the modification of the project under section 75W of the EP&A Act.

5.2 Delegated Authority

Under the Instrument of Delegation dated 16 February 2015, 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 less than 25 public submissions in the nature of objections.

The proposal complies with the terms of the delegation as Coffs Harbour City Council (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 in the nature of objections. 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 24 March 2015, and was referred to the Council for comment. Given the minor nature of the modification request, it was not publicly exhibited or notified to other agencies.

The Council advised that it had no comments in relation to the modification request. In addition, 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 report for the original Project Application.

Based on the above, the Department considers the key issue for assessment is the appropriateness of extending the lapse date and lapsing provisions specified in Condition A6 of the Project Approval. This issue is discussed in detail below.

6.1 Modification of Condition A6

As previously outlined the modification request seeks approval to amend Condition A6 to:

- extend the lapse date from five years from the date of approval (20 December 2015) to seven years from the date of approval (20 December 2017); and
- specify that the Concept Plan will lapse unless the Proponent lodges a development application with the Council for works within the Concept Plan area by 20 December 2017.

The current and proposed wording of Condition A6 is reproduced in full below:

Current wording:

"A6 This Concept Approval shall lapse five (5) years after the date the approval is endorsed by the Minister, unless the works the subject of any related application are physically commenced on or before that lapse date. The Director-General may extend this lapse date if the Proponent demonstrates to the satisfaction of the Director-General that the project remains current, appropriate and reflective of the best use of the site at the date the approval would otherwise lapse".

Proposed wording:

"A6 The Concept Plan approval shall lapse seven (7) years after the date of the approval is endorsed by the Minister, unless an application is submitted for approval to carry out a project or part of a project for which concept approval has been given under this Concept Plan before that lapse date".

The Department has reviewed the Proponent's preferred wording for Condition A6 and has concluded that it would be appropriate to extend the lapse period by two additional years to 20 December 2017, despite it being beyond the default lapse date for all Part 3A transitional projects in Schedule 6A of the EP&A Act on the basis that:

- it would provide sufficient time for the current landowner to obtain a development consent for works within the Concept Plan area prior to the approval lapsing; and
- the site is located within the Sandy Beach growth area of the *Mid North Coast Regional Strategy* and the preservation of the Concept Plan will assist the Council in achieving its dwelling target of 19,200 new dwellings by 2031.

Notwithstanding the above, the Department does not support the Proponent's request to modify Condition A6 to preserve the Concept Approval by specifying that the approval will not lapse if a development application to carry out development within the Concept Plan area is lodged within, or before the lapse date. This is because the Proponent could obtain development consent and never commence works on-site, which is contrary to the Department's standard practice. Given the above, it is recommended that Condition A6 be amended as follows:

"A6 *The Concept Plan approval shall lapse seven (7) years after the date the approval is endorsed by the Minister, unless the works the subject of any related development consent within the Concept Plan area are physically commenced on or before that lapse date*".


7. CONCLUSION

The Department has assessed the proposed extension of the lapsing date and is satisfied that it is consistent with the intent of the original Concept Plan approval and will not result in any additional environmental impacts. In addition, the Department has concluded that extending the lapse date of the Concept Plan will assist the Council in achieving the density targets outlined in the *Mid North Coast Regional Strategy*. Accordingly, the modification request is recommended for approval subject to conditions.

8. RECOMMENDATION

It is recommended that the Manager, Industry Assessments, as the delegate of the Minister for Planning, under section 75W of the EP&A Act, approve the MP05_0083 MOD 3 as set out in the recommended Instrument of Modification (see **Appendix B**).

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APPENDIX A: MODIFICATION REQUEST 05_0083 MOD 3

Refer to http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6981

APPENDIX B: INSTRUMENT OF MODIFICATION
