



NSW GOVERNMENT
Department of Planning

Y08/3334

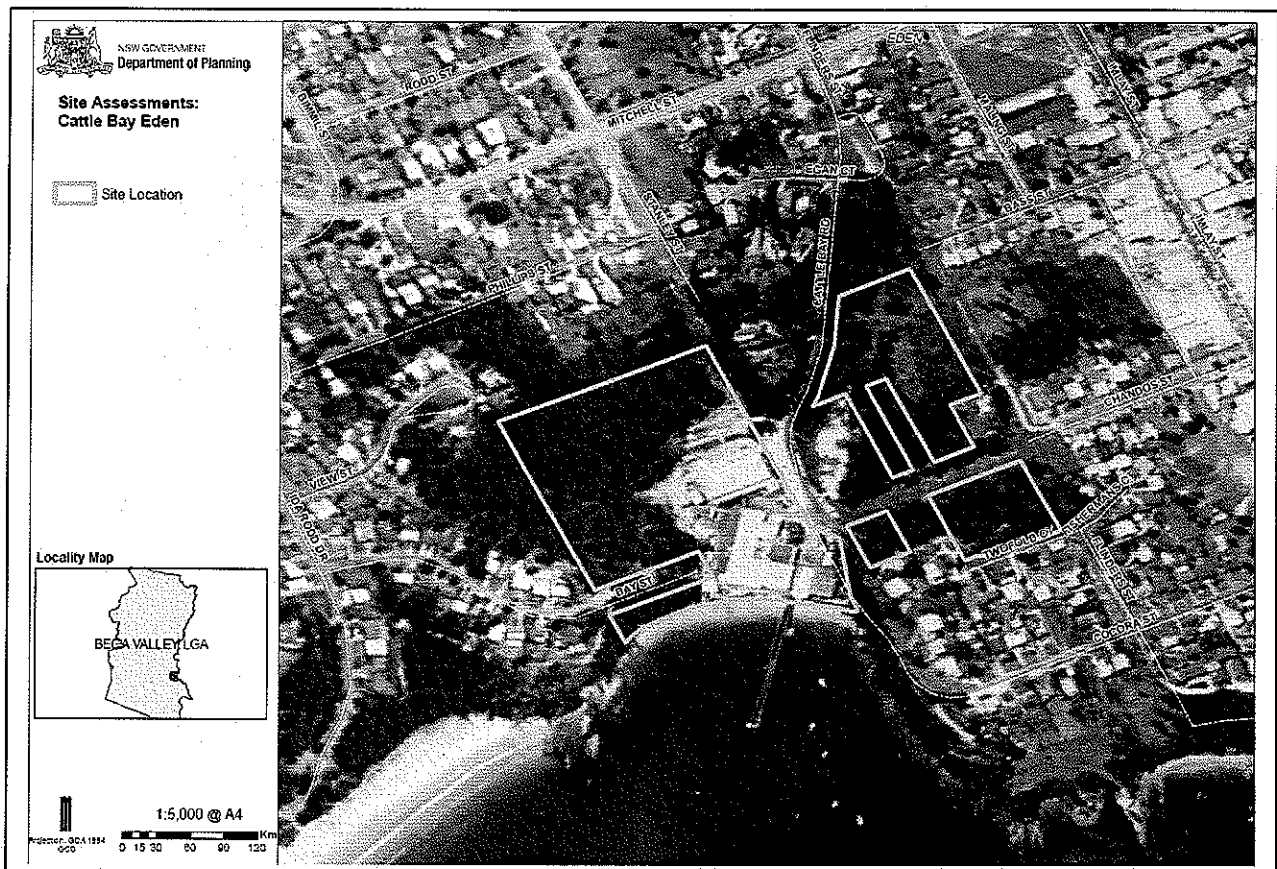
ASSESSMENT REPORT

MIXED TOURIST & RESIDENTIAL DEVELOPMENT, SECTION 75W, MODIFICATION OF CONCEPT APPROVAL 05_0032

BACKGROUND

- On 22 August 2008, the Minister for Planning, granted concept approval 05_0032 for a mixed tourist and residential development at Cattle Bay Road, Cattle Bay, Eden in the Bega Valley local government area, subject to conditions (**Figure 1** shows the location of the site).
- On 2 December 2008, the proponent JBA Urban Planning Consultants, on behalf of Eden Resort Hotel Pty Ltd lodged a modification application pursuant to section 75W of the *Environmental Planning & Assessment Act 1979* (the Act) proposing to modify various conditions of the concept approval 05_0032 (**Tag B**). The modification requests demolition and remediation being subject to Part 4 and not Part 3A, and minor amendments to correct anomalies.
- The site has frontage to Cattle Bay Road, and is bounded by residential development.

Figure 1 – Site Location



MODIFICATION SOUGHT

Demolition and remediation as Part 4 development (part (e))

- The modification seeks variation of the approval so that all future development for Precinct A (tourist precinct) other than demolition of the ex-cannery buildings and site remediation, are subject to Part 3A of the Act.
- The proponent argues that demolition and site remediation are not matters of State significance and are more appropriately determined by Council. They advised that any remediation would be minor and not Category 1 works under SEPP 55. The request seeks certainty and clarification that not all works will be required to be a Major Project.
- Council is well placed to determine a DA for demolition and site remediation given its site knowledge. The request is considered reasonable and the Concept Approval should be modified accordingly. This is reflected in the modified part (e) in the attached modifying instrument.

Description of land (Schedule 1)

- The request seeks the deletion of two lots included in error in the description of land at Schedule 1 of the Concept Approval. This is reflected in a modified Schedule 1 in the attached modifying instrument.

Staging of landscaping and provision of public foreshore access (Condition A1(7))

- The modification seeks clarification of staging to provide that landscaping and public foreshore access is tied to Stage 1 or Stage 2 whichever occurs first. It seeks a corresponding change to the definition of Stage 1 (Definitions Schedule 1) to exclude demolition.
- The request is consistent with the intent of the Concept Approval to ensure provision of landscaping and public foreshore access with any development of (tourist) Precinct A, but refines the requirement to preclude its provision for demolition works.
- The request is considered reasonable and is reflected in modified Condition A1(7) and the definition of 'Stages: Stage 1' (Definitions Schedule 1) in the attached modifying instrument.

Gross floor area and height (Condition C1(1))

- The modification seeks clarification that the 3 storey building forms in Precincts E1 and E2 are subject to a 10m maximum height limit, and not 7.5m as stated in the table to Condition C1(1).
- Condition C1(1) sets a 2-3 maximum height (storeys) for Precincts E1 and E2 with a maximum height of 7.5m AHD. The request is considered reasonable as it will correct an anomaly in the condition. It is reflected in modified Condition C1(1) in the attached modifying instrument.

FSR limit Precincts F1 and F2 (Condition C1(2))

- Condition C1(2) sets a 0.5:1 maximum FSR for Precincts B, E1, F1 and F2, once subdivided into lots for the relevant Precinct buildings. The modification seeks a change in the maximum combined FSR for Precincts F1 and F2 to 0.57:1, on the basis that the Environmental Assessment sought a maximum FSR of 0.57:1, notwithstanding several references elsewhere in the EA to the proposed FSR not exceeding 0.5:1 for development on the site generally.

- The modification does not involve any change in the approved maximum gross floor area of Precincts F1 and F2 but seeks correction of an anomaly, acknowledging a precinct-wide FSR of 0.57:1.

- The condition currently reads:

(2) Notwithstanding the maximum GFAs in the table above, all future residential buildings, including single dwelling houses and multi-unit development in Precincts B, E1, F1 and F2, shall not exceed an FSR of 0.5:1 for the subject site once subdivided into lots for those relevant Precinct buildings. Note, depending upon the final subdivision layout, this will mean that the maximum GFAs indicated above may need to be reduced and the FSR in the table above shall prevail.

- The note in the condition refers to the fact that although the combined FSR for Precincts F1 and F2 may work out at 0.57:1, in all likelihood, once the site is subdivided, Precinct F1 contains a Residential Flat Building and based on the proposed future site are indicated in the EA, the resultant FSR will be 0.82:1. The development in Precinct 2 will be residential houses on single lots. In effect, the development for the RFB will be 'borrowing' from the site area of the single houses'. The 'Note' in the condition serves to highlight this issue and to indicate that in order to achieve an FSR of 0.57:1, the GFA will need to be reduced.
- To be more clear, the note will be amended to read (amendments indicated in bold):

*(2) Notwithstanding the maximum GFAs in the table above, all future residential buildings, including single dwelling houses and multi-unit development in Precincts B and E1, shall not exceed an FSR of 0.5:1, **and in Precinct F shall not exceed an FSR of 0.57:1.** Note, **once the site is subdivided, depending upon the final subdivision layout, this will mean that the maximum GFAs indicated above may need to be reduced and the FSR above shall prevail.***

SEPP 65 (Condition C2(1))

- The modification seeks a minor addition to the condition, clarifying its relevance to residential flat buildings only. The request is minor and is reflected in modified Condition C1(2) in the attached modifying instrument.

CONSIDERATION

- Under s 75W(4) of the Act, the Minister may modify a project or concept approval with or without conditions. Section 75W(7) does not limit the circumstances in which the Minister may modify a Part 3A Concept Approval.
- In accordance with s 75X of the Act, the modification request was made publicly available on the Department's website. Due to the nature of the proposed modifications, there was no need to issue environmental assessment requirements under s 75W(3) of the Act, or to publicly exhibit the modification. Council will subsequently publicly notify its receipt of a Part 4 DA for demolition and remediation.

DELEGATION

- Under the Instrument of Delegation dated 7 June 2007, the Minister for Planning has delegated to the Executive Director, Major Project Assessments, ~~her~~ powers and functions under s 75W (Modification of Minister's approval) of Part 3A of the Act, subject to conditions relating to capital value, the number of submissions, and floor area/height of buildings.

- The proposed modifications do not have a capital investment value in terms of the development itself; no submissions were received (the modification was not exhibited); and the modification does not increase the gross floor area or maximum height of any approved building envelopes. Therefore, the Executive Director may exercise powers under the delegation. ✓

CONCLUSION

- The proposed modifications will ensure that Council can assess a DA for demolition and site remediation. The Department considers that the proposed modifications are relatively minor, seek to correct anomalies in the Concept Approval, will result in substantially the same development, and place no further constraints upon the built or natural environmental features of the locality. Accordingly, the modification is supported and may be determined under section 75W(4) of the Act.

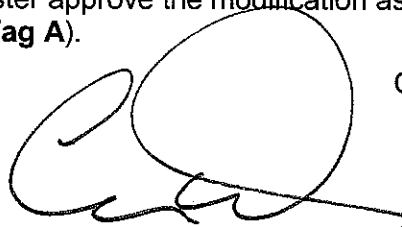
RECOMMENDATION

- It is recommended that the Executive Director, Major Project Assessments, as delegate of the Minister approve the modification as set out in the attached modifying instrument (Tag A).



Heather Warton
Director
Coastal Assessments

22/12/08



Chris Wilson
Executive Director
Major Project Assessments

Contact: Jane Flanagan
Coastal Assessments
Phone: 9228 6431

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