



# ***Gwandalan Residential Development***

Part 3A Modification  
Assessment  
(MP 10\_0084 MOD 1)



April 2019

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# Glossary

Abbreviation	Definition
Proponent	Scape Properties Pty Ltd
Council	Central Coast Council
Department	Department of Planning and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EP&A ST&OP Regulation	<i>Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i>
EPI	Environmental Planning Instrument
Guideline 2	Subsidence Advisory NSW Surface Development Guideline 2
LEP	Local Environmental Plan
LGA	Local Government Area
Minister	Minister for Planning
OEH	Office of Environment and Heritage
RtS	Response to Submissions
SANSW	Subsidence Advisory New South Wales
Secretary	Secretary of the Department of Planning and Environment
SEPP	State Environmental Planning Policy



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# 1. Introduction

## 1.1 Background

This report provides an assessment of an application seeking to modify the Concept Approval (MP 10\_0084) for an approved residential development at 85-95 Kanangra Drive, Crangan Bay, in the Central Coast local government area (LGA).

The application was lodged by ADW Johnson Pty Limited, on behalf of Scape Properties Pty Ltd (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The application seeks approval to remove the one storey height restriction that applies to approximately 60 percent of the site, and permit two-storey development across the entire site based on the new mine subsidence guidelines.

## 1.2 Subject site

The subject site is located at Crangan Bay, approximately 38 kilometres (km) north-east of Gosford and 30km south-west of Newcastle in the Central Coast LGA.

The site is bounded by Gwandalan village to the north, Lake Macquarie and Crangan Bay to the east, vegetated land to the south and Kanangra Drive to the west (see **Figure 1**). The site is currently undeveloped and is partially undermined from previous underground mining activity in two underlying seams, the Wallarah seam and the Great Northern seam.



**Figure 1** | Aerial view of the subject site shaded in yellow (Base source: Sixmaps)

### 1.3 Approval History

On 12 July 2012, the then Planning Assessment Commission granted Concept Plan approval 10\_0084 for:

- residential development of a 62.24 hectares (ha) development site into a maximum of 623 dwellings across two stages, referred to as Hamlet A and Hamlet B;
- local open space and bushland reserves;
- dedication of 205.75 ha of Conservation Lands;
- conceptual lot layout; and
- associated infrastructure.



## 2. Proposed Modification

On 14 December 2018, the Proponent lodged a section 75W modification request (MP 10\_0084 MOD 1) seeking approval to modify the Statement of Commitments to remove the one storey building height restriction that applies to approximately 60 percent of the site.

The Proponent seeks to remove the height restriction because Subsidence NSW have recently released a new guideline (Guideline 2) that applies to the site and now allows for the construction of two storey dwellings across the site rendering the previous height restriction unnecessary.



## 3. Statutory Context

### 3.1 Section 75W

The Concept Approval was originally approved under Part 3A of the EP&A Act. The power to modify concept plans approved under Part 3A of the EP&A Act under former section 75W of the EP&A Act is being wound up. Clauses 3BA(2) and (3) of Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (EP&A (ST&OP) Regulation) provide that an approved concept plan cannot be modified under section 75W on or after the cut-off date of 1 March 2018, unless the request to modify was lodged before 1 March 2018.

However, Clause 3BA(5) of Schedule 2 to the EP&A (ST&OP) Regulation provides that a Concept Plan may continue to be modified under section 75W in response to a request lodged before or after 1 March 2018 if the Minister is satisfied that:

- a) the proposed modification is to correct a minor error, misdescription or miscalculation, or*
- b) the proposed modification is of minimal environmental impact, or*
- c) the project to which the concept plan as modified relates is substantially the same as the project to which the concept plan currently relates (including any modifications previously made under section 75W).*

The proposal seeks to amend an existing Statement of Commitment in the approval. The Department is satisfied that the proposal is within the scope of clause 3BA(5)(b) as it is of minimal environmental impact and the proposal as modified would remain substantially the same. **Section 5** of this report provides an assessment of the impacts associated with this proposal.

### 3.2 Environmental Planning Instruments

The following EPIs are relevant to the application:

- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy No. 71 (Coastal Protection);
- State Environmental Planning Policy No. 55- Remediation of Land;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004; and
- Wyong Local Environmental Plan 2013 (Wyong LEP 2013).

The Department has considered the proposed modification against these above-mentioned EPIs in its original assessment. The Department considers the modification does not result in any significant changes that would alter the considerations and conclusions made as part of the original assessment.

#### State Environmental Planning Policy (Coastal Management) 2018 (Coastal SEPP)

The Department has also considered the proposal against the requirements of the Coastal SEPP which commenced on 3 April 2018. The Coastal SEPP consolidates and replaces SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection). The Department considered the development against SEPP 14 and 71 in its original assessment.

The Coastal SEPP identifies the site as being located within the Coastal Environment Area and Coastal Use Area and therefore clauses 13 and 14 apply. The Department has considered the proposal against these clauses and is satisfied that the proposal is consistent with the Coastal SEPP as it does not seek to change the footprint of the development and would not result in any additional coastal impacts beyond those already assessed and approved in the original assessment.

### 3.3 Consent Authority

The Minister for Planning is the consent authority for the application. However, the Executive Director, Key Sites and Industry Assessments, may determine the application under delegation as:

- Council has not made an objection;
- a political disclosure statement has not been made; and
- a total of two public submissions were received objecting to the proposed modification.



## 4. Engagement

### 4.1 Department's Engagement

The Department notified the modification request for 14 days between 21 February 2019 and 7 March 2019. The request was made publicly available on the Department's website, notified to Subsidence Advisory NSW (SANSW), Central Coast Council (Council) and surrounding landowners and residents.

The Department received a total of four submissions, comprising two agency submissions and two public submissions. A summary of the submissions is provided below, and a full copy of the submissions is provided in **Appendix A**.

**Council** did not object to the proposed modification, noting that the development controls under the Wyong LEP 2013 permit two storey dwellings within the subject zone.

**SANSW** did not object to the proposed modification.

## 4.2 Public Submissions

The Department received two public submissions objecting to the proposal.

Key concerns raised in the public submissions included:

- the removal of the height restriction will impact on the diversity of housing across the site; and
- the modification provides opportunity for wall to wall two storey development over the site.

## 4.3 Response to Submissions

On 15 March 2019, the Proponent provided a Response to Submissions (RtS) to address the issues raised during the notification period (**Appendix A**). The RtS is available on the Department's website.



# 5. Assessment

In assessing the merits of the proposed modification, the Department has considered the:

- the modification and associated documents (**Appendix A**)
- the Environmental Assessment and conditions of approval for the original concept plan
- submissions received on the proposal and the Proponent's response to the submissions
- relevant environmental planning instruments, policies and guidelines
- requirements of the EP&A Act.

The modification request seeks to remove the one storey building height limit that applies to approximately 60% of the development, to allow for two storey development across the site.

The height limit was imposed as the site was identified as being potentially impacted by subsidence from past underground mining activity. This was consistent with the Subsidence Advisory NSW's guideline at that time, which identified the need to limit development to one storey in areas where the risk of predicted subsidence and tilts exceeded 0.4m and 4mm/m.

The Department notes the height restriction was imposed in response to potential subsidence risks only. It was not imposed to mitigate or manage any potential visual, built form or amenity impacts associated with the development.

The Proponent now seeks to remove this restriction as SANSW's updated guideline (Surface Development Guideline 2) now permits two storey buildings to be developed in accordance with the guideline.

The Department notes that SANSW and Council do not object to the deletion of the height restriction. SANSW confirmed that the updated guideline would permit two storey development on all of the properties within the approved residential development area.



The Department considers the proposal to remove the building heights restriction is acceptable as:

- it aligns with the current Subsidence Advisory NSW Guideline 2 that applies to the site
- applications for subdivision and residential development will be assessed in accordance with the Guideline and include the special requirements to ensure future development can tolerate subsidence impacts, therefore minimising the risk of damage
- it aligns with Council's current planning controls for the site, which permits two storey buildings up to 8.5m in height within the site
- it is consistent with the height and character of other development within Gwandalan and would not result in any significant visual or amenity impacts beyond those assessed as part of the original application
- it would not result in any significant impacts on the diversity of housing in the area.

Overall, the Department's assessment concludes that the proposal is reasonable and recommends that the modification be approved.



## 6. Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department considers the proposed modification is appropriate as it:

- complies with the relevant statutory provisions and remains consistent with relevant EPIs
- is of minimal environmental impact and the proposal as modified would remain substantially the same
- demonstrates consistency with SANSW's updated guideline, with no issues raised by Council or SANSW.

Consequently, the Department recommends the modification request be approved (see **Appendix B**).



## 7. Recommendation

It is recommended that the Executive Director, Key Sites and Industry Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report;
- **determines** that the application (MP 10\_0084 MOD 1) falls within the scope of section 75W of the EP&A Act;
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application;
- **modify** the consent MP 10\_0084 MOD 1; and
- **signs** the attached approval of the modification (Appendix B)

Recommended by:

**Anthony Witherdin**  
Director  
Regional Assessments



## 8. Determination

The recommendation is: **Adopted by:**

*Sargeant*

**Anthea Sargeant**

Executive Director

Key Sites and Industry Assessments

29/4/19



# Appendices

## Appendix A – Relevant Supporting Information

The following supporting documents and supporting information to this assessment report can be found on the Department's website at:

1. Modification Request  
[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9815](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9815)
2. Submissions  
[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9815](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9815)
3. Response to Submissions  
[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9815](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9815)

## Appendix B – Notice of Modification

The recommended modification of Concept Plan approval can be found on the Department's website at:  
[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9815](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9815)