



10 January 2019

Modification to Magenta Shores Integrated Tourist Facility (DA 32-1-2003 MOD 5)

1. INTRODUCTION

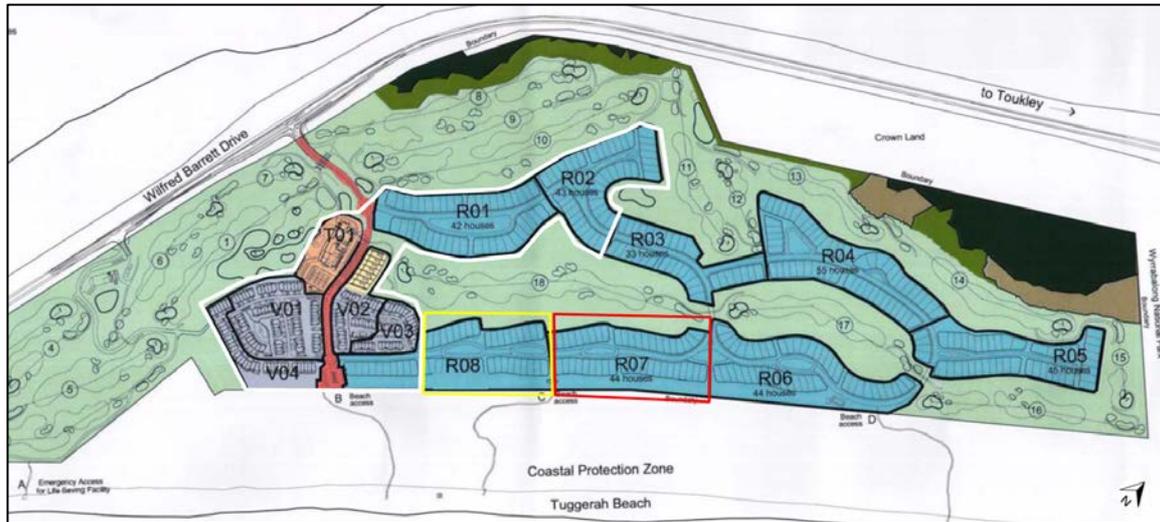
1. On 12 November 2018, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning and Environment (**Department**) a modification request from Option SIV Real Estate Fund, Tung Chit Real Estate Investment Australia Pty Limited, Zhao Family Trust (**Proponent**) to modify the Development Approval (DA 32-1-2003) for the Magenta Shores integrated residential and tourist development at 300 Wilfred Barrett Avenue, The Entrance North (**Application**).
2. The Proponent has lodged the Application pursuant to section 75W of *Environmental Planning and Assessment Act 1979 (EP&A Act)*. The Application is a transitional Part 3A project under clause 2 of Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (Transitional Regulation)*.
3. The Commission is the consent authority in respect of the Application in accordance with the Minister's delegation of September 2011. This is because the Department received more than 25 submissions from the public objecting to the Application.
4. Professor Mary O'Kane AC, Chair of the Commission, nominated Chris Wilson (Chair), Catherine Hird, and Russell Miller AM to constitute the Commission to determine the Application.

1.1 Site and locality

5. The Proponent's Environmental Assessment (**EA**) notes that Magenta Shores has a total area of 101.92 hectares (ha) with frontages of approximately 1.8 kilometres (km) to Wilfred Barrett Drive to the west and 2.31 km to the Coastal Protection Zone to the east. It has northern and western boundaries of approximately 378 metres (m) and 771 m respectively to the Wyrabalong National Park. The site is located approximately 5.2 km south of Toukley, 4.7 km north of The Entrance and approximately 100 km north of the Sydney CBD.
6. The Department's assessment report, dated 6 November 2018, notes that the Magenta Shores Masterplan Approval (**Masterplan Approval**) (DA 32-1-2003) comprises a tourist resort, golf course, and permanent residential dwellings. The Masterplan is divided into 13 stages of which seven have been, or are in the process of being, developed including the resort area and some permanent dwellings.
7. This modification application relates to the lots within Stage R07 (edged red in *Figure 1*). The site is located east of the golf course and west of the coastal protection zone. The Masterplan Approval envisaged the provision of up to 44

permanent residential lots within Stage R07.

Figure 1 – Magenta Shores Staging Plan



Source: DA 32-1-2003

8. The Department’s assessment report also states that Stage R07 does not contain any significant vegetation, is relatively flat and does not contain any roads or other supporting infrastructure.

1.2 Background to the Modification Application

9. The Minister for Planning granted Masterplan Approval for an integrated tourist facility on 3 February 2004.
10. The approval comprised:
 - a resort with a maximum gross floor area (GFA) of 10,000 square metres;
 - an 18-hole golf course and ancillary facilities;
 - a maximum of 611 tourist and permanent residential accommodation comprising:
 - 93 resort suites;
 - 120 resort accommodation villas and recreational facilities; and
 - 398 permanent residential dwelling.
 - vehicular and pedestrian access and circulation arrangements; and
 - subdivision and landscaping.
11. The Masterplan has been modified four times as outlined in *Table 1*.

Table 1 – Modification to the Masterplan Approval (DA 32-1-2003)

Reference	Description of Modification	Approved
MOD 110-10-2004	Deletion of 93 resort suites, reduction of 46 permanent dwellings, increase of 43 resort villas and modifications to landscaping, subdivision and building heights and locations	10 February 2005

MOD 70-5-2006	Modification of Rural Fire Service conditions	4 October 2006
MOD 23-3-2007	Modification permitting the ownership of small dogs	22 May 2007
DA 32-1-2003 – MOD 4	Increase of 15 permanent residential lots, reconfiguration of lot layouts and size, removal of pedestrian access to the golf course and realignment of roads, including removal of pocket parks	23 December 2016

1.3 Summary of the Application

12. According to the Department’s assessment report the Application before the Commission for determination originally proposed to modify DA 32-1-2003 by seeking approval to:
 - increase the number of permanent residential lots within Stage R07 by 14 lots (from 44 to 58 lots);
 - reconfigure the subdivision layout; and
 - delete two proposed pocket parks and a pedestrian link to the golf course.
13. The Proponent’s original EA identified that the Masterplan as relevant to Stage R07 “*indicates a high-level concept plan of approximately 38 lots and a curved road layout on this section of the site. This is proposed to be amended to 58 lots with a road arrangement that better matches the rest of the development on the site.*”
14. Following the Department’s public notification of the application, the Proponent submitted a Response to Submissions (**RtS**) after a request for further information from the Department dated 8 August 2018. The RtS amended the proposal by removing 10 residential lots, reconfiguring the lot layout and reinstating one pocket park.
15. The Application, as amended, seeks approval for:
 - Four additional permanent residential lots within Stage R07 (from 44 lots to 48 lots);
 - A reconfigured lot layout resulting in the provision of:
 - 23 lots on the north western side of Pebble Beach Avenue ranging in size from 346.6 square metres (m²) to 554.6 m²; and
 - 25 lots on the south eastern side of the extended White Haven Avenue ranging in size from 336 m² to 426 m²
 - The realignment of Pebble Beach Avenue, including the removal of one of the two pocket parks located centrally within the roadway.

**The Commission notes that the Department’s assessment report refers to both Pebble Beach Avenue and White Haven Avenue as the street name for Stage R07. The Department has confirmed that their references are for the same street. From here on, the Commission will refer to the street name as White Haven Avenue.*

1.4 Stated need for modification

16. The Proponent states in its EA that,

“The proposed development is consistent with the relevant strategic planning

documents as it will provide additional housing for a growing population. This additional housing will also have economic impacts by generating demand for local services, contributing to employment growth. The proposal is part of the larger Magenta Shores development, which provides employment and attracts people to The Entrance, further enhancing the viability of local businesses”.

17. The Department notes in its assessment report that the Proponent has requested the modification on the basis that it rationalises the lot layout to make more efficient use of the site and address current market demand.

2. THE DEPARTMENT’S CONSIDERATION OF THE APPLICATION

2.1 Key steps in Department’s consideration of the Application

18. The Department received the modification request on 24 July 2017 and publicly exhibited the Application from 8 November 2017 until 22 November 2017. A total of 43 submissions were received during the exhibition period, including three from Government agencies and 40 submissions from the public.
19. None of the Government authorities objected to the proposal, all public submissions were in the form of objections.
20. On 19 December 2017 the Proponent submitted an RtS to the Department to address the issues raised in submissions. The RtS was updated on 20 February 2018 and 2 October 2018. The RtS contains further information and clarification of key issues raised by the Department, Government authorities, and the public. The RtS also included the following amendments to the proposal:
 - Reduction of 10 proposed lots (from 58 lots to 48 lots); and
 - Updated subdivision plan including:
 - Larger lots located adjacent to the beach
 - Reinstatement of the pedestrian link between the golf course and the proposed new road; and
 - Provision of a pocket park as an island in the three-way intersection at the northern end of the site.
21. The RtS was made available on the Department’s website and renotified along with the modification request between 2 October 2017 and 16 October 2017. Council, OEH and RMS provided comments. Council reiterated its comments from its previous submission and confirmed that future development applications lodged with Council will need to be compliant with the Wyong Local Environmental Plan (WLEP) 2013. The Office of Environment and Heritage (OEH) and Roads and Maritime Services (RMS) advised that they had no further comments.
22. One submission was received from the Magenta Community Association which did not raise any additional issues to those raised previously by the Association.

2.2 The Department’s assessment report

23. The Department’s assessment report identified the key assessment issue associated with the proposal as development density. The Department also considered other relevant matters including:

- consistency with the Masterplan Approval;
- pocket parks;
- size of lots adjacent to the beach;
- pedestrian link to the golf course;
- construction traffic;
- dwelling design;
- development precedent;
- property values and private agreements; and
- coastal management.

24. The Department's report concluded that the Application is acceptable as:
- *“the Proponent has amended the proposal in the RtS, addressing the majority of issues raised in public submissions*
 - *the increase of four residential lots within Stage R07 is minor and would not result in additional traffic, infrastructure or amenity impacts beyond those already assessed and approved in the original Masterplan*
 - *the modification is consistent with the Masterplan Approval and maintains its key features including access to the golf course and the beachfront*
 - *the Department supports the inclusion of a pocket park at the northern end of the site. However, to prevent the creation of an uncharacteristically straight road, the Department recommends the road layout be amended by the inclusion of an additional pocket park at the southern end of the site*
 - *the larger lots provided along the southern side of Pebble Beach Avenue, adjacent to the beach, are of an acceptable size and density*
 - *construction impacts would be considered in further detail by Council during the assessment of future subdivision / development applications.”*
25. The Department's assessment concludes, *“the modification request is approvable”*.

3. THE COMMISSION'S MEETINGS AND SITE VISIT

26. As part of its consideration and determination of the Application, the Commission met with various parties as set out below. All meeting transcripts and site inspection notes were made available on the Commission's website on 6 December 2018.

3.1 Meeting with the Department

27. On 3 December 2018, the Department met the Commission to discuss the Department's assessment of the Application.

3.2 Meeting with Central Coast Council

28. On 3 December 2018, the Commission held a teleconference with Central Coast Council to discuss the Application.

3.3 Meeting with the Proponent

29. On 3 December 2018, the Commission held a teleconference with the Proponent to discuss the Application.

3.4 Site inspection

30. On 12 December 2018, the Commission conducted an inspection of the site with representatives of the Proponent.
31. The Proponent provided a map to the Commission, which was made available on the Commission's website on 10 January 2019.

3.5 Public meeting

32. The Commission held a public meeting at The Entrance Leagues Club, 3 Bay Village Road, Bateau Bay NSW on 12 December 2018. A list of the five speakers that presented to the Commission is available on the Commission's website. A transcript of the public meeting and copies of the material tendered was also made available on the Commission's website on 19 December 2018 and 10 January 2019.
33. In summary, the main issues of concern included:
 - density, road configuration, access and pocket parks;
 - the need for subdivision applications to reflect the appropriate design guidelines;
 - uncertainty over the status of the Masterplan Approval within the context of ongoing modifications for each stage of the development; and
 - noise and dust pollution during construction.

4. ADDITIONAL INFORMATION

34. On 12 December 2018, the Commission requested additional information from the Proponent regarding the registered Architectural & Landscape Guidelines 2010 (A&LG's), which form part of the Community Management Statement (CMS) for the entirety of the Community Scheme, and an updated plan of the road layout and location of the second pocket park. This information was provided to the Commission on 14 December 2018 and is available to view on the Commission's website.

5. THE COMMISSION'S CONSIDERATION

5.1 Material considered by the Commission

35. In this determination, the Commission has carefully considered the following material (**Material**):
 - the modification application lodged on 9 November 2017 by Option SIV Real Estate Fund, Tung Chit Real Estate Investment Australia Pty Limited, Zhao Family Trust;
 - the proponent's Environmental Assessment including its accompanying appendices dated July 2017 and prepared by The Design Partnership:

- Magenta Shores MOD 5_Modification to Conditions (draft) prepared by The Design Partnership;
- Proposed Plan of Subdivision (Lot 24 in DP 270492) dated 21 July 2017 prepared by Project Development Surveys;
- submissions from Government Authorities and the public resulting from the Department's exhibition of the proposal;
- the Response to Submissions (RtS) report dated December 2017 prepared by The Design Partnership;
- The Response to Submissions report – Further Information Request dated 21 August 2018 prepared by Perception Planning;
- the revised proposed Plan of Subdivision dated 8 August 2018 prepared by Project Development Surveys and appended to the above report;
- the Department's assessment report dated 6 November 2018;
- DA-01-2003 MOD 5_Recommended Modification Instrument appended to the Department's assessment report;
- information provided to the Commission at its meetings with the Department, Council and the Proponent on 3 December 2018;
- information provided to the Commission at the site inspection on 12 December 2018;
- information provided by the Proponent and the community at the public meeting on 12 December 2018 and comments received since; and
- additional information provided by the Proponent as outlined in paragraph 34.

36. The Commission considers the key assessment matter to be development density, but also acknowledges and responds in Section 5.3 to other matters raised by the community.

5.2 Development Density

Public Comments

37. The Commission heard concerns at the public meeting and received written comments relating to the project's density. The Commission also notes that previous concerns had been raised with the Department regarding the proposed density of Stage R07. However, the Commission heard from the Magenta Shores Community Association that they were "*generally supportive*" of the proposed reduced density.

Proponent's Consideration

38. In response to the community's concerns, the Proponent amended the modification application by reducing the number of proposed lots by 10 lots (from 58 lots to 48 lots) resulting in fewer but larger lots on the beach side. The Proponent states in its EA that the proposal, as amended, results in an overall increase of 4 residential lots which is minor in nature, there is adequate infrastructure to service the lots, and the proposal would not have adverse amenity impacts. The Proponent also states that due to the minor nature of the proposed change, there is no need to update the existing Masterplan Approval reports.

Department's Consideration

39. The Department's assessment report states that,
"...the proposed increase in density is minor and the proposal would not result in additional traffic, infrastructure or amenity impacts beyond those already assessed and approved in the original Masterplan. Further, given the proposal would result in the provision of only four additional lots, the Department considers it is unnecessary to require the Masterplan Approval and supporting reports to be updated."
40. The Department also states that it,
"...also considers the increased density (of the amended application) would not impact on the character of Magenta Shores, as the development already accommodates higher density dwellings, including attached dwellings."

Commission's Consideration

41. The Commission acknowledges the Proponent's reduction of lots in response to concerns raised by the community. The Commission accepts the Department's positions, outlined in paragraphs 39 and 40, and finds that the Application would not result in significant impacts on infrastructure or services in the area or impact the character of Magenta Shores, as the proposed increase in lots would be minor.

5.3 Other matters raised by the Community

5.4.1 Design

Public Comments

42. The Commission heard at the public meeting and received written comments regarding:
- any increases in density that are proposed in the next stage of the development should trigger a requirement that a new Masterplan be prepared for the remainder of the site;
 - an indicative design should be included as part of any subdivision application;
 - the continuance of an ad hoc approach to the development without a new Masterplan provides uncertainty and substantial risk to the overall theme and the quality of the development; and
 - concerns regarding the potential for the developer to sell off individual lots in this and any future stage without the appropriate design guidelines in place.
43. The Commission notes that the Department received concerns from the community stating that:
- the lots and road designs in the original proposal were out of character with the Masterplan Approval;
 - the smallest lots should not be located adjacent to the beach; and
 - there would be adverse environmental and access impacts if the pedestrian links to the golf course were removed.

Proponent's Consideration

44. The Proponent stated at the public meeting that it was its *"intention to not carry out further amendments from this point on until revised master planning is carried out through an integrated and holistic manner for new applications covering the entirety of the development lots from this point onwards."*
45. The Proponent also stated at the public meeting that in response to community concerns,
"the subdivision plan was amended and the beach conservation zone to have larger lots and no townhouses. This will now create an environment that's more conducive or have less visual impact in this important environmentally sensitive area."
46. The Proponent has also reinstated the pocket parks and the connection between the golf course and White Haven Avenue that were approved as part of the original Masterplan.

Department's Consideration

47. The Department states in its assessment report that it initially raised concern about the location of narrow lots on the southern side of White Haven Avenue being out of character with the surrounding development and the adjacent beach/coastal protection zone. In response, the Proponent amended the proposal to increase the lot sizes adjacent to the beach so they could accommodate freestanding dwellings.
48. The Department concludes that it,
"is satisfied the revised lot sizes adjacent to the beach are now of an acceptable size and density."
and,
"is satisfied that the proposal is consistent with the Masterplan Approval as it retains key features of the Masterplan Approval, including pedestrian access points to the golf course and the beach."
49. With regard to requirements for detailed design at this stage of the development process, the Department notes in its assessment report that,
"the Masterplan Approval did not approve any detailed dwelling designs and the modification does not propose any amendments to existing conditions relating to the height, scale, and floor space ratios for future dwellings."

Further, the Department is satisfied detailed design matters would be appropriately considered by Council during the assessment of future development applications."

Commission's Consideration

50. The Commission acknowledges the community's concerns and the Proponent's efforts to address them as outlined in paragraphs 44, 45 and 46.
51. The Commission also notes community concern regarding potential modifications to the Masterplan for each stage of the development and the uncertainty that this

creates. Whilst an applicant has the right to lodge multiple modification applications under NSW planning legislation, the Commission acknowledges the Proponent's commitment in paragraph 45 to approach development of the remaining undeveloped sites in a more holistic manner and finds that this would be in the public interest. The Commission recommends that the Proponent work closely with the community in delivering this commitment.

52. The Commission notes that the detailed design of this Stage is not within the scope of this modification application and accepts the Department's statement in paragraph 49 that detailed design matters would be appropriately considered by Council during the assessment of future development applications.

5.4.2 Road Alignment and Pocket Parks

Public Comments

53. The Commission notes that concerns were raised in public submissions to the Department regarding the deletion of pocket parks in the modification application which would result in the provision of an uncharacteristically straight road.

Department's Consideration

54. The Department states in its assessment report that it,
“does not support the removal of further pocket parks along Pebble Beach Avenue as it would result in an uncharacteristically straight road along the beach front and be inconsistent with the intent and design of the Masterplan Approval.”
55. The Department supports the inclusion of a pocket park (as shown in the modification application) in the northern end of White Haven Avenue. However, the Department considers an additional pocket park should be provided at the southern end of White Haven Avenue to break up this section of straight road and ensure the proposal remains consistent with the original Masterplan.

Proponent's Consideration

56. In response to the concerns raised by the community and the Department, the Proponent amended the proposal to reinstate a pocket park within Stage R07, located at the three-way intersection at the northern end of the site. The Proponent stated at the public meeting that,
“To prevent the creation of uncharacteristically straight roads, the development was proposed to ensure the overall character be proved by introducing curves and traffic counting devices within the development. This has been reflected in the proposed conditions, but also the plans have been amended to reflect this.”
57. At the site inspection with the Commission, the Proponent identified that the second pocket park would be located between lots 8 and 43 on White Haven Avenue. The Proponent provided a map of its location, which is available to view on the Commission's website.

Commission's Consideration

58. The Commission acknowledges the Proponent's efforts to address the

community's and the Department's concerns, outlined in paragraphs 56 and 57. The Commission finds that the installation of the proposed pocket parks along White Haven Avenue, including a second pocket park proposed by the Proponent, would present an improved urban design and traffic management outcome for the site, with the benefit of increased amenity for future residents.

5.4.3 Dust and noise generation

Public Comments

59. The Commission heard concern at the public meeting stating that,
“Noise and dust pollution together with traffic will affect the existing residents potentially for a very long time.”

Commission's Consideration

60. The Commission notes that assessment of construction impacts is not within the scope of this modification application being a modification to the Masterplan and that these impacts would be considered in detail by Council during its assessment of relevant development applications.

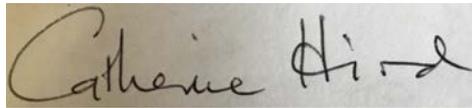
6. THE COMMISSION'S FINDINGS AND DETERMINATION

61. The Commission has carefully considered the Material before it.
62. Based on the Material, the Commission finds that the proposed modification to the development is within the scope of section 75W, and therefore the request to modify can be considered under section 75W, as the development, if modified, would retain the core elements of the Magenta Shores Masterplan Approval in providing permanent residential dwellings, with vehicular and pedestrian access and circulation arrangements.
63. The Commission notes that detailed design matters and dust and noise impacts would be appropriately considered by Council during the assessment of future development applications.
64. The Commission finds that:
- the Application would not result in significant impacts on infrastructure or services in the area or impact the character of Magenta Shores, as the proposed increase in lots would be minor; and
 - the installation of the proposed pocket parks along White Haven Avenue would present an improved urban design and traffic management outcome for the site, with the benefit of increased amenity for future residents.
65. For the reasons outlined in paragraph 64, the Commission finds that the modification application is within the public interest.
66. For the reasons outlined above, the Commission determines to approve the proposed modification application, as amended by the Proponent.

67. The reasons for the Decision are given in this Statement of Reasons for Decision dated 10 January 2019.



Chris Wilson (Chair)
Member of the Commission



Catherine Hird
Member of the Commission



Russell Miller AM
Member of the Commission