

## LATE REPORT NO. 2 - ORDINARY MEETING 21 APRIL 2009

**Subject:** PES - LATE REPORT - DA798/2005 - Amended s88B Instrument - Lot 6178 DP 1099599, 30 The Southern Parkway, Forster  
**Index:** DA 798/2005 & PK 34708  
**Author:** Development Assessment Planner - David Koppers

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### DETAILS:

**Date Received:** DA: Lodged 5 April 2005 – Approved 20 December 2005  
S96 Modification: Lodged 10 December 2008 – Approved 18 February 2009

**Applicant:** Lidbury, Summers & Whiteman

**Owner:** Davglade Pty Ltd

**Land:** Lot 6178 DP 1099599 – 30 The Southern Parkway, FORSTER

Area: 812m2  
Prop Key: 34708  
Zoning: Zone No. 2(a) Low Density Residential

### SUMMARY OF REPORT:

The applicant is seeking to have Council approve an amended s88B Instrument over the subject site.

### SUMMARY OF RECOMMENDATION:

That approval to amend the s88B Instrument be granted.

### FINANCIAL/RESOURCE IMPLICATION:

Nil.

### POLICY IMPLICATIONS:

Nil.

### LEGAL IMPLICATIONS:

Nil.

### LIST OF ANNEXURES:

A: Approved plan of subdivision

### ATTACHMENTS

Nil.

## SUBJECT SITE



## REPORT

### BACKGROUND

A development application for a two lot subdivision was lodged with Council on 5 April 2005. Council approved this subdivision with conditions on 20 December 2005. A copy of the approved plan of subdivision is contained in Annexure 'A'.

The site was classified as bushfire prone land and referred to the NSW Rural Fire Service under s100B of the Rural Fires Act 1997. The Rural Fires Service applied one condition to the development for the creation of a 40m asset protection zone (APZ) to the southwest of the proposed Lot 6178. This was applied as Condition 7, and stated:

*Compliance with the following Bushfire Safety Authority from NSW Rural Fire Service:*

*A 40m Asset Protection Zone (APZ) shall be provided from the vegetation to the southwest of proposed Lot 6178. It is advised that The Southern Parkway can be included as part of the APZ calculations with the balance to be maintained on proposed Lot 6178*

This created a further complication as the land to the southwest was to be re-zoned to a 7(1a) Environmental Protection Zone. The APZ requirement would then in effect allow the clearing of vegetation from this area. It was recommended to avoid this potentially from happening a 10 metre setback on the proposed lot 6178 was to be enforced as a restriction to user under a s88B Instrument. This requirement was enforced under condition 8, and stated:

*The following Restriction as to User is to be entered onto the title of proposed Lot 6178 with Council nominated as the body empowered to modify or waive such requirements.*

*“A building line setback of 10m from the front boundary applies to this site”*

The original Bushfire Assessment was done in compliance with Planning for Bushfire Protection 2001.

The applicant lodged a s96 Modification of Consent on 10 December 2008. The s96 was seeking an amendment to the s88B and the Rural Fire Service requirements. The applicant submitted an amended Bushfire Assessment Report under the provisions of Planning for Bushfire Protection 2006 to reduce the setback restrictions.

The amended Bushfire Assessment showed any residential buildings with a setback of greater than 5 metres would only require Level 1 construction under AS 3959-1999 Construction of buildings in bushfire prone areas. Any building works closer than 5 metres from the front boundary would require Level 2 construction. The Rural Fire Service raised no objection to the Bushfire Assessment.

The s96 was then approved on 18 February 2009 which deleted conditions 7 and 8. The s96 also included a new condition 10 which required the amendment of the s88B Instrument requirements in accordance with the recommendations of the amended Bushfire Assessment.

Council has received a written request from the applicant to now approve a Deed to release the restriction of the land that related to the original bushfire report.

Councils current delegations requires approval for the signing of the Deed to be approved by the elected Council – this is the purpose of this report.

## **REPORT**

The applicant for this development application is seeking the consent of Council to approve a Deed which would remove the current restrictions on the s88B Instrument that applies to the site. The original instrument provided to Council is not deemed as being acceptable as it did not include any reference to the amended Bushfire Assessment Report and new Condition 10.

Council staff are currently finalising the required amendments to the Deed with the applicants solicitors.

Council will require the submission of an amended Deed which makes reference to the recommendations of the Bushfire Assessment Report as required by Condition 10 of the consent, or alternatively to lodge a s96 application requesting the removal of the relevant condition of consent.

## **RECOMMENDATION:**

Council grant approval for the signing of the Deed and any associated documentation which complies with the relevant conditions of consent as applied to Development Application – DA 798/2005 – Lot 6178 DP 1099599 – 30 The Southern Parkway, FORSTER.



