

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791,
Lot 156 DP 753202 and Lot 53 DP 836998

Prepared For: RTS Super Pty Ltd

Date: 15 October 2020

Our Reference: P00031_R2_Proposed Modification.docx

town planning
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Client:	RTS Super Pty Ltd
Report No.:	P00031_R2_Proposed Modification.docx
Draft/Final:	Final

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The preparation of this report has been in accordance with the project brief provided by the client and has relied upon the information, data and results provided or collected from the sources and under the conditions outlined in the report.

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Prepared/Approved By:	Anthony Fish
Position:	Town Planner
Signed:	<i>A signed copy can be provided upon request</i>
Date:	15 October 2020

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1	1	PDF	NSW Planning	15/10/2020

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



Table of Contents

1# Introduction#

1.1#	Introduction	1#
1.2#	Project Background.....	2#
1.3#	Environmental Planning and Assessment Act 1979	2#
1.4#	Physical Commencement	4#
1.5#	Consultation	5#
1.6#	Consistency with Project Approval.....	5#

2# Site Analysis#

2.1#	Cadastral Description	6#
2.2#	Land Use Context	6#
2.3#	Ecological Characteristics	6#
2.3.1#	Vegetation Communities	6#
2.3.2#	Fauna Species	7#
2.4#	Bushfire Prone Land	7#
2.5#	Flood Prone Land.....	8#
2.6#	Contamination.....	8#
2.7#	Geology and Soil Characteristics	8#
2.8#	Acid Sulfate Soils	9#

3# Proposed Modification#

3.1#	Lots and Staging	10#
3.2#	Design Modification	10#
3.3#	Proposed Filling	10#
3.4#	Foreshore Reserve.....	11#
3.5#	Riparian Area	11#
3.6#	Significant Ecological Land	11#
3.7#	Landscaping.....	11#
3.8#	Changes to Conditions	12#
3.9#	Proposed Subdivision Layout.....	12#

4# Statutory and Policy Planning#

4.1#	Greater Taree Local Environmental Plan 2010.....	13#
4.2#	Greater Tare Development Control Plan 2010	13#
4.3#	State Environmental Planning Policy (Coastal Management) 2018	15#

5# Impact Assessment#

5.1#	Traffic	18#
5.2#	Flooding, Stormwater and Water Quality	18#
5.2.1#	Flooding	18#
5.2.2#	Stormwater Management	19#
5.2.3#	Water Quality Management	19#
5.3#	Bushfire	20#
5.4#	Aboriginal Heritage	20#
5.5#	Ecology	20#

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



6# Conclusion#

6.1# Ecologically Sustainable Development	23#
6.2# Statement of Commitments	24#
6.3# Conclusion	24#

Appendix A#

Owners Consent#

Appendix B

PHYSICAL COMMENCEMENT EVIDENCE#

Appendix C#

COUNCIL MEETING NOTES#

Appendix D#

MODIFICATION PLANS#

Appendix E#

SEWER STRATEGY#

Appendix F

CHANGES TOP CONDITIONS#

Appendix G#

LANDSCAPE CONCEPTS#

Appendix H 32#

TRAFFIC ASSESSMENT#

Appendix I#

STORMWATER MANAGEMENT PLAN#

Appendix J

BUSHFIRE ASSESSMENT#

Appendix K

CULTURAL HERITAGE ASSESSMENT#

Appendix L

ECOLOGICAL ASSESSMENT#

Appendix M#

STATEMENT OF COMMITMENTS

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998

1 Introduction

1.1 Introduction

Major Project No. 05_0038 was approved by the Department of Planning on 5 April 2009. The approval was for a 133 Lot Residential Subdivision of Lots 53 and 54 DP 836998 and Lot 156 DP 753202, The Bucketts Way, Tinonee. The approval included the construction of roads, infrastructure and the provision of public foreshore access and was to be carried out in a number of stages.

The location of the subject land is shown in **Figure 1**.

The ownership details of the properties that are subject to the current approval are as follows:

Lot 542 DP 1113791 - RTS Super Pty Ltd

Lot 156 DP 753202 - Rodney and Jillian Illidge

Lot 53 DP 836998 - Joan Donnelly

The consent of the owners to the proposed modification is attached at **Appendix A**.

Figure 1 – Site Location

Source: Midcoast Council Online Mapping



PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



1.2 Project Background

This Modification Report has been prepared in response to proposed subdivision layout changes and further analysis of the site opportunities and constraints for development of the site.

The modifications to the development are proposed to:

- Take into account Council's request for restriction of access to the foreshore;
- Allow for the dedication of additional environmental protection land to Council;
- Incorporate changes to the layout required by condition of the original approval;
- Request modification of conditions of consent to reflect the new proposed subdivision layout; and
- Adjust roads and infrastructure to achieve an improved subdivision layout that will meet current market demands.

This report discusses the proposed changes to the development layout and provides an outline of the proposed changes to the conditions of the approval.

1.3 Environmental Planning and Assessment Act 1979

This report has been prepared to support a proposed modification of the Major Project 05.0038 Approval under the provisions of Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979).

A comparative analysis of the proposed modification against the Major Project 05.0038 Approval is provided in Table 1.1 below.

Table 1.1 Comparative Analysis

Development Component	Project Approval	Proposed Modification	Analysis
Subdivision Type	Rural Residential	Rural Residential	No change
Number of Lots	133	126	Decrease of 7 lots
Development Footprint	Lots contained within R5 Large Lot Residential Zone	Lots contained within R5 Large Lot Residential Zone	No change
Lot Size	>2000m ²	>2000m ²	No change
Services Provision	Lots will be serviced by reticulated sewer and water, electricity and telecommunications	Lots will be serviced by reticulated sewer and water, electricity and telecommunications	No change
Internal Road Design	Road design will be to Council standard	Road design will be to Council standard	No change

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998

Site Access	Access points will be from The Bucketts Way and Urray Road	Access points will be from the same location on The Bucketts Way and Urray Road	No change
Ecological Protection	Extensive measures are proposed and included in Conditions of Approval for the protection of threatened species and habitats	Extensive measures will remain in the Conditions of Approval for the protection of threatened species and habitats	No change
Bushfire Protection	Bushfire protection measures proposed to meet the requirements of Planning for Bushfire protection 2006.	Bushfire protection measures upgraded to meet the requirements of Planning for Bushfire protection 2019.	More up to date measures to be undertaken
Heritage Protection	Aboriginal heritage sites will be unaffected by the proposed subdivision.	Aboriginal heritage sites will continue to be unaffected by the proposed subdivision.	No change
Public Access	Public access to foreshore proposed.	No Public access to foreshore proposed	Deletion of Public access to foreshore in response to request from Council due to need to preserve environmental significance of foreshore area.
Land Dedication	Public Foreshore and Creek Riparian Zone to be dedicated to Council	Public Foreshore, Central E2 zone and Creek Riparian Zone to be dedicated to Council	Additional lands of ecological significance to be dedicated to Council
Stormwater Management	Stormwater management measures proposed to meet Council requirements.	Stormwater management measures proposed to meet Council requirements.	No change
Water Quality Controls	Water quality controls proposed to meet Council requirements.	Water quality controls proposed to meet Council requirements.	No change
EEC Rehabilitation	Killawerra Creek riparian area to be rehabilitated	Killawerra Creek riparian area to be rehabilitated	No change

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



As demonstrated in Table 1.1, the proposed modification involves the rural residential development of the land that comprises development components that predominately remain unchanged. On this basis it is submitted the proposed modification is substantially the same development as approved.

The proposed modification needs to be evaluated under Section 4.15 of the EP&A Act 1979 and in particular Section 4.15 (1)(b) which states:

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

As outlined in this report it is submitted that the proposed modification will:

- not result in any additional environmental impacts;
- not result in any impact on the built environment;
- result in positive social benefit by the provision of alternative land supply; and
- positively contribute to the local economy.

1.4 Physical Commencement

The proposed subdivision that is subject to the Major Project No. 05_0038 Approval has been physically commenced.

Section 95(4) of the *Environmental Planning and Assessment Act* (EPA Act) provides:#

(4) Development consent for"

(a) the erection of a building, subdivision of land, or

(b) the subdivision of land, or

(c) the carrying out of a work,

does not lapse if building, engineering or construction work relating to the building, subdivision or work is physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse under this section.

Accordingly, in order to establish that a consent has not lapsed it is necessary to establish:

- (i) that the consent was for the erection of a building and/or the carrying out of work;
- (ii) that building, engineering or construction work relating to the building or work has been physically carried out;
- (iii) that the work relates to the consent;
- (iv) that it was carried out on the land to which the consent relates; and
- (v) before the date on which the consent would otherwise lapse.

Secondly, while the composite phrase "building, engineering or construction works" is not defined, in *Hunter Brokerage Pty Ltd v Cessnock City Council, Tavedale Pty Ltd v Shoalhaven City Council* (2005) 140 LGERA 201, the meaning of the term "engineering work" was held to be broad enough to include all activities associated with and forming a necessary part of the whole discipline of engineering work, including preparatory work, such as surveying. However, in *Hunter Brokerage* it was held, at [83] that engineering work could include surveying.

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



In early 2014 McGlashan and Crisp Surveyors undertook initial engineering surveys on the subject land in order to commence design work associated with Conditions B38, E34 and E35 of the approval. Evidence of this work is included at **Appendix B**.

It is therefore submitted that the project has physically commenced.

1.5 Consultation

The Modification Report has been prepared following consultation with MidCoast Council (formerly Greater Taree City Council). A copy of the notes of the meeting with Council held on 17 November 2017 is attached at **Appendix C**.

Since this initial meeting with Council further consultation has occurred to discuss specific aspects of the proposed modification and it is submitted that the proposed modification meets the requirements of Council.

1.6 Consistency with Project Approval

The proposed modification is generally consistent with the Major Project 05.0038 Approval with the following changes:

- reduction in the number of total lots;
- changes to staging;
- additional dedication of significant land of high ecological value to Council; and
- deletion of Public access to the foreshore.

2 Site Analysis

2.1 Cadastral Description

Since the approval of the project the description of Lot 54 DP 836998 has changed and is now Lot 542 DP 1113791. The cadastral description of the properties that are subject to the current approval are as follows:

- Lot 542 DP 1113791
- Lot 156 DP 753202
- Lot 53 DP 836998

2.2 Land Use Context

The site is bounded by the Manning River to the north, Urray Road and The Bucketts Way to the south, with an unnamed road traversing the site and separating Lots 542 and 156. The Manning River is located approximately 100m from the site and is separated by vegetation preservation. Approximately one third of the site is covered by reasonably dense vegetation.

The site is approximately 107 hectares in area.

The site is located in a semi rural locality and is 5.2 km from the City of Taree and 3.8km from the village of Tinonee. The site has direct access to The Bucketts Way.

2.3 Ecological Characteristics

2.3.1 Vegetation Communities

Vegetation surveys recorded four vegetation communities across the site. These comprised the following:

1. Spotted Gum/Grey Ironbark/Small-fruited Grey Gum/White Mahogany Dry Sclerophyll Open Forest.
2. Grey Ironbark/Small-fruited Grey Gum Wet Sclerophyll Forest with Rainforest understorey.
3. Shatterwood/Red Kamala Closed Forest (Dry Rainforest).
4. Pasture Grassland (+/- Forest Red Gum Woodland/Open Woodland).

All of these communities were found to be in a modified state as a result of previous disturbances including clearing, logging, grazing and fire.

Of these communities, the dry rainforest community (Community 3) is likely to qualify as a Lowland Rainforest Endangered Ecological Community under both state and federal legislation.

Community 2 qualifies as the EEC *Subtropical Coastal Floodplain Forest* where it occurred on a floodplain.

An assessment of the impact of the proposed modification on vegetation communities is discussed further in **Section 5.7**.

Major Project – 05-0038
Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202 and Lot 53 DP 836998



2.5 Flood Prone Land

Flooding from the Manning River occurs close to or within the development site at two different locations being:

- Northern River Frontage: Where the site fronts the Carters Creek (effectively the Manning River during flooding) at its northern boundary, the 100 year ARI flood level is 7.05m AHD. This level of flooding does not affect the subject site.
- Killawerra Creek Backwater: Within the eastern site area, backwater from the Manning River extends up Stitts Creek and Killawerra Creek to a level of 6.47m AHD for the 100 year ARI flood. This flood level affects proposed lots at the eastern portion of the site.

An assessment of the impact of flooding on the proposed modified subdivision layout is discussed further in **Section 5.7**.

2.6 Contamination

RCA Australia undertook a Phase 1 Site Assessment of the land for the original application in February 2007. This report concluded:

The site has no history of activities with a potential for causing concentrated contamination such as cattle dip sites, cultivation, storage of hazardous chemicals or landfill. Aerial photographic history of the site is unavailable from Greater Taree City Council, however there are no documented activities of manufacturing or other industrial developments associated with the site. Past owners could not be traced and therefore anecdotal evidence was not received in regards to the site, however all anecdotal evidence cannot be treated factually.

The site is not mapped by Midcoast Council as a contaminated site.

2.7 Geology and Soil Characteristics

Reference to the Department of Mineral Resources 1: 250,000 scale geology sheet for Hastings indicates the elevated sections of the site are underlain by the Tinonee and Belbora Beds, whilst flat lying sections of the site are within Quaternary Alluvium. The Tinonee and Belbora Beds are characterised by Laminite, Tuff, Spilite, Greywacke, Mudstone, Shale, Lithic Sandstone and Andesitic Breccia rock types. Quaternary Alluvium comprises mud, silt, sand and gravel.

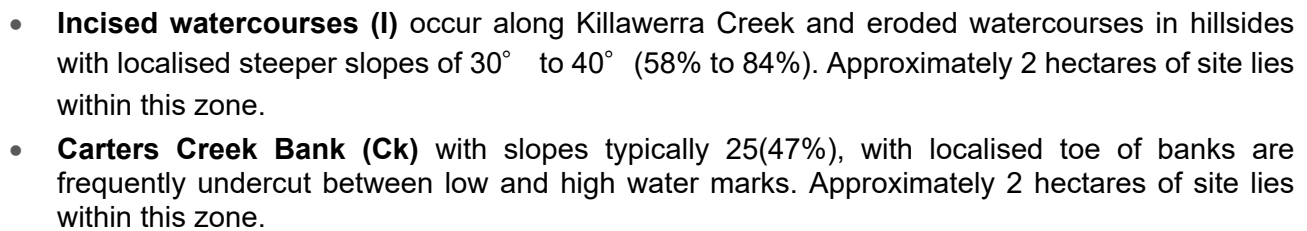
There is only limited surface exposure of rock within the site boundaries.

The eastern third of the site is located on alluvial lowlands, forming part of the Manning River Floodplain. The remainder is occupied by rolling terrain, with incised gullies along drainage lines.

Topographically the site is comprised of five zones as follows:

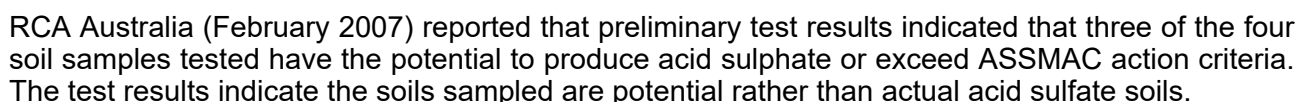
- **Alluvial lowlands (A)** with surface slopes typically $<3^\circ$ (5%), except for localised eroded banks along Killawerra Creek. Lowland areas are identified in the eastern portion of Lot 542 and the northwest corner of Lot 156. Approximately 25 hectares (Ha) of the site lies within this zone.
- **Steep slopes eroded into hillsides (R1)** have a typical slope range of 15° to 25° (27% to 47%). Approximately 10 hectares of site lies within this zone.
- **Hills and Slopes (R2)** with typical slope range of 4° to 10° (7% to 17.6%) occupies the majority of Lots 542 and 156. Approximately 78 hectares of site lies within this zone.

Major Project – 05-0038
Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



Council's mapping indicates that the majority of the site does not include Acid Sulfate soils as shown in **Figure 4**.

Source: Midcoast Council Online Mapping



Further testing is required to confirm acid sulphate potential and if an acid sulfate soil management plan is required. This should be confirmed prior to site earthworks commencing.

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



3 Proposed Modification

3.1 Lots and Staging

The total number of lots for the proposed subdivision has decreased from 133 to 126 lots.

The total number of stages has decreased from 6 stages to 3 stages.

Each stage will be required to prepare and gain approval for a construction certificate for roads, drainage, sewer, water supply, communications and electricity for all lots within the stage.

All lots in each nominated release of a subdivision certificate shall be constructed in accordance with that relevant part of the construction certificate.

The number of lots to be released within the construction certificate shall be nominated by the developer.

The proposed modified design is represented in the plans prepared by McGlashan & Crisp Pty Ltd dated 10 June 2020 as follows:

- Locality Plan
- Overall Stage Plan
- Old Consent Overlay
- Asset Protection Zones
- Vegetation Retention
- Proposed Stage 1 - Carters Creek Estate (88 Lots)
- Proposed Stage 2 – Illidge Estate (25 Lots)
- Proposed Stage 3 – Donnelly Estate (13 Lots)

The proposed modified plans are included at **Appendix D**.

A proposed sewer strategy for the modified subdivision is attached at **Appendix E**.

3.2 Design Modification

Condition B1 of the Project Approval required a number of design modifications to be undertaken for the proposed subdivision.

All of these changes have been incorporated into the proposed modification design.

3.3 Proposed Filling

A Stormwater Management Plan was prepared for the proposed modification (**Appendix I**) that undertook a thorough analysis of the flooding extent of Killawerra Creek that traverse Lot 542 and identifies the relevant fill levels for the site which are equivalent to the 100 year ARI flood levels.

The conditions of consent are proposed to be amended to reflect the required fill levels across the site.

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



3.4 Foreshore Reserve

The proposed Foreshore Land is to be retained in Public Ownership. Council indicated that they would *“not require the construction of any infrastructure or recreational assets on the foreshore reserve due to its ecological significance”* (**Appendix C**).

Proposed amendments to the conditions of the approval to reflect Council’s request with regard to proposed infrastructure and assets deletion from the foreshore area is included at **Appendix F**.

3.5 Riparian Area

Council has advised that the *“the drainage lines and riparian area vegetation would be retained in private ownership with a drainage easement and instrument that directs the appropriate management of the drainage lines”* (**Appendix C**).

Council’s position in relation to the ownership has changed since this meeting and it is now proposed that the central riparian area is to remain in Council ownership as proposed in the Project Approval.

The extent of the drainage reserve and EEC rehabilitation area has also been revised based on geotechnical studies which determined the extent of the alluvial floodplain formation was less than previously determined using mapping available at the time. This reduction in area is reflected in the proposed modification plans.

3.6 Significant Ecological Land

Part of Lot 308 of the original Project Approval, being the land that is zoned E2 Environmental Conservation, has been identified by Council as having ecological significance and they are supportive of the dedication of this land to Council (**Appendix C**).

The E2 land that was part of the approved Lot 308 is therefore proposed to be dedicated to Council as indicated on the modified plans. In addition, Council as indicated that the dedication of this land obviates the need for a Habitat and Vegetation Management Plan for that land as required by Condition B4 of the Project Approval. Given that the significant ecological areas of the site are proposed to be dedicated to Council, they have advised that the habitat and vegetation management can be carried out by them without the need for a Habitat and Vegetation Management Plan.

Details of the proposed changes to the condition relating to the Habitat Management Plan are outline in **Appendix F**.

3.7 Landscaping

The landscaping of the proposed modified subdivision will be carried out in accordance with the Landscape principle contained within **Appendix G**.

It is submitted that a detailed landscape Plan can be prepared in accordance with Condition B9 of the Project Approval, which is proposed to be retained as part of the modification.

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



3.8 Changes to Conditions

The proposed project modifications result in a number of Project Approval conditions that require amendment or deletion. A summary of the requested changes to the Project Approval conditions is included at **Appendix F**.

3.9 Proposed Subdivision Layout

An analysis of the Old Layout Consent Plan in comparison to the proposed Overall Stage Plan indicates that the spatial extent of the development area of the site remains unchanged with the primary layout changes being:

- Consolidation of lots as required by Condition B1 of the Project Approval;
- Road Layout;
- Reduce Lot Yield;
- Reduction of the riparian area to reflect the revised floodplain; and
- Dedication of additional ecologically significant land; and
- Restriction of Public access the foreshore.

It is submitted that the proposed modification results in a subdivision that achieves improved environmental outcomes whilst achieving sustainable economic development of the land.

4 Statutory and Policy Planning

4.1 Greater Taree Local Environmental Plan 2010

The land is zoned R5 Large Lot Residential under the provisions of Greater Taree Local Environmental Plan 2010.

The R5 zoned land has a minimum lot size of 4000m². The Major Project No. 05_0038 Approval allowed the lots to be less than the minimum lots size under the provisions of the former State Environmental Planning Policy No.1

Subdivision of the land as proposed is permissible in the R5 zone and consistent with the zone objectives.

4.2 Greater Tare Development Control Plan 2010

Section C of Greater Taree Development Control Plan 2010 (DCP 2010) outlines the general requirements for subdivisions. The design principles for subdivision outlined in DCP 2010, as they relate to the proposed lot layout, are addressed below.

- **Slope and orientation of land.**

The slope and orientation of the land has been used to ensure that future dwellings will be retained on lots that will gain adequate solar access and to enable adequate drainage.

- **Considered orientation of allotments.**

Lots have been orientated to maximise solar access for future dwellings.

- **Configuration of the land to ensure future usability.**

The lots are designed to ensure that a building envelope can be provided with adequate areas for future open space.

- **Hazards such as soil stability, flooding, erosion and bushfires.**

All these potential hazards are addressed in this Modification Report and are appropriately managed or mitigated.

- **Opportunities for solar and daylight access to future development.**

Lot size and configuration allows for adequate solar and daylight access to future dwellings.

- **Design of roads, access ways and individual site access.**

Individual site access has been designed to give maximum opportunity for site layout.

- **Retention of special qualities or features such as trees and views.**

The special qualities of views to the Manning River are retained for some lots.

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



- **The scenic quality of the landscape, including protection of dominant ridge lines and hilltops, or other visually prominent locations.**

The proposed layout enables maximisation of views to scenic locations from all lots.

- **Protection of character of existing waterways.**

There will be no adverse impacts to any waterways.

- **Availability of services and utilities.**

All services and utilities are available to the proposed lots.

- **Provision of adequate site drainage.**

Adequate drainage is provided to the proposed lots.

- **Provision of public open space.**

There is no need for provision of public open space.

- **Possible need to retain existing subdivision character.**

The proposed subdivision is consistent with nearby approved large lot subdivision.

- **Heritage and archaeological conservation.**

Archaeological conservation is proposed.

- **Adequacy of each site considering the proposed use and relevant development standards such as setbacks, car parking, landscaping etc.**

Each lot will have adequate area for a dwelling and surrounding open space and setbacks.

- **The relationship of the subdivision layout to adjacent land suitable for subdivision;**

Not applicable.

- **Enhancement of existing or future subdivision and village character.**

The proposed subdivision enables the more efficient use of large lot residential zoned land.

- **Location of boundaries along natural features such as drainage lines where appropriate in order to minimise the likelihood of soil erosion.**

Lot boundaries are located to minimise soil erosion.

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



4.3 State Environmental Planning Policy (Coastal Management) 2018

State Environmental Planning Policy (Coastal Management) 2018 updates and consolidates into one integrated policy SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection).

The Coastal Management SEPP gives effect to the objectives of the Coastal Management Act 2016 from a land use planning perspective, by specifying how development proposals are to be assessed if they fall within the coastal zone.

An integrated and coordinated approach to land use planning is promoted by the new SEPP. It defines the four coastal management areas in the Act through detailed mapping and specifies assessment criteria that are tailored for each coastal management area. Councils and other consent authorities must apply these criteria when assessing proposals for development that fall within one or more of the mapped areas.

The four coastal management areas are:

- Coastal wetlands and littoral rainforests area; areas which display the characteristics of coastal wetlands or littoral rainforests that were previously protected by SEPP 14 and SEPP 26
- Coastal vulnerability area; areas subject to coastal hazards such as coastal erosion and tidal inundation
- Coastal environment area; areas that are characterised by natural coastal features such as beaches, rock platforms, coastal lakes and lagoons and undeveloped headlands. Marine and estuarine waters are also included
- Coastal use area; land adjacent to coastal waters, estuaries and coastal lakes and lagoons.

Each coastal management area has differentiated objectives under the Act, which respond to their social and environmental values and key threats. The objectives for each management area are to be achieved using both strategic and site-specific approaches. When considering individual development proposals, councils and other consent authorities will give effect to the Act's objectives by applying the development controls in the new planning policy.

The subject land is identified within the Coastal Environment Area and the Coastal Use Area.

With regard to development proposals in the Coastal Environment Area the SEPP Coastal Management Clause 13 outlines the matters that must be considered by Council before issuing development consent. These matters are addressed below.

13 Development on land within the coastal environment area

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,

(b) coastal environmental values and natural coastal processes,

The proposed subdivision will not adversely affect any coastal environmental values or natural coastal processes.

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



(c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,

The proposed subdivision will not have an adverse impact on the water quality in the adjacent Manning River.

(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,

The proposed subdivision will not have an adverse impact upon marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms

(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

The proposed subdivision will not affect any existing public open space in the locality.

(f) Aboriginal cultural heritage, practices and places,

The proposed subdivision will not have an adverse impact upon any Aboriginal cultural heritage, practices and places.

(g) the use of the surf zone.

The proposed subdivision is not adjoining the surf zone.

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or

(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

With regard to development proposals in the Coastal Use Area the SEPP Coastal Management Clause 14 outlines the matters that must be considered by Council before issuing development consent. These matters are addressed below.

14 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



(a) has considered whether the proposed development is likely to cause an adverse impact on the following:

(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

The proposed subdivision will not affect any existing public open space in the locality.

(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,

The proposed subdivision will not result in the overshadowing, wind funnelling and the loss of views from public places to foreshores.

(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,

The proposed subdivision will not have an adverse impact upon the visual amenity and scenic qualities of the coast, including coastal headlands.

(iv) Aboriginal cultural heritage, practices and places,

The proposed subdivision will not have an adverse impact upon any Aboriginal cultural heritage, practices and places.

(v) cultural and built environment heritage, and

The proposed subdivision will not have an adverse impact upon the cultural and built environment heritage in the locality.

5 Impact Assessment

5.1 Traffic

A Traffic Assessment was undertaken for the Major Project 05.0038 Approval application and is included at **Appendix H**. This assessment concluded that the existing road system is able to cater for the traffic demands of the proposed development and concluded that the provision of a RTA Type AUR intersection control will have adequate capacity for the traffic volumes associated with the proposed development.

The proposed modified subdivision results in a reduced number of lots and therefore will have reduced traffic generation. The conclusions of the original Traffic Assessment are therefore still application to the proposed modification.

5.2 Flooding, Stormwater and Water Quality

A Stormwater Management Plan for the proposed subdivision modification was prepared by Midcoast Consulting Engineers in August 2019 and is included at **Appendix I**. This report addresses the issues of flooding, stormwater management and water quality management of the proposed subdivision modification. The conclusions of the report are summarised below.

5.2.1 Flooding

The implementation of the mitigation measures for the Western Ephemeral Watercourse and Killawerra Creek will cause an increase in flood levels at the upstream site boundary i.e. adjacent to The Bucketts Way. This is discussed below:

- For the Western Ephemeral Watercourse the flood level is expected to increase by approximately 50mm which is considered to be minor and within the limitations of the modelling.
- At the upstream boundary of the site where Killawerra Creek crosses the boundary, the flood levels for the 100 year ARI are expected to increase from 11.17m (predevelopment) to 11.42m AHD (post-development). The road level of The Bucketts Way at this point is approximately 11.2m AHD, and the culverts under The Bucketts Way are 5x1800mm x 900mm box culverts. For a 100 year ARI flow of 47m³/s the culverts are under capacity and it is estimated that the road will overtop by approximately 0.3m (i.e. level of 11.5m AHD).

The road therefore forms the control for upstream flood levels, and the proposed filling within the subject site will not increase flooding upstream from The Bucketts Way.

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



Due to the extensive flooding across lower areas of the site for pre-development conditions, flood mitigation measures are required to allow the development of several lots.

During detailed design of the roads and earthworks for the subdivision, the road crossings should be modelled to ensure that the building envelopes on each lot upstream from the road remain flood free for the 100 year ARI event.

The following is a summary of the flood mitigation measures required:

- Building envelopes should be nominated for proposed lots which are above the 100 year ARI flood.
- A levee or filling of some lots is required. Relevant fill is to be equivalent to the 100 year ARI flood levels.
- The access road adjacent to lot 101 is to be raised to minimum levels. This will allow access during flood conditions and prevent flooding of Lot 101.

5.2.2 Stormwater Management

It is recognised that post development flows from the development site will be higher than that of the pre development flows. However, the requirement for on-site detention (OSD) should be assessed on the benefits it will provide to downstream waterways and downstream development. This is primarily due to the significantly higher time of concentration for Killawerra Creek compared with that of the development itself. Killawerra Creek has a catchment area of >330ha, whilst the development site has a catchment of approximately 30ha. Therefore, peak flows from the development will occur while the creek is still rising and will not affect peak flows within the creek.

OSD will therefore not achieve any benefit with respect to peak flows within the creek. Also, development potential is non-existent downstream from the site as all areas downstream are within the Manning River Floodplain.

OSD is therefore not considered to be required for the site. This was agreed by Council in a meeting at Greater Taree City Council on 19 August 2015.

It is noted that there are some minor site areas to the north of catchment I1 which drain north to the Manning River. These catchments were not considered within the analysis of OSD as they will discharge directly to the Manning River floodplain which has a very large catchment, and therefore the effect of OSD on peak flows within the Manning River are insignificant.

5.2.3 Water Quality Management

The results of the water quality assessment show that with the swale lengths available for treatment of stormwater within the development, NorBE can be easily achieved. The modelling also included a 5kL raintank on each dwelling for treatment of roof water, with standard parameters used for reuse within each dwelling and for irrigation.

No bioretention basins or wetlands are required within the development to achieve NorBE, and therefore the development will comply with Councils DCP without the use of basins.

The final layout and design should be modelled in MUSIC to determine pollutant load reductions for the detailed design of the subdivision.

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



5.3 Bushfire

A Bushfire Management Assessment for the proposed subdivision modification was prepared by David Pensini in July 2020 and is included at **Appendix J**. The conclusions of the report are summarised below.

It is considered that the proposed residential subdivision of the site is at risk of bushfire attack; however, it is in our opinion that with the implementation of the bushfire threat reduction measures and consideration of the recommendations in the Bushfire Assessment, the bushfire risk is manageable for the proposed residential subdivision.

With the implementation of the recommendations it is considered that it will be possible for the proposed subdivision modifications to meet the applicable acceptable solutions as provided for in NSW Rural Fire Service, Planning for Bushfire Protection, 2019 having regard to the proposed subdivision layout and the size of the proposed lots.

The proposed Asset Protection Zones are shown in the proposed modified plans included at **Appendix D**.

5.4 Aboriginal Heritage

An Aboriginal Cultural Heritage Assessment was undertaken for the Major Project 05.0038 Approval application and is included at **Appendix K**. This assessment concluded that a number of measures are proposed to avoid and/or mitigate potential adverse impacts to the Aboriginal heritage values recorded on the site, these being:

- The stone artefact along the site's main ridgeline would be relocated by an appropriately qualified archaeologist or local LALC officer to the southern bushland remnant (7a zone) or other suitable habitat prior to site clearing works to ensure its protection and conservation;
- Exclusion fencing around the perimeter (drip line) of the scarred tree recorded in the low lying eastern portion of the site would be used, where appropriate, during bushland regeneration and wetland construction works; and
- Aboriginal heritage management issues would be incorporated into a site induction program for all contractors on the site.

The proposed modified subdivision does not involve an increase in development footprint. The conclusions of the original Aboriginal Cultural Heritage Assessment are therefore still application to the proposed modification.

5.5 Ecology

An Ecological Assessment for the proposed subdivision modification was prepared by Biodiversity Australia in September 2020 and is included at **Appendix L**. The conclusions of the report are summarised below.

An overlay analysis of the approved and modified plan was undertaken in ArcGIS to accurately determine the changes in vegetation removal between the two plans. The amount of vegetation removal and thinning in the modified plan is similar to the approved plan as shown in Table 4 below. The new plan requires much less 100% clearing, however more thinning to 85% cover is required for building envelopes and Asset Protection Zones.

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



Although the new plan requires more thinning, this is preferable to 100% clearing as it allows retention of key habitat features such as known Koala food trees and hollow-bearing trees.

The impact of the modified subdivision on threatened species and ecological communities is likely to be less than the approved subdivision. This is due to the lower intensity of the development (less human presence and associated anthropogenic impacts) and the flexibility in retaining habitat features in the thinning areas versus complete removal with the approved subdivision. The updated road design which features more cul-de-sacs is also likely to reduce driver speeds which will see a lower risk of road strike for the Koala and other fauna species.

The changes to the public reserve layout in the south of the site also allows for a dedicated corridor between the main patch of forest and the floodplain EEC area to the west which will be rehabilitated. This, in turn improves the east-west connectivity through the entire development site. In the approved subdivision layout, the EEC reserve area is directed towards The Bucketts Way along the southern boundary. This would direct fauna towards this busy road and result in an increased road strike hazard, especially once this area regenerates.

Analysis of the approved subdivision and the modification has determined that the modified layout is likely to have less impacts on biodiversity. It will allow for enhanced fauna connectivity across the site, less risk of fauna road strike and a greater number of habitat features can be retained in the area now subject to vegetation thinning rather than complete removal under the approved plan. The modified plan now has fewer Lots on the site which will reduce the level of potential anthropogenic impacts to some degree.

An updated site survey did not record any threatened plants in the proposed clearing/thinning areas. Searches for Koala scats and an SAT survey found that the site is still being actively used by Koalas and would comprise Core Koala Habitat.

There have been several new relevant threatened species listings since the 2007 ecological assessment. Assessment of these species determined that the subdivision would be unlikely to result in any significant adverse impacts given the minor level of vegetation removal required in the context of the retained vegetation on site which will form part of a reserve dedicated to Council.

Three additional recommendations have been provided which will assist in the retention of Koala food trees and hollow bearing trees and provide an update on the status and distribution of the Pale Yellow Doubletail population known to occur on the site.

All recommendations provided in the Orogen 2007 ecological assessment and the subdivision consent are still considered appropriate. Three additional recommendations are provided.

- The clearing/thinning footprint of the modified subdivision should be pegged on site by a surveyor. It is recommended that an ecologist carries out a tree marking survey within the footprint to identify all preferred Koala food trees and hollow-bearing trees. These should then be surveyed by a registered surveyor and shown on the development plan. This will allow for these features to be retained where possible in the thinning and APZ areas.
- Vegetation removal for the APZ/thinning zones is to selectively retain the following trees in this order:
 - Hollow-bearing Trees.
 - Tallowwood, Forest Red Gum and Grey Gum (preferred Koala food trees).
 - Bloodwoods (sap tree for Squirrel Glider).

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



- Non-Koala/habitat trees and undergrowth should be removed first to achieve canopy separation in the APZ. Trees with branches that connect with other tree canopies may also be pruned, reducing the need to remove the entire tree to achieve canopy separation.

An updated survey for the Pale Yellow Doubletail is recommended to be undertaken in September 2020 to confirm its current distribution and if any new colonies have established. The reference population should first be checked to confirm the timing of the local flowering event.

6 Conclusion

6.1 Ecologically Sustainable Development

ESD refers to development that aims to meet the current and future needs of the community whilst protecting and conserving the ecological processes and functions of ecosystems.

In determining the appropriate development for this site, the principles of Ecologically Sustainable Development as defined in the *Local Government Act 1993* should be adopted in the development design and implemented in the construction and post construction phases of the development.

Under the *Local Government Act 1993*, *principles of ecologically sustainable development* mean the following statements of principles:

Ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

(a) **the precautionary principle** — *namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

In the application of the precautionary principle, public and private decisions should be guided by:

- (i) *careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*
- (ii) *an assessment of the risk-weighted consequences of various options,*

(b) **inter-generational equity** — *namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations,*

(c) **conservation of biological diversity and ecological integrity** — *namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,*

(d) **improved valuation, pricing and incentive mechanisms** — *namely, that environmental factors should be included in the valuation of assets and services, such as:*

- (i) *polluter pays — that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,*
- (ii) *the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,*
- (iii) *environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms that*

PROPOSED MODIFICATION

Major Project – 05-0038

Proposed Subdivision of Lot 542 DP 113791, Lot 156 DP 753202
and Lot 53 DP 836998



enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

The adoption of ESD principles in any development on the site should therefore address all environmental issues associated with the subject site and adjoining areas potentially affected by development such as the nearby waterways.

The provision of subdivision on the subject site would provide for an identified housing demand generated by current and immediate future generations. With appropriate planning and consideration, development would not compromise the ecological needs of long term future generations as the existing biological diversity and ecological integrity of the site can be maintained, and areas improved for the threatened and protected species.

From a social perspective, the developable portion of the site is of a sufficient area that, with careful design, its development for residential purposes can create community prosperity.

With regards to the recommendations above, it is considered that development of the site can occur in a manner consistent with accepted ESD principles and provide a balance between the current tourist needs of the Midcoast LGA and the long term protection of ecological values.

6.2 Statement of Commitments

A revised Statement of Commitments for the proposed subdivision modification is included at **Appendix M**.

6.3 Conclusion

The proposed modification of consent involves the subdivision of land that was proposed to be developed in the original approval. There is no increase in the development footprint. All environmental protection measures proposed in the original application and included in the conditions of the approval to protect the environment are being maintained. There will be no additional clearing of native vegetation, the provision of Asset protection Zones for bushfire protection have been included and dedication of environmentally sensitive lands are proposed to Council for ongoing management and protection.

This Proposed Modification Report presents a revised layout and additional information in support of proposed changes to conditions of the Project Approval that will result in an improved environmental, social and economic outcome for future development of the land.

Appendix A

OWNERS CONSENT

Appendix B

PHYSICAL COMMENCEMENT EVIDENCE

Appendix C

COUNCIL MEETING NOTES

Appendix D

MODIFICATION PLANS

Appendix E

SEWER STRATEGY

Appendix F

CHANGES TOP CONDITIONS

Appendix G

LANDSCAPE CONCEPTS

Appendix H

TRAFFIC ASSESSMENT

Appendix I I

STORMWATER MANAGEMENT PLAN

Appendix J

BUSHFIRE ASSESSMENT

Appendix K

CULTURAL HERITAGE ASSESSMENT

Appendix L

ECOLOGICAL ASSESSMENT

Appendix M

STATEMENT OF COMMITMENTS