

Modification of Development Consent

Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning and Public Spaces, I approve the modification of the development consent referred to in Schedule 1, subject to the conditions in Schedule 2.



Brendon Roberts
A/Director
Regional Assessments

Sydney

12 May 2020

SCHEDULE 1

Development consent: **MP 05 0129** granted by the Minister for Planning on 7 June 2013.

For the following:

Residential subdivision, including:

- 162 allotments consisting of 160 residential allotments, one allotment (lot 141) containing lands for conservation, a Heritage Park and managed open space and 1 allotment (Lot 142) for future development;
- site remediation works;
- earthworks;
- vegetation rehabilitation and management; and
- infrastructure works including roads, drainage, sewerage works and utility services provision.

Applicant: Noubia Pty Ltd

Consent Authority: Minister for Planning and Public Spaces

The Land: Part Lot 164 DP 1170833, Lot 10 DP 1071628, Lot 1 DP 1089778, Lot 2 DP 607602, North Boambee Road and Lakes Drive, North Boambee Valley

Modification: **MP 05_0129 MOD 3:** the modification includes an increase in the number of lots from 160 to 165, replacement of a fire trail in Stage 3A with a public road, and amendments to site remediation conditions (A1 and E28).

SCHEDULE 2

- (a) Schedule 2 Part A – Administrative and Development Contributions Conditions, Condition A1 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struckout~~ words/numbers as follows:

Remediation of Land

- A1 A Remedial Action Plan must be prepared prior to commencement of construction **on any stage containing a potential hot spot listed below**, a Intensive testing of potential hot spots must be undertaken in accordance with the *Guidelines for Assessing Banana Plantation Sites* (NSW EPA, 1997) to determine the extent of soil contamination, potential soil plume and spatial distribution and to inform the Remedial Action Plan. Potential hot spots to be further investigated must include:

- The areas of environmental concern identified in the Coffey Report (dated 27 February 2008);
- The area surrounding the former potential machinery shed in 'Banana Area 1';
- The area surrounding any other historically identified former sheds in 'Banana Area 2' which cannot reasonably be ruled out as having been directly associated with the growing of bananas; and
- The area surrounding the two locations where significantly elevated Dieldrin concentrations have been found in 'Banana Area 3'.

The Remedial Action Plan must take into account any staging of the development and be submitted to the Secretary for approval. Advice from a Site Auditor accredited under the Contaminated Lands Management Act, on whether the works outlined in the Remedial Action Plan will make the site suitable for the intended use and the suitability of the proposed staging of any works, must accompany the Remedial Action Plan.

Each future construction certificate application **on any stage containing a potential hot spot listed above** must demonstrate compliance with the Remedial Action Plan, and be endorsed by a Site Auditor accredited under the Contaminated Lands Management Act.

Following remediation and validation works and prior to the issue of a subdivision certificate for any stage **containing a potential hot spot listed above**, a Site Audit Statement must be issued by an accredited Site Auditor, confirming the suitability of that stage for the intended use.

- (b) Schedule 2 Part A – Administrative and Development Contributions Conditions, Condition A2 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struckout~~ words/numbers as follows:

Project Description

- A2 Except as amended by the conditions of this consent, project approval is granted only to carrying out the project as generally described below:
- ~~160~~**5** residential allotments;
 - two allotments (Part Lot 161 and 162) containing lands for koala conservation, a heritage park and managed open space;
 - one superlot for future development (Lot 163);
 - site remediation works;
 - earthworks;
 - vegetation management within part lots 161 and 162 in accordance with a vegetation management plan approved by the Secretary; and
 - infrastructure works including roads, drainage, sewerage, and utility service provision.

- (c) Schedule 2 Part A – Administrative and Development Contributions Conditions, Condition A3 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struckout~~ words/numbers as follows:

Development in Accordance with Plans and Documents

- A3 The Applicant shall carry out the Project generally in accordance with the:
- 'Lakes Estate' Residential Subdivision Environmental Assessment Report, prepared by Habitat Planning, dated August 2009; and
 - Bushfire Hazard Assessment Report prepared by Building Code and Bushfire Hazard Solutions Pty Ltd, dated March 2013
 - Ecological Assessment for Proposed Subdivision of Lot 10 DP 1240161, Lakes Estate Stage 3B, prepared by Biodiversity Hazard Solutions Pty Ltd, dated April 2020**
 - Bushfire Assessment Report prepared by Building Code and Bushfire Hazard Solutions Pty Ltd, dated 6 April 2020**
 - Arboricultural Impact Assessment Statement and Tree Protection Plan prepared by Arbpro, dated 2 April 2020.**

As amended by:

- Preferred Project Report Lakes Estate Residential Subdivision prepared by GLN Planning, dated August 2012;
- Section 75W Modification Lakes Estate Residential Subdivision, prepared by GLN Planning, dated May 2014;
- Lakes Estate Residential Subdivision – Submission Report prepared by GLN Planning, dated 5 November 2014; and
- Section 4.55(1A) request for Modification of Consent, prepared by Keiley Hunter Urban Planning, dated 31 October 2019 and Response to Submissions dated 3 April 2020.**
- The following drawings, except for:
 - any modifications which are Exempt or Complying Development; or
 - otherwise provided by the conditions of this consent.

Architectural (or Design) Drawings prepared by Astoria Group Pty Ltd			
Drawing No.	Revision	Name of Plan	Date
A001	G	Location Plan	27/03/14
A002	G	Surrounding Developments Plan	27/03/14
A003	J	Zoning Plan	27/03/14
A004	J	Koala Habitat Plan	27/03/14
A005	J	Previous Banana Plantation Areas Plan	27/03/14
A006	J	Combined Constraints Plan	27/03/14
A007	K	Open Spaces Plan	27/03/14
A008	K	Roads and Movement Access Plan	27/03/14
A009	J	Services Plan	27/03/14
A010	G	Subdivision Layout Plan (Lot Sizes Mix)	27/03/14
A011	G	Subdivision Staging Plan	27/03/14
A012	F	Subdivision Stage 1 Plan Lots 1-58 and Part Lot 141 (Residual)	27/03/14
A013	G	Subdivision Stage 2 Plan Lots 59-	27/03/14

		115, Lot 142 and Part Lot 141 (Residual)	
A014	G K	Subdivision Stage 3 Plan Lots 116-140 148-160 , Lot and Part Lot 141 162 (residual)	27/3/14 12/04/20
A015	D	Subdivision Staging Plan_Response to RFS	27/03/14
A016	D	Subdivision Stage 1 Plan_Response to RFS lots 1-58 and Part Lot 141 (Residual)	27/03/14
A017	D	Subdivision Stage 2 Plan_Response to RFS lots 59-115, Lot 142 and Part Lot 141 (Residual)	27/03/14
A018	E	Subdivision Stage 3 Plan_Response to RFS lots 116-140, Lot and Part Lot 141 (Residual)	27/3/14
:	3	<u>Proposed Subdivision Lot 10 DP 1240161</u>	27/3/20

- (d) Schedule 2 Part A – Administrative and Development Contributions Conditions is amended by deleting the following Condition A4A:

~~A4A~~ Modifications to Part Lot 162 and the Layout of Stage 3

~~A4A~~ Prior to the issue of a Construction Certificate for any works within Stage 3, or prior to the commencement of any vegetation management works within Part Lot 162, whichever occurs first, the Proponent shall revise the drawings identified in a) to k) below to incorporate the land zoned 'R2 General Residential' that sits immediately west of the fire trails within lots 143 and 145 to 154 into Part Lot 162:

- ~~a) A003 Zoning Plan, Revision J, prepared by Astoria Group, Pty Ltd, dated 27/03/14;~~
- ~~b) A004 Koala Habitat Plan, Revision J, prepared by Astoria Group, Pty Ltd, dated 27/03/14;~~
- ~~c) A005 Previous Banana Plantation Area Plan, Revision J, prepared by Astoria Group, Pty Ltd, dated 27/03/14;~~
- ~~d) A006 Combined Constraints Plan, Revision J, prepared by Astoria Group, Pty Ltd, dated 27/03/14;~~
- ~~e) A007 Open Spaces Plan, Revision K, prepared by Astoria Group, Pty Ltd, dated 27/03/14;~~
- ~~f) A008 Roads and Movement Access Plan, Revision K, prepared by Astoria Group, Pty Ltd, dated 27/03/14;~~
- ~~g) A009 Services Plan, Revision J, prepared by Astoria Group, Pty Ltd, dated 27/03/14;~~
- ~~h) A010 Subdivision Layout Plan (Lot Sizes Mix), Revision G, prepared by Astoria Group Pty Ltd, dated 27/3/14;~~
- ~~i) A014 Subdivision Stage 3 Plan Lots 116-140, Lot and Part Lot 141 (Residual), Revision G, prepared by Astoria Group Pty Ltd, dated 27/3/14; and~~
- ~~j) A015 Subdivision Staging Plan_Response to RFS, Revision D prepared by Astoria Group, Pty Ltd, dated 27/03/14;~~
- ~~k) A018 Subdivision Stage 3 Plan_Response to RFS Lots 116-140, Lot and Part Lot 141 (Residual), Revision E, prepared by Astoria Group Pty Ltd, dated 27/3/14.~~

- (e) Schedule 2 Part A – Administrative and Development Contributions Conditions is amended by the insertion of the following new Condition A5A:

Amended Stage 3A Plans

A5A Amended plans shall be submitted to and approved by Coffs Harbour City Council prior to the issue of any Construction Certificate for works in Stage 3A approved under MP 05 0129 MOD 3, showing:

- a) **the public road around the perimeter of Stage 3A (extension of Eyre Road) designed to include a verge width, maximum grade and speed to radius relationship in accordance with AUS-SPEC – Standards Australia, or as otherwise approved by Council.**
- b) **the extension of Amadeus Place (connecting with Eyre Road) designed to include:**
 - **an 8m wide carriageway in accordance with Planning for Bushfire Protection**
 - **the verge slope in accordance with Council's standards (maximum slope 1:4) and Austroads- Guide to Road Design Part 6.**

Any amendments to road or lot layout to meet the above road design requirements must not require the removal of any additional trees or koala habitat and must not impact on the protection of Tree 34 (as shown on Proposed Subdivision Lot 10 DP 1240161, dated 27.03.20) as outlined in the Arborist Report.

- (f) Schedule 2 Part B – Prior to issue of a Construction Certificate, is amended by the insertion of the following new Condition B11A:

Compensatory Planting

B11A The two Acacia Melanoxylon trees proposed to be removed (trees 35 and 36 as shown on Proposed Subdivision Lot 10 DP 1240161, dated 27.03.20) must be replaced by compensatory planting at a ratio of 1:2 in accordance with Section E1.2 of the Coffs Harbour City Council Development Control Plan. This will require four Acacia melanoxylon trees to be planted.

The four koala food trees (Eucalyptus Microcorys) proposed to be removed (trees 38, 39, 25 and 42 as shown on Proposed Subdivision Lot 10 DP 1240161, dated 27.03.20) must be replaced by compensatory planting at a ratio of 1:5 in accordance with the Coffs Harbour Koala Plan of Management and Section E1.2 of the Coffs Harbour City Council Development Control Plan. This will require 20 Eucalyptus Microcorys koala food trees to be planted.

The replanting is to be completed prior to the issue of any Subdivision Certificate for works within Stage 3A approved under MP 05 0129 MOD 3.

- (g) Schedule 2 Part B – Prior to issue of a Construction Certificate, is amended by the insertion of the following new Condition B11B:

Significant Tree Registration

B11B A VMP must be prepared to manage compensatory plantings associated with the removal of the preferred koala habitat food trees and native vegetation within Lot 10 DP 1240161 as detailed in Section 10.5 of the Ecological Assessment prepared by Biodiversity Australia, dated April 2020.

The VMP must be prepared in accordance with the Coffs Harbour City Council Biodiversity Guideline 1a, Preparing a Vegetation Management Plan and the Coffs Harbour City Council Koala Plan of Management. The VMP must be prepared to the satisfaction of Coffs Harbour City Council and be approved by the certifying authority prior to the issue of a Construction Certificate for lots in Stage 3A approved under MP 05 0129 MOD 3.

- (h) Schedule 2 Part B – Prior to issue of a Construction Certificate, is amended by the insertion of the following new Condition B11C:

Significant Tree Registration

B11C The Applicant must apply to Coffs Harbour City Council to have the hollow bearing tree (Tree No. 34 as shown on Proposed Subdivision Lot 10 DP 1240161, dated 27.03.20) listed on Council's State Significant Tree Register.

Evidence of this application being submitted to Council must be provided to the certifying authority prior to the issue of a Construction Certificate for works within Stage 3A approved under MP 05 0129 MOD 3.

- (i) Schedule 2 Part D – During Construction is amended by the insertion of the following new Condition D15:

Tree Protection Plan

D15 Tree protection works are to be undertaken in accordance with the recommendations and Tree Protection Plan outlined in the Arborist Report prepared by Arbpro dated 2 April 2020 during all works within Stage 3A.

- (j) Schedule 2 Part D – During Construction, is amended by the insertion of the following new Condition D16:

General Clearing Measures

D16 The following must be implemented prior to the commencement of construction and maintained during the construction of Stage 3A to manage clearing:

- **The extent of the development footprint to be clearly marked (e.g. via pegging/fencing/flagging) before clearing in order to prevent any inadvertent clearance beyond what is required and has been assessed and to avoid damage or encroachment into the root zone of retained trees. This fencing/marketing is to remain until all clearing and construction is completed.**
- **Site induction is to specify that no clearing is to occur beyond the marked area. All vehicles are to be parked in designated areas only.**
- **Clearing and earthworks is to avoid damage to the root zones of any retained trees.**
- **Weeds are not to be mulched with native vegetation and should be taken to a licenced landfill facility.**

- (k) Schedule 2 Part D – During Construction, is amended by the insertion of the following new Condition D17:

Animal Welfare

D17 The following are to be implemented to minimise risk of direct mortality of fauna during clearing works associated with Stage 3A:

- **The area of clearing work is to be inspected for Koalas and other fauna by a suitably qualified Ecologist immediately prior to commencement of any vegetation removal involving machinery and/or tree-felling. Pre-clearing checks will include searches of habitat e.g. lifting and destruction of logs, searches for bird nests, and raking of leaf litter. Other than Koalas, any detected fauna is to be relocated off-site. Any bird nest considered active is to be removed in a manner that allows retrieval of eggs/young, and these are to be taken into care by FAWNA.**
- **If a Koala is present in the proposed clearing area, works are to be suspended until the Koala moves along on its own volition. If the Koala is located in a position that a 50 metre buffer may be established, works may proceed outside this buffer.**

- (l) Schedule 2 Part D – During Construction, is amended by the insertion of the following new Condition D18:

Tree Removal

D18 Only trees identified for removal on Proposed Subdivision Lot 10 DP 1240161, dated 27.03.20 are permitted to be removed within Stage 3A. Preference should be given to retaining the following trees in order of importance:

- **Hollow-bearing trees (must be retained)**
- **Tallowwood (Koala Food trees)**
- **Bloodwood (potential Glider sap trees)**
- **Allocasuarina (Glossy Black Cockatoo foraging tree)**

Any trees to be retained must be clearly marked and an exclusion zone (outside the tree root zone) are to be established to prevent any damage to retained trees.

- (m) Schedule 2 Part D – During Construction, is amended by the insertion of the following new Condition D19:

Hollow Bearing Tree

D19 The hollow-bearing tree (Tree No. 34 as shown on Proposed Subdivision Lot 10 DP 1240161, dated 27.03.20) must not be removed or harmed during construction. An exclusion zone (outside the tree root protection zone) is to be established and clearly marked to prevent any damage to the root structure.

- (n) Schedule 2 Part D – During Construction, is amended by the insertion of the following new Condition D20:

Sedimentation and Erosion Control

D20 Standard soil and sedimentation control measures will be required throughout the clearing works within Stage 3A to ensure that habitats on the site and in the study area, including the ephemeral stream are not substantially affected by erosion and sedimentation.

- (o) Schedule 2 Part D – During Construction, is amended by the insertion of the following new Condition D21:

Weed Control

D21 The following must be implemented during construction of Stage 3A to manage weed control:

- **Disturbance of vegetation and soils on the site shall be limited to the areas of the proposed work and shall not extend into adjacent vegetation.**
- **All plant used for clearing and construction works is to be inspected for presence of weeds.**
- **Appropriate collection and disposal of all weed material removed via clearing.**
- **Removal of any new weed infestations that have developed throughout the construction phase.**

- (p) Schedule 2 Part D – During Construction, is amended by the insertion of the following new Condition D22:

Fencing

D22 Any disturbance of temporary fencing required during earthworks and construction within Stage 3A should be Koala friendly, permeable and not pose a barrier or risk of entanglement to fauna (e.g. post and plain wire).

- (q) Schedule 2 Part E – Prior to issue of Subdivision Certificate, Condition E2 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struckout~~ words/numbers as follows:

Bushfire

- E2 At the issue of subdivision certificate for each Stage and in perpetuity, the entire area of each residential lot within that Stage (**including Lots 1 to 10 within Stage 3A approved under MP 05 0129 MOD 3 as shown on Proposed Subdivision Lot 10 DP 1240161, dated 27.03.20**) shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

- (r) Schedule 2 Part E – Prior to issue of Subdivision Certificate, Condition E3 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struckout~~ words/numbers as follows:

- E3 At the issue of Subdivision Certificate for each stage, a restriction to the land use pursuant to section 88B of the *Conveyancing Act, 1919* shall be placed on relevant lots within the subdivision requiring the provision of asset protection zones (APZ), to be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of *Planning for Bush Fire Protection 2006* and the NSW Rural Fire Service's document *Standards for asset protection zones*, as identified on the 'approved plans' and as follows:

- i) the APZ over southern portion of Lot 75 be increased to 9 metres;
- ii) the APZ over southern portion of Lots 82, 83, 84 and 85 be increased to 21 metres;
- iii) include a 10 metre wide APZ along the eastern boundary of Lot 101 – measured from the western edge of the unmanaged vegetation;
- iv) include a 10 metre wide APZ over Lot 163 along the western edge of Lot 86;

- v) the APZ over the eastern portion of lots 137 and 138 being increased to taper from 9 metres wide at the south to 12 metres wide at the north;
 - vi) the APZ to the north-west of lots 143, 145 and 146 being increased to 21 metres;
 - vii) the APZ over the northern portion of Lot 147 being increased to 13.5 metres;
 - l) **the APZ around the perimeter of Stage 3A as identified in the Bushfire Assessment Report prepared by Building Code and Bushfire Hazard Solutions Pty Ltd, dated 6 April 2020**
 - viii) Details of the Restriction(s) are to accompany the application for Subdivision Certificate.
- (s) Schedule 2 Part E – Prior to issue of Subdivision Certificate, is amended by the insertion of the following new Condition E3A:

E3A Prior to the issue of a Subdivision Certificate for works within Stage 3A (approved under MP 05_0129 MOD 3), a restriction on land use pursuant to section 88B of the Conveyancing Act 1919 shall be placed on Lots 1 to 9 in Stage 3A approved under MP 05_0129 MOD 3 (as shown on Proposed Subdivision Lot 10 DP 1240161, dated 27.03.20) stating that future dwellings are not to be erected within the required APZ.

- (t) Schedule 2 Part E – Prior to issue of Subdivision Certificate, is amended by the insertion of the following new Condition E7A:

E7A Public road access, water, electricity and gas are to comply with the requirements of section 4.1.3 of Planning for Bushfire Protection 2006.

- (u) Schedule 2 Part E – Prior to issue of Subdivision Certificate, Condition E28 is amended by the insertion of the **bold and underlined** words / numbers and deletion of the ~~struckout~~ words/numbers as follows:
- (v) Schedule 2 Part E – Prior to issue of Subdivision Certificate, is amended by the insertion of the following new Condition E14A:

Sewer Coverage - Restriction on Title

E14A Where any lot cannot obtain sewer coverage, as required by Water Services Association Australia (WSAA) codes and standards relating to reticulated water and sewer, a restriction on title shall be created for the relevant lot/s specifying the minimum floor height for future development to ensure gravity discharge to the reticulated sewer system.

Details of the Restrictions are to accompany the application for Subdivision Certificate.

Any section 88B instrument creating restrictions as to user or easements which benefit Council shall list Council in the Schedule as a prescribed authority.

Site Remediation/Validation Reporting

- E28 Following remediation and validation works and prior to the issue of a subdivision certificate for any stage **containing a potential hot spot listed in Condition A1**, a Site Audit Statement must be issued by an accredited Site Auditor, confirming the suitability of the site for the intended use.

End of modification

(MP 05_0129 MOD 3)