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+ MODIFICATION OF MAJOR PROJECT APPROVAL NO. MP05_0198 (MOD4)

PROPOSED 84 LOT RESIDENTIAL SUBDIVISION

**AT LOT 1 DP 134787, LOT 1 DP 167380, LOT 2 DP 961928 & LOT 5 DP 1117326 WALMSLEYS ROAD
& STOTT STREET, BILAMBIL HEIGHTS**

• Prepared For: **WDLC Pty Ltd, M Walmsley, R Walmsley, H Mabbut, V Bailey & D Millar** | • Prepared by: **DAC Planning Pty Ltd** | • July 2018 |

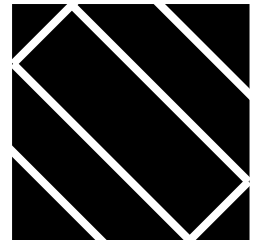


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1.0 INTRODUCTION

The owners of the subject land have instructed DAC Planning Pty Ltd to prepare and lodge a Modification Application in relation to Major Project Approval No. MP05_0198 (MOD4) to correct anomalies in Conditions B24 and E7.

2.0 BACKGROUND

On 2 August 2012, the Planning and Assessment Commission (PAC) issued Major Project Approval No. 05_0198 for an 84 lot subdivision of the subject land. A copy of the Approval is attached at **Annexure A**.

On 5 June 2017, the Approval was modified (MOD1). A copy of the Modified Approval is contained at **Annexure B**.

On 12 October 2017, the Director of Modification Assessments modified the Project Approval (MOD2) by amending Condition A6 to extend the lapse date to 2 August 2018. A copy of the Modified Approval is contained at **Annexure C**.

On 6 July 2018, the Approval was modified (MOD3) to extend the lapse date to 2 August 2019. A copy of the Modified Approval is contained at **Annexure D**.

Condition B24 of MP05_0198 (as modified) is in the following terms:

“Bushfire Management

B24 Asset Protection Zones

- 1) Asset Protection Zones (APZs) in each stage are to be provided in accordance with the Ecological Bushfire Planning Assessment in the Biolink Ecological Consultants report dated June 2011, as contained within the Environmental Management Area, illustrated on the proposed subdivision plans in condition A3. Details of the APZs are to be provided, accompanied by RFS endorsement, to the satisfaction of the Certifying Authority prior to the release of the Construction Certificate for each stage.*
- 2) Asset Protection Zones in each Stage are to be provided on private land, in accordance with Planning for Bushfire Protection (2006). Details and a plan showing the APZs, accompanied by RFS endorsement, are to be provided to the satisfaction of the Certifying Authority prior to the release of the Construction Certificate for each Stage.*
- 3) Thinning of Camphor Laurel trees within the APZ for Lots 38, 39, 40, 55, 57, 59, 60 and 61 is required in order to comply with Planning for Bushfire Protection 2006 as part of the on going maintenance of adequate bushfire protection.”*

In accordance with the requirements of Condition B24(1) and (2), an Asset Protection Zone Management Plan (Biolink, October 2017) was forwarded to the Rural Fire Service (RFS) on 27 October 2017 for endorsement. A copy of the submission is contained at **Annexure E**.

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On 23 February 2018, the RFS responded by email, a copy of which is contained at **Annexure F**. In summary, the RFS advised that it does not endorse any plans.

On 12 March 2018, the Department of Planning and Environment (DoPE) was advised that the RFS will not confirm that Condition B24 has been complied with and the Department was requested to accept certification of compliance from a BPAD Accredited Bushfire Practitioner.

On 21 March 2018, the Department advised that:

"Part B, Condition B24(1) and (2) of Project Approval MP05_0198 dated 2 August 2012 require the certifying authority to be satisfied regarding the condition requirements.

In view of the Department's response, on 21 March 2018 Tweed Shire Council were requested to confirm that Council will be satisfied with certification of compliance with Condition B24(1) and (2) by an Accredited Bushfire Certifier given that the RFS have declined to certify compliance.

On 28 March 2018, Tweed Shire Council advised the DoPE as follows:

"Dear Jane,

Further to our telephone conversation this afternoon, I recently met with Council Development Engineer and Biodiversity officer regarding the Subdivision Construction Certificate currently before Council (as the PCA) for the above subdivision.

We are still working to resolve vegetation management plans for the subdivision and it becoming evident that there will need to be some further discussion in regard to achieving the objects of the vegetation plan as well as providing the required APZ's, and this will be facilitated in the coming weeks. However, in the meantime, we are seeking clarification on Condition B24 on the attached development consent.

The condition requires detail of the plan showing the APZ's with 'endorsement' by RFS, and (as per the email trail below) the RFS have not concurred to provide any such endorsement of plan, therefore it appears the query regarding this condition has done a full circle and come back to Council at the PCA for the CC.

Given the condition has no reference to legislative obligations or conditions by the RFS under the Rural Fires Act 1997, it is unclear as to how this condition can be satisfied, and what it is exactly that the RFS are 'endorsing' ?

I wonder if you could provide Council with some insight as to how this condition came about and whether RFS ever concurred to the development by way of a separate approval, conditions of consent (perhaps a Section 100B Rural Fires Act 1997 General Term of Approval)?

We hope to be able to get some clarity on this matter so we can move forward with further discussions regarding APZ's and how they can be managed to satisfy the VMP.

If you have any questions or would like to discuss further, please feel free to contact me."

On 29 March 2018, the DoPE advised Tweed Shire Council as follows:

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"Hannah,

Condition B24 requires the Certifying Authority to be satisfied, in consultation with the RFS, that the condition requirements have been discharged.

The RFS' endorsement could take the form of a file note or written acknowledgement to the Certifying Authority.

If the Certifying Authority cannot be satisfied, the proponent would need to lodge a modification request to change the condition."

On 12 April 2018, Tweed Shire Council responded to the DoPE as follows:

"Hi Jane,

Based on your advice below, I am still unclear as to how the proponent is expected to obtain this endorsement in the absence of any General Terms of Approval by the NSW Rural Fire Service.

It has also come to our attention that Condition E7 of the MP_05198 consent references Section 100B Approval from the Rural Fire Service which means that there must be some sort of S100B Approval for this development. Normally, it would be appended to the consent however it appears to be absent in this circumstance. Further to my previous email to you below (28 March 2018), are you certain that there is no evidence of a S100B from NSW RFS on file ? It seems unusual that such would be referenced in a condition of consent if it does not exist ?

We are currently preparing some formalise advise to the proponent in regard to Condition B24, Condition E7 and also the subsequent Vegetation Management Plan that needs to be endorsed by Council/DoP. It is likely that you will be hearing from the proponent in regard to requirements for a Section 96 application to modify the consent and facilitate the provision of RFS GTA's/ 'endorsement' for the proposed subdivision in accordance with the Ecological Bushfire Planning Assessment in the Biolink Report in the absence that there are no RFS General Terms of Approval which apply to this development."

On 12 April 2018, Tweed Shire Council advised the proponent's Consulting Town Planner as follows:

"Darryl,

A meeting was held with our Town Planner and Biodiversity Planner today and provide the following:

Condition B24 of the consent requires that the APZ be provided in accordance with the Ecological Bushfire Planning Assessment in the Biolink Ecological Consultants report dated June 2011, as contained within the Environmental Management Area, illustrated on the proposed subdivision plans in condition A3. Details of the APZs are to be provided, accompanied by RFS endorsement, to the satisfaction of the Certifying Authority prior to the release of the Construction Certificate for each stage.

The applicant has advised that RFS have not provided such endorsement.

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In order to rectify how the condition can be satisfied, Council has consulted with the consent authority (NSW DoP&E) in regard to the wording of the condition. Jane Flanagan (Acting Team Leader – Modification Assessments) has advised that the RFS' endorsement could take the form of a file note or written acknowledgement to the Certifying Authority. Should the RFS endorsement not be obtained to the satisfaction of the certifying authority, the proponent would need to lodge a modification request to change the condition.

At this stage a BPAD endorsement would not suffice the requirements of condition B24 and written endorsement from RFS is required to satisfied the requirements of this condition.

Having regard to the advice provided by NSW DoP&E (as mentioned above) and in the absence of a copy of the RFS General Terms of Approval (as referenced in condition E7 of the Consent), it is recommended that further liaison with the department occur in order to seek clarification on this condition and the GTA's which need to be complied with in condition E7 of the consent.

Consultation with the RFS in regard to the referenced General Terms of Approval may also need to occur to determine:

- a. whether that consultation has previous occurred at the time of the development being considered by the department and in fact General Terms of approval do exist for this development and;*
- b. if the required APZ's are consistent with the Ecological Bushfire Planning Assessment in the Biolink Ecological Consultants report dated June 2011.*

It is understood that there is a Vegetation Management Plan currently under review by Council and the NSW DoP to facilitate the preliminary stage 1A works to activate the development consent. Given the above issues, the endorsement of the VMP cannot occur until the NSW RFS requirements in regard to APZ/Section 100B Approvals is fully understood.

It is recommended that liaison occur with the NSW DoP&E and NSW RFS to resolve this issue and seek support from the NSW RFS.

Our Town Planner has provided Jane from NSW DoP&E with an email (previously CC'd to you) raising concerns and advising that we will be referring the applicant to the department of a Section 96 application. A copy has been attached for your reference."

Following representations to the DoPE from Tweed Shire Council on 13 April 2018, the DoPE advised, on 3 May 2018, that:

"Hi Vince,

Apologies for the delay in getting back to you.

I spoke with Brad Sellings from the RFS who had a look through their files on the project. He couldn't find any documentation related to issue of a 100B Approval for the Project Approval and the Department also doesn't have any documentation related to a 100B Approval. As such, if the Certifying Authority cannot be satisfied, it is recommended that the Proponent request that the Project Approval be modified to update the two conditions.

Please give me a call if you wanted to discuss."

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On 3 May 2018, Tweed Shire Council forwarded a further submission to the DoPE advising that, inter alia:

“Unfortunately, Council is not the consent authority and therefore is reliant on the wording of the conditions in the MP consent and therefore is unable to resolve matters pertaining to the wording of conditions nor can vouch for what has happened during the assessment process regarding consultation with the RFS and imposition of RFS conditions.”

On 11 May 2018, the Department responded to Tweed Shire Council as follows:

“Hi Hannah,

As discussed, I spoke with Alan Bawden (from the RFS) re your suggestion below. Alan advised that Part 3A projects do not require a Section 100B approval. As such, if the certifying authority cannot be satisfied, the Proponent will need to modify the Project Approval to update the conditions.

I note that the correspondence you attached, was the RFS submission received during exhibition of the application. The comments raised by RFS were considered to by the Proponent in the Preferred Project Report and the Department in the Assessment Report.”

In summary, Conditions B24 and E7 cannot be complied with and therefore this Modification Application seeks to amend the Conditions such that they are capable of being complied with.

3.0 IMPLEMENTATION OF MAJOR PROJECT APPROVAL NO. 05_0198

Action has been taken by the proponent to implement the approval including:

- ♦ Lodgement of Construction Certificate Application No. 17/0329 with Tweed Shire Council on 30 June 2017 and appointment of Tweed Shire Council as the PCA for the preliminary works authorised by Condition A2(1A).

The Tree Removal Plan (TRP) required by Condition A2(1A) has been submitted to the Department of Planning and Environment (DoPE) for approval, however the Department advised by email on 19 October 2017 that, if the Vegetation Management Plan (VMP) is approved by Tweed Shire Council, then the Department can consider the TRP.

A VMP was submitted to Tweed Shire Council on 27 October 2017, however Council has requested further investigations and amendment of the Plan. Amendment of the Plan is in progress.

- ♦ Lodgement of Construction Certificate Application No. 17/0640 with Tweed Shire Council on 16 November 2017 and appointment of Council as the PCA for subdivision works pursuant to Major Project Approval No. 05_0198.

The Major Project Approval is dependent on Development Consent No. DA15/0042 and Construction Certificate No. 17/0726 lodged with Tweed Shire Council on 11 December 2017 for subdivision work pursuant to that consent, which is for a 20 lot subdivision on land to the immediate south of the Major Project site, because both projects involve common sewer infrastructure and fill material for the Major Project site is to be obtained from the Development Consent site.

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Tweed Shire Council has issued Requests for Further Information (RFIs) in relation to the Construction Certificates and a response will be submitted to Council as soon as possible.

In summary, the Project Approval is complex and includes many conditions which need to be complied with prior to the issue of Construction Certificate No. 17/0329 (for preliminary works) and/or Construction Certificate No. 17/0726 for subdivision work. In addition, Construction Certificates No. 17/0726 and 17/0640 need to be assessed and issued concurrently because of the common sewer infrastructure and transfer of fill from one site to the other.

However, the Construction Certificates cannot be issued until Conditions B24 and E7 are amended.

4.0 THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

Pursuant to Clause 115 of the Regulation, an application for modification of a development consent is required to contain information as discussed below.

a) The Name and Address of the Applicant

The applicants for this Section 4.55(1A) Application are WDLC Pty Ltd, M Walmsley, R Walmsley, V Bailey, H Mabbut & D Millar. Additional details are provided on the Application Form.

b) The Development to be Carried Out Under Major Project Approval No. MP05_0198

On 2 August 2018, Major Project Approval No. MP05_0198 was issued for an 84 lot residential subdivision. A copy of the Approval and Approved Plans are attached at **Annexure A**.

c) Address and Formal Particulars of Title of the Land

The site is legally described as Lot 1 DP 134787, Lot 1 DP 167380, Lot 2 DP 961928 and Lot 5 DP 1117326 Walmsleys Road and Stott Street, Bilambil Heights.

d) Description of the Proposed Modification to Major Project Approval No. MP05_0198

Condition B24 of the Project Approval is in the following terms:

***"Bushfire Management
B24 Asset Protection Zones***

- 1) Asset Protection Zones (APZs) in each stage are to be provided in accordance with the Ecological Bushfire Planning Assessment in the Biolink Ecological Consultants report dated June 2011, as contained within the Environmental Management Area, illustrated on the proposed subdivision plans in condition A3. Details of the APZs are to be provided, accompanied by RFS endorsement, to the satisfaction of the Certifying Authority prior to the release of the Construction Certificate for each stage.*
- 2) Asset Protection Zones in each Stage are to be provided on private land, in accordance with Planning for Bushfire Protection (2006). Details and a plan showing the APZs, accompanied by RFS endorsement, are to be provided to the satisfaction of the Certifying Authority prior to the release of the Construction Certificate for each Stage.*

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- 3) *Thinning of Camphor Laurel trees within the APZ for Lots 38, 39, 40, 55, 57, 59, 60 and 61 is required in order to comply with Planning for Bushfire Protection 2006 as part of the on going maintenance of adequate bushfire protection.*

As discussed in Section 2.0 Condition B24 cannot be complied with as the RFS will not “endorse the plans”. It is therefore proposed to modify Condition B24 as follows:

Bushfire Management

B24 Asset Protection Zones

- 1) Asset Protection Zones (APZs) in each stage are to be provided in accordance with the Ecological Bushfire Planning Assessment in the Biolink Ecological Consultants report dated June 2011, as contained within the Environmental Management Area, illustrated on the proposed subdivision plans in condition A3. Details of the APZs are to be provided, accompanied by a **Fire Protection Association Australia Accredited Bushfire Planning and Design (BPAD) Certified Practitioner endorsement**, to the satisfaction of the Certifying Authority prior to the release of the Construction Certificate for each stage.
- 2) Asset Protection Zones in each Stage are to be provided on private land, in accordance with Planning for Bushfire Protection (2006). Details and a plan showing the APZs, accompanied by a **Fire Protection Association Australia Accredited Bushfire Planning and Design (BPAD) Certified Practitioner endorsement**, are to be provided to the satisfaction of the Certifying Authority prior to the release of the Construction Certificate for each Stage.
- 3) Thinning of Camphor Laurel trees within the APZ for Lots 38, 39, 40, 55, 57, 59, 60 and 61 is required in order to comply with Planning for Bushfire Protection 2006 as part of the on going maintenance of adequate bushfire protection.

Condition E7 is in the following terms:

“E7 Asset Protection Zones (APZ)

- 1) *Prior to the issue of the Subdivision Certificate for the relevant Stage, certification from a Fire Protection Association Australia (FPA Australia) accredited Bushfire Planning And Design (BPAD) certified practitioner, must be submitted to the PCA, confirming that the subject development complies with the Rural Fire Service's General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997 on the consent.*
- 2) *No dwellings shall be constructed within the APZ. Private open space, communal open space, roads, backyards and pools are permissible in the APZ.*
- 3) *Thinning of Camphor Laurel trees within the APZ for Lots 38, 39, 40, 55, 57, 59, 60 and 61 is required in order to comply with Planning for Bushfire Protection 2006 as part of the on going maintenance of adequate bushfire protection.”*

As discussed in Section 2.0, Condition E7 cannot be complied with because the RFS has not and will not, issue General Terms of Approval under Section 100B of the Rural Fires Act, 1997. It is therefore proposed to amend Condition E7 as follows:

E7 Asset Protection Zones (APZ)

- 1) Prior to the issue of the Subdivision Certificate for the relevant Stage, certification from a Fire Protection Association Australia (FPA Australia) accredited Bushfire Planning And Design (BPAD) certified practitioner, must be submitted to the PCA, confirming that the subject development complies with the **the original Biolink Ecological and Bushfire Planning Assessment – Final Report dated June 2011 and Asset Protection Zone Management Plan prepared by Biolink dated October 2017.**
- 2) No dwellings shall be constructed within the APZ. Private open space, communal open space, roads, backyards and pools are permissible in the APZ.

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- 3) Thinning of Camphor Laurel trees within the APZ for Lots 38, 39, 40, 55, 57, 59, 60 and 61 is required in order to comply with *Planning for Bushfire Protection 2006* as part of the on going maintenance of adequate bushfire protection.

e) Effect of Proposed Modification

The modification is intended to remove the anomalies in both Conditions such that the Conditions can be complied with.

In this regard, the proposed modification is to be made pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act, 1979*.

f) Description of Expected Impacts of the Modification

Having regard to the administrative nature of the proposed modification, it is not expected that the modified project will have any additional adverse impacts.

In granting approval for the original Project Application, the Planning and Assessment Commission has accepted that the potential impacts associated with the proposal were not unreasonable.

g) An undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved

As indicated in Section 5.0, the modification as proposed will not result in any physical changes to the project as approved. Therefore, as modified, the project will remain substantially the same as that originally approved.

h) If the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner)

Owner's Consent is **attached**.

i) A statement as to whether the application is being made to the Court (under section 96) or to the consent authority (under section 96AA), and, if the consent authority so requires, must be in the form approved by that authority.

The application is made to the DoPE as the Consent Authority. The relevant form is attached to the application.

5.0 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (AS AMENDED) & ENVIRONMENTAL PLANNING AND ASSESSMENT (SAVINGS, TRANSITIONAL AND OTHER PROVISIONS) REGULATION, 2017

Clause 3BA of Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation, 2017 (the Regulation) provides that a Project Approval cannot be modified under Section 75W of Part 3A (as saved for transitional projects) after 1 March 2018. Therefore, this Modification Application is lodged under Section 4.55(1A) of the Environmental Planning and Assessment Act (EPAA), on the basis that it will involve minimal environmental impact.

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Section 4.55(1A) of the Act relates to modifications involving minimal environmental impact and is in the following terms:

“(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.”

With regard to Section 4.55(1A)(a), the proposed modification to the project is unlikely to create more than minimal environmental impact given that it only involves administrative amendments to Conditions B24 and E7 such that they are capable of being complied with. No changes to the design of the project or conditions of approval (other than B24 and E7) are proposed.

Pursuant to Section 4.55(1A)(b), before the consent authority can modify the consent, it must be satisfied in relation to the threshold requirement that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.

The Land and Environment Court has made a number of decisions in relation to this threshold question, as discussed in the following sections.

In *Moto Projects (No. 2) Pty Ltd v North Sydney Council* (1999) Bignold J described the following test in determining the threshold question:

“The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).”

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Further, in *Wolgan Action Group Incorporated v Lithgow City Council* (2001) Talbot J addressed the question of “substantially the same development” in the context of Section 4.55.

In forming his view, Talbot refers to case law as follows (note relevant definitions underlined):

“In Vacik Pty Limited v Penrith City Council (Stein J, NSWLEC, 18 February 1992, unreported), Stein J adopted a meaning for “substantially” where used in the earlier s 102(1)(a) of the EP&A Act as “essentially or materially or having the same essence”. In North Sydney Council v Michael Standley & Associates Pty Ltd (1998) 97 LGERA 433 at 440, Mason P expressly agreed with the view taken by Stein JA. Mason P also said, at p 439, that in the context of s 102 the verb modify meant “to alter without radical transformation” (see Sydney City Council v Ilenc Pty Ltd (1984) 3 NSWLR 414 at 421)”. In Standley Stein JA also reiterated the view he expressed in Vacik.

In Standley Stein JA also reiterated the view he expressed in Vacik.

Following on from the tests established in these cases and based on numerous Land and Environment Court decisions, it is apparent that the following key principles apply:

- The comparison is undertaken at a general level rather than between detail;
- The question is whether the development as a whole is essentially or materially similar to the originally approved development;
- If the impacts of the modifications are minor, the modified development is more likely to be essentially or materially the same development;
- It is relevant to consider the magnitude of any physical changes to the development and any changes to the use of the land.

Having regard to the fact that the operational details of the development will not change and the key principles discussed above, it is submitted that the threshold question is satisfied on the basis that:

- The development as a whole, being for an 84 lot subdivision, will remain unchanged.
- The proposed modification will not alter the statutory or policy compliance of the proposal, create any other material difference and does not give rise to any significant environmental impacts.
- The likely impact of the modification is minor.
- No changes to the nature, scale, intensity and lot layout of the development will occur.

Accordingly it is submitted that the proposed modification will not represent a substantial change to the originally approved development and that the proposed modification to the Approval will represent substantially the same development as the development for which the Approval was originally granted.

Pursuant to Section 4.55(1A)(c), public notification of the proposed modification to the Approval is to be in accordance with the Regulation. Clause 117(2) of the Regulation states that the notification of Section 4.55(1A) Applications are to be in accordance with a Development Control Plan.

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Clause 4.0 of the relevant Tweed Development Control Plan 2008, Section A11 – Public Notification Policy, states that the Plan only applies to modifications of Approvals under Section 4.55(2) of the EP&A Act 1979. Accordingly there is no requirement to advertise the subject application.

In considering an application to modify an Approval under Section 4.55(1A) of the Act, Section 4.55(3) requires the consent authority to take into account relevant Section 4.15(1) matters.

Relevant Section 4.15(1) matters are addressed as follows:

a) the provisions of:

i) Any Environmental Planning Instrument

MP05_0198 was approved based on the planning controls contained in Tweed Local Environmental Plan 2000 (TLEP2000). Condition A4 of the Approval requires the project to be undertaken in accordance with the Environmental Assessment Report dated November 2006, as revised in June 2009, prepared by Darryl Anderson Consulting Pty Ltd.

Figure 1 contained in the Environmental Assessment shows the zoning of the land as mainly 2(c) Urban Expansion together with an area zoned 7(d) Environmental Protection (Scenic Escarpment).

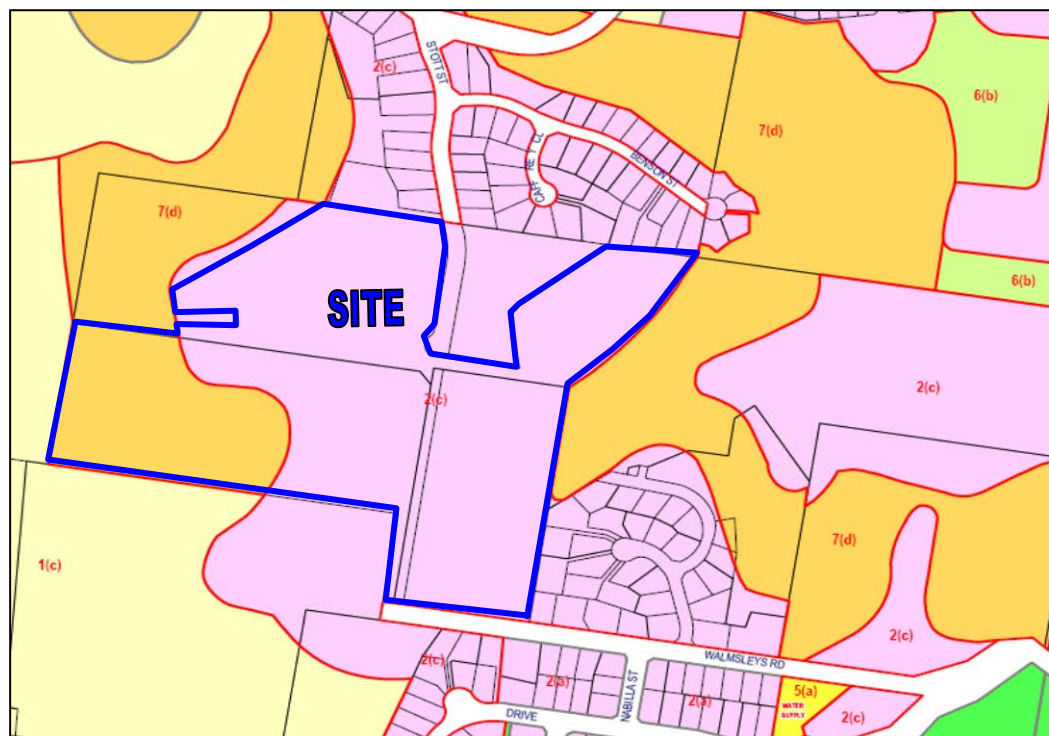


Figure 1 – Site Location and Zoning
Source: Figure 1 of Environmental Assessment, DAC, November 2006

On 4 April 2014, TLEP2000 was replaced by Tweed Local Environmental Plan 2014 (TLEP2014). Under the provisions of TLEP2014, the land previously zoned 2(c) Urban Expansion is now zoned R1 General Residential, as indicated on **Figure 2**.

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The remaining land is a Deferred Matter and therefore retains the 7(d) zoning under TLEP2000.

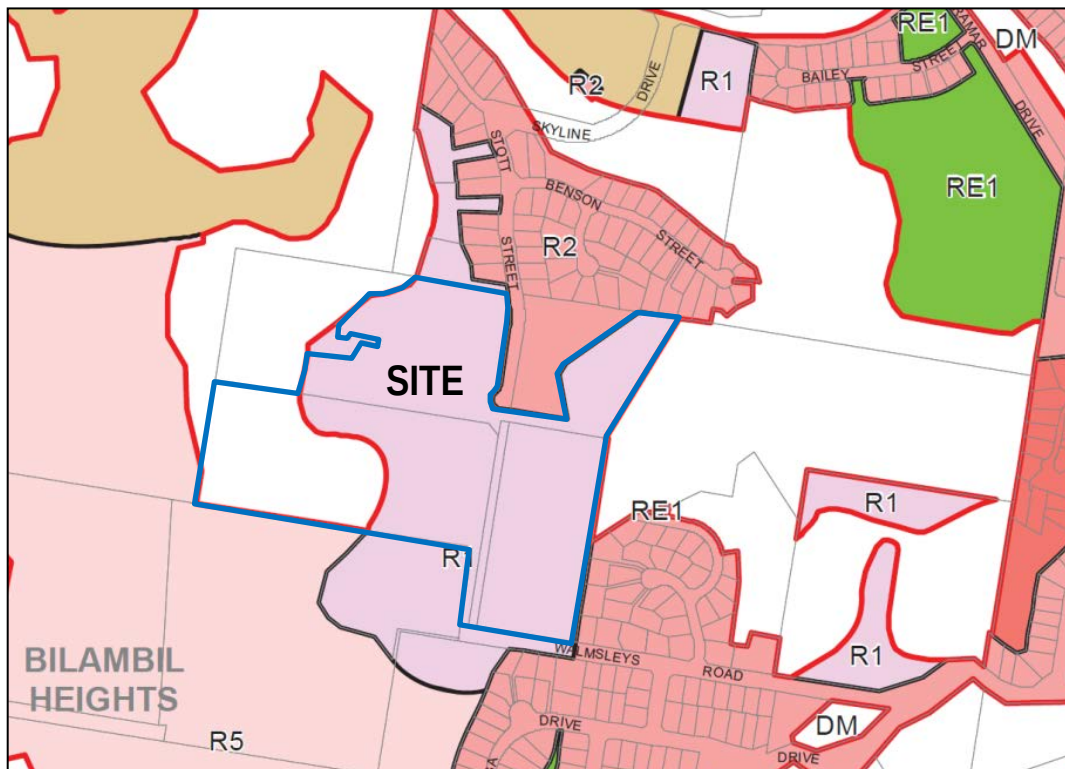


Figure 2 – Zoning Map
Source: Tweed Local Environmental Plan 2014

A minimum lot size of 450m² continues to apply to the R1 zoned land and the approved residential lots comply with this requirement.

In summary, the Project Approval (as modified) is not inconsistent with the provisions of TLEP2014 or TLEP2000.

ii) Any Exhibited Draft Planning Instrument

Not applicable.

iii) Development Control Plans

Tweed Development Control Plan 2008 contains various controls. Given that there will be no change to the layout and operational details of the Approval, it is considered that modification of the Approval, as proposed, will not be inconsistent with any relevant provisions of Tweed Development Control Plan 2008.

iiia) Planning Agreements

Not applicable.

iv) Provisions of the Regulations.

Not applicable.

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v) Any coastal zone management plan.

Not applicable.

b) Likely Impacts of the Development

Given the administrative nature of the proposed modification, no significant impacts are likely to occur.

c) The Suitability of the Site for the Development

As acknowledged when the project was originally approved, the site was and remains, suitable for the proposed development.

d) Any Submissions Made In Accordance With the Act or Regulations

It is a matter for the Department to consider any submissions made in respect of the Modification Application.

e) The Public Interest

Under the provisions of the Far North Coast Regional Strategy (FNCRS) 2006-2031, that part of the site zoned R1 is within the existing urban footprint.

Under the North Coast Regional Plan 2036 (NCRP), that part of the site zoned R1 remains in the urban growth area footprint (Figure 18).

In summary, the project is not inconsistent with the NCRP or the FNCRS.

As there has been no change in the statutory or strategic planning regime for the site since the original project was approved and as there are no physical changes to the scale, layout or intensity of the development, it is submitted that modification of Conditions B24 and E7 would not be inconsistent with the public interest and would not give rise to any significant adverse environmental impacts.

6.0 SUMMARY AND CONCLUSIONS

In summary, approval of this Modification Application will enable the project to proceed to the construction stage such that additional lots are provided to meet the continuing demand for housing in the northern sector of Tweed Shire.