

Bilambil Residential Subdivision Modification 4

Conditions B24 and E7 regarding bushfire safety
State Significant Development Modification Assessment
(MP 05_0198 MOD 4)

August 2020



Published by the NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

Title: Bilambil Residential Subdivision Modification 4

Subtitle: Assessment Report

© State of New South Wales through Department of Planning, Industry and Environment 2020. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Industry and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (August 2020) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Industry and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Glossary

Abbreviation	Definition
BCD	Biodiversity Conservation Division
Council	Tweed Shire Council
Department	Department of Planning, Industry and Environment
EESG	Environment, Energy and Science Group, DPIE
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
RFS	Rural Fire Service
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SSD	State Significant Development

Contents

1	Introduction	1
1.1	Background	1
1.2	Approval history.....	2
2	Proposed modification	4
3	Statutory context	1
3.1	Part 3A transition to State significant development	1
3.2	Scope of modifications	1
3.3	Consent authority	2
3.4	Mandatory matters for consideration.....	2
4	Engagement.....	3
4.1	Department's engagement.....	3
4.2	Summary of submissions	3
4.3	Response to submissions	4
5	Assessment	5
5.1	Modification of Bushfire Management Conditions.....	5
5.2	Other issues	6
6	Evaluation.....	9
7	Recommendation.....	10
8	Determination.....	11
	Appendices	12
	Appendix A – Modification report.....	12
	Appendix B – Submissions	12
	Appendix C – Response to Submissions.....	12
	Appendix D – Notice of modification.....	12

1 Introduction

This report provides the Department of Planning, Industry and Environment's assessment of an application to modify the development consent for a residential subdivision at Bilambil Heights (MP 05_0198).

The application seeks approval to modify Conditions B24 and E7 relating to bushfire safety to ensure consistency between the conditions and advice from the Rural Fire Service (RFS) and make minor amendments to the lot layout.

The application was lodged by DAC Planning Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

1.1 Background

The site is located on Walmsleys Road and Stott Street, Bilambil Heights, approximately 6 kilometres (km) south-west of the Tweed CBD and 3 km south of the New South Wales and Queensland border, in the Tweed Shire local government area (**Figure 1**).



Figure 1 | Regional Context Map (Source: Nearmap)

The majority of the site is cleared of vegetation. However, an Endangered Ecological Community (EEC) and eight rare and/or threatened plant communities are located adjacent to the southern and western boundaries of the site. A single row of Camphor Laurel trees also runs between the eastern and western boundaries of the site (**Figure 2**).



Figure 2 | Local Context Map (subject site outlined in blue) (Source: Nearmap)

To the north and south of the site is existing residential and seniors living development, and to the east and west is vacant agricultural land (**Figure 2**).

1.2 Approval history

On 2 August 2012, the then Planning Assessment Commission (the Commission) granted project approval for an 85 lot residential subdivision, comprised of 77 Torrens Title lots, a six lot Community Title scheme (five residential lots and one neighbourhood property lot), one public reserve, one lot to accommodate a sewage pumping station, and associated infrastructure works.

The project approval has been modified on four occasions, as summarised in **Table 1**.

Table 1 | Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Type	Status
MOD 1	Reconfigure sewerage pumping station and sewer lines and consolidate certain lots within the development site.	Department	75W	Approved on 5 June 2017
MOD 2	Extend the approval lapse date by one year from 2 August 2017 to 2 August 2018.	Department	75W	Approved on 12 October 2017

MOD 3	Extend the approval lapse date by one year from 2 August 2018 to 2 August 2019.	Department	4.55(1A)	Approved on 6 July 2018
MOD 5	Amend Condition C2 to allow survey and investigative geotechnical works to occur prior to satisfaction of various conditions.	Department	4.55(1A)	Approved on 14 June 2019

Relevant to the proposed modification, the approved subdivision plan includes an 25m wide Environmental Management Area (EMA) along the eastern and western boundaries of the site. Asset Protection Zones (APZs) are required to be located within the EMA, and the area is to be managed in accordance with the provisions of the Vegetation Management Plan.

Conditions B24 and E7 were imposed to require further details of the APZs to be submitted and endorsed, as follows:

- Condition B24 requires detailed APZ plans to be provided and endorsed by RFS prior to the issue of a Construction Certificate for each stage
- Condition E7 requires certification that the development complies with Rural Fire Service's General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997 on the consent.

2 Proposed modification

The proposal (as amended by the RTS) seeks to modify:

- Condition B24 to clarify that details of APZs in each stage are to be endorsed by a Fire Protection Australia Accredited Bushfire Planning and Design (BPAD) Certified Practitioner, rather than RFS
- Condition E7 to clarify that a BPAD Certified Practitioner may confirm the development complies with the original Biolink Ecological and Bushfire Planning Assessment (June 2011) and Asset Protection Zone Bushfire Fuel Management Plan (June 2020), rather than the General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997
- the layout of Lots 32 to 40 to provide an additional 5m between the APZ and indicative building envelopes (**Figure 4**).

The proposed wording of the conditions is as follows:

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~~ **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 ~~RFS endorsement~~ **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.

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.~~ **original Biolink Ecological and Bushfire Planning Assessment - Final Report dated June 2011 and Asset Protection Zone Bushfire Fuel Management Plan prepared by Bushfire Certifiers dated 16 June 2020.**
- 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.

The Applicant contends that Condition B24 cannot be complied with, as it requires endorsement from RFS. However, RFS have advised that it will not issue endorsement as this is the responsibility of the

consent authority. The amendment to Condition E7 is sought as no General Terms of Approval were imposed under Section 100B of the Rural Fires Act 1997 as part of the original approval, and therefore the condition cannot be complied with.

The changes to Lots 32 to 40 are proposed in response to Council's concerns that complying building envelopes cannot be accommodated within the previously approved smaller lots with APZ constraints. The approved and proposed subdivision plans are shown in **Figures 3 and 4**.

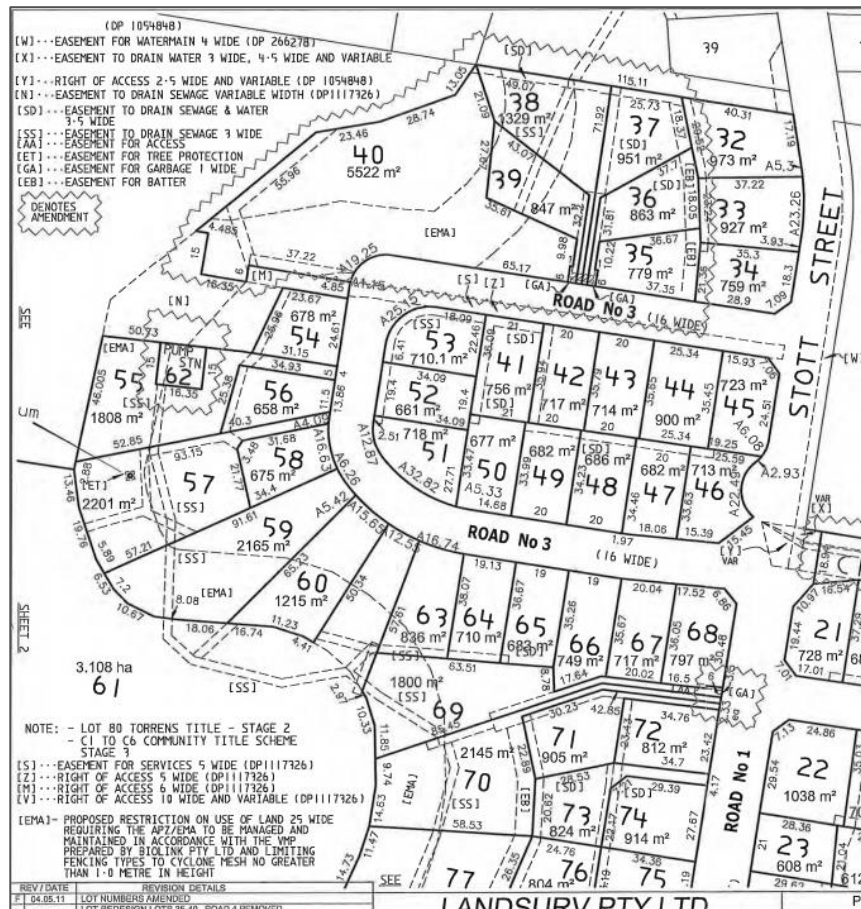


Figure 3 | Approved subdivision layout

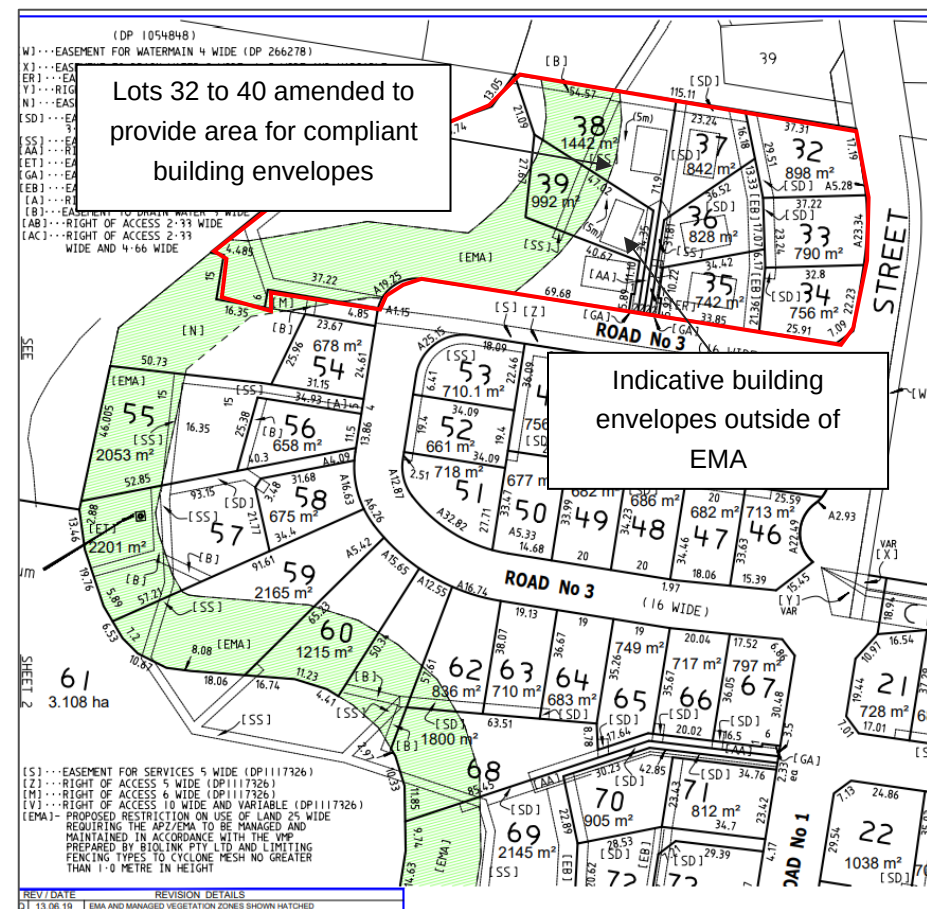


Figure 4 | Proposed subdivision layout - Lots 32 to 40 (outlined in red) modified

3 Statutory context

3.1 Part 3A transition to State significant development

The project approval (MP 05_0198) was originally granted under Part 3A of the EP&A Act. This means the project satisfied the definition of a 'transitional Part 3A project' under clause 2(1) Schedule 2 to the Environmental Planning & Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (ST&OP Regulation), which came into effect on 1 March 2018.

Under the ST&OP Regulation, projects the subject of existing Part 3A approvals remain transitional Part 3A projects until they are transitioned to State significant development (SSD) (clause 3(1)-(2), Schedule 2). As of 1 March 2018, new proposals to modify existing Part 3A project approvals can only be determined once the project has been declared to be SSD by the Minister for Planning, and the relevant provisions to modify an SSD consent under Part 4 of the EP&A Act apply.

On 6 July 2018, an Order was published in the New South Wales Government Gazette transitioning the Part 3A project approval (MP 05_0198) to SSD.

The effect of this order is that the project approval is taken to be a development consent under Part 4 of the EP&A Act for the carrying out of the development and the modification request is taken to be an application to modify under section 4.55 of the EP&A Act. The application has been lodged under section 4.55(1A) of the EP&A Act for a modification involving minimal environmental impact.

3.2 Scope of modifications

Section 4.55(1A) of the EP&A Act outlines the matters that a consent authority must take into consideration when determining an application that seeks to modify an SSD application and results in minor environmental impacts.

The matters for consideration under section 4.55(1A) of the EP&A Act that apply to the modification of the project approval have been considered in **Table 2**.

Table 2 | Section 4.55(1A) Modification involving minimal environmental impact

Section 4.55(1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	Section 5 of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the proposed modifications are minor in nature and will have minimal environmental impact.
b) that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted was modified (if at all), and	The Department is satisfied the modification is substantially the same development as originally granted as it only seeks to amend conditions to resolve discrepancies between the requirements and RFS advice and allow Conditions B24 and E7 to be satisfied.

c) the application has been notified in accordance with the regulations, and	The modification application has been notified in accordance with the regulations. Details of the notification are provided in Section 4 of this report.
d) any submission made concerning the proposed modification has been considered.	The Department received two public authority submissions. Consideration of submissions is provided in Section 4 and 5 of this report.

Accordingly, the Department is satisfied that the application may be assessed and determined under section 4.55(1A) of the EP&A Act.

3.3 Consent authority

The Minister for Planning and Public Spaces is the approval authority for the modification request. However, under the Minister's delegation dated 9 March 2020, the Director, Regional Assessments, may determine the application as:

- a political disclosure statement has not been made, and
- no public objections were received.

3.4 Mandatory matters for consideration

The original project approval was assessed against the provisions of the following Environmental Planning Instruments (EPIs):

- State Environmental Planning Policy (Major Development) 2005
- State Environmental Planning Policy No.14 – Coastal Wetlands
- State Environmental Planning Policy No.44 – Koala Habitat Protection
- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy No. 71 – Coastal Protection
- Tweed Shire Council Local Environmental Plan 2000
- North Coast Regional Environmental Plan 2008.

While SEPP 14, SEPP 71 and the Tweed LEP 2000 have been replaced, the Department is satisfied that the proposed modification does not result in any significant changes that would alter the conclusions made as part of the original assessment.

The Department has also considered the proposal against relevant provisions of more recent EPIs, including State Environmental Planning Policy (Coastal Management) 2018, the Tweed LEP 2014 in **Section 5.2** and is satisfied that the proposal is consistent with these controls.

4 Engagement

4.1 Department's engagement

The application was made publicly available on the Department's website and notified to Tweed Shire Council (Council) and the RFS.

The Department received submissions from Council and RFS. A summary of the submissions is provided at **Table 2**. No **public** submissions were received.

4.2 Summary of submissions

Table 2 | Summary of Agency Submissions

Tweed Shire Council (Council)

Council advised that it does not support the Asset Protection Management Plan dated October 2017 and therefore objects to the reference to this plan in the proposed amended Condition E7. Council also provided the following comments:

- raised concerns with the proposed Asset Management Plan, including:
 - APZs extending beyond the EMA and onto adjacent private land
 - proposed APZs compromising expected habitat restoration works
 - lack of certainty for the long term protection of threatened flora species
- raised concerns that the required APZs and approved EMAs in future lots unlikely to leave sufficient space to accommodate a dwelling
- it is recommended that the following information be provided:
 - a Bushfire Threat Assessment Report considering the required APZ location, future use and commitment to vegetation management
 - clarification whether the modification to the lot layout is necessary to achieve a development layout that does not result in any additional impact on ecological values
- conflicts between the requirements for vegetation management and APZs should be resolved as part of the current modification application.

Rural Fire Service (RFS)

RFS raised no objection to the proposed modification to enable endorsement of certain matters by a suitably qualified bushfire consultant, noting that:

- Conditions B24 and E7 were not recommended by RFS
- no assessment has been provided to demonstrate that the proposed conditions or documents referenced in proposed Condition E7 reflect the intent of the conditions recommended by RFS in its letter to the Department dated 24 September 2009.

4.3 Response to submissions

The Department provided the submissions to the Applicant and requested a response to the issues raised. On 18 June 2020, the Applicant provided a Response to Submissions (RtS) including:

- a subdivision plan that incorporated minor amendments to the configuration of Lots 32 to 40 to achieve compliant EMAs and APZs
- an updated APZ Bushfire Fuel Management Plan
- an amended Vegetation Management Plan
- an amended Tree Removal Plan.

The RtS was notified to Council and RFS and made publicly available on the Department's website.

Table 3 | Summary of Agency Submissions on RTS

Tweed Shire Council (Council)
Council advised that the amended plans satisfactorily address the matters previously raised.
Rural Fire Service (RFS)
RFS reiterated that it did not object to the proposed modification of Condition B24, but noted that the documents referenced in Condition E7(1) do not address all the matters included in the recommended conditions provided by RFS on 24 September 2009. RFS recommended that the following requirements be included as conditions:
• upon the issue of the subdivision certificate, the entire area of Lots 1-37, 41-60, 62-78 and C1-C5 should be managed as an APZ • Lots 38, 39, 40, 61 and C6 should be managed as an APZ, for those parts of the respective lots identified as EMA / APZ and around the building envelope • the restriction-to-use over Lot 6 DP 1117326 should include the EMA and the land between the EMA and the boundary of Lot 54 • Fire hydrant spacing, sizing and pressure should comply with AS 2419.1 – 2005.

5 Assessment

In assessing the merits of the proposed modification, the Department has considered:

- the Modification Report and associated documents (**Appendix A**)
- the Environmental Assessment and conditions of approval for the original project and previous modifications
- submissions received on the proposal
- the Response to Submissions and associated documents
- relevant EPIs, policies and guidelines
- the requirements of the EP&A Act.

The Department considers the key issue is the modification of bushfire management conditions. An assessment of other issues is provided at **Table 4**.

5.1 Modification of Bushfire Management Conditions

The proposal seeks to modify:

- Condition B24 to clarify that details of APZs in each stage are to be endorsed by a Fire Protection Australia Accredited Bushfire Planning and Design (BPAD) Certified Practitioner, rather than RFS
- Condition E7 to clarify that a BPAD Certified Practitioner may confirm the development complies with the original Biolink Ecological and Bushfire Planning Assessment (June 2011) and Asset Protection Zone Bushfire Fuel Management Plan (June 2020), rather than the General Terms of Approval imposed under Section 100B of the Rural Fires Act 1997.

The Applicant seeks these changes to resolve discrepancies between the requirements of the conditions and RFS advice, so that Conditions B24 and E7 may be satisfied. RFS has advised that it will not endorse the plans referred to in Condition B24 as the conditions recommended at the time of the original approval did not require further involvement of RFS, and the endorsement of the plans should be the responsibility of the consent authority. RFS also advised that no General Terms of Approval were imposed under Section 100B or the Rural Fires Act 1997 as part of the original approval.

Council initially raised concerns about the reference to the APZ Management Plan contained in Condition E7, which required APZs in locations inconsistent with the conditions and that appeared to compromise required habitat restoration works. Council also raised concerns about conflict between the objectives to protect vegetation within the EMA and establish APZs, and that the required APZs may burden lots and leave insufficient space for a dwelling.

In response, the Applicant's RtS provided an updated APZ Management Plan, which considers the requirements of an updated Vegetation Management Plan and Tree Removal Plan. An amended subdivision plan was also submitted showing an additional 5m buffer between the APZ and the indicative building envelopes on lots 38, 39 and 40.

Council advised that the amended plans address their concerns, and the Department is therefore satisfied that any conflicts between the requirements to maintain and protect vegetation within EMA's have been resolved.

RFS raised no objection to the proposed modification to enable endorsement of certain matters by a suitably qualified bushfire consultant as proposed for Condition B24. However, it noted that the documents referenced in proposed Condition E7 to replace the reference to General Terms of Approval do not address matters included in the advice provided for the original application. RFS recommended a number of conditions to address this, and subject to the imposition of these conditions raised no objection to the modification of Condition E7.

Noting the above, the Department is satisfied the changes would ensure that Conditions B24 and E7 are able to be satisfied, while maintaining the intent of the conditions and ensuring that an appropriate review of the APZs is undertaken.

The Department has also recommended the additional bushfire management conditions provided by the NSW RFS to address matters included in advice for the original application. It is noted that recommended Condition E7(1)(a) requiring the entire area of Lots 1-37, 41-60, 62-78 and C1-C5 to be managed as an asset protection zone, conflicts with existing Condition E7(2) and E8(5)(d) which states that no dwellings shall be constructed within the APZ. RFS has confirmed that Condition E7(2) was not recommended by RFS and the intent of E7(1)(a) is not to prohibit the construction of a dwelling on the referenced lots, but to maintain reduced fuel loads. RFS also advised that Condition E7(2) could be deleted to ensure that dwellings are able to be constructed on Lots 1-37, 41-60, 62-78 and C1-C5. Subject to the deletion of Condition E7(2), modification of E8(5)(d) and the additional conditions recommended by RFS, the Department is satisfied the proposal would result in appropriate bushfire management.

5.2 Other issues

Table 4 | Assessment of other issues

Issue	Findings	Recommendations
Lot layout	The proposal seeks approval for the minor reconfiguration of Lots 32 to 40 in order to achieve a compliant EMA and APZ to the west of these lots (Figure 4). The Department considers the modified layout to be acceptable as: • no change to the number of lots or approved development footprint is proposed • There is no additional adverse impact on the environment or	Modified Condition A3 to reference the updated Subdivision Plan.

surrounding area and existing conditions remain relevant

- the reconfigured lots meet the minimum lot size requirement of 450m² in accordance with the Tweed LEP 2014 and are capable of accommodating a compliant building envelope in accordance with Tweed Development Control Plan 2008.

The Department therefore considers the proposed modified lot layout is acceptable and recommends the conditions be updated to reflect the amended subdivision layout.

Tree Removal Plan

The Applicant provided a Tree Removal Plan (TRP) as part of the RtS.

No additional conditions or amendments to existing conditions necessary.

The Department notes that Condition A2 requires a TRP to be submitted to the Secretary identifying all trees to be removed within Stages 1A and any trees to be removed to facilitate the construction of the sewer line, prior to the issue of a Construction Certificate authorising any tree removal works.

The Department is satisfied that the proposed Tree Removal Plan is consistent with the Bushfire Management Plan and the Vegetation Management Plan, but notes that the TRP will be subject to a separate approval process for Condition A2 to be satisfied.

Vegetation Management Plan

The Applicant provided a Vegetation Management Plan (VMP) as part of the RtS, taking into consideration the amended lot layout and APZ Management Plan.

No additional conditions or amendments to existing conditions necessary.

The Department notes that Condition B23 requires a VMP to be submitted for the approval of Tweed Shire Council and

a copy forwarded to the Department prior to the issue of a Construction Certificate.

The Department notes that Council has reviewed the RtS documentation, however the VMP will be subject to separate approval for Condition B23 to be satisfied.

Coastal SEPP

The Department has considered the proposal against State Environmental Planning Policy (Coastal Management) 2018 (Coastal SEPP).

The Coastal SEPP identifies part of the site as located within the Coastal Environment Area and therefore clause 13 applies.

The Department is satisfied the proposed modification would not cause any inconsistency with the provisions of the Coastal SEPP or result in any unreasonable impacts on the Coastal Environment or Use area, as it does not seek to alter the development footprint.

6 Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. Consistent with the advice from Council and RFS, the Department considers the proposal is acceptable as it resolves discrepancies between the requirements and RFS advice and allows Conditions B24 and E7 to be satisfied while ensuring the required APZs do not compromise vegetation management.

The Department is satisfied that the modification can be approved, subject to the recommended conditions (**Appendix D**).

7 Recommendation

It is recommended that the Director, Regional Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **determines** that the application MP 05_0198 MOD 4 falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modifies** the consent MP 05_0198
- **signs** the attached Modification of Development Consent (**Appendix D**).

Recommended by:



Emma Butcher
Senior Planning Officer
Regional Assessments

Recommended by:



Silvio Falato
Team Leader
Regional Assessments

8 Determination

The recommendation is **Adopted** by:

A handwritten signature in blue ink, appearing to be 'K T' followed by a horizontal line.

21 August 2020

Keiran Thomas

Director

Regional Assessments

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – Modification report

<https://www.planningportal.nsw.gov.au/major-projects/project/13516>

Appendix B – Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/13516>

Appendix C – Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/13516>

Appendix D – Notice of modification

<https://www.planningportal.nsw.gov.au/major-projects/project/13516>