

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.



Keiran Thomas
Director
Regional Assessments

Sydney

21 August 2020

SCHEDULE 1

- Development consent:** MP 05_0198 granted by the Planning Assessment Commission on 2 August 2012.
- For the following:**
- 84 lot subdivision comprising:
 - 77 Torrens title residential lots;
 - a 6 lot Community Title scheme (5 residential and 1 neighbourhood property);
 - a public reserve lot; and
 - associated roads, storm water and utility infrastructure.
- Applicant:** WDLC Pty Ltd, ATF Dickinson Superannuation Fund, M Walmsley, R Walmsley, H Mabbutt and D Miller
- Consent Authority:** Minister for Planning and Public Spaces
- The Land:** Lot 1 DP 134787, Lot 1 DP 167380, Lot 2 DP 961928 and Lot 5 DP 1117326 Walmsleys Road and Stott Street, Bilambil Heights.
- Modification:** MP 05_0198 MOD 4: the modification seeks to amend Conditions B24 and E7 and minor amendments to the layout of Lots 32 to 40.

SCHEDULE 2

The above approval is modified as follows:

- (a) Schedule 2, Part A, Condition A3 - is amended by the insertion of the **bold and underlined** words and deletion of the ~~struckout~~ words as follows:

A3 Project in Accordance with Plans

The project will be undertaken in accordance with the Environmental Assessment, the Preferred Project Report and the following drawings:

Subdivision Design Drawings prepared by Landsurv Pty Ltd			
Drawing No.	Revision	Name of Plan	Date
35054 (Sheets 1, 2, 3 in 3 sheets))	L Q	Plan of Proposed Subdivision	24.03.16 <u>13.06.19</u>
Engineering Drawings prepared by Opus Quantec McWilliam			
Drawing No.	Revision	Name of Plan	Date
203057 Fig.4.0		Proposed Cut and Fill Contours	October,2011
203057 Fig 6.0		Erosion and Sediment Control Plan	October 2011
203057 Fig 7.0		Road Layout Plan	October 2011
203057 Fig 7.1		Site Cross Sections	October 2011
203057 Fig 7.2		Site Cross Sections	October 2011
203057 Fig 8.0		Walmsleys Road Longitudinal Section and Typical Cross Section	September 2010
203057 Fig 9.0		Road 1 Longitudinal Section and Typical Cross Section	October 2011
203057 Fig 10.0		Road 2 Longitudinal Section and Typical Cross Section	April 2009
203057 Fig 11.0		Road 3 Longitudinal Section and Typical Cross Section	October 2011
203057 Fig 12.0		Road 5 Longitudinal Section and Typical Cross Section	October 2011
203057 Fig 12.1		Right of Carriageway No.1 Longitudinal Section and Typical Cross Sections	April 2010
203057 Fig 12.2		Right of Carriageway No.2 Longitudinal Section and Typical Cross Sections	April 2010
203057 Fig 12.3		Right of Carriageway No.3 Longitudinal Section and Typical Cross Section	April 2010
203057 Fig 12.4		Right of Carriageway No.4 Longitudinal Section and Typical Cross Section	April 2010
203057 Fig 13.0		Water Cycle Management Plan Pre- Development	October 2011

203057 Fig 14.0		Water Cycle Management Plan Post-Development	October 2011
203057 Fig 15.0		Services Plan as amended by Cozens Regan Williams Prove Sewer Reticulation Plans, SK15 and SK16, Rev D, June 2016 and the relevant conditions of consent included within DA 15/0042	October 2011
203057 Fig 16.0		Proposed Grades Analysis	August 2010
203057 SK20100303		Indicative Restriction of Use Layout Plan	June 2011
203057 SK20100713		Walmsley Road Extension Proposed 1 in 4 Batter	July, 2010
203057 SK20100809-01	Rev A	Proposed Local Park Grade Compliance Schematic	August 2010
203057 SK20100809-02	Rev A	Proposed Local Park Grade Compliance Schematic	August 2010
203057 SK20100921		Proposed Energy Dissipater & Level Spreaders	
Engineering Drawings prepared by Cozens Regan Williams Prove			
SK15	D	Sewer Reticulation Plan Sheet 1 and relevant conditions of consent included within DA15/0042	June 2016
SK16	D	Sewer Reticulation Plan Sheet 2 and relevant conditions of consent included within DA15/0042	June 2016
Landscape Drawings prepared by Form Landscape Architects			
Drawing No.	Revision	Name of Plan	Date
91105 DA03 P2		Landscape Masterplan	08 Dec 10
91105 DA03 P3		Landscape Masterplan	08 Dec 10
91105 DA03 P4		Landscape Masterplan - Pedestrian Pathways	08 Dec 10
91105 DA03 P5		Landscape Masterplan - Trees In Public Places	08 Dec 10
91105 DA03 P6		Landscape Masterplan - Public Park Concept	08 Dec 10
91105 DA03 P7		Tree Suitability List	08 Dec 10

- (a) Schedule 2, Part A, Condition A4 – is amended by the insertion of the **bold and underlined** words and deletion of the ~~struckout~~ words as follows:

A4 Project in Accordance with Documents

The project will be undertaken in accordance with the following documents:

- (1) *Environmental Assessment Report* dated November, 2006, as revised June 2009 prepared by Darryl Anderson Consulting Pty Ltd; ~~and~~;
- (2) *Preferred Project Report/Response to Submissions* prepared by Darryl Anderson Consulting Pty Ltd dated October 2011; and
- (3) + *Modification Report – Major Project Approval No. 05_0198 (MOD 1) Proposed Residential Subdivision Wamsleys Road & Stott Street, Bilambil Heights*, prepared by DAC Planning PTY LTD, dated February 2017.

- (4) **Modification 4 (Mod 4) Application Report prepared by DAC Planning Pty Ltd, dated July 2018 and Response to Submissions prepared by DAC Planning Pty Ltd dated 18 June 2020.**

- (b) Schedule 2, Part B, Condition B24 - is amended by the insertion of the **bold and underlined** words and deletion of the ~~struckout~~-words 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 **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 **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.
- (c) Schedule 2, Part E, Condition E7 - is amended by the insertion of the **bold and underlined** words and deletion of the ~~struckout~~ words 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 ~~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, including:**
 - a) **The entire area of Lots 1-37, 41-60, 62-78 and C1-C5 shall be managed as an asset protection zone, as outlined in the Bushfire Fuel Management Plan (Bushfire Certifiers, 16 June 2020).**
 - b) **Lots 38, 39, 40, 61 and C6 shall be managed as an asset protection zone, as outlined in the Bushfire Fuel Management Plan (Bushfire Certifiers, 16 June 2020) for those parts of the respective lots identified as environmental management area / asset protection zone and around the building envelope.**
 - c) **The restriction-to-use over Lot 6 DP 1117326 shall include that part of Lot 6 identified as the environmental management area and the land between the environmental management area and Lot 54.**
- 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.
 - 4) **Fire hydrant spacing, sizing and pressure shall comply with AS 2419.1 – 2005.**
- (d) Schedule 2, Part E, Condition E8 - is amended by the insertion of the **bold and underlined** words and deletion of the ~~struckout~~ words as follows:

E8 Registration of Easements / Restrictions to use / Right of carriageways

- 1) The creation of easements for services, rights of carriageways and restrictions as to user are applicable under Section 88B of the *Conveyancing Act 1919*, including (but not limited to) the following:
 - a. Easements for sewer, water supply and drainage over all public services/infrastructure on private property.
 - b. Right of carriageway over the approved driveway access, subject to the outcomes required in condition B2, is to benefit Council ~~and provide access in perpetuity to the sewer pump station.~~
 - c. Drainage Easements are to be placed over all subsurface drains and interallotment drainage, benefiting and burdening the property owners. Maintenance of the subsurface drains is to be included in the 88B instrument.
 - d. Right of carriageways are to benefit and burden the property owners. Maintenance of the right of carriageways is to be shared between the property owners. Provision is also to be included in the 88B to provide public access to the proposed parks, nominating Council as the benefiting authority.
 - e. Use of site regrading on sloping residential subdivision sites to manufacture flat earth platforms is not permitted. Future dwellings on these sites are to use building techniques suitable to sloping sites.
- 2) Pursuant to Section 88BA of the *Conveyancing Act* (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.
- 3) Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.
- 4) Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the *Community Land Development Act 1989*, *Strata Schemes Management Act 1996*, *Conveyancing Act 1919*, or other applicable legislation.
- 5) In addition to the above certification, the following is to be included in the Section 88B Instrument to accompany the final plan of subdivision.
 - a. A restriction to user for each lot that has the benefit of a retaining wall that prevents any cut or fill greater than 0.3m in vertical height within a zone adjacent to the wall that is equal to the height of the wall.
 - b. Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction as to user advising the landowner of the need to maintain the wall in accordance with that standard.
 - c. A restriction as to user burdening all lots that prevents use of site regrading on sloping (natural slope >10%) residential subdivision sites to manufacture flat earth platforms suitable for construction of concrete slab-on-ground dwellings. Dwellings

on these sites are to use building techniques suitable to sloping sites such as piled or piered foundations.

- d. A Restriction as to User for any indicated Asset Protection Zone. No dwellings are to be constructed in ~~this area~~ **the APZ/ Environmental Management Area shown on the Proposed Plan of Subdivision, Revision Q, dated 13.06.20.** The Restriction as to User shall advise the landowner of the need to maintain this area as an Asset Protection Zone, **including:**
- (i) **The entire area of Lots 1-37, 41-60, 62-78 and C1-C5 shall be managed as an asset protection zone, as outlined in the Bushfire Fuel Management Plan (Bushfire Certifiers, 16 June 2020).**
 - (ii) **Lots 38, 39, 40, 61 and C6 shall be managed as an asset protection zone, as outlined in the Bushfire Fuel Management Plan (Bushfire Certifiers, 16 June 2020) for those parts of the respective lots identified as environmental management area / asset protection zone and around the building envelope.**
 - (iii) **The restriction-to-use over Lot 6 DP 1117326 shall include that part of Lot 6 identified as the environmental management area and the land between the environmental management area and Lot 54.**

The restriction is to be clearly marked on the plan of subdivision and Council is to be nominated as the sole party to vary, modify and/or extinguish the restriction.

- 6) A public positive covenant is to be created under Section 88E of the *Conveyancing Act 1919*, to require that the land the subject to the VMP is to be maintained in accordance with the requirements of the VMP.

**End of modification
(MP 05_0198 MOD 4)**