

ASSESSMENT REPORT

**Lyons Road, North Bonville
08_0080 MOD 1**

1. INTRODUCTION

This report is an assessment of an application seeking to modify an approved residential subdivision at Lyons Road, North Bonville in the Coffs Harbour local government area. The application has been lodged by Resource Design and Management Pty Ltd on behalf of Pacific Coast Developments 112 Pty Ltd (the Proponent) pursuant to section 4.55(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The application seeks approval to correct errors in Condition B15 that reference compliance with Special Fire Protection Purposes (SFPP) requirements of the Rural Fire Service's (RFS) Planning for Bushfire Protection 2006 (PBP 2006), as the development is not a SFPP development. It also seeks approval to correct an error in Condition B15, which references a wrong condition number.

2. SUBJECT SITE

The subject site covers an area of 38.49 hectares and is located off Lyons Road and Bambarra Drive at North Bonville. Access to the site is via Bambarra Drive, which connects with Lyons Road approximately 170 m to the north of the site. The site is approximately 8.5 km south of Coffs Harbour city centre and approximately 3.2 km west of the coastal town of Sawtell (see **Figures 1 and 2**)

The site is bounded to the east, south and west by Bongil Bongil National Park. To the north of the site is existing low density residential development including development associated with the North Bonville urban release area.

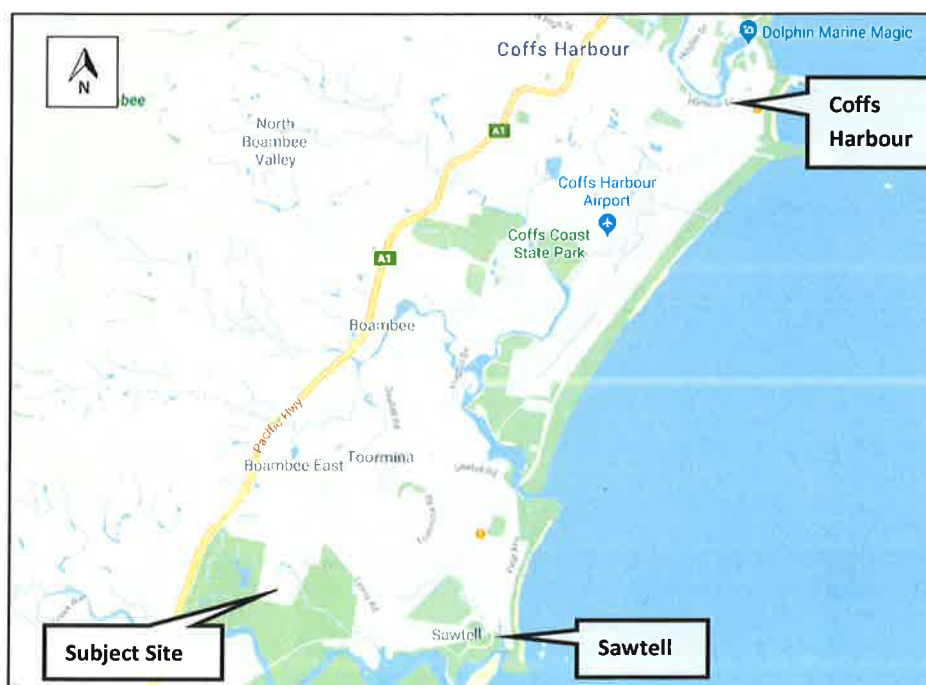


Figure 1: Site Location



Figure 2: Subject Site

3. APPROVAL HISTORY

On 18 July 2013, the then Executive Director, Development Assessment Systems and Approvals, as delegate of the then Minister for Planning, granted approval for a 165 lot residential subdivision. The approval included:

- 165 residential lots
- associated site earthworks
- provision of roads, footpaths, street tree and general landscaping
- provision of associated infrastructure, including stormwater management infrastructure (bio-retention basins and bio-retention swales)
- rehabilitation and revegetation of a riparian zone/corridor
- provisions of public reserve areas, including the riparian zone and a neighbourhood park
- creation of a residual lot over the eastern portion of the site (approximately 12.71 hectares) where no development is to occur.

The Project Approval has not been previously modified.

4. PROPOSED MODIFICATION

On 28 May 2018, the Applicant lodged an application (08_0080 MOD 1) seeking approval to correct errors in Condition B15 that references:

- compliance with the sections of the PBP 2006 related to SFPP and preparation of an Emergency Evacuation Plan as the development does not include uses classified as SFPP
- compliance with asset protection zones (APZ) required under Condition B19(3), instead of the correct Condition B15(3).

5. STATUTORY CONSIDERATION

5.1 Part 3A Transition to State Significant Development

The project was originally approved under section 75J of Part 3A of the EP&A Act and was a transitional Part 3A project under Schedule 2 to the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (EP&A (ST&OP) Regulations).

Following amendments to the EP&A Act and the associated EP&A (ST&OP) Regulations that commenced on 1 March 2018, the power to modify Part 3A approvals under former section 75W has been wound up for modification applications submitted after 1 March 2018. In order to modify a transitional Part 3A approval, the Minister for Planning can declare the development to be SSD by order under clause 6 of Schedule 2 of EP&A (ST&OP) Regulations. If a declaration is made the approval becomes a development consent which can be modified under Part 4 of the EP&A Act if it meets the relevant test.

On 3 July 2018, the Director, Regional Assessments (as delegate of the Minister for Planning), made an order under clause 6 of Schedule 2 declaring the development the subject of the project approval to be SSD. This order was published in the NSW Government Gazette on 6 July 2018 and took effect from that date.

The effect of this order is that the:

- the project approval is taken to be a development consent under Part 4 for the carrying out of the development
- modification request is taken to be an application to modify under section 4.55 of the EP&A Act.

5.2 Modification of Approval

Section 4.55(1) of the EP&A Act requires the consent authority to be satisfied that the following matters are addressed in respect of all applications that seek modification approvals:

Table 2: Matters for consideration

Section 4.55(1) matters for consideration	Comment
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 a development consent granted by it to correct a minor error, misdescription or miscalculation.	The application seeks approval to correct errors in Condition B15 which makes references to a development type not approved by the application and an incorrect condition number.
Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.	Noted.

5.2 Approval Authority

The Minister for Planning is the approval authority for the request. However, the Director, Regional Assessments may determine the request under delegation as:

- the relevant local council has not made an objection
- a political disclosure statement has not been made
- there are no public submissions in the nature of an objection.

6. CONSULTATION

The Department referred the application to Coffs Harbour Council (Council), RFS and made the application publicly available on the Department's website.

Council did not provide comments.

RFS did not object to the proposal, however it provided a range of conditions related to APZs and compliance with PBP 2006. The Department notes that the conditions are the same conditions provided by the RFS during assessment of the original application and as such,

conditions provided by the RFS during assessment of the original application and as such, were considered and implemented, where required, as part of the original application and Project Approval.

No **public** submissions were received.

7. ASSESSMENT

The application seeks approval to correct an error in Conditions B15(2)(ii), B15(2)(iii) and B15(2)(v) that references compliance with a section of the PBP 2006 that relates only to SFPP land-uses.

The Department is satisfied that the references to SFPP and the requirement to prepare an Emergency Evacuation Plan in Conditions B15(2)(ii), B15(2)(iii) and B15(2)(v) are in error as the development is for a residential subdivision only and does not contain uses identified as SFPP in PBP 2006. To ensure adequate provision of water, electricity, gas and internal road design, the Department has updated the conditions to reflect the correct sections of the PBP 2006.

The Department is also satisfied that the reference in Condition B15(2)(i) requiring compliance with APZs identified in Condition B19(3) is an error, as there is no Condition B19. Rather the correct reference is Condition B15(3), which requires the provision of APZs to the satisfaction of the certifying authority.

The Department has confirmed RFS is satisfied with the revised conditions.

The Department's assessment therefore concludes the proposal is acceptable as it would simply amend Condition B15 to accurately reflect land uses associated with the approved development and correct a reference to a wrong condition number.

8. RECOMMENDATION

It is recommended that the Director, Regional Assessments, as delegate for the Minister for Planning:

- **considers** the findings and recommendations of this report
- **determines** that the application 08_0080 MOD 1 falls within the scope of section 4.55(1) of the EP&A Act
- **approves** the modification request 08_0080 MOD 1 subject to the modified terms of approval
- **signs** the attached approval of the modification (Appendix A).

Recommended by:


Michelle Niles 6/7/18
Senior Planner
Regional Assessments

DECISION

The recommendation is: Approved by:


Anthony Witherdin 6/7/18
Director
Regional Assessments
as delegate of the Minister for Planning.

APPENDIX A: MODIFICATION CONSENT

A copy of the modified consent can be found on the Departments website at:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9380

APPENDIX B: SUPPORTING INFORMATION

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification application

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9380

2. Submissions

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9380