

Belle O'Connor Residential Subdivision

*Modification Assessment
(MP 08_0167 MOD 6)*

June 2019

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Cover photo

Residential area. Port Macquarie, NSW.

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Glossary

Abbreviation	Definition
AHD	Australian Height Datum
Consent	Development Consent
Council	Kempsey Shire Council
Department	Department of Planning and Environment
EIS	Environmental Impact Statement
EPA	Environment Protection Authority
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
RtS	Response to Submissions
Secretary	Secretary of the Department of Planning and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>



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1. Introduction

1.1 Background

This report is an assessment of a request to modify the Project Approval (MP 08_0167) for a residential and seniors living subdivision at Belle O'Connor Street, South West Rocks in the Kempsey local government area (LGA).

The request has been lodged by Keiley Hunter Town Planning on behalf of Teebee Property Trust (the Proponent) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The proposal seeks approval to amend Condition A5 to allow a Construction Certificate for subdivision works for the first four lots in Stage 4 to be issued.

1.2 Site

The subject site covers an area of approximately 28 hectares (ha) and is located at South West Rocks. South West Rocks is located on the New South Wales mid-north coast approximately 28 kilometres (km) to the north-east of Kempsey and 65km to the south of Coffs Harbour (refer to **Figure 1**).



Figure 1: Site location (outlined in red) and subdivision boundary (highlighted blue and outlined in a dashed line) (Base source: Nearmap)

To the north of the site is the future residential development site known as Saltwater. To the north-east is the Saltwater Lagoon and an extensive area of coastal wetlands which borders the lagoon and extends into the north-eastern portion of the site. The South West Rocks Sewage Treatment Plant adjoins the north-western corner of the site, and the South West Rocks Golf Course is situated along the site's western boundary. A small number of rural-residential properties are located directly to the east and south-east. A Crown road acts as the

site's southern boundary with low density residential housing development located to the south-west (refer to **Figure 2**)



Figure 2: Aerial view of the site location (outlined in red), its surroundings and the subdivision boundary (outlined in blue dashed line) (Base source: Nearmap)

1.3 Approval History

On 3 June 2011, the Planning Assessment Commission (the Commission) approved a Project Application (MP 08_0167) for a residential subdivision (the Project Approval) including low and medium density residential lots, parks conservation zone and roads.

The Project Approval has been modified on four occasions, as summarised in **Table 1**.

Table 1 – Summary of Modifications

Reference	Description of Modification	Approved
MOD 1	Provision of four additional residential lots, reduction of bushland exercise park, enlargement of the central open space, modifications to the stormwater treatment system, road network layout, project staging and section 94 contributions.	6 August 2013
MOD 2	Deletion of the medium density lot and replacement with 14 low density residential lots.	2 December 2018
MOD 3	Deletion of 122 residential lots and creation of a seniors living lot for 199 dwellings, amended road layouts, relocation and reduction in the size of the public park, boundary adjustment and overall staging of the development.	19 December 2017
MOD 4	Administrative changes to the conditions of approval.	16 October 2017
MOD 5	Extension of the seniors living development further to the west into Stage 3 and part of Stage 2.	Withdrawn

The Project Approval as modified includes:

- 165 low density residential lots constructed in eight stages
- 199 Senior Living Development lots and associated amenities
- internal public road network
- public open space areas with recreation facilities
- a network of pedestrian and cyclist pathways
- a 14.9ha conservation zone
- two stormwater treatment areas
- on-site landscaping works.

The approved Staging Plan is below at **Figure 3**.

Since the Project Approval, Kempsey Shire Council (Council) has issued Construction Certificates relating to the bulk earthworks for Stage 1A of the project.

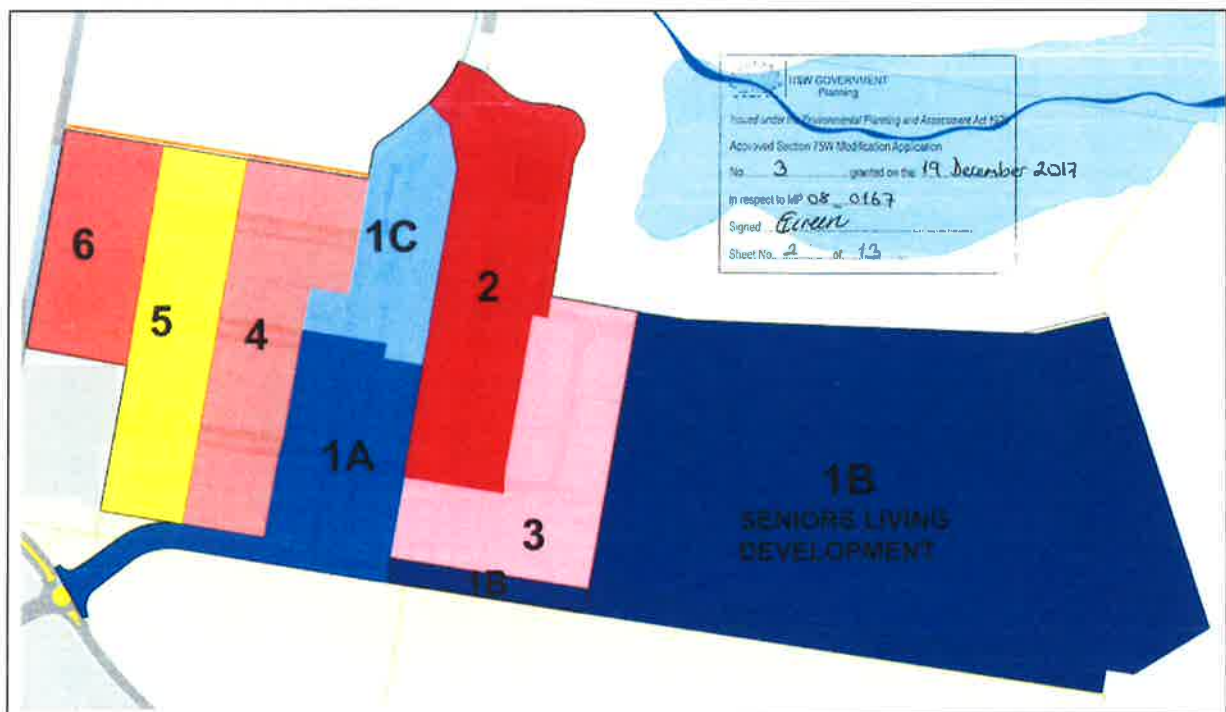


Figure 3: Approved Staging Plan



2. Proposed Modification

The Applicant lodged a modification request (08_0238 MOD 12) seeking approval to modify Condition A5 to allow the first four lots in Stage 4 (with frontage to the completed section of the Burrawong Drive extension) to obtain a Construction Certificate for subdivision works.

Condition A5 restricts the release of a construction certificate for subdivision works pending the completion of the Burrawong Drive extension through to the intersection of Burrawong Drive and Roads 2 and 3, approximately 67 m east of the subject 4 lots (see **Figure 4**). The proposed modified condition is outlined below.

Limits on release of lots pending new road connection

1) Stages 1 to 4:

A Construction Certificate for subdivision works or civil works (excluding bulk earthworks) may only be issued for development associated with the first 48 lots/sites within Stages 1A and 1B. Construction Certificates for subdivision works associated with further lots or Stages 2 to Stage 4 may be issued once the Burrawong Drive extension is constructed from roundabout intersection of Burrawong Drive and Belle O'Connor Street to ~~the intersection of Road Nos 2 and 3~~ **the full frontage of the lot(s) to be released.**

Condition A5 (2) and (3) are not proposed to be modified.

The modification is requested on the basis that the Burrawong Drive extension has been completed along the full frontage of Lots 266 to 269 in Stage 4 as shown in **Figures 3 and 4**.



Figure 5: Construction progress of Burrawong Drive

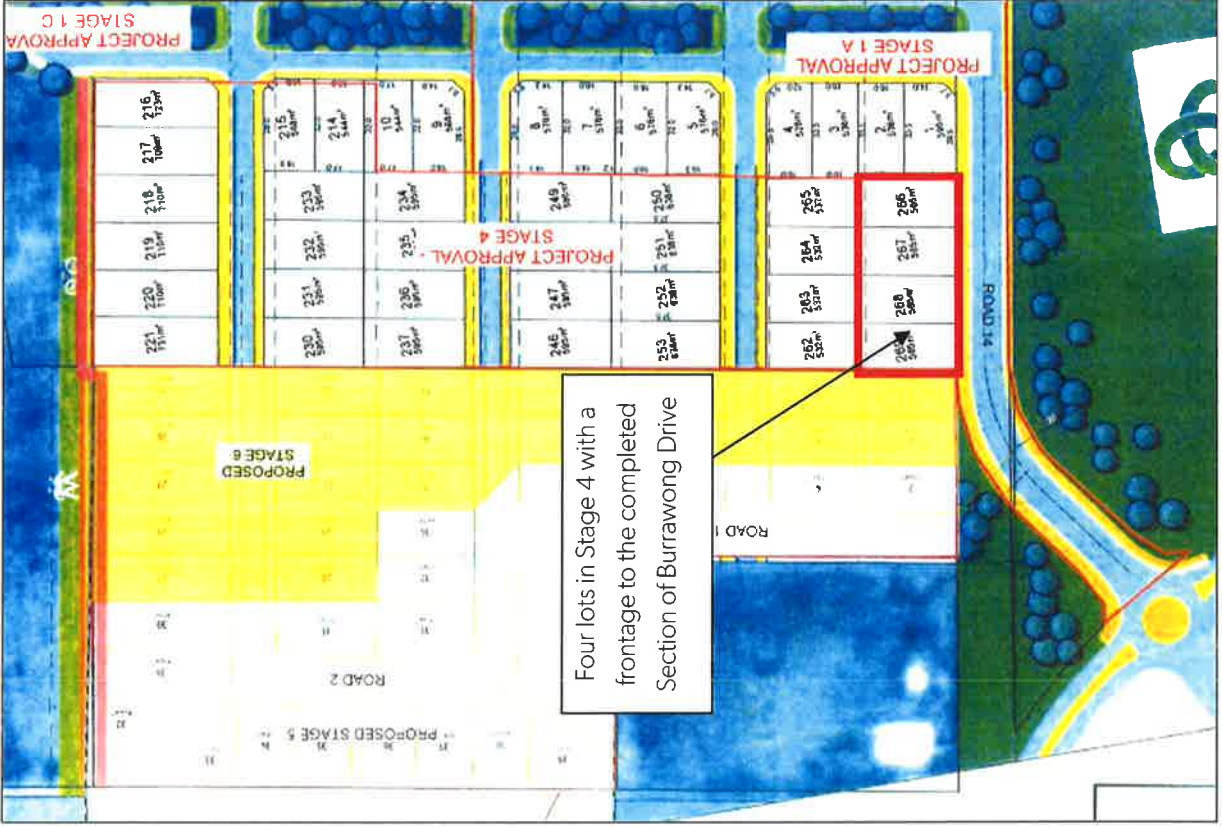


Figure 4: Lots in Stage 4 to be released



3. Statutory Context

3.1 Section 75W and Modification of a Minister’s Approval

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 was 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 21 March 2019, 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 29 March 2019 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
- the modification request is taken to be an application to modify under section 4.55 of the EP&A Act.

3.2 Scope of Modification

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 3**.

Table 3 – Section 4.55(1A) Matters for Consideration

Section 4.55(1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	<p>The application seeks approval to modify Condition A5 to allow the first four lots in Stage 4 to be released under a separate Subdivision Certificate.</p> <p>Section 5 of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the proposed modifications will have minimal environmental impacts.</p>
b) 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	<p>The Department is satisfied the modification is substantially the same development as originally granted as it only seeks approval to modify a condition relating to the release of lots.</p>

granted was modified (if at all), and

- | | |
|--|---|
| 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. | No submissions were received. |

3.3 Approval Authority

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

- the relevant local council has not made an objection
- a political disclosure statement has not been made
- there are no more than 25 public submissions in the nature of objections.

3.4 Environmental Planning Instruments

The following EPIs are relevant to the application:

- State Environmental Planning Policy (State & Regional Development) 2011;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy No. 55- Remediation of Land; and
- Kempsey Local Environmental Plan 2013.

The Department undertook a comprehensive assessment of the redevelopment against the above-mentioned EPIs in its original assessment. The Department has considered the above EPIs and is satisfied that the modification is generally consistent with the EPIs.



4. Engagement

4.1 Department's Engagement

The Department made the modification request publicly available on its website.

No **public** or **agency** submissions were received



5. Assessment

In assessing the merits of the proposal, the Department has considered:

- the modification request and associated documents
- the Environmental Assessment and conditions of approval for the original project
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act.

5.1 Modification of Condition A5

The proposal seeks to modify Condition A5 to allow four lots in Stage 4 with a frontage to the completed section of Burrawong Drive to obtain a Construction Certificate for subdivision works.

Condition A5 was originally imposed to ensure the Burrawong Drive extension would occur at the earliest possible stage of residential development. It has since been modified to ensure the road is completed by the two Proponents for the site at appropriate stages within the development.

The Department notes the Burrawong Drive extension has been constructed from the roundabout intersection of Burrawong Drive and Belle O'Connor Street to the intersection with Road 2, as shown in **Figure 5**.

The Department raises no concern with the proposal to allow the release of a Construction Certificate for the four lots in Stage 4 with a frontage to Burrawong Drive. However, the proposed wording of the condition requiring the construction of the Burrawong Drive extension from the intersection of Burrawong Drive and Belle O'Connor Street to the full frontage of the lot(s) to be released, is unclear, and could potentially allow further lots to obtain Construction Certificates before Burrawong Drive is constructed to the intersection with Road 3.

To ensure the final piece of Burrawong Road extension is completed through to the intersection with Road 3, the Department recommends Condition A5 be modified as follows:

Limits on release of lots pending new road connection

1) Stages 1 to 4:

A Construction Certificate for subdivision works or civil works (excluding bulk earthworks) may only be issued for development associated with the first 48 lots/sites within Stages 1A and 1B **and proposed lots 266 to 269 inclusive**. Construction Certificates for subdivision works associated with further lots or Stages 2 to Stage 4 may be issued once the Burrawong Drive extension is constructed from roundabout intersection of Burrawong Drive and Belle O'Connor Street to the intersection of Road Nos 2 and 3.

This would allow for the four lots in Stage 4 to obtain a Construction Certificate for subdivision works, and would ensure that the final piece of the Burrawong Drive extension to the intersection with Road 3 is completed.

Subject to the revised condition, the Department is satisfied the proposal would not result in any additional impacts beyond those already assessed and approved.

5.2 Modification of Condition B28

During the assessment of the modification request, the Department identified an administrative error within Condition B28 that could prevent the construction of the connection road to the north of the site.

Condition B28 was imposed under Modification 2 and requires plans demonstrating the proposed fire trail located along the northern boundary of Stages 4, 5 and 6 is within the Residential zoned land to be submitted to the Certifying Authority. It also states that *no works are approved within the E2 Environmental Conservation zoned land*.

The intent of the condition was to ensure the fire trail and other supporting infrastructure was contained within the Residential zoned land. It was not intended to restrict the construction of the northern connection road, which was approved with minor encroachments into the E2 zoned land.

The Department therefore recommends Condition B28 be modified as follows:

B28 Fire Trail Location

Prior to the issue of a construction certificate for works within Stages 4, 5 or 6, amended plans applicable to each relevant stage must be submitted to and approved by the Certifying Authority demonstrating the proposed fire trail (along the northern boundary of Stages 4, 5 and 6) is wholly contained within the Asset Protection Zone within Stages 4, 5 and 6, on the R1 General Residential zoned land. No works **(excluding the future connection road to the north of the site)** are approved within the E2 Environmental Conservation zoned land.

The Department considers the modified condition would provide clarity for the Certifying Authority regarding the northern connection road, and would not result in any adverse impacts beyond those already assessed and approved.



6. Evaluation

The Department has assessed the modification request and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes the proposed modification is appropriate as:

- it would not affect the overall provision of the Burrawong Drive extension
- it would allow the four lots in Stage 4 with a frontage to the completed section of Burrawong Drive to obtain Construction Certificates for subdivision works
- it would not result in any additional impacts beyond those already assessed and approved.

Consequently, it is recommended that the modification be approved subject to the recommended condition.



7. Recommendation

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

- **Considers** the findings and recommendations of this report;
- **Determines** that the application (08_0238 MOD 12) falls within the scope of Section 4.55(1A) of the EP&A Act;
- **Accepts** and adopts the findings and recommendations in this report as the reasons for making the decision to grant approval to the application;
- **Modifies** the approval (08_0238); and
- **Signs** the attached modification of approval (**Appendix B**)

Recommended by:

Emma Butcher

**Planner
Regional Assessments**

Recommended by:

Silvio Falato

**Team Leader
Regional Assessments**



8. Determination

The recommendation is: **Approved by:**

Anthony Witherdin

**Director
Regional Assessments**



Appendices

Appendix A – Statement of Environmental Effects/ Environmental Assessment

<https://www.planningportal.nsw.gov.au/major-projects/project/11531>

Appendix B – Notice of Modification

<https://www.planningportal.nsw.gov.au/major-projects/project/11531>