

DEPARTMENT OF PLANNING

Development Assessment and Systems Performance

SUBJECT: BILAMBIL VILLAGE RESIDENTIAL SUBDIVISION 08_0034 MOD 1

PURPOSE

To determine a modification request for the Bilambil Village Residential Subdivision.

BACKGROUND

A request for the modification of a project approval relating to a residential subdivision at Bilambil Village (08_0034) was received by the Department of Planning on 17 August 2010. The proponent is Jackson International Pty Ltd.



FIGURE 1: Site context. Area of subdivision subject to modification circled.

Site

The site is located within the small rural village of Bilambil. Bilambil is located in the far north coast region of New South Wales and lies toward the western-most extent of the coastal zone in this area. The site is bounded on the immediate west by Bilambil Creek that is at its approximate tidal limit adjacent to the site, and to the north by Urliup Road, Bilambil Road to the east, and Hogan's Road to the south.

The site is currently disused and has been highly modified by previous land uses including quarrying, stockpiling of soil and rock, and grazing.

The land surrounding Bilambil Village is mainly rural and used primarily for grazing and other agricultural purposes (refer to Figure 1 above).

Approved Project

On 8 July 2010, the Deputy Director-General as delegate for the Minister for Planning granted project approval pursuant to section 75J of the *Environmental Planning and Assessment Act 1979* (the Act). The approval allowed the proponent to undertake a 52-lot subdivision primarily for residential purposes including: 48 residential lots; one lot for a possible future commercial use; one lot to be dedicated as a public riparian reserve; one lot for a local park with a playground; and one lot for the sewer pump station. To facilitate this, significant bulk earthworks and re-contouring of the site is necessary.

The subdivision will be constructed in one stage. A Development Application for the construction and operation of the proposed childcare centre will be lodged separately. The approval and construction of future dwellings will also occur at a later stage.

The project cost was estimated at \$2.405 million.

As part of this approval a 10m wide Asset Protection Zone (APZ) was created to protect future buildings from the bushfire threat posed by the riparian area adjacent to Bilambil Creek in the north-west of the site.

PROPOSED MODIFICATIONS

1. The proponent now seeks to delete condition A2(1) that currently requires the incorporation of Lots 1 and 2 to form a larger lot and regain Lot 1.
2. In addition to this modification, the proponent also seeks to fill the existing open drain at the rear of Lots 1, 2 and 3 and replace it with a pipe and culvert.

CONSULTATION

In accordance with section 75X of the Act and clause 8G of the Regulation, the modification request was made available on the Department's website. Due to the minor nature of the proposed modification, the modification request was not exhibited by any other means. No public submissions were received on the modification request. The request was referred to the NSW Rural Fire Service and the Tweed Shire Council for comment and their feedback is summarised below.

NSW Rural Fire Service

The RFS advised that any future dwelling on proposed Lot 1 would require a minimum 15m Asset Protection Zone (APZ) to the south, from any unmanaged vegetation within the adjoining public reserve. This assessment was based on classification of the vegetation adjoining as rainforest and an effective downslope of 5-10 degrees.

Tweed Shire Council

Council raised concern regarding the adequacy of the APZ and its impact on the riparian zone and environmental buffer width to Bilambil Creek. Council also reiterated its opposition to proposed Lot 51 (the neighbourhood park) and its inadequacy in terms of configuration and shape. Amended section 94 contributions (of the *Environmental Planning and Assessment Act 1979*) and section 64 contributions (of the *Local Government Act 1993*) were also provided, but these were not considered relevant to the

modification request so have not been applied. Further discussion of these issues can be found under 'Key Issues'.

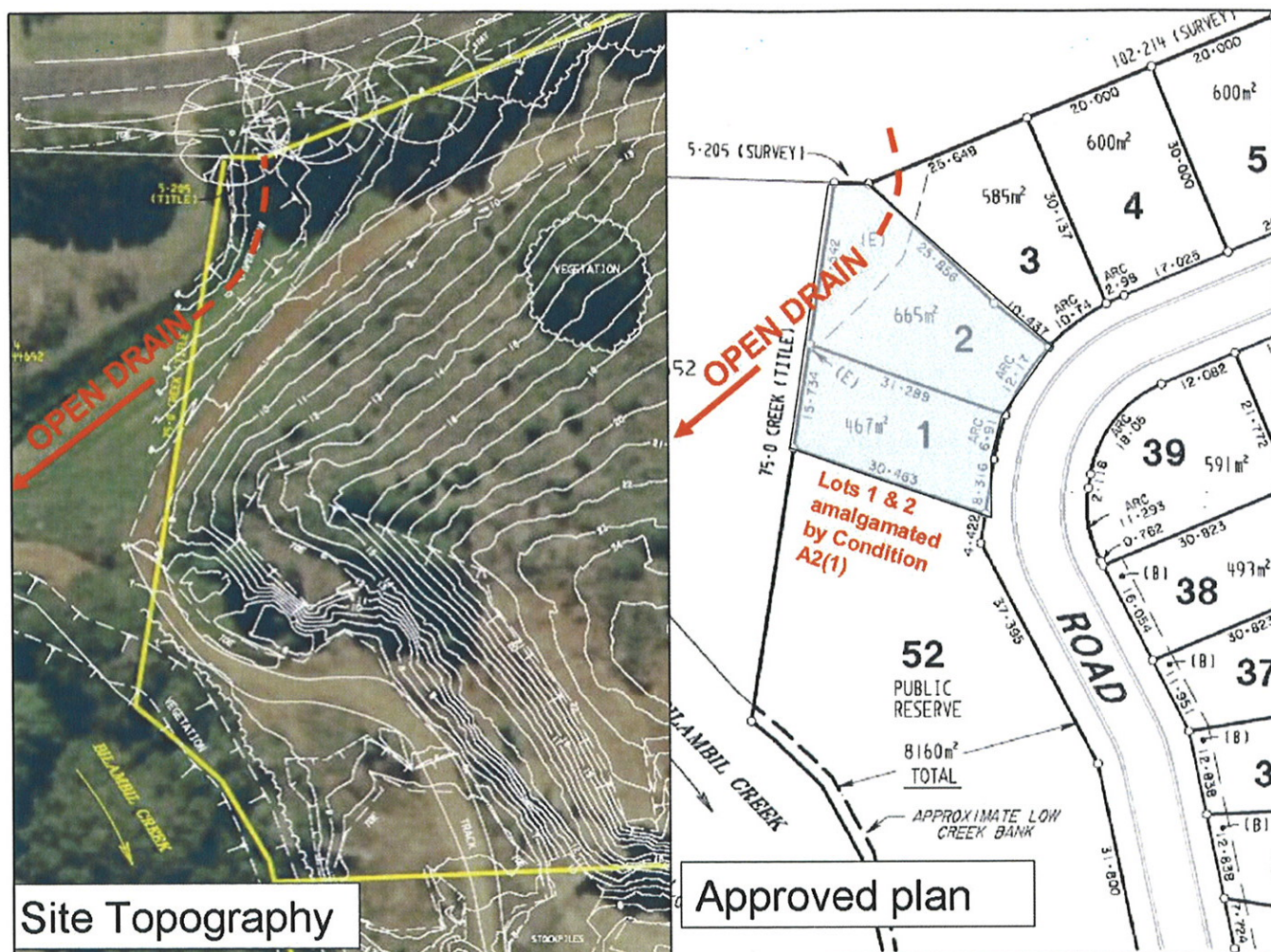


FIGURE 2: Close up view of the north-west part of the site subject to modification request. Approved subdivision layout in the north-west corner is shown on the right hand side (RHS). Site topography and aerial photograph is shown on left hand side (LHS).

DELEGATED AUTHORITY

On 25 January 2010, the Minister delegated his powers and functions under section 75W of the Act. In this instance as there were less than 10 public submissions in the nature of objections in respect of the modification request, the A/Director – Regional Projects may determine the modification request.

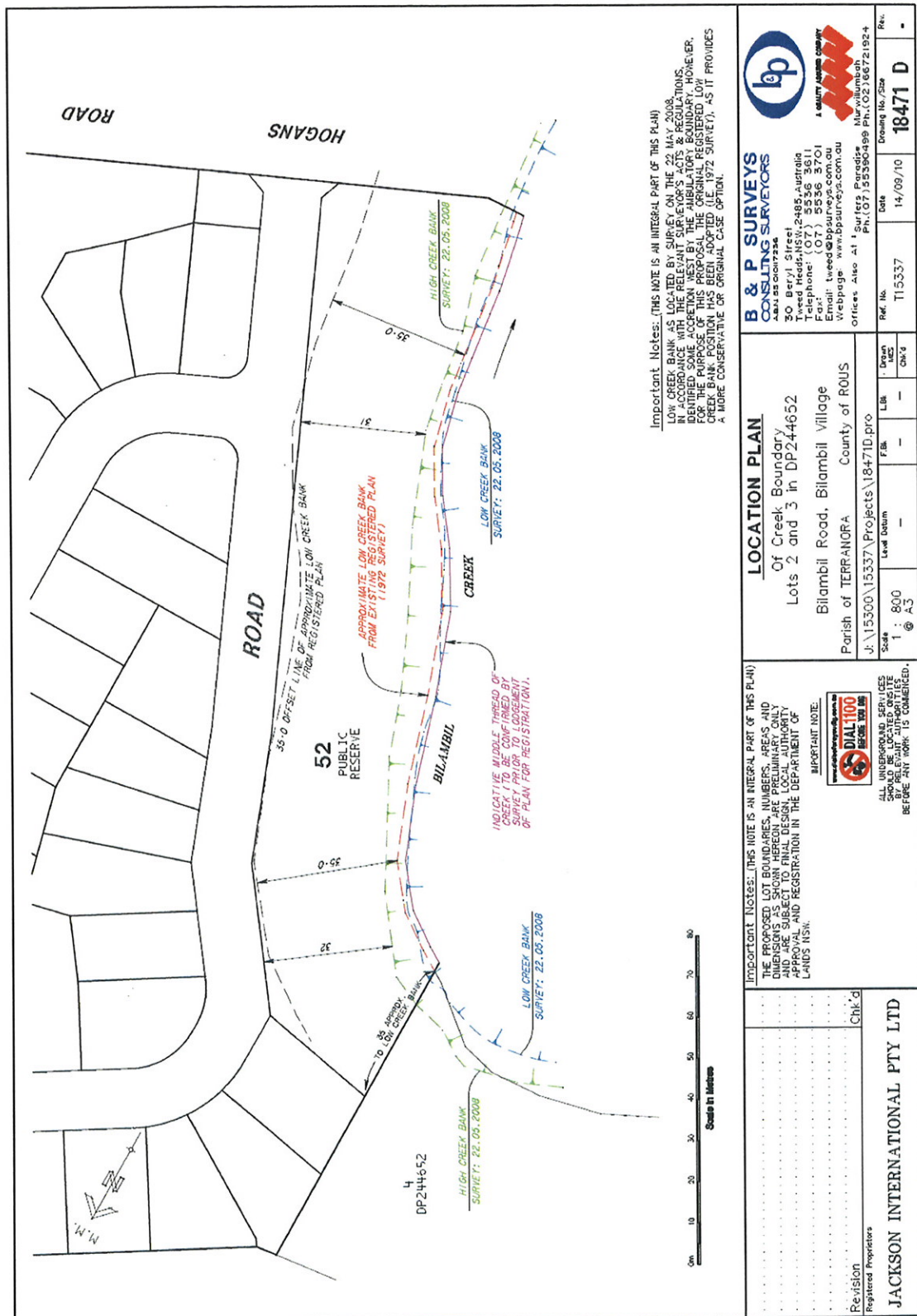


FIGURE 4 Plan showing buffer width in relation to Creek boundary dated 14 September 2010. This plan shows the 35m riparian buffer along the extent of Lot 52 in relation to low creek bank, high creek bank and the Creek centre line (legal boundary)

KEY ISSUES

The proposal to reinstate Lot 1 is subject to a number of constraints - including the requirement to provide an Asset Protection Zone for bushfire purposes, the requirement to maintain an environmental (riparian) buffer to Bilambil Creek, and concerns raised with subdivision density and visual character. A detailed discussion of the background to each of these issues, followed by the impacts of the proposed modifications can be found below.

Reinstatement of Lot 1

Riparian Buffer to Bilambil Creek

During preparation of the Environmental Assessment, the proponent negotiated with NSW Industry and Investment, the Land and Property Management Authority and Council for a reduction in vegetated buffer width from 50m to 35m. The 15m wide road reserve would constitute the remaining width of the buffer and would double as an APZ for future dwellings (where possible). The concessions were made on the basis that the entire 35m width would be revegetated to form a natural riparian corridor and in doing so provide improved outcomes for fish and aquatic habitat.

Notwithstanding, during the public exhibition period, Department of Environment, Climate Change and Water (DECCW), the Land and Property Management Authority (LPMA), and Council all submitted that the proposed buffer from Bilambil Creek was inadequate to ensure the environmental integrity of the riparian vegetation and the Creek was preserved. It was submitted that a 50m vegetated buffer be retained and all structures, roads, walkways etc. be located outside of that. In general the narrower the riparian buffer, the more difficult successful vegetation rehabilitation and management becomes as the remnant areas are subject to negative edge effects, such as greater penetration by weed species, increased predation, and changes in ecology.

The Department considered these submissions, however, on balance determined that a 35m environmental buffer was satisfactory in this instance because:

- conditions require an amended Vegetation Rehabilitation Plan be submitted and approved that will ensure environmental objectives for the Creek are met;
- the impacts of pollutants from stormwater runoff will be managed by appropriate treatment devices and be consistent with the principles of Water Sensitive Urban Design;
- the development of a detailed Stormwater Management Plan (SWMP) will be required to be submitted and approved prior to the issue of a Construction Certificate. The SWMP will assess the impacts of stormwater over the whole site and in particular the effect of the proposed stormwater discharge from the project into Bilambil Creek, and will provide mitigation to ensure any environmental effects are adequately managed;
- pedestrians will be excluded from the riparian area; and
- the project provides an improvement on the current land use in terms of water quality and provides a greater environmental buffer between the development and the Creek.

Bushfire Safety - Asset Protection Zone

The width of the environmental buffer to Bilambil Creek and the need for an Asset Protection Zone (APZ) were both critical issues in the assessment of the original application. This was reflected in the conditions placed on the development to:

"Adequately mitigate the potential bushfire hazard and provide for the safety of future residents on site, create workable open space, and maintain the ecological integrity of the site and adjacent Bilambil Creek"

In particular condition A2 of the approval states:

A2 Project Amendments

The project shall be amended as follows:

- (1) *Proposed Lot 1 is to be deleted and the area (467m²) incorporated into proposed Lot 2 to give a final area for Lot 2 of 1,132m².*

Note: it is the intention of this condition (A2(1)) to enable the Asset Protection Zone to be entirely provided for within private property, and provide a greater width to ensure the ongoing ecological integrity of the riparian zone (Lot 52).

The proponent originally sought to provide the APZ on public land within the riparian area (Lot 52) – however this was deemed unsatisfactory. Lot 1 immediately abuts the riparian area and in regards to bushfire safety, Section 4.1.3 of *Planning for Bushfire Protection 2006* specifically states that the provision of an APZ should not diminish the ecological integrity of adjacent bushland. Furthermore, Council's DCP Section A5 - *Subdivision Manual* states that APZs are not permitted on environmentally sensitive land. Therefore the project was modified through the approval to require that the APZ be provided for on private property (and not within the riparian buffer). This was achieved via the placement of a 'Restriction as to User' (under the *Conveyancing Act 1919*) on the title of the new Lot created by Condition A2(1) advising potential landowners of the need to manage and maintain a 10m APZ on this Lot. This ensured that the landowner benefiting from the APZ would be charged with maintaining that APZ.

Proposed Lot 1 (as referred to above) was the smallest allotment in the approved plan. The imposition of maintaining a 10m wide APZ on Lot 1 (467m²), would have rendered the allotment unable to achieve a suitable building envelope to comply with Council standards. Therefore to achieve a suitable outcome for bushfire safety, environmental integrity and to achieve a suitable developable area, a condition was imposed to amalgamate Lot 1 with Lot 2 (Condition A2(1) as described above).

Visual Character and Subdivision Density

One of the key issues raised by members of the public and Council in the original application was the proposed density of development for the site. Whilst most residents supported some level of development on the site, it was considered that the current proposal was too intense for the area.

During the assessment process the Department acknowledged these concerns, but highlighted the fact that the size of the proposed lots was consistent with the existing and draft local environmental plan (LEP) and was permissible with consent. The proposed subdivision was also deemed to be consistent with the overarching strategic land use documents that guide development and manage anticipated population growth in the Region.

Notwithstanding, to minimise the residual impacts of the proposal, the Department recommended modifications to design, scale and landscaping during assessment of this subdivision to allow for a Village design sensitive to the surrounding rural-residential land use. An agreement was reached with the proponent to ensure that lots fronting Uriup Road in the north-west of the site would be a minimum of 600m² to create more visual permeability through the development. Having this minimum

lot size agreed to, ensured that development sensitive to the surrounding character could occur on those lots. Future applications for development consent for the construction of dwellings (and a possible childcare centre) will also be required to suitably address the surrounding character of the village.

To further ensure the edges of the development would transition 'softly' into the surrounding land uses the proponent was required to use staged vegetation management and provide detailed landscape plans prior to issue of a construction certificate.

As described above the amalgamation of Lots 1 and 2 was needed to provide for both a suitable APZ and an appropriate environmental (riparian) buffer. However in addition to these environmental gains, the amalgamation of Lot 1 and Lot 2 made it the largest residential lot and had the added effect of increasing average lot size across the site – particularly in the north-west corner.

Assessment

The requirements to provide an APZ, an environmental (riparian) buffer to the Creek and the need to provide for the visual character of the area to be maintained are linked. A change to one of these will inevitably lead to a trade-off resulting in a negative impact on another. Therefore they cannot be assessed on their merits as individual components, but rather, must be assessed collectively.

The subdivision plan as submitted with the modification request was dated 21 July 2010. Consequent to a review of the request by the RFS and Council, a further amended plan was submitted – dated 11 October 2010. Of particular note to these amended plans was the submission from the RFS requiring a 15m APZ. Together with the approved plan of subdivision, these plans are summarised in the table below:

TABLE 1 *Plans of subdivision*

| Date of Plan | Riparian Area | Riparian width at boundary to 1972 low creek bank | APZ width | Comment |
|----------------------------------|---------------------|---|-----------|---|
| Approved plan (15 February 2010) | 8,160m ² | 34.76m (by deduction) | 10m | Lots 1 and 2 amalgamated |
| 21 July 2010 | 8,035m ² | 30.6m (by deduction) | 10m | Buffer and area of Riparian Area (Lot 52) reduced |
| 11 October 2010 | 8,035m ² | 30.6m (by deduction) | 15m | APZ increased to 15m, Lots 2, 3, 4, 5 and 6 reduced in area to accommodate larger Lot 1 |

In advice received for this modification application the RFS has concluded that 15m is an adequate APZ for proposed Lot 1 based on the nature of the vegetation type and the effective slope of the land. This width is greater than the 10m APZ currently required under the approval for Lot 1 as it is specific to the future topography (as approved) of the area of concern. The APZ of 10m was based on the proponent's own bushfire assessment and the enlarged lot size being more flexible in terms of dwelling placement.

The final plan submitted (11 October 2010) shows a reduced riparian area to Bilambil Creek (in both width and area). As detailed above, the 35m nominal width of the riparian area is already an agreed compromise and further reductions to this are unacceptable. Furthermore, to achieve a suitable building envelope on Lot 1 with a 15m APZ provided for, the proponent has reduced the lot sizes of Lots 2, 3, 4, 5 and 6 thereby compromising the agreed lower density lots fronting Uriup Rd.

The proponent has also submitted an additional plan depicting the variously surveyed margins of Bilambil Creek (refer Figure 4 above). This plan shows the Creek banks as they were surveyed in May 2008 against an inferred position of low creek bank and the middle thread from the original survey in 1972. A previous submission from the Land and Property Management Authority (18 August 2009) advised that the proponent had title to the middle thread of the Creek (*ad medium filae aquae*). Final property boundaries, dimensions and present location of both low and high Creek banks are likely to be confirmed in application for the subdivision certificate.

The proponent contends that the 1972 survey used low creek bank for the legal boundary rather than the middle thread of the Creek. The proponent then goes on to argue that a 35m wide environmental (riparian) buffer can be achieved using the low Creek bank as defined in 1972. The survey completed of the site in 2008 confirms that low creek bank in this location is further eastward – confirmation that ‘real’ riparian width in this vicinity is already reduced. It is also worth noting that effective buffer width is normally calculated excluding the steep area between the low and high Creek banks.

Notwithstanding, the Creek bank in the vicinity of Lot 1 is situated on the outside of a bend in the Creek and therefore is subject to stronger, persistent erosive forces. It could be expected that further erosion is likely to occur on this corner and further reduce the actual environmental (riparian) buffer in this area.

A further reduction in environmental (riparian) buffer width is likely to lead to enhanced impacts through edge effects (as outlined above) and contribute to a reduction in ecological integrity of the riparian area and Bilambil Creek.

Although variable, in general the nominal 35m buffer to Bilambil Creek is achieved along the entire margin of Lot 52 with the approved plan of subdivision. The variability arises from natural erosion and accretion cycles of the banks of Bilambil Creek. As Table 1 shows, the nominal 35m buffer is already reduced in the vicinity of Lot 1.

Although detailed survey plans are required to be approved prior to the issue of a subdivision certificate for the development, the precautionary principle must be applied and the originally approved condition A2(1) retained. Therefore any further reduction in environmental (riparian) buffer width in this vicinity is not supported.

Recommendation

The retention of Condition A2(1) is considered to support the principles of ecologically sustainable development (particularly the precautionary principle), and is consistent with the objects of the Act, particularly allowing for (Clause 5(a)(vi)) :

“...the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats...”

The maintenance of the approved visual character of the development and the retention of condition A2(1) is also consistent with the stated objective for the Village 2(d) zone from the *Tweed Local Environment Plan 2000*:

...“to provide for residential development and a full range of services and facilities traditionally associated with a rural village which is of a design and scale that makes a positive contribution to the character of the village.”

By ensuring a reduced bulk and scale of this new development in Bilambil Village, the approved subdivision layout recognises and seeks to soften the transition between the development and the surrounding rural-residential character. This is reflected in the *Far North Coast Regional Strategy 2006* where it states in Chapter 8:

“New development should be designed to reflect and enhance the natural, cultural, visual and built character and values of the local...landscape”

And then in Chapter 4:

Chapter 4 – “New development adjoining farmland, ...waterways...and areas of high biodiversity value will incorporate buffers to avoid landuse conflict”

Therefore for the reasons detailed above, the Department is not able to support the proponent's modification request to reinstate Lot 1. Furthermore, conditions will be amended to ensure a 15m wide APZ is provided for on the Lot created by the amalgamation of Lots 1 and 2.

Filling of drain

As part of this modification request, the proponent seeks to replace the open drain immediately behind Lots 1, 2 and 3 with a 1200mm diameter pipe that connects to the existing pipe draining beneath Urliup Road. The 14.5m pipe will follow the same channel as the existing open drain and discharge to the same point as it does now over flow dissipating rock rip-rap. Filling over the top of the pipe will require minor earthworks that will be married into existing levels at the neighbouring property. There are no additional impacts on flow rates and the neighbouring property than that already consented to.

On this basis the Department has no objections to the proponent filling the open drain and recognises that it provides greater amenity and usable space for Lots 1, 2 and 3. Condition A3 of the approval will be modified by the addition of the appropriate engineering drawing to allow this.

Other amendments

Advice from Council also noted that the indicative building envelope plans referred to within condition A3 contradicted the shape of the local park (Lot 51) as finally approved. As these plans are indicative only, they have been deleted to minimise confusion with the approved subdivision layout.

RECOMMENDATION

It is RECOMMENDED that the A/Director:


- note the information provided in this briefing;
- approve the modification request to fill the open drain adjoining Lots 1, 2 and 3;
- disapprove the modification request to reinstate Lot 1;
- make other amendments to the approval as described above; and
- sign the attached instrument of approval (**TAG A**).

Prepared by:



Tom FitzGerald
A/Senior Planner
Regional Projects
Assessment

Approved by:



15/11/11.

Mark Schofield
A/Director
Regional Projects

APPENDIX A.

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning under delegation executed on 25 January 2010, I approve the modification of the project application referred to in Schedule 1, subject to the conditions in Schedule 2.



A/Director
Regional Projects

Sydney

15/11 2010

SCHEDULE 1

Project Approval: 08_0034 granted by the Minister for Planning on 8 July 2010

For the following:

- 48 residential lots ranging in size from 476m² – 704m²;
- One lot for a proposed commercial use (childcare centre) (Lot 50) – 1,300m²;
- Dedication of foreshore as public reserve, and re-vegetation of the area adjacent to Bilambil Creek (Bilambil Creek Foreshore, Lot 52) – 8,160m²;
- Provision of embellished open space – 2,625m²;
- Creation of an easement for electricity transmission lines 40m wide over the existing overhead transmission lines through the site adjacent to Hogan's Road;
- Construction of proposed roads within the project and upgrading of certain surrounding roads to Council standard;
- Construction of a sewer pumping station on-site (Lot 53 - 200m²); and
- Earthworks, re-contouring and preparation of the site, including vegetation clearing and weed removal, establishment of water, stormwater and other services.

Constructed in one stage upon Lots 2 and 3 DP244652 - bounded by Uriup Road, Bilambil Creek, Hogan's Road and Bilambil Road, Bilambil Village

Modification: 08_0034 Mod 1:

- Filling of the existing open drain at the rear of Lots 1, 2 and 3 to enable a suitable building envelope to be provided and to improve the amenity of these lots.

SCHEDULE 2

The approval is modified as follows:

1. Delete the table in condition A3 and replace with the following table:

| Engineering Drawings prepared by CLA Consultants Civil & Structural Engineers | | | |
|--|------------------|---|-------------|
| Drawing No. | Revision | Name of Plan | Date |
| 08418 001 | F | Site plan, Drawing Schedule & Notes | 25/11/2009 |
| 08418 002 | G | General Arrangement | 25/11/2009 |
| 08418 003 | F | Earthworks Plan | 25/11/2009 |
| 08418 003A | B | Earthworks – Isopache Details | 25/11/2009 |
| 08418 004 | E | Earthworks Cross Sections, Sheet 1 of 2 | 29/6/2009 |
| 08418 005 | E | Earthworks Cross Sections, Sheet 2 of 2 | 29/6/2009 |
| 08418 006 | C | Road #1 Longitudinal Sections | 15/3/2009 |
| 08418 007 | C | Road #2 Longitudinal Sections | 15/3/2009 |
| 08418 008 | E | Water Quality Management construction Phase | 25/11/2009 |
| 08418 009 | D | Construction Management Plan | 15/3/2009 |
| 08418 010 | E | External Sewer Rising Main Alignment | 29/6/2009 |
| 08418-012 | - | Lot 50 Earthworks Concept | 24/2/2010 |
| 08418-013 | - | Urliup Road Culvert | 24/2/2010 |
| Landscape Drawings prepared by Donald Irving and Andrew Gold Landscape Architecture | | | |
| Drawing No. | Amendment | Name of Plan | Date |
| A1.DD.3 | B | Landscape Concept Plan | 24/2/2010 |
| Survey Drawings prepared by B & P Surveys Consulting Surveyors | | | |
| Drawing No. | Revision | Name of Plan | Date |
| 17154 D | G | Proposed Subdivision Plan, Sheet 2 of 3 | 15/2/2010 |
| 17154 D | J | Proposed Subdivision Plan, Sheet 3 of 3 | 2/6/2010 |

2. Delete condition E7(3)(f) and replace with new condition E7(3)(f) as follows:

(f) A Restriction as to User within the new Lot created by condition A2(1) allowing for the creation of a 15m wide Asset Protection Zone to the riparian vegetation on the adjacent public reserve (Lot 52). No dwellings are to be constructed in this area. The Restriction as to User shall advise the landowner of the need to maintain this area as an Asset Protection Zone.