

Ref: 16-19

**NSW P&E Ref: 8_0167 Belle O'Connor St
08_0167 MOD2, Modification to Residential Subdivision - 08_0167 MOD 2**

11 May 2018

The Director General
NSW Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Attention: Anthony Witherdin

Dear Anthony

RE: Section 75W Modification of Consent (MOD 2) –Lot 36 DP 1214499 Belle O'Connor Street, South West Rocks.

Reference is made to the above Part 3A Project Approval and subsequent approved Modifications 1 and 3. The purpose of this letter is to submit amended Concept Plans prepared by deGroot & Benson, Consulting Engineers and supporting information in relation to MOD 2.

The amended plans have been prepared following the NSW Department of Planning & Environments (NSWP&E) advice of 25 January 2018 (email Natasha Harras), clarifying a recent judicial interpretation of clause 8F(1) of the EP&A Regulation: *Platform Project Services Pty Ltd v Minister for Planning [2017] NSWLEC 102*. In that case, the Court held that the words "land on which a project is to be carried out" in clause 8F(1) are prospective and forward-looking and should not be construed as a reference to the land on which the project as already approved was to be carried out.

This interpretation meant that the relevant land for the purposes of the landowner's consent requirement is only that which is the subject of, or affected by the proposed modification, rather than the entire land to which the original project approval applies. In the subject case, and in relation to MOD 2, the subject land is Lot 36 DP 1214499.

The result of this is that the impasse experienced with NSW P&E regarding the withholding of the adjoining landowners consent no longer applies and the Department will continue to assess the MOD 2.

Following a 'phone meeting held on 15 February 2018 with Anthony Witherdin, myself and Rob deGroot it was agreed the 'key' remaining three issues to be addressed to finalise MOD 2 are:

1. Stormwater drainage infrastructure

The department will seek legal advice regarding whether the stormwater infrastructure can be located within the drainage easement as ancillary work to the subdivision.

2. Lot layout

The applicants will prepare an alternative lot layout that better reflects the existing approved layout. The revised layout will adopt a grid subdivision pattern where possible. It was acknowledged that a separate access point to Belle O'Connor Drive would need to be included in the revised layout. Where the revised layout impacts on the ability of the adjoining land to be developed as per the approved layout, the applicants will liaise with the adjoining land owner with a view to obtaining their approval / agreement to the revision.

3. DCP

The applicant will prepare a table of consistency with the Kempsey DCP focussing on prescriptive controls. The table will clearly indicate where the proposal meets the controls or where the proposal is inconsistent with controls. Justification will be provided for any inconsistencies with prescriptive controls.

Items 1 to 3 are addressed as follows:

Stormwater Infrastructure

The following advice was received from Anthony Witherdin by email on 3 April 2018:

Stormwater infrastructure cannot be located in the E2 zone as it is prohibited. Further, the stormwater infrastructure cannot be considered ancillary as residential development is not permissible on the adjoining E2 zoned land. Ancillary works only become permissible if the dominant purpose is permissible. Also, the APZ and access trails should be located outside the E2 zone.

Despite the fact that there is a 15 m wide drainage easement available for use, stormwater management infrastructure has been relocated to within residential zoned land as shown on the *Road & Drainage Plan Drawing L36-MOD04* attached.

The revised infrastructure involves a piped interallotment drainage system that will connect with the approved system (north/south central bio-retention swale) serving the adjoining stages of the approved development.

As an interim measure, a temporary bio-retention swale will be provided within proposed Lot 25 until the adjoining stormwater is completed within Stage 1A of the development most recently described as the 'Saltwater Links' residential subdivision. The most recently

approved Modification (MOD3) amended the staging of the approved development to ensure that central drainage swale was provided in Stage 1A.

It is anticipated however that the civil work for Stage 1A will be completed prior to the commencement of civil work within Lot 36 (Stages 5 & 6) and that the interim measures will not be necessary.

Lot Layout

The lot layout has been revised to continue the approved grid layout. The number of proposed lots has reduced from 43 to 42. All of the lots are over 500 m², ranging in area from 541 m² to 844 m². There are no cul-de-sacs in the proposed layout. A separate road access will be constructed off Road No 14 to enable proposed Lots 1 to 42 to be released separately to the adjoining Stages 1 to 4 of the approved development.

The proposed amended layout has no impact on the ability or feasibility of the adjoining land to be developed in accordance with the Project Approval.

The proposed modification (MOD2) replaces the Medium Density Lot (Lot 274) with low density lots and resolves the three 'dead end' east/west roads.

DCP Consistency

A DCP Consistency Table is attached. The proposal complies with prescriptive controls and is consistent with the other DCP requirements, noting that the vast majority of the DCP controls relate to the provision of plans and strategies that have already been submitted and approved with the Project Application documentation.

Consent Conditions

An amended Schedule 2 of Consent Conditions is attached.

Agency Submissions

The amended lot layout either meets or improves on the matters raised in agency submissions as detailed in the attached table. The revised layout provides an improved environmental outcome and therefore should not require another round of agencies referrals.

If you have any queries or require any further information in relation to this application, please contact me on 04 585 15963 or email keiley@keileyhunter.com.au.

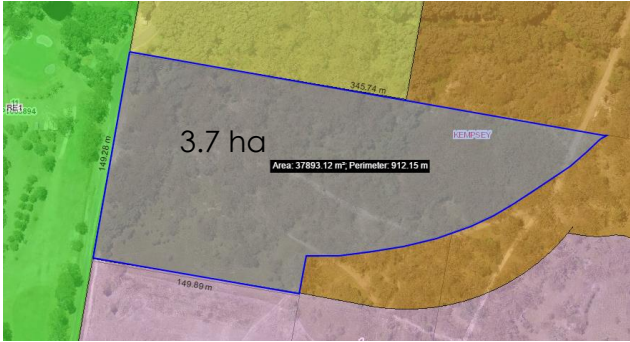
Yours faithfully

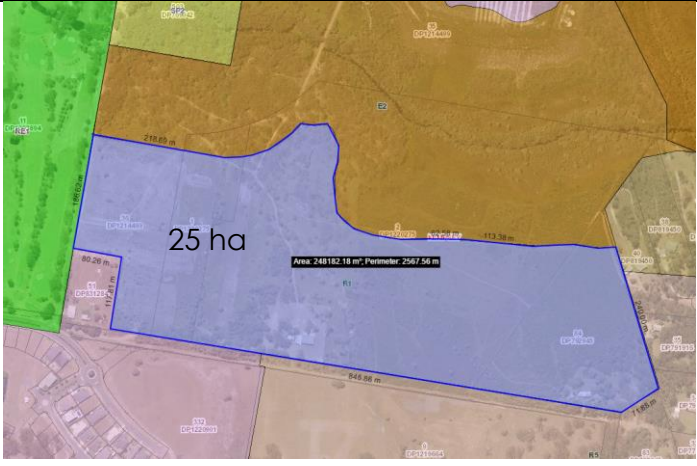


Keiley Hunter
Urban Planner

Encl:

- Amended concept subdivision plans prepared by deGroot & Benson Consulting Engineers.
- DCP Consistency Table.
- Agency submissions and response Table.
- Schedule of amended consent conditions.

AGENCY SUBMISSIONS	
NSW Office of Environment and Heritage	
<p><i>The Project Approval which was given in 2011 considered the biodiversity impacts associated with the whole development at that time. The biodiversity impacts were considered acceptable subject to a range of conservation measures, including the rehabilitation and protection of certain lands (14.9 ha of conservation land).</i></p>	<p>There are no changes to the extent of biodiversity impacts arising from the development as modified.</p> <p>There are no changes to the quantity (area) of land to be rehabilitated and protected as required in the project approval.</p> <p>The development area occupies the same footprint as previously approved.</p>
<p><i>Figure 18 of the Department of Planning and Environmental Director-General's Environmental Assessment Report dated May 2011 indicates that the area subject to this modification has two or three vegetation communities which have the potential to support threatened species.</i></p>	<p>As stated above.</p> <p>The DA Modification does not propose any additional elements that give rise to ecological impacts that have not already been assessed during the project approval application and the subsequent DA Modification (1).</p>
<p><i>The biodiversity impacts associated with Stages 10 and 11 should be appropriately offset as part of this modification request. This may be a proportional area of the 14.9 ha of conservation land. The OEH is willing to assist the proponent in determining an appropriate offset.</i></p>	<p>Stages 10 and 11 (now Stages 5 and 6 (MOD3)) occupy 3.557 ha out of a total 25 ha of R1 zoned land, therefore representing approximately 15% of the Project Approval area.</p> <p>As shown in the image below, the proportion of the 14.9 ha of E2 environmental conservation zoned land applicable to Stages 5 and 6 is approximately 3.7 ha or 25%.</p> <p>It is therefore considered that the proportion of E2 zoned land available to offset residential development within Stages 5 and 6 is more than adequate.</p> 

	
<p><i>If all of the 14.9 ha conservation land is delayed until commencement of the other stages there will be a biodiversity loss associated with the delay in rehabilitation and protection of these areas. This delay is not supported by the OEH.</i></p>	<p>There is no delay in the dedication of 'conservation land'. Approval of Stages 5 and 6 will occur independently of the earlier stages of the development. This will progress the rehabilitation of 3.7 ha of the E2 zoned land into an earlier stage of the approved development. All of the conservation land is already protected under the provisions of the E2 Environmental Conservation zone.</p>
<p><i>The modification report has not discussed the impacts to biodiversity or how these may be offset. Further discussion about the biodiversity impacts of the subject property needs to be discussed within the report.</i></p>	<p>As discussed earlier, there will be no change to biodiversity impacts arising from the proposed modification.</p> <p>The project approval considered impacts to biodiversity assuming that all of the R1 zoned land would be developed for urban purposes.</p>
<p><i>The OEH also notes that the bushfire Asset Protection (APZ) to the lots in the northern part of the subject land is depicted in the modification report as occurring on the neighbouring property to the north. It is unclear how an APZ restriction will be imposed on a neighbouring property. From the Director-General's EARs dated May 2011, it appears that the neighbouring property to the north is zoned as environmental protection (7(b)). An APZ would not be appropriate in such a zoning.</i></p>	<p>All of the required APZs are within residential zoned land.</p>
<p><i>The OEH recommends that:</i></p> <ol style="list-style-type: none"> <i>1. An appropriate biodiversity offset should be determined and secured as</i> 	<p>As stated earlier, the proportion of E2 zoned land allocated as biodiversity offset for Stages 5 and 6, is more than adequate to offset impacts arising from this stage of the approved development. The DA Modification does not</p>

<p>part of the proposed modification</p> <p>2. All bushfire APZ area to be contained within the subject property and should not impact on biodiversity values.</p>	<p>alter the area of land zoned E2, rather, it enables Stages 5 and 6 to proceed independently of Stages 1 to 4.</p> <p>The proposed residential development of 3.557 ha of land (Lot 36) is offset by 3.7 ha of E2 zoned land (part of Lot 35). This is considered to be well in excess of biodiversity requirements.</p> <p>The writer has discussed this with Mr Kirster Waern of OEH who understands that the area, proportion and management of E2 zoned land will not alter as a result of the DA Modification.</p> <p>The bushfire APZ is contained within residential zoned land.</p>
<p>NSW Transport – Roads and Maritime Services</p>	
<p>The proposed increase in the total number of allotments will generate a subsequent increase in daily and peak hour traffic movements that has not been addressed in the application. The Consent Authority should consult with Council, as the relevant Road Authority, to ensure that proposed amendments to the future road network remain consistent with Council's wider network strategy.</p>	<p>The approved layout comprises 28 low density lots and one medium density lot of 14,740 m². Future residential development within the medium density lot may have yielded around 30 to 40 townhouses. This being the case, under the Project Approval, Stages 5 and 6 would have yielded 30 to 40 medium density dwellings and 28 low density dwellings; up to 68 dwellings. The proposed modified layout comprises 42 low density lots. Therefore will be no increase in daily traffic movements.</p>
<p>The proposed layout and any new intersection should be appropriately located and designed to safely accommodate vehicle, pedestrian and bicycle movements generated by the proposed development.</p>	<p>Access to the site is from a new intersection off Road 14. The intersection is 50 m to the east of the Belle O'Connor Street / Burrawong Drive roundabout in a safe and level location in terms of sight distance for turning into and out of the proposed new intersection.</p> <p>Traffic must negotiate the roundabout prior to making the left-hand turn into the new road and will consequently be slow moving.</p> <p>Vehicles leaving the new intersection making a right-hand turn into Road 14 will also be slow moving local traffic.</p>
<p>NSW Rural Fire Service</p>	
<p>The proposed plan of subdivision.....does not show the required asset protection zone or</p>	<p>Plan L36-MOD02 (deGroot and Benson) shows:</p> <ol style="list-style-type: none"> 1. Approved fire trail adjacent to northern boundary.

<p>any reference to the fire trail previously approved along the northern boundary.</p>	<p>2. 21 m wide APZ along northern boundary. 3. 8 m wide APZ along eastern boundary.</p>
<p>The APZ to the north is partly located on adjoining land. The applicant has not addressed Section 3.3 of PFBP 2006. In this regard the applicant must provide evidence of the adjoining owner's consent to creation of the APZ and details of who will be responsible for ongoing management of this area.</p>	<p>APZs are located wholly within the subject land (Lot 36 DP1214499).</p>
<p>The current Project Approval includes a fire trail along the northern boundary of Stages 10 and 11 which appears to have been deleted and replaced with a drainage easement. The preferred option to separate bushland from urban areas is a perimeter road.</p>	<p>The Project Approval did not include a perimeter road between the R1 and E2 zoned land. The previously approved fire trail is located adjacent to the northern boundary of Stages 5 & 6 and continues along the northern boundary of Stage 4.</p>
<p>The application should be amended to clearly show the location of the northern drainage easement with respect to access to the bushland interface. The extent of land that will be managed in this area should be detailed and the corresponding extent of APZ that will be required on Lots 13 to 19.</p>	<p>Refer to DWG L36-MOD02 – DA2. The APZ is 21 m wide.</p>

The modification application has deleted APZs adjacent to Lot 51 DP 831284 on the basis that Lot 51 is managed. No evidence has been provided that there is a mechanism in place to ensure the ongoing management of this land. On this basis a temporary APZ should be provided adjacent to the boundary with Lot 51 DP 831284

LOT 51 DP 831284

There is no requirement to provide an 8 m wide APZ along the boundary with Lot 51 DP 831284. The land was assessed by Steve Britt of FloraFauna Consulting as 'managed land' and does not require an APZ.

The Bushfire Risk Assessment by FloraFauna Consulting was submitted with the S75W Application.

Lot 51 is zoned R1 General Residential and is maintained in a managed condition (mown with stands of ornamental vegetation) as shown in the image below:



Kempsey Shire Council

Provision of essential services

Concept civil and servicing plans are provided.

Traffic

Vehicular access – The documentation does not demonstrate how vehicular access to Lot 36 will be provided if it is to be developed independently of Stages 1-9 of the project. It would seem that the development of Lot 36 will be reliant upon Stage 1A being completed first, in particular the extension of Burrawong Drive from the Belle O'Connor roundabout. Alternatively, a portion of the extension of

Development of Lot 36 under the proposed modification is not reliant on any other stages of the project approval. It is proposed to construct a new section of public road 50 m east of the roundabout at Belle O'Connor Drive and Burrawong Drive.

Burrawong Drive could be constructed in accordance with the project approval as part of the development of Lot 36.

New intersection – An assessment of the traffic impacts associated with the new road connection to Burrawong Drive has not been provided nor is it consistent with the construction certificate plans for Stage 1A of the project that are currently being assessed by Council. For example, the location of the new road connection will impact upon (as depicted in the current plans for the Stage 1A construction certificate) utility services and the proposed culvert crossing the Burrawong Drive extension.

The new intersection will provide an alternative access to the approved subdivision in the location shown circled red below.

The modification is consistent with the arrangements shown in Figure 2 of the Traffic and Transport report prepared by Colston Budd Hunt & Kafes (April 2010). Specifically, the “indicative long term/future site access / design subject to Council specifications and subsequent approval.” Shown circled below.



The proposed grid network provides for the even distribution of traffic within the approved road layout.

Road widths within the modified subdivision proposal ‘match’ those already approved as shown in the following table:

Road	Reserve width	Verge width	Carriageway width
Road 1	16m	3.5m x 2	9m
Road 2	16m	3.5m x 2	9m
Road 3	16m	3.5m x 2	9m

The width of the proposed new road (off Road 14) will be the same as Road 1 shown in the above table and as shown on Drawing L36-MOD04.

Internal road layout – The approved internal road layout avoided cul-de-sacs and dead

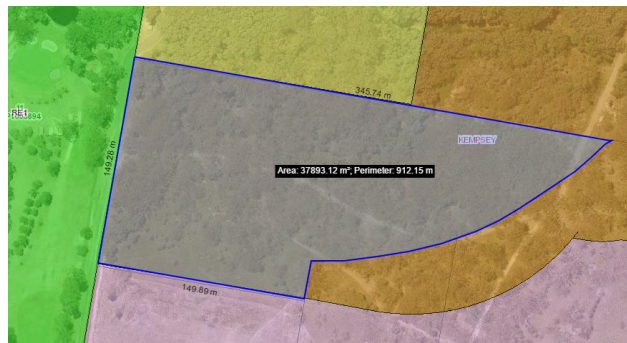
The proposed layout has been amended to connect with the approved grid layout. There will be no culdesacs.

<p>ends were provided only where connections to future development were proposed. Modification (2) proposed to remove two road linkages between Stages 9 and 10 resulting in dead ends for two of the roads in Stage 9. The documentation submitted does not address the impact of this, in particular whether cul-de-sacs will be provided at these points and any associated reduction in lot size for adjoining lots.</p>	
<p>Stormwater Management Stormwater quality, disposal and treatment are critical issues for this project, particularly given the relatively high water table and the sensitive SEPP 14 lagoon (and associated tributaries) within close proximity to the site. The Department should be satisfied that the stormwater management system is appropriate in the context of these constraints.</p>	<p>As shown in the Concept Road and Drainage Plan L36-MOD04, stormwater measures will dovetail with stormwater infrastructure already approved in the adjoining stages of the development. Interim works have been proposed to accommodate stormwater management until the adjoining infrastructure to be constructed in Stage 1A is available.</p> <p>The key stormwater management design principle for the approved development and the proposed modification is ensuring no adverse impact to the receiving environment, consistent with the requirements of the project approval.</p>
<p>Open Space The modification (2) application does not provide detail as to how the open space requirements for Lot 36 will be achieved if it is to be developed independently of the remainder of the project.</p>	<p>Clause 6.13 of Chapter D2 of the Kempsey DCP makes the following reference:</p> <p><i>One guideline for open space provision is 1.3 ha per 1000 head of population. The final lot yield, population and amount of open space required for the Saltwater precinct will be dependent upon the outcome of the recommendations of the traffic and water cycle management systems assessments. (Source: ERM South West Rocks Open Space Strategy 2004)</i></p> <p>Stages 5 and 6 of the project approval occupies a lot area of 3.577 ha and will provide residential housing for approximately 88 people (42 lots x 2.1 people per household).</p> <p>On its own, Stages 5 and 6 generates the need for 1,170 m² of open space. Stages 5 and 6 has direct access to all of the environmental conservation</p>

zoned land held within Lot 35 DP 1214499. Within that land, the area shown edged blue in the image below has an area of 3.7 ha and is part of the site for which the project approval was granted.

The area is considered to be the open space allocated to Stages 10 and 11 and is well in excess of the DCP requirements.

Image showing 3.7 ha of open space



Extract from DG's EA Report:



Figure 2: Site Context (source: Environmental Assessment)

As shown above, the 3.7 ha was part of the subject land described as Lot 36 DP 1167775. It has since been re-subdivided and is in the ownership of a company associated with Tee Bee Holdings Pty Ltd.

The "3.7 ha" offset area is now held in Lot 36 DP 1214499 and will be progressively rehabilitated and dedicated to Council as part of a VMP for the adjoining subdivision of that land. As shown in the photograph below, (taken January 2016), this part of the E2 zoned land comprises established stands of native trees and a network of access tracks. The Project Approval provides for passive recreation (pedestrian and cycleway) within this land as shown in the image below:



Additionally, Stages 5 and 6 has ready access to:

- extensive off-site coastal recreation areas between South West Rocks and Trial Bay; and
- active recreation areas at the adjoining South West Rocks Golf Club and sporting facilities.

Overall, it is considered that there is sufficient open space to serve the needs of Stages 5 and 6 independently of any parkland provided for the adjoining stages of the development.



<p>Lot Layout</p> <p><i>It is suggested that the proponent be asked to provide documentation demonstrating that appropriate building envelopes are available for each proposed lot having regard to constraints such as bushfire APZs and building setbacks.</i></p>	<p>As shown on drawing L36-MOD02, all of the lots have an area of 500 m² or greater and will accommodate a suitable building envelope with regard to building setbacks and APZs. This is illustrated for proposed Lots 27 and 32, showing a suitable building area clear of the APZ and with a 5 m setback from the road frontage.</p> <p>Lots 1, 6, 7, 12, 13, 24 & 25 are affected by a temporary APZ, 8 m wide, along the eastern boundary of each lot. This APZ will impact on the ability of these lots to support a viable building envelope until the APZ is extinguished when the adjoining stage is developed, and the land is no longer classified as 'grassland'.</p> <p>A temporary stormwater detention basin will be located within Lot 25. This basin will be decommissioned once the stormwater infrastructure for Stage 1A is completed enabling connection to the approved north/south road swale system.</p>
<p>PUBLIC SUBMISSIONS</p>	
<p>WB and ME Walls</p> <p><i>Concerned about construction impact and order of staging.</i></p>	<p>The project approval requires the preparation of a Construction Environmental Management Plan (CEMP). The CEMP will include contact particulars for complaints regarding construction impacts. Staging of the development will be as per the project approval and any subsequent modifications.</p>
<p>Philip Hope</p> <p><i>Our objection is based on what we believe is environmental vandalism to wetlands which our property overlooks.</i></p> <p><i>Dust and noise impacts from construction.</i></p>	<p>Environmental impacts of the proposal were assessed in the project approval and Mod 1. The subject Mod 2 does not propose any additional elements that would increase the environmental impact of the development.</p> <p>As stated above, these matters will be detailed in the CEMP.</p>

PROJECT APPROVAL – REVISIONS

Schedule 1:

Land: Lot 1 DP 1128633; Lot 2 1128633; and Lot 84 DP 792945, Belle O'Connor Street, South West Rocks – Kempsey local government area.

Amend to read:

Lots 1 & 2 DP 1229162; Lot 36 DP 1214499 and Lot 84 DP 792945, Belle O'Connor Street, South West Rocks – Kempsey local government area.

Schedule 2:

Condition #	Consent Condition	Modified Condition
A1(1)	<p>Project Description</p> <p>1. Subdivision of the land into:</p> <ul style="list-style-type: none"> a) 152 residential lots, including up to 151 low density residential lots and 1 medium density residential lot; and b) A Seniors Living Development lot including 199 dwelling sites, and construction of roads, a clubhouse, pool, amenities block, tennis courts, bowling green, landscaping and infrastructure works. <p>2. Extension of the Belle O'Connor Street road reserve and construction of the internal public road network (consistent of Roads 1 to 7 in the residential subdivision, and an internal private road network consisting of Roads SL1 to SL7 in the Seniors Living Development.</p>	<p>Project Description</p> <p>1. Subdivision of the land into:</p> <ul style="list-style-type: none"> a) 161 low density residential lots; and b) A Seniors Living Development lot including 199 dwelling sites, and construction of roads, a clubhouse, pool, amenities block, tennis courts, bowling green, landscaping and infrastructure works. <p>2. Extension of the Belle O'Connor Street road reserve and construction of the internal public road network (consistent of Roads 1 to 8 in the residential subdivision, and an internal private road network consisting of Roads SL1 to SL7 in the Seniors Living Development.</p>
A2	Project in Accordance with Plans	<p>Add to the table of drawings: Design Drawings prepared by deGroot and Benson, Consulting Engineers and Planners. MP 08-0167 DA Modification, DWG # L36-MOD00 DA2 to L36-MOD06 DA2, 8 March 2018.</p>

A5	Limits on release of lots pending new road connection	Add: (4) Consent condition A5(1) to (3) does not apply to Stages 5 and 6.
A7A	Staging Stages 1A, 1B, 1C, 2 and 3 must be carried out first, in accordance with the Saltwater Links Residential Subdivision Revised Overall Staging Plan (Revision G) prepared by Land Dynamics Australia and dated 26.09.2017. The order of subsequent stages may be varied, subject to the proponent having received written approval by the Secretary.	Change numbering from A7 to A7A.
A7B	New condition:	Stages 5 and 6 may be carried out independently of Stages 1 to 4, in accordance with the General Arrangement & Lot Layout Plan prepared by deGroot and Benson dated 8.03.2018 Drawing # L36-MOD01 Amendment # DA2.
E5(d)	A Restriction as to User allowing for the creation of a 20 metre wide Asset Protection Zone, measured from the boundary of the conservation zone shall burden the following residential Lots and stages: <ul style="list-style-type: none"> • The two lots immediately south of the 1,450 m² Bushland exercise park (Stage 2); • The six northern lots (Stage 4) • The four northern lots (Stage 5); and • The medium density lot (Stage 6). 	A Restriction as to User allowing for the creation of a 20 metre wide Asset Protection Zone, measured from the boundary of the conservation zone shall burden the following residential Lots and stages: <ul style="list-style-type: none"> • The two lots immediately south of the 1,450 m² Bushland exercise park (Stage 2); • The six northern lots (Stage 4) • The four northern lots (Stage 5); and • The five northern lots (Stage 6).
E5 (e)	New condition	A Restriction as to User allowing for the creation of an 8 metre wide Asset Protection Zone, measured from the eastern boundary of Lot 36 DP 1214499 shall burden Lots 1, 6, 7, 12, 13, 24 & 25 i (Stages 5 and 6). The area shall be maintained as an inner protection area in accordance with <i>Planning for</i>

		<p><i>Bushfire Protection 2006 and the RFS's Standards for Asset Protection Zones. 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.</i></p> <p><i>This condition is to be extinguished in the event the land to the east of Lot 36 DP 1214499 (Stage 4) is developed for residential purposes and becomes managed land.</i></p>
E10 (1)	Section 94 Monetary Conditions Contribution Table	The number of ETs is to be altered from 147 to 161 residential lots.

Statement of Commitments

The current version (MP 08_0167 MOD1) of the Statement of Commitment provided on the Major Projects website is generally applicable to the modified proposal within Lot 36.