

## Section 75W Modification

Lot 36 DP 1214499

Belle O'Connor Street, South West Rocks

Project Approval 08\_0167 (Malbec SWR P/L)

Prepared for: Teebee Property Trust  
Date: September 2016

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## 1

# Introduction

## 1.1 Background

Keiley Hunter has been engaged by Teebee Property Trust (the Proponent) to prepare this report to accompany an application made pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979*<sup>1</sup> (EP&A Act) to modify Project Approval MP08\_0167.

Project Approval MP08\_0167 for a residential subdivision was granted by the Planning Assessment Commission (PAC) on 3 June 2011 for:

- 269 low density residential lot constructed in 11 stages
- One medium density residue lot
- Internal public road network
- Public open space areas with recreation facilities
- Network of pedestrian and cyclist pathways
- 14.9 ha conservation zone
- Stormwater treatment areas
- Landscaping

The project was modified on 6 August 2013 (08\_0167 MOD 1) involving:

- Revised stormwater treatment regime for the site, including deletion of stormwater treatment wetlands and piping of inter-allotment drainage
- Revised road network layout
- Revised project staging
- Four additional low density lots
- Increased area of the central active open space park
- Decreased area of the bushland exercise park
- Amended S94 contributions

The subject land of the Project Approval is described as Lot 1 and 2 DP 1128633 and Lot 84 DP 792945, Belle O'Conner Street, South West Rocks in the Kempsey local government area.

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<sup>1</sup> Section 75W was repealed with the repeal of Part 3A of the EP&A Act, but has continuing effect pursuant to Schedule 6 (12) of the EP&A Act.

In 2012, Lot 2 DP 1128633 was subdivided, leaving Lot 36 DP 1167775 as part of the subject land. In 2016, Lot 36 DP 116775 was subdivided, leaving Lot 36 DP 1214499 as part of the subject land.

Teebee Property Trust are the owners of Lot 36 DP 1214499. Lot 36 DP 1214499 has an area of 3.577 ha and comprises the land identified as Stages 10 and 11 of the Project Approval (08\_0167 MOD 1).

The purpose of the subject modification is to enable Lot 36 DP 1214499 to be subdivided independently of the balance of the subject land, being Stages 1 to 9 of the Project Area and described as the **'Malbec'** land.

The proposed modification alters the subdivision layout to enable a separate public road access off Belle O'Connor Street. The other key change is that the previously approved 'medium density residue lot' is to be subdivided for low density residential purposes.

The proposed modifications remain consistent with environmental outcomes, development expectations of adjoining lands, the requirements of the relevant public authorities, including Council and the landscape character of the project approval. It is therefore considered that this application is substantially the same development as previously approved and warrants approval.

## 1.2 The Site

The land comprising Stages 10 and 11 of the project approval is legally described as Lot 36 DP 1214499 and is located to the north of Belle O'Connor Street, South West Rocks. Illustration 1.1 shows the locality of the subject site. The land has an area of 3.577 hectares with frontage to a public road reserve variable width off Belle O'Connor Street. A copy of the Deposited Plan (DP1214499) is found at Appendix A. An aerial photo is provided at Illustration 1.2.

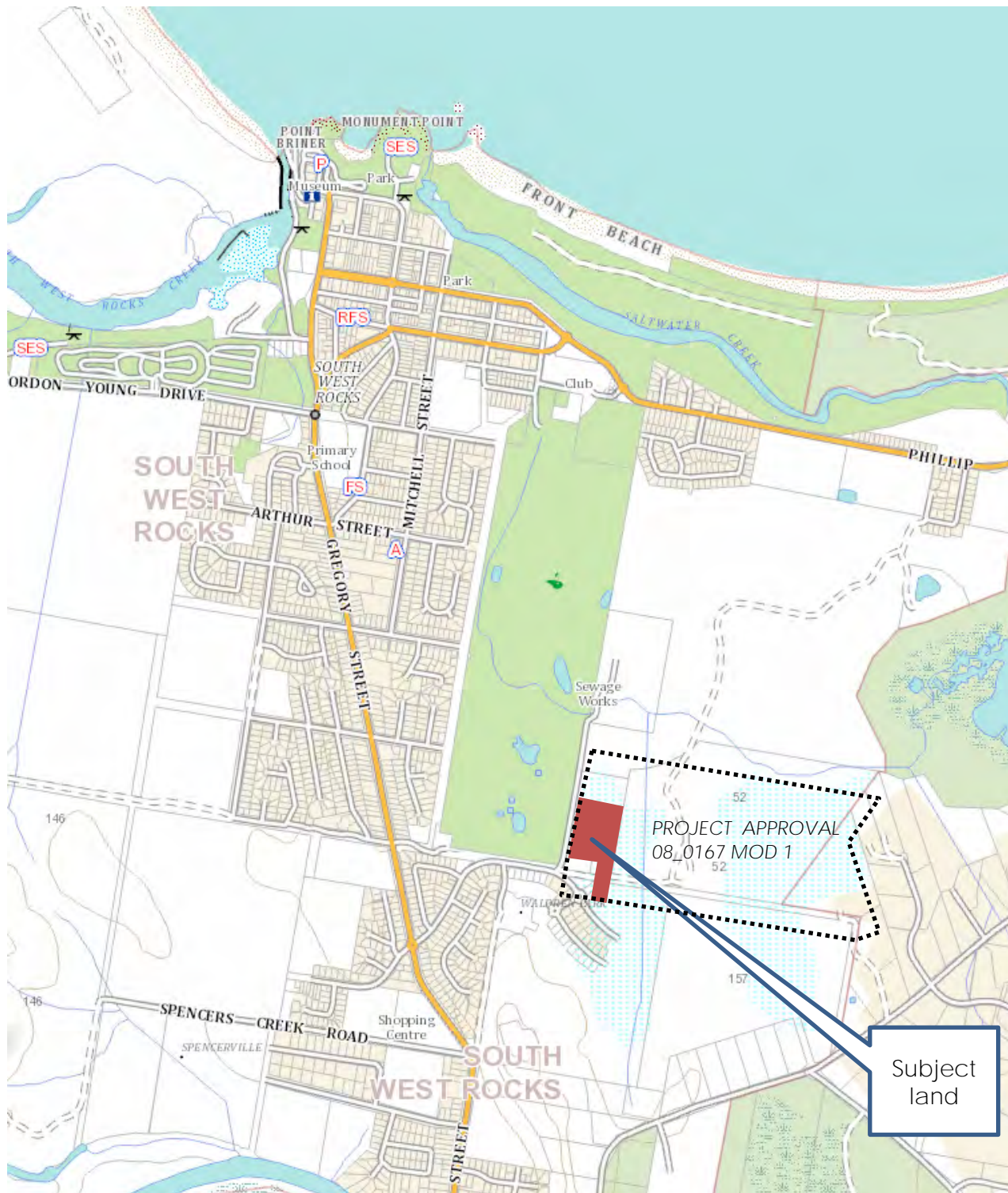
The subject site is on the northern side of existing residential subdivision development off Belle O'Connor Street. An undeveloped, one hectare, parcel of residential zoned land is located on the south western corner of the site.

The western boundary of the site adjoins a sealed accessway to the South West Rocks sewerage treatment plant situated to the north of the site. Managed land associated with the South West Rocks golf course is situated further to the west, adjacent to the sewage treatment works access road.

Civil works for the Malbec residential subdivision have commenced directly adjoining the subject land to the east.

The land is zoned R1 General Residential under the Kempsey Local Environmental Plan 2013 (LEP).

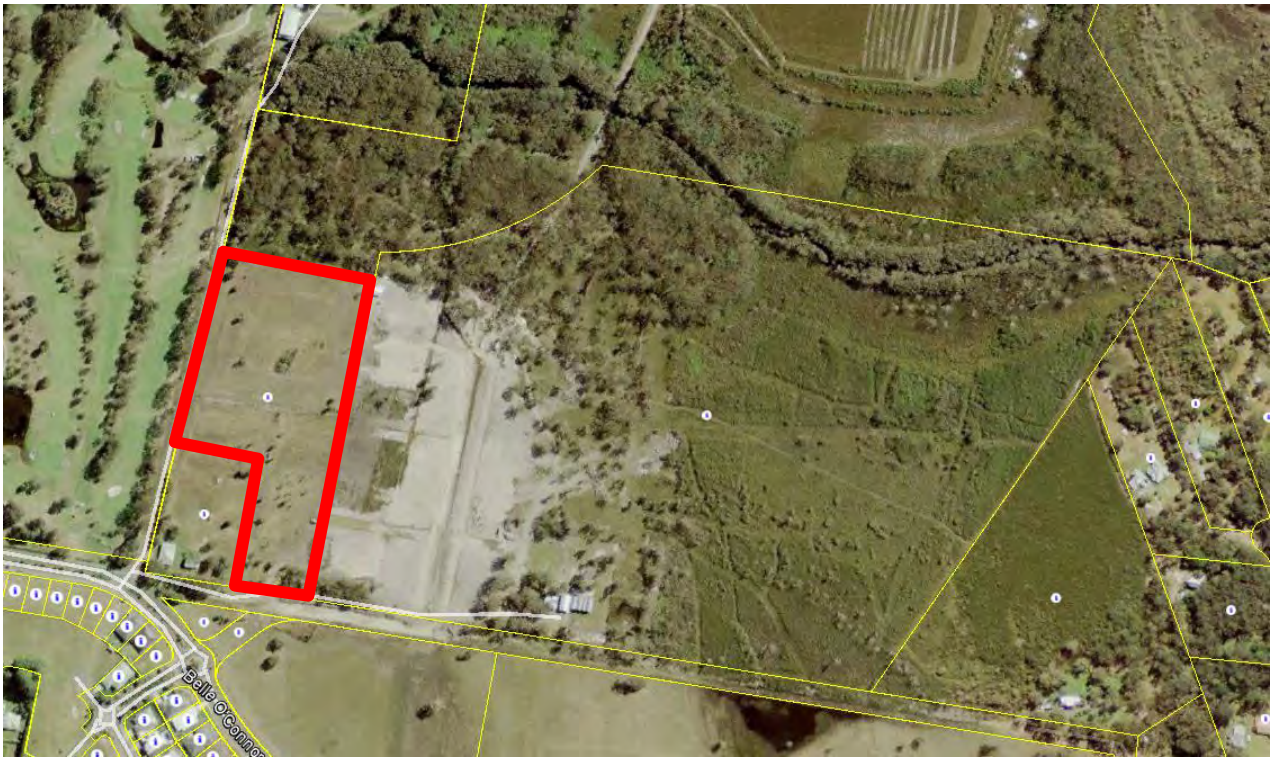
Illustration 1.1 Site Locality



Source: Six Maps 2016



Illustration 1.2      Aerial Photo



Source: Google Earth 2016

## 2

## Modified Proposal

## 2.1 Proposed Modifications

The specific modifications sought under this application are as follows:

Modify part of the approved subdivision plan to create the proposed allotments as follows and as shown at Illustration 2.1 and Appendix C.

1. Create 43 low density residential allotments ranging in area from 500 m<sup>2</sup> to 1,126 m<sup>2</sup>.
2. Amend internal road network.
3. Create new public road access to connect with the public road reserve variable width off Belle O'Connor Street.
4. Create public road access connection to Stage 9 of the Malbec development.
5. Amend bushfire asset protection zone requirements.
6. Amend approved staging of the development. Stages 10 and 11 to occur independently of Stages 1 to 9 of the Malbec development.

As shown in the follow table and Illustration, the modification involves amending the approved layout as follows:

Approved Layout - 28 lot density lots and one medium density lot of 14,740 m<sup>2</sup>  
Modified Layout – 43 low density lots.

In other words, under the modification, the “medium density lot” will be subdivided to create low density lots, similar to the rest of the approved subdivision.

The reason for the modification is:

- a) the land is now held in separate ownership and the subdivision layout has been revised to enable Stages 10 and 11 to occur independently of rest of the subdivision; and
- b) medium dwelling development of proposed Lot 29, a 14,740 m<sup>2</sup> 'superlot', is not feasible in terms of compatibility with the surrounding low density neighbour character and the Kempsey Development Control Plan 2013 density controls.<sup>2</sup>

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<sup>2</sup> Chapter C1 (clause 5.1) provides guidelines for residential density. Site and landscape areas for dwellings range from 270 m<sup>2</sup> for one bedroom dwellings to 665 m<sup>2</sup> for 4 bedroom dwellings.

## 2.2 Detailed Description

Lot numbers and lot areas are shown in the table below:

	Approved Lot	Area (m <sup>2</sup> )	Proposed Lot	Area (m <sup>2</sup> )
1	222	714	1	500
2	223	730	2	500
3	224	730	3	500
4	225	780	4	500
5	226	605	5	500
6	227	595	6	500
7	228	595	7	500
8	229	595	8	500
9	238	562	9	500
10	239	595	10	500
11	240	595	11	500
12	241	605	12	582
13	242	558	13	1,126
14	243	595	14	743
15	244	595	15	679
16	245	595	16	675
17	254	616	17	679
18	255	638	18	836
19	256	638	19	938
20	257	610	20	602
21	258	506	21	600
22	259	544	22	600
23	260	544	23	600
24	261	535	24	651
25	270	565	25	657
26	271	565	26	832
27	272	565	27	608
28	273	565	28	600
29	274	14,740	29	738
			30	481
			31	500
			32	500
			33	500



Approved Lot	Area (m <sup>2</sup> )	Proposed Lot	Area (m <sup>2</sup> )
		34	500
		35	501
		36	743
		37	689
		38	692
		39	686
		40	674
		41	686
		42	733
		43	709

Illustration 2.1 Approved and Modified Subdivision Layout



Extract: Malbec Properties # 4972\_N\_SHT 02  
Issue B: 05/04/13



Extract: Lot 36 Concept Master Plan  
DeGroot and Benson # 13056; L36-MP1;  
12/07/16

## 2.3 Bushfire Assessment

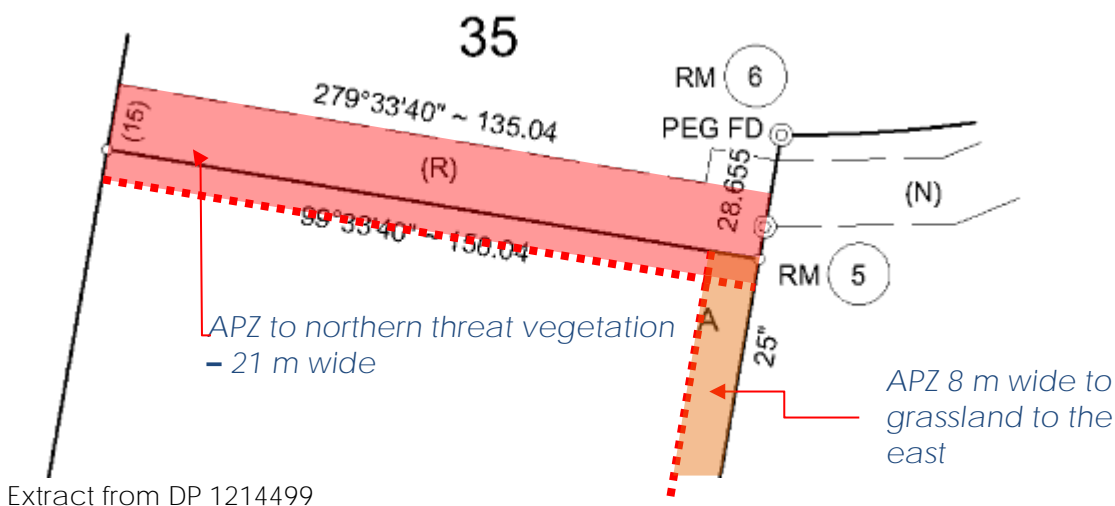
A Bushfire Risk Assessment was carried out by FloraFauna Consulting to confirm that the amended subdivision layout meets the requirements of Planning for Bushfire Protection 2006. The full report is provided at Appendix D and is summarised below.

### Asset Protection Zones (APZ):

- North 21 metres
- East 8 metres
- South and west – managed land to 140 m (no APZ required)

The amended layout enables the provision of required Asset Protection Zones for future residential buildings within the proposed development area. The northern APZ will occupy the existing Easement to Drain Water 15 m wide and variable (located within Lot 35 DP 1214499) and 6 m along the northern boundary of proposed Lots 3 to 19, as shown below:

Illustration 2.2      Northern APZ:



The width of the eastern APZ is 8 metres. This APZ will not be required at the completion of Stage 9 of the 'Malbec' development.

There is no requirement for an APZ to the golf course to the west of the site or from the vacant land in the southwestern corner of the site. This differs from APZ shown on the approved plans (Sheet 1 of 3 of Project Approval MP\_08\_0167MOD1). The Bushfire Risk Assessment carried out by FLoraFauna Consulting is considered to accurately represent site and vegetation conditions. It is therefore requested that the APZs shown at Illustration 2.2 are adopted for this modification. The approved APZs are shown at Illustration 2.3.

Illustration 2.3 Approved Plans - APZ



Extract from Malbec Properties #4972 Sheet 1 of 3

### Access Roads

*The capacity of public roads to handle increased volumes of traffic in the event of a bushfire emergency:*

The existing road network and in particular, Belle O'Connor Street satisfies the acceptable solutions of *Planning for Bushfire Protection 2006* for public road access for road widths and design and therefore has the capacity to handle increased volumes of traffic in the event

of a bushfire emergency. The public road network within the proposed subdivision will also be able to satisfy the acceptable solutions of *Planning for Bushfire Protection 2006* for public road access for road widths and design and therefore has the capacity to handle increased volumes of traffic in the event of a bushfire emergency.

*Whether or not public roads in the vicinity have two-way access:*

The existing public road network providing access to the proposed development (Belle O'Connor Street) is bitumen-sealed two-wheel drive all weather road. The roadway provides two-way access, meaning that it comprises at least two (2) traffic lane widths to allow traffic to pass in opposite directions.

The proposed internal access road serving proposed Lots 1 to 43 will be a bitumen-sealed two-wheel drive all weather public road. It also comprises at least two (2) traffic lane widths to allow traffic to pass in opposite directions.

*The adequacy of arrangements for access to and egress from the development site for the purposes of an emergency response:*

Currently, Belle O'Connor Street is not a through road and the distance from the beginning of the road (being the intersection with Gregory Street) to the subject site (the roundabout where construction of new roads is proposed) is approximately 650 metres.

This exceeds the recommended maximum length of 200 metres as prescribed under the acceptable solutions of *Planning for Bushfire Protection 2006* for public road access. It appears that this situation has arisen due to the incomplete state of the residential development in the vicinity of the subject site, which is likely to be addressed as the development of the area proceeds.

However, given the adequacy of the road (bitumen-sealed and two-way access) together with the relatively small number of residential properties located on bushfire prone land that are currently served by the road, it is considered that the intent of the acceptable solutions is achieved by satisfying the performance criteria for public road which states;

***“Public road widths and design that allow safe access for firefighters while residents are evacuating an area.”***

The proposed residential subdivision development within the subject site will be provided with two (2) access points, including one road from Belle O'Connor Street and another road providing connection directly to Stage 9 of Malbec Properties approved subdivision on the adjacent land to the east, which will effectively provide a through road network.

Therefore, the proposed public road access arrangements within the proposed residential subdivision are able to satisfy the acceptable solutions of *Planning for Bushfire Protection 2006*. With the exception of the aforementioned issue in relation to road length of Belle O'Connor Street, the arrangements for access to and egress from the subject site for the purposes of an emergency response are considered adequate.

Modifications to consent conditions relating to bushfire requirements are detailed in Section 3.

## 2.4 Environmental Considerations

The proposed modification to the subdivision layout remains consistent with the environmental outcomes of the original and modified approvals.

Subdivision of the land to enable stages 10 and 11 to occur independently of Stages 1 to 9 will not result in any significant change to environmental interactions already considered in the detailed assessments submitted, assessed and approved with the Part 3A Residential Subdivision in 2011, or with the modifications approved in 2013.



# 3

## Project Approval

### 3.1 Amendments to Consent Conditions

The proposed modifications to Project Approval MP08\_0167(MOD1) will result in amendments to the description of the proposal and the consent conditions as listed in Modify Instrument MP08\_0167(MOD1).

### 3.2 Project Approval – Schedule 1 Development Description

The Proponent seeks to modify the development description of the development under Schedule 1 to reflect the proposed modifications as outlined under this report.

If all modifications are accepted the Proponent seeks the 'Development Description' and schedule of consent conditions to read as follows:

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:

Lot 1 DP 1128633; 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)	<del>Subdivision of the land into 274 lots, including 273 low density residential lots and 1 medium density residential lot.</del>	Subdivision of the land into 288 lots, low density residential lots.
A2	Project in Accordance with Plans	Add to the table of drawings: Design Drawings prepared by deGroot and Benson, Consulting Engineers and Planners

		MP 08-0167 DA Modification, DWG # L36-MP1, 12 July 2016.
A5	Limits on release of lots pending new road connection	Add (4) Consent condition A5(1) to (3) does not apply to Stages 10 and 11.
B17	<del>Asset Protection Zone (APZs) are to be provided in accordance with Bushfire Hazard Assessment – Proposed Subdivision – Lots 1 &amp; 2 DP 11238633 &amp; Lot 84 DP 792945 Belle O'Connor Street, South West Rocks prepared by Midcoast Building and Environmental, dated November 2012. Details of the APZs (as it relates to each stage of the project) are to be provided to the satisfaction of the Certifying Authority prior to the release of the Construction Certificate for each stage of the project.</del>	<p>Asset Protection Zone (APZs) for <b>Stages 1 to 9</b> are to be provided in accordance with <i>Bushfire Hazard Assessment - Proposed Subdivision – Lots 1 &amp; 2 DP 11238633 &amp; Lot 84 DP 792945 Belle O'Connor Street, South West Rocks</i> prepared by Midcoast Building and Environmental, dated November 2012.</p> <p>Asset Protection Zone (APZs) for <b>Stages 10 and 11</b> are to be provided in accordance with <i>Bushfire Risk Assessment, Proposed Residential Subdivision, Lot 36 DP 1214499 Belle O'Connor Street, South West Rocks</i> prepared by FloraFauna Consulting, dated <b>23 August 2016</b>.</p> <p>Details of the APZs (as it relates to each stage of the project) are to be provided to the satisfaction of the Certifying Authority prior to the release of the Construction Certificate for each stage of the project.</p>
E5(d)	<del>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 Lots:</del> <ul style="list-style-type: none"> <li><del>• Lot 56 and 57 (Stage 2);</del></li> <li><del>• Lots 216 – 221 inclusive (Stage 9);</del></li> <li><del>• Lots 222 – 225 inclusive (Stage 10);</del> and</li> <li><del>• Lots 274 (medium density lot) (Stage 11)</del></li> </ul>	<p>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 Lots:</p> <ul style="list-style-type: none"> <li>• Lot 56 and 57 (Stage 2);</li> <li>• Lots 216 – 221 inclusive (Stage 9)</li> </ul>

E5 (d2)	New condition	<p>A Restriction as to User allowing for the creation of a 6 metre wide Asset Protection Zone, measured from the boundary of the conservation zone shall burden the following Lots:</p> <ul style="list-style-type: none"> <li>• Lots 13 – 19 inclusive (Stages 10 and 11)</li> </ul> <p>The area shall be maintained as an inner protection area in accordance with <i>Planning for Bushfire Protection 2006</i> and the <i>RFS's Standards for Asset Protection Zones</i>. 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.</p>
E5 (d3)	New condition	<p>A Restriction as to User allowing for the creation of an 8 metre wide Asset Protection Zone, measured from the boundary of the conservation zone shall burden the following Lots:</p> <ul style="list-style-type: none"> <li>• Lots 1 – 13 inclusive (Stages 10 and 11)</li> </ul> <p>The area shall be maintained as an inner protection area in accordance with <i>Planning for Bushfire Protection 2006</i> and the <i>RFS's Standards for Asset Protection Zones</i>. 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.</p> <p>This condition is to be extinguished in the event the land to the east of Lots 1 – 13 inclusive (Stages 10 and 11) becomes managed land.</p>
E10 (1)	Section 94 Monetary Conditions Contribution Table	The number of ETs is to be altered from 273 to 288.

## 4

## Conclusion

## 4.1 Conclusion

Project Approval MP08\_0167 for a residential subdivision was granted by the Planning Assessment Commission (PAC) on 3 June 20011 for land described as Lot 1 and 2 DP 1128633 and Lot 84 DP 792945, Belle O'Conner Street, South West Rocks in the Kempsey local government area.

The subject land has been re-subdivided to enable Lot 36 DP 1214499 within the project approval area to be transferred from Malbec Properties to Teebee Property Trust.

The project was modified on 6 August 2013 (08\_0167 MOD 1). The project has been commenced.

The operational consent relates to certain lands within the subject site.

This application is made pursuant to Section 75W of the Environmental Planning and Assessment Act 1979 to modify Project Approval MP05\_0129 to ensure consistency between the subject Project Approval and the modified layout.

Given the proposed modifications remain consistent with environmental outcomes, development expectations of adjoining lands, the requirements of the relevant public authorities, including Council, this application warrants approval.



Keiley Hunter  
Planner