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18 March 2020

Mr Brendon Roberts
Acting Director, Regional Developments
Department of Planning, Industry and Environment
Lvl 29, 320 Pitt Street,
Sydney NSW 2000

Dear Mr Roberts,

RE: Major Project (MP05_0029-PA-1) Modification to replace existing gully reserve and create 7 additional lots. Lot 406 DP 1061103, Sunshine Bay, NSW

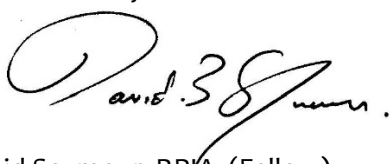
Thank you for your letter dated 10 March 2020 and the request for clarification on the respective modification determination under the EP&A Act 1979.

This response and enclosed, sets out the intention and justification for a determination to be provided under s4.55(1A) of the Act in lieu of s4.55(2) as indicated within the original application. Given the exploratory and field work that has been devoted to the modification application and the recommendations arising from the bio-diversity report and the absence of agency objection, there would be very little justification for the modification to be determined under section 4.55(2) of the EP&A Act 1979.

Therefore, on behalf of the project owners (Telmen Holdings Pty Limited) we request the Department to amend the application accordingly and to provide a determination under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

In that regard we await finalisation of the consent document from the Department in due course.

Yours faithfully

A handwritten signature in black ink, appearing to read 'David Seymour', with a stylized flourish at the end.

David Seymour RPIA (Fellow)
BSc (Build) Melb, BU&R Plan (Hons) UNE,
Principal planner

SUNSHINE BAY RESIDENTIAL SUB-DIVISION MODIFICATION (MP_0029-MOD-1)

Request for Modification classification amendment – Justification statement

The modification application and support material, lodged with Department of Planning, Industry and Environment December 2018, had been submitted and prepared as a 4.55(2) Modification under the Environmental Planning and Assessment Act 1997 (EP&A Act). Although the proposed modification had effect over a relatively small area, the changed use of the land requiring removal of vegetation, filling of a small gully and re-assigning the land for additional residential allotments, would contribute to an environmental effect relative to retention of the extant condition of the land. However, the detailed site investigation and field work that ensued to establish the nature and character of the affected land environment has revealed that the proposed modification effect would be quite minimal (if at all) and manageable in the longer term.

Certainly, the modification would involve the removal of a small number of mature trees and ground cover. Also a single habitat tree would be relocated close by for retained fauna habitat, but due to the very small area and that under the original sub-division layout the area would be isolated, the environmental value of the retained vegetation would be severely eroded and deteriorate over time. This aspect of the biodiversity evaluation was reinforced within the separate BDAR report, which states:

“Given the location of the DMA site adjacent to existing road infrastructure and cleared land for development, it is considered unlikely that the proposal would have inadvertent impacts which would reduce viability of any adjacent native vegetation or habitat due to edge effects, noise, dust or light spill, or disturbance to breeding habitats”.

Furthermore, the BDAR report has acknowledged the removal of the single habitat tree and recommended re-location:

“The single hollow bearing tree within the DMA site would be cleared as part of the proposal. It is recommended that the hollow bearing tree be salvaged as part of the project and utilised to create a standing hollow-bearing snag or used to increase fallen woody debris with other retained woodland areas within the sub-division site”.

The biodiversity assessment has also recommended the placement of three nest boxes to be located in retained vegetation within the adjacent reserve land. The provision of the nest boxes to be included within the suggested establishment of a Vegetation Management Plan (VMP) for the DMA site.

The modification documentation and support material had been referred (via DPI&E) to relevant agencies for their review and comment, these responses have now been received and indicate no outstanding issues yet to be addressed. It is worth noting here, that the instigation for the modification arose from local government and the desire by Eurobodalla Shire Council to reduce the quantum of reserve land that would transition to their long-term care and control.

The proposed modification will remove an isolated bushfire hazard within the estate and the requirement for hazard risk management zones. In terms of landscape management, it is beneficial to have undeveloped land areas contained within title allotments than retained within public open space subject to possible inadequate and/or ineffectual maintenance.

It is our understanding that the community notification/consultation of the proposed modification did not generate comment adverse or supportive.

The Environmental Planning and Assessment Act 1979 requires the consent authority, in this case is the NSW Department of Planning, Industry and Environment, to assess the modification application in accord with the criteria as set out at s4.55(1A) of the Act. The following table provides justification against those provisions.

s4.55(1A)	PROVISION	RESPONSE
(a)	<i>it [DPI&E] is satisfied that the proposed modification is of minimal environmental impact,</i>	The consent authority is required to ensure that all aspects of the application will comply with the suite of environmental and societal objectives relevant to the proposed modification and not inconsistent with the original project consent.
(b)	<i>it [DPI&E] is satisfied 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 granted was modified (if at all),</i>	The original development was for the establishment of residential allotments within an area for which urban growth had been identified and permitted under local legislation. The purpose of the modification retains that purpose.
(c)(i)	<i>it [DPI&E] has notified the application in accordance with the regulations, if the regulations so require;</i>	Notification has been undertaken consistent with the Regulations (cls.117) and consistent with the notification as function of the original project application.
(c)(ii)	<i>it [DPI&E] has notified the application in accordance with a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent</i>	Notification has occurred that is not inconsistent with notification as required as set out in local Council notification policy.
(d)	<i>it [DPI&E] has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</i>	All submissions received during the period of notification and agency referral have been considered and included in a response to submissions as provided by the applicant.