



23 December 2019

## Mundamia Residential Subdivision (SSD 7169)

### 1. INTRODUCTION

1. On 18 July 2019, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning, Industry and Environment (**Department**) a State significant development application (SSD 7169) from Allen Price and Scarratts Pty Ltd on behalf of Jemalong Mundamia Pty Ltd (**Applicant**) to develop the Mundamia Residential Subdivision (**Application**).
2. The Commission is the consent authority in respect of the Application under section 4.5(a) (**EP&A Act**) and clause 8A of the *State Environmental Planning Policy (State and Regional Development) 2011 (SEPP SRD)*. This is because the:
  - Application constitutes State significant development under section 4.36 of the Environmental Planning and Assessment Act (**EP&A Act**) as the project was transitioned from Part 3A to Part 4 of the **EP&A Act** in 2015
  - Department received a reportable political donations disclosure with the Application.
3. Professor Mary O’Kane AC, Chair of the Commission, nominated Ross Carter (Chair) and Chris Wilson to constitute the Commission determining the Application.

#### 1.1 Site and locality

4. The Application is located in the Shoalhaven Local Government Area (**Shoalhaven LGA**) and forms part of the Mundamia Urban Release Area (**URA**), a 53 hectare (**ha**) allotment of land intended to provide up to 720 new homes within the Nowra-Bomaderry region. The site comprises approximately 41.3ha of residential and environmental conservation zoned land (**Application Site**).
5. The Department’s Assessment Report (**Department’s AR**), dated 17 July 2019, stated that the Application Site is “located approximately 2.5 kilometres (**km**) west of the Nowra town centre, 1.5 km west of the suburb of West Nowra, and 300 m south of the Shoalhaven River”.
6. The Department’s AR stated that the Application Site “contains one dwelling with associated out-buildings and has historically been used for pastoral grazing. Remnant vegetation exists along the northern and eastern site boundaries... The topography of the site ranges in height from between approximately 46 m (AHD) near its north-eastern corner, to approximately 70 m (AHD) near its south-western corner”.
7. The Department’s AR stated that the “surrounding landscape is gently undulating and vegetated with tall forest, heathland and wetland plant communities. The site adjoins bushfire prone land on all boundaries and access and egress to the URA is achieved via a single road (George Evans Road)”.
8. The context of the Application Site is demonstrated in Figure 1.

Figure 1 – Application Site and Site Context



Source: Department's Assessment Report

## 1.2 Background to the Application

9. In 2006, Shoalhaven City Council (**Council**) adopted the Nowra-Bomaderry Structure Plan (**NBSP**) to assist with the development of its Local Environmental Plan (**LEP**). The NBSP identified new living areas in the Shoalhaven LGA.
10. The Department's AR stated that the "NBSP identifies the subject site as a 'future living area' suitable for early release due to this proximity to the Nowra Town Centre and Wollongong University's Shoalhaven Campus".
11. The Department's AR stated that following adoption of the NBSP, "Council and the Applicant prepared a Masterplan comprising a conceptual subdivision layout and Planning Principles to support the rezoning of Mundamia for residential and conservation uses. The Masterplan and Planning Principles were adopted by Council on 22 July 2008".
12. Subsequently, the Application Site was identified as an urban release area and rezoned R1 General Residential and E2 Environmental Conservation in the *Shoalhaven Local Environmental Plan 2014 (SLEP 2014)*.
13. On 13 April 2009, Director-General's Environmental Assessment Requirements (DGRs) were issued for a residential subdivision on an adjoining site, Lot 1 DP 1021332, George Evans Road, Mundamia (originally known as project application MP09\_0056). That project was transitioned from Part 3A to Part 4 of the EP&A Act, application SSD 7128.
14. SSD 7128 proposed a 109 lot subdivision including 105 residential lots, a village centre and public open space. The project was exhibited from 8 May 2013 to 11 June 2013 and was subsequently withdrawn.

### 1.3 Summary of the Application

15. The Department's AR stated that the Applicant seeks approval to subdivide the Application Site into 308 residential lots, one commercial lot, and five reserves for open space, drainage and conservation purposes.
16. The Department's AR identified the following key components and features of the current proposal, as amended (Table1):

**Table 1 - Main Components of the Application (Source: Department's Assessment Report)**

| <b>Component</b>                            | <b>Description</b>   |
|---|--|
| <i>Development Application (DA) Summary</i> | <ul style="list-style-type: none"><li>● Subdivision works including demolition of existing dwellings and outbuildings, site remediation, and construction of estate wide civil infrastructure and landscaping.</li></ul>   |
| <i>Proposed Uses</i>                        | <ul style="list-style-type: none"><li>● Residential, commercial, recreation, infrastructure (sewerage pumping station) and biodiversity conservation.</li></ul>  |
| <i>Site Area</i>                            | <ul style="list-style-type: none"><li>● 41.39 ha.</li></ul>  |
| <i>Subdivision</i>                          | <ul style="list-style-type: none"><li>● Subdivision of the site into 308 residential lots, with subdivision works proposed over 11 stages.</li></ul>   |
| <i>Neighbourhood Safer Place (NSP)</i>      | <ul style="list-style-type: none"><li>● Provision of a neighbourhood safer place (NSP) to act as a bushfire shelter for people located within 100 m of the bushfire hazard. The NSP would be constructed as a part of the first stage of the subdivision.</li></ul>                          |
| <i>Site Preparation Works</i>               | <ul style="list-style-type: none"><li>● Remediation works in accordance with a proposed Remedial Action Plan (RAP).</li></ul>  |
| <i>Access</i>                               | <ul style="list-style-type: none"><li>● Construction of internal estate roads.</li></ul>   |
| <i>Infrastructure</i>                       | <ul style="list-style-type: none"><li>● Construction of estate wide services and infrastructure including:<ul style="list-style-type: none"><li>○ reticulated sewer, water, electrical and telecommunications infrastructure</li><li>○ four stormwater detention basins.</li></ul></li></ul> |
| <i>Biodiversity</i>                         | <ul style="list-style-type: none"><li>● Removal of 10.46 ha of native vegetation</li><li>● Retirement of 544 ecosystem credits and 4,980 species credits to offset the loss of vegetation.</li></ul>   |
| <i>Landscaping</i>                          | <ul style="list-style-type: none"><li>● Landscaping within the site comprising:<ul style="list-style-type: none"><li>○ public open space treatments</li><li>○ street tree planting</li><li>○ swale landscaping.</li></ul></li></ul>  |
| <i>Capital Investment Value</i>             | <ul style="list-style-type: none"><li>● \$14.4 million.</li></ul>  |
| <i>Employment</i>                           | <ul style="list-style-type: none"><li>● 10 construction jobs and 10 operational jobs.</li></ul>  |

### 1.4 Stated need for the Application

17. The Applicant's Environmental Assessment (EA) dated April 2013 stated:

*"The development supports the aims of SCC to provide for urban expansion of the Nowra urban area in a planned manner, considerate of relevant ecological and social impacts, that supports the essential and social infrastructure invested in this locality".*

18. The Department's AR stated:

*"The Department's assessment concludes the proposal is acceptable as it is consistent with the statutory and strategic planning framework established for the site. The proposal would also facilitate the delivery of new residential lots in a priority land release area within the Shoalhaven LGA..."*

## **2. THE DEPARTMENT'S CONSIDERATION OF THE APPLICATION**

### **2.1 Key steps in Department's consideration of the Application**

19. In August 2008, the Applicant submitted an Application for the subdivision of the Application Site under the then Part 3A of the EP&A Act.
20. In October 2008, the Department issued its Director-General's Requirements (**DGRs**) for the Application.
21. In October 2010, the Department re-issued DGRs for the Application (as the initial DGRs were more than 2 years old and had subsequently lapsed).
22. In April 2013, the Applicant submitted the DA and EA prepared by Cowman Stoddart Pty Ltd. The proposal sought approval to subdivide the subject site into 312 residential lots, one rural residential lot, one commercial lot, three public open space reserves and two environmental reserves.
23. The Application was placed on exhibition between 8 May and 11 June 2013 and made available on the Department's website, at the Department's Information Centre, and at Council and Nowra Libraries. A total of twelve submissions were received by the Department, ten from Government agencies, one from Council and one from the public. According to the Department's AR, only one objection was received, from the RMS (now TfNSW).
24. In January 2015, the Applicant submitted a Preferred Project Report (**PPR**) which responded to issues raised in the submissions and issues raised by the Department. The PPR included changes to the number of lots, public open space and increased bushland reserves, as set out in Table 1.
25. In June 2015, the Applicant provided a Section 79C (now Section 4.15) assessment under the EP&A Act. The assessment addressed amendments to the development prior to it being transitioned from Part 3A to Part 4 of the EP&A Act.
26. In August 2015, the PPR and Section 79C assessment were made publicly available and previous submitters notified. The Department received comments from Council and each agency notified of the exhibition. No public submissions were received.
27. The Applicant provided supplementary information to the Department responding to the issues raised.
28. On 18 July 2019, the Department referred the Application to the Commission for determination.

## **2.2 The Department's Assessment Report**

29. The Department's AR identified the following key issues associated with the assessment of the development:
  - subdivision design
  - bushfire
  - biodiversity
  - hydrology and stormwater management
  - traffic.
30. The Commission notes the following were also considered in the 'Other Issues' section of the Department's AR:
  - Geotechnical conditions
  - Contamination
  - Acid sulfate soils
  - Aboriginal cultural heritage
  - Development contributions
  - Noise
  - Construction management
  - Aviation.

## **3. THE COMMISSION'S MEETINGS AND SITE INSPECTION**

31. As part of its determination of the proposal, the Commission met with relevant stakeholders as set out below. The Commission also conducted a site inspection.

### **3.1 Meeting with the Department**

32. On 6 August 2019, the Commission met with the Department to discuss the Department's AR, the Application and the key issues identified by the Department as part of its assessment. A copy of the transcript was made available on the Commission's website on 7 August 2019.

### **3.2 Meeting with the Applicant**

33. On 6 August 2019, the Commission met with the Applicant to discuss the proposal, the Department's AR, and the key issues identified by the Department as part of its assessment. A copy of the transcript was made available on the Commission's website on 7 August 2019.

### **3.3 Site inspection and locality tour**

34. On 13 August 2019, the Commission conducted an inspection of the site and visited the surrounding locality. The site inspection was attended by the Commission Panel and Secretariat and representatives of the Applicant. The site inspection notes were made available on the Commission's website on 29 October 2019.

### **3.4 Meeting with Shoalhaven City Council**

35. On 13 August 2019, the Commission met with Council to discuss the Department's AR and the key issues identified by both the Department and Council as part of its assessment. A copy of the transcript was made available on the Commission's website on 28 October 2019.

#### 4. ADDITIONAL INFORMATION

36. On 10 September 2019 the Commission engaged Australian Bushfire Assessment Consultants (**ABAC**) to undertake a peer review (**Peer Review**) of the Applicant's proposed risk mitigation strategies and the Department's Assessment of Bushfire Impacts dated 1 February 2019, prepared by Australian Bushfire Protection Planners (**ABPP**).
37. On 18 November 2019 the Commission received ABAC's Bush Fire Peer Review. The Peer Review is further addressed in section 5.6.2.

#### 5. THE COMMISSION'S CONSIDERATION

##### 5.1 Material before the Commission

38. In this determination, the Commission has carefully considered the following material (the **Material**):
  - the Department's DRGs dated October 2008
  - the Department's reissued DRGs dated October 2010
  - the Environmental Assessment Report dated April 2013 and prepared by Cowman Stoddart Pty Ltd, and its accompanying appendices
  - the Preferred Project Report dated 22 January 2015 and prepared by Cowman Stoddart Pty Ltd, and its accompanying appendices
  - the Section 79C Assessment dated June 2015 and prepared by Cowman Stoddart Pty Ltd, and its accompanying appendices;
  - the Assessment of Bushfire Impacts, dated 1 February 2019 and prepared by ABPP
  - the Department's Assessment Report dated July 2019, and its accompanying appendices
  - Council's comments to the Commission, dated 14 August 2019
  - the Applicant's comments to the Commission on the draft conditions, dated 26 August 2019
  - the Bush Fire Peer Review dated 18 November 2019, prepared by ABAC
  - the Applicant's comments to the Commission, dated 5 October 2019
  - the Applicant's comments to the Commission, dated 28 October 2019;
  - the Department's response to the Commission, dated 30 October 2019
  - the Applicant's comments to the Commission on the Bush Fire Peer Review, dated 25 November 2019
  - the Applicant's comments to the Commission, dated 28 November 2019
  - the Department's response to the Commission, dated 27 November 2019
  - Council's comments to the Commission on the Bush Fire Peer Review, dated 27 November 2019
  - the NSW Rural Fire Service (**RFS**) response to the Commission, dated 11 December 2019 consisting of:
    - RFS letter to the Department, dated 10 September 2015
    - RFS email to the Department, dated 30 March 2016
    - RFS letter to the Department, dated 24 January 2018
  - ABAC's comments on the December 2019 RFS information and final review comments, received 20 and 21 December 2019.

##### 5.2 Mandatory considerations

39. In determining this application, the Commission has taken into consideration the following relevant mandatory considerations, as provided in s 4.15 of the EP&A Act (**mandatory considerations**):
  - the provisions of all:
    - environmental planning instruments (**EPIs**)

- proposed instruments that are or have been the subject of public consultation under the EP&A Act and that have been notified to the Commission (unless the Secretary has notified the Commission that the making of the proposed instrument has been deferred indefinitely or has not been approved)
- development control plans
- planning agreements that have been entered into under s 7.4 of the EP&A Act, and draft planning agreements that a developer has offered to enter into under s 7
- the *Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)* to the extent that they prescribe matters for the purposes of s 4.15 (1) of the EP&A Act

that apply to the land to which the Application relates;

- the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality
- the suitability of the site for development
- submissions made in accordance with the EP&A Act and Regulation
- the public interest.

### 5.3 Relevant Environmental Planning Instruments

40. The Department's AR provides consideration and assessment of the EPIs that apply to the Application. The following EPIs were identified as relevant to the Application:

- *State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)*
- *State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)*
- *State Environmental Planning Policy No. 44 Koala Habitat Protection (SEPP 44)*
- *State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)*
- *State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71)*
- *State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP)*
- *Shoalhaven Local Environmental Plan 2014 (SLEP 2014).*

41. With regard to the **SRD SEPP** the Department's AR stated that:

*"The proposal was previously a Transitional Part 3A project under Schedule 61 of the EP&A Act, as it satisfied the requirements of clause 1(1)(j)(i), Schedule 2 of the then State Environmental Planning Policy (Major Projects) 2005, being the subdivision of land that is not in the metropolitan coastal zone, into more than 25 residential lots.*

*As the project was not determined prior to Part 3A being wound up, it was declared a State significant development and transitioned into the Government's new State significant development assessment framework on 12 January 2015".*

42. The Department's AR stated that the recommended conditions of consent enable an accredited certifier to issue Subdivision Certificates for the proposal.

43. With regard to the **Infrastructure SEPP**, the Department's AR stated that:

*"The development constitutes traffic generating development in accordance with clause 104 of the ISEPP as it proposes the creation of more than 200 residential allotments on a new public road. The ISEPP requires traffic generating development to be referred to TfNSW (RMS) for comment.*

*The EA and PPR were referred to TfNSW (RMS) for comment in accordance with the ISEPP. TfNSW (RMS) raised no objection to the revised proposal and supports the use of section 94 contributions to secure the upgrades required to offset the traffic impacts of the proposal. The proposal is therefore consistent with the ISEPP.”*

44. With regard to **SEPP 55**, the Department’s AR stated that:

*“The Applicant has provided a RAP [remedial action plan] and the Department is satisfied that subject to the implementation of the proposed RAP, the site can be made suitable for residential use...*

*The recommended development consent permits the proposed remediation works and requires the Applicant to ensure the remediation works are validated by an EPA accredited Site Auditor prior to the release of each Subdivision Certificate.”*

45. With regard to **SEPP 44**, the Department’s AR stated that:

*“The subject site contains one species of feed tree (Grey Gum Eucalyptus punctate) which is listed under Schedule 2 of SEPP 44. However, this species does not ... comprise more than 15% of the tree species comprising the forested parts of the site. Further, no resident Koalas have been recorded on site. Accordingly, the Department is satisfied [that the] proposed development does not contain any areas of core or potential Koala habitat and the provisions of SEPP 44 do not apply to the assessment of the proposal.”*

46. With regard to **SEPP 71**, the Department’s AR stated that:

*“The proposal is considered to comply with the aims of the SEPP as subject to the recommended conditions of consent, it will respond to the ecological and social constraints of the site and its surrounds”.*

47. With regard to **Coastal Management SEPP**, the Department’s AR stated that:

*“The Coastal Management SEPP promotes an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the Coastal Management Act 2016. The Coastal Management SEPP replaces the requirements of the now repealed provisions of SEPP 71. However, as the application was lodged and undetermined prior to the gazettal of the Coastal Management SEPP, the provisions of clause 21 of the Coastal Management SEPP apply. In this regard, clause 21 states the provisions of the Coastal Management SEPP do not apply to the assessment of the proposed development, and the provisions of SEPP 71 continue to apply”.*

48. With regard to the **SLEP 2014**, the Department’s AR stated that:

*“The Department has consulted with Council throughout the assessment process and has considered all relevant provisions of the Shoalhaven LEP 2014 and those matters raised by Council in its assessment of the development... Based on these assessments, the Department concludes the development is consistent with the relevant provisions of the Shoalhaven LEP 2014”.*

49. The Commission notes the Department has provided an assessment of the Application against the relevant EPIs at Appendix D of its AR. The Commission is generally satisfied with the assessment conducted by the Department and the reasons it has identified in relation to the Application’s compliance with the identified EPIs.

#### 5.4 Relevant Development Control Plans

50. Under clause 11 of the SRD SEPP, development control plans do not apply to SSD applications. Notwithstanding, the Department considered the Shoalhaven DCP in its assessment.
51. The Application includes minor variations to the density targets, bus and cycle routes, public open space and the landscaping provisions of the Shoalhaven DCP. Following an assessment of the Application, the Department's AR stated that:

*"Minor non-compliances with the DCP can be resolved by recommended conditions of approval".*

52. The Commission has reviewed the recommended conditions in this respect and is satisfied that the minor non-compliances with the DCP are justified and where relevant addressed by specific conditions.

#### 5.5 Relevant Planning Agreements and Draft Planning Agreements

53. The Department's AR stated that:

*"The application includes a letter of offer to Council to facilitate the provision of intersection upgrades required in addition to those identified in Council's Development Contributions Plan. The Offer was accepted by Council on 18 September 2018".*

54. The Department's AR notes that the Department has recommended a condition of consent requiring the Applicant to execute a Planning Agreement prior to the issue of the first Construction Certificate (CC) consistent with the letter of offer.

#### 5.6 Likely impacts of the development on both natural and built environments

55. The Commission considers the key impacts associated with the Application include:
  - subdivision design
  - bushfire
  - biodiversity
  - hydrology and stormwater management
  - traffic.

##### 5.6.1 Subdivision design

###### *Applicant's Consideration*

56. As part of the Applicant's 2015 EA, the Applicant proposed four public reserve allotments, one commercial allotment and 320 residential allotments comprising:
  - 305 traditional residential allotments
  - 9 allotments suitable for dual occupancy development
  - 6 multi dwelling allotments (suitable for higher density residential development).
57. The Applicant advised in its final response to Council's submission, dated 21 February 2017, that the proposed subdivision layout had been modified, providing 308 residential lots, one commercial allotment and five reserves for drainage, open space and conservation purposes.
58. As part of the Applicant's response to the draft recommended conditions, dated 26 August 2019, the Applicant prepared a revised subdivision plan, which removed the commercial

allotment, However, the Commission notes that the Application has not been formally amended and therefore this assessment considers the PPR as presented. The commercial lot is further addressed in paragraphs 83 - 89.

### *Department's Assessment*

59. The Department considered the following aspects of the subdivision design:
- neighbourhood design and density targets
  - road layout and movement network
  - proposed road layout
  - proposed bus route
  - shared paths and cycle routes
  - public open space and landscaping.
60. As stated in paragraph 51, the Application includes minor variations to the density targets, bus and cycle routes, public open space and landscaping provisions of the Shoalhaven DCP.
61. Whilst considering neighbourhood design and density targets, the Department's AR stated that:
- "...to ensure Council achieves its LGA wide density targets, the DCP recommends 20% of housing stock within the Mundamia URA should comprise medium density dwellings, with the preferred mix comprising:*
- *medium density dwellings at 20 dwellings/ha, with 5% of single residential lots capable of accommodating dual occupancy developments*
  - *detached residential dwellings at 12 dwellings/ha."*
62. However, the Department notes that the proposal does not meet the above DCP requirements. The Department notes that the proposal exceeds the density target for medium density dwellings of 20 dwellings/ha (proposing 26.08 dwellings/ha) and seeks a minor variation to Council's 5% requirement for dual occupancy lots (proposing 12 lots, which is less than the 15 lots required under the DCP).
63. Additionally, the Applicant seeks a minor variation to the density target for detached dwellings (12 dwellings/ha in DCP; 10.35 dwellings/ha proposed). The Department's AR notes that the Applicant has increased the number of medium density lots to offset the proposed variation to the density target for detached dwellings, achieving an overall density of 11.5 dwellings/ha. The Department states that it supports this approach as it will offset the minor variation (13.75%) to the detached dwelling density target.
64. The Department's AR concluded that it is:
- "...satisfied the density of the proposed subdivision responds to the site's context and will provide a suitable range of housing types to improve housing choice and affordability within the Shoalhaven LGA. As such, the Department supports the minor departures from the dwelling density targets in this instance."*
65. The Department's AR assessed the proposed road layout and is *"...satisfied the proposal would create a legible street hierarchy comprised of a main spine road, collector roads and access streets, consistent with the intent of Council's DCP"*.
66. The Department's AR addressed the road layout noting Council's concerns regarding vehicle access to lots on the main road and *"...recommended a condition restricting vehicle access to the rear of the lots along Road 1, south of Road 9"*.

67. The Department also recommended a condition requiring a perimeter access road along the western boundary of the site. Subject to the recommended conditions, the Department is satisfied the proposal will provide a legible and permeable road network, with high levels of amenity to encourage pedestrian activity within the URA, as per the intent of Council's DCP.
68. The Department states, in relation to Council's concern over the proposed bus route, that *"...the proposed bus route will encourage public transport use within the URA, consistent with the intent of the Shoalhaven DCP. However, it is advised the bus route may need further refinement as the residual lands within the URA are developed."*
69. The Department has reviewed the Applicant's supplementary information and advised that *"...the proposed bus route will ensure new homes within the URA are located within walking distance of a bus stop... Further the proposed route will ensure a bus stop is located within walking distance of the neighbourhood hub, as per the intent of the DCP"*.
70. In response to concern raised by Council regarding the shared path and cycle routes, the Applicant provided a revised footpath and cycle concept. The Department's AR states that it *"...has reviewed the conceptual footpath and cycle concepts and agrees the revised designs will provide a safe path of travel for pedestrian and cyclists and will encourage active transport within the URA"*. The Department recommended a condition requiring detailed designs to be submitted to Council prior to the issue of a CC for each development stage.
71. The Department's AR noted that the Applicant's supplementary information package increased the amount of public open space from 5,442 m<sup>2</sup> to 6,438 m<sup>2</sup> and proposes to fund the long-term conservation and management of the bushland reserves via a BioBanking Agreement. Additionally, the supplementary information package includes a conceptual street tree and bioswale planting scheme to address Council's residual concerns with the proposed landscape treatments.
72. The Department's AR notes that the proposal exceeds the minimum open space requirement identified in Council's Community Infrastructure Strategic Plan (CISP) by 2,100 m<sup>2</sup>. The Department concludes that the proposed plan of subdivision ensures local open space is highly accessible, with all lots located within 300 m of a local park.
73. Furthermore, subject to conditions requiring the Applicant to provide detailed landscape plans for the proposed parks, the Department concludes that *"...the proposal will provide high quality accessible open space that will meet the needs of future residents as per the intent of the DCP"*.
74. In regard to the proposed bushland reserves, the Department's AR states:  
  
*"the Department has reviewed the land ownership arrangements for the proposed bushland reserves and agrees a BioBanking proposal will ensure suitable funding arrangements are in place to provide for their long-term management. However, as the EESG has not finalised its assessment of the BioBanking Agreement, the Department has recommended conditions of consent requiring the Applicant to manage the proposed conservation reserves in accordance with a landscape and vegetation management plan in-perpetuity, unless the reserves are transferred into public ownership. Subject to the above condition, the Department has concluded the proposal will ensure suitable measures are in place to fund the long-term conservation and management of the proposed bushland reserves"*.
75. The Department also considered estate landscaping, noting that the Applicant's supplementary information package did not include detailed landscaping plans. The Department recommended the following conditions requiring the Applicant to prepare and submit:

- *A master landscape and vegetation management plan to Council prior to the issue of the first Construction Certificate*
- *Detailed landscape and vegetation management plans prior to the issue of each Construction Certificate for subdivision works within Stages 1 to 11 of the development.*

76. The Department is satisfied the proposal will incorporate landscape treatments consistent with the intent of Council's DCP, subject to the conditions above.

### *Commission's Findings*

77. The Commission is satisfied with the Department's assessment of the neighbourhood design and density targets. The Commission notes that the proposal is inconsistent with the density targets in the DCP, however it will provide a suitable range of housing types to improve housing choice and affordability within the Shoalhaven LGA.

78. Further, the Commission supports the recommended condition requiring a perimeter access road along the western boundary of the site.

79. The Commission notes Council's concern regarding vehicle access to lots on the main road. In response, the Commission recommends that no vehicle parking is permitted on Road 1 south of Road 9, as discussed in paragraph 66.

80. The Commission is satisfied with the Department's assessment of the proposed bus route within the URA and that it will ensure a bus stop is located within an acceptable walking distance of the neighbourhood hub.

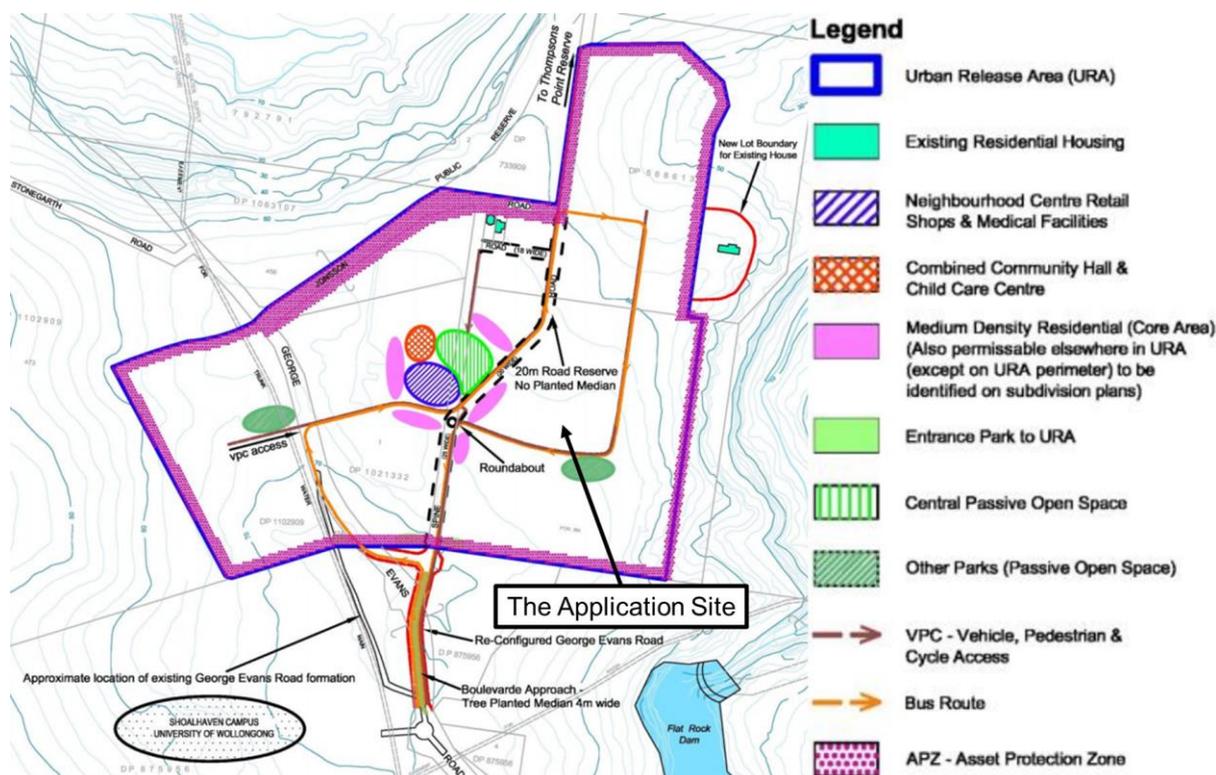
81. The Commission is also satisfied with the Department's assessment of the footpath and cycle concepts within the URA, noting that the recommended condition requires detailed designs to be submitted to Council prior to the issue of a CC for each development stage.

82. The Commission supports the increase of public open space and the long-term conservation and management of bushland reserves via a BioBanking Agreement. Additionally, the Commission accepts the Department's recommended conditions, requiring the Applicant to manage the proposed conservation reserves in accordance with a landscape and vegetation management plan in perpetuity as the Department's Environment, Energy and Science Group (**EESG**) has not finalised its assessment of the BioBanking Agreement.

83. The Department had considered the DCP particularly as it relates to a neighbourhood centre, retail shops and medical facilities. The Application Site in relation to the DCP is shown in

84. Figure 2:

Figure 2 – Development Control Map for the Mundamia Urban Release Area



Source: Shoalhaven Development Control Plan 2014

85. Following a review of the Department's draft recommended Conditions, the Applicant sought to delete the commercial lot, located on the western side of the subdivision. The Commission notes that the proposal to remove the commercial lot from the Application Site would be inconsistent with the DCP.
86. The Applicant stated that the removal of the commercial lot is justified given the requirement to provide perimeter road for bushfire protection, as noted in the Department's recommended condition A1(9)(b)(i) set out below.
87. Condition A1(9)(b)(i) is reproduced as follows
 

*"(9) The Applicant shall prepare and submit to the satisfaction of the consent authority a revised Plan of Subdivision in consultation with Council and the RFS. The revised Plan of Subdivision must adequately address the following requirements:*

*(b) provide an access road around the entire perimeter of the R1 zoned land, as per the requirements of section 4.1.3(1) 'Public Roads' of Planning for Bushfire Protection 2006, as amended from time to time. This must include:*

*(i) the extension of Road 6 to Road 1 along the western boundary of commercial Lot 1"*
88. The Commission notes that the proposed Condition A1(9)(b)(i), which requires a perimeter road along the western boundary of commercial Lot 1, does not necessarily require the removal of the commercial lot.
89. Notwithstanding, the Commission notes that the removal of the commercial lot would only

result in a minor decrease (of approximately 163 m<sup>2</sup>) of land earmarked for commercial use. It is understood that the neighbourhood centre (as planned in the DCP) is proposed predominantly in the western portion of the Mundamia URA and is not wholly within the Application Site.

90. The Commission considers that the removal of commercial Lot 1 is acceptable as the neighbourhood centre can be accommodated within the western portion of the Mundamia URA and the perimeter road contributes to bushfire protection. Consequently, the Commission recommends Deferred Commencement Condition 8(d) be amended as follows (~~strikethrough~~):

~~“Provide Delete the one commercial allotment with a minimum area with an area of 163 m<sup>2</sup> shown on the western boundary of the site. within 200 m of the edge of the neighbourhood hub identified in Chapter NB1 of the Shoalhaven Development Control Plan 2014”~~

91. The Commission is also satisfied with the Department’s conclusions in relation to the minor non-compliances with the DCP, noting that the non-compliances are justified and addressed where relevant by the Department’s recommended conditions. Additionally, the recommended conditions proposed by the Department have been amended to remove reference to commercial Lot 1.

### 5.6.2 Bushfire impacts

#### *Applicant’s Consideration*

92. The Applicant’s EA was supported by a Bushfire Protection Assessment (**BPA**), prepared by Eco Logical Australia dated 25 May 2012, which assessed the impacts of bush fire risk of the Application. The BPA was prepared in accordance with the *Building in Bush Fire Prone Areas – Guidelines for Subdivision Applications* and the *Planning for Bushfire Protection 2006 (PBP)*.
93. The Applicant’s EA proposes mitigation measures to reduce potential bushfire risks in accordance with the PBP, including asset protection zone (**APZ**) maintenance measures, construction standards, water supply measures, gas and electricity supply protection measures, and egress/ingress routes via Jonsson Road. The Applicant’s EA also proposes either a perimeter road or a perimeter fire trail to the standards described in the BPA.
94. Furthermore, the Applicant’s PPR was supported by a revised Bushfire Protection Assessment, prepared by Eco Logical Australia dated 22 May 2015 (**Revised BPA**).
95. As part of the PPR and supplementary information package, the Applicant proposes to reduce bushfire risk (including the risk of only having one access/egress point) by providing a Neighbourhood Safer Place (**NSP**). Should there be the threat of bushfire, the NSP would act as a shelter for residents who do not evacuate early from the site. The Applicant also proposes APZs and a perimeter road system to address the requirements of the PBP.

#### *Department’s Assessment*

96. The Department raised concerns with the findings of the Applicant’s BPA, noting that the BPA identifies Jonsson Road and the northern section of George Evans Road as an alternative road network. However, both roads ultimately lead into the southern part of George Evans Road which provides the sole access into the subdivision.
97. Notwithstanding the concerns regarding sole access, and as stated in the Department’s AR, the RFS advised that the proposed subdivision can be designed to provide suitable bushfire

protection.

98. As part of its assessment of this issue, the Department engaged ABPP to examine the bushfire risks associated with the access/egress to the subdivision.
99. As stated in the Department's AR, the ABPP review found that:
- *The subdivision and access roads would be subject to an extreme level of bushfire risk and the road providing access into and out of the site would be impacted by fire over-run during major fire events which would pose an extreme level of risk to the public and emergency service personnel*
  - *The Applicant's BA identifies Jonsson Road and the northern portion of George Evans Road as an alternative road network. The site inspection confirmed that these roads are not through roads, will be impacted by fire over-run and do not provide a safe alternative means of egress*
  - *The subdivision layout does not comply with the PBP 2006 acceptable solution for public roads or provide a safe alternative means of egress for residents and emergency service personnel*
  - *Resolution of the safe access/egress for the subdivision of the land into multi-lot residential development should have been addressed as part of the rezoning of the land and not left, to the Development Application Stage.*
100. However, by providing a NSP as a performance-based solution the Department states in its AR that:
- "Overall, the Department is satisfied that the proposed NSP will provide an acceptable performance-based solution, in this instance. The NSP will be constructed in accordance with the RFS's requirements and provide future residents with two evacuation options (i.e. West Nowra and the NSP). Importantly, the Department notes the RFS support the establishment of an NSP as an additional bushfire protection measure and Council has confirmed it will accept ownership and responsibility for its ongoing operation via a VPA. The Department is therefore satisfied the proposed NSP would appropriately mitigate the risk of not providing an alternative access/egress, in this instance."*
- "The Department has considered the advice received from the RFS and the independent bushfire expert. The Department agrees that a 100 m wide temporary APZ should be provided along the western boundary of the site as a part of Stage 1 of the proposal. This would ensure the subdivision, including most of the medium density lots located along the western boundary, are protected from the main westerly fire path, until the adjoining, Council owned land to the west is developed."*
- "The Department also agrees that the APZs should be provided in accordance with Table A 2.4 of PBP 2006, rather than using performance-based approach. This would increase the width of the APZs and improve the level of protection afforded to future dwellings. It would also resolve the issues raised by RFS about the errors in the Applicant's slope analysis."*
101. The Department's AR recommended a suite of deferred commencement conditions to further improve bushfire safety.
102. The Department recommended conditions requiring:
- *"dwellings to achieve a BAL of 29 or lower*
  - *the applicant to prepare an APZ and bushfire fuel management plan*
  - *the applicant to provide evidence that Council will be responsible for the ongoing ownership and management of the APZs and implementation of the management plans in perpetuity."*

103. The Department's AR concluded that *"Subject to the recommended conditions, the Department is satisfied that sufficient APZs will be provided in accordance with the requirements of PBP 2006"*.

#### *Commission's Bush Fire Peer Review*

104. As outlined in paragraphs 36 and 37, the Commission engaged ABAC to undertake a Peer Review of the proposed risk mitigation strategies in relation to bushfire management as proposed by the Applicant and the Department.

105. The scope of the Peer Review was as follows:

- *Review of relevant project documentation and Planning for Bushfire Protection 2006;*
- *Provide advice on whether the Department's Assessment Report conclusions regarding bushfire risk mitigation are reasonable in light of both the Applicant's and the Department's bushfire consultants reports;*
- *Provide advice on whether the Applicant's alternative bushfire solution has been prepared in accordance with Planning for Bushfire Protection 2006;*
- *Provide advice on whether the Neighbourhood Safer Place (NSP) recommended by the Department is a robust risk mitigation measure that accords with an alternative solutions approach (i.e. reduces risk to levels envisaged by secondary access) in Planning for Bushfire Protection 2006; and*
- *Having regard to points 1-3, provide advice on the Applicant's concerns regarding conditions A1(9)(a)(i), A1(9)(a)(ii), A1(9)(b)(v), A1(9)(d) and A1(9)(e) [Conditions recommended by the Department in the AR].*

106. The Peer Review notes that the Applicant proposed two alternate bushfire solutions:

1. *Asset Protection Zones – The alternate solution with respect to APZs was initially proposed via the 2015 BPA and... involved a quantitative/modelling approach to determine APZs.*
2. *Neighbourhood Safer Places – The alternate solution with respect to the NSP was proposed via the applicant's additional bushfire information to the Department (letter from the applicant's bushfire consultant, Ecological) to the Department dated 2 April 2019).*

107. The Peer Review states that *"...as was the case with the EA, while the PPR comments that access/egress complies with PBP (alternative routes), there is clearly no alternative access/egress from the subdivision to Yalwal Road, only the single route via George Evans Road"*.

108. The Peer Review also states that as a concept *"...the provision of a NSP is supported, mainly because it would be the only option of last resort for persons seeking to evacuate (if the sole access/egress route was cut)"*.

109. The Peer Review considered the Department's draft conditions and the views of the Applicant specifically on the bushfire related conditions and provided a number recommendations (paragraphs 110 - 121).

110. The Department recommended the following draft deferred commencement Condition A1(9)(a)(i):

*"the APZs for the site shall be determined to the widths required by Table A2.4 of Planning for Bushfire Protection 2006 and shall take into account the impact of a dynamic bushfire event"*

111. The Peer Review concluded that Condition A1(9)(a)(i) should be modified as the wording of the draft condition does not reflect the Department's concerns regarding slope analysis. The revised wording is as follows:

*"A. Revise draft condition A1(9)(a)(i) in light of (A)-(C) in the above comments [provided below] and amend the condition as required; and  
B. Reference in the draft condition to a "dynamic bushfire event" may be deleted as it is not clear how this can be quantified."*

112. With respect to (A) – (C), the Peer Review recommended the following:

*"A. The RFS be requested to provide a clear statement confirming that the slope analysis in the 2015 BPA was adopted and accepted (by the RFS) notwithstanding the slope analysis contained in the 2012 BPA; **or***

*B. The slope out to a distance of at least 100 metres from the easternmost extent of land able to be maintained as an APZ (the eastern side of the perimeter road system) be determined (and certified) by a registered surveyor based on a minimum of 2 metre contours. The slope is to be assessed at not less than 100 metre intervals along the eastern boundary of the site and long sections are to be provided; **and***

*C. A suitably qualified bushfire consultant is to determine the "effective slope" based on the survey information and identify the APZ widths required to ensure that no dwelling within the proposed subdivision will be subject to construction requirements any higher than BAL-29 as per AS3959".*

113. The Commission proposes to apply the Condition wording in B and C above as it provides certainty in this regard.

114. The Department has recommended the following draft Condition A1(9)(a)(ii):

*"provide for a temporary 100 m wide APZ to the east of the southern portion of Road 1 and Road 6 in accordance with the requirements of Planning for Bushfire Protection 2006, as a part of the first stage of the development"*

115. In regard to this condition, the Peer Review recommends the draft condition be deleted. The Peer Review states that there does not appear to be any justification for the retention of this condition, as detailed below:

*"...the obligation of the developer with respect to potential bushfire risks arising from any retained vegetation on the land to the west of the site is to provide APZs between the western boundary of the site and the westernmost part of any development in accordance with the Planning for Bush Fire Protection guideline document as in force at the relevant time.*

*On this basis, there does not appear to be any justification for retention of this condition".*

116. The Department has recommended the following draft condition A1(9)(b)(v)

*"ensure no vehicle parking is permitted on:  
a. both sides of the perimeter access roads  
b. Road 1 south of Road 9"*

117. The Peer Review recommends this draft condition be modified as it is "considered that restriction of parking on the bushfire hazard side to intervals of 200 metres is an appropriate means of ensuring that emergency services access to the bushfire hazard side of the road is available". The Peer Review consequently recommended the following:

*“A. Amend condition to read:*

*Ensure no vehicle parking is permitted on Road 1 south of Road 9.*

*B. Consider inclusion of the following condition (or a similarly worded condition) in the set of operational conditions for bushfire protection in Section F of the proposed instrument of consent:*

*Parking along the bushfire hazard side of perimeter access roads is to be limited to intervals not greater than 200 metres each, with a clear no standing/no parking restriction of at least 200 metres length between each parking interval (to facilitate emergency services access to the bushfire hazard side of the road)”.*

118. The Department has recommended the following draft condition A1(9)(d)

*“amend the subdivision layout to provide alternate, safe internal access roads/laneways from all perimeter lots to the NSP.”*

119. In regard to this condition, the Peer Review recommends the draft condition be deleted for the following reasons:

*“The intent of this condition appears to be that an access way to be provided from the rear of each perimeter lot to avoid people having to egress via the perimeter road. While the intent is understood, consideration of the condition has been undertaken based on what, if any, similar restriction (or requirement for design amendment) might be imposed on perimeter lots if this was a subdivision where alternative evacuation routes were available to West Nowra. This has concluded that there would be unlikely to be any such restriction/amendments required in the case of a subdivision where alternative evacuation routes were available.”*

120. Finally, the Department also recommended the following draft condition A1(9)(e):

*“relocate medium density lots a minimum of 100 m from the adjoining bushfire hazard.”*

121. The Peer Review recommends that this draft condition be deleted as it relates to Condition A1(9)(a)(ii), as detailed in the justification below:

*“Any development on medium density lots is to be subject to a BAL not greater than BAL-29, subject to the availability, and provision, of minimum required APZs to achieve that standard.”*

#### *Comments on the Bush Fire Peer Review*

122. The Commission received comments from the Applicant on the Bush Fire Peer Review on 25 November 2019, and provided additional information regarding the Commission’s bushfire assessment as summarised below:

- the Applicant supports ABAC’s recommendations to delete conditions A1(9)(a)(ii), A1(9)(d) and A1(9)(e)
- the Applicant objects to draft revised condition A1(9)(b)(v), as the Applicant notes that Road 1 south of Road 9 is 11 metres wide and the row of dwellings fronting the road only have rear lane access so the provision of parking along the road is critical to the suitable functioning of those dwellings. Additionally, a 2.5 metre wide parking lane on the eastern side of the road still permits 8.5 metres for ingress/egress which is sufficiently wide for emergency egress

- the Applicant has provided correspondence from its bushfire consultant to further detail the slope analysis undertaken and to provide additional justification of the slope analysis.
123. The Commission received comments from the Department on the Bush Fire Peer Review on 27 November 2019, noting that the Department's assessment takes a precautionary approach to managing bushfire risk, through:
- *requirements for a neighbourhood safer place (NSP) to mitigate potential bushfire risk issues associated with having one access/egress (which is supported by the RFS as attached)*
  - *requirements for a 100m temporary asset protection zone noting the fire risk potential from the west*
  - *all other APZs to be provided in accordance with Table A2.4 of Planning for Bushfire Protection 2006, rather than the Applicant's Bushfire... Assessment...*
124. The Commission received comments from Council on the Bush Fire Peer Review on 27 November 2019, stating that:
- *Council has agreed 'in principle' with the provision of the NSP*
  - *Council is pleased that there has been a peer review, particularly in light of the fact that bushfire risk is a significant issue with regard to potential impacts on life and property as evident by current events*
  - *we agree that BAL 29 is desirable and the subdivision design should facilitate this*
  - *we note, that there is an assumption concerning the maximum number of dwellings / population. Observing what the zone \*the bulk of which is R1 under the Shoalhaven Local Environmental Plan 2014) will permit and the potential population, the capacity of the NSP will need to be carefully estimated.*

#### RFS Consideration

125. On 3 December 2019, the Commission wrote to the RFS seeking confirmation as to whether the RFS is in agreement with the slope analysis and APZs set out in the Applicant's 2015 BPA, and that the performance requirement for APZs is met by that analysis and the APZs proposed.
126. The RFS provided the Commission with further background information which consisted of:
- RFS letter to the Department, dated 10 September 2015
  - RFS email to the Department, dated 30 March 2016
  - RFS letter to the Department, dated 24 January 2018.
127. The RFS in the letter to the Department dated 24 January 2018 stated that the proposal can be supported subject to the incorporation of conditions (provided in the letter). These conditions were included in the Department's draft conditions with the exception of the following condition:
- "APZs are to be increased for proposed lots 1101-1104 and 1113-1116 (located generally adjoining the northern property boundary) recalculated for slope of 0 -5 degrees downslope (not upslope as currently provided) to demonstrate that these lots as subject to a radiant heat level of not greater than 29Kw/m<sup>2</sup>: as required in Planning for Bushfire Protection 2006, as amended from time to time."*
128. The Commission accepts the Department's position, based on the Department's Review that the performance-based condition proposed by the RFS referred to in paragraph 111 above should not be applied as *"The Department also agrees that the APZs should be provided in accordance with Table A2.4 of PBP 2006 rather than using performance-based approach"*. This is reflected in Conditions A(9)(a)(i), (as modified to delete reference to a 'dynamic' bushfire event, as referred to in paragraph 110 above). The Condition proposed by the

Commission referred to in paragraph 111 above addresses this issue based on the advice from the Commission's Peer Review.

### *Summary of Commission's Findings*

129. The Commission accepts the conclusions of the Department outlined in paragraphs 100-103 above, including the proposed deferred commencement conditions as amended by the recommendations of the Peer Review.
130. The Commission notes that Council has agreed in principle with the provision of the NSP as stated in paragraph 124.
131. The Commission finds that the provision of the NSP, increased APZ's and the proposed conditions are adequate in mitigating potential bushfire risks and impacts for the Application Site. The Commission has imposed conditions of consent consistent with the recommendations made in the Peer Review.

### **5.6.3 Hydrology and stormwater management**

#### *Applicant's consideration*

132. As part of the Applicant's 2013 EA, the Applicant submitted a Water Cycle Management Report prepared by Storm Consulting and dated November 2012.
133. As stated in the Department's AR, the Water Cycle Management Report sought approval to implement the following stormwater management measures:
  - *Construction of 5,000 m<sup>2</sup> of drainage swales, including a bioretention trench along the northern boundary of the development footprint to maintain wet habitats downstream of the development.*
  - *On-site stormwater treatment to ensure off-site discharge meets best practice pollutant reduction guidelines.*
  - *Erosion and sediment controls during the construction phase of the proposal.*
  - *On-lot stormwater management comprising rainwater tanks and on-lot infiltration pits.*
134. The Department's AR notes that DPI and Council raised concerns regarding the Hydrogeological Assessment and the Water Cycle Management Report.
135. The Department engaged Evans and Peck to undertake an independent review of the Hydrogeological Assessment and the Water Cycle Management Report. The review identified that the model used in the Hydrogeological Assessment did not provide a reliable basis to determine the recharge requirements for the groundwater dependent ecosystems within and downstream of the development.
136. The Applicant submitted a revised Stormwater Management Assessment (**SMA**) with the PPR, in response to the Evans and Peck review. The following changes to the recharge and stormwater management systems were made:
  - removal of on-lot bioretention devices;
  - provision of on-site detention basins with level spreaders and energy dissipators to replicate existing flow conditions; and
  - revised engineering measures to reduce impedances to shallow ground water flows.
137. As part of the Applicant's response to draft conditions, dated 26 August 2019, additional information was prepared for the Applicant by Dr Meredith Henderson from Ecological Australia (Appendices F and G of Applicant's response to draft conditions), undertaking an assessment of the following:

- the nature of any groundwater dependency on the species of interest to DPIE in its draft conditions; and
- the condition of the Nowra Heath Myrtle over the same period that the groundwater monitoring was being undertaken by Martens and Associates.

138. The additional advice prepared by Dr Meredith Henderson from Ecological Australia concluded the following:

In regard to the nature of any groundwater dependency on the species of interest to DPIE in its draft conditions:

*“There is little evidence to support that Nowra Heath Myrtle, the two vegetation types or the moss gardens are groundwater dependent ecosystems. There is some suggestion in the final determination for Pterostylis vernalis that this species is associated at least with some water flow between the shallow soil and the rock surface.*

*Pterostylis vernalis was not found on site, despite about a decade of surveys for this species. Both OEH and Council, as well as ecological consultants have not found this species within the lands managed by Jemalong Mundamia Pty Ltd.*

*The link between groundwater and most of the ecological values present within the site has not been established. Monitoring of groundwater could be done through the establishment of short- and long-term bores. However, the consequences of change in the above ground vegetation may not be attributable to any changes in groundwater regimes, should that occur.”*

In regard to the current condition of the Nowra Heath Myrtle:

*“Overall the ‘health’ of the biodiversity values appeared to be average to good in the initial survey in October 2018. Some of the moss gardens were quite dry, but this does not seem to have affected their ability to recover with more substantial rainfall. There did not appear to be any negative consequences of below average rainfall on the health of the Nowra Heath Myrtle. The plants sampled were in relatively good health in the October 2018 and June 2019 surveys. There does however appear to have been some damage to the Nowra Heath Myrtle plants, but this is not likely to be related to rainfall or groundwater.”*

#### *Department’s Assessment*

139. The revised SMA was referred to both and Council for comment. Both DPI and Council raised concerns regarding the revised SMA.
140. Consequently, the Department engaged Advisian (formerly Evans and Peck) to undertake a review of the revised SMA.
141. The Department states in its Assessment Report that:  
*“The Department has considered the findings and recommendations of the independent reviews and the comments provided by DPI and Council. The Department is satisfied that an appropriate recharge and stormwater management system can be provided to maintain pre-development flows and water quality to the GDEs [groundwater dependent ecosystems] located downstream of the development. However, this system must be designed based on the outcomes of revised hydrogeological modelling and additional investigations to confirm the growing conditions of the Nowra Heath-myrtle and Spring Tiny Greenhood Orchid.”*

142. The Department's AR states:

*"...to ensure the final recharge and stormwater management system is designed to provide flow and water quality conditions to sustain the Nowra Heath-myrtle and conserve potential habitat for the Spring Tiny Green Hood Orchid, the Department has recommended conditions of consent requiring the Applicant to:*

- Submit final designs of the recharge and stormwater management system to the Secretary for approval prior to the issue of any Construction Certificate. The final designs must be based on revised hydrogeological modelling that considers the growing conditions of the GDEs downstream of the development footprint, and responds to the natural topography and drainage patterns of the site*
- Prepare, submit and implement a monitoring program, GDE management plan and contingency strategy over the life of the development to ensure the long-term protection of the Nowra Heath-myrtle and potential Spring Tiny Greenhood Orchid habitat affected by the proposal"*

*The Department also notes the final design of the SMA may affect the proposed subdivision layout as the size and location of the recharge devices cannot be confirmed until revised hydrogeological modelling is provided. To enable minor changes to the subdivision layout that may need to occur to implement the final SMA, the Department has recommended conditions of consent requiring the Applicant to submit a final plan of subdivision to the Secretary's approval prior to the issue of any Construction Certificate. Subject to the recommended conditions, the Department is satisfied the proposed recharge and stormwater management system can be designed to mimic the hydrological conditions required to retain the Nowra Heath-Myrtle and Spring Tiny Greenhood Orchid species downstream of the site".*

### **Commission's Findings**

143. The Commission is satisfied with the Department's findings, as set out in paragraph 141, that the proposal can provide an appropriate recharge and stormwater management system to maintain pre-development flows and water quality to the GDEs located downstream of the development, subject to the recommended conditions.
144. The Commission is also satisfied that the recharge and stormwater management system can be designed to mimic the hydrological conditions required to retain the Nowra Heath-Myrtle and Spring Tiny Greenhood Orchid species downstream of the site, subject to the recommended conditions.
145. It is noted that the Applicant requests that the proposed conditions relating to the preparation of a Hydrogeological Report and a Recharge and Stormwater Management System (as addressed in the Applicant's response to draft conditions) dated 26 August 2019 be deleted.
146. The Commission accepts the conclusions of the Department outlined in paragraphs 141 and 142 above.
147. The Commission has also reviewed the Applicant's request to modify and/or delete a range of other conditions recommended by the Department following its assessment. On balance, the Commission is satisfied that these conditions remain relevant and that insufficient justification has been provided to warrant any change.

#### 5.6.4 Traffic

##### *Applicant's Consideration*

148. As part of the Applicant's 2013 EA, the Applicant submitted a Transport Report prepared by Colston Budd Hunt and Kafes Pty Ltd (**CBHK**) and dated May 2012.
149. The Applicant's Transport Report stated that the proposed development would generate approximately 310 to 330 vehicles per hour two-way during the morning and afternoon peak periods. During the morning peak, approximately 70% of residential traffic would be outbound. The reverse would apply in the afternoon, with 70% predicted to be inbound in the afternoon peak.
150. The Applicant concludes in its EA, that the results of the Transport Assessment reveal that the existing road network and intersections currently operate with a good level of service, and that the predicted traffic to be generated by the proposal will not have significant traffic and transport impacts.

##### *Department's Assessment*

151. Concerns were raised by Council and TfNSW that the Applicant's Transport Report does not assess the cumulative impacts of development and the impact of holiday traffic. As a result, the Department engaged an independent traffic expert to review traffic impacts. The review considered both the Mundamia Residential Subdivision and SSD 7128 (since withdrawn) to assess required upgrades from the increased traffic and the cost arrangements.
152. The review concluded the URA development would impact the operation of the following intersections:
  - The proposed Road 1 and the realigned George Evans Road
  - George Evans Road and Yalwal Road
  - Yalwal Road and Albatross Road
  - Berry Street and Albatross Road.

In particular, if not upgraded in the pm period, the level of service on the Yalwal Road approach would result in Level of Service F, delays and queuing.

153. The review recommended the Applicant prepare a Voluntary Planning Agreement (**VPA**) to contribute towards local road upgrades. Following this, the Council updated its Contributions Plan requiring developments in the Mundamia URA to contribute toward internal and external road upgrades. This was accepted by the Applicant.
154. The Department has recommended draft condition F2, requiring the payment of Section 7.11 development contributions prior to the issue of each Subdivision Certificate. The draft condition outlines the description and total payment requirement for each contribution item.
155. The traffic related items subject to the Section 7.11 development contributions include:
  - Access roads
  - Shared cycle/pathway – George Evans Road
  - George Evans and Yalwal Road intersection upgrade
  - Roundabouts – Yalwal Road/Rannoch Drive and Yalwal Road/Lightwood Drive
  - Traffic signals associated works at intersection of Albatross/Yalwal Roads.
156. The Department noted that Council had advised that an extra roundabout was required. The Department engaged TDG as an independent traffic expert to confirm the need for the additional round about to manage traffic impacts. Using information from the final review the

Department concluded *“the impacts of the proposal on the external road network can be managed via the implementation of the road upgrades identified in Council’s Contributions Plan.”* and advised *“two additional roundabouts are required beyond those in Council’s Contributions Plan to manage vehicle speeds, reduce the potential for conflicting vehicle movements and optimise road safety.”*

157. The Department further recommended a condition requiring the Applicant to execute a VPA prior to issue of the first CC as a means of delivering the additional two roundabouts.

#### *Commission’s Findings*

158. The Commission accepts the conclusions of the Department’s assessment outlined in paragraphs 152-157 above, noting that the Department has considered the comments provided by Council, TfNSW and the independent traffic expert.
159. The Commission accepts the findings of the Department and agrees that the offsite traffic impacts would be appropriately managed by the upgrades required under Council’s Contributions Plan and the provision of two additional roundabouts within the site to optimise traffic safety. The Application includes a letter of offer to enter into a VPA with Council to facilitate the provision of intersection upgrades required in addition to those identified in Council’s Development Contributions Plan.

#### **5.6.5 Biodiversity**

##### *Applicant’s Consideration*

160. The Applicant’s EA included an assessment of the flora and fauna impacts of the proposal. Additional flora and fauna assessments were also provided in the Applicant’s PPR and supplementary information package to address the residual concerns raised by the Department’s Environment, Energy and Science Group (**EESG**) and Council.

##### *Department’s Assessment*

161. The Department considers *“...clearing can be undertaken in the R1 Zone as the NBSPP contemplates additional clearing to facilitate the residential development, subject to the provision of a suitable offset package...”*.
162. The Department’s AR notes that EESG has reviewed the Applicant’s Biodiversity Offset Strategy (**BOS**) and confirmed that, subject to a condition requiring the Applicant to increase the species credits from 4,980 to 4,995 credits, it correctly identifies the potential biodiversity impacts of the proposal.
163. The Department’s AR also notes the EESG supports the implementation of offset ‘Option 4’, subject to conditions of consent specifying the ecosystem and species credits to be retired prior to the commencement of works within Stages 1, 4 and 7 of the proposal.
164. Offset ‘Option 4’ is defined in the Applicant’s BOS as follows:

*“A fourth offsetting option is a combination of supplementary measures, variation rules and credit purchases, as follows:*

- Purchase and retirement of the some of the biodiversity credits required (or equivalent as permitted as per the Variation Rules) should they become available over the required period; with*
- Supplementary measures, being a monetary contribution equivalent to the remainder of the credits not purchased. The amount calculated is deposited into a NSW*

*Government fund, or invested in another approved conservation fund.”*

165. The Department’s AR concludes that the number of potential on-site credits has not been confirmed and that the Applicant may need to source additional credits off-site or pay a monetary contribution to the Biodiversity Conservation Fund.
166. The Department recommended conditions of consent requiring the Applicant to stage the retirement of the biodiversity credits. The Department has also recommended conditions requiring the Applicant to prepare a Contingency Strategy outlining the measures that will be implemented if there is a significant reduction in the number of Nowra Heath-myrtle ramlets, or potential Spring Tiny Greenhood Orchid habitat within the BioBank area.
167. The Department’s AR concluded “*it is therefore satisfied the BOS identifies suitable offsets, consistent with the requirements of the NSW Biodiversity Offsets Policy for Major Projects and the FBA, to mitigate the impacts of clearing 10.46 ha of vegetation on-site*”.
168. The Department’s AR further stated that the Department is satisfied biodiversity impacts would be appropriately offset in accordance with the requirements of the *NSW Biodiversity Offsets Policy for Major Projects* and the proposed stormwater management system can be designed to replicate the hydrological conditions required to retain the Nowra Heath-myrtle and Spring Tiny Greenhood Orchid species downstream of the site.

#### *Commission’s Findings*

169. The Commission is satisfied that the BOS identifies suitable offsets to mitigate the impacts of clearing 10.46 ha of vegetation on site.
170. The Commission accepts the conclusions of the Department outlined in paragraphs 167 - 168 above as the assessment fully considers the extent and nature of potential impacts to biodiversity and provides suitable recommendations to mitigate, manage and compensate for these offsets.

### **5.7 Suitability of the site for the development**

171. The Commission is satisfied that the development is suitable for the Application Site as:
  - it will provide for residential development within an identified urban release area, as outlined in section 1;
  - the likely environmental impacts, outlined in section 5.6, associated with the Application can be adequately addressed through management and/or mitigation measures;
  - the Application Site can be appropriately protected from bush fire risk by providing APZs, a perimeter road and an NSP, as outlined in section 5.6.2; and
  - the Application is generally consistent with the strategic framework applicable to the Application Site, outlined in section 1.2.

### **5.8 The public interest**

#### *Applicant’s Consideration*

172. The Applicant’s EA states:

*“The development is considered to be entirely in the public interest as it:*

- *is of a design that is consideration of the extensive environmental investigations that have been made;*
- *does not result in the removal of any significant vegetation, nor impose significant*

- environmental impacts as it utilises predominantly cleared land, along with land having lower quality ecological qualities;*
- provides additional housing stock to meet the demand identified by SCC in the NBSP and the Department of Planning in the SCRS;*
- is consistent with provisions of the Draft Shoalhaven LEP 2013 as being currently exhibited;*
- results in the provision of a greater choice in housing; and*
- proposes high quality urban design to create an area having a distinct character”.*

#### *Department’s Assessment*

173. The Department’s AR states:

*“The Department’s assessment therefore concludes the impacts of the proposed development are acceptable and can be appropriately mitigated and/or managed through the implementation of the recommended conditions of consent. Consequently, the Department considers the development is in the public interest and is approvable”.*

#### *Commission’s Findings*

174. In considering whether the Application is in the public interest the Commission has had regard to the objects of the EP&A Act. Under section 1.3, the objects of the Act relevant to the proposal are as follows:

- a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,*
- b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- c) to promote the orderly and economic use and development of land,*
- e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- f) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State, and*
- g) to provide increased opportunity for community participation in environmental planning and assessment.*

175. A key relevant object of the EP&A Act to the Application, as set out in paragraph 174, is the facilitation of Ecologically Sustainable Development (**ESD**). The Commission notes that section 6(2) of the *Protection of the Environment Administration Act 1991* states that ESD requires the effective integration of social, economic and environmental considerations in its decision-making, and that ESD can be achieved through the implementation of:

- a) the precautionary principle;*
- b) inter-generational equity;*
- c) conservation of biological diversity and ecological integrity; and*
- d) improved valuation, pricing and incentive mechanisms.*

176. The Commission finds that the Application is generally consistent with the ESD principles (set out in paragraph 175), the objects of EP&A Act (set out in paragraph 174) and is in the public interest because it will provide for residential development within an identified urban release area, the likely environmental impacts can be adequately addressed through management and/or mitigation measures, and the Application is generally consistent with the strategic framework applicable to the Application Site.

## 5.9 Other issues

177. Section 6.6, Table 9 of the Department's AR identified the following 'other issues' relevant to the Application, including:
- Geotechnical conditions;
  - Contamination;
  - Acid sulfate soils;
  - Aboriginal cultural heritage;
  - Development contributions;
  - Noise;
  - Construction management; and
  - Aviation.
178. The Commission is satisfied with the Department's assessment of these other issues as set out in section 6.6 of its AR because it considers the identified issues can be mitigated and/or managed to an acceptable level through the recommended conditions of consent.

## 6. HOW THE COMMISSION TOOK COMMUNITY VIEWS INTO ACCOUNT IN MAKING DECISION

179. The Department's AR stated:

*"One public submission was received during the exhibition period. The submission did not object to the proposal, however, it requested site access to 42 Jonsson Road is maintained over the life of the development."*

*The Department notes the Applicant addressed the access arrangements for 42 Jonsson Road in its PPR. The Department has recommended conditions of consent to ensure temporary and permanent access is provided at 42 Jonsson Road for the life of the development".*

The Commission has considered the public submission as part of making its decision. The Commission adopts draft Condition C32(f) that requires access to be maintained to all private properties during the construction phase. The Commission notes that permanent access for no. 42 Jonsson Road to Public Road is currently available and there is no reason to suggest that this access will be affected by the development.

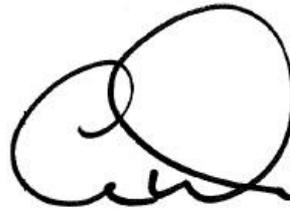
## 7. CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

180. The Commission has carefully considered the Material before it and has determined to grant deferred commencement consent to the Application, subject to conditions, for the reasons set out in paragraphs 181 to 183 below.
181. The Commission finds that:
- The minor non-compliances with the DCP are justified and where relevant addressed by recommended draft conditions;
  - justified and can be resolved via the recommended conditions (see paragraph 52);
  - The provision of a NSP, sufficient APZs and mitigation measures in accordance with the PBP (including APZ maintenance measures, construction standards, water supply measures, gas and electricity supply protection measures, and a perimeter road) will provide an acceptable solution to potential bushfire impacts (see paragraph 131);
  - The proposal can provide an appropriate recharge and stormwater management system to maintain pre-development flows and water quality to the GDEs located downstream of the development, subject to recommended conditions (see paragraph 143);
  - The offsite traffic impacts would be appropriately mitigated by the upgrades required

- under Council's Contributions Plan, and the provision of two additional roundabouts within the site would optimise traffic safety (see paragraph 159); and
- The extent and nature of potential impacts to biodiversity can be appropriately mitigated and managed, subject to the recommended conditions (see paragraph 170).
182. The Commission finds that the impacts of the Application are acceptable and can be appropriately mitigated through the implementation of the Department's recommended conditions of consent, as amended by the Commission.
183. The Commission has determined to approve the Application, subject to conditions. These conditions are designed to prevent, minimise and/or offset adverse impacts on the environment and community.
184. The reasons for the Decision are given in this Statement of Reasons for Decision dated 23 December 2019.



**Ross Carter (Chair)**  
Member of the Commission



**Chris Wilson**  
Member of the Commission