



30 July 2021

Professor Mary O'Kane AC
Independent Planning Commission
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000
By email: [REDACTED]

Dear Professor O'Kane,

Mundamia Residential Subdivision (SSD 7169)

I refer to the request from the Department of Planning, Industry and Environment (**Department**) dated 6 July 2021 in relation to the deferred commencement conditions A1(4), A1(5), A1(6), A1(8) and A1(9) for the Mundamia Residential Subdivision (SSD 7169) determined by the Independent Planning Commission (**Commission**) on 23 December 2019.

As requested, I have undertaken a review (**Attachment 1**) of the material provided by the Department including the Department's compliance table (**Attachment 2**) and independent expert bushfire reports (**Attachment 3**) commissioned by the Department. The review concludes that the Applicant has:

- demonstrated compliance with conditions A1(4), A1(5), A1(6)(i) and (ii), A1(8) and A1(9); and
- not demonstrated compliance with Condition A1(6)(iii). Condition A1(6)(iii) requires Council to take responsibility for the implementation of several bushfire management plans and protocols including the Bushfire Emergency/Evacuation Management Plan (**BEM&EP**) and the Bushfire Traffic Management Plan (**BTMP**). Council has advised however that it cannot take responsibility for these plans as it is not the responsible authority.

While the Department is of the view that Government Agencies responsible for evacuation and emergency management procedures during a bushfire would have ongoing responsibility for these matters, as standard practice, I am of the view that given Council's position, and the fact there is no clear lines of agency responsibility for the implementation of either the **BEM&EP** or **BTMP**, the intent of the condition is not met.

Submitted for your consideration.

Yours sincerely

Chris Wilson
Member of the Commission

Attachment 1

A1. Pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, the Applicant must satisfy the following deferred commencement conditions prior to this development consent becoming operative:

BUSHFIRE MANAGEMENT PLANS

(4) The Applicant must submit to the satisfaction of the consent authority, a Bushfire Fuel Management Plan. The Plan must be prepared by a suitably qualified expert and demonstrate that there has been adequate consultation with the NSW RFS and Council and detail the inspection and management measures required for appropriate fuel reduction, in accordance with the requirements of the RFS and Planning for Bushfire Protection 2006.

The Bushfire Fuel Management Plan (**BFMP**) dated 25 March 2021 has been prepared by a suitably qualified expert (Rod Rose FPAA BPAD-A Certified Practitioner No. BPAD1940-L3) in consultation with the NSW RFS and Shoalhaven City Council (**Council**). I agree with the Department that the BFMP largely aligns with the Applicant's Vegetation Management Plan (**VMP**), dated 29 March 2021, comprises standard practice, and details the inspection and management measures required for appropriate fuel reduction in accordance with the requirements of the RFS and *Planning for Bushfire Protection 2006*. Council indicated in correspondence dated 22 April 2021 that the BFMP would be accepted by Council under condition A1(6)(iii) insofar as it relates to Council land.

In undertaking the review, the Commission consulted the Department which confirmed that the management of private residential lots regarding bushfire management will be the responsibility of future residents and bushfire management further considered during the development assessment process for individual dwellings. The Department also confirmed that Asset Protection Zones (**APZ**) on lots around the perimeter with specific requirements for protection of the development will be secured by restrictions on title under condition F9.

Consequently, I am satisfied that the intent of Condition A1(4) has been satisfied.

(5) The Applicant must prepare and submit to the satisfaction of the consent authority, a Vegetation Management Plan (VMP) and demonstrate adequate consultation with RFS and Council in the preparation of the VMP, including for the ongoing maintenance of APZs, parks, reserves and residual lands. The VMP must detail the management measures required to maintain these lands as APZs, in accordance with the requirements of the RFS and Planning for Bushfire Protection 2006.

The VMP dated 29 March 2021 has been prepared by a suitably qualified expert (Rod Rose FPAA BPAD-A Certified Practitioner No. BPAD1940-L3) in consultation with the NSW RFS and Council. I agree with the Department that the VMP largely aligns with the BFMP, comprises standard practice and details the management measures required to maintain these lands as APZs in accordance with the requirements of the RFS and *Planning for Bushfire Protection 2006*. Council indicated in correspondence dated 22 April 2021 that the VMP would be accepted by Council under condition A1(6)(iii) insofar as it relates to Council land.

Similar to A1(4) above, the Department confirmed that the management of private residential lots regarding vegetation management will be the responsibility of future residents and vegetation management further considered during the development assessment process for individual dwellings. The Department also confirmed that APZs on

lots around the perimeter with specific requirements for protection of the development will be secured by restrictions on title under condition F9.

Consequently, I am satisfied that the intent of Condition A1(5) has been fully satisfied.

- (6) The Applicant must submit written confirmation from Council stating that Council will accept and be responsible for:**
- (i) the ownership and ongoing management of the APZs in parks, open space, road reserves and residual lands**
 - (ii) the ownership and ongoing maintenance, management, and operation of the NSP**

Council advised in correspondence dated 22 December 2020 that Council would accept the ownership and ongoing management of the APZs and internal parks/open areas as shown in drawing number 25489-27, dated 22 September 2020. Council also advised in correspondence dated 27 July 2021 that Council would accept ownership of the Neighbourhood Safer Place (**NSP**), subject to relevant approvals and compliance with the adopted BMP and VMP.

Consequently, I am satisfied that the intent of Condition A1(6)(i) & (ii) has been satisfied.

- (iii) the implementation, ongoing review and update of all bushfire management plans/protocols required by this consent, including but not limited to: the Bushfire Fuel Management Plan; the Emergency/Evacuation Management Plan; Bushfire Traffic Management Plan; and the Vegetation Management Plan. The Applicant must demonstrate that it has entered into a suitable agreement/mechanism with Council for the ownership, maintenance and funding of the above items.**

Council advised via email on 22 December 2020 that it is not the primary responder regarding emergency management or evacuation and as such Council does not accept responsibility for either the Bushfire Emergency Management and Evacuation Plan (**BEM&EP**) or the Bushfire Traffic Management Plan (**BTMP**). The Department is of the view that the Government Agencies responsible for the evacuation and emergency management procedures during a bushfire would have ongoing responsibility for these plans, as is standard practice. While this might be the case, given Council has advised that they will not accept responsibility for either the BTMP or the BEM&EP under A1(6)(iii) and there is no clear agency lines of responsibility for the implementation of either the **BEM&EP** or **BTMP**, the intent of the condition is not met.

Consequently, in my view, the requirements of Condition A1(6)(iii) have not been satisfied.

DESIGN AMENDMENTS - GENERAL

- (8) The Applicant must prepare and submit to the satisfaction of the consent authority a revised Plan of Subdivision in consultation with Council. The revised Plan of Subdivision must address the following requirements:**
- (a) demonstrate the final subdivision layout complies with the minimum lot size requirements of the Shoalhaven Local Environmental Plan 2014**
 - (b) identify the location of all drainage reserves and associated structures and landscape treatments required to facilitate the implementation of the recharge and stormwater management system approved under Condition C5**

- (c) **ensure a minimum of 6,438m² of public open space is provided, with all public open space reserves achieving a minimum site area of 3,000m²**
- (d) **delete the commercial allotment with an area of 163m² shown on the western boundary of the site**
- (e) **identify the landscape treatments required along the eastern boundary of the site to prevent vegetation creep**
- (f) **identify the location of all roundabouts proposed for construction under the Planning Agreement required under Condition C3**
- (g) **apply the access road upgrades identified in the conditions of this consent and the Shoalhaven City Council's Contributions Plan 2019**
- (h) **ensure the sewerage pumping station site is included in Stage 1, along with all necessary public road access or initial easements for access and services.**

I agree with the Department that the Revised Subdivision Plan Revision No. 22, dated 24 February 2014 (**Revised Subdivision Plan**), submitted by the Applicant, has been prepared in consultation with Council and addresses the requirements set out in Condition A1(8)(a) – (h).

It is noted that Condition C5 requires the final recharge and stormwater management system to be designed to respond to the recommendations of the **revised** Hydrogeological Report approved by the Planning Secretary under Condition C4. While this might result in changes to the eventual location of drainage reserves and associated structures and landscape treatments, I am satisfied that the Revised Subdivision Plan has addressed the requirements of Condition A1(8)(b) and meets the intent of the condition at this time. Should there be any changes to the location of drainage reserves, associated structures and landscape treatments resulting from the implementation of Condition C5, these will be considered at that time. The Department's Bushfire Consultant also concluded that the intent of the condition had been met.

Consequently, I am satisfied that the intent of Condition A1 (8) (a) – (h) has been satisfied.

DESIGN AMENDMENTS - BUSHFIRE

- (9) **The Applicant must prepare and submit to the satisfaction of the consent authority a revised Plan of Subdivision in consultation with Council. The revised Plan of Subdivision must address the following requirements:**
 - (a) **ensure asset protection zones (APZs) are provided around the entire perimeter of the site in accordance with the following requirements:**
 - (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 bushfire event.**

I note that the development is not capable of meeting the APZ widths required by Table A2.4 of *Planning for Bushfire Protection 2006* in the south-east corner of the site. The Applicant has utilised an alternative solution (Method 2 Modelling) which was verified by the Department's Bushfire Consultant using the Bushfire Attack Assessor version 4.1. in consideration of the above. I agree with the Department that the intent of Condition A1(9)(a)(i) which is to ensure adequate asset protection of the subdivision including the south-east corner has been provided.

- (ii) **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.

- (iii) 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*
- (iv) the APZs specified at (i) (ii) and (iii) above must not be located on E2 zoned land and must be contained within the perimeter road reserve system, unless an alternate location is endorsed by the RFS.*

The Department's Bushfire Consultant has confirmed that the slope out to a distance of 100 metres from the easternmost extent of land is able to be maintained as an APZ which has been established by a registered surveyor based on 2 metre contours. The Department's Bushfire Consultant has also determined that the Applicant's bushfire consultant calculated 'effective slope' based on the survey information referenced in Condition A1(9)(a)(ii). I agree with the Department that the APZs as proposed on the Revised Subdivision Plan do not extend into E2 zoned land and are located within the perimeter road reserve. I agree with the Department that Conditions A1(9)(a) (ii), (iii) and (iv) have been satisfied.

- (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*
 - (ii) the extension of Road 7 to Road 1 as a no through road, with the construction of bollards at this intersection to ensure this egress point is only used in the event of a bushfire emergency*
 - (iii) ensure the central median on Road 1 is set back from the intersection of Road 1 and Road 7*
 - (iv) ensure all internal roads are designed and constructed in accordance with the requirements of section 4.1.3(1) 'Public Roads' of Planning for Bushfire Protection 2006, as amended from time to time*
 - (v) ensure no vehicle parking is permitted on Road 1 south of Road 9*
 - (vi) 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)*
 - (vii) ensure all roundabouts within the subdivision have been designed so they can be mounted by emergency service vehicles.*
- (c) amend the subdivision layout to accommodate the final design of the NSP and associated parking, as required by Condition A1 (1).*

The Applicant's Revised Subdivision Plan provides for 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*. The requirements set out in Condition A1(9)(b)(i) – (vii) have also been detailed in the Revised Subdivision Plan. The final design of the NSP and associated parking is able to be accommodated within the Revised Subdivision Plan. I agree with the Department and am of the view that Conditions A1(9)(b) and (c) have been satisfied.