



Mundamia Residential Subdivision Modification 1

Modification to amend Condition A1(6) regarding Bushfire
Management Plans
State Significant Development Modification Assessment
(SSD 7169 MOD 1)

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Glossary

Abbreviation	Definition
BEM&EP	Bushfire Emergency Management and Evacuation Plan
BFMP	Bushfire Fuel Management Plan
BTMP	Bushfire Traffic Management Plan
CIV	Capital Investment Value
CPP	Community Participation Plan
Council	Shoalhaven City Council
Department	Department of Planning, Industry and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development
VMP	Vegetation Management Plan

Executive Summary

Allen Price & Scarratts Pty Ltd (the Applicant) seek approval for the modification of Deferred Commencement Condition A1(6)(iii) of SSD 7169 for the Mundamia Residential Subdivision to remove Council's responsibility for the Bushfire Emergency Management and Evacuation Plan and the Bushfire Traffic Management Plan.

Engagement

The application was not required to be publicly exhibited, however, it was made publicly available on the Department's website and was referred to Shoalhaven Council for comment. The Department received comments from Shoalhaven City Council (Council). Council raised no objections to the proposed modification and provided comments regarding the clarity of the proposed rewording of the condition and the status of the Neighbourhood Safer Place.

Assessment

The Department has assessed the modification application against the provisions of the relevant Environmental Planning Instruments and considered the issues raised in Council's submission. The Department considers the modification application, subject to the recommended conditions, is acceptable as it would:

- reflect the standard practice for ongoing implementation, review and update of bushfire management plans;
- correct an error within Deferred Commencement Condition A1(6)(iii);
- not result in unacceptable bushfire risk; and
- allow for the remaining deferred commencement condition to be discharged and the consent to become operational.

Conclusion

The Department's assessment concludes the proposed modification, subject to the recommended conditions, is appropriate as it would not result in any significant residual bushfire risk and complies with the requirements of relevant Environmental Planning Instruments. It is therefore recommended that the application be approved, subject to conditions.

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1 Introduction

1.1 Introduction

- 1.1.1 This report provides the Department of Planning, Industry and Environment's assessment of a request to modify the approval for the Mundamia Residential Subdivision (SSD 7169).
- 1.1.2 The request seeks to modify Deferred Commencement Condition A1 (6) (iii) to remove the requirement for Council to have responsibility for the implementation, ongoing review and update of the Bushfire Traffic Management Plan and the Bushfire Emergency/Evacuation Management Plan, as this is not standard practice and was included in error.
- 1.1.3 The application was lodged on 17 August 2021 by Allen Price and Scarratts Pty Ltd (the Applicant) pursuant to section 4.55(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 Background

- 1.2.1 The Mundamia Residential Subdivision is located approximately 2.5 kilometres (km) west of the Nowra town centre, 1.5 km west of the suburb of West Nowra and 300m south of the Shoalhaven River. The site comprises approximately 41.3 ha of residential and environmental conservation zoned land.
- 1.2.2 The site forms part of the Mundamia Urban Release Area (URA). The Mundamia URA comprises approximately 53 ha of land and is intended to provide up to 720 new homes for approximately 1,800 residents within the Nowra-Bomaderry region. The Mundamia Residential Subdivision will create the first residential lots within the URA.



Figure 1 | Regional Context Map (Source: Google Maps)



Figure 2 | Site and Site Context Map (Source: Google Earth)

1.2.3 Prominent features in the surrounding landscape include the Shoalhaven River, Flat Rock Creek and Thompson’s Point to the north, Flat Rock Dam to the south-east, and the Shoalhaven State Forest and the Tripilarina Nature Reserve on the southern side of Yalwal Road.

1.2.4 The site has not been developed as the consent is not yet operational.

1.3 Approval History

1.3.1 The original application (SSD 7169) was approved by the Independent Planning Commission (IPC) on 23 December 2019, under Part 4 of the EP&A Act. The approval has not been modified before.

1.3.2 The approval included:

- a 308-lot residential subdivision
- a Neighbourhood Safer Place (NSP)
- open space
- drainage reserves.

1.3.3 The IPC determination included a suite of Deferred Commencement Conditions, including conditions relating to:

- The Neighbourhood Safer Place
- Bushfire Management Plans
- Water Supply
- General Design Amendments
- Bushfire Design Amendments.

1.3.4 The IPC has since discharged all deferred commencement conditions with the exception of A1(6)(iii).

1.4 Background relevant to Modification

- 1.4.1 The site is mapped as and surrounded by bushfire prone land and access/egress to the site is achieved via a single road (George Evans Road). During assessment of the original application, bushfire risk was considered a key assessment issue, including access and egress, asset protection zones and the provision of an NSP.
- 1.4.2 In its assessment, the Department carefully considered the suitability of the proposed access arrangements and APZs to ensure the potential bushfire risks associated with the development were appropriately mitigated and managed.
- 1.4.3 In making its recommendation to the IPC, the Department included a suite of conditions recommended by the RFS and the Department's independent bushfire and traffic experts to further improve bushfire safety prior to the consent becoming operational including the preparation of a Bushfire Emergency and Evacuation Plan and a Bushfire Traffic Management Plan. The preparation of these plans was captured in Deferred Commencement Conditions A1(2) and A1(3) and the implementation and review of the plans by Council required under Deferred Commencement Condition A1(6).
- 1.4.4 The IPC engaged Australian Bushfire Assessment Consultants (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. The Commission accepted the proposed deferred commencement conditions as amended by the recommendations of the Peer Review. The Commission found that the provision of the NSP, increased APZ's and the proposed conditions are adequate in mitigating potential bushfire risks and impacts for the site.

2 Proposed Modification

2.1 Description

2.1.1 The request seeks to modify Deferred Commencement Condition A1(6)(iii) to remove the requirement for Council to have responsibility for the implementation, ongoing review and update of the Bushfire Traffic Management Plan (BTMP) and the Bushfire Emergency/Evacuation Management Plan (BEM&EP), as this is not standard practice and was included in error.

2.1.2 Condition A1(6)(iii) requires written confirmation from Council stating that it will accept and be responsible for the implementation, ongoing review and update of all bushfire management plans required by the consent including the Bushfire Fuel Management Plan, the Emergency/Evacuation Management Plan, the Bushfire Traffic Management Plan and the Vegetation Management Plan.

2.1.3 Condition A1(6) currently reads as follows:

(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;

(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.

2.1.4 The proposed modified wording of Condition A1(6)(iii) is as follows:

(iii) the implementation, ongoing review and update of the Bushfire Fuel Management Plan and the Vegetation Management Plan.

2.1.5 The Applicant has contended that the inclusion of the BEM&EP or the BTMP relating to emergency management was in error and that Council will not accept responsibility for the Emergency/Evacuation Plan or the Bushfire Traffic Management Plan as they are not a primary responder in regard to emergency management. The Applicant has provided written evidence that confirms Council's position.

3 Statutory context

3.1 Scope of modifications

3.1.1 The Department has reviewed the scope of the modification application and considers that the application can be characterised as a modification involving minor error, misdescription or miscalculation, as the proposal:

- corrects an error in the wording of a deferred commencement condition and reflects the standard practice for implementation, review, and update of bushfire management plans; and
- is substantially the same development as originally approved.

3.1.2 Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1) of the EP&A Act as it seeks to correct a minor error or misdescription in the consent and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1) of the EP&A Act.

3.2 Consent authority

3.2.1 In accordance with the Clause 8A of the *State Environmental Planning Policy (State and Regional Development) 2011* and Section 4.5 of the *Environmental Planning and Assessment Act 1979*, The Independent Planning Commission (the Commission) is the consent authority for the purposes of section 4.55(1) of the EP&A Act, as the Applicant has disclosed a reportable political donation.

3.3 Mandatory matters for consideration

3.3.1 The Department comprehensively assessed the project against the mandatory matters for consideration under section 4.15 of the EP&A Act as part of the original assessment (of SSD 7169). The Department considers this modification request does not alter its assessment of the proposal against these mandatory matters for consideration and the conclusions made as part of the original assessment.

3.3.2 The original project was assessed against the provisions of the following Environmental Planning Instruments (EPIs):

- *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)
- *Shoalhaven Local Environmental Plan 2014* (Shoalhaven LEP 2014).

3.3.3 The Department is satisfied that the proposed modification does not result in any significant changes that would alter the conclusions made as part of the original assessment.

- 3.3.4 As SEPP 71 and SEPP 44 have been replaced, the Department has also considered the proposal against relevant provisions of more recent EPIs, including *State Environmental Planning Policy (Coastal Management) 2018* (Coastal SEPP) and *State Environmental Planning Policy (Koala Habitat Protection) 2021* (at **Section 5.2**) and is satisfied that the proposal is consistent with any relevant provisions.

3.4 Part 3A transition to state significant development

- 3.4.1 The original approval was previously a Transitional Part 3A project under Schedule 6A 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.
- 3.4.2 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.

4 Engagement

4.1 Department's Engagement

4.1.1 Clause 117(3B) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) specifies that the notification requirements of the EP&A Regulation do not apply to section 4.55(1) modifications. Accordingly, the application is not required to be publicly exhibited, however, it was made publicly available on the Department's website and referred to Shoalhaven City Council for comment. Council provided a response as discussed in **Section 4.2** below.

4.2 Summary of Submissions

4.2.1 The Department received comments from Shoalhaven Council on 25 August 2021.

4.2.2 Council raised no objection to the proposed modification, and provided the following comments:

- condition A1(6)(iii) should be reworded to make it clear that Council's responsibility for the remaining two plans, the Vegetation Management Plan (VMP) and the Bushfire Fuel Management Plan (BFMP), will only extend to the components/aspects of the plans that relate to land that is in the ownership and on-going management of Council
- there is currently no approval for a Neighbourhood Safer Place (NSP), the approval granted is for a community centre and therefore a further development application will be required to change the use of the community centre to an NSP.

4.2.3 Council's comments regarding the VMP and BFMP have been considered in **Section 5** of this assessment report, however Council's comments relating to the NSP are not relevant to the assessment of this modification.

5 Assessment

5.1 Key Assessment Issues

5.1.1 In assessing the merits of the proposed modification, the Department has considered:

- the Modification Report and associated documents (**Appendix A**)
- the Environmental Assessment and conditions of the original approval
- relevant EPIs, policies and guidelines
- issues raised in submissions
- the requirements of the EP&A Act.

5.1.2 The Department considers the key assessment issue associated with the proposal is the removal of the requirement for Council to implement, review and update the Bushfire Fuel Management Plan and the Emergency/Evacuation Management Plan from Condition A1(6)(iii). This is considered below (**Section 5.2**). An assessment of other issues is set out at **Table 1**.

5.2 Removal of Responsibility for Certain Bushfire Management Plans

5.2.1 Condition A1(6)(iii) requires written confirmation from Council stating that it will accept and be responsible for the implementation, ongoing review and update of all bushfire management plans/protocols required by the consent including the Bushfire Fuel Management Plan (BFMP), the Emergency/Evacuation Management Plan (BEM&EP), the Bushfire Traffic Management Plan (BTMP) and the Vegetation Management Plan (VMP).

5.2.2 Shoalhaven City Council has advised that it will not accept responsibility for BEM&EP or the BTMP and has only accepted the BFMP and the VMP to the extent to which the plans relate to Council land. Correspondence dated 22 December 2020 outlines Council's reasoning for this position, noting that they are not the primary responder regarding emergency management or evacuation.

5.2.3 The Department supports Council's position and considers the proposed modification would align Condition A1(6)(iii) with standard practice for the management and responsibility of bushfire management plans, and that the inclusion of the BTMP and BEM&EP originally was in error.

5.2.4 The Department notes that once subdivision occurs and the land is owned by individual landowners, it is not feasible to enforce the ongoing review and update of management plans as they do not relate to individual lots and there is no governing body responsible for the ongoing management of land which has been subdivided. The current wording of Condition A1(6)(iii) does not reflect the infeasibility to enforce responsibility, and the inclusion of the BEM&EP and BTMP was an error.

5.2.5 The proposed amended condition was reviewed by an independent bushfire consultant, engaged to assist with the discharge of deferred commencement conditions. The consultant advised that although there is some inevitable residual bushfire risk associated with there being no ongoing requirement to review and update the bushfire management plans/protocols that *"it is standard practice that conditions of development consent in relation to bushfire for subdivisions do not generally require the ongoing review and update of these plans, except where there is a clear responsibility for them, as Council has clear responsibility for plans which relate to land under their control in this case"*.

- 5.2.6 The Department also notes that the BEM&EP and the BTMP have been prepared in consultation with the NSW RFS, Council, the Bushfire Management Committee and Local Emergency Management Committee. Both plans have been reviewed and are considered satisfactory.
- 5.2.7 The actions outlined in the plans will inevitably be the responsibility of the State government agencies responsible for emergency procedures during a bushfire event and will be undertaken in accordance with standard practice. Noting this, the Department considers the ongoing implementation, review and update of the BEM&EP and BTMP by Council on all land is unnecessary and the removal of this requirement would not result in unacceptable bushfire risk.
- 5.2.8 In response to Council's concerns about the proposed wording of Condition A1(6)(iii), the Department, in accordance with the independent bushfire consultant's advice, has recommended a modified condition to clarify that Council's responsibilities in regard to the VMP and the BFMP relate only to land that it owns and/or manages.
- 5.2.9 The modification of Condition **A1(6)(iii)** as proposed by the Applicant is as follows:
- (iii) the implementation, ongoing review and update of the Bushfire Fuel Management Plan and the Vegetation Management Plan.*
- 5.2.10 The recommended modified wording of Condition **A1(6)(iii)** is as follows:
- (iii) the implementation, ongoing review and update of the Bushfire Fuel Management Plan and Vegetation Management Plan required by this consent to the extent that those plans apply to land that will be under the care and control of Shoalhaven City Council.*
- 5.2.11 The Department is satisfied that the amended wording would ensure the management of bushfire protection measures within land under the care and control of Council, and that the actions outlined in the BTMP and BEM&EP will be the responsibility of the State government agencies responsible for emergency procedures during a bushfire event. Subject to the amended condition, the Department is satisfied that the proposal reflects the standard practice for implementation, review, and update of bushfire management plans and corrects the erroneous inclusion of the BTMP and BEM&EP within Condition A1(6)(iii).

5.3 Other Issues

5.3.1 Table 1 | Summary of Other Issues

Issue	Findings	Recommendations
Related conditions	<p>Condition B17(d) requires the review of all strategies, plans and programs required under the consent within three months of the approval of any modification of the conditions of consent.</p> <p>The Department notes that this process will be managed in consultation with the</p>	No additional conditions or changes to existing conditions are necessary.

	<p>Applicant as a post approval matter, to ensure the relevant strategies and plans are reviewed within the required timeframe.</p>	
<p>Neighbourhood Safer Place</p>	<p>Council raised concerns that there is currently no approval for a Neighbourhood Safer Place (NSP), and that the approval granted is for a community centre and therefore a further development application will be required to change the use of the community centre to an NSP.</p> <p>The Department considers Council's comments relating to the NSP are not relevant to the assessment of this modification, and that the NSP will be managed through a separate process.</p>	<p>No additional conditions or changes to existing conditions are necessary.</p>

6 Evaluation

6.1.1 The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department considers the proposal to be acceptable, subject to the recommended conditions, on the basis that it would:

- reflect the standard practice for ongoing implementation, review and update of bushfire management plans;
- correct an error within Deferred Commencement Condition A1(6)(iii);
- not result in unacceptable bushfire risk; and
- allow for the remaining deferred commencement condition to be discharged and the consent to become operational.

6.1.2 The Department is satisfied that the modification can be approved, subject to the recommended conditions (**Appendix B**).

7 Recommendation

7.1.1 It is recommended that the Independent Planning Commission:

- considers the findings and recommendations of this report
- determines that the application SSD 7169 MOD 1 falls within the scope of section 4.55(1) of the EP&A Act
- accepts and adopts all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- modifies the approval SSD 7169
- signs the attached Modification of Project Approval (**Appendix B**).

Recommended by:



Louise Starkey
Acting Director
Regional Assessments

Recommended by:



Anthea Sargeant
Executive Director
Key Sites and Regional Assessments

Appendices

Appendix A – Modification report

<https://www.planningportal.nsw.gov.au/major-projects/project/42611>

Appendix B – Recommended modification of approval

<https://www.planningportal.nsw.gov.au/major-projects/project/42611>