



New South Wales Government
Independent Planning Commission

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Mundamia Residential Subdivision Modification 2

SSD 7169 Mod 2

Statement of Reasons for Decision

Dr Peter Williams (Chair)

23 June 2023

1. Introduction

1. On 8 June 2023, the NSW Department of Planning and Environment (**Department**) referred State Significant Development (**SSD**) modification application SSD 7169 Mod 2 (**Modification 2**) from Allen Price and Scarratts Pty Ltd (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination.
2. Modification 2 seeks to modify the development consent for the Mundamia Residential Subdivision (SSD 7169) (**Existing Approval**) pursuant to section 4.55(1) of the Environmental Planning and Assessment Act 1979 (**EP&A Act**).
3. In accordance with section 4.5(a) of the EP&A Act and section 2.7(3) of the *State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP)*, the Commission is the consent authority as the Applicant disclosed a reportable political donation.
4. Professor Mary O'Kane AC, Chair of the Commission, nominated Dr Peter Williams (Chair) to constitute the Commission Panel in determining Modification 2.

2. The Application

2.1 Site and Locality

5. The Mundamia residential subdivision site (the **Site**) is located within the Shoalhaven Local Government Area (**Shoalhaven LGA**) and is described at section 1.2 of the Department's Assessment Report (**Department's AR**), dated June 2023, as follows:

The [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 300m south of the Shoalhaven River... The site is identified as Lot 30 DP 1198692 and comprises approximately 41.3 ha of residential and environmental conservation zoned land.

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 proposal will create the first residential lots within the URA.

6. The Site, in context with the Mundamia Urban Release Area and the local area of Nowra, is illustrated at Figure 1 of this report.

Figure 1 – Site and Site Context Map (source: Figure 2 – Department’s AR)



2.2 Approval History

7. A deferred commencement consent was issued for the Existing Approval on 23 December 2019 for a 308 lot residential subdivision, including the provision of a Neighbourhood Safer Place, open space, and drainage reserves.
8. On 6 July 2021, the Commission received a request from the Department for advice in relation to several deferred commencement conditions for the Existing Approval. In correspondence dated 30 July 2021, the Commission advised the Department that the Applicant had complied with relevant conditions, apart from Condition A1(6)(iii).
9. Consequently, on 16 September 2021, the Department referred to the Commission a SSD modification application (SSD 7169 Mod 1) (**Modification 1**) from the Applicant, to amend an error in Deferred Commencement Condition A1(6)(iii). This sought to:
 - remove the reference that Council is responsible for the implementation of the Bushfire Traffic Management Plan and the Emergency/Evacuation Management Plan, and
 - clarify that Council is only responsible for the implementation of the remaining plans referenced in the condition to the extent that those plans apply to Council land.
10. Modification 1 was approved by the Commission on 28 September 2021. Subsequently, the Commission notified the Applicant in writing on 27 October 2021 that all deferred commencement consent conditions had been satisfied. The Department notified the Applicant by letter dated 5 November 2021 that the development consent became operative on 27 October 2021.

2.3 Proposed Modification

11. The Department’s AR notes at paragraph (**AR para**) 2.1.1 that Modification 2 seeks to modify Condition D13 to correct an error that identifies the Environment, Energy and Science Group (**EESG**) as the approval authority for the Aboriginal Cultural Heritage Management Plan (**ACHMP**) instead of the Department.

12. The wording of Condition D13 in its current form, and the Applicant's proposed modification, are shown at Figure 2 of this report.

*Figure 2 – Current and Applicant proposed Condition D13 amendment
(source: Applicant's S4.55 Modification Letter)*

Current Condition	Proposed Condition Amendments
D13. The Applicant shall prepare an Aboriginal Cultural Heritage Management Plan in consultation with the Nowra Local Aboriginal Land Council. The Plan must be submitted to and approved by EESG prior to the commencement of works within Stage 1 of the development.	D13. The Applicant shall prepare an Aboriginal Cultural Heritage Management Plan in consultation with the Nowra Local Aboriginal Land Council. The Plan must be submitted to and approved by EESG DPE prior to the commencement of works within Stage 1 of the development.

13. It is noted the Applicant's proposed wording of 'DPE' refers to the Department of Planning and Environment.
14. The Department's AR notes that the Applicant seeks the amendments outlined in Figure 2 to ensure NSW Government agency sign off can be achieved in order to satisfy Condition D13 and allow works to commence, following agency restructuring that abolished the ability of the former EESG to undertake this sign off (AR para 2.1.3). The Applicant considers that should this restructure not have occurred, the condition in its current wording could be satisfied (AR para 2.1.3).

3. The Commission's Consideration

3.1 Material Considered by the Commission

15. In this determination, the Commission has considered the following material (**Material**):
- Statement of Reasons for Decision for the Existing Approval for the Mundamia Residential Subdivision (SSD 7169) and Modification 1 (SSD 7169 Mod 1);
 - The Commission's Letter to the Department following review into the request to discharge deferred commencement conditions, dated 30 July 2021;
 - the Applicant's Modification Letter, dated 17 April 2023, and all supporting documentation lodged by the Applicant;
 - referral response from Heritage NSW, dated 8 May 2023;
 - the Department's Letter of Referral to the Commission, dated 6 June 2023;
 - the Department's AR, dated June 2023; and
 - the Department's draft Instrument of Modification, dated June 2023.

3.2 Statutory Context

16. Modification 2 has been submitted pursuant to section 4.55(1) of the EP&A Act as set out below:

(1) Modifications involving minor error, misdescription or miscalculation

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.

17. The Commission notes that section 4.55(3) of the EP&A Act, which requires a consent authority in determining an application for modification of a consent to take into consideration the matters referred to in section 4.15(1) (including section 4.15(1)(d) which includes any submissions made in accordance with the EP&A Act and Environmental Planning and Assessment Regulation 2021), does not apply to Modification 2 pursuant to section 4.55(1). Therefore, the Commission was not required to invite or take into consideration public submissions on Modification 2.

4. Key Considerations

4.1.1 Scope of modification

18. The Department considers Modification 2 can be characterised as a modification involving minor error, misdescription or miscalculation as the proposal corrects wording of a condition to reflect the appropriate approval authority and is substantially the same development as originally approved (AR para 3.2.1). The Department states that the proposed modification is therefore within the scope of section 4.55(1) of the EP&A Act and does not constitute a new development application (AR para 3.2.2).
19. The Commission agrees with the Department that Modification 2 falls within the scope of a section 4.55(1) modification and considers that it corrects a minor error or misdescription in Condition D13. The Commission finds that without the proposed modification, Condition D13 in its current state cannot operate or be effectively implemented. The Commission is also satisfied Modification 2 does not constitute a modification under section 4.55(1A) or (2) of the EP&A Act.

4.1.2 Public submissions

20. As noted in section 3.2 of this report, the Commission was not required to invite public submissions for Modification 2 in accordance with section 4.55(1). The Commission considers inviting public submissions for Modification 2 would be unnecessary, given the scope and minor nature of the proposed modification.
21. The Commission notes that there has been an appropriate level of engagement by the Department and the Commission as part of the approval process of SSD 7169. Aboriginal heritage, the subject of Condition 13, was also considered as part of this process for the Existing Approval.
22. The Commission further notes the Department did not publicly exhibit Modification 2 as its Community Participation Plan does not require section 4.55(1) modifications to be publicly exhibited given their minor nature (AR para 4.1.1). Nonetheless, the Department states in its AR (para 4.1.1) that it had made Modification 2 publicly available on its website.
23. The Department also sought advice from Heritage NSW (Aboriginal Cultural Heritage) (**HNSW ACH**), which confirmed in its advice dated 8 May 2023 that the proposed modification was supported and had no further comments (AR para 4.1.2).

4.1.3 Department recommendation

24. The Department notes at AR para 5.2.2 that EESG no longer exists due to agency structure changes, and the equivalent agency is HNSW ACH, which falls within the Environment and Heritage division of the Department.

25. The Department has recommended a minor change to the Applicant's proposed modification of Condition D13. This change is to substitute the 'Department' (or 'DPE' as worded in the Applicant's S4.55 Modification Letter) with the 'Planning Secretary' (Secretary of the Department of Planning) as the approval authority, as the Planning Secretary is the head of the Department. The Department considers that the Planning Secretary is the appropriate approval authority for the ACHMP and notes that HNSW ACH does not have any concerns with this change to the condition (AR para 5.2.3). Further, it is noted that through the course of the Department's assessment of the submitted ACHMP, the Department will refer the ACHMP to HNSW ACH for comment. The Department's recommended modification of Condition D13 is as follows:

*D13. The Applicant shall prepare an Aboriginal Cultural Heritage Management Plan in consultation with the Nowra Local Aboriginal Land Council. The Plan must be submitted to and approved by EESG **the Planning Secretary** prior to the commencement of works within Stage 1 of the development.*

26. Incorporating this minor change to Modification 2, the Department considers that the modification is acceptable as it would simply amend Condition D13 to accurately identify the correct approval authority for the ACHMP and that all other requirements of the condition, including consultation with the Nowra Local Aboriginal Land Council, would remain unchanged (AR para 5.2.4).
27. The Commission agrees with the Department's recommended modification and finds that it appropriately and accurately establishes the correct approval authority for the ACHMP, and will in this way ensure the effective operation and implementation of Condition D13 of SSD 7169. The Commission notes that the purpose of the condition remains unchanged and the proposed modification to Condition D13 ensures its enforceability.

5. The Commission's Findings and Determination

28. The Commission has carefully considered the Material before it as set out in section 3.1 of this report. Based on its consideration of the Material, the Commission finds that Modification 2 should be approved and Condition D13 of the Existing Approval for the Mundamia Residential Subdivision (SSD 7169) modified as per the Department's recommended wording (refer to paragraph 25 of this report), for the following reasons:
- Modification 2 falls within the scope of a s4.55(1) modification, correcting a minor error or misdescription in Condition D13;
 - Modification 2 would not result in any significant changes to the Existing Approval SSD 7169 nor create any new impacts on the environment or community;
 - All other requirements of Condition D13, including consultation with the Nowra Local Aboriginal Land Council, would remain unchanged; and
 - The proposed modification appropriately and accurately establishes the correct approval authority for the ACHMP, and will in this way ensure the effective operation and implementation of Condition D13.
29. The reasons for the Decision are given in the Statement of Reasons for Decision dated 23 June 2023.

A handwritten signature in black ink that reads "Peter Williams". The signature is written in a cursive style with a large initial 'P'.

Peter Williams (Chair)
Member of the Commission



New South Wales Government
Independent Planning Commission

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