



# Addendum Report Wahroonga Estate Modification 8

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Consideration of change to APZ requirements  
Modification Assessment (MP07\_0166 MOD 8)

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# 1 Introduction

- 1.1.1 Ethos Urban, on behalf of then Capital Bluestone Pty Ltd (now Capital Corporation Wahoonga) (the Proponent) submitted an application to amend the Concept Approval (MP07\_0166) for the redevelopment of the Wahoonga Estate. The application seeks approval to amend residential flat building envelopes within Precinct B.
- 1.1.2 The Departments Environmental Assessment Report, dated 24 September 2019, provides a detailed assessment of the proposed modification. It recommends approval of the modification subject to recommended future assessment requirements.
- 1.1.3 Relevantly, the Department's Assessment noted that the proposed building footprints would encroach into the asset protection zones (APZs) permitted by the Concept Plan, which were different to the APZs shown on the proposed modification plans. The difference being that the Concept Plan required the APZs to be located outside of the E2 Environmental Conservation zoned land, while the proposal included APZs partially within the E2 zone. As such the Department recommended a future assessment requirement (FAR) that required the building footprints shown on the plans to be adjusted to ensure compliance with the existing required APZs.
- 1.1.4 On 2 December 2019 the Commission wrote to the Department and asked the Department to assess incorporation of a further amendment to the Concept Plan. As requested by the Proponent, an amendment was sought to FAR B5(1) to allow for the redefinition of 'conservation land' resulting in a change to the permitted location of APZs for the site.
- 1.1.5 In consultation with the Commission, the Department sought additional information from the Proponent to confirm the scope of the proposed modification and additional information in relation to the environmental impacts of the modification and then consulted with Council and relevant government agencies.
- 1.1.6 Further information and changes were subsequently made by the Proponent in response to concerns raised following agency consultation.
- 1.1.7 This report provides an assessment of the Proponent's amendment to the modification application, as revised by the additional information provided following consultation.

## 2 Background

### 2.1 The Approved Wahroonga Estate Concept Plan

- 2.1.1 State Significant Site listing for the Wahroonga Estate was gazetted on 18 December 2009 and the Concept Plan for the Wahroonga Estate (MP07\_0166) was approved on 31 March 2010. Details of the approvals are included in the Department's Modification Assessment report.
- 2.1.2 The line of the E2 Environmental Conservation zone boundary was considered in detail throughout the assessment process for the Concept Approval and the associated State Significant Site listing. The final line of the E2 zone boundary was determined having regard to an independent review of the vegetation mapping commissioned by the Department due to inconsistencies between the Proponent's and the Council's mapping. The final results were generally consistent with the Council's mapping and resulted in an increase in the E2 zoned land from 18ha as originally proposed to 31ha in the final Preferred Project Report (PPR) and consistent with the final gazetted SEPP amendment which established the E2 zone boundary.
- 2.1.3 Also relevant, the Concept Plan includes the following two conditions:

#### **B4 Biodiversity**

*A Biodiversity Management Plan is to be prepared by the Proponent and approved by DEWHA prior to determination of the first project or development application. The Plan is to include:*

- (a) *Vegetation Management Plan*
- (b) *Pest and Weed Plan*
- (c) *Hydrology and Nutrient Management Plan*
- (d) *Habitat Corridor and Linkages Management Plan*
- (e) *Fire Management Plan*
- (f) *Management Plan outlining public access and impacts on the conservation land (E2 Environmental Conservation zone)*
- (g) *Ownership, management, maintenance and monitoring responsibilities for conservation land (E2 Environmental Conservation zone) and funding arrangements.*

#### **B5 Bushfire Protection**

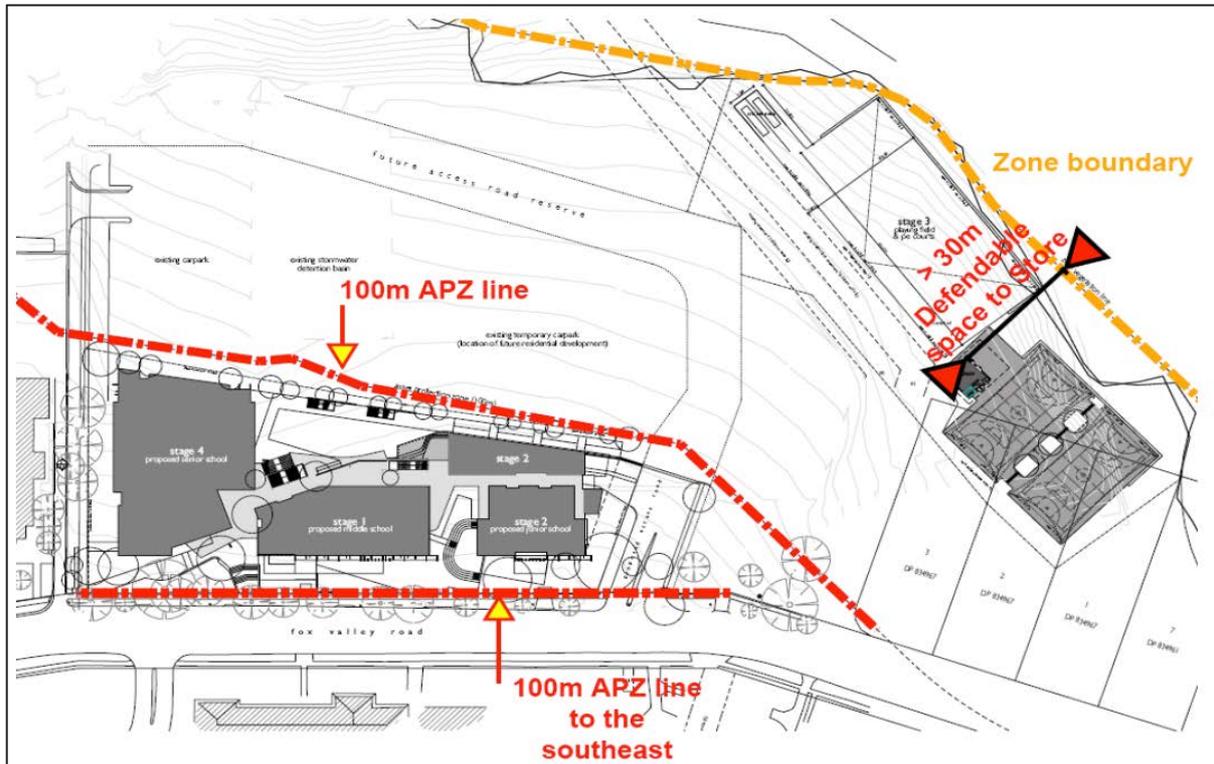
- (1) *All Asset Protection Zones are to be located outside of the conservation land as shown in the approved Concept Plan unless required for development constructed prior to the date of this instrument.*
- (2) *Uses constituting 'Special Fire Protection Purposes' as defined in Planning for Bushfire Protection 2006 are to be undertaken in consultation with the NSW Rural Fire Service.*
- (3) *All Asset Protection Zones and other bushfire protection measures are to comply with Planning for Bushfire Protection 2006.*

- 2.1.4 Condition B4 was included in the approval as the PPR did not specifically address or provide a firm commitment to the ongoing long-term management and financial support of the conservation areas or contain specific measures to protect listed endangered ecological communities.

- 2.1.5 To address outstanding concerns in relation to biodiversity impacts, the final PPR also specifically revised building footprints to ensure all APZs across the site would be located wholly outside of the E2 zoned land (as shown in **Figure 16** of the Department’s Modification Assessment Report). Although this was already provided for by the final plans, the Concept Approval provided further protection of the E2 zoned land through Condition B5 to further ensure APZs could not encroach into the E2 zoned land.
- 2.1.6 The Proponent subsequently prepared a Biodiversity Management Plan which was approved by the Department of the Environment, Water, Heritage and the Arts (DEWHA) (now the Department of Agriculture Water and the Environment) as required by Condition B4. However, the plan created Asset Protection Zones (along a line named the ‘Vegetation Management Transition Line’ (VMTL) within some parts of the E2 zoned land, in contravention of Condition B5(1). The difference between the E2 zone boundary and the VMTL is shown in **Figure 17** of the Department’s Modification Assessment report.
- 2.1.7 The VMTL in the Biodiversity Management Plan has been subsequently relied on by the Proponent for the establishment of APZs in subsequent developments, rather than the approved Concept Plan APZ plan or Condition B5.

## 2.2 Wahrenonga Adventist School Approval

- 2.2.1 SSD 5535 was approved in 2015 for the development of the Wahrenonga Adventist School. Details of the approval are included in the Department’s Modification Assessment Report.
- 2.2.2 The approved plans included a 100m+ wide APZ for the school. A 100m wide APZ is required for the school as it is characterised as a special fire protection purpose development under *Planning for Bushfire Protection*.
- 2.2.3 However, the APZ line was based on the VMTL and not the E2 zone boundary as required by the approved Concept Plan Drawings and Condition B5. The Application documents did not advise that a different line was being used for the establishment of the APZ and the bushfire assessment report submitted with the application indicates the APZ was based on the E2 zone boundary, advising the school would be “*more than 100 metres from the E2 zone boundary*” and incorrectly showing the Vegetation Management Transition line as the E2 zone boundary in the documentation (**Figure 1**).
- 2.2.4 In approving the plans, the Department was therefore not made aware that a different APZ line was being used in contravention of the Concept Plan approval.



**Figure 1 |** Extract from Bushfire Assessment Report submitted with SSD 5535. The line indicated in yellow as the 'Zone Boundary' is incorrectly labelled as it is not the E2 zone boundary but the vegetation management transition line (Source: SSD 5535 application documents).

## 2.3 Changes to Planning for Bushfire Protection

- 2.3.1 Since the Department's Environmental Assessment Report for the modification report was written, *Planning for Bushfire Protection 2019* (PBP2019) has been adopted into legislation (on 1 March 2020).
- 2.3.2 Under the updated requirements of PBP2019, APZs of 56 metres are required for the residential development (previously 60 m was required) and APZs of 100 m are required for the school (unchanged).

# 3 Proposed Amendment to Modification Request

## 3.1 Original Amendment request and additional information

3.1.1 On 2 December 2019 the Commission asked the Department to assess incorporation of a further amendment to FAR B5(1) of the Concept Plan as part of the modification request. The requested amendment was set out in a letter from the Proponent on 15 October 2019 (**Appendix A**).

3.1.2 The amendment initially sought to revise FAR B5 (1) as follows:

### **B5 Bushfire Protection**

(1) *All Asset Protection Zones are to be located outside of the conservation land as shown in the approved ~~Concept Plan~~ **Biodiversity Management Plan** unless required for development constructed prior to the date of this instrument.*

3.1.3 The effect of the amendment would be to enable all APZs for the Concept Plan to be based on the VMTL rather than the E2 zone boundary.

3.1.4 The Proponent advised the amendment is sought on the basis that:

- while the zone boundaries were based on information that surveyed the location of vegetation, they did not accurately reflect the location of existing APZs. The Biodiversity Management Plan subsequently identified some parts of the E2 zoned land that were vegetated but already being actively managed as APZs as the VTML. The approach to continue to manage these areas as APZs was approved by the then DEWHA as part of the Controlled Activity Approval
- the Department's approach for MOD 8 differs from the approach taken on other sites where approvals were granted on the basis of the VMTL
- the affected area is already required to be managed as an APZ for the school approval
- without the proposed amendment, there would be significant impacts to Buildings C and E, requiring major reconfiguration of these buildings.

3.1.5 On 11 February and 2 April 2020, the Proponent provided additional information in support of its amendment to the modification. The additional information can be viewed at **Appendix A** and includes:

- an amendment to the FAR to clarify that the proposed change only related to the APZs for the Central Church Precinct, and not the entire Concept Plan
- advice from its ecologist that no vegetation would be affected by the proposed amendment (as it is already being managed as an APZ)
- advice from its bushfire consultant that no additional vegetation removal or management is required.

## 3.2 Revised Amendment request

3.2.1 On 7 August 2020, the Proponent submitted further information and a revised scheme. While the Proponent considers it should be able to continue to rely on the VMTL for the APZs, an alternative scheme that would improve or maintain biodiversity outcomes was submitted for consideration.

3.2.2 The revised scheme includes:

- establishing a new APZ line that would:
  - predominantly follow the E2 zone boundary as required by Condition B5
  - deviate from the E2 zone boundary to the minimum extent necessary to maintain a 100m APZ for the school buildings, creating an area of 263m<sup>2</sup> within the E2 zoned land that would be managed as an APZ (shown blue cross-hatched on **Figure 2**)
- offsetting the 263m<sup>2</sup> E2 zoned land managed as APZ with an area of equal size within the R4 Residential Zone but that adjoins the E2 zoned land and has similar ecological values to the affected E2 zoned land (shown red hatched in **Figure 2**)
- establish a new APZ for the residential buildings of 56m instead of 60m (as permitted by PBP 2019). In conjunction with the change to the APZ line described above, this would allow Buildings A, B and C to be retained as proposed
- modify the proposed Building Envelope for Building E so that it would comply with the requirements of Condition B5 with an APZ that is entirely within the Residential zone (see **Figure 2**)

3.2.3 The updated information also advised of a change in the name of the Proponent.

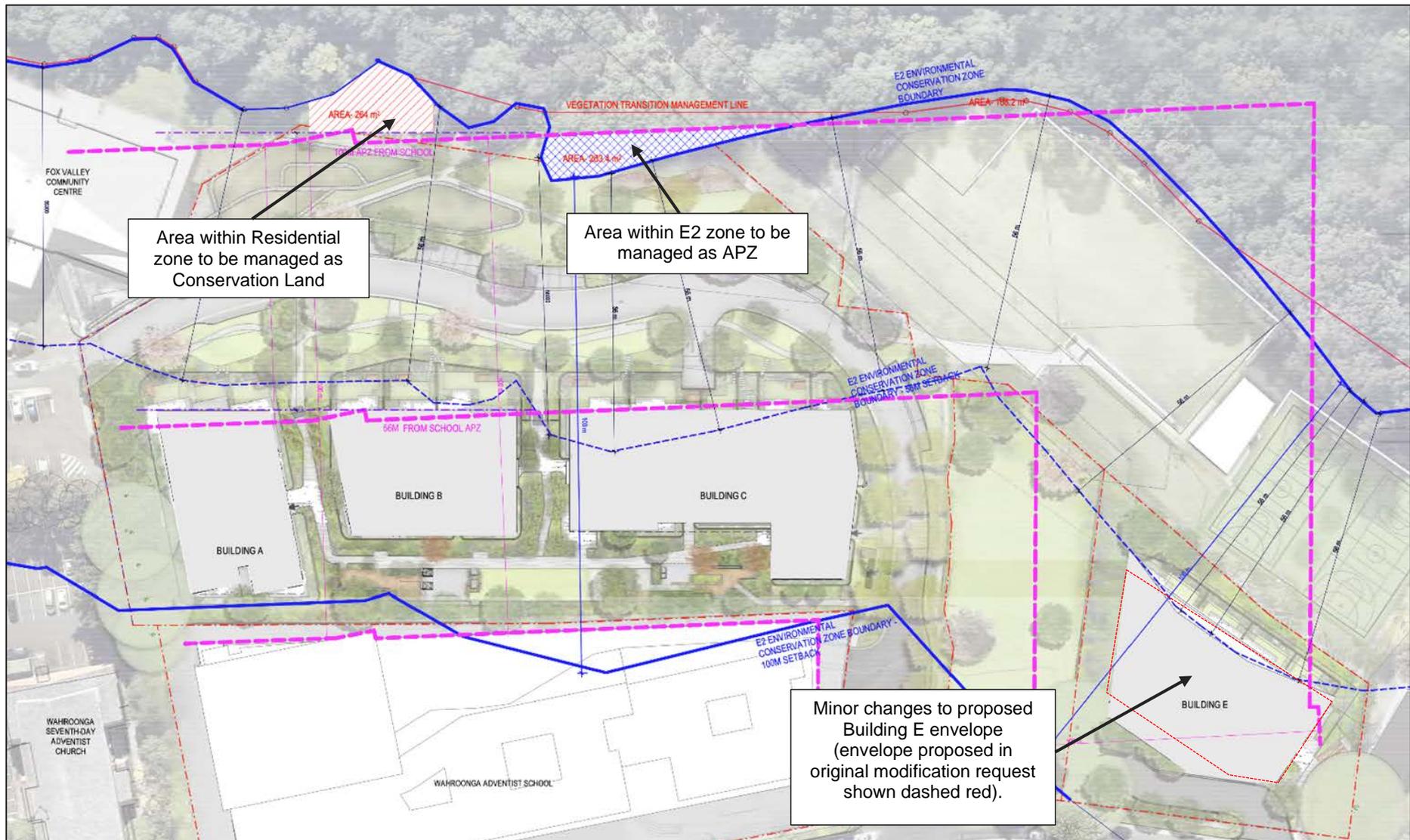


Figure 2 | Revised Scheme (source: Group GSA Architects plan submitted with revised request)

## 4 Consultation

- 4.1.1 The Department referred the requested amendment, with supporting documentation from the Proponent's ecologist and bushfire consultant to Council, DPIE's Environment, Energy and Science Group (EESG) and to the NSW Rural Fire Service (RFS). The updated requested amendment was also re-referred to EESG and RFS. It was not re-referred to Council as Council did not have any outstanding concerns. Comments received from Council, EESG and RFS are summarised in **Table 1**.

**Table 1 | Summary of Council and Agency Comments**

### **Ku-ring-gai Council (Council)**

Comments on Original Amendment:

- The Department's conditions reflect Council's previous comments for MOD 8. However, further review of the current APZ requirements for the school and the scale of the modifications to the proposed buildings required to enable an APZ based on the E2 zone boundary justify the proposed APZ modification.
- While it is unfortunate that the approvals for the school did not include APZs calculated from the zone boundary, as the requirement now already exists for the school, Council has no objection to the proposed modification (subject to approval by the RFS).
- Council notes the Ethos Urban letter of 15 October also refers to other areas within the site where discrepancies in APZ clearing areas exist. Whilst the ecological report addressed these sites, associated bushfire documentation was not provided. Council therefore has not reviewed the implication of adopting this position for any other future development proposed for the site.

### **Environment, Energy, and Science Group of the Department of Planning, Industry and Environment (EESG)**

Comments on Original Amendment:

- The affected areas are required under the consent to be protected within an E2 zone and are not to be managed as APZs. The vegetation in these areas is Sydney Turpentine-Ironbark Forest (STIF), a listed Critically Endangered Community, which must be protected.
- Provision of APZs in this area is fundamentally incompatible with the conservation of STIF.
- EESG disputes the advice provided by the Applicant's ecologist and considers if these areas were not managed as APZs, they would be actively managed under the Biodiversity Management Plan and could regenerate to a natural habitat.

Comments on Updated Amendment:

- EESG supports the proposal to protect and restore an area that is currently zoned residential, and is contiguous with the E2 zoned land and is equivalent in size to the area within the E2 zoned land required to be maintained as Asset Protection Zone for the school
- In addition to inclusion of this area in the Biodiversity Management Plan, EESG recommends appropriate signage and / or fencing to be placed on the boundary
- Although beyond the scope of this application, EESG recommends this area be rezoned E2 as part of the next housekeeping amendment of the Ku-ring-gai LEP.

### **NSW Rural Fire Service (RFS)**

Comments on Original Amendment:

- RFS advised it has no objections to the amendment subject to future developments demonstrating compliance with the relevant provisions of *Planning for Bush Fire Protection 2019*

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- RFS confirms that the proposed APZ to the Vegetation Management Transition line would meet the minimum APZ requirements for the school and the residential development.
  - However, where it is determined that the proponent may not maintain APZs beyond the E2 Environmental Conservation zone boundary, the Concept Plan will be required to be updated to demonstrate that all development will be located behind the required APZ setbacks.

Comments on Updated Amendment:

- RFS have no objection to the change of the location of the APZs
- The 56m residential APZ and 100m School APZ meet the minimum requirement of *Planning for Bush Fire Protection (2019)*
- All future development will need to be located outside the required APZ.

## 5 Assessment

### 5.1 Current APZ Requirements

- 5.1.1 As required by FAR B5, all APZs are to be located outside of the conservation land shown on the Concept Plan unless required for development that already existed at the time of the Concept Plan approval. This is clearly depicted in the approved plans which show APZs on the subject site based on the E2 zone boundary.
- 5.1.2 The Department therefore considers the inclusion of APZs within the E2 zoned land in this part of the site within the Biodiversity Management Plan was unnecessary and in contravention of the approved plans and FAR B5.
- 5.1.3 It was not open to the Biodiversity Management Plan to include measures which were inconsistent with the approved plans or conditions of approval. Therefore, regardless of its approval by the then DEWHA, the Biodiversity Management Plan does not override the approved plans or the Concept Plan approval requirements where there is an inconsistency between the documents. Therefore, where the VMTL is located within the E2 zoned land, it is the E2 zone boundary (rather than the VMTL) from which the APZ must be applied.

### 5.2 Biodiversity Impacts

- 5.2.1 The key issue for consideration is the biodiversity impacts of permitting the affected E2 zoned land to be managed as an APZ.
- 5.2.2 The objectives of the E2 zone are to:
- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
  - *To prevent development that could destroy, damage or otherwise have an adverse effect on those values*
- 5.2.3 The affected land is also designated as 'Biodiversity Land' under Clause 6.3 of Ku-ring-gai LEP (KLEP) 2015 and the following objective also applies:
- *to protect, maintain and improve the diversity and condition of native vegetation and habitat, including—*
    - (a) protecting biological diversity of native fauna and flora, and*
    - (b) protecting the ecological processes necessary for their continued existence, and*
    - (c) encouraging the recovery of threatened species, communities, populations and their habitats, and*
    - (d) protecting, restoring and enhancing biodiversity corridors*
- 5.2.4 Clause 6.3 of KLEP 2015 requires that the consent authority must give consideration to (amongst other things) the impact of the development on any native vegetation community and habitat of any threatened ecological community, any proposed measures to ameliorate adverse environmental impacts and any opportunity to restore or enhance remnant vegetation, habitat and biodiversity corridors.

5.2.5 The Proponent's Ecologist provided an Ecological Impact Assessment for the APZ areas within the E2 zoned land within Central Church Precinct of the Wahroonga Estate (**Appendix A**). The assessment found that:

- the affected areas are characterised by the vegetation community Sydney Turpentine Ironbark Forest (STIF) which is listed as critically endangered under the NSW Biodiversity Conservation Act and the Commonwealth Environment Protection and Biodiversity Conservation Act
- maintaining these areas as APZs would result in no change from the existing situation (they are already managed as APZs) and additional vegetation removal would not be required
- without extensive ongoing management, including both revegetation and long term weed management, it is extremely unlikely that ceasing management of the APZs would result in any substantial level of natural regeneration, and over time native species richness and cover will further decline as weed regrowth occurs.

5.2.6 EESG reviewed the Ecologist's assessment and advised:

- the affected areas are required under the consent to be protected and not to be managed as APZs. The STIF, being a listed Critically Endangered Community, must be protected
- provision of APZs in this area is fundamentally incompatible with the conservation of STIF
- if these areas were not managed as APZs they would be actively managed under the Biodiversity Management Plan and could regenerate to a natural habitat.

5.2.7 The Department agrees with EESG that in principle, the affected areas could be actively managed to regenerate to a natural habitat. To ensure the objectives of E2 zone and Biodiversity Land are achieved, the Department considers APZs generally should not be located within the E2 zoned land and the E2 zoned land should be actively managed to regenerate to its natural state. This would ensure the stated objectives of managing, restoring, improving and enhancing these areas would be achieved.

5.2.8 The approved school requires an APZ of 100m, and the Department acknowledges the fire safety benefits to the existing approved school outweigh the loss of potential biodiversity improvements where an existing APZ is required. However, as shown in **Figure 2**, the required APZ can be achieved without encroaching into the E2 zoned land to the full extent of the VMTL. The Proponent calculates an area of 263.4m<sup>2</sup> E2 zoned land would be required to be managed as APZ to meet the fire safety requirements of PBP 2019 for the school. The Proponent has confirmed this would not require any amendment to the school approval, as the relevant condition on that approval only requires a 100m APZ and does not rely on or refer to the plans which show the larger APZ to the VTML line.

5.2.9 To offset the loss of this land, the Proponent proposes to provide an area equal in size that its Ecologist has confirmed is suitable for revegetation with STIF.

- 5.2.10 EESG is supportive of the proposed change and recommends the change be incorporated into the Biodiversity Management Plan, and the provision of appropriate signage and / or fencing to be placed on the boundary to ensure protection of this area.
- 5.2.11 The Department considers this is an appropriate outcome given there could be no opportunity to regenerate the affected E2 zoned land due to the overriding requirement for fire safety, and ultimately the provision of the additional revegetated offset area would result in a similar outcome for the protection of biodiversity values on the site.
- 5.2.12 With the exception of the minimum area required to retain an acceptable APZ to the school, the Department also considers that there is opportunity to further improve the biodiversity outcomes on the site by removing unnecessary APZs in the E2 zoned land and ensuring these areas are actively managed and regenerated to improve biodiversity outcomes as envisaged by the Concept Approval and the E2 zone objectives.
- 5.2.13 The Department therefore recommends the following requirements:
- APZs for the residential buildings not encroach into the E2 zoned land with the exception of the minimum APZ area required for the school
  - APZs comply with PBP 2019, allowing the APZs to be reduced from 60m to 56m
  - that prior to approval for Buildings A, B or C on the site (as these would all be affected by the revised amendments), the Biodiversity Management Plan be updated and approved by the Department of Agriculture Water and the Environment to:
    - remove all APZs adjacent to the residential flat buildings in Precinct B with the exception of the minimum APZ required for the school
    - adjust the associated VMTL adjacent to the residential flat buildings in Precinct B to be consistent with the E2 zone boundary, but excluding the APZ for the school and including the new offset area to be revegetated
    - include active regeneration and weed management of these areas to ensure regeneration to a natural habitat
    - include arrangements for fencing and / or signage as appropriate to ensure the relevant areas of the site would be protected
- 5.2.14 Subject to these requirements, the Department considers that the encroachment of APZs into the E2 zoned land would be minimised as far as possible, would be appropriately offset, and overall biodiversity outcomes for the E2 zoned land would be improved in line with objectives for the E2 zoned land and the objectives of the Concept Plan Approval. Separately, the Proponent should consult with the Department of Agriculture Water and the Environment as to whether an updated Controlled Activity Approval is required to identify the lesser ecological impact on the STIF.
- 5.2.15 A revised recommended instrument is provided accordingly (**Appendix B**).
- 5.2.16 Following the Commission's determination, the Department would also advise Ku-ring-gai Council of the decision and EESG's recommendation that Council consider a rezoning to reflect the recommended change to the E2 zone boundary as part of its next housekeeping amendment to the LEP.

### 5.3 APZs in remainder of the Wahroonga Estate

- 5.3.1 This assessment is limited to the APZs necessary to permit the proposed residential flat buildings that have been considered as part of MOD 8.
- 5.3.2 Consideration of the applicability of APZs in the Biodiversity Management Plan in the remainder of the estate are beyond the scope of this modification assessment and future applications would need to have regard to the requirements of existing FAR B5 when considering approval of development.

### 5.4 Changes to Building E

- 5.4.1 The proposed changes include some minor changes to the footprint of Building E to comply with the required APZs (**Figure 2**).
- 5.4.2 The Department notes overall building envelope height would not change and the minimum building setback of 10 metres from Fox Valley Road would be retained. The Department is satisfied that compared to the modification request as previously assessed, the proposed changes are minor and would not alter the Departments previous assessment in relation to this building.

## 6 Conclusion

- 6.1.1 The Department does not recommend the provision of APZs within E2 zoned land where they can be avoided. The provision of APZs in the E2 zoned land, where avoidable, would not allow for the regeneration of the critically endangered ecological community of Sydney Turpentine-Ironbark Forest, and is contrary to the provisions of the Concept Approval, the objectives of the E2 zone and the objectives of KLEP 2012 in relation to biodiversity.
- 6.1.2 The Department acknowledges a small area of E2 zoned land will need to be managed as an APZ to ensure the safety of the Wahroonga Adventist School and it is therefore reasonable for the proposed residential buildings to also be able to rely on this area of APZ.
- 6.1.3 The Department considers that subject to the provision of a residential zoned area being revegetated to offset the APZ in the E2 zoned land, in conjunction with amendments to the Biodiversity Management Plan to remove all unnecessary APZs in the E2 zoned land adjacent to the site, the proposed modification would not result in unacceptable impacts in terms of biodiversity. The revegetated area would also improve biodiversity outcomes compared to the currently approved arrangements.
- 6.1.4 The Department's assessment therefore concludes that the changes to APZ requirements is approvable, subject to the recommended FARs in **Appendix B**. This addendum report is hereby presented to the Commission for determination.

Recommended by:



**Silvio Falato**  
Team Leader  
Regional Assessments

Recommended by:



**Keiran Thomas**  
Director  
Regional Assessments

# Appendices

## Appendix A – Additional Documents

- Amendment Request and additional information submitted by the Proponent
- Submissions from Council and agencies

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## Appendix B – Revised Notice of Modification

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9011](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9011)