



New South Wales Government
Independent Planning Commission

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Mundamia Residential Subdivision Modification 4

SSD-7169-MOD-4

Statement of Reasons for Decision

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1. Introduction

1. On 7 January 2025, the NSW Department of Planning, Housing and Infrastructure (**Department**) referred the State Significant Development (**SSD**) application SSD-7169-MOD 4 (**Modification 4**) from Allen Price Pty Ltd (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination.
2. The Modification seeks to modify condition D14 of the existing development consent for the Mundamia Residential Subdivision (SSD-7169) (**Existing Approval**) to substitute biodiversity credits that are not available on biobanking credit registers with available credits, correct the Plant Community Types (**PCTs**) listed in condition D14, and shift the boundary between Lots 519 and 520.
3. The Department considered that the Modification is within the scope of section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) and does not constitute a new development application.
4. In accordance with section 4.5(a) of the EP&A Act and section 2.7 of the *State Environmental Planning Policy (Planning Systems) 2021* (**SEPP Planning Systems**), the Commission is the consent authority as the Applicant has disclosed a reportable political donation.
5. Andrew Mills, Chair of the Commission, appointed Michael Chilcott (Chair) and Sarah Dinning to constitute the Commission for the purpose of exercising its functions with respect to the Application.
6. The Department concluded in its Assessment Report (**AR**) that the Modification would facilitate the retirement of biodiversity offset credits in accordance with the Existing Approval, would improve the diversity of housing lots within the Mundamia subdivision, and would be in the public interest, subject to conditions.

2. The Modification

2.1.1 The Site

7. The Project site (the **Site**) is located at Mundamia in the Shoalhaven local government area (**LGA**), within the Nowra-Bomaderry region of NSW (refer AR Figure 1). As identified at paragraph 6 of the AR (**AR para**), the Site forms part of the Mundamia Urban Release Area, which 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.

2.1.2 Background

8. The Mundamia Residential Subdivision (SSD-7169) (**Existing Approval**) was approved by the Commission in December 2019, and included a 308-lot residential subdivision, a Neighbourhood Safer Place, open space and drainage reserves. The development consent for SSD-7169 has been previously modified on two occasions and one modification (MOD 3) is currently under assessment by the Department (AR para 6 and 10). Refer to Table 1 of the AR for a summary of these modifications.

2.1.3 Proposed Modification

9. Modification 4 seeks to change two aspects of the Existing Approval, being: condition D14, which sets out the biodiversity offset credits the Applicant must retire; and Appendix 1, which sets out the approved subdivision plans (AR para 11).
10. Condition D14 was imposed by the Commission to ensure that the clearing of 10.46ha of plant community types listed in the Framework for Biodiversity Offset Assessment was offset by the purchase of credits per the Applicant's Biodiversity Offset Strategy (AR para 12 and Table 1). The Applicant considers that the wording of condition D14 should be modified to (AR para 13):
 - provide more flexibility in the process for varying credits by allowing the Planning Secretary to approve variations;
 - refer to the NSW Biodiversity Offset Policy for Major Projects rather than the Framework for Biodiversity Offset Assessment;
 - provide for the retirement of biodiversity credits for alternative PCTs as the Applicant has been unable to source credits, as required in the existing condition, for Grey Gum, Red Bloodwood and Hairpin Banksia PCTs due to market constraints; and
 - the correction of code numbers included in the condition related to Hairpin Banksia, Red Bloodwood and Swamp Mahogany PCTs.
11. The Applicant also proposes to shift the boundary of lots 519 and 520 by 1m to provide some diversity in lot size in this part of the subdivision. This would require the approved plan for the subdivision layout listed in Schedule 1 to be updated with reference to a revised plan (AR para 14). The Applicant's Modification Letter, dated 5 November 2024, notes that the "aim of this change is to evoke change to the approved development itself and provide the power to modify [the development to which consent had been granted under the Existing Approval]" (page 12).
12. The above changes are shown in the Department's draft Instrument of Modification, dated December 2024.

3. The Commission's Consideration

3.1 Material Considered by the Commission

13. In this determination, the Commission has considered the following material (**Material**):
 - the Applicant's Modification Letter, dated 5 November 2024, and its attachments;
 - the Biodiversity, Conservation and Science Group's (**BCS**) advice to the Department regarding the Modification, dated July and November 2024;
 - the Department's AR and draft Instrument of Modification, dated December 2024;
 - the Commission's respective Statement of Reasons for Decision for:
 - Mundamia Residential Subdivision (SSD-7169), dated 23 December 2019;
 - Mundamia Residential Subdivision Modification 1 (SSD-7169-Mod-1), dated 28 September 2021;
 - Mundamia Residential Subdivision Modification 2 (SSD-7169-Mod-2), dated 23 June 2023; and
 - the Department's response (dated 10 February 2025) to the Commission's request for information.

3.2 Engagement

14. Modification 4 was made publicly available on the Department's website on 18 November 2024. No public submissions were received. The Department also engaged with BCS regarding Modification 4 prior to and following its lodgement by the Applicant (AR para 21-23).
15. Noting Modification 4's narrow scope, minimal environmental impacts and the absence of public interest during the Department's exhibition period, the Commission did not seek further public submissions on the application.

3.3 Statutory considerations

3.3.1 Purpose of the Modification and Commission's Jurisdiction

16. As set out in section 2.1.3 above, Modification 4 falls into two parts: an adjustment to the boundary between Lots 519 and 520 (**Boundary Adjustment**), and changes to condition D14 of the Existing Approval relating to biodiversity offset credits (**Condition Amendment**).
17. Pursuant to the distinction drawn by the Court of Appeal in *Ku-ring-gai Council v Buyozo* [2021] NSWCA 177 (**Buyozo**), the Boundary Adjustment seeks to modify development (as defined in section 1.5 of the EP&A Act to include, *inter alia*, the subdivision of land), whereas the Condition Amendment seeks to modify conditions of consent imposed on the Existing Approval without effecting change to development.
18. The Applicant's Modification Letter states that the Boundary Adjustment "aims primarily" to "provide the power to determine the proposed modification" per *Buyozo* (Modification Letter, pages 1-2).
19. The Commission's view is that, as the Condition Amendment deals specifically with the retirement of biodiversity credits, the Boundary Adjustment is not required to bring the Condition Amendment within power. There is a separate, discrete, source of statutory authority permitting the Commission to grant consent to the Condition Amendment that does not rely on the Boundary Adjustment sought by the Applicant.
20. Specifically, section 7.14(3) of the *Biodiversity Conservation Act 2016* (**BC Act**) provides for the Minister for Planning's discretion to impose conditions on the grant of consent to SSD requiring the retirement of biodiversity credits. By virtue of clause 19(2) of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, that reference to the Minister for Planning includes a reference to the Commission.
21. Section 7.17(2) extends that discretion to the Commission determining an application to modify a development consent granted after the commencement of Division 4 of Part 7 to the BC Act on 25 August 2017.
22. As the Existing Approval was granted by the Commission on 23 December 2019, it follows that, through the operation of sections 7.14(3) and 7.17(2) of the BC Act, the Commission has the power to affect the Condition Amendment (relating, as it does, to the retirement of biodiversity offsets) irrespective of whether the Boundary Adjustment forms part of the present Modification 4 or not.

3.3.2 Scope of the Modification

23. The Commission agrees with the Department and is satisfied that Modification 4 does not constitute a new development application (AR Table 2). The Commission is satisfied that Modification 4 meets the criteria at section 4.55(1A)(a)-(d) of the EP&A Act, as follows:
- Modification 4 is of minimal environmental impact;
 - the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified;
 - as noted at section 3.3 above, Modification 4 was notified in accordance with the *Environmental Planning and Assessment Regulation 2021 (EP&A Regulation)*; and
 - no public submissions were made regarding Modification 4 during the Department's exhibition period. As noted at section 3.1 above, the Commission has considered BCS's advice to the Department in its assessment of Modification 4.
24. The Commission is also satisfied that Modification 4 is a valid application in respect of sections 98, 99 and 100 of the EP&A Regulation.

3.3.3 Mandatory considerations

25. In determining Modification 4, the Commission is required by sections 4.15(1) and 4.55(3) of the EP&A Act to take into consideration such of the listed matters as are of relevance to the development the subject of the Application (**Mandatory Considerations**).
26. The Commission finds:
- Modification 4 is consistent with relevant environmental planning instruments;
 - the Site is suitable for the development;
 - the likely impacts of Modification 4 are acceptable, subject to conditions of consent;
 - Modification 4 is consistent with the relevant ecologically sustainable development principles;
 - Modification 4 is consistent with the Objects of the EP&A Act; and
 - Modification 4 in the public interest.

3.3.4 Reasons given by the consent authority for the grant of consent that is sought to be modified

27. Under section 4.55(3), the Commission must also consider the reasons given by the consent authority for the grant of consent that is sought to be modified. When considering the reasons given by the consent authority for the grant of consent that is sought to be modified, the substantive question is whether there any reasons that would preclude the modification of that consent.
28. The Commission has considered its respective Statement of Reasons for Decision for the Existing Approval, Modification 1 and Modification 2 and finds that approval of Modification 4 would not be inconsistent or conflict with the reasons given by the Commission in its granting of consent for the Existing Approval, Modification 1 and Modification 2.

3.4 Key Issues

3.4.1 Biodiversity Offset Credits (condition D14)

29. As noted at section 3.2 above, BCS has reviewed the Applicant's proposed changes to condition D14. As the Department notes, BCS supports the proposed changes, namely:
- the replacement of the reference to the Framework for Biodiversity Offset Assessment with the NSW Biodiversity Offset Policy for Major Projects (OEH 2014b), as the latter is the more relevant policy (AR para 26);
 - the substitution of alternative listed PCT credits, given the Applicant has met the requirements for credit substitutions under the Framework for Biodiversity Offset Assessment, including making reasonable efforts to acquire credits, seeking like-for-like credits, and proposing appropriate alternative credits (AR para 28-30); and
 - the correction of the PCT codes listed for Hairpin Banksia, Red Bloodwood and Swamp Mahogany, as these were incorrect (AR para 31).
30. Noting BCS's support, the Commission accepts the Department's assessment and is satisfied that the Applicant's proposed changes are:
- appropriate;
 - will not have any adverse impact; and
 - as noted above at section 3.3.1 above, through the operation of sections 7.14(3) and 7.17(2) of the BC Act, the Commission has the power to affect the Condition Amendment (relating, as it does, to the retirement of biodiversity offsets) irrespective of whether the Boundary Adjustment forms part of the present Modification 4 or not.

3.4.2 Approved Subdivision Plans (Appendix 1)

31. The Commission finds that the Boundary Adjustment is not, contrary to the Applicant's view on page 1 of its Modification Letter, required to enable the modification of condition D14 (see section 3.3.1 above).
32. Notwithstanding this, the Commission agrees with the Department and is satisfied that the proposed shift of the boundary between Lots 519 and 520 by 1m will have no adverse impacts and may support the provision of diverse lots within the subdivision (AR para 32). The Commission therefore grants consent to the Applicant's proposed change to Appendix 1.

4. The Commission's Findings and Determination

33. The Commission has 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 the Modification is in the public interest and should be approved subject to conditions of consent. These conditions are designed to:
- prevent, minimise and/or offset adverse environmental impacts;
 - set standards and performance measures for acceptable environmental performance;
 - require regular monitoring and reporting; and
 - provide for the on-going environmental management of the development.
34. The reasons for the Decision are given in the Statement of Reasons for Decision dated 20 February 2025.



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