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29 January 2018

The General Manager
Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

Our Ref: L103000
Council Ref: SF 9320

Attention: Mrs Cathy Bern

Dear Mrs Bern

RE: PROPOSED MODIFICATION OF DEVELOPMENT CONSENT SF 9320 UNDER SECTION 96(1A) OF THE *EP&A ACT 1979*

- LOT 4 DP 1011021 SCHOFIELDS LANE BERRY;
- LOTS 72 DP 4468 KANGAROO VALLEY ROAD BERRY;
- LOT 73 & 79 DP 4468 HITCHCOCKS LANE BERRY;
- LOT 2 DP 1029237 FORD STREET BERRY; &
- LOTS 25, 26, 33, 34, 35, 36 DP13701 KANGAROO VALLEY ROAD BERRY (collectively, the *Land*)

INTRODUCTION / BACKGROUND

This application is submitted for Pindan Capital Berry Pty Ltd, owners of the subject land. An authority to make this application on behalf of the owners has been provided with the application (Annexure A).

This application requests that Shoalhaven City Council (*Council*) approve the modification of development consent SF9320 (*Consent*) pursuant to section 96(1A) of the *Environmental Planning and Assessment Act 1979* (NSW) (the *EP&A Act*). The approved subdivision layout is shown in Annexure B.

Development Consent SF9320 was originally approved by Council on 27 August 2003.

The Consent approved a six stage subdivision of the Land, comprising 287 residential lots, one community lot, one medium density lot, public open space and a residue lot. Fifteen modifications to the Consent under s.96 (1A) have subsequently been approved being:

- DS 03/1296 approved 24 July 2003
- DS 05/1332 approved 6 December 2005 – staging altered
- DS 06/1288 approved 21 July 2006 – boundary adjustments
- DS 07/1208 approved 4 July 2007 – modified Stages 2A & 3

- DS08/1496 approved 2 February 2009 – Stage 1 - consolidate 4 lots and re-subdivide into 3 lots; Stage 2 - consolidate 12 lots and re-subdivide into 8 lots
- DS 11/1109 approved 14 October 2011 – modify conditions 3, 24(c) and (d), 25, 26, and the general subdivision layout as it relates to Stages 3, 4 and 5.
- DS 13/1385 approved 21 March 2013 - reconfigure lots and road alignment in stages 2b and 3; adjust stage boundaries.
- DS 13/1152 approved 13 August 2013 – modify conditions 1(d) and (e), 17 of Part A; 1(b), 2, 8, and 12 of Part C; 1, 2A, and 5 of Part D; and 2 and 2A of Part E.
- DS 13/1402 approved 14 February 2014 – delete conditions 4(a), 5, 6, 8.
- DS 14/1211 approved 9 October 2014 - modify condition d (iii) relating to roof pitch.
- DS 14/1375 approved 14 January 2015 - modify staging to break stage 3 into four sub stages.
- DS15/1511 approved on 1 April 2016 – modification to conditions relating to stage 4.
- DS16/1144 approved on 11th July 2016 – modify condition Part I 1 c) to remove building setback.
- DS16/1420 approved on 7th December 2016 – modify building setbacks for lots within Stage 3b
- DS17/1155 approved on 17th August 2017 – modify building line setback, road layout, lot boundaries and restage development from eight stages to nine stages comprising 249 lots.

Subsequent to the above modifications the development consent currently comprises 249 residential lots, three medium density lots, and public open space.

The proposed modifications are based on the condition numbers presented in the Consolidated Subdivision Consent DS17/1155.

PROPOSED MODIFICATIONS

This S.96 application relates to lot boundaries and reduced riparian zones for lots 601-609 in stage 6a, lots 624-628 in stage 6b and lots 701-703 in stage 7a. The extent of the changes to the lot boundaries is highlighted on the comparison plan submitted as Annexure C. The approved lot boundary is shown in red with the hatched area indicating the additional area added to lots 601-609, 624-628 and 701-703.

The modifications also remove the road reserve abutting Lot 717 in stage 7b. All changes are shown in the revised subdivision plans, reference no. 103000, Sheet 1 of 1, dated 18 January 2018 (Annexure D).

Modifications proposed within this Section 96 application aim to achieve the following outcomes:

- *Reduce the width of the public reserve land adjacent to the creek, to reduce the bushfire threat to lots 601-609 in stage 6a, lots 624-628 in stage 6b, lots 701-703 in stage 7a.*
- *Remove the road reserve adjoining lot 717 in stage 7b (reverting it to lot 718).*
- *Re-assess the bushfire asset protection zones requirements for the lots adjoining the creeks.*
- *Create an easement over lots 601-609 in stage 6a, lots 624-628 in stage 6b, and lots 701-703 in stage 7a for shared asset protection zones and vegetated buffers adjacent to the riparian corridor.*

This modification application relates to the following Conditions of Consent:

Part A – Conditions of a General Nature

Condition 1 –

Modification

Amend the above sections of Condition 1 as follows:

"This condition relates to the subdivision proposal as illustrated on the plans Surveyors' reference:

...

g)

Plan	Reference	Author	Date
Revised staging and layout plan	103000	SET Consultants	18 January 2018
Stage 6A layout	103000	SET Consultants	18 January 2018
Stage 6B layout	103000	SET Consultants	18 January 2018
Stage 7A layout	103000	SET Consultants	18 January 2018
Stage 7B layout	103000	SET Consultants	18 January 2018
Stage 8 layout	103000	SET Consultants	18 January 2018
Stage 9 layout	103000	SET Consultants	18 January 2018

Stamped with reference to this Consent, as modified by the following conditions. The development shall be carried out in accordance with this Consent.

Note

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The development shall be carried out in the following stages:

- *Stage 1 Completed: Lots 1 to 33 (inclusive), Lot 79, open space for water quality ponds, screen planting buffer and dedication of ramp land from Princes Highway. Total of 34 lots*
- *Stage 2a Completed: Lots 35 to 58 (inclusive). Total of 24 lots*
- *Stage 2b Completed: Lots 201 to 215 (inclusive). Total of 15 lots*
- *Stage 3a: Lots 301 to 312 (inclusive). Total of 12 lots*
- *Stage 3b: Lots 316 to 338 (inclusive), Lots 340 and 341, Medium Density lots 313, 314 and 315, and Public Reserve (Lot 339). Total of 28 residential lots*
- *Stage 4: Lots 402 to 435 (inclusive). Total of 36 lots*
- *Stage 5a: Lots 501 to 513 (inclusive). Total of 13 lots*
- *Stage 5b: Lots 514 to 527 (inclusive). Total of 14 lots*
- *Stage 6a: Lots 601 to 618 (inclusive). Total to 18 lots*
- *Stage 6b: Lots 619 to 628 (inclusive). Total to 10 lots*
- *Stage 7a: Lots 701 to 714 (inclusive). Total to 14 lots*
- *Stage 7b: Lots 715 to 726 (inclusive). Total of 13 lots*
- *Stage 8: Lots 801 to 822 (inclusive). Total of 9 lots*
- *Stage 9: Lots 901 to 905 (inclusive). Total to 13 lots*

Justification

To align the condition with the revised plans submitted as part of this application.

**Condition 17 –
 Modification**

Amend the tables to reflect the new staging, as outlined below:

Stage 5				
<i>Project</i>	<i>Description</i>	<i>Rate</i>	<i>Qty</i>	<i>Total</i>
01 AREC 0001	Tennis, Football, Cricket (Area 1)	\$2,790.29	27	\$75,337.83
01 AREC 0002	Basketball & Netball (Areas 1 & 2)	\$558.20	27	\$15,071.40
01 CFAC 0003	S94 CP AMENDMENT No.67 Nowra District Community Centre	\$349.76	27	\$9,443.52
01 CFAC 0011	S94 CP AMENDMENT No.67 Berry/Shoalhaven Heads District H&CC Centre	\$79.36	27	\$2,142.72
01 CFAC 0013	S94 CP AMENDMENT No. 67 Berry Gardens Neighbourhood Community Centre	\$2,901.26	27	\$78,334.02
01 FIRE 0008	Broughton Vale/Berry – fire control	\$176.08	27	\$4,754.16
01 FIRE 0009	City Wide – fire control/state emergency services	\$40.66	27	\$1,097.82
01 OREC 0009	Berry Garden Estate Passive Open Space	\$4,389.14	27	\$118,506.78
CW AREC 0003	Hockey Facilities	\$359.91	27	\$9,717.57
CW MGMT 0001	Project Management Costs	\$249.58	27	\$6,738.66
TOTAL STAGE 5				\$321,144.48

Stage 6a				
<i>Project</i>	<i>Description</i>	<i>Rate</i>	<i>Qty</i>	<i>Total</i>
01 AREC 0001	Tennis, Football, Cricket (Area 1)	\$2,790.29	18	\$50,225.22
01 AREC 0002	Basketball & Netball (Areas 1 & 2)	\$558.20	18	\$10,047.60
01 CFAC 0003	S94 CP AMENDMENT No.67 Nowra District Community Centre	\$349.76	18	\$6,295.68
01 CFAC 0011	S94 CP AMENDMENT No.67 Berry/Shoalhaven Heads District H&CC Centre	\$79.36	18	\$1,428.48
01 CFAC 0013	S94 CP AMENDMENT No. 67 Berry Gardens Neighbourhood Community Centre	\$2,901.26	18	\$52,222.68
01 FIRE 0008	Broughton Vale/Berry – fire control	\$176.08	18	\$3,169.44
01 FIRE 0009	City Wide – fire control/state emergency services	\$40.66	18	\$731.88
01 OREC 0009	Berry Garden Estate Passive Open Space	\$4,389.14	18	\$79,004.52
CW AREC 0003	Hockey Facilities	\$359.91	18	\$6,478.38
CW MGMT 0001	Project Management Costs	\$249.58	18	\$4,492.44
TOTAL STAGE 6a				\$214,096.32

Stage 6b				
<i>Project</i>	<i>Description</i>	<i>Rate</i>	<i>Qty</i>	<i>Total</i>
01 AREC 0001	Tennis, Football, Cricket (Area 1)	\$2,790.29	10	\$27,902.90
01 AREC 0002	Basketball & Netball (Areas 1 & 2)	\$558.20	10	\$5,582.00
01 CFAC 0003	S94 CP AMENDMENT No.67 Nowra District Community Centre	\$349.76	10	\$3,497.60

01 CFAC 0011	S94 CP AMENDMENT No.67 Berry/Shoalhaven Heads District H&CC Centre	\$79.36	10	\$793.60
01 CFAC 0013	S94 CP AMENDMENT No. 67 Berry Gardens Neighbourhood Community Centre	\$2,901.26	10	\$29,012.60
01 FIRE 0008	Broughton Vale/Berry – fire control	\$176.08	10	\$1,760.80
01 FIRE 0009	City Wide – fire control/state emergency services	\$40.66	10	\$406.60
01 OREC 0009	Berry Garden Estate Passive Open Space	\$4,389.14	10	\$43,891.40
CW AREC 0003	Hockey Facilities	\$359.91	10	\$3,599.10
CW MGMT 0001	Project Management Costs	\$249.58	10	\$2,495.80
TOTAL STAGE 6b				\$118,942.40

Stage 7a				
Project	Description	Rate	Qty	Total
01 AREC 0001	Tennis, Football, Cricket (Area 1)	\$2,790.29	14	\$39,064.06
01 AREC 0002	Basketball & Netball (Areas 1 & 2)	\$558.20	14	\$7,814.80
01 CFAC 0003	S94 CP AMENDMENT No.67 Nowra District Community Centre	\$349.76	14	\$4,896.64
01 CFAC 0011	S94 CP AMENDMENT No.67 Berry/Shoalhaven Heads District H&CC Centre	\$79.36	14	\$1,111.04
01 CFAC 0013	S94 CP AMENDMENT No. 67 Berry Gardens Neighbourhood Community Centre	\$2,901.26	14	\$40,617.64
01 FIRE 0008	Broughton Vale/Berry – fire control	\$176.08	14	\$2,465.12
01 FIRE 0009	City Wide – fire control/state emergency services	\$40.66	14	\$569.24
01 OREC 0009	Berry Garden Estate Passive Open Space	\$4,389.14	14	\$61,447.96
CW AREC 0003	Hockey Facilities	\$359.91	14	\$5,038.74
CW MGMT 0001	Project Management Costs	\$249.58	14	\$3,494.12
TOTAL STAGE 7a				\$166,519.36

Stage 7b				
Project	Description	Rate	Qty	Total
01 AREC 0001	Tennis, Football, Cricket (Area 1)	\$2,790.29	13	\$36,273.77
01 AREC 0002	Basketball & Netball (Areas 1 & 2)	\$558.20	13	\$7,256.60
01 CFAC 0003	S94 CP AMENDMENT No.67 Nowra District Community Centre	\$349.76	13	\$4,546.88
01 CFAC 0011	S94 CP AMENDMENT No.67 Berry/Shoalhaven Heads District H&CC Centre	\$79.36	13	\$1,031.68
01 CFAC 0013	S94 CP AMENDMENT No. 67 Berry Gardens Neighbourhood Community Centre	\$2,901.26	13	\$37,716.38
01 FIRE 0008	Broughton Vale/Berry – fire control	\$176.08	13	\$2,289.04
01 FIRE 0009	City Wide – fire control/state emergency services	\$40.66	13	\$528.58
01 OREC 0009	Berry Garden Estate Passive Open Space	\$4,389.14	13	\$57,058.82
CW AREC 0003	Hockey Facilities	\$359.91	13	\$4,678.83
CW MGMT 0001	Project Management Costs	\$249.58	13	\$3,244.54
TOTAL STAGE 7b				\$154,625.12

Stage 8				
<i>Project</i>	<i>Description</i>	<i>Rate</i>	<i>Qty</i>	<i>Total</i>
01 AREC 0001	Tennis, Football, Cricket (Area 1)	\$2,790.29	9	\$25,112.61
01 AREC 0002	Basketball & Netball (Areas 1 & 2)	\$558.20	9	\$5,023.80
01 CFAC 0003	S94 CP AMENDMENT No.67 Nowra District Community Centre	\$349.76	9	\$3,147.84
01 CFAC 0011	S94 CP AMENDMENT No.67 Berry/Shoalhaven Heads District H&CC Centre	\$79.36	9	\$714.24
01 CFAC 0013	S94 CP AMENDMENT No. 67 Berry Gardens Neighbourhood Community Centre	\$2,901.26	9	\$26,111.34
01 FIRE 0008	Broughton Vale/Berry – fire control	\$176.08	9	\$1,584.72
01 FIRE 0009	City Wide – fire control/state emergency services	\$40.66	9	\$365.94
01 OREC 0009	Berry Garden Estate Passive Open Space	\$4,389.14	9	\$39,502.26
CW AREC 0003	Hockey Facilities	\$359.91	9	\$3,239.19
CW MGMT 0001	Project Management Costs	\$249.58	9	\$2,246.22
TOTAL STAGE 8				\$107,048.16

Stage 9				
<i>Project</i>	<i>Description</i>	<i>Rate</i>	<i>Qty</i>	<i>Total</i>
01 AREC 0001	Tennis, Football, Cricket (Area 1)	\$2,790.29	13	\$36,273.77
01 AREC 0002	Basketball & Netball (Areas 1 & 2)	\$558.20	13	\$7,256.60
01 CFAC 0003	S94 CP AMENDMENT No.67 Nowra District Community Centre	\$349.76	13	\$4,546.88
01 CFAC 0011	S94 CP AMENDMENT No.67 Berry/Shoalhaven Heads District H&CC Centre	\$79.36	13	\$1,031.68
01 CFAC 0013	S94 CP AMENDMENT No. 67 Berry Gardens Neighbourhood Community Centre	\$2,901.26	13	\$37,716.38
01 FIRE 0008	Broughton Vale/Berry – fire control	\$176.08	13	\$2,289.04
01 FIRE 0009	City Wide – fire control/state emergency services	\$40.66	13	\$528.58
01 OREC 0009	Berry Garden Estate Passive Open Space	\$4,389.14	13	\$57,058.82
CW AREC 0003	Hockey Facilities	\$359.91	13	\$4,678.83
CW MGMT 0001	Project Management Costs	\$249.58	13	\$3,244.54
TOTAL STAGE 9				\$154,625.12

Justification

To align contributions with the proposed staging.

Part I – Other Conditions

Condition 1 (c1) –

Modification

We request this condition be modified to read:

“Lots 201-215, 301-307, 425-427, 313-318 and Lots 504-506 shall be managed as an inner protection area (IPA) as outlined within section 4.3.1.....”

Justification

To reflect the new lot numbers.

Condition 2 –

Modification

We request this condition be deleted.

“Creation of the proposed lots as per the approved plan but with the consolidation of Lots 717 and adjoining lot immediately to the east 524 and 525”.

Justification

The submitted plan shows the road reserve/drainage lot as Lot 718. This is generally as approved under DS16/1420.

Rural Fire Service - General Terms of Approval

Condition 5 (a)–

Modification

We request that condition 5(a) be modified as follows:

“a) The development proposal is to comply with the subdivision layout identified on the drawings prepared by SET Consultants, numbered 103000 and dated 18 January 2018.”

Justification

To align the plan reference with the revised plans submitted as part of this application.

Condition 5 –

Modification

We request that condition 5(h) be added to the Consent as follows:

“At the issue of subdivision certificate and in perpetuity lots 507 – 512, 901 – 903, 910 – 913 and 801 – 809 are to be cleared and maintained as an Asset Protection Zone as outlined within section 4.3.1. and Appendix 5 of ‘Planning for Bush Fire Protection’ and the NSW Rural Fire Service’s document ‘Standard for asset protection zones’.”

Justification

Refer to the Bushfire Assessment below.

Condition 5 -

Modification

We request that condition 5(i) be added to the Consent as follows:

“An easement is to be created in accordance with Section 88B of the Conveyancing Act 1919 for the purpose of vegetated buffer zone as follows:

- i) To a distance of 10 metres from the northern boundary of Lots 601-609 in stage 6a and Lots 626-628 in stage 6b; and*
- ii) To distance of 15 metres from the northern boundary of Lots 624-625 in stage 6b and Lots 701-703 and 705 in stage 7a.*

The vegetated buffer shall comply with the requirements for asset protection zone, while maintaining the maximum amount of vegetation possible to ensure a vegetative buffer is provided to the riparian zone”

Justification

Refer to the Bushfire Assessment below.

Bushfire Assessment

The following Bushfire Assessment has been prepared to re-assess the bushfire threat associated with lots 601 – 609, 624 – 628 and 701 – 705 based on the reconfigured subdivision layout. The subdivision layout has been re-designed to achieve a better bushfire outcome and to reduce the bushfire attack level for future dwellings. The original bushfire assessment relied on establishing APZs within the public reserve lot which incorporates the creek line and associated riparian zone. Council have advised they will not support the establishment of APZs within the public reserve lot resulting in the majority of the lots adjacent to the public reserve being located within the flame zone.

The subdivision has been redesigned to increase the size of the lots and reduce the width of the public reserve lot back to the core riparian zone. Asset protection zones have been incorporated into privately owned lots to improve the likelihood of appropriate maintenance. The vegetation within the riparian zone has been assessed by Kevin Mills as Lowland Rainforest.

A site inspection was conducted to determine the direction and scale of any potential bush fire event based on an analysis of slope, aspect, vegetation type and density, current fuel loading and evidence of past fire history. The assessment of the site is based on the results of a field survey conducted by David Cannon on 23rd August 2017. The following pieces of current legislation and guidelines were referred to when preparing this report:

- Planning for Bushfire Protection, A Guide for Council, Planner, Fire Authorities and Developers' (NSW Rural Fire Service (RFS) in cooperation with the Department of Planning (2006);
- Rural Fires Act 1997;
- Australian Standard 3959-2009 Construction of Buildings in Bushfire Prone Areas; and
- Rural Fires Regulation 2013.

This assessment includes an analysis of the potential hazard persisting and affecting the subject site and the standards and bushfire mitigation measures that should be introduced to address the objectives of the PBP 2006 and AS3959-2009. The mitigation measures have been derived from the provisions (performance criteria and acceptable solutions) as outlined within the PBP 2006.

CLASS OF VEGETATION

The vegetation forming the dominant threat to the proposed development comes from the vegetation located within the public reserve lot directly associated with the creek line. Vegetation inhabiting this area has been classified as Lowland Rainforest. According to Keith (2004) the vegetation type would be classified as Wet Sclerophyll Forest, when converted to AUSLIG Pictorial Analysis in AS3959-2009 the vegetation is Rainforest.

ASSESSMENT OF SLOPE

The slope assessment was undertaken using a Lidar data, were a number of different slope classes present over the 140m in any one direction, the slope of the area, which will most significantly influence the fire behavior, has been adopted.

For the lots with a fire run of less than 50m the slopes were classified of the following classes:

- (i) all upslope vegetation (considered 0°)
- (ii) >0 to 5° downslope vegetation
- (iii) >5 to 10° downslope vegetation
- (iv) >10 to 15° downslope vegetation
- (v) >15 to 18° downslope vegetation.

The slope varies along the creek line, the effective bushfire slopes for the lots affected by this modification are provided Table 1.

ASSESSMENT METHODOLOGY

For Lots 601 – 609, 624 – 628 and 701 – 705 the information contained in the appendices of the PBP 2006 has been used to categorise vegetation type and slope class in the locality, as discussed above. Table A2.3 of the PBP 2006 was used to determine the appropriate fire area and corresponding FDI rating. Following on from this, the simplified method of bushfire attack level (AS3959- 2009 table 2.4.2) was used to calculate the required APZs for each respective vegetation class and the bushfire exospore level (construction requirements) for each lot.

Table 1: Breakdown of the vegetation type, slope class and the required APZ in accordance with Table 2.4.2 of AS3959-2009 for the proposed lots.

Lot	Dominate Vegetation Type	Effective Bushfire Slope	Required APZ (M) AS3959	BAL
601	Rainforest	5 to 10° Downslope	18	29
602	Rainforest	0 to 5° Downslope	14	29
603	Rainforest	5 to 10° Downslope	18	29
604	Rainforest	5 to 10° Downslope	18	29
605	Rainforest	10 to 15° Downslope	23	29
606	Rainforest	10 to 15° Downslope	23	29
607	Rainforest	10 to 15° Downslope	23	29
608	Rainforest	10 to 15° Downslope	23	29
609	Rainforest	10 to 15° Downslope	23	29
624	Rainforest	10 to 15° Downslope	23	29
625	Rainforest	10 to 15° Downslope	23	29
626	Rainforest	10 to 15° Downslope	23	29
627	Rainforest	5 to 10° Downslope	18	29
628	Rainforest	5 to 10° Downslope	18	29
701	Rainforest	20° Downslope	29	29
702	Rainforest	20° Downslope	29	29
703	Rainforest	15° Downslope	29	29
705	Rainforest	20° Downslope	29	29

ASSESSING THE BUSHFIRE RISK

The main factors directly affecting the behavior of fire are:

- Wind (strength and direction);
- Fuel Moisture and content (how dry it is, relative humidity);
- Type quantity and arrangement of fuel (vegetation density); and
- Slope (fire spreads quicker upslope due to preheating).

The prevailing weather conditions associated with the bushfire season in the Illawarra (Berry) region are strong north-westerly winds, low relative humidity and high temperatures. In general, the site is surrounded by existing managed rural land and residential development, which offers adequate asset protection area. With the combination of the vegetation (post development) and slope, the overall bushfire risk associated with the proposed subdivision is medium, with the foremost bushfire risk coming from the remnant rainforest vegetation inhabiting the public reserve lot (creekline). All lots have a buildable area which can comply with BAL 29. This is a significant improvement on the current subdivision layout.

It is recommended that Lots 601 – 609, 624 – 628 and 701 – 705 are cleared and maintained as an Asset Protection Zone as outlined within section 4.3.1. and Appendix 5 of 'Planning for Bush Fire Protection' and the NSW Rural Fire Service's document 'Standard for asset protection zones'.

It is recommended that the Inner Protection Areas shall be maintained for the life development in accordance with section 4.1.3 and Appendix 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service's document 'Standards for asset protection zones', as outlined below:

- Existing larger trees (at least 150mm in diameter measured at chest height) may remain within the APZ provided that:
 - They do not occur within 4m of a building;
 - Lower limbs are removed;
 - Shrubs beneath the trees are removed; and
 - Crowns do not form a continuous canopy.
- Smaller trees, shrubs, fallen trees, tree limbs and stumps are to be removed
- The presence of a few shrubs is acceptable provided that they are at least 10m from the structure, are well spread out, do not form a contiguous pathway to the dwelling and do not constitute more than 5% of the total APZ area.
- Vegetable gardens or fruit trees may be located within the APZ. Any other gardens should not occupy more than 5% of the APZ and only contain low flammability species.
- A minimal ground fuel is to be maintained to include either mowed grass, paving, concrete, bare ground or less than 4 tonnes per hectare of fine fuel.
- Any structures within the APZ are to be non-combustible
- Any structures storing combustible materials such as firewood must be sealed to prevent entry of burning debris.
- Gutters, roofs and roof gullies shall be kept free of leaves and other debris.

As the asset protection zones are adjacent to the riparian zone it is recommended that an easement is to be created in accordance with Section 88B of the Conveyancing Act 1919 for the purpose of vegetated buffer zone as follows:

- i) To a distance of 10 metres from the northern boundary of Lots 601-609 in stage 6a and Lots 626-628 in stage 6b; and
- ii) To distance of 15 metres from the northern boundary of Lots 624-625 in stage 6b and Lots 701-703 and 705 in stage 7.

The vegetated buffer shall comply with the requirements for asset protection zone, while maintaining the maximum amount of vegetation possible to ensure a vegetative buffer is provided to the riparian zone.

CONCLUSION

If the proposed subdivision is constructed and maintained in accordance with the recommendations outlined above, it will provide a better bushfire outcome than existing under the consent. This is achieved

through combination of increased ability for land owners to establish APZ's on their site, reducing the prevailing bushfire hazard and by providing safer operational access. The lots affected by this modification will be provided adequate provision for firefighting strategies.

NSW Office of Water - General Terms of Approval

Condition 6A –

Modification

We request that condition 6A (viii) and (ix) be added as follows:

"These General Terms of Approval (GTA) only apply to the controlled activities described in plans and associated documentation relating to DS13/1385 and DS14/1375 provided by Shoalhaven City Council on 7th January 2014 and 1st October 2014 respectively:.....

- "viii) Proposed modification of Development Consent SF9320 under Section 96(1A) of the EP&A Act 1979 by SET Consultants for Pindan Capital Berry Pty Ltd and dated 18 January 2018.*
- ix) Revised staging and layout plan, Huntingdale Park Estate, Princes Highway and Kangaroo Valley Road, Berry for Pindan Capital Berry Pty Ltd Ref: No. 103000 prepared by SET Consultants and dated 18 January 2018, as amended by this Consent (Note this plan superseded that approved in DS17/1155)."*

Justification

Additional conditions added to reference the plans submitted with this application.

SECTION 96(1A) – STATUTORY CONSIDERATIONS

Section 96(1A) of the *EP&A Act* provides that the consent authority may modify a development consent provided that the requirements set out in subsections (1A)(a)-(d) are met. Our consideration of the requirements of these subsections is set out below.

(1A)(a) – minimal environmental impact

This subsection requires the consent authority to be satisfied that the proposed modification is of minimal environmental impact.

We submit that the modifications proposed are of minimal environmental impact. The purpose and intent of the subject conditions as presently drafted is preserved in the conditions as proposed to be modified.

The proposed amended layout occupies the same development footprint as consent SF9320 and requires no additional clearing of vegetation. The proposed modifications address Council's concerns with existing approved layouts including the maintenance of the road reserve off Parker Road (south) and the required asset protection zones adjoining the southern core riparian zone.

A supplementary flora and fauna assessment has been prepared by Kevin Mills and Associates to address the potential environmental impacts resulting from the proposed modifications (Annexure E). The report

maps an area of rainforest Endangered Ecological Community (EEC) and considers impacts on local threatened and endangered flora, including migratory species. The proposal was found to be unlikely to impact upon native flora and fauna (Annexure F). A biodiversity development assessment report is not warranted. Accordingly, Council can be satisfied that the modifications proposed are of minimal environmental impact.

A draft vegetation management plan has been prepared for the public reserve lot (Annexure E). The VMP will be finalise as part of the controlled activity permit application to NSW Office of Water (Department of Primary Industries), which is required to be submitted to NOW as part of the stage 8 and 9 works.

(1A)(b) – substantially the same development

This subsection requires the consent authority to be satisfied that the development to which the consent as modified relates is substantially the same development for which the consent was originally granted.

We submit that the modifications proposed to the layout do not affect the approved development in a material respect. The original Consent, issued in 2003 approved 276 residential lots, 1 community lot, 1 medium density lot and public open space, for a total of 279 lots. The proposed modifications will result in a total of 249 residential lots, three medium density lots and public open space (including land for community facilities) for a total of 253 lots.

Figures 1 and 2 below show the original approved layout and proposed modified layout. The original approved development covered a nominally larger footprint than the current layout and also had a larger overall lot yield. The location of roads, community facilities and medium density lots has not changed and will not be affected by the current s96 application.

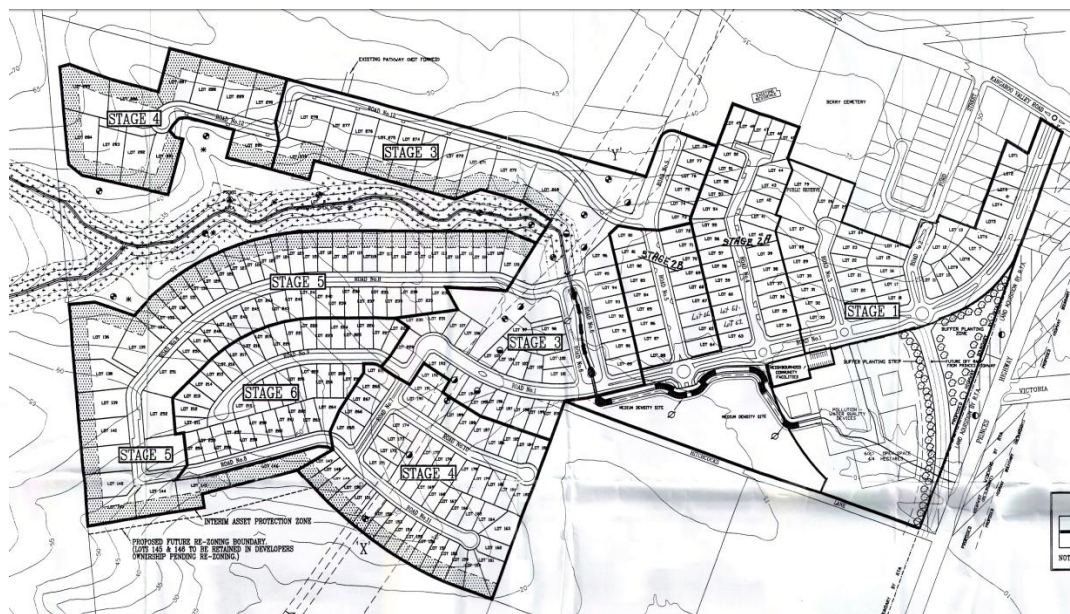


Figure 1: Subdivision layout approved under SF9320

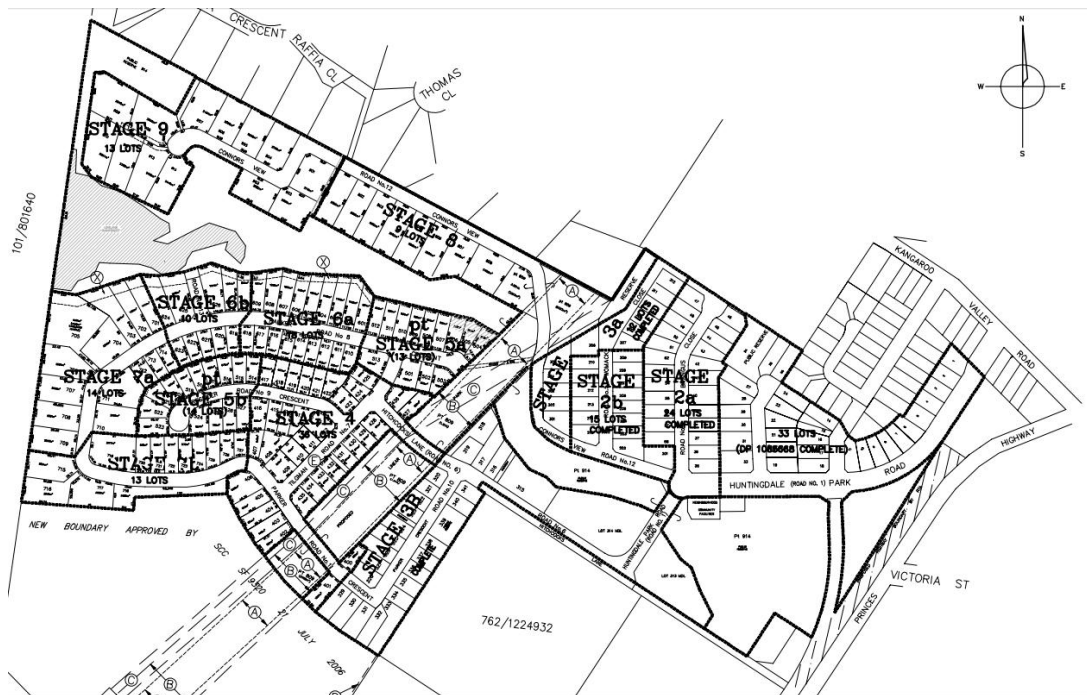


Figure 2: Subdivision layout proposed

The amendments proposed primarily seek to modify the lot layout to address Council's maintenance concerns relating to the road reserve on the southern side of Parker Road (now Lot 718) and the required APZs for properties adjoining the southern core riparian zone. Council do not wish to have maintenance liability for the road reserve on Parker Crescent, therefore this area has been reverted back to the previously approved lot layout (DS16/1420). Council have also raised concern with the maintenance requirements for asset protection zones along the riparian corridor. To address this issue the lot boundaries have been extended to encompass the entirety of the asset protection zone, thus placing them within private ownership and removing the maintenance burden from Council. The asset protection zones do not impinge on the core riparian zone or the EEC. It should be noted that the APZ impact exists regardless of whether the land is in private or public ownership, therefore the only impact of the proposed change relates to the ownership and maintenance responsibility shifting from public to private.

The proposed amendments, as noted above, occupies substantially the same development footprint as the original consent, requires no additional clearing and is substantially the same proposal as was approved by Council in SF9320. The proposed modifications are consistent with the objectives of the *Shoalhaven Local Environmental Plan 2014* and conform to all relevant Council development control plans. Accordingly, Council can be satisfied that the development to which the consent as modified relates is substantially the same development as that for which consent was originally granted.

(1A)(c) – Notification

This subsection requires the consent authority to notify the modification application in accordance with the regulations, if it so requires, or a development control plan.

Council will determine any requirement to notify the application in accordance with the requirements of this subsection.

(1A)(d) – Submissions

This subsection requires the consent authority to consider any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Council will comply with the requirements of this subsection in the course of its assessment of the application.

Conclusion

It is respectfully requested that Shoalhaven City Council modify the consent as requested in accordance with S.96 of the *EP&A Act*. Should you wish to discuss this matter further please contact David Cannon or Adrian Riepsamen direct at our office.

Yours faithfully
SET Consultants Pty Limited



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Annexure A – Letter of Authority from the owners
Annexure B – Approved Subdivision Plan (DS17/1155)
Annexure C – Comparison Plan (dated 18 January 2018)
Annexure D – Revised Subdivision Plan (dated 18 January 2018)
Annexure E – Draft Vegetation Management Plan
Annexure F – Flora and Fauna Assessment (dated January 2018)