

24th April 2024

The General Manager
Tamworth Regional Council
Box 555
Tamworth, NSW 2340

**Section 4.55(1A) – Lot 200 DP1271202 & Lot 57 DP1195840
Modification of DA0278/2015
Statement of Environmental Effects Submission**

Introduction

The Bathla Group seeks to modify an existing development consent DA0278/2015 (as modified).

This application is made under section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the EP&A Act).

Tamworth Regional Council (Council) originally granted the above-mentioned development consents on 20th May 2015.

DA0278/2015 has been modified a number of times over the past 9 years, including modifications approved on:-

- 3rd November 2016 (MOD2017/0012) and
- 17th November 2021 (MOD2020-0092)

This request seeks to modify **condition 40 of DA0278/2015**. This application follows on from discussions with Council regarding the delivery strategy for the construction of dual lane Calala Lane roundabout. The proposed modification is aimed specifically to providing flexibility on how the condition may be managed in the future.

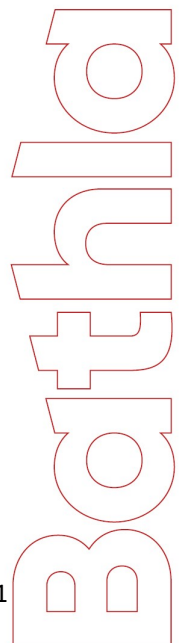
Current Amended condition 40 (DA0278/2015) states:

40. External roads

The proposed dual lane roundabout on Calala lane adjacent to the Water Treatment plan shall be designed in accordance with Council's Engineering Design Minimum Standards for Subdivisions and Developments and Austroads Guide to Road Design part 4B.

The roundabout, access road and associated civil infrastructure shall be constructed on creation of 150 lots or construction of 150 dwellings within the development, whichever occurs first. This condition and the developer shall bear all costs associated with the roundabout and access road (and civil infrastructure) into the development site.

This condition shall take into consideration lots created and dwellings constructed as part of DA0278/2015 & DA0190/2013 inclusive, and any other development within Lot 1 DP1211619



Advisory note:

1. *In accordance with regulatory requirements, a plan of the roundabout shall be submitted to Local traffic Committee for comment and acceptance prior to issue of a construction certificate.*
2. *Any landscaping shall be shown on the design drawings and included in the landscaping plan. Any proposed landscaping shall be designed such that it does not interfere with the design sight distances of the roundabout in accordance with relevant Austroads guidelines.*
3. *Pursuant to normal engineering practice and the requirements of the various utilities' providers, the roundabout design shall make provision for protection and/ or relocation of all utility services, including optic fibre.*
4. *Council will consider a roundabout design incorporating a single circulating lane, slip lane entering the proposed development and separated bypass for the west-bound traffic on Calala lane as meeting the requirement for a dual lane roundabout*

Requested Change to condition 40 (DA0278/2015):

40. External roads

The proposed dual lane roundabout on Calala lane adjacent to the Water Treatment plan shall be designed in accordance with Council's Engineering Design Minimum Standards for Subdivisions and Developments and Austroads Guide to Road Design part 4B. The dual-lane roundabout, access road and associated civil infrastructure shall be constructed or a single-lane roundabout, access road and associated civil infrastructure shall be constructed and an agreement to provide a financial contribution for a westbound bypass lane shall be entered into with Council, on creation of 150 lots of construction or 150 dwellings within the development, whichever occurs first. This condition and the developer shall bear all costs associated with the roundabout and access road (and civil infrastructure) into the development site. This condition shall take into consideration lots created and dwellings constructed as part of DA0278/2015 & DA0190/2013 inclusive, and any other development within Lot 1 DP1211619

This current request seeks to modify consent **condition 40 of DA0278/2015** in relation to the timing and threshold lot yields as to construction of Calala Lane Roundabout. The advisory Note remains unchanged.

Prescribed Form

The application is made in a form prescribed in Section 100 of the Environmental Planning & Assessment Regulations as follows:

Section 100 (1)(a) the name and address of the applicant.

The Bathla Group – 137 Gilba Road Girraween NSW 2145

Section 100 (1) (c) the address and folio identifier of the land

Lot 200 DP1271202 7 Lot 57 DP1195840 The Outlook Estate Tamworth

Section 100 (1)(b) a description of the development that will be carried out.

This current request seeks to modify consent **condition 40 of DA0278/2015** in relation to the timing and payment of the construction of the Calala Lane Roundabout.

The intent of the modification is to provide sufficient flexibility to Council to vary the condition if an alternate funding and timing arrangement was negotiated between the landowner and Council for alternate strategies.

No change to approved subdivision plans and engineering plans are proposed nor required.

Section 100(1)(d) a description of the modification to the development consent.

Section 4.55 provides that a consent authority may on application modify the consent if, among other things, 'it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)'.

Both a qualitative and quantitative comparison is required to identify and compare the material and essential features of the two developments (Moto; Feldkirchen Pty Ltd v Development Implementation Pty Ltd [2022] NSWCA 227 at [112] (Preston CJ); 47 Boronia Street Pty Ltd v Georges River Council [2021] NSWLEC 1173 at [10]).

It is our submission that the proposed modification to Condition 3 meets the test of “substantially the same development”. The requested changes merely give the ability to amend timing and funding arrangements reflected in a supplementary development agreement/deed.

Section 100 (1) (e) whether the modification is intended to-

- (i) merely correct a minor error, misdescription or miscalculation, or**
- (ii) have another effect specified in the modification application,**

The requested changes merely give the ability to amend timing and funding arrangements reflected in a supplementary development agreement/deed; Condition 40 remains largely intact.

Section 100 (1) (f) a description of the expected impacts of the modification,

Section 4.15 of the Environmental Planning and Assessment Act 1979 contains matters that need to be considered for any development application and Modification.

- (1) Matters for consideration--general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—*
 - (a) the provisions of--*
 - (i) any environmental planning instrument, and*
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) any development control plan, and*

- (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
- (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) the suitability of the site for the development,*
- (d) any submissions made in accordance with this Act or the regulations,*
- (e) the public interest.*

There will be no change in any potential impacts arising because of the proposed request for flexibility provided to the condition by way of reference to any future alternate agreement reached with Council reflected in the development Agreement.

The impact on infrastructure services and supply as well as traffic generation and impact on major external intersections will remain the same with the potential alternate agreement as to the construction & timing of Calala Lane Roundabout.

Any potential impacts relating to triggers and timing of the works need not be assessed in the MOD request as these can be considered prior to any future agreement being reached.

The site will continue to be suitable for the approved use and substantially the same development after the requested amendment is made with the public interest not diminished because of the modification request.

The MOD request will assist in meeting the objects of the EP&A Act 1979 specifically 1.3 (c) & (d) which are as follows:-

- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*

The MOD request will:-

- Ensure the timing of infrastructure works coincides with the demand for such works on the road network. The provision will ensure that funds are not spent in the development cycle ahead of demand for such services.
- Enable Council to manage the infrastructure works in a manner to Council's satisfaction and guarantee Council's standards are adhered to
- The delivery of efficiencies and improvements to service to the local community when needed results in the optimum delivery program is available supporting the Object 1.3 (c) of the Act.
- The efficient timing of infrastructure will assist in lowering the cost of land development contributing to the potential delivery of more affordable housing supporting the Object 1.3 (d) of the Act.

Section 100 (1)(g) an undertaking that the modified development will remain substantially the same as the development originally approved,

The site is zoned Residential R1 under Tamworth Regional Environmental Plan 2010; the objectives of the zone are: -

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed modification makes NO CHANGES to the approved and existing subdivision layout. We confirm that the proposed development, with the approval of the requested modification will substantially result in the same development - no significant change will occur.

Section 100 (1)(h) for a modification application that is accompanied by a biodiversity development assessment report-the biodiversity credits information,

Not applicable to this Modification Request

Section 100 (1)(j) whether the modification application is being made to-

The application is being made to Council as the Consent Authority under the EP&A Act

Section 100 (3) 1f a modification application under the Act, section 4.55(1A) or (2) relates to BASIX development, or BASIX optional development if the development application was accompanied by a BASIX certificate.

Not applicable to this subdivision modification request.

Conclusion

The foregoing submission has been prepared in accordance with Section 99 and 100 of the EP&A Regulations.

The Modification request results in substantially the same development as approved in DA0278/2015, including modifications approved on:-

- 3rd November 2016 (MOD2017/0012) and
- 17th November 2021 (MOD2020-0092)

If you require any further information, please do not hesitate to contact me.

Yours truly,



Graeme Allen
Managing Director

Mobile 0411824476