

COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSTH-283
<b>Parent DA Number</b>	RA21/1002
<b>Modification Number</b>	DS23/1276 PAN355814
<b>LGA</b>	Shoalhaven City Council
<b>Requested Modification</b>	<p>The modification application involves minor design amendments to the approved materials recycling facility to:</p> <ul style="list-style-type: none"> <li>• Include additional pedestrian doors in the east, north and west elevations</li> <li>• Remove polycarbonate roof panels</li> <li>• Relocate the accessible parking spot to a more functional location</li> <li>• Amend the stormwater plan to avoid flows onto the adjoining property</li> <li>• Update the Bushfire Assessment Report.</li> </ul>
<b>Street Address</b>	Flatrock Road, Mundamia – Lot 436 DP 808415
<b>Applicant/Owner</b>	<p>Applicant: Shoalhaven City Council</p> <p>Owner: Shoalhaven City Council</p>
<b>Date Lodged</b>	25 August 2023
<b>Owner's consent</b>	Yes
<b>Number of Submissions</b>	NIL
<b>Recommendation</b>	Approval
<b>Regional Development Criteria (Schedule 6 of the SEPP (Planning Systems) 2021)</b>	<p>Schedule 6 Section 3(a) – Council related development over \$5 million</p> <p>The development has a capital investment value (CIV) of more than \$5 million, Council owns the land, and Council will develop and operate the facility.</p>
<b>List of all relevant s4.15(1)(a) matters</b>	State Environmental Planning Policy (Planning Systems) 2021
<b>List all documents submitted with this report for the Panel's consideration</b>	<p>Attachment 1 - Section 4.15 Assessment Report (parent DA)</p> <p>Attachment 2 - Determination Document – Amended - Approval</p> <p>Attachment 3 – Rural Fire Service Advice</p> <p>Attachment 4 - Amended Plans</p> <p>Attachment 5 – Amended Bushfire Assessment Report</p>
<b>Section 4.6 requests</b>	N/A – Request for height variation was found acceptable at parent DA stage
<b>Summary of key submissions</b>	N/A – Nil submissions received
<b>Report prepared by</b>	<b>Consultant Planner: Louise Munday</b>
<b>Report date</b>	23 January 2024

**Summary of s4.15 matters**

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	<b>Yes</b>
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**Legislative sections requiring consent authority satisfaction**

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report?	<b>Yes</b>
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**Section 4.6 Exceptions to development standards**

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	<b>Not applicable</b>
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**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)?	<b>No</b>
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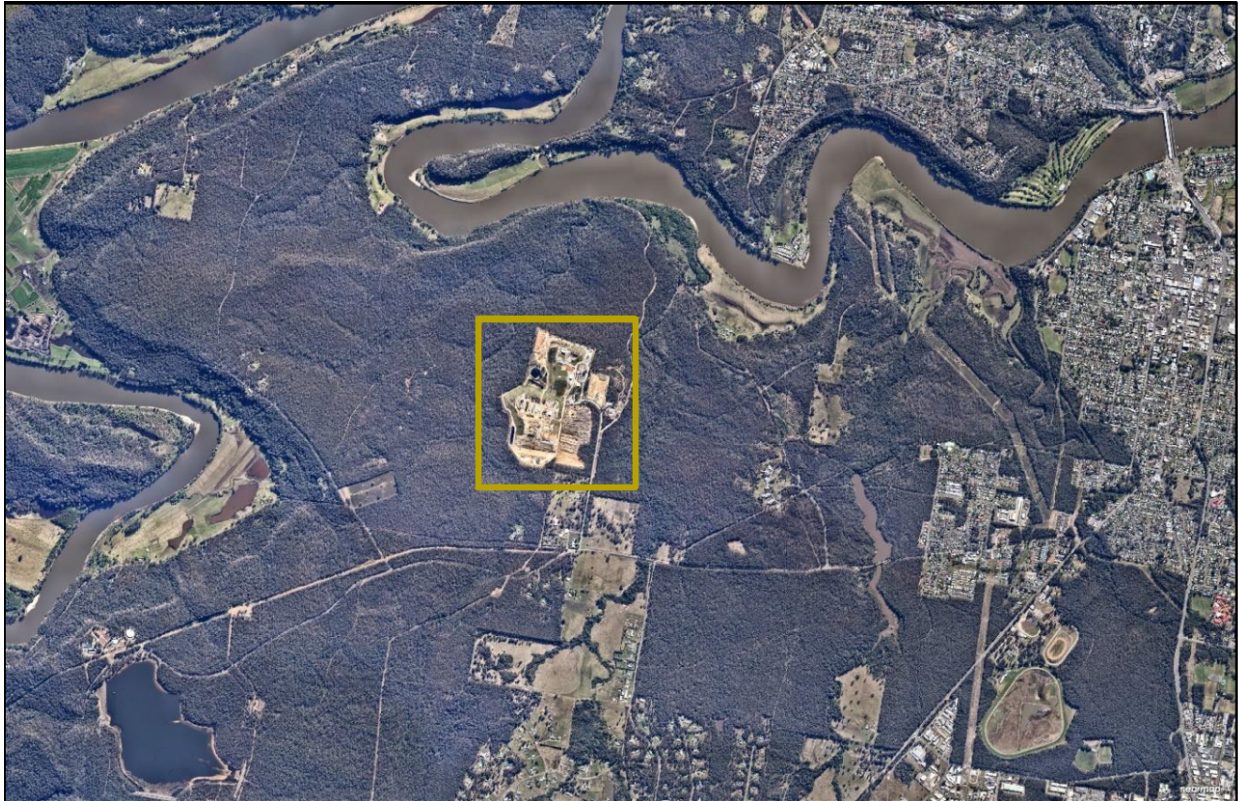
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**Conditions**

Have draft conditions been provided to the applicant for comment?	<b>Yes</b>
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## Executive Summary

The modification application relates to land described as Lot 436 DP 808415, and addressed as Flatrock Road, Mundamia (the site). The site is located approximately 3km west of the Nowra town centre and is within the existing West Nowra Waste Facility (the waste facility) owned and operated by Shoalhaven City Council. The waste facility exists over several lots and accommodates a range of waste related activities, including landfill and recycling. The site is situated on the lot in the northwest corner of the waste facility and in the western part of that lot (refer to **Figure 1**).



*Figure 1. Locality plan*

The site is zoned SP2 Infrastructure (Waste Facility) under the Shoalhaven Local Environmental Plan 2014 (SLEP 2014). The MRF is permissible, with consent, as an activity that is ordinarily incidental or ancillary. The site is on bushfire prone land classified as Category 1 (majority of the land) and Category 2 (a small part of the land).

The consent for RA21/1002, issued 22 December 2022, is for construction of a MRF with a maximum processing capacity of 24,000 tonnes per annum. The modification application seeks replacement of some of the approved plans and the bushfire assessment report, and consequential modification of Conditions 1 and 7. The requested amendments are considered minor, and the development would be substantially the same as the approved development.

The modification application seeks to replace the following approved plans and documentation:

- Site plan
- Ground floor plan
- Roof plan
- Elevations
- Sections
- Stormwater plan
- Bushfire Assessment Report.

And to amend conditions 1 and 7 to reflect approval of the amended plans and bushfire assessment report. The covering letter for the modification application indicates the changes are generated by the need to comply with the NCC, and specifically to improve internal travel paths to external pedestrian doors to enable adequate emergency egress.

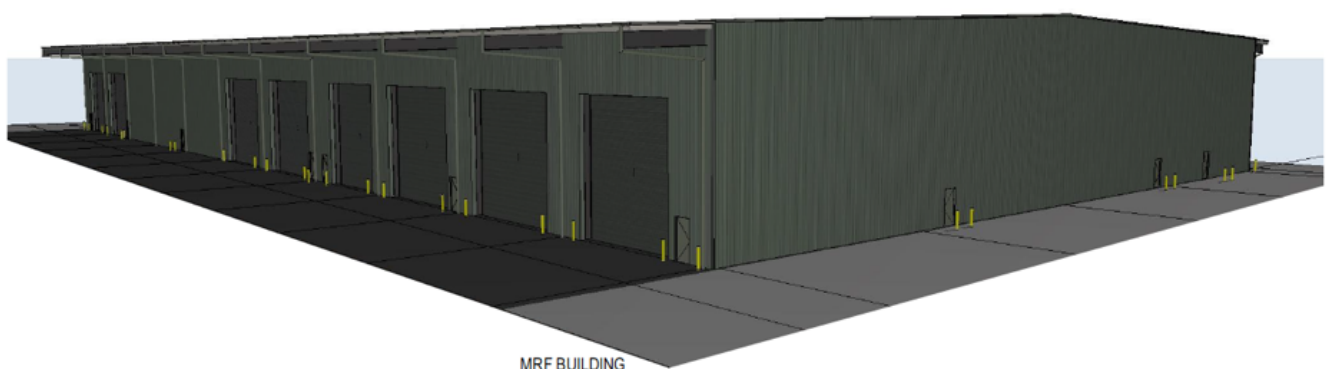
The table on page 15 details the approved plans to be replaced and the requested replacements. In summary, the requested modifications would result in:

- Additional pedestrian doors (3 additional on the north elevation, 2 additional on the west elevation) and 1 door relocated on the east elevation
- Relocation of the accessible parking spot to the middle of the parking area
- An amended stormwater plan to avoid flows onto the adjoining property
- Updated bushfire protection measures (noting that the approved bushfire assessment report was based on NCC Class 10 (shed) and the current is based on NCC Class 8 (industrial)).

The modification application involves regionally significant development as it has a capital investment value of more than \$5 million and the applicant, owner and developer of the proposed development is Shoalhaven City Council. The parent Development Application RA21/1002 to the Modification Application DS23/1276 was declared to be regionally significant development under Schedule 6 section 3(a) of SEPP Planning Systems. The Southern Regional Planning Panel determined the parent development application. The modification application is, therefore, referred to the Panel for determination.

Council notified the modification application in accordance with the *Environmental Planning and Assessment Regulation 2000* and the *Shoalhaven Community Consultation Plan*, from 6 September 2023 to 6 October 2023. No submissions were received in response to the notification.

The modification application has been assessed against the relevant requirements of section 4.55(2) and (3) of the *Environmental Planning and Assessment Act 1979* and no additional issues are raised, with the exception of bushfire risk assessment and protection measures. While the Rural Fire Service (RFS) is not an approval body, and the amended bushfire risk assessment was certified, for reasons discussed in this report, the modification application was referred to the Rural Fire Service (RFS). The subsequent RFS advice and consequential implications for the assessment of the modification application are discussed in detail in the report and resulted in additional recommended conditions.



*Figure 2. 3D Impression of the amended MRF (looking from southwest)*



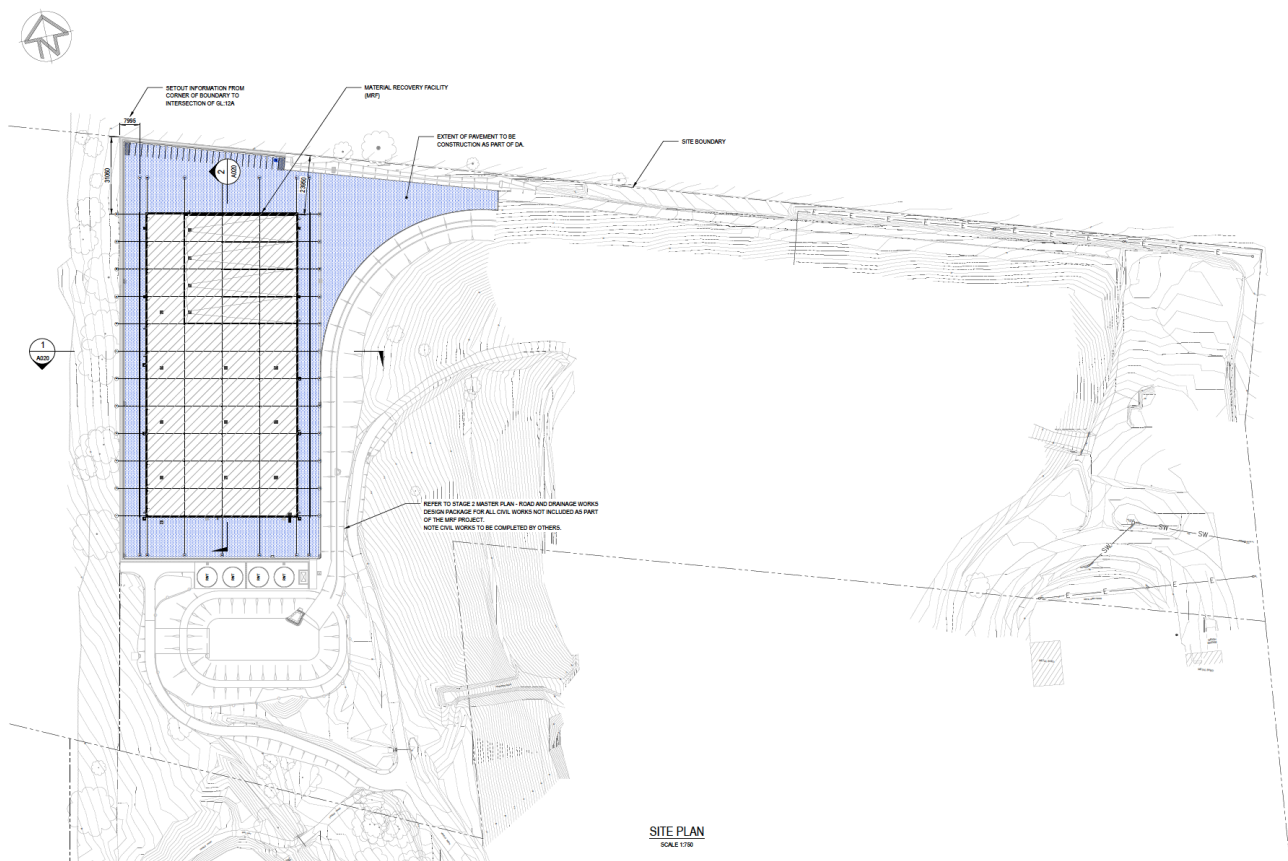
## 1. Approved Development

The approved development is the construction and operation of a Materials Recycling Facility (MRF) at the waste facility. The MRF will comprise:

- Enclosed metal building 121m by 68m, 10m high at the eaves and 12.065m high at the ridge
- Within the building, equipment with up to 24,000 tonnes per annum recycling capacity
- Building footprint of 7260m<sup>2</sup>
- Internal footprint of 5000m<sup>2</sup> – including receiving hall and bunker approximately 1980m<sup>2</sup>
- Stormwater infrastructure and on-site sewage treatment
- Earthworks, access roads and carparking.

The siting and orientation of the proposed building are shown in **Figure 3**. The MRF will be situated in the north west corner of the subject lot (refer to **Figure 5** for aerial photograph view of site plan).

Refer to **Attachment 4** for a copy of the plans, and **Attachment 5** for a copy of the amended bushfire assessment report.



*Figure 3: Site plan (approved development)*

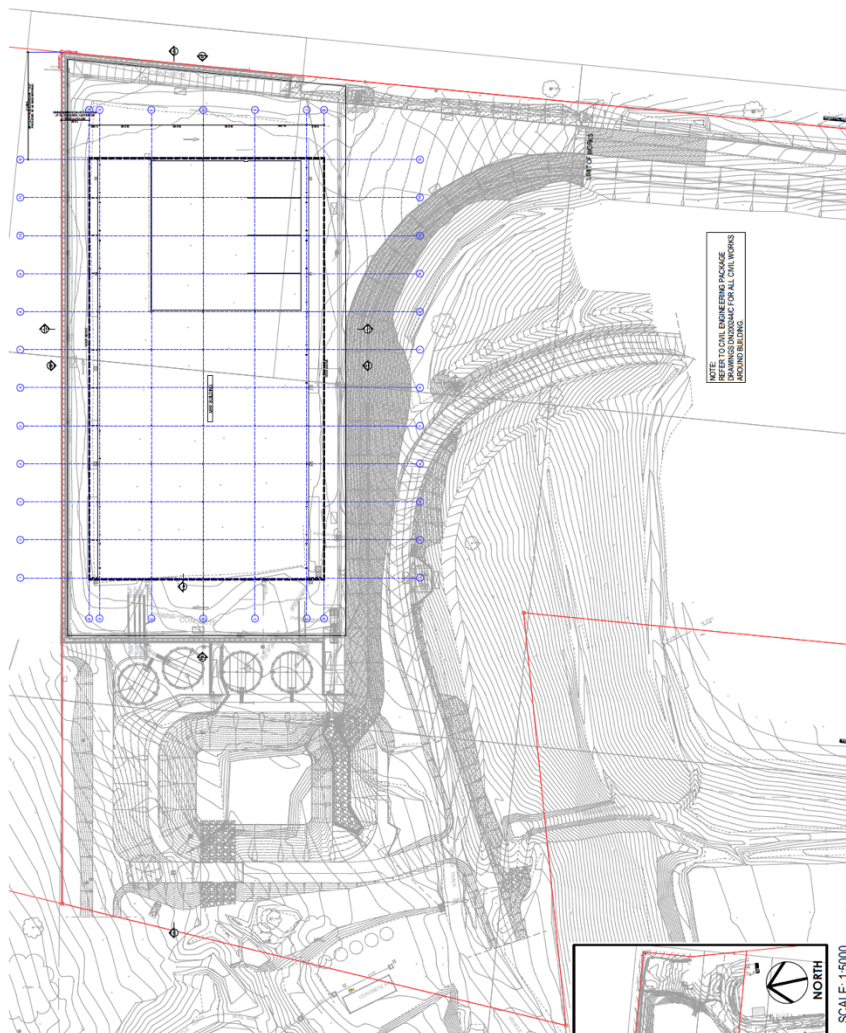


Figure 4: Site plan (requested modification)

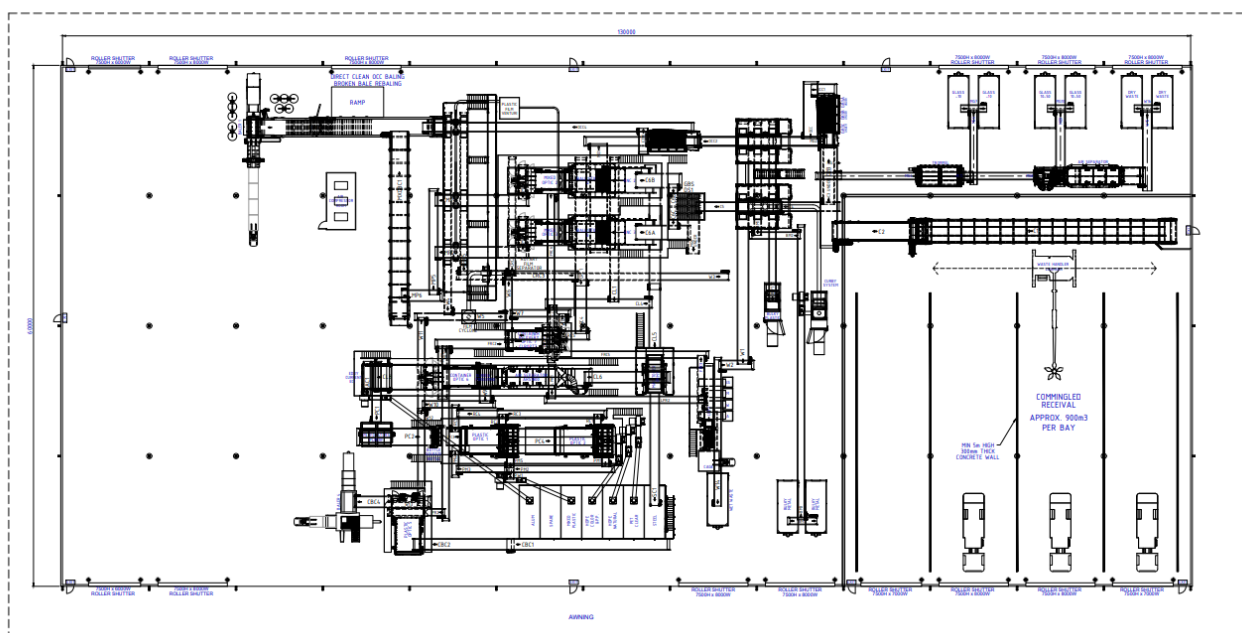


Figure 5: Indicative layout within the proposed building (approved development)



## 2. Subject Site and Surrounds

The site is located approximately 3km west of the Nowra town centre and is within the existing the waste facility that is owned and operated by Shoalhaven City Council. The waste facility exists over several lots and accommodates a range of waste related activities, including landfill and recycling, weighbridge, waste drop-off and sorting, community recycling drop-off, buy-back centre, green waste stockpiles, sedimentation ponds, numerous buildings and staff facilities, and access roads. Vehicle access to the waste facility is from Flatrock Road, and an internal road provides access around to waste facility and to subject lot (main vehicle access to the subject lot and the site is via the northern boundary).

The subject lot is in the northwest corner of the waste facility and the approved MRF will be in the northwest corner of the subject lot. The subject lot is approximately 8.29ha. The site is cleared of vegetation and preliminary earthworks have been undertaken (refer to **Figure 6**).



*Figure 6: Site location at the north west corner of the waste facility and subject lot*

The following nearby proposals are underway:

- RA23/1004, lodged 28 September 2023 and under assessment (adjacent lot to south east of the subject lot, known as 120 Flatrock Road, Mundamia, also within the waste facility,) - construction of a waste resource learning centre
- SSD-7015, approval 25 August 2016 (land adjacent to the east of the waste facility, known as 114 Flat Rock Road, Mundamia) - Concept and Stage 1 resource recovery facility (RRF). The whole of the land has been cleared and levelled. The RRF will have a capacity to process 130,000 tonnes of waste (including composting and demolition waste) and will have its own vehicle access off Flatrock Road.

To the south of the waste facility there are rural properties, some with dwellings, and community facilities (zoned R1, RU2, E1 and SP2). To the south east is the National Parks and Wildlife Service Depot at 104 Flatrock Road (zoned SP2). Bushland adjoins the site to the west and north (zoned C1/C3).

### 3. Background

#### Requested modification

The modification application seeks replacement of some of the approved plans and the approved bushfire assessment report, and consequential amendment of conditions 1 and 7 to reflect approval of the amended plans and bushfire assessment report. The covering letter to the modification application indicates:

- The amended plans are a result of having to meet requirements of the NCC – specifically to provide safe travel paths and emergency egress
- The amended bushfire assessment report is required to correct a typographical error (although, on review it was found that there were more significant amendments to the bushfire assessment report as discussed in Sections 4 and 7 of this report).

The following table shows the approved plans and documentation to be replaced (struck out) and the requested replacement plans and documentation (in italics) and is based on the most recent amended documentation submitted.

Stamped plans/documents	Ref/sheet no.	Prepared by	Dated
<del>Site Plan</del>	<del>Project No DN200244 Drawing No. A001</del>	<del>MI Engineers</del>	<del>03/11/2022 (Revision C)</del>
<i>Site Plan</i>	<i>Project No. 8983 Drawing No. A.1002</i>	<i>BHI Architects</i>	<i>23/10/2023 Issue C</i>
<del>Stormwater Plan</del>	<del>Project No DN200244 Drawing No. C200</del>	<del>MI Engineers</del>	<del>04/06/2021 (Revision C)</del>
<i>Stormwater Plan</i>	<i>Project No DN200244 Drawing No. C200</i>	<i>MI Engineers</i>	<i>26/10/2023 Revision E</i>
<del>Ground Floor Plan</del>	<del>Project No DN200244 Drawing No. A002</del>	<del>MI Engineers</del>	<del>03/11/2022 (Revision C)</del>
<i>Ground Floor Plan</i>	<i>Project No.8983 Drawing No. A.1003</i>	<i>BHI Architects</i>	<i>23/10/2023 Issue C</i>
<del>Roof Plan</del>	<del>Project No DN200244 Drawing No. A003</del>	<del>MI Engineers</del>	<del>03/11/2022 (Revision C)</del>
<i>Roof Plan</i>	<i>Project No. 8983 Drawing No. A.1004</i>	<i>BHI Architects</i>	<i>23/10/2023 Issue C</i>
<del>Elevations</del>	<del>Project No DN200244 Drawing No. A004 &amp; A005</del>	<del>MI Engineers</del>	<del>03/11/2022 (Revision C)</del>
<i>Elevations</i>	<i>Project No.8983 Drawing No. A.1005</i>	<i>BHI Architects</i>	<i>23/10/2023 Issue C</i>
<del>Typical Cross Sections</del>	<del>Project No DN200244 Drawing No. A020</del>	<del>MI Engineers</del>	<del>03/11/2022 (Revision C)</del>
<i>Sections</i>	<i>Project No. 8983 Drawing No. A.1006</i>	<i>BHI Architects</i>	<i>23/10/2023 Issue C</i>



Bushfire Risk Assessment Report	Reference No. S021424	SET Consultants Pty Ltd	20/05/2022
Bushfire Risk Assessment Report	BRA-S021424	SET Consultants Pty Ltd	29/11/2023 Ver 6

## Post lodgement

While the requested amendments are considered minor, and the resulting development would be substantially the same as the approved development, Council generated a request for further information (RFI) in regard to the consistency and accuracy of the lodged plans and bushfire assessment report and requested clarity on the extent of the modifications being requested (refer to **Attachment 1**). Significantly the new plans and bushfire assessment report contained more changes than were indicated on the original application form and in the original covering letter.

Initially, the applicant identified the application as integrated development under the *Rural Fires Act 1993*. Subsequently, it was determined that the application is not integrated development under the *Rural Fires Act 1993*. Notwithstanding, when received, the amended bushfire assessment report was referred to the Rural Fire Service (RFS). The RFS responded with a RFI (refer to **Attachment 2**) and this led to further recommended modifications to the original conditions of consent (as discussed in Section 7 of this report and the recommendation). The table below presents a chronology of the applicant's responses to both RFI's and subsequent amendments, referrals and correspondence.

Action	Date	Summary
Council RFI to applicant	22/09/23	<ul style="list-style-type: none"> <li>Update bushfire assessment report to address inaccuracy, inconsistency and required amendment to consent condition 7.</li> <li>Update plans to address inaccuracy, inconsistency and correctly identify all changes on the amended plans in colour or colour bubble.</li> <li>Update the application form to describe the requested changes accurately.</li> </ul>
Applicant response to RFI	27/10/2023	<ul style="list-style-type: none"> <li>Updated bushfire assessment report and plans</li> <li>Updated description of requested modification.</li> </ul>
Referral to RFS	31/10/2023	Amended bushfire assessment report v. 5 referred to RFS.
RFS Email	31/10/2023	RFS to Council questioning referral as original DA was not referred.
PPSTH Briefing	31/10/2023	Council staff and their planning consultant, and the applicant provided a preliminary briefing to the Panel.
Applicant letter	06/11/2023	Applicant to Council confirming application is not integrated under the <i>Rural Fires Act 1993</i> and requesting Council assess it as non-integrated.
RFS response - RFI	08/11/2023	DA20231031004892-Original-1 Request for additional detail on roofing and framing. Clarification re inclusion of elevated floor and sub-floor support standards, and reasons for exclusion of the eastern wall from recommended conditions.
RFI response	29/11/2023	Revised bush fire report (version 6) addressing the RFS RFI dated 8 November 2023 (DA20231031004892-Original-1).

RFS response	21/12/2023	Recommended conditions.
Applicant and RFS Meeting	18/01/2024	RFS offered to revisit their bushfire report information/inaccuracies particularly when there is an option to increase the APZ.
Applicant email	19/01/2024	Applicant requested the assessment continue on the basis of available information.

#### 4. Consultation and Referrals

Internal Referrals		
Referral	Recommendation Summary	Comment
Building Surveyor	No concerns are raised with the proposed modification. No new conditions, or modification to existing conditions required to address BCA matters.	No action required.

Internal referrals were undertaken in the assessment of the parent development application, resulting initially in additional information requests. All internal referrals completed assessments, and provided consent conditions in relation to:

- NCC compliance process (Council was not appointed principal certifier)
- Development engineering (earthworks, stormwater, access roads)
- Environmental health (potential land contamination)
- Environmental assessment (flora/fauna protection, clearing for APZs, stormwater run-off,)
- Shoalhaven Water (water servicing)
- City Services (restricting increase in heavy vehicle movement).

Given the modification application seeks minor amendments to the approved development, it is considered the modification application raises no additional matters that require further internal referrals (noting that none of the internal referrals' conditions require amendment).

External Referrals		
Agency	Recommendation	Comment
Rural Fire Service	<p>Provided advice 21 December 2023 recommending other conditions on:</p> <ul style="list-style-type: none"> <li>• Bush Fire Emergency Management and Evacuation Plan</li> <li>• Maintenance of an inner protection area</li> <li>• Construction standards – BAL40</li> <li>• Property access</li> <li>• Water and utility standards</li> <li>• Landscaping assessment</li> </ul>	Refer to discussion in Section 7. RFS recommended conditions that are additional to those in the bushfire assessment report have been included in the attached recommended determination.

	Significantly under construction standards the RFS recommend the walls, roof and eaves of the MRF building are BAL-40 construction	
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## 5. Other Approvals

There are no other approvals required. As per the discussion in Section 7, the original approval from the Environmental Protection Authority remains unchanged.

## 6. Statutory Considerations

This report assesses the proposed modification against relevant State, Regional and Local Environmental Planning Instruments and policies in accordance with sections 4.55(2) and (3) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as described in Section 7.

## 7. Assessment

### Section 4.14 Environmental Planning and Assessment Act 1979

Under s 4.14 the consent authority must be satisfied that the development resulting from the requested modification conforms to the applicable specifications and requirements of *Planning for Bush Fire Protection 2019* and can reach this conclusion under its own assessment (s4.14(1)(a)), by receiving certification from an accredited certifier (s 4.14(1)(b)), or by referral to the RFS (s4.14(1A)).

The consultant that prepared the amended bushfire assessment report has accreditation (BPAD 23829 (LEVEL 3) and is, therefore, recognised for the purposes of s 4.14(1)(b). The consultant provided certification that *subject to the recommendations contained in the attached Bushfire Risk Assessment Report the proposed development conforms to the relevant specifications and requirements*.

Notwithstanding, and as a result of the modification application initially being identified as integrated development requiring referral to the RFS, the bushfire risk assessment report was referred. After receiving an amended bushfire assessment and additional information, the RFS provided advice that included a number of conditions (refer to **Attachment 3**). Significantly, the RFS advised the following as a recommended condition of consent:

*4. New construction to the walls and entire roof and eaves must comply with Sections 3 and 8 (BAL 40) Australian Standard AS3959-2018 Construction of buildings in bushfire-prone areas or the relevant requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of Planning for Bush Fire Protection 2019.*

The approved bushfire risk assessment report does not require construction to a relevant BAL (noting that the assessment in that report is based on building Class 10a – shed). The amended bushfire assessment report Ver.6 (updated following the RFS advice) includes a recommendation that *the roof system shall be designed to comply with Section 8.6 (BAL 40) of Australian Standard AS3959-2018 Construction of Buildings in Bush Fire-Prone Areas (2018)*.

Given the deemed to comply provisions do not apply to Class 5-8 buildings, *Planning for Bushfire Protection 2019* provides guidance on the assessment of bushfire risk and protection measures and states *compliance with AS 3959 and the NASH Standard must be considered when meeting the aims and objectives of PBP* (p76 Section 8.3.1 Buildings of Class 5 to 8 under the NCC). In relation to construction standards, the guidance states *construction requirements for bush fire protection will need to be considered on a case-by-case basis*. The guidance also refers to the

following objectives to be applied in relation to access, water supply and services, and emergency and evacuation planning. To provide:

- *Safe access to/from the public road system for firefighters providing property protection during a bush fire and for occupant egress for evacuation*
- *Suitable emergency and evacuation (and relocation) arrangements for occupants of the development*
- *Adequate services of water for the protection of buildings during and after the passage of bushfire, and to locate gas and electricity so as not to contribute to the risk of fire to a building*
- *Storage of hazardous materials away from the hazard wherever possible.*

The RFS state they *have undertaken a performance based assessment under Section 8.3.1 - Buildings of Class 5 to 8 under the NCC - Planning for Bush Fire Protection 2019. Class 5 to 8 buildings are assessed on a case-by case basis. The recommendations herein are commensurate with the proposal's size, setbacks to vegetative hazards, and use.*

While the RFS stress their advice is a recommendation only, under s 4.14 of the *Environmental Planning and Assessment Act 1979*, their advice has raised additional matters for consideration in relation to the assessment of the modification application. The RFS recommended conditions reflect the guidance discussed above and respond to the stated objectives. This report, therefore, recommends that the Panel, as the consent authority, have due regard for the RFS advice. Accordingly, the RFS recommended conditions that are additional or more stringent to those in the bushfire assessment report are included in the recommended modified consent (**Attachment 2**).

#### **Section 4.55(2) Environmental Planning and Assessment Act 1979**

Section 4.55(2) states a consent authority may modify a consent if, in summary:

- (a) *It is satisfied that the development is substantially the same as the original development*
- (b) *It has consulted with a public authority/approval body in respect of conditions imposed*
- (c) *It has notified the application*
- (d) *It has considered any submissions made.*

#### ***The development is substantially the same as the original development***

A basic test of 'sameness' is whether the modification proposal consists of the same fundamental elements as the original. In this respect the requested modification would result in a development that consists of the same elements as contained in the approval for RA21/1002 being:

- An enclosed building (to house the MRF) 121m by 68m and 12m high (10m to the underside of the eave and a maximum of 12.065m at the highest point of the ridge)
- Building footprint of 7260m<sup>2</sup>
- Internal footprint of 5000m<sup>2</sup>
- Receiving hall and bunker approximately 1980m<sup>2</sup>
- Machinery and equipment capable of processing up to 24,000 tonnes/pa of kerbside recycling
- Stormwater infrastructure and on-site water storage
- Earthworks and access roads
- Landscaping.

The requested modifications relate to Condition 1 (to include amended plans) and Condition 7 (to include an amended bushfire assessment report). The amended plans incorporate:

- 9 new pedestrian access doors, three on the western elevation, two on the northern elevation and four on the eastern elevation (there are no doors on the southern elevation)
- Removal of polycarbonate roof sheeting inserts (to incorporate full metal roof sheeting)
- Amended parking layout to improve access to the MRF from the accessible parking space



- Amended stormwater and servicing detail to reflect original consent conditions.

The amended bushfire assessment report incorporates corrections and protection measures relevant to the amended plans. The amended bushfire report identifies a change of building classification from Class 10a to Class 8. While this amendment does not change the fundamental elements of the approved development, it has affected the assessment, particularly in relation to bushfire risk and protection measures as discussed above.

### ***Consultation with public approval authority in respect of original conditions***

Council consulted the NSW Environmental Protection Authority (EPA), the only public approval authority for the proposal. Condition 8 of the original consent stated:

*The conditions of the General Terms of Approval issued by the NSW Environment Protection Authority, Notice No: 1621579, dated 14 September 2022, as defining the Environmental Protection Licence 5877 (and its revisions), are included as conditions of this consent (as attached) and must be complied with.*

By letter dated 12 September 2023, the EPA replied that, as the proposal does not seek to modify the conditions of the consent that relate to the Environment Protection Licence No. 5877, the EPA does not have any comments to provide on the proposal (the requested modification).

### ***Notification and submissions***

Council notified affected owners of the modification application (2/09/2023 – 6/10/2023). No submissions were received. Further, no submissions were received in regard to the original development application when it was notified in 2022.

### **Section 4.55(3)**

Section 4.55(3) of the Act states that *in determining an application for modification of a consent, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

The assessment report for the original development application (**Attachment 1**) indicates the proposal meets the provisions of relevant State Environmental Planning Policies (SEPPs) and the relevant provisions and objectives under SLEP 2014 and SDCP 2014. Further, that any potential impacts can be adequately addressed via conditions of consent.

With the exception of the matters relating to bushfire risk assessment discussed above, the modification application raises no additional matters for consideration under s 4.15(1) as discussed in the following.

### **(a) Any planning instrument, draft instrument, DCP and regulations that apply to the land**

#### **i) Environmental planning instrument**

#### State Environmental Planning Policy (Planning Systems) 2021

Schedule 6.3(a), (b) and (c) apply as the approved development is has a capital investment value of more than \$5 million and Council is the applicant for the development, is the owner of the land and will carry out the development.

The original development application was referred to the Southern Regional Planning Panel (the Panel) for determination. Compliance with the relevant provisions of the SEPP are complied with by referral of the modification application to the Panel.

SEPP (Transport and Infrastructure) 2021

SEPP (Biodiversity and Conservation) 2021

SEPP (Resilience and Hazards) 2021

The original development application was assessed having regard to the relevant matters for consideration within these SEPP's and was considered to be acceptable. Given the modification application seeks minor amendments to the approved development, the modification application raises no additional matters for consideration under the relevant provisions of the above SEPP's.

Shoalhaven LEP 2014 (SLEP 2014)

The original development application was assessed against the following parts and sections of the SLEP 2014 and was considered to be acceptable:

- 2.3 Objectives of zone and land use table
- 4.3 Height of buildings
- 4.6 Exceptions to development standards
- 7.1 Acid sulphate soils
- 7.5 Terrestrial biodiversity
- 7.6 Riparian land and water courses
- 7.11 Essential services

The section 4.6 exception was for variation of the maximum building height from the 11m applicable under section 4.3 to a maximum of 12.065m at the ridgeline. The requested variation was found to be acceptable. The modification application does not involve any change to the maximum height of the building.

Given the modification application seeks minor amendments to the approved development, the modification application raises no additional matters for consideration under the relevant provisions of SLEP 2014.

**ii) Draft Environmental Planning Instrument**

NIL

**iii) Any Development Control Plan**

Shoalhaven DCP 2014 (SDCP 2014)

The original development application was assessed against the following provisions of the SDCP 2014 and was considered to be acceptable, with conditions imposed where appropriate:

- G2: Sustainable Stormwater Management and Erosion/Sediment Control
- G4: Tree and Vegetation Management
- G5: Biodiversity Impact Assessment
- G7: Waste Minimisation and Management Controls
- G8: Onsite Sewage Management
- G20: Industrial Development
- G21: Car Parking and Traffic.

Given the modification application seeks minor amendments to the approved development, the modification application raises no additional matters for consideration under the relevant provisions of SDCP 2014.

**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**

NIL

**iv) Environmental Planning and Assessment Regulation 2021 (Regulation 2021)**

When the parent DA, RA21/1002, the Regulation 2000 applied in accordance with Schedule 6 of the Regulation 2021 that provided “the 2000 Regulation continues to apply instead of this Regulation to a development application and an application for a complying development made but not finally determined before 1 March 2022.” The assessment found that *no specific parts of the EP&A Regulation are specifically applicable to the proposed development. No areas of concern are raised as a result of a review of the Regs.*

Given the modification application seeks minor amendments to the approved development, the modification application raises no additional matters for consideration under the Regulation 2021 (that is now applicable).

**v) Any coastal zone management plan**

N/A

**vi) Other Council Policies**

**Section 7.11 - Shoalhaven Contribution Plan 2019**

The approved development triggered a contribution under the Shoalhaven Contributions Plan 2019. Given the requested modification will not increase the gross floor area of the approved development, the amount of contribution is not affected.

**(b) The likely impacts of that development, including environmental impacts on the natural and built environments, and social and economic impacts in the locality**

The original development application was assessed against these heads of consideration and found to be acceptable. The report indicated minimal social impact, and that any natural, built, and economic impacts could be addressed by conditions of consent that were imposed in the determination.

Given the modification application seeks minor amendments to the approved development, the modification application raises no additional matters for consideration in terms of impacts.

**(c) Suitability of the site for the development**

The original development application was assessed against these heads of consideration and found to be acceptable. The report indicated the site was suitable for the development. While the RFS raised additional matters for consideration in relation to bushfire assessment and protection measures, their advice provided additional conditions (that are recommended for inclusion in the

modified consent) and the RFS advice did not raise concerns about the suitability of the site for the development.

Given the modification application seeks minor amendments to the approved development, the modification application raises no additional matters for consideration in regard to the suitability of the site.

#### **(d) Submissions made in accordance with the Act or the regulations**

Affected owners were notified of the modification application [2/09/2023 – 6/10/2023]. No submissions were received. Further, no submissions were received in regard to the original development application when notified.

#### **(e) The Public Interest**

As per the original assessment report, the approved development is acceptable in regard to relevant SEPP's, and the provisions of SLEP 2014 and SDCP 2014. Relevant conditions of consent were imposed so that the development is not expected to have any unacceptable negative impacts on the environment, or the amenity of the locality. The approved development was considered to have public benefit and to be in the public interest.

Given the modification application seeks minor amendments to the approved development, the modification application raises no additional matters for consideration in regard to the public interest.

#### **Consent Authority**

##### **State Environmental Planning Policy (Planning Systems) 2021 (SEPP Planning Systems)**

The parent Development Application RA21/1002 to the Modification Application DS23/1276 was declared to be regionally significant development under Schedule 6 section 3(a) of SEPP Planning Systems. The Southern Regional Planning Panel determined the parent development application. The modification application is, therefore, referred to the Panel for determination.

#### **Recommendation**

The modification application was assessed in accordance s 4.55(2) and (3) of the *Environmental Planning and Assessment Act 1979* and having regard to relevant s 4.15 (matters for consideration).

Assessment of the parent development application indicates, in summary:

- The development is:
  - Permissible with consent in the zone and is consistent with the zone objectives
  - Complying with applicable *Shoalhaven Local Environmental Plan 2014* objectives and controls (including acceptable s 4.6 variation of the applicable building height)
  - Consistent with the relevant *Shoalhaven Development Control Plan 2014* objectives and requirements
- The intended use is compatible with nearby land uses and potential natural, built, social and economic impacts can be addressed by conditions of consent



- The site is suitable for the development and the development is in the public interest.

Given the modification application seeks minor amendments to the approved development, the assessment of the modification application raises no additional matters for consideration under the relevant environmental planning instruments and policies, with the exception of bushfire protection that has been addressed in this report and in the recommended modified development consent.

It is recommended that Modification Application No. DS23/1276 relating to Development Consent No. RA21/1002 be approved subject to the recommended modifications to the development consent as detailed below:

- a) Modification of Condition 1 to include a modified table of approve documents and replace the table to Condition 1 in the original consent:
- b) Modification of Condition 7 to refer to the amended bushfire risk assessment (Version 6 dated 29/11/2023) and include additional Rural Fire Service conditions as provided in the advice dated 21/12/2023.

Louise Munday  
Consultant Planner  
23 January 2024