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STATEMENT OF ENVIRONMENTAL EFFECTS

PROPOSED MODIFICATION OF DA18/0429

**REALIGNMENT OF DRIVEWAY AS PART OF PROPOSED
TWO LOT SUBDIVISION**

No.60-64 BONNER RD, AGNES BANKS

DECEMBER 2021

cityscape planning + projects

abn: 37 089 650 386

phone: 4739 3374

mobile: 0408 866913

email: cityscape@cityscape.net.au

www.cityscape.net.au

post: PO Box 127

Glenbrook NSW 2773

This submission has been prepared by:



Vince Hardy BTP, RPIA
URBAN PLANNING CONSULTANT



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1.0 INTRODUCTION

Cityscape has been engaged to prepare a Statement of Environmental Effects (SEE) to accompany a proposed modification of development consent to be submitted on the subject site.

The SEE has been prepared pursuant to Section 4.55(1A) of the *Environmental Planning & Assessment (EP&A) Act 1979*, and clause 50 of the *Environmental Planning & Assessment Regulation, 2000*.

The purpose of this SEE is to:

- Describe the proposed modified development and its context
- Assess the development proposal against applicable planning instruments, standards and controls
- Assess the potential environmental impacts and mitigation measures

It has been compiled, through on ground investigations, research, analysis and discuss all accompanying plans and the reports that were lodged as part of the original Development Application (DA).

2.0 THE SUBJECT SITE

The subject site is a large irregular shaped parcel of land located on the southern side of Bonner Rd, approximately 20m east of its intersection with Eaton St. A plan showing the locality of the site is provided at Figure 1.

The site is known as No.60-64 Bonner Rd, Agnes Banks but has the following real property description:

Lot: B **DP:** 38896

Figures 2 and 3 provide a cadastral plan and aerial image of the site respectively.

FIGURE 1: LOCATION OF SITE

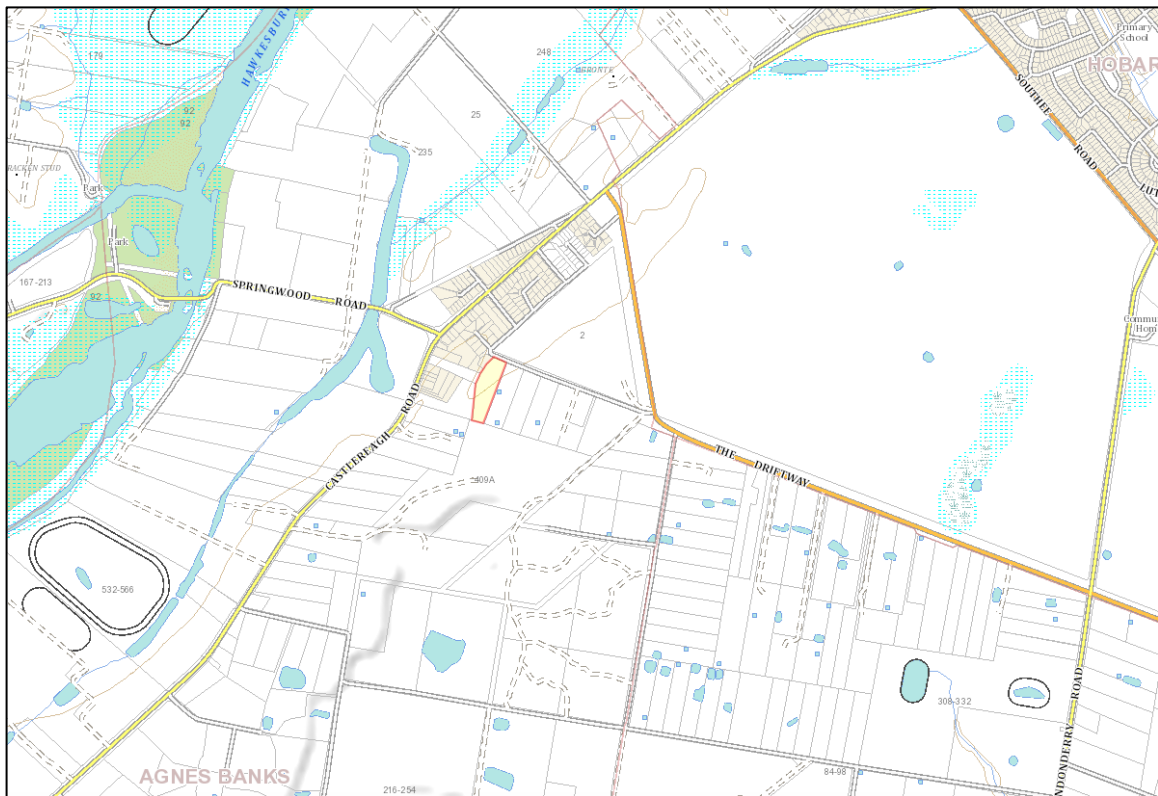


FIGURE 2: SITE BOUNDARIES

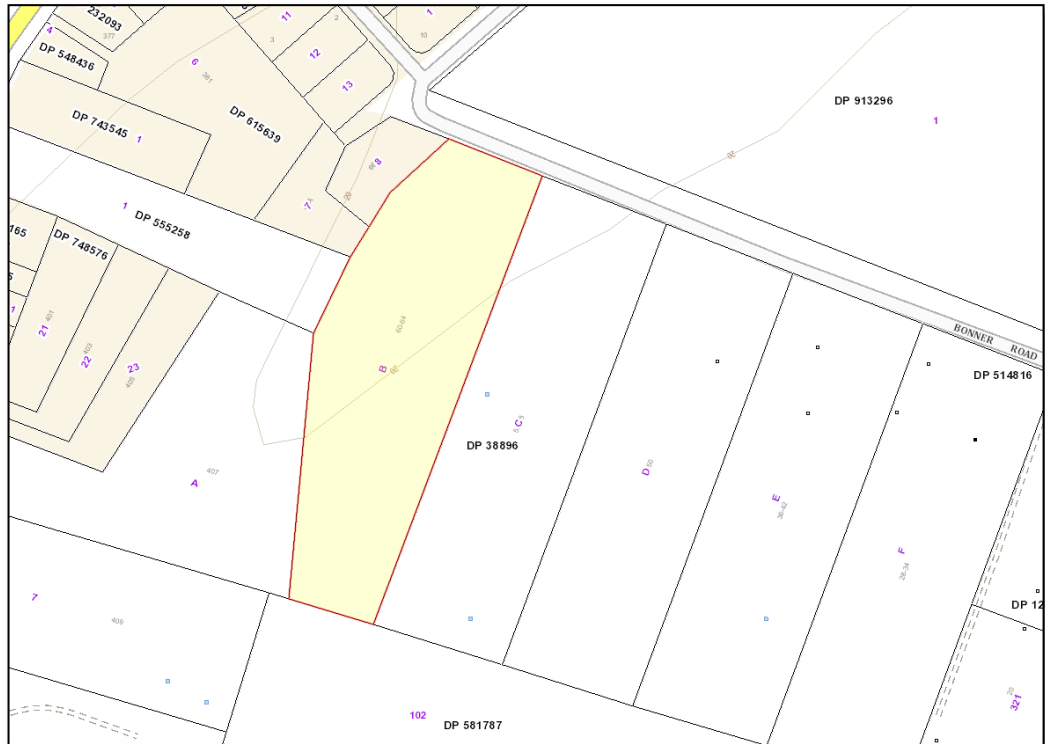


FIGURE 3: AERIAL PHOTO OF SITE



3.0 THE SUBJECT DA

The subject Development Application (DA), to which modification is being sought, is **DA18/0429** which was initially approved by the Penrith City Council on 12/09/2018.

This consent granted development approval to a two-lot Torrens Title subdivision of the site including a proposed right of carriageway that meanders over the western and central sections of proposed lot 1 to provide vehicle access to proposed lot 2.

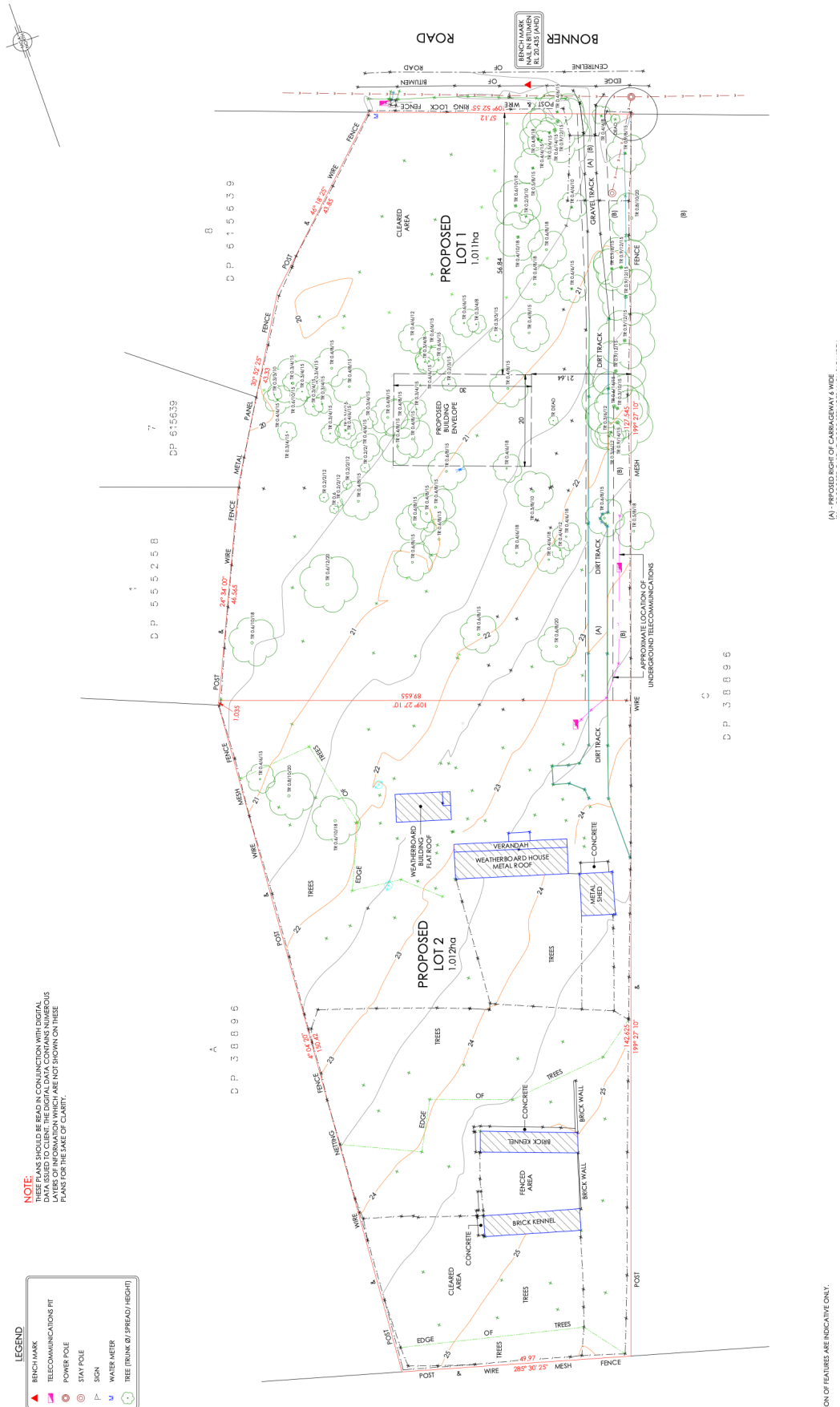
4.0 PROPOSED MODIFICATION

The modified development proposal seeks to realign the proposed vehicle access to the rear lot (Proposed Lot 2) by providing a driveway that runs along the alignment that is near parallel to the western boundary of the subject site.

A modified Plan of Proposed Subdivision also accompanies this application and identifies the proposed location of the modified right of carriageway. An extract of that plan is provided at Figure 3.

A driveway plan has also been prepared to satisfy Condition No 8 of the existing development consent. This plan also accompanies the application but is provided for information purposes only.

FIGURE 3: MODIFIED PLAN OF SUBDIVISION



5.0 STATUTORY ASSESSMENT

Section 4.55(1A) of the EP& A Act provides for Councils to modify a development consent notice, subject to its consideration of a number of matters. The relevant sections of the EP & A Act and consideration of those relevant matters is provided over page:

4.55 Modifications of consents – generally

(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the proposed modification is of minimal environmental impact, and ^[1]_[SEP]

The proposed modification proposes no changes to the approved lot yield, lot layout or building envelopes and as such has no potential cause anything beyond a minimal environmental impact.

(b) it is satisfied that 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 (if at all), and

The proposed modification seeks to provide relatively simple and modest changes to the approved access arrangements to for vehicles and services.

No changes to the approved lot yield, lot layout or building envelopes is sought.

Therefore, the modified development proposal can be considered to be substantially the same development as that that was originally granted.

(c) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered 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.

It is expected that all planning considerations will be addressed by both this and the previous development application. However, should Council receive any submission during the notification process then we are prepared to respond to any submission that is received.

(3) In determining an application for modification of a consent under this section, 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 development proposal causes no significant change to the proposed development and therefore cannot be considered to have any adverse environmental impact pursuant to 4.15(1) of the EP&A Act. An assessment of this impact is further demonstrated at Section 6 of this report. This assessment reveals no adverse impact.

The original development consent notice did not provide any reasons for the imposition of the various conditions of consent. Nevertheless, the proposed modifications are unlikely to cause any inconsistency with any of the underlying and unstated reasons.

Accordingly, Council has the authority to approve the proposed modification.

6.0 PLANNING ASSESSMENT

The following section undertakes an assessment of the modified development proposal against the heads of consideration identified at section 4.15(1) of the EP & A Act, 1979.

6.1 PROVISIONS OF ANY PLANNING INSTRUMENTS

6.1.1 SREP NO.20 – HAWKESBURY NEPEAN RIVER

Sydney Regional Environmental Plan No 20 (SREP 20) is in place to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

It seeks to achieve this by providing a series of strategies and planning controls that all development must be considered against.

The modified development proposal provides no changes to the existing stormwater drainage and will continue to provide for on-site waste water systems as identified in the original DA.

Accordingly, the development cannot be expected to cause any changes to regional or local water quality of the Nepean Hawkesbury River and its catchment.

6.1.2 PENRITH LEP 2010

The relevant provisions of the Penrith LEP 2010 are provided below together with an assessment of the development against those provisions.

PART 2 PERMITTED OR PROHIBITED DEVELOPMENT

2.3 Zone objectives and land use table

Zone E4 Environmental Living

1 Objectives of zone

- **To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.**
- **To ensure that residential development does not have an adverse effect on those values.**
- **To minimise conflict between land uses within the zone and land uses within adjoining zones.**
- **To ensure land uses are compatible with the available infrastructure, services and facilities and with the environmental capabilities of the land.**
- **To preserve and improve natural resources through appropriate land management practices.**

COMMENT:

A site analysis reveals that the sites major environmental features are is the remnant bushland that is dispersed across the site and the overland flow path in the north western corner of the site.

The modified development proposes no changes to the building envelopes that have been sited to ensure that future built forms will limit the removal of that vegetation as part of any future dwelling and its APZ.

Further, the modified development provides a new vehicle access path that limits the extent of vegetation clearing and provides a safer evacuation and access in the event of a flood.

The modified development will therefore cause no inconsistency with relevant zone objectives.

2.6 Subdivision—consent requirements

(1) Land to which this Plan applies may be subdivided, but only with consent.

Council has already granted development consent to the subdivision of the site. The modified development proposal seeks simply to obtain formal development consent to the alteration of the proposed right of carriageway that provides access to the lots.

PART 4 PRINCIPAL DEVELOPMENT STANDARDS

4.1 Minimum subdivision lot size

(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

The Lot Size Map identifies the subject site as having a minimum lot size of 1 ha.

The approved subdivision provides lots with an area of greater than 1ha and the modified development proposal does not seek to change the area of those approved lots.

PART 5 MISCELLANEOUS PROVISIONS

5.21 Flood Planning

(1) The objectives of this clause are as follows:

- (a) to minimise the flood risk associated with the use of the land,**
- (b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,**
- (c) to avoid adverse or cumulative impacts on flood behaviour and the environment,**
- (d) to enable the safe occupation and efficient evacuation of people in the event of a flood.**

The subject site is not identified as being exposed to mainstream flooding. However, advice has been obtained from Council that indicates that the site is exposed to the 1%AEP local overland flow flood level which is estimated to be RL20.3m AHD. Those overland flows occur primarily at the north western corner of the site.

The originally approved subdivision provided both lots with good opportunity for the existing and proposed building envelope to be provided in areas outside those overland flows and therefore ensures that the development is compatible with the sites flood risk.

The modified development proposal provides the vehicle access in an area of the site which is higher than the originally approved access and therefore provides for safer access and evacuation in a flood event.

The modified development therefore provides a better flood response for the site and a development that is more consistent with the objective of this clause of the LEP.

PART 6 URBAN RELEASE AREAS

Not relevant to the subject site or its development.

PART 7 ADDITIONAL LOCAL PROVISIONS

7.7 Servicing

(1) The objective of this clause is to ensure that development of land to which this Plan applies reflects the availability of services.

(2) Before granting development consent for development on any land to which this Plan applies, the consent authority must be satisfied that:

(a) the development will be connected to a reticulated water supply, if required by the consent authority, and

(b) the development will have adequate facilities for the removal and disposal of sewage, and

(c) if the development is for seniors housing, the development can be connected to a reticulated sewerage system, and

(d) the need for public amenities or public services has been or will be met.

The site adjoins an established rural-residential urban area and as such enjoys access to power and communication services as an ability to connect to *Sydney Water's* reticulated water services.

The originally approved development also provided an on-site waster system for both lots.

The development will also attract development contributions, which will assist meeting demand for local amenities and services.

The development causes no inconsistency with the objectives or requirements of this clause of the LEP.

PART 8 LOCAL PROVISIONS – PENRITH CITY CENTRE

PART 9 PENRITH PANTHERS SITE

Not relevant to the subject site.

6.2 PROVISIONS OF ANY DRAFT LEP

The Department of Planning, Industry & Environment have released a Draft SEPP (Environment) that seeks to protect and manage the natural environment. This Draft SEPP applies to the subject site.

However, the Draft SEPP does not necessarily seek to introduce new planning controls but rather simply seeks to consolidate several REP's including SREP No.20 – Hawkesbury Nepean River.

Accordingly, the development proposes no inconsistency with that Draft SEPP.

There are no other known draft Planning Instruments relevant to this development proposal.

6.3 PROVISIONS OF ANY DCP

PENRITH DCP 2014

A detailed assessment of the original development proposal against this DCP was undertaken as part of the initial development application. This previous assessment identified a general compliance with all relevant objectives and controls of the DCP.

Accordingly, this section of the report will only undertake an assessment against those sections of the DCP relevant to the modified development proposal.

C2 VEGETATION MANAGEMENT

2.2 Biodiversity Corridors and Areas of Remnant Indigenous Vegetation in Non-Urban Areas

B. Objectives

- a) **Promote the establishment and retention of biodiversity corridors and areas of remnant indigenous vegetation that contribute to the long-term survival of native fauna and flora species in the area;**
- b) **Maintain (and where possible increase) the current area of native bushland, and retain the natural species diversity of bushland as far as possible;**
- c) **Encourage the planting of a diversity of indigenous species to enhance biodiversity values, scenic quality and landscape character; and**
- d) **Facilitate the implementation of weed control and management measures that act upon the processes causing weed invasion of natural areas.**

The modified development proposal seeks the removal of twelve 12 trees and their replacement with a tree replenishment area in the south eastern corner of the site.

These trees are identified for removal because of one or more of the following reasons:

- they are non-native pine trees with no ecological value
- they are either dead or in poor health
- they will be adversely impacted by the proposed driveway
- are required to be removed to satisfy the General Terms of Approval (GTA) of the NSW Rural Fire Service.

A flora and fauna assessment has also been undertaken and accompanies the modified development proposal to assess the impact of the proposed removal of seven (7) native trees that weren't identified for removal as part of the original development proposal.

This assessment concludes that the 7 trees are not old and do not contain any tree hollows. The trees are part of the *River-flat Eucalypt*

Forest on Coastal Floodplains ecological community that is listed as Endangered under the Biodiversity Conservation Act 2016 (BC Act) and Critically Endangered under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The proposal would not have a significant impact on the ecological community. No listed species of flora or fauna would be impacted by the proposal. The proposal would not have a significant impact on flora or fauna.

Finally, the proposed location of the Tree Replenishment Zone at the rear of the property is a good location as it adjoins an existing remnant of native vegetation and replanting in this area would add to and consolidate that area of remnant vegetation.

Accordingly, the development is not considered to cause any inconsistency with the relevant legislation or the objectives of this section of the DCP.

2.3 Bushfire Management

B. Objectives

- a) **Minimise the risk to life, property and the environment in the event of a bushfire, including the lives of emergency personnel;**
- b) **Ensure that all development on bush fire prone land makes adequate provision for access for emergency personnel, vehicles and equipment;**
- c) **Balance the risk of bushfire to life and property with the other principles in this DCP, including the need to protect and enhance existing vegetation where possible; and**
- d) **Recognise that land not classified as ‘bushfire prone land’ may still be subject to the impact from bushfire, particularly through ember attack.**

A Bushfire Hazard Assessment was undertaken as part of the original development application and resulted in the issuing of a Bushfire Safety Authority by the NSW Rural Fire service.

The modified development includes the removal of trees and the provision of vehicle access required to satisfy the GTA's from that Bushfire Safety Authority by the NSW Rural Fire service.

The development therefore causes no inconsistency with this section of the DCP.

C3 WATER MANAGEMENT

3.5 Flood Planning

C. Control

13) Overland Flow Flooding

- a) **Council has undertaken a Penrith Overland Flow Flood 'Overview' Study. Consideration must be given to the impact on any overland flow path. Generally, Council will not support development obstructing overland flow paths. Development is required to demonstrate that any overland flow is maintained for the 1% AEP (100 year ARI) overland flow. A merit based approach will be taken when assessing development applications that affect the overland flow.**

The original development was able to provide building envelopes in areas removed from the overland flow paths. As such it would not result in the obstruction of overland flows and caused no inconsistency with the DCP objectives or controls.

The modified development proposal provides the vehicle access in an area of the site which is higher than the originally approved vehicle access and therefore provides for safer access and evacuation in a flood event.

The modified development therefore provides a better flood response for the site and a development that is more consistent with the objectives of section of the DCP.

6.4 LIKELY IMPACTS OF DEVELOPMENT

6.4.1 IMPACT ON THE NATURAL ENVIRONMENT

The modified subdivision proposes the removal of 12 trees for one or more of the following reasons:

- they are non-native pine trees with no ecological value
- they are either dead or in poor health
- they will be adversely impacted by the proposed driveway
- are required to be removed to satisfy the General Terms of Approval (GTA) of the NSW Rural Fire Service.

A flora and fauna assessment has been undertaken and concludes that the 7 native trees proposed to be removed area not of high ecological value and will not cause any inconsistency with relevant biodiversity legislation.

The removed trees will also be replaced by a large replenishment area in the south eastern corner of the site.

Accordingly, the modified development can be considered to cause no significantly adverse impact upon the natural environment.

6.4.2 IMPACT ON BUILT ENVIRONMENT

The modified development proposal provides no changes to the approved lot layout, scale or building envelopes.

As such it is considered that the proposed modified development will t have no significantly adverse impact upon the local built environment.

6.4.3 ECONOMIC IMPACT

The modified proposal is not of a scale that could be considered to have any significant impact upon economy of the local area.

6.4.4 SOCIAL IMPACT

The development is not of scale or type that is considered to cause any significant social impact.

6.5 SUITABILITY OF THE SITE FOR DEVELOPMENT

The subject site is appropriately zoned and serviced to accommodate the proposed development and will cause no adverse impacts to the built or natural environment.

It is therefore considered that the subject site is ideally suited to the proposed development.

6.6 THE PUBLIC INTEREST

The modified development proposal does not generate any development outcomes that would be considered to be not in the public interest.

7.0 CONCLUSION

The application seeks approval relatively minor modifications to the floor plan layout and corresponding elevation changes to the approved development.

The proposed modifications are permissible pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act, 1979*, and satisfy all requirements pursuant to that clause.

In summary this assessment demonstrates that the proposed modified development proposal:

- Is substantially the same as the development as the development for which the consent was originally granted
- Represents an appropriate response to the context, setting, planning instruments, controls and guidelines and other considerations outlined in Section 4.15(1) of the *Environmental Planning & Assessment Act, 1979*.
- Provides for safer access and evacuation in a flood event.
- Provide for tree removal and replenishment that represents an appropriate environmental response for the site.
- Have no significantly adverse impacts upon the natural or built environment

The benefits provided by the development outweigh any potential impacts and it is therefore considered to be in the public interest. The proposal will deliver a suitable and appropriate development that is worthy of approval.