

29 April 2022

Our Ref: 16083\_TP\_RP\_MOD5

Ms Emma Butcher  
Regional Assessments  
Department of Planning & Environment,  
Locked Bag 5022, Parramatta NSW 2124.

Dear Emma,

**RE: SECTION 4.55(1A) MODIFICATION TO MAJOR PROJECT APPROVAL 06\_0143  
THE GLADES ESTATE RESIDENTIAL SUBDIVISION – MOONEE BEACH  
LOT 1 & 2 IN DP 725785**

Land Metrics Pty Ltd acting on behalf of the Rothwell Boys Pty Ltd have prepared this Section 4.55 Modification Application to Major Project Approval 06-0143 (MP06-0143).

This application seeks to resolve the conflict which will arise from the provisioning of subdivision infrastructure on land that is required to be dedicated to Council as public open space. This matter has been brought to our attention as a result of email communications between J. Wyndham Prince Pty Ltd and Council concerning a change in the subdivision staging sequence.

In response to the above, consent from the Department of Planning & Environment (The Minister of Planning) is sought to modify **Condition A2, A3, A6, E11 and E14** in so far as these apply to the phased dedication of open space land. Because of these modifications, consent from the Department is also sought to modify the accompanying plans which apply to the staging of open space dedication to Council and the subdivision development staging boundaries as approved under MP06-0143.

## **1.0 BACKGROUND**

MP06-0143 was issued by the Minister for Planning on the 5<sup>th</sup> of March 2009. Amongst other things, the approval provides for the creation of 524 residential allotments, site earthworks (cut and fill) the provision of roads and associated playing fields and a pedestrian/cycleway network.

Since 2009, this Project Approval has been commenced and has been subject to four modifications. These are:

### **MOD 1:**

On the 18th of November 2009 a Section 75W modification was lodged with the Department seeking:

- a) to facilitate the issue of a Construction Certificate to permit bulk earthworks on-site in advance of providing the creation of any easements or instruments of title for the construction of the northern collector road;
- b) permit the staging of the project to proceed in a manner generally consistent with the Preliminary Lot Layout Plan (04-1600 Drawing P1 Amendments F dated February 2009) but allowing flexibility regarding the sequencing of staging.





- c) The provision of temporary construction fencing during the bulk earthwork's construction in a manner different to Plan 8 Landscape Staging Plan dated December 2008 referred to in Condition C10 of MP06\_0143.

The proposed modification sought and obtained changes to Conditions A2, B1(2), & C10 as well as including new Condition B1A. This proposed modification was approved on the 1st of February 2010.

**MOD 2:**

On the 21st of June 2011 a Section 75W modification was lodged with the Department seeking to allow the issue of a construction certificate for the installation of a sewer rising main across the Pacific Highway in advance of any other approvals or certifications required for the development.

The proposed modification sought changes to Conditions B1A and C10. This proposed modification was approved on the 15th of July 2011

**MOD 3:**

On the 27th of November 2014 a Section 75 W modification application was lodged with the Department seeking to amend Condition B1(3) and Condition E18 to delete references to the Moonee Developer Contributions Plan 2008 and the associated development contribution table and replace it with the contributions applicable under the recently adopted Moonee Release Area Development Contributions Plan. This proposed modification was approved by DPE on the 2nd of February 2015.

**MOD 4:**

On the 24<sup>th</sup> of November 2017 a Section 75 W modification application was lodged with the Department seeking to amend several conditions pertaining to the approved layout, site levels, and noise mitigation levels. During the ensuing assessment period, revisions were made to the modifications being sought and ultimately amendments to Conditions A3, A4, B4, B10, D6, D13 D14, E7, E16 and E20 were approved on the 16<sup>th</sup> of November 2020.

## **2.0 REQUEST FOR PROPOSED MODIFICATIONS**

### **Amendments to Staging of Open Space Dedication to Council**

Project Approval MP06-0143 requires the dedication of approximately 45 hectares of open space/habitat conservation.

The dedication of this area is required in accordance with Condition E14, and also in accordance with the sequence shown on the approved plan titled 'Staging of Open Space Dedication to Council December 2008', Annexure E. A copy of this plan is attached.

The currently approved phased dedication of open space / habitat conservation areas in accordance with Condition E14 is problematic for most construction stages. Under the current arrangement, construction activities associated with subdivision infrastructure provisioning would be required on land that has been embellished in accordance with an approved vegetation management plan and subsequently dedicated to Council as public open space before all the relevant infrastructure is satisfactorily completed and dedicated to Council.

This issue is evident for subdivision stages 4,8,10 & 11. At the completion of subdivision development stage 3, the open space / habitat conservation areas that adjoin these later subdivision development stages, being 4,8,10 & 11, are required to be dedicated to Council.



To counter this issue, we propose that the dedication of the relevant adjoining open space/habitat conservation land occur in accordance with the attached plan, titled 'Subdivision Staging and Staging of Open Space Dedication to Council' plan prepared by J. Wyndham Prince, dated 02/03/22. Regarding this plan, we note the proposed modifications to:

- a) the alignments which define the dedication of each open space area for Stages 1,3,4,5,8 & 9 and the accompanying table shown thereon, and
- b) the alignments that define the subdivision development staging so that they coincide with the proposed changes to the open space dedication to council for Stages 1,3,4,5,8 & 9.

We believe this modified approach represents the most practical and efficient way of completing all construction and environmental related activities associated within each subdivision development stage. We also believe that this approach will result in the functional delivery and dedication of open space / habitat conservation land.

To facilitate this change to the development, it is necessary to modify conditions of consent A2, A3, A6, E11, & E14. Section 3 below identifies the modifications which are required to each condition.

### **Amendments to Staged Subdivision Boundaries**

To avoid any confusion with respect to the embellishment of open space land, approval from the Department of Planning & Environment regarding the subdivision staging boundaries as shown on the attached plan, titled 'Subdivision Staging and Staging of Open Space Dedication to Council' is also sought. As noted above, the repositioning of the subdivision development staging is necessary so that it coincides with the proposed changes to the alignments which define the open space dedication to Council.

To formalise this change, it is necessary to modify Conditions A3 & A6. Section 3 below incorporates the change which is required.

## **3.0 MODIFICATIONS TO PROJECT APPROVAL CONDITIONS**

To enable the development to proceed in accordance with the discussion provided in Section 2 above, it will be necessary for the Department of Planning & Environment to support the following changes.

### **Condition A2 – Staging**

Condition A2 refers to the staging of development under MP 06-0143. With reference to Section 2 above, it is necessary to amend condition A2 to ensure that the release of each subdivision development stage coincides with the proposal plan entitled 'Subdivision Staging and Staging of Open Space Dedication to Council' plan prepared by J. Wyndham Prince, dated 02/03/22. Condition A2 as proposed below has been revised to reflect the changes to the abovementioned plan.

### **A2 Staging**

*The project is to be constructed in eleven (11) stages; generally, as follows:*

*1) Stage 1*

- i) 62 residential lots*
- ii) 1 lot for a potential corner store.*
- iii) construction of noise mitigation measures for road traffic noise*
- ~~iii) dedication to Council of Phase 1 Open Space, 0.46ha.~~**



- 2) Stage 2
  - i) 40 residential lots
  - ii) construction of Recreation Node No.1.
  - ~~iii) dedication to Council of Phase 2 Open Space, 3.23ha.~~
- 3) Stage 3
  - i) 47 residential lots
  - ~~ii) dedication to Council of Phase 3 Open Space, 3.58ha.~~
- 4) Stage 4
  - i) 47 residential lots
  - ~~ii) dedication to Council of Phase 4 Open Space, 1.83ha.~~
- 5) Stage 5
  - i) 51 residential lots
  - ~~ii) dedication to Council of Phase 5 Open Space, 5.47ha.~~
- 6) Stage 6
  - i) 61 residential lots
  - ii) construction of Recreation Node No.2.
  - ~~iii) dedication to Council of Phase 6 Open Space, 9.54ha.~~
- 7) Stage 7
  - i) 48 residential lots
  - ~~ii) dedication to Council of Phase 7 Open Space, 2.93ha.~~
- 8) Stage 8
  - i) 48 residential lots
  - ~~ii) dedication to Council of Phase 8 Open Space, 3.89ha.~~
- 9) Stage 9
  - i) 50 residential lots
  - ~~ii) Dedication to Council of Phase 9 Open Space, 6.91ha.~~
  - iii) Construction of pedestrian / cycleway linking site to the south along the collector road.
- 10) Stage 10
  - i) 42 residential lots
  - ~~ii) dedication to Council of Phase 10 Open Space, 0.91ha~~
- 11) Stage 11
  - i) 28 residential lots
  - ~~ii) dedication to Council of Phase 11 Open Space, 4.27ha~~

Essential infrastructure, including roads, shall be constructed as specified in the staging listed above.

**Dedication to Council of Phase 1,2 & 3 Open Space Areas in accordance with the plan "'Subdivision Staging and Staging of Open Space Dedication to Council' plan prepared by J. Wyndham Prince, dated 02/03/22.**

Note: Proposed modifications to Condition A2 are shown as bold. Text that is to be deleted is struck out.



### Condition A3 – Project in Accordance with Plans

Condition A3 lists the approved drawings. Given the proposed modifications to the staging of the open space areas and the subdivision development staging as discussed above, it is necessary to alter the approved drawing references as follows.

Project and Landscape Drawings Prepared by ERM			
Drawing No.	Revision	Name of Plan	Date
Annex E		<del>Staging of Open Space Dedication to Council</del>	<del>December 2008</del>
Project and Landscape Drawings Prepared by J. Wyndham Prince			
Drawing No.	Revision	Name of Plan	Date
<b>110719-02-SK013</b>	<b>2</b>	<b>Subdivision Staging and Staging of Open Space Dedication to Council</b>	<b>02/03/22</b>

Note:

Proposed modifications to Condition A3 are shown as bold. Text that is to be deleted is struck out.

### Condition A6 - Certification and Staging

Condition A6 (1) describes how the staging of the development is to occur. Given the proposed modifications to the staging of the open space areas and the subdivision development staging as discussed above, it is necessary to alter this condition as follows.

#### *A6 Certification and Staging*

1) *Staging of the Development*

*The staging of the project is to occur generally in numerical order, commencing with Stage 1. It is noted that staging may vary in timing accordingly to market forces.*

**Note:**

**The subdivision development staging is defined on the plan entitled 'Subdivision Staging and Staging of Open Space Dedication to Council' prepared by J. Wyndham Prince, dated 02/03/22. To avoid any doubt, this plan replaces the subdivision staging that is shown on the approved plan P1, Preliminary Lot Layout, Revision F dated February 2009.**

2) *Construction Certificate*

*Prior to the commencement of subdivision works the proponent must obtain a Construction Certificate from either the Council or an accredited certifier for each stage of the subdivision before any subdivision work can commence for each stage.*

3) *Subdivision Certificate*

*Prior to registration of a plan of subdivision under Division 3 of Part 23 of the Conveyancing Act 1919 for any allotments in any stage within the subdivision a Subdivision Certificate pursuant to Sections 109C(1)(d) and 109D of the Act must be obtained from the Council or an accredited certifier for each stage of the subdivision.*

Note:

Proposed modifications to Condition E11 are shown as bold. Text that is to be deleted is struck out.



### Condition E11 – Open Space / Landscaping

Condition E11 references the plan titled "Staging of Open Space Dedication to Council, December 2008, Anneure E of the 'Post Preferred Project Submission' December 2008."

Given the modification which is being sought in relation to Conditions A2 & A3, it is necessary to also modify Condition E11 as follows:

#### *E11 Embellishment and Maintenance of Open Space Areas*

- 1) *Prior to the release of relevant Subdivision Certificate for the project, open space (as it relates to each of those stages) is to be embellished and recreation areas and facilities established and constructed consistent with the approved landscape plans and in accordance with the plan titled ~~Staging of Open Space Dedication to Council, December 2008, Annexure E of the 'Post Preferred Project Submission', December 2008~~ 'Subdivision Staging and Staging of Open Space and Dedication to Council', prepared by J. Wyndham Prince, dated 02/03/22.*
- 2) *The works prescribed in the approved Vegetation Management Plan (VMP) for that relevant stage, must be completed in accordance with the VMP and certified in writing by the consultant who prepared the VMP, prior to the issue of the relevant Subdivision Certificates.*
- 3) *All landscaped and open space areas (Open Space Categories 1, 2 and 3 as identified in the approved plan prepared by ERM 'Broad Scale Open Space Types' dated December 2008) to be dedicated to Council including open space areas along road reserves are to be managed and maintained for a minimum 5 years from release of relevant construction certificates.*

Note:

Proposed modifications to Condition E11 are shown as bold. Text that is to be deleted is struck out.

### Condition E14 – Project in Accordance with Plans

Condition E14 references the plan titled "Staging of Open Space Dedication to Council, December 2008, Anneure E of the 'Post Preferred Project Submission' December 2008."

Given the modification which is being sought in relation to Conditions A2, A3 & E11, it is also necessary to modify Condition E14 as follows:

#### *E14 Dedication Of Open Space*

- 1) *The proponent shall make necessary arrangements for the dedication of the open space areas to Council prior to release of the relevant Subdivision Certificate in accordance with the plan titled ~~Staging of Open Space Dedication to Council, December 2008, Annexure E of the 'Post Preferred Project Submission', December 2008~~ 'Subdivision Staging and Staging of Open Space Dedication to Council', prepared by J. Wyndham Prince, dated 02/03/22*

- ~~2) Prior to the issue of the first Subdivision Certificate for the project, relevant approvals or agreements are to be entered into with Council to allow the proponent to carry out management and maintenance works, as required under condition E11, on the open space areas in each stage of the project, during five years following release of construction certificates of each stage.~~

***Prior to the dedication of the relevant open space area to Council, relevant approvals or agreements are to be entered into with Council to allow the proponent to carry out management and maintenance works as required under condition E11 on the open space areas in each stage, during five (5) years following release of the subdivision certificate for each open space area phase.***



***For the avoidance of doubt, the dedication of open space to Council is to occur after the final stage of subdivision works are completed for each Open Space Area Phase as shown on the 'Subdivision Staging and Staging of Open Space Dedication to Council', prepared by J. Wyndham Prince, dated 02/03/22***

*3) All open space and public reserve areas shall be dedicated at no cost to Council, other than any land that may be subject to the acquisition provisions of clause 20 Coffs Harbour Local Environmental Plan 2000. Note: Clause 20 Coffs Harbour Local Environmental Plan 2000 applies to land zoned "Open Space 6A Public Recreation Zone" on the site.*

Note:

Proposed modifications to Condition E14 are shown as bold. Text that is to be deleted is struck out.

#### **4.0 ENVIRONMENTAL ASSESSMENT**

Section 4.55(3) of the Act requires the Department of Planning & Environment to take into consideration the matters referred to in Section 4.15(1) of the Act. On review of the relevant provisions, it is submitted:

##### **Planning Framework**

The proposal remains compliant with the relevant planning framework.

##### **Likely Impacts of the Development**

The proposal will not result in any adverse impact to the environment

##### **Suitability of the Site for the Development**

The suitability of the site for residential and open space development is well established.

##### **Any Submissions Made**

This matter is not applicable at this time.

##### **The Public Interest**

The proposal is in the public interest because it will provide optimum timing for the completion of all relevant infrastructure adjacent to the relevant dedicated open space and ensure appropriate access, maintenance, monitoring and reporting will be implemented in the most practical and efficient manner.

#### **5.0 CONCLUSION**

The modification of Conditions A2, A3, A6, E11 & E14 and the aforementioned plans, are sought to simplify the delivery and dedication of open space land according to each subdivision development stage. The proposed changes will not have a material impact on the development as originally approved under MP06\_0143 nor will they affect the subsequent modifications approved as MOD 1,2,3 & 4.

The proposed amendments to MP06\_0143 being sought herewith are considered consistent with the provisions of Section 4.55(1A) of the Environmental Planning & Assessment Act 1979. Furthermore, we believe that the proposed modifications are consistent with the original approval, in that

- the proposal complies with the relevant statutory provisions.
- the proposal is substantially the same development as originally approved and does not result in adverse environmental impacts.



- the proposal does not materially change the nature or appearance of the approved development.

We trust sufficient information has been provided herewith. Should the Department require further information or wish to discuss this proposal, please do not hesitate to contact the undersigned on 0422 697 846.

Yours faithfully,

**LAND METRICS PTY LTD**

**Matt Cooper**  
Director

Enc:

'Staging of Open Space Dedication to Council December 2008', Annexure E.

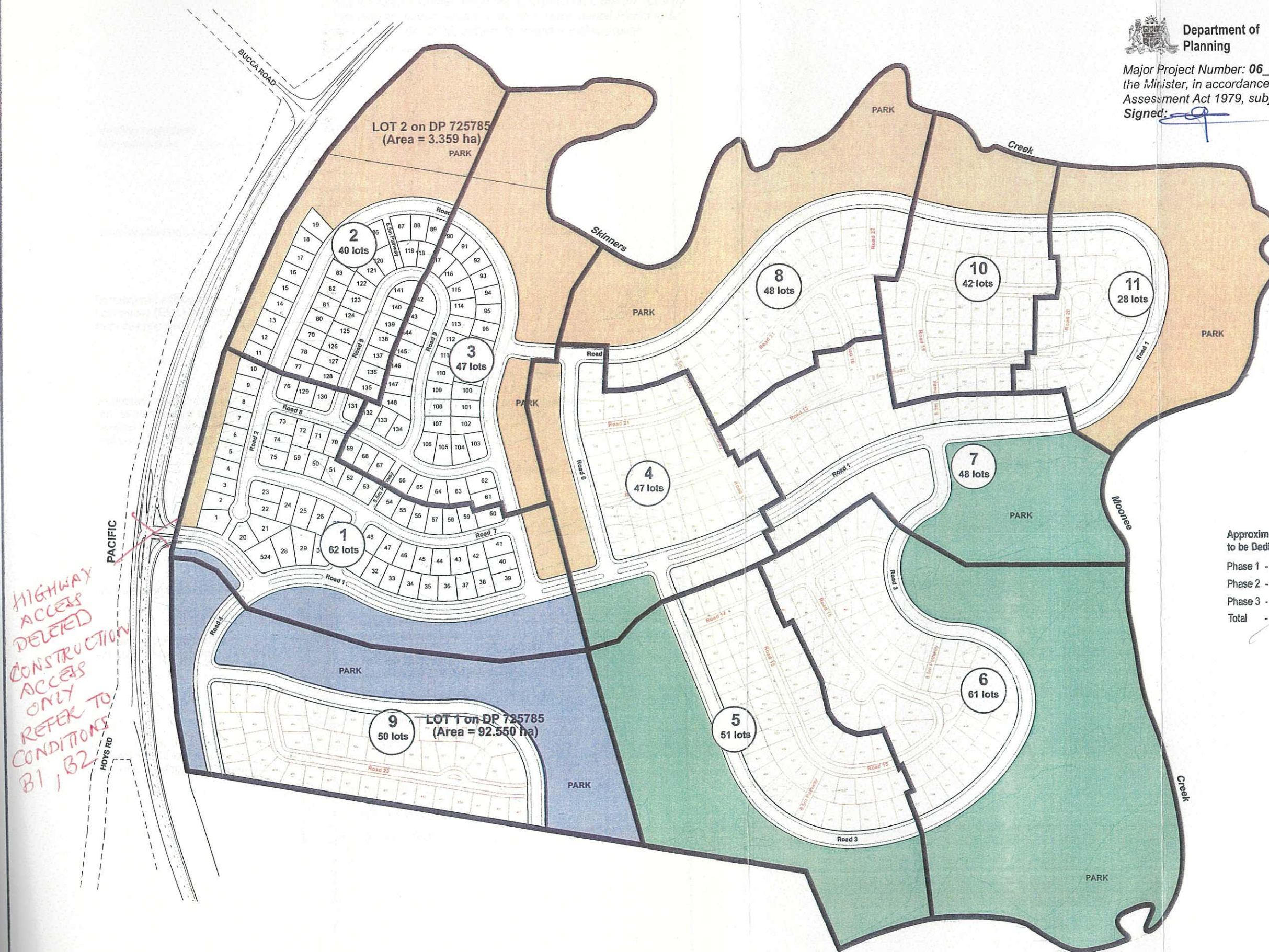
'Subdivision Staging and Staging of Open Space Dedication to Council', Plan No. 110719-02-SK013 dated 02/03/22





Department of  
Planning

Major Project Number: **06\_0143**, approved on **5 March 2009** by the Minister, in accordance with the Environmental Planning & Assessment Act 1979, subject to conditions of approval.  
Signed:



#### CONSTRUCTION

Stage	No. of Lots
1	62
2	40
3	47
4	47
5	51
6	61
7	48
8	48
9	50
10	42
11	28
<b>TOTAL</b>	<b>524</b>

#### Approximate Area of Land to be Dedicated:

Phase 1 - 19ha (To be dedicated after Stage 3 works completed)  
Phase 2 - 18ha (To be dedicated after Stage 7 works completed)  
Phase 3 - 8ha (To be dedicated after Stage 9 works completed)  
Total - 45ha

#### Legend

Construction Stage

Open Space Areas to be Dedicated

- Stage 1 (Phase 1)
- Stage 2 (Phase 1)
- Stage 3 (Phase 1)
- Stage 4 (Phase 1)
- Stage 5 (Phase 2)
- Stage 6 (Phase 2)
- Stage 7 (Phase 2)
- Stage 8 (Phase 1)
- Stage 9 (Phase 3)
- Stage 10 (Phase 1)
- Stage 11 (Phase 1)

HIGHWAY ACCESS DELETED  
CONSTRUCTION ACCESS ONLY  
REFER TO CONDITIONS B1, B2



0 100m  
Approximate Only



