

**MODIFICATION REQUEST:
FERN BAY SEASIDE VILLAGE
SEASIDE BOULEVARDE, FERN BAY
06_0250 MOD 5**



Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

April 2014

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1. BACKGROUND

This report is an assessment of a request to modify Major Project 06_0250 pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification relates to a community title residential subdivision, referred to as 'Fern Bay Seaside Village', located at Seaside Boulevard, Fern Bay in the Port Stephens local government area.

Project approval for MP 06_0250 was granted by the then Deputy Director-General, as delegate of the then Minister for Planning on 28 June 2010 under Part 3A of the EP&A Act. Approval was granted generally for:

- bulk earthworks and vegetation clearing;
- subdivision of land for the creation of 411 lots under a community title scheme (including 370 residential lots, 38 super lots, 2 commercial lots and 1 community lot);
- creation of ecological conservation areas to be managed as Community Conservation Lands (under the community title);
- creation of recreational and open space network including formal parks and an Aboriginal cultural heritage reserve;
- creation of two sites for commercial areas and recreational/community centre area;
- construction of a road network including internal roads, pedestrian pathways and a shared footpath/cycleway on part of Nelson Bay Road;
- construction of stormwater management measures;
- creation of asset protection zones;
- associated landscaping; and
- works to connect to reticulated services (water, sewerage, power and telecommunications).

The subdivision consists of 17 stages and is an extension to an existing subdivision approved under Part 4 of the EP&A Act by the Land and Environment Court (L&E Court). The L&E Court gave approval for Stages 1 to 3. As a result, any reference in the project approval to Stage 4 shall be read as a reference to the first stage of the development approved by the project approval under Part 3A of the EP&A Act.

1.1 Subject Site

The site covers an area of 205ha and is largely vegetated. It is legally described as Lot 46 DP 28008 and Lots 1, 4 and 7 DP 270466 and is located off Nelson Bay Road in Fern Bay.

The site sits between two key coastal features being the Hunter River (the estuarine reach of the river is located to the west) and Stockton Bight (open coast of the Tasman Sea to the east), and is located approximately 18km north of Newcastle, 6km north of Stockton, and 20km south of Nelson Bay.

The site is part of the Newcastle Bight dune barrier system. The transgression of dunes across the site has resulted in a series of prominent and distinct ridges and sandy knolls, principally in a north-south direction. Active dunes occur in the south-east corner of the site. **Figure 1** shows the site location.

1.2 Surrounding Development

The site is surrounded by vegetated land in various ownerships including the Worimi Regional Park to the south and Worimi State Conservation Area to the north-east, which are owned and managed by the Office of Environment and Heritage. These lands (and the site) are part of a regional corridor in the Lower Hunter region (connecting the Sugarloaf Range to Stockton Bight). A mobile home village adjoins the site to the southwest. **Figure 2** provides an aerial view of the site and location of surrounding features.



Figure 1: Site Location – Fern Bay



Figure 2: Aerial view of the site depicting surrounding properties

1.3 Site History

On 29 September 1997, the L&E Court granted approval to a 208 lot residential subdivision. This consent has been modified on five occasions with the most significant modification being the relocation of 33 lots from the area adjacent to Nelson Bay Road to create a vegetated buffer.

SEPP 71 Master Plan

On 8 August 2006, the then Minister for Planning adopted a master plan (20-4-2005) prepared in accordance with clause 18 of State Environmental Planning Policy No. 71 – Coastal Protection over the site. The master plan was for a subdivision consisting of 947 residential lots, open space lots, a community nursery, conservation areas, recreational and commercial facilities, new public roads, fire trails, pedestrian trails and asset protection zones.

Major Project Approval

The subdivision has been granted approval to be constructed across 20 stages. Stages 1 to 3 were the subject of separate approvals issued by other authorities, the subsequent 17 stages comprising 411 residential lots were granted project approval as part of MP 06_0250.

Project Modifications

The project approval has been modified on two occasions:

- On 1 April 2011, the then Deputy Director-General – Development Assessments & Systems Performance approved a modification (MOD 1) involving amendments to the timing by which certain aspects of the development are provided, including; the construction of cycleway/footpaths, the provision of a plan detailing the location of detention basin 6, and the provision of landscaping and revegetation plans for individual stages; and
- On 1 May 2012, the then Director – Metropolitan and Regional Projects North approved a modification (MOD 3) involving amendments to the subdivision layout to incorporate stormwater detention basin 6 within the development footprint.

On 19 January 2011, the application for MOD 2 was formally withdrawn by the proponent and instead incorporated as part of MOD 1. MOD 4 was submitted in October 2011 and originally proposed the insertion of a new condition allowing Port Stephens Council (council) to hold a security bond for subdivision works. The proponent has opted not to pursue the MOD 4 request. Planning and Infrastructure (the agency) has since requested the proponent provide a formal request to withdraw the application.

2. PROPOSED MODIFICATION

2.1 Modification Description

On 24 January 2014, Cardno on behalf of Winten Fern Bay No. 2 Pty Ltd (the proponent), submitted a Section 75W modification request involving the following:

- the division of Stage 8 into two separate stages (Stage 8A and 8B);
- amendments to the timing of the provision of certain infrastructure and services, including sewer pump stations and parkland areas, to better correspond with the proposed new staging sequence; and
- minor amendments to the subdivision and road network layout of Stages 5 to 8.

Figure 3 shows the subdivision layout as approved, including the location of Stages 5 to 8 in the south-eastern portion of the site.

Figure 4 shows the approved staging regime for Stages 5 to 8. **Figure 5** shows the proposed subdivision layout and modified staging regime, including the location of proposed new Stages '8A' and '8B'.

On 25 February 2014, the proponent submitted amended project plans in support of the proposed modification. A copy of the modification request and amended plans is provided at **Appendices B** and **D** respectively.

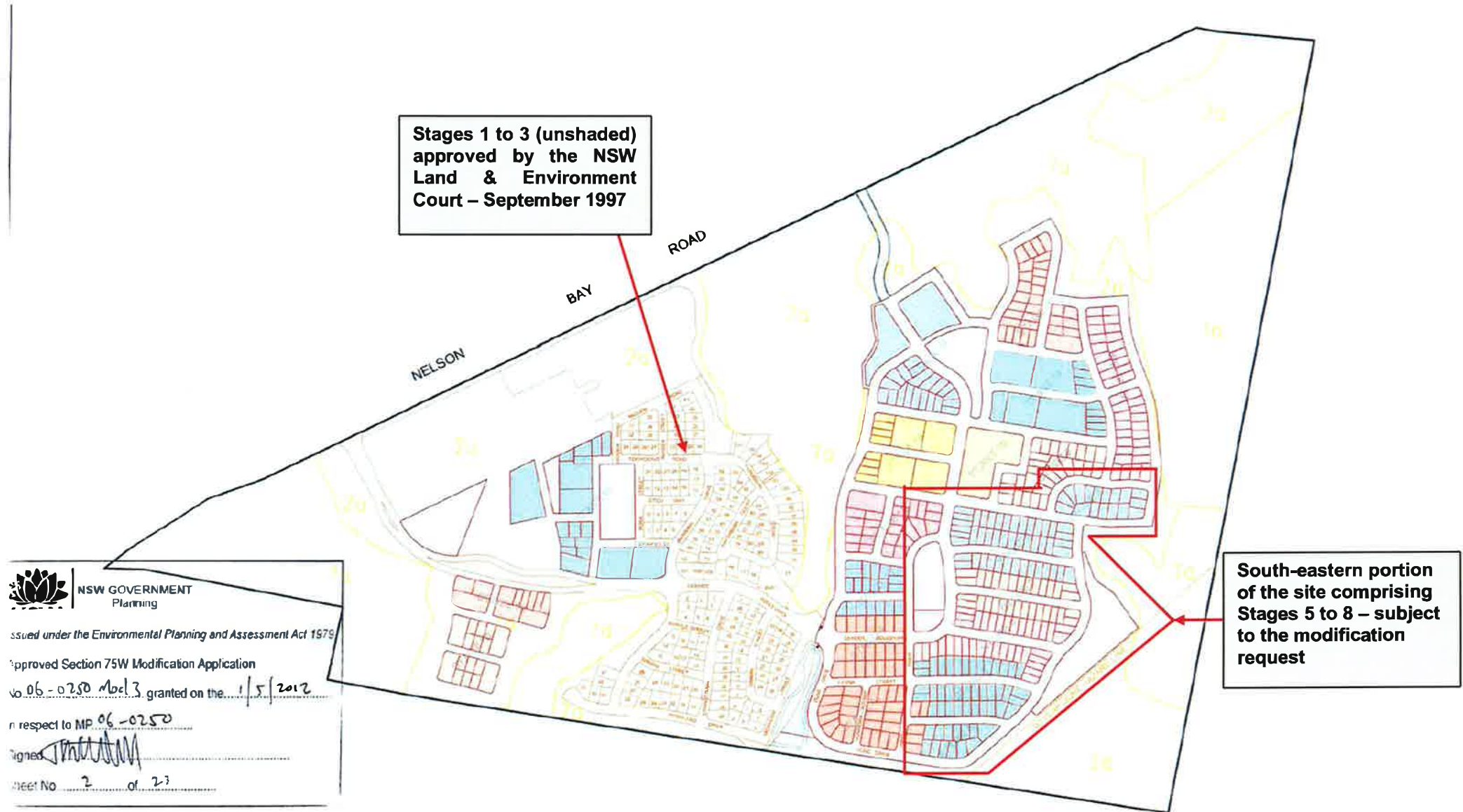


Figure 3: Approved Subdivision Layout – Fern Bay Seaside Village.

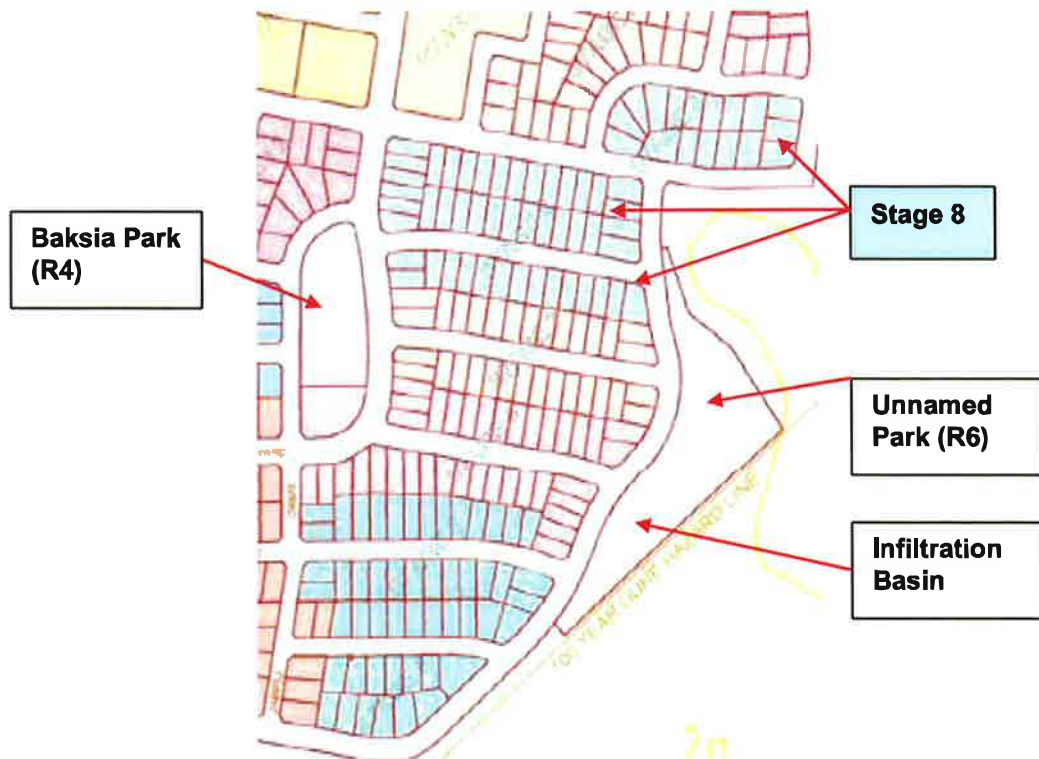


Figure 4: Approved Staging and Subdivision Layout

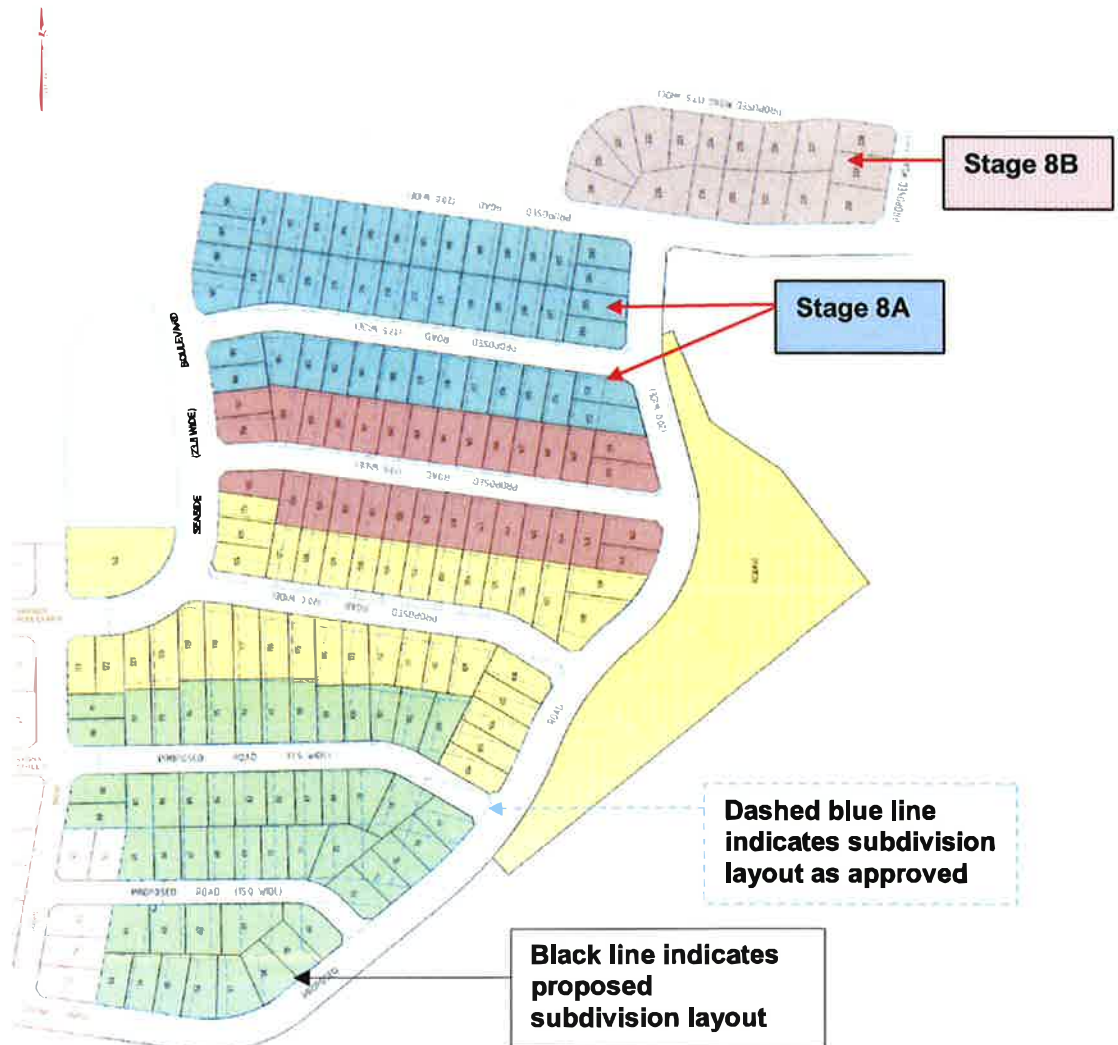


Figure 5: Proposed Staging and Subdivision Layout – Overlaid with Approved Subdivision Layout

2.2 Modification Justification

The proposed modification to amend the approved staging is requested in order for future lots to be developed in sequence with the relevant sewer servicing catchment. The request to amend the timing for the provision of infrastructure and services is requested in order to provide these services in conjunction with the development of lots in individual stages.

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

Approval of Major Project 06_0250 was granted in accordance with Part 3A under Section 75J of the EP&A Act. Section 75W of the EP&A Act provides for the modification of the Minister's approval.

Pursuant to Section 75W(2) of the EP&A Act, the proponent may request the Minister to modify the approval of a project. Any request is to be lodged with the Director-General. A copy of the proponent's modification request is included at **Appendix B**.

Section 75W(3) of the EP&A Act provides that the Director-General may notify the proponent of environmental assessment requirements (DGRs) with respect to the proposed modification. Following an assessment of the modification request, it was considered that DGRs are not required.

Under Section 75W(4) of the EP&A Act, the Minister may modify the approval (with or without conditions) or disapprove the modification. The following report outlines the agency's assessment of the modification request.

3.2 Delegated Authority

Under the Instrument of Delegation dated 14 September 2011, the Minister for Planning and Infrastructure has delegated his functions to determine section 75W modification requests to the Director – Industry, Key Sites & Social Projects whereby:

- the relevant local council has not made an objection to the proposal;
- a political disclosure statement has not been made; and
- there are less than 10 public submissions in the nature of objections.

Council has not objected to the proposal, a political disclosure statement has not been made and less than 10 public submissions in the nature of objects were received. The Director – Industry, Key Sites & Social Projects may therefore determine the modification request under delegation.

4. CONSULTATION AND SUBMISSIONS

Under Section 75W of the EP&A Act, it is at the agency's discretion as to whether a modification request is required to be publicly exhibited. Given the relatively minor nature of the modification request, public exhibition was not undertaken. Notwithstanding, under Section 75X(2)(f) of the EP&A Act, the Director-General is to make publicly available requests for modifications of approvals given by the Minister. In accordance with Clause 8G of the Environmental Planning and Assessment Regulation 2000, the request for modification was made publicly available on the agency's website.

The modification request was referred to council. Council did not raise any concern with the proposed amendments. A copy of council's response is included at **Appendix C**.

5. ASSESSMENT

The agency has assessed the proposed modification involving the following:

- the division of Stage 8 into two stages;
- amendments to the sequencing of stages and revised timing for the provision of certain infrastructure and services; and
- minor amendments to the approved subdivision layout.

5.1 Division of Stage 8

The proponent seeks to develop Stage 8 in two individual stages, to be referred to as Stages 8A and 8B. The modification is sought as the lots approved within Stage 8 are currently spread across separate sewer servicing catchments.

The development is required to provide three sewage pump stations (P3, P5 and P7) to service all future lots. Of the 64 lots approved as part of Stage 8, 47 are within sewer catchment 5 (to be serviced by P5) and 17 are within sewer catchment 7 (to be serviced by P7).

The 47 lots contained within catchment 5 are proposed to be developed as part of new Stage 8A. The remaining 17 lots are within catchment 7 and proposed to be developed as part of new Stage 8B.

Figure 6 shows the approved sewer servicing plan for the south-eastern portion of the site including the location of those lots approved as part of Stage 8, and the location of sewer pump stations P5 and P7.

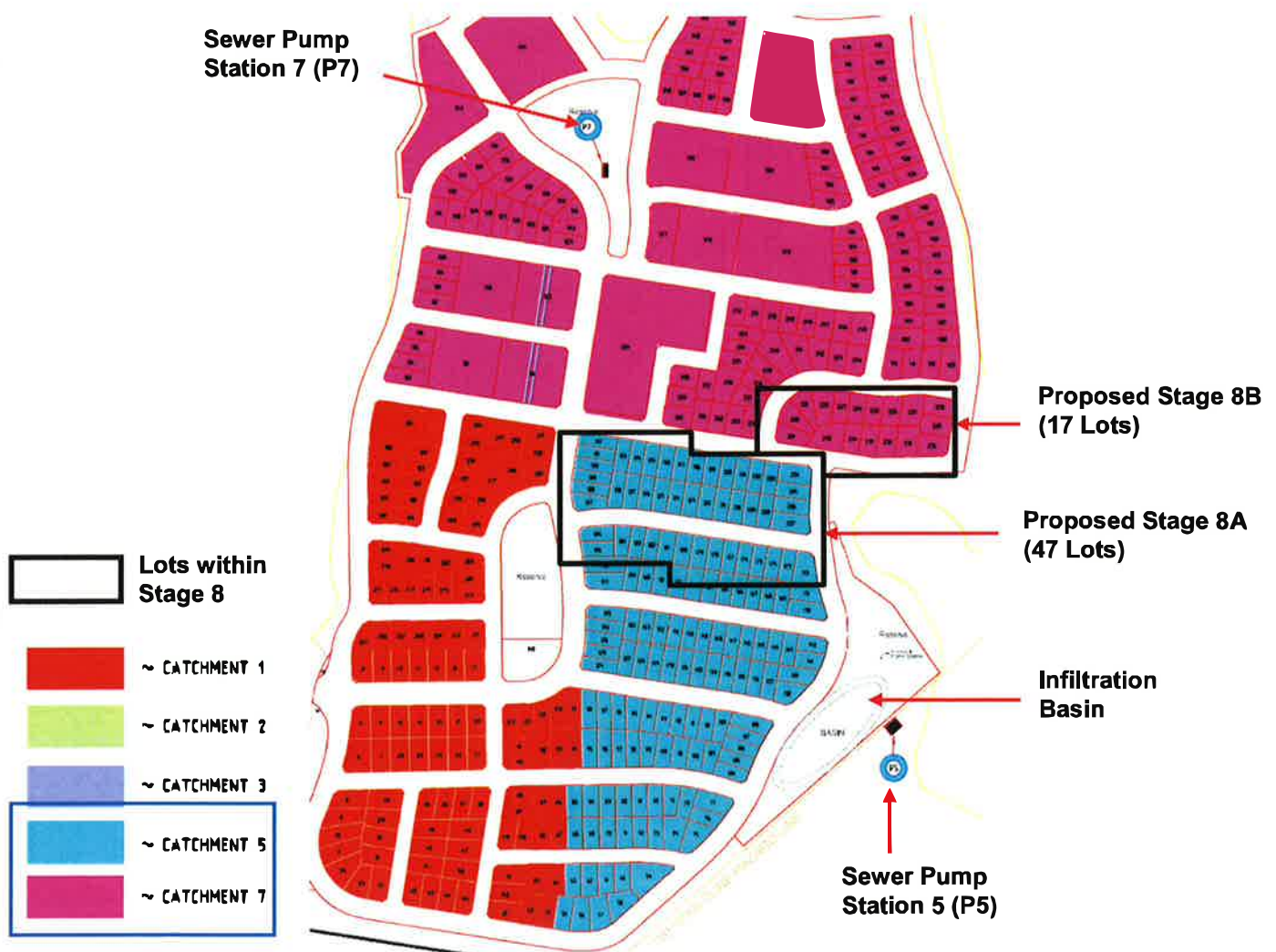


Figure 6: Approved Sewer Servicing Plan

Agency's Consideration

The division of Stage 8 into two separate stages is requested in order for future lots to correlate with the relevant sewer servicing catchment. Council did not raise any concern with the proposed modification. The agency also raises no issue with this aspect of the modification request.

5.2 Amended Stage Sequencing and Timing of Infrastructure and Services

The modification seeks to amend the approved stage sequencing, with Stages 6 & 7 proposed to be developed ahead of Stage 5 (**Figure 6** illustrates Stages 5 to 8). The proponent has advised that the commencement of Stage 6 ahead of Stage 5 will allow for the earlier delivery of the approved stormwater detention basin (also shown at **Figure 6**). The proponent considers it logical to then develop the adjoining stages being north to Stage 7 and south to Stage 5. As a result of the amended sequencing of stages, the provision of certain infrastructure and services required as part of the development is also proposed to be amended, including:

- construction of sewer pump station P5 – approved under Stage 5, now proposed within **Stage 6**;
- construction of infiltration basin 6 – approved under Stage 5, now proposed within **Stage 6**;
- construction of unnamed park (R6) including recreation facilities – approved under Stage 5, now proposed within **Stage 6**; and
- construction of the Banksia Park (R4) including recreation facilities – approved under Stage 7, now proposed within new **Stage 8A**.

Whilst the approved location of the infrastructure and services listed above will not change as a result of the modification, the timing for when these services are provided is proposed to be amended to better correspond with the development of lots at individual stages.

Agency's Consideration

The requirement to develop stages sequentially was deleted as part of MOD 3, subsequently giving the proponent a degree of flexibility in regards to the timing of construction of future stages. The agency, therefore, raises no concern in regards to the amended sequencing of stages. It is noted that infrastructure and services including sewer pump station P5, the infiltration basin and parkland areas R4 and R6 will be provided as future demand dictates.

5.3 Amendments to the Approved Subdivision Layout

The size and configuration of residential lots approved under Stages 5 to 8 are proposed to be amended slightly. Those lots within Stages 5 & 6 are proposed to be shifted marginally to the north. The proponent advised that the minor variations to the shape of some residential lots will improve the constructability of dwellings on these lots. The proponent further advised the amended subdivision design will provide safer intersection alignments within Stages 5 & 6 from the approved 'Y' intersection configuration to a safer 'T' intersection.

Figure 7 shows the proposed lot layout (the blue hatched line indicates the subdivision design as approved).

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Agency's Consideration

The proposed modification to the subdivision layout does not result in the creation of any additional lots, and the urban footprint will not expand beyond what was originally approved. The revised intersection alignments will also provide for the safer movement of traffic within the subdivision due to improved sight distances. The agency, therefore, raises no concern in regards to this aspect of the modification.

6. CONCLUSION AND RECOMMENDATIONS

The agency considers the proposed modification involving revised staging and minor amendments to the subdivision layout does not detract from the original intent of the project being for a residential housing estate. The agency is satisfied that the proposed amendments are relatively minor and will not result in additional environmental, social, or economical implications on the site or surrounding locality. Furthermore, the proposed amendments are not considered to be inconsistent with the original intent of the project approval.

It is recommended that the Director – Industry, Key Sites & Social Projects, as delegate of the Minister approve the proposed modification under section 75W of the EP&A Act by signing the Instrument of Approval included at **Appendix A**.

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