



MODIFICATION REQUEST:
Residential Subdivision
Dolphin Point Road and Wuru Road,
Dolphin Point
05_0016 MOD 2 (Concept Plan & Project
Application)



Secretary's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

May 2014

ABBREVIATIONS

Department	Planning and Environment
CIV	Capital Investment Value
EARs	Environmental Assessment Requirements
EA	Environmental Assessment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
LEP	Local Environmental Plan
MD SEPP	State Environmental Planning Policy (Major Development) 2005
Minister	Minister for Planning and Environment
PAC	Planning Assessment Commission
Part 3A	Part 3A of the <i>Environmental Planning and Assessment Act 1979</i>
PPR	Preferred Project Report
Proponent	Australian Property Growth Limited
RtS	Response to Submissions
Secretary	Secretary of Planning and Environment, or delegate.
SEPP	State Environmental Planning Policy

Cover Photograph: Aerial photograph of the site

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1. BACKGROUND AND THE SITE

1.1 Introduction and Scope

This report is an assessment of a request to modify the concept plan and project approval (MP 05_0016) for the 164 lot Dolphin Point residential subdivision, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 Site Location and Surrounding Land Uses

The site is located on Dolphin Point and Wuru Roads, on the border between Burrill Lake and Dolphin Point, approximately 5 kilometres south of Ulladulla. Burrill Lake/Dolphin Point is a small coastal town with limited retail and commercial facilities and a population of around 1400 people. The site is located within the local government area of Shoalhaven and comprises part of the southern boundary of the Burrill Lake/Dolphin Point residential area. The site location is illustrated in **Figure 1**.

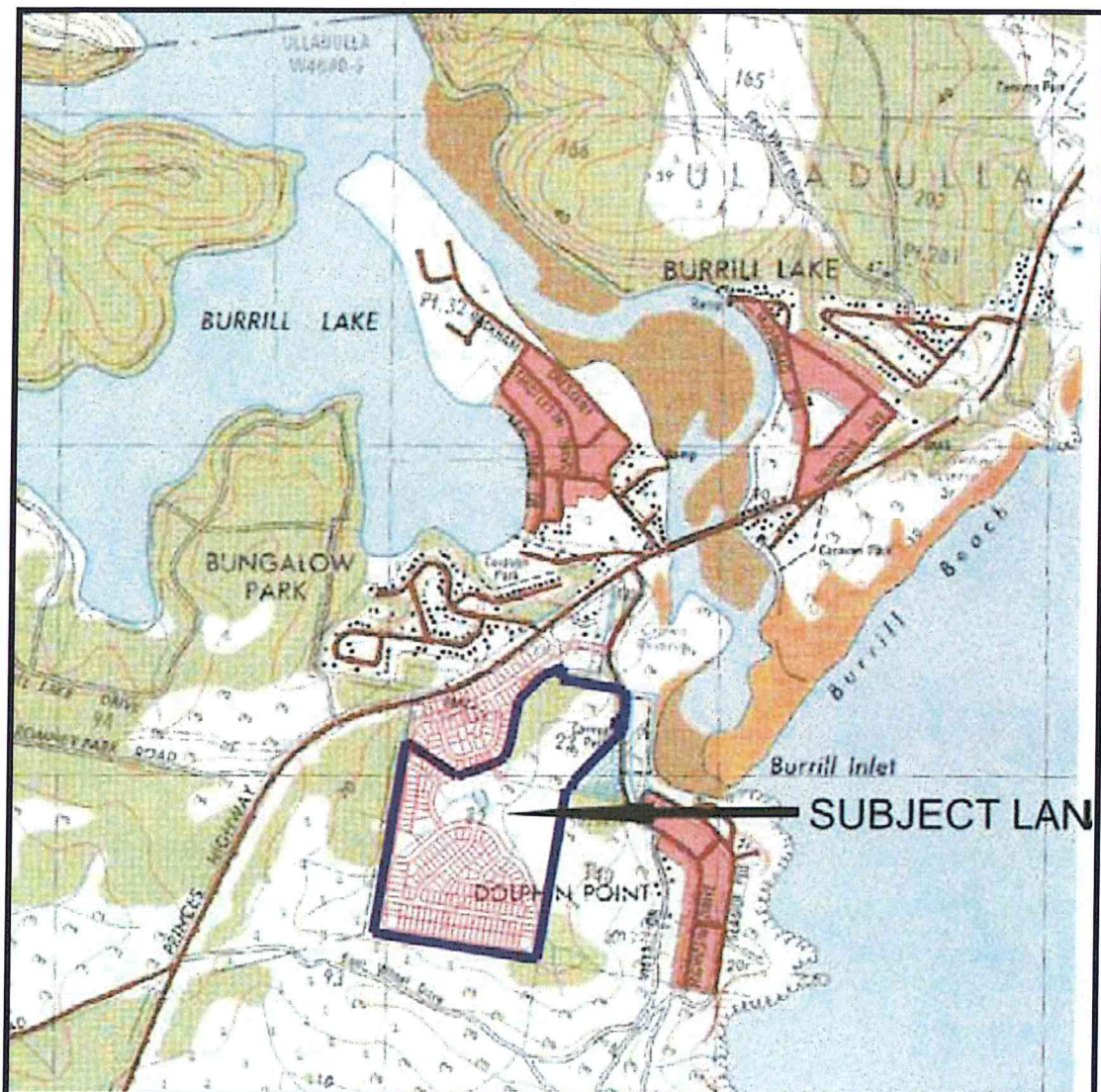


Figure 1: Site Location

The site was previously legally described as Lot 11 in DP 1104789 and a portion of Part Lot 72 in DP 1073600 (upon concept and project approval), however, the title particulars have now changed to Lots 2, 3 and 4 in DP 1123774 ('the site'). The subject site comprises a total site area of 47.19 hectares and consists of a large residential subdivision.

1.3 Original Concept and Project Approval

The site comprises a broader five (5) stage subdivision. Stages 1 and 4 have previously been approved by Council, and Stages 2, 3 and 5 form part of a concept and project approval granted by the Minister. The area subject to the Minister's approval covers an area of 35.61 hectares and comprises the southern and western parts of the site as outlined in **Figure 2**.

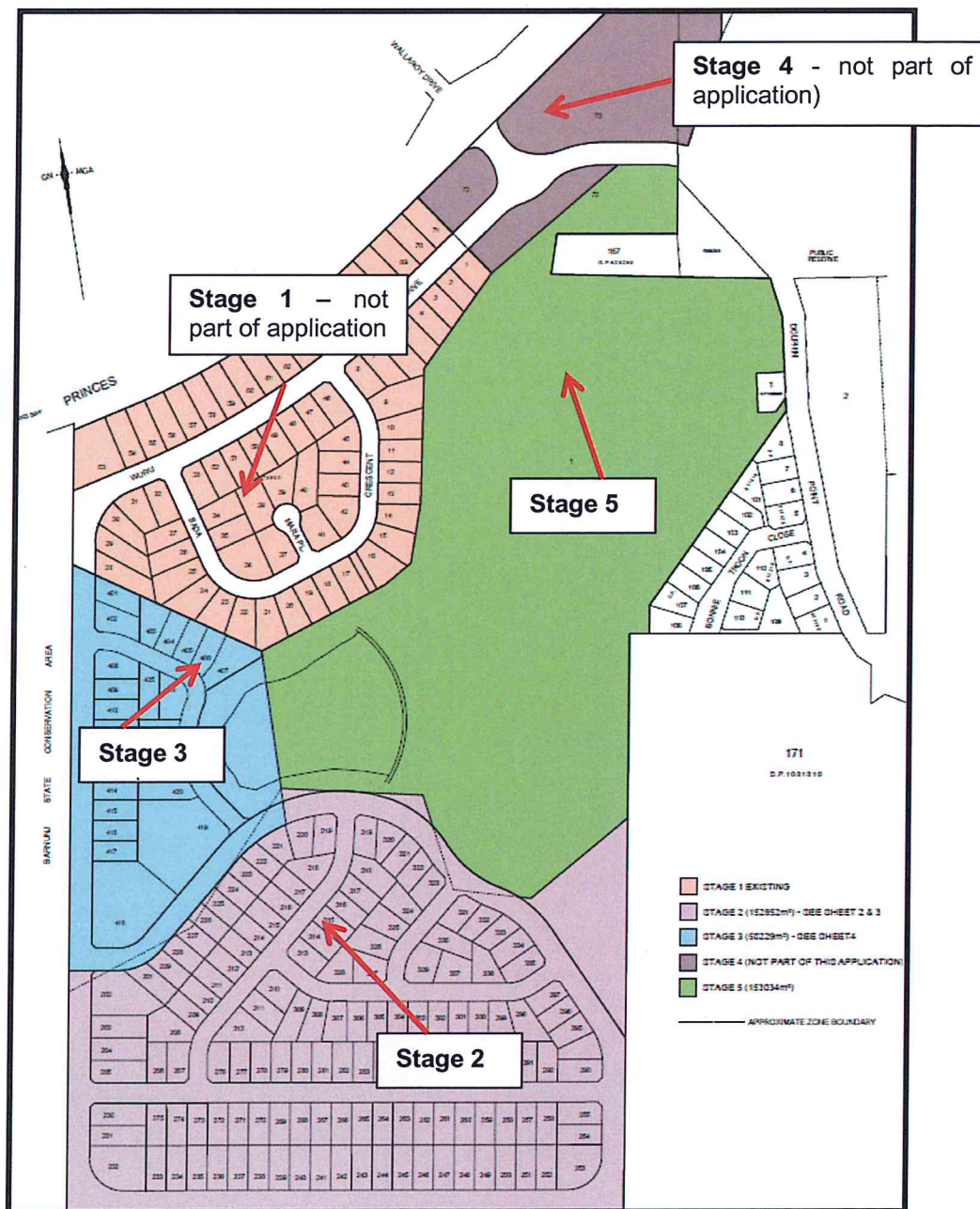


Figure 2: The Site
(Source: Rygate & West, 2007 with Original EA)

Concept approval for the site was granted by the then Minister for Planning on 12 March 2008, in accordance with Part 3A of the EP&A Act. Approval was granted for the carrying out of:

- staged subdivision into 164 residential lots (Stage 2 (Precinct B) & 3 (Precinct A));

- creation of roads to service the subdivision;
- creation and embellishment of one allotment as a neighbourhood park in Precinct A;
- creation and embellishment of an informal neighbourhood park in Precinct B;
- construction of pedestrian/cycle paths through all precincts;
- landscaping;
- revegetation works to riparian zones in all precincts;
- provision of services and infrastructure; and
- identification of development parcels within Stage 5 (Precinct C).

Project approval for the subdivision of Stages 2 (Precinct B) and 3 (Precinct A) and construction of roads, services and infrastructure was granted concurrently with the concept plan approval. The only aspect of the concept plan not covered by the project approval involved three parcels of land within Stage 5 (Precinct C) where future development may occur. The concept plan restricts the future development of this land to consist of community facilities and structures for educational and recreational purposes, subject to development consent under Part 4 of the EP&A Act. **Figure 3** overleaf shows the approved concept layout.

1.4 Previous Modification

A previous modification request was lodged with the department on 19 December 2012 which sought an extension to the time period for the date on which the concept approval is liable to lapse from 12 March 2013 to 1 October 2016. This modification of the Minister's approval was granted under delegated authority on 25 February 2013 (MOD 1) and related to the Concept Plan only. There have been no previous modifications to the Project Application.

2. PROPOSED MODIFICATION

2.1 Modification Description

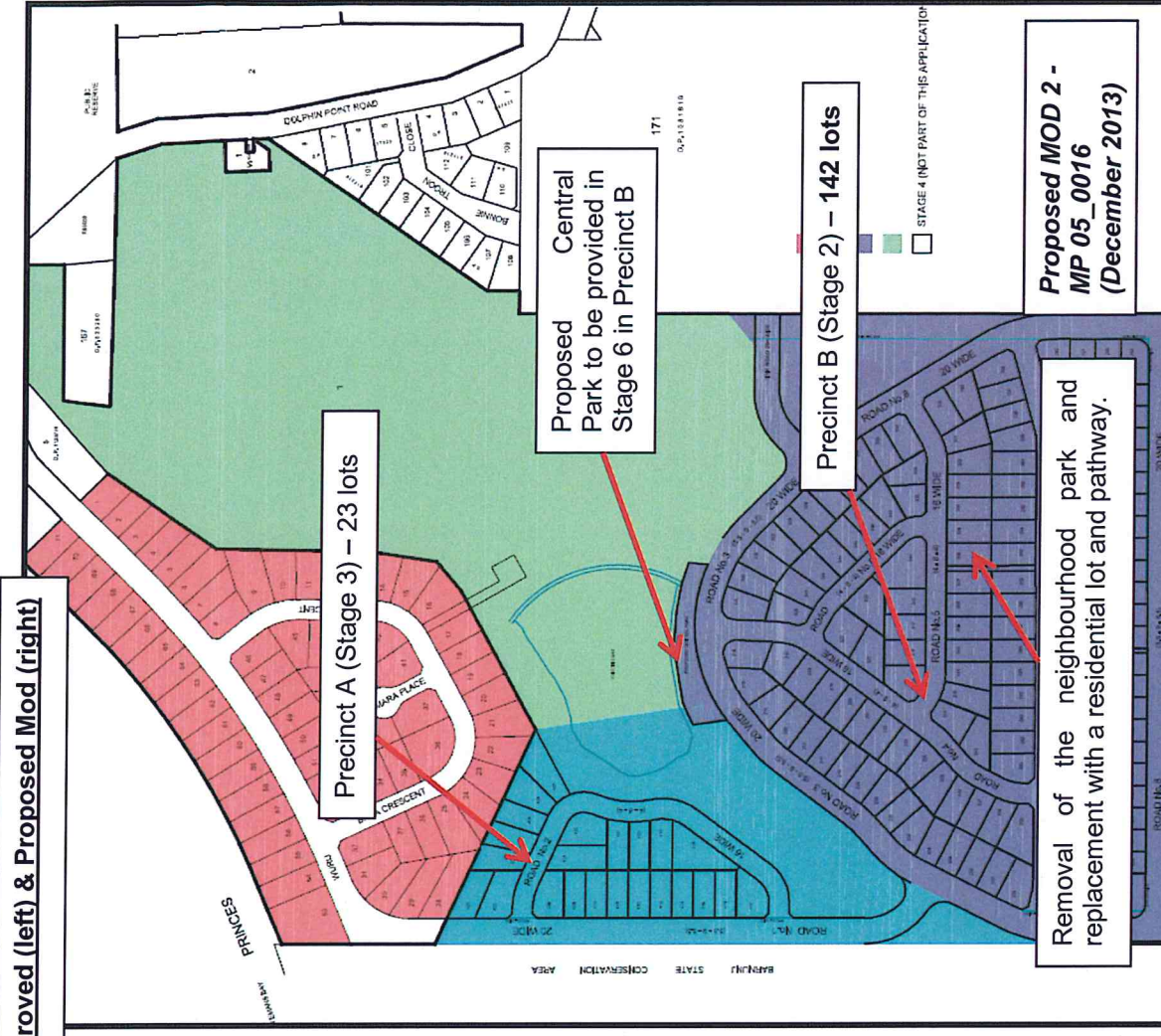
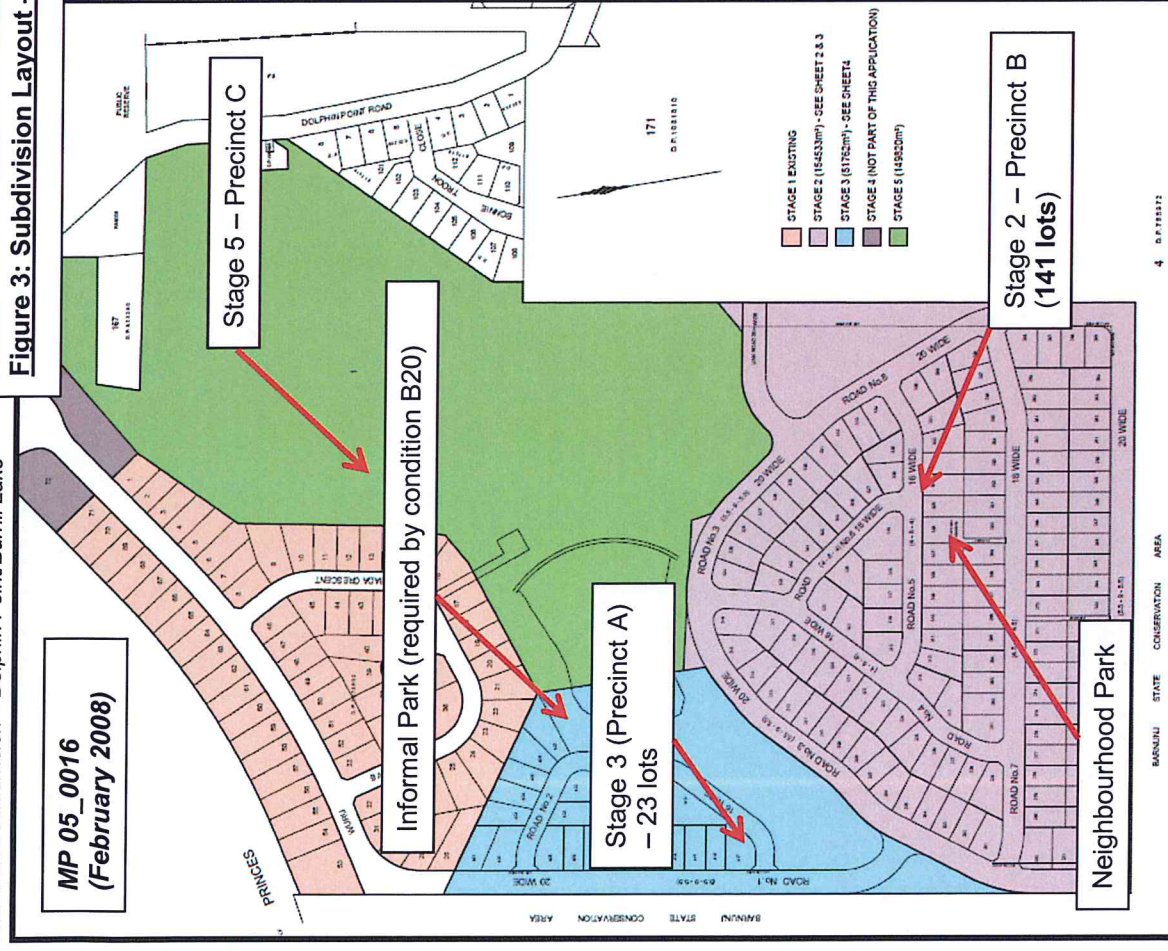
On 24 May 2013, the proponent submitted a Section 75W modification request (MP 05_0016 Mod 2) proposing to make a number of amendments to the project approval, attached in **Appendix C**. The proposed modified layout is shown in **Figure 3**, along with the approved concept plan layout. The proposed modified staging plan is illustrated in **Figure 4**. The plans for the proposed modifications are at **Appendix D**.

The modification request seeks the following amendments:

- to consolidate the informal and neighbourhood parks into one park in a central location;
- changes proposed to the timing, required embellishments and the timing of the provision of the plans for the park;
- changes to the boundary treatment to the adjoining conservation area from fencing to a batter slope;
- the removal of the prohibition on the keeping of domestic pets; and
- other generally procedural changes to the staging of the project to 17 stages (from the original 3 stages) and updating title, ownership and staging references.

The Proponent subsequently lodged a modification request to the Concept Plan on 18 February 2014 to ensure the concept plan approval is consistent with the proposed modifications to the Project approval. The modification to the concept plan also seeks some general procedural changes to the staging of the project and updating title, ownership and staging references.

Figure 3: Subdivision Layout – Approved (left) & Proposed Mod (right)





Section 75W(3) of the EP&A Act provides that the Secretary may notify the proponent of environmental assessment requirements (EARs) with respect to the proposed modification. Following an assessment of the modification request, it was considered that EARs were not required. Under Section 75W(4) of the Act, the Minister may modify the approval (with or without conditions) or disapprove the modification. Section 4 outlines the department's assessment of the modification request.

3.2 Zoning

The subject site has multiple zonings (**Figure 5**) including 2(c) (Residential "C" (Living Area), 7(d2) (Environment Protection "D2" (Special Scenic) Zone) and 6(b) (Open Space—Recreation "B" (Private) Zone) under the *Shoalhaven LEP 1985*. The changes proposed in this modification application do not raise any issues with respect to permissibility given the residential development is confined to the 2(c) zoned portions of the site.

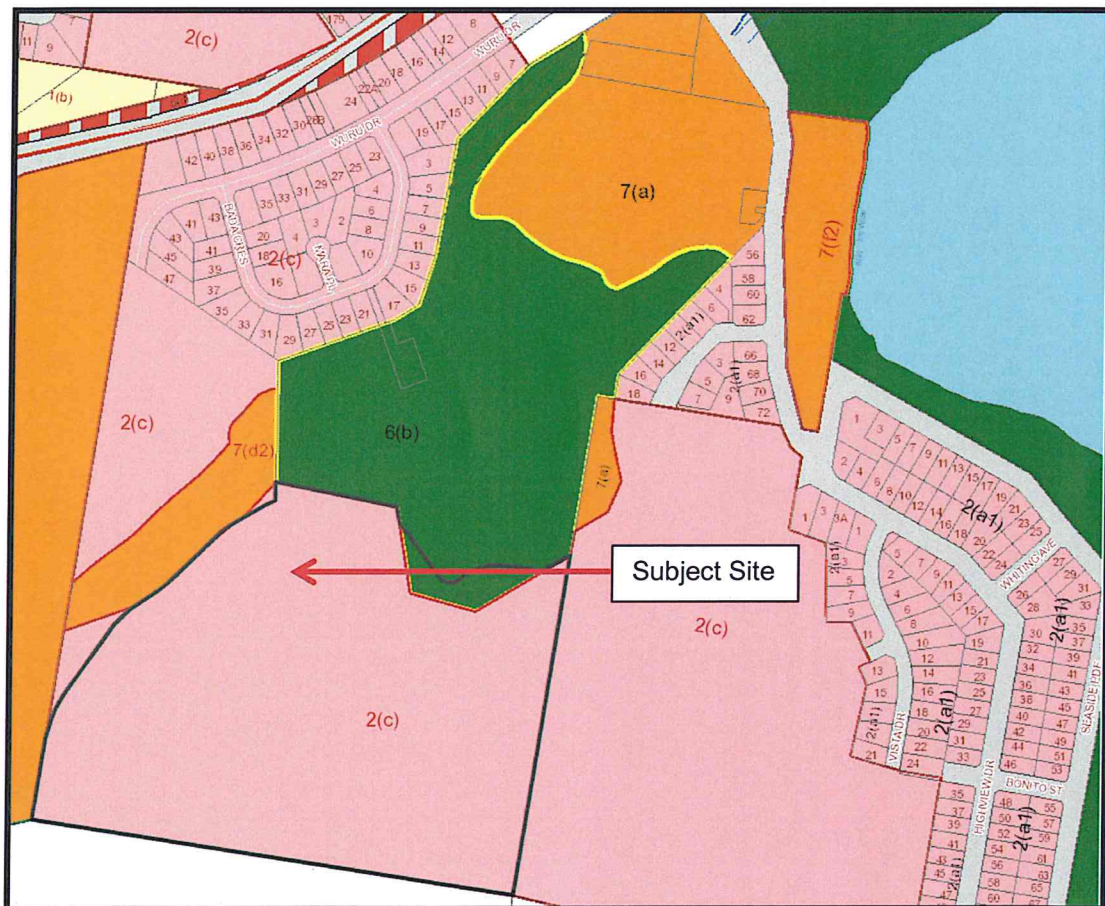


Figure 5: Zoning of the Subject Site
(Source: www.shoalhaven.nsw.gov.au)

3.3 Delegated Authority

Under the Instrument of Delegation dated 14 September 2011, the Minister's functions to determine section 75W modification requests have been delegated to the Director - Industry, Key Sites and 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.

Shoalhaven City Council did not make an objection to the proposal, however, a number of concerns were raised which are considered in Section 4.2. The proponent has not made a political donation and no public submissions in the nature of objections were received. The Director - Industry, Key Sites and Social Projects, is therefore delegated to determine the modification request.

4. CONSULTATION AND SUBMISSIONS

4.1 Notification

Under section 75X(2)(f) of the EP&A Act, the Secretary 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 department's website.

4.2 Consultation

Shoalhaven City Council raised the following concerns:

- Condition B20 - the location of the informal park needs to be considered in the context of the overall subdivision layout, the neighbourhood park and pathways/cycleways. Consideration should be given to amalgamating the informal park and neighbourhood park into one. One high quality park in a central location would be of greater benefit to the community and cheaper to maintain. Council supports reconsideration and requests an alternate location and proposed timeframe for delivery be provided for comment;
- Concern with change to Condition B22 - This is a confusing condition and its purpose needs to be clarified. Water quality monitoring should take place throughout the entire subdivision construction phase for any catchment draining to the pond;
- Condition C2 - The proponent should seek to identify the proposed measures and include them in the modified consent;
- Suggested alternative wording for consideration is required for the proposed change to Condition E13 with respect to an alternative for funding of the Collector road connection with the adjoining land;
- Conditions E15 and E16 - The timing for implementation of the VMP should be considered with respect to the timing for dedication of Precinct C to Council (see E21). Furthermore, the construction of cycleways/pathways (see E17) should be considered to ensure public infrastructure is on public land and Council is free to undertake maintenance. Conversely, maintenance by third parties on Council land should be avoided;
- Conditions E18 and E19 - changes to these conditions need to be considered in relation to the comments for B20 above with respect to location and timing of the proposed new consolidated park;
- Condition E20 - with respect to the delivery of the pedestrian and cycleway conditions, the timing of dedication should be considered; and
- Condition E24 - Revised Section 94 contributions condition is required that is correct (as provided).

These comments are considered in detail in **Appendix F** (Table 1).

Following the submission of additional information and revised plans, the Council is satisfied that the proposed modifications are satisfactory. In particular, the Council provided the following comments:-

- **Condition B20** - Council supports the aggregation of the open space as generally proposed, however, has some concerns with respect to the area, reference to a

reserve at Narrawallee and the timing for providing the open space. In summary, the Council requires:-

- that the park is provided after 60 lots are created and not after 147 lots are created as per the Proponent's request;
- that the embellishments required by the original condition are provided, with no requirement for toilets. The Narrawallee references should be removed;
- BBQs should be electric and to Council's standards; and
- the aggregated area of the consolidated park should be 1500m² and not the 1000m² currently proposed by the Proponent.

Council agrees to require the plans for this park prior to the issue of Construction Certificate for Precinct B Stage 3.

- **Condition C2** - Council does not object to the proposed batter slope with bollards spaced at 1.5 metres as a boundary treatment to the adjoining State Conservation Area.
- **Condition E18** – Council has no objection to the deletion of this condition as the small park area is proposed to be redesigned as a residential lot and an adjacent drainage reserve given the consolidation of the 2 parks into the central park.
- **Condition E19** – Council objects to the timing of the provision of this park. The park should be provided prior the release of the Subdivision Certificate for when 60 lots are created.

Council's comments in relation to the above are considered in the assessment in Section 5.

5. ASSESSMENT

The key assessment issues associated with this modification request are generally related to changes to staging as well as amalgamating the two parks into one with the associated changes in timing and delivery of this park and the boundary treatment to the adjoining Barnunj State Conservation Area ('SCA'). Details of the modifications to the conditions are considered in **Appendix F** (Table 1 for the Project Application and Table 3 for the Concept Plan). The proposed changes to the Statement of Commitments (Project application) are also considered in **Appendix F** (Table 2).

These issues are discussed below.

5.1 Consolidation and Provision of Public Open Space

The Proponent proposes to consolidate the proposed neighbourhood park proposed for Precinct A (required by Condition E18) and the informal park (required by Conditions B20 and E19) into a larger 'central' park within the central area of the site. Council supports this consolidation as it would result in a greater area of usable public open space in a more central location (refer to **Figure 6**). As a result of this consolidation of the open space into one park, there is an additional lot proposed in Precinct B in the location of the former neighbourhood park. The modified proposal therefore involves 165 lots, instead of 164 lots.

The timing for the provision of this central park and the plans outlining its embellishment were the subject of negotiations between Council and the Proponent. These discussions have resulted in agreement that the park will be provided once 60 lots have been created which will be at the completion of the development of Stage 6 Precinct B (following Stage 6, 63 lots will have been created). The plans will be required at Stage 3 Precinct B for Council's approval since the final design levels of the surrounding roads to the park will be known at this time. The embellishments required in this park are to remain as outlined in the original condition, with the exception that the toilet is no longer required and BBQs are to be electric to Council's standards.

Council considers that Condition E18 can now be deleted as the neighbourhood park is no longer required. The area formally reserved for this small neighbourhood park is now proposed to be a residential lot with an adjacent drainage reserve. The proposed pathway between roads 5 and 7 which originally passed through this proposed park is still proposed between the residential lots in this area. The department considers this to be an acceptable urban design outcome for the site and Council concurs. Conditions B20 and E19 are to be modified accordingly. These changes are illustrated in **Figure 6**.

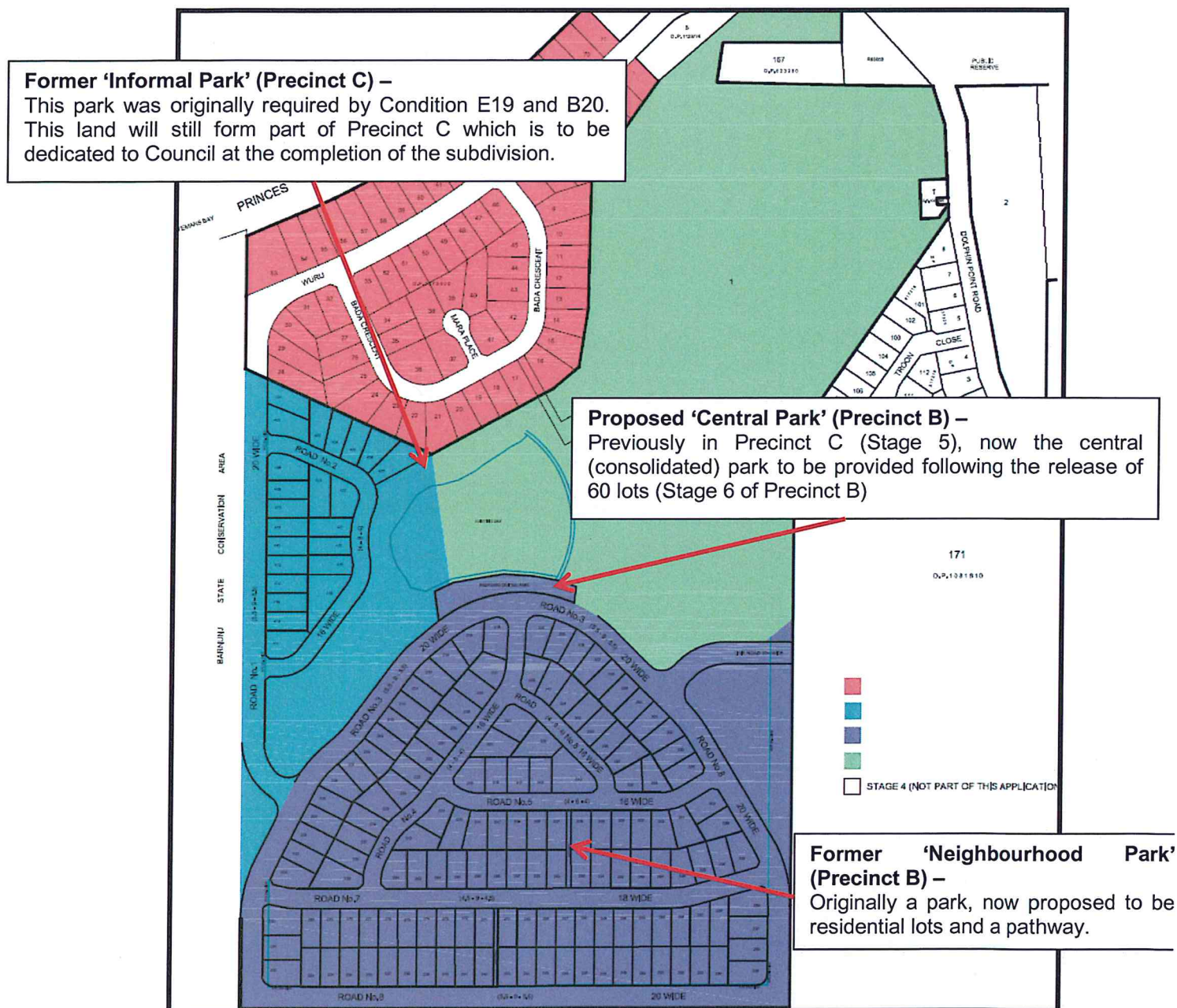


Figure 6: Proposed Changes to the Parks on the Site
(Source: MOD 2 (MP 05_0016) dated 13 November 2013)

5.2 Boundary Treatment to Barnunji SCA

Condition C2 originally required the provision of fencing along the boundary between the subject site and the adjoining Barnunji State Conservation Area. The Proponent requested that this condition be modified to allow for a batter slope with bollards along this boundary to

reduce the costs of this boundary fencing which would be incurred for both construction (by the Proponent) and on-going maintenance (by the Council).

Subject to the bollards being spaced at a minimum of 1.5 metres, the Council considered this alternative boundary treatment to be satisfactory to prevent vehicle access to the adjoining State Conservation Area (illustrated in **Figure 7**). The relevant modifications to this condition are supported.

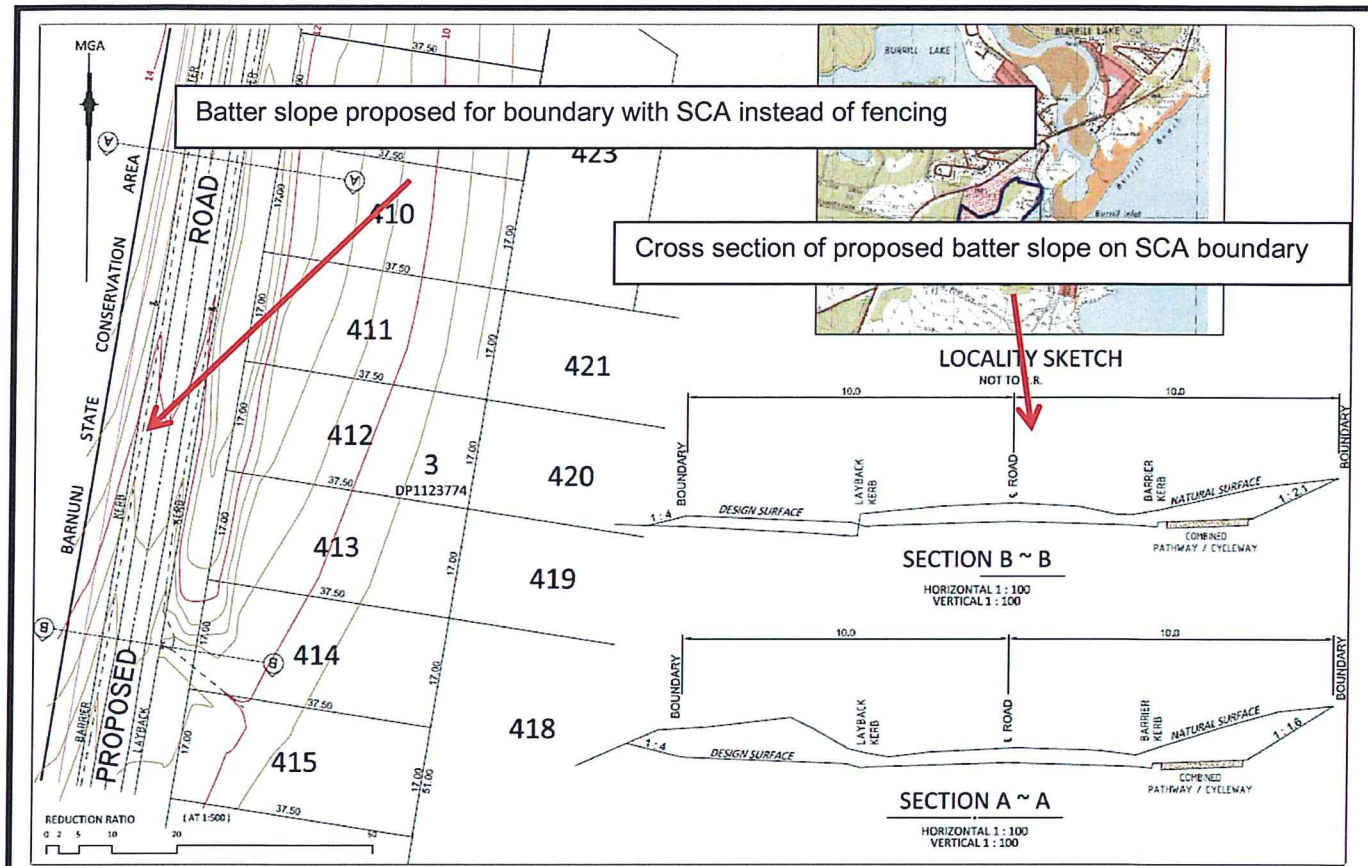


Figure 7: Proposed Boundary Treatment to Conservation Area
(Source: MOD 2 (MP 05_0016) dated 13 November 2013)

5.3 Changes to the Statement of Commitment's

The modification request includes the withdrawal of the majority of the original commitments within the Statement of Commitment's (SoC) as they are covered by the conditions of approval. Consideration of the withdrawal of the majority of these original commitments is considered in **Appendix E** (Table 2). A total of 32 of the 53 commitments are recommended to be deleted as such commitments are adequately addressed in the conditions.

The department considers that the remaining commitments requested to be deleted by the Proponent (comprising Commitment Nos 10, 19, 24, 25, 26, 31, 34, 41, 42, 43 and 5 & 7 of the additional commitments) are not adequately covered in conditions or are only included in advisory notes which do not form part of the approval. Such commitments are recommended to remain in Schedule 3 of the modified approval. The Proponent accepted this decision following the department's initial advice on the application.

5.4 Keeping of Domestic Pets

The approval requires that a Section 88B instrument is created over all residential lots in all stages of the subdivision requiring that cats and dogs be prohibited within the subdivision.

The modification request originally sought the deletion of this condition, however, the request was amended to accept the prohibition on cats and request that dogs be allowed to be kept on the site provided they are restrained at all times within the dwelling curtilage by appropriate fencing and secured on a leash outside the dwelling curtilage.

This request is not supported due to the potential impact that domestic dogs and cats pose to fauna species likely to occur in the adjoining Barnunj SCA. This is consistent with the position the department has taken for the adjoining site at Highview Drive, Dolphin Point (MP 05_0024, as modified). Accordingly, this condition is recommended to be retained. The Proponent accepted this condition when given the draft conditions to review.

5.5 Changes to Staging and Related Plans and Documents

The modifications to the concept and project applications involve changes to the staging of the project, with numerous additional sub-staging within Precincts A, B and C (illustrated in **Figure 4**). This staging is supported as it will provide a logical and clear pattern of lot release on the subject site. The associated changes to conditions in the concept and project approvals with respect to relevant staging, plans and documents are also supported as outlined in **Appendix A, B and F**.

6. CONCLUSION

The department considers the proposal, as modified, achieves the same objectives as assessed under the original approval. The department's original assessment of the application considered the proposed development would allow for the provision of additional residential land to allow for future growth in the region. The proposed modification ensures this objective can still be achieved. It is therefore recommended that the modification request be approved.

7. RECOMMENDATION

It is recommended that the A/Director, Industry, Key Sites and Social Projects, as delegate for the Minister for Planning, under Section 75W of the EP&A Act approve the proposed modification (MOD 2) to MP 05_0016, as detailed in **Section 2** of this report, and vary the terms of approval as set out in the modifying instrument included at **Appendix A** for the Project Approval and **Appendix B** for the Concept Plan approval.

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16/5/14