

ASSESSMENT REPORT

Section 75W Modification

Lakes Estate Residential Subdivision, North Boambee Valley (MP 05_0129 MOD 1),
Coffs Harbour Local Government Area

1. BACKGROUND

This report is an assessment of a request to modify the Project Approval for the Lakes Estate residential subdivision, North Boambee Valley (MP 05_0129 MOD 1). The request has been lodged by GLN Planning, on behalf of Noubia Pty Ltd (the Proponent), pursuant to section 75W of the *Environmental Planning & Assessment Act 1979* (the EP&A Act).

The modification request seeks to amend the subdivision layout, the staging plans, conditions A2, A3, A4, B1, B2, B6, B11, E1, E18 and the Statement of Commitments to:

- create 20 additional lots within stages 1, 2 and 3 (10 additional lots within Stage 1, eight additional lots in Stage 2 and two additional lots within Stage 3);
- clarify when geotechnical plans need to be submitted to the Secretary for approval;
- clarify the extent of consultation that is required prior to the Principal Certifying Authority approving the road design plans;
- clarify the land the subject of the Vegetation Management Plan;
- amend conditions A4 and E17 to clarify the Proponent's section 94 obligations; and
- delete the requirement for the land zoned 'R2 General Residential' within Lot 141 to be transferred to the Council free of cost, or managed by the Proponent in perpetuity.

2. SUBJECT SITE

The site is located in the North Boambee Valley on the New South Wales mid-north coast, approximately 2.5 kilometres (km) south-west of the Coffs Harbour central business district, and 2 km east of the Boambee State Forest. The site covers an area of approximately 53.15 hectares (ha) and is legally described as Lot 10 in DP 1071628, Lot 1 in DP 1089778, Lot 2 in DP 607602, and Part Lot 95 in DP 1126227, North Boambee Road and Lakes Drive (see **Figure 1**).

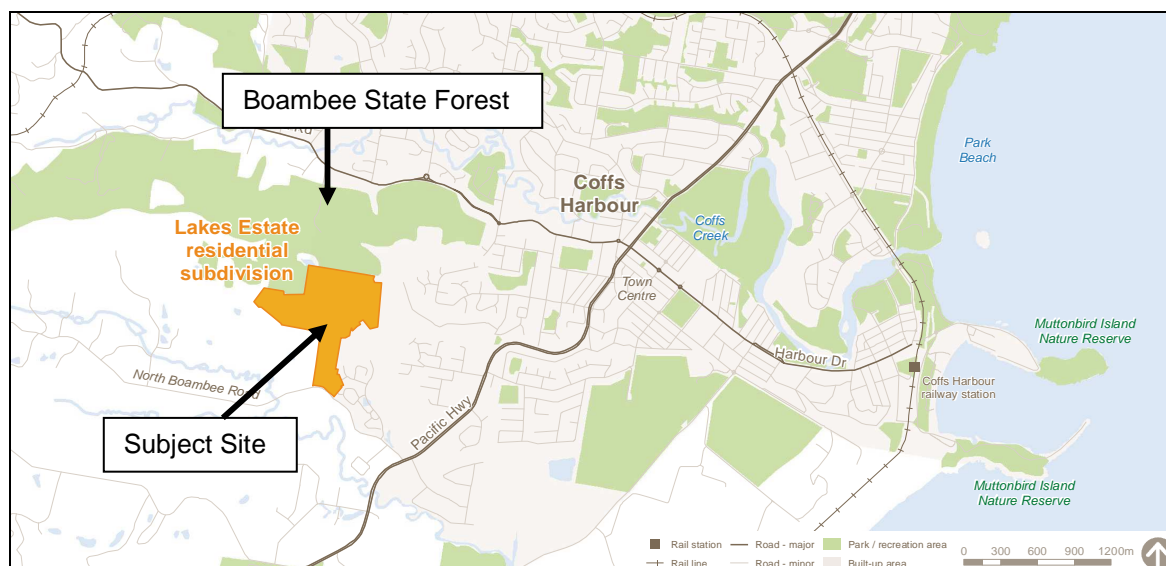


Figure 1: Regional Context

The north-west corner of the site contains areas of dense vegetation that provides habitat for a range of flora and fauna, including the Rusty Plum, Slender Marsdenia, Rainbow Bee Eater and Koala, all of which are listed species under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). In addition, the north-west portion of the site also contains the *Lowland Rainforest in NSW and North Coast and Sydney Bioregion Endangered Ecological Community* (Lowland Rainforest EEC).

The site is bounded by existing agricultural developments and the Roberts Hill Reservoir to the north, the Kratz Drive residential estate to the east, The Highlands residential estate and the completed stages of the Lakes Estate to the south-west, and Bishop Druitt College and commercial industrial precincts to the south of North Boambee Drive (see Figure 2).

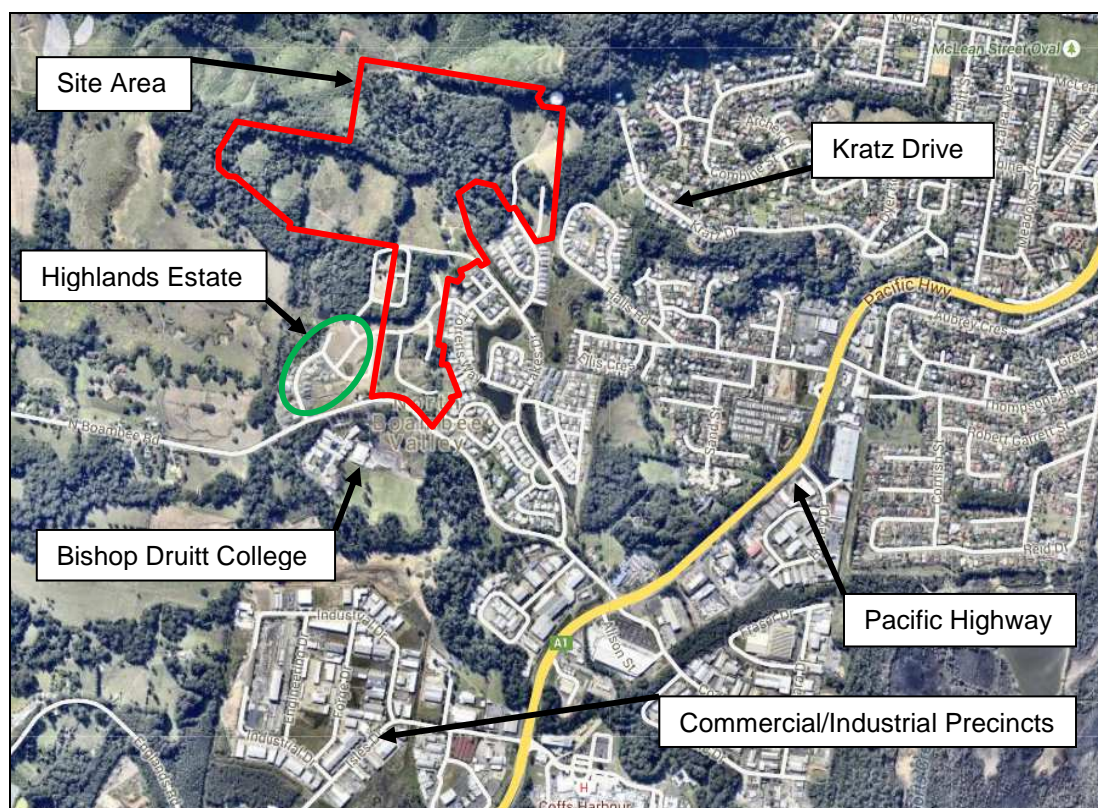


Figure 2: Site and Surrounding Development

The site is zoned 'R2 General Residential', 'SP2 Infrastructure' and 'E2 Environmental Conservation' in the *Coffs Harbour Local Environmental Plan 2013* (LEP). The preferred route for the Coffs Harbour Pacific Highway Bypass Corridor also bisects the western edge of the site (see **Figure 3**).

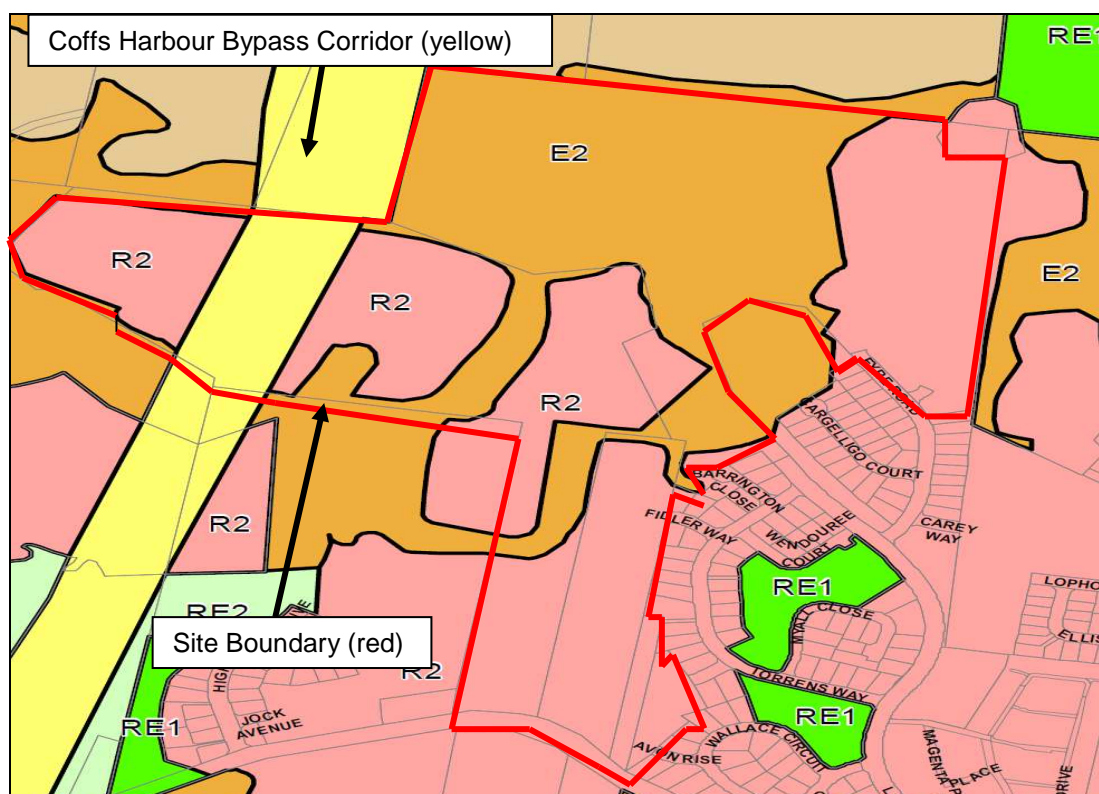


Figure 3: Site Zoning

3. SITE HISTORY

On 11 April 2003, Coffs Harbour City Council (Council) granted development consent (DA 575/03) for a 160 lot residential subdivision on the land immediately south-east of the site (see **Figure 4**). All lots approved under this consent have now been created.

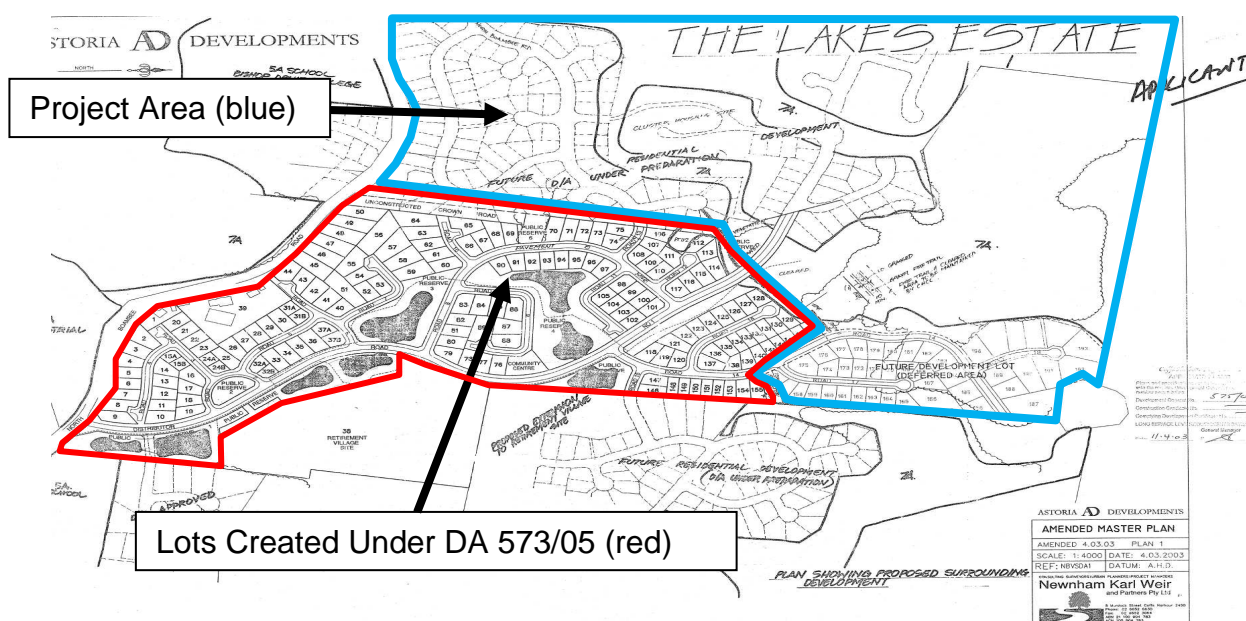


Figure 4: Council Approved Subdivision

On 7 June 2013, the then Minister for Planning granted Project Approval for a residential subdivision (MP 05_0129) on the subject site under Part 3A of the EP&A Act. The Project Approval permits:

- a 162 lot subdivision constructed over three stages, comprised of:
 - 160 residential lots (140 shown on the approved plans of subdivision, and 20 additional lots required in stages 1 and 2 under Condition B1(a));
 - one lot (Lot 141) containing conservation lands, a Heritage Park and open space; and
 - one lot (Lot 142) for future development subject to a separate development application;
- site remediation and earthworks;
- vegetation rehabilitation and management; and
- infrastructure works including roads, drainage, sewerage works and utility services.

No works have commenced on site as the Proponent is required to redesign the layout of stages 1 and 2 to provide 20 additional lots prior to the issue of a Construction Certificate.

4. PROPOSED MODIFICATION AND JUSTIFICATION

On 7 April 2014, the Proponent lodged a section 75W modification request to modify the project approval for MP 05_0129 to:

- amend the subdivision plan to:
 - create 10 additional lots within Stage 1, eight additional lots in Stage 2 and two additional lots within Stage 3;
 - create a new lot (Lot 162) to define the koala management and conservation lands intended to be dedicated to the Council;
 - create a new lot (Part Lot 161) to facilitate the creation, management and dedication of open space into public ownership;
 - renumber Lot 142 (a future development lot) to Lot 163;
- exclude the land required to be transferred to the Council under DA 575/03 from the provisions of the Vegetation Management Plan;
- amend the subdivision and staging plans to reflect the proposed lot layout;
- modify the road alignment at the intersection of Amadeus Place and Eyre Road;
- clarify the Proponent's section 94 obligations;
- delete Condition B1 (a), (b) and (e) requiring the provision of 20 additional lots within stage 1 and 2 of the development, the provision of a 3 metre (m) wide pedestrian corridor to Halls Road, and a road link between Amadeus Place and Kratz Drive;
- amend the geotechnical certification requirements outlined in Condition B2 to specify that the Secretary is only required to approve the geotechnical specifications where there is a level change in excess of 2 m within 1 m of a property boundary;
- re-word Condition B6 to amend the consultation requirements for the final road design; and
- undertake administrative changes to the Statement of Commitments to reflect the proposed modifications to the subdivision layout and conditions of approval.

The approved and proposed plans of subdivision are depicted in **Figures 5 and 6** overleaf.

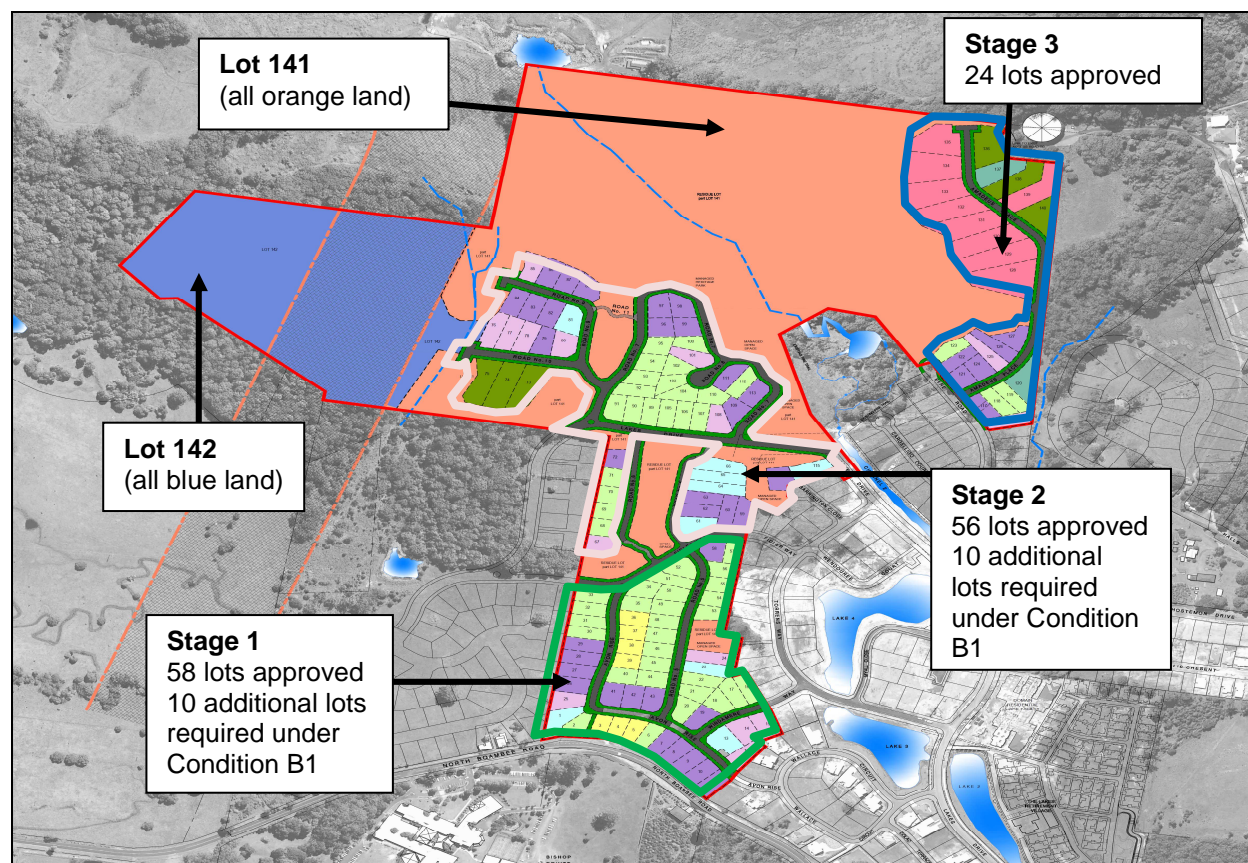


Figure 5: Approved Subdivision Plan

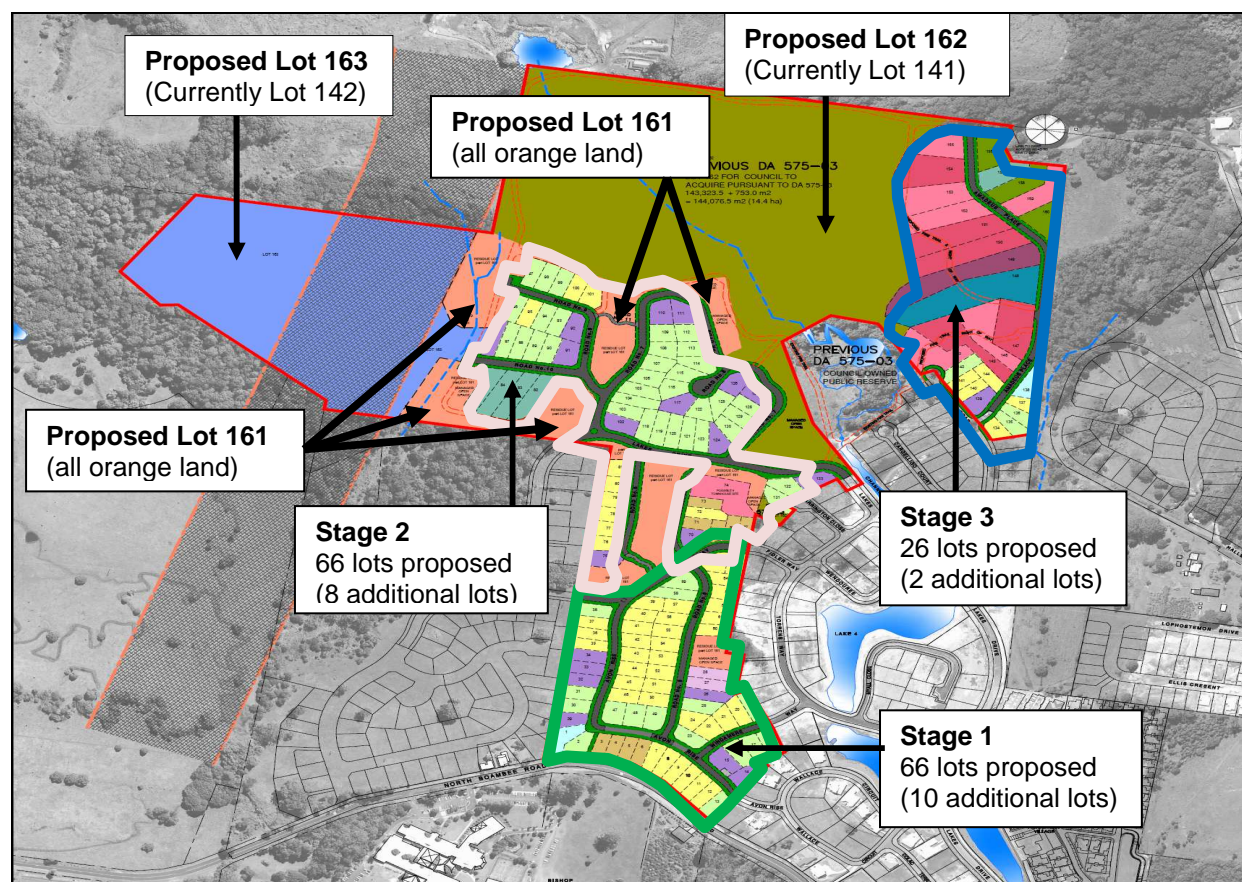


Figure 6: Proposed Subdivision Plan

5. STATUTORY CONTEXT

5.1 Section 75W

Part 3A of the EP&A Act, as in force immediately before its repeal on 1 October 2011, and as modified by Schedule 6A to the EP&A Act, continues to apply to section 75W modification applications to Part 3A projects.

The modification request has been lodged with the Secretary pursuant to section 75W of the EP&A Act. The Minister's approval is not required if the project, as modified, remains consistent with the original Project Approval. As the modification request seeks to amend the conditions of approval, the Minister's approval is required.

The proposed changes constitute a modification, are within the scope of section 75W of the EP&A Act, and do not constitute a new application. Therefore, the Minister (or his delegate) has the ability to determine the modification application.

Consequently, this report has been prepared in accordance with the requirements of Part 3A of the EP&A Act and the Environmental Planning and Assessment Regulation 2000 (EP&A Reg). The Minister (or his delegate) may approve or refuse of the modification of the project under section 75W of the EP&A Act.

5.2 Approval Authority

The Minister for Planning delegated responsibility for the determination of section 75W modification applications to the Executive Director, Infrastructure and Industry Assessments where:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- less than 25 public submissions of objection were received.

The proposal complies with the terms of the delegation as Council did not object to the proposal, a political disclosure statement has not been made in relation to the application, and less than 25 submissions were received in the nature of objections. Accordingly, the A/Executive Director, Infrastructure and Industry Assessments may determine the application in accordance with the Minister's delegation.

5.3 Consultation

The Department publicly exhibited the modification request from Thursday 17 July 2014 to Monday 18 August 2014 (31 days):

- on the Department's website;
- at the Department's Information Centre; and
- at Coffs Harbour City Council's offices.

The modification request was also advertised in the Sydney Morning Herald, the Daily Telegraph and the Coffs Harbour Advocate. In addition, surrounding landowners and the relevant State and local government authorities were notified in writing.

The Department received submissions from the Council, the Office of Environment and Heritage (OEH), the Rural Fire Service (RFS) and Roads and Maritime Services (RMS). 12 public submissions objecting to the modification request were also received. These submissions are summarised below.

5.4 Public Authority Submissions

Council objects to the application for the following reasons:

- the proposed modifications to Condition A4 to specify that all land transfers must be consistent with the provisions of DA 575/03 are inappropriate as there is no outstanding land required to be transferred to the Council under that consent. In addition, the Council does not agree that the land proposed to be transferred to the Council formed part of DA 575/03;
- the Proponent's request to offset its section 94 liability against the value of the Koala habitat land is not supported as the Proponent has not outlined the value of the Koala management land;
- the removal of the 3 m wide pedestrian corridor and the road link between Amadeus Place and Kratz Drive is inappropriate as these requirements provide pedestrian connectivity in the locality and emergency access to the residential lots within Stage 3;
- the proposed modifications to Condition B6 are not supported as they would remove the Proponent's responsibility to co-ordinate the road design with the adjoining landowner;
- the Vegetation Management Plan required under Condition B11 should apply to all conservation lands being acquired by or dedicated to the Council to mitigate the environmental impacts of the approved development;
- Condition E18 should not be amended as the 'R2' zoned land within Lot 141 contains a minor corridor and watercourse which should be maintained and enhanced in perpetuity, either via the dedication of land to the Council, or the on-going management of Lot 141 by the Proponent in accordance with the approved Vegetation Management Plan; and
- the revised lot layout within Stage 3 is not supported on the basis that the revised design would require the clearing of additional Koala habitat and land within the Lowland Rainforest EEC buffer, and does not provide appropriate emergency access for emergency vehicles (i.e. the RFS).

The Department has reviewed the Council's comments and considers that:

- works associated with DA 575/03 have commenced and the consent has therefore been activated. As such, it would be possible for the Proponent to dedicate land any residual land required for dedication under that consent without the need to modify the conditions of the Project Approval. In addition, the Department has recommended the deletion of the conditions requiring the dedication of land to Council, as Council has advised that it is willing to purchase the relevant land from the Proponent once it has collected sufficient funds under its Contributions Development Control Plan (Contributions DCP);
- the Department agrees that the Proponent has not identified the extent of the offsets that it is seeking against its section 94 liability (i.e. the discount it is seeking against its section 94 liability), and permitting an offset without this information would be inappropriate;
- the Department agrees that the Proponent should be required to consult with the adjoining landowner prior to the finalisation of the road design;
- the Department agrees that Condition B11 should apply to the land required to be transferred to the Council under the Project Approval; and
- the modification request does not include sufficient information to justify the proposed modifications to the layout of Stage 3.

The Department requested that the Proponent prepare a Response to Submissions (RTS) to address these issues.

Office of Environment & Heritage (OEH)

The OEH raised no objection to the application and did not provide any comments.

Rural Fire Service (RFS)

The **RFS** objected to the proposed modifications to the design of Stage 3, and provided the following comments:

- the fire trail proposed over lots 143, 145 to 155, and 162 is not supported as it is inconsistent with the requirements of *Planning for Bushfire Protection 2006* (PBP 2006), as the fire trails would extend over multiple private land holdings;
- if the link road between Amadeus Place and Kratz Drive is removed the Proponent should be required to provide an asset protection zone (APZ) along the eastern boundary of proposed Part Lot 160;
- the Proponent should demonstrate that appropriate APZs will be provided for lots 119 to 123, the land to the east of Stage 2D south of proposed Lot 131; and
- conditions B10, E3 and E5 of the Project Approval should be amended to reference the requirements of PBP 2006, and reflect the revised lot numbers for lots requiring the registration of a restrictive covenant for fire management purposes.

The Department requested that the Proponent address these issues in its RTS.

Roads and Maritime Services (RMS)

The RMS raised no objection to the proposed modification.

5.5 Public Submissions

12 submissions of objection were received during the exhibition period. A summary of the issues raised in the submissions is provided below:

- the 3 m wide pedestrian corridor is required to provide access to local playgrounds, Bishop Druitt College and the Coffs Harbour CBD and its removal is not supported;
- the townhouses on proposed Lot 74 may require the removal of existing Koala habitat;
- the additional lots proposed on Barrington Close will create a landlocked area of open space, will reduce the amenity for local residents, will require changes to the drainage swale on Fidler Way, and may impact on existing Koala habitat located within proposed Lot 161;
- the creation of a road link between Amadeus Place and the proposed residential developments immediately east of the site will create additional traffic and parking demands and pose as a safety risk to local residents; and
- the removal of Condition B6 would be inconsistent with the Council's policy of requiring liaison between adjoining property owners within the North Boambee release area.

The Department has reviewed the public submissions and has concluded that:

- the removal of the pedestrian link would reduce connectivity between the subject site, the adjoining residential estate and Bishop Druitt College and is not supported;
- proposed Lot 74 is within the development footprint approved under the existing Project Approval and will not require the removal of any additional Koala habitat;
- the open space adjacent to the proposed lots on Barrington Place would be accessible from Lakes Drive; and
- the road link between Amadeus Place and Kratz Drive is required to provide appropriate emergency access, and its removal is not supported.

The Department requested that the Proponent address these issues in its RTS.

5.6 Response to Submissions (RTS)

On 5 November 2014, the Proponent lodged an RTS to address the agency and public submissions. The RTS:

- provided additional justification for the proposed modifications; and
- responded to the issues raised in the public and agency submissions.

It should be noted that the RTS did not propose any further modifications to the approved Plan of Subdivision beyond those outlined in the original modification request.

The Department placed the RTS on its website and referred it to the Council, the OEH and the RFS for comment. A summary of each agencies submission is provided below.

The **Council** advised that it supported the proposed modifications to Condition B1(e) and B6 to clarify the Proponent's obligations in relation to the road connection between Amadeus Place and the adjoining residential development on Halls Road. However, the Council reiterated that it does not support the following components of the modification request:

- the proposed modifications to Condition A4 which seek to permit the transfer of land to the Council in accordance with DA 575/03;
- the proposed revisions to the subdivision layout for Stage 3 of the development (due to fire safety and environmental management concerns);
- the proposed modifications to Condition B11 which seek to specify that the Vegetation Management Plan will not apply to proposed Lot 162; and
- the deletion of Condition E18 which will remove the requirement for the Proponent to dedicate the residential zoned lands within Lot 141 to Council.

The Department has recommended conditions to address the Council's concerns. The Department provided the Council with the draft conditions and the Council subsequently withdrew its objection to the modification request on 14 July 2015.

The **OEH** advised that it supports the dedication of environmental conservation lands within proposed Part Lot 161 to the Council. In addition, it requested that the Department consider the implications of future clearing permitted under the 10/50 Bushfire Code.

The Department has reviewed the OEH's comments and notes that the requirements of the 10/50 Code only apply to existing dwellings.

The **RFS** reiterated that it does not support the fire trails proposed within Stage 3 and provided conditions to ensure that stages 1 and 2 comply with the requirements of PBP 2006. The Department has included the conditions recommended by the RFS in the recommended Instrument of Modification.

6. ASSESSMENT

In its assessment of the modification request, the Department has considered the following:

- the Environmental Assessment (EA) and RTS provided to support the modification request (see **Appendix B**);
- all submissions received by the Department (see **Appendix C**); and
- the Director-General's assessment report for the original Project Application.

Based on the above, the Department considers the key issues for assessment are:

- modifications to Condition B1;
- development contributions;
- vegetation management;
- road design and bulk earthworks; and
- administrative modifications to the conditions of approval.

These issues are discussed in detail below.

6.1 Modifications to Condition B1

The modification request seeks approval to modify Condition B1 to delete the following requirements:

- the provision of 20 additional lots within stages 1 and 2 to ensure a total of 160 lots are provided on-site as per the intent of Condition B1;
- the provision of a 3 m wide pedestrian corridor to the north of approved Lot 120 to link the site to Halls Road;
- the provision of the road link between Amadeus Place and Kratz Drive; and
- the provision of an amended Plan of Subdivision for the approval of the Director-General prior to the issue of a Construction Certificate.

The Proponent has advised that these modifications are required on the basis that:

- the provision of 20 additional lots within stages 1 and 2 is not feasible given the environmental constraints of the site and the lack of demand for smaller residential lots.;
- the proposed subdivision layout provides 20 additional lots as per the intention of Condition B1, however these lots are provided within stages 1 to 3;
- the 3 m wide pedestrian corridor has not been included within the Contributions DCP and is therefore not reasonable. Further, it is possible to provide pedestrian access between the site and the adjoining future developments via Amadeus Place and Road No. 3; and
- the traffic reports prepared to support the original Project Application demonstrate that the road design is suitable in its current form.

The Department's assessment of the proposed modifications to Condition B1 is provided below.

6.1.1 Deletion of B1(a)

Condition B1(a) requires the provision of 20 additional lots (to create a total of 160 lots) within stages 1 and 2 of the development without causing any substantive changes to the road layout, or a reduction in the size of Lot 141. Condition B1(a) was imposed to reduce the shortfall in the number of lots required to fund the infrastructure outlined in the Council's Contributions DCP (167 lots required, 140 lots proposed in the Proponent's PPR for the approved application).

As previously outlined, the Proponent is seeking to delete Condition B1(a) to enable the creation of 18 additional lots within stages 1 and 2, and two additional lots within Stage 3 on the basis that:

- the total approved lot yield will remain the same (160 lots required, 160 lots proposed), albeit with the 20 additional lots provided within stages 1 to 3, rather than stages 1 and 2 only;
- the topography within stages 1 and 2 prevents the creation of 20 additional lots within these stages; and
- there is limited demand for small residential lots within the locality.

A comparison of the approved and proposed subdivision layout is provided at **Figure 7** overleaf.

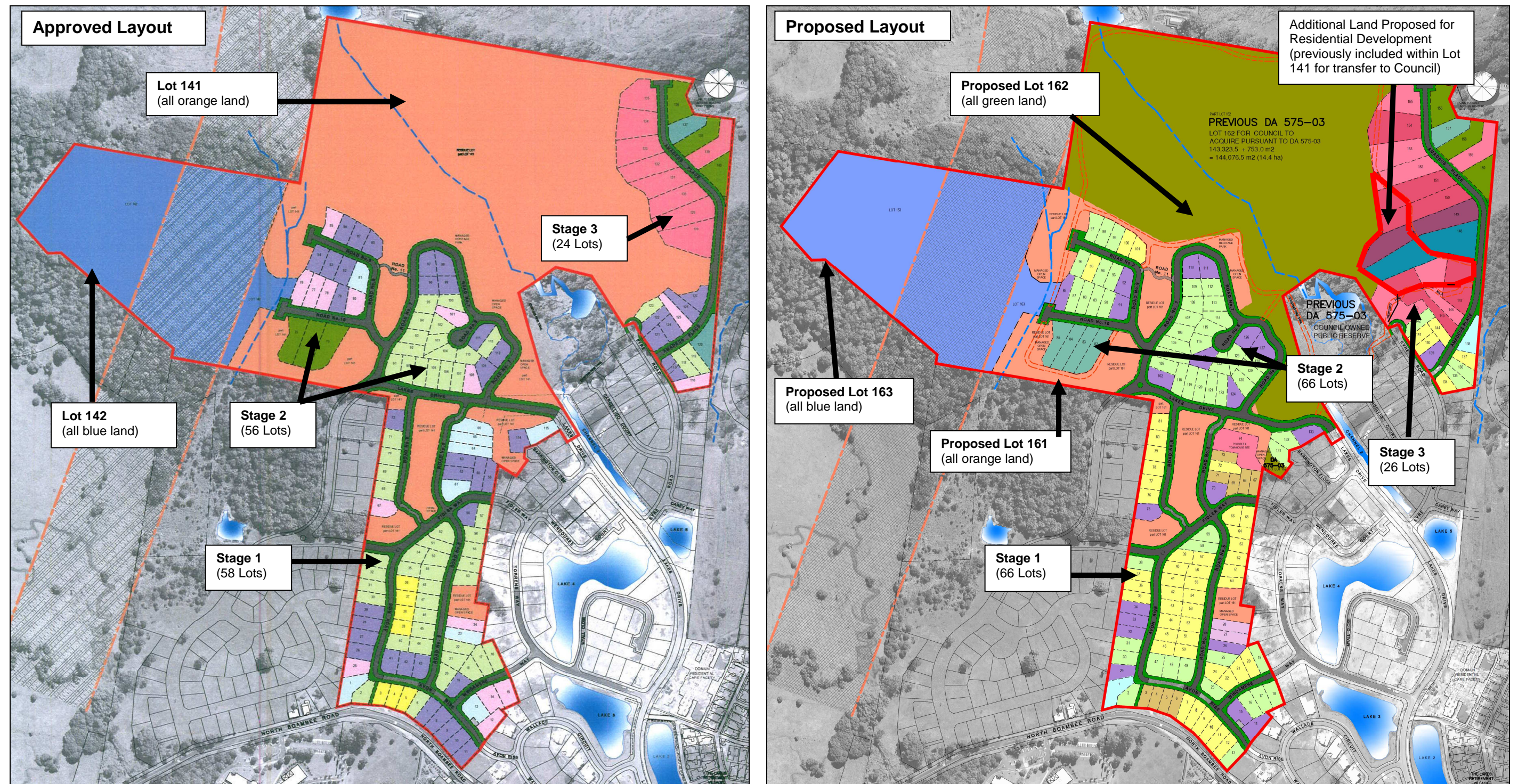


Figure 7: Comparison of Approved and Proposed Subdivision Layout (Approved Layout Left, Proposed Layout Right)

The Department has assessed the proposed modifications to the subdivision layout and has concluded that the additional lots proposed within stages 1 and 2 are appropriate given that:

- the revised lot layout will not result in any significant modifications to the approved road network;
- all lots exceed 400 m² and have a minimum frontage of 15 m as required by Condition B1(a); and
- the proposed lot layout for these stages will not result in any adverse environmental impacts.

In terms of the proposed subdivision layout for Stage 3, the Department notes that the Council and the RFS raised concerns with the following aspects of the proposal:

- the potential need to clear primary and secondary Koala habitat and the potential reduction in the endangered ecological communities (EEC) protection buffer (see **Figure 8**);
- the proposed reduction in the size of Lot 141 (see **Figure 7** above); and
- the configuration of the proposed fire trails.

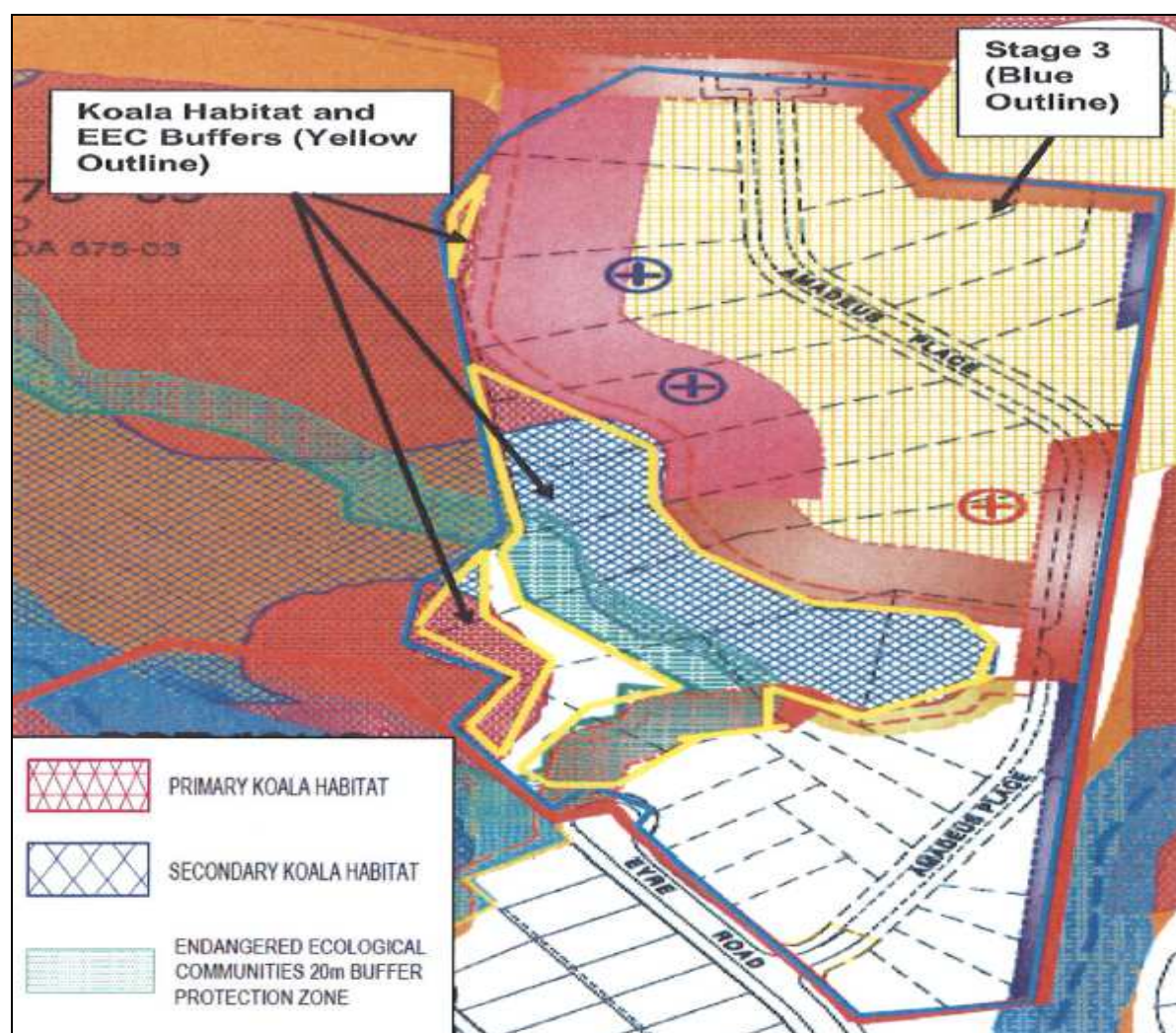


Figure 8: Location of Primary and Secondary Koala Habitat and EEC Buffers

The Department has assessed the proposed modifications to the layout of Stage 3 and notes that:

- the land within proposed lots 143 and 145 to 154 immediately west of the approved fire trail contains significant vegetation, and fragmenting this land is likely to result in a poor environmental management outcome; and

- whilst the modification request does not seek to alter the location of the fire trails approved within Stage 3, the proposed subdivision layout would result in the fire trails bisecting lots 143 and 145 to 154, which is inconsistent with the provisions of section 4.1.3(3) of PBP 2006.

In order to provide an appropriate environmental outcome, and ensure compliance with the requirements of PBP 2006, the Department has recommended a condition requiring all of the land to the west of the fire trail within Stage 3 to be incorporated into Part Lot 162. This will ensure the conservation and bush fire management outcomes are maintained as per the intent of the current Project Approval.

6.2 Deletion of Condition B1(b) and (e)

The modification request seeks approval to delete conditions B1(b) and (e) which require the Proponent to provide a 3 m wide pedestrian corridor to link the site to Halls Road, and a road link between Amadeus Place and the Kratz Drive estate. These connections are depicted in **Figure 9** below.

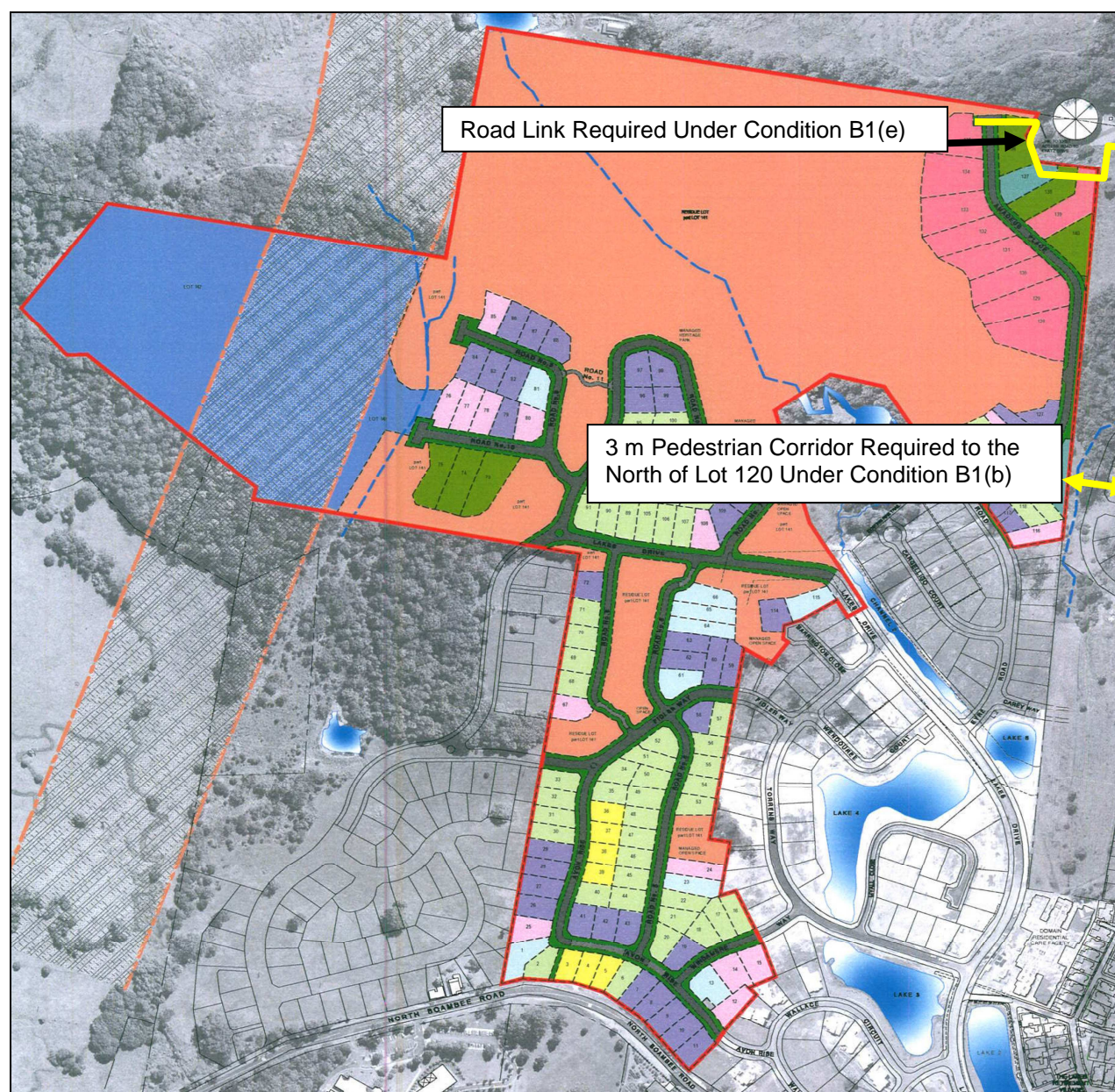


Figure 9: Pedestrian and Road Links Required under Condition B1(b) and (c)

As previously outlined, the Proponent has advised that it is seeking the deletion of these requirements for the following reasons:

- the pedestrian connection between the site and Halls Road is not required in the Contributions DCP and is therefore unreasonable. In addition, the footpaths provided on Amadeus Place and Road 3 will link the site to the developments proposed immediately east of the site;
- the traffic assessment prepared to support the original Project Application demonstrates that the road design is suitable in its current form, and therefore the connection between Amadeus Place and the adjoining residential development is not necessary; and
- the provision of a road link to a future development area (Kratz Drive Estate) is not considered appropriate as it would dictate the subdivision layout for the adjoining site.

The Department notes that the Council and a number of local residents raised the following concerns with the deletion of the 3 m wide pedestrian corridor between the site and Halls Road:

- the removal of this connection would reduce the level of accessibility to the public open space within the Lakes Estate for residents east of Halls Road; and
- the removal of the pedestrian corridor would decrease permeability within the locality and would significantly increase the travel distance for children accessing Bishop Druitt College.

In addition, both the Council and the RFS raised concern with the removal of the road link between Amadeus Place and the Kratz Drive estate on the basis that the removal of this link would reduce accessibility for emergency vehicles, and the Proponent has not identified a viable alternate access route.

The Department has reviewed the agency and public submissions and has concluded that:

- the road link between Amadeus Place and Kratz Drive was required to ensure emergency service vehicles could access the residential lots within Stage 3B in the event of a bush fire, and no viable access has been proposed by the Proponent. Accordingly, its removal is not supported; and
- the removal of the pedestrian corridor connecting the site to Halls Road is inappropriate as it will significantly reduce pedestrian connectivity within the locality, particularly for school students attending Bishop Druitt College (see **Figure 10**). Given the above, the Department does not support the removal of this connection.

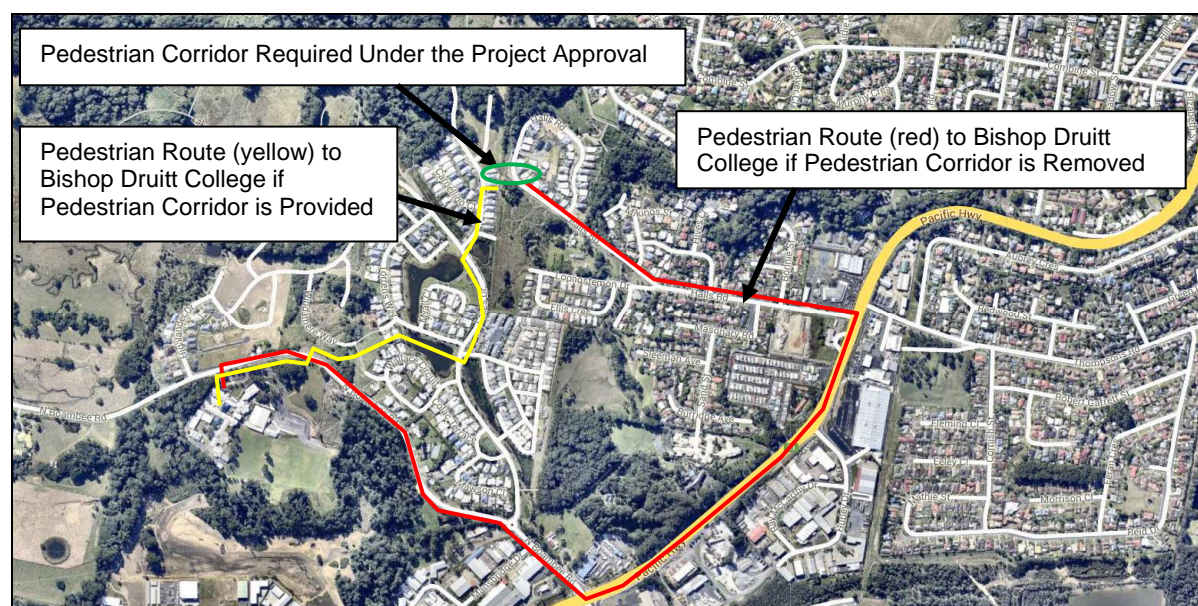


Figure 10: Access to Druitt Bishop College

6.3 Development Contributions

Conditions A4, E1, and E17 outline the Proponent's development contribution obligations. The modification request seeks approval to amend these conditions to:

- require the transfer of 14.4 ha of land within approved Lot 141 to the Council in accordance with DA 575/2003, in lieu of transferring it under MP 05_0129;
- permit the Proponent to offset its section 94 liability where land zoned '7A' (now 'E2' under the Coffs Harbour LEP 2013) is transferred to the Council in accordance with Condition E1; and
- remove the requirement for the Proponent to provide both a cash contribution and the dedication of the 'E2' land within approved Lot 141.

The Proponent has requested these modifications on the basis that:

- the boundaries of MP 06_0129 and DA 575/2003 overlap and the Proponent is seeking to transfer the residual 'E2' land included within DA 575/2003 to the Council under the provisions of that consent; and
- Conditions E1 and E17 currently require the Proponent to pay a section 94 contribution toward the acquisition of koala habitat located within Lot 141, and also transfer all koala habitat land within the site to the Council. The proposed modifications would remove the 'double dipping' for this component of the development by requiring the Council to offset the value of some of the land within Lot 141 against the Proponent's section 94 liability.

The Department's assessment of the proposed modifications is provided below.

6.3.1 Modifications to Condition A4

Condition A4 sets out the staging arrangements for the subdivision of the site and outlines that all land transfers are subject to the provisions of the Council's Contributions DCP.

The Proponent has requested revisions to the advice note at the end of Condition A4 to enable the dedication of land in accordance with the provisions of DA 575/2003 as the boundaries of MP 05_0129 and DA 575/2003 overlap. The proposed wording of the advice note as follows:

"Land transfers shall be ~~subject to the provisions of~~ consistent with Development Consent No. 575/2003 and the North Boambee Valley (East) Release Area Developer Contributions Plan 2013. If any inconsistency exists between Development Consent No. 575/2003 and the Contributions Plan then the existing Development Consent will prevail".

This **Project** approval does not impose or imply any obligation on Council to acquire any residentially zoned lands".

The Department notes that the Council has advised that there is no outstanding land required for dedication under DA 575/2003, and that the boundaries of MP 05_0129 and DA 575/2003 do not overlap. The Department has reviewed the Plan of Subdivision approved under DA 575/2003 and considers that it is unclear whether there is any overlap between this application and MP 05_0129. Notwithstanding, in the event that the Proponent can demonstrate that the boundaries of the applications do overlap, and there is land still required for dedication under DA 575/2003, then the Proponent could transfer the land required for dedication under the Council's consent without the need to modify MP 10_0129.

Accordingly, this is a matter for the Proponent to negotiate with the Council as the relevant consent authority for DA 575/2003, and as such the Department does not support the proposed modifications to Condition A4.

6.3.2 Modification of Conditions E1 and E17

Conditions E1 and E17 require the Proponent to pay a monetary contribution and transfer all lands identified within the Council's Contribution DCP to the Council.

The Proponent is seeking to modify conditions E1 and E17 as it contends that the current conditions would result in 'double dipping' on the basis that the Proponent is required to pay a contribution toward the acquisition of Koala management land, and also transfer all Koala management land within the project area to the Council. In addition, the Proponent is seeking the inclusion of an advisory note at the end of Condition E1 to specify that it will receive an offset against its section 94 liability for all Koala management land that is transferred to the Council free of cost.

The Department notes that the Council has objected to the modification of Condition E1 on the basis that it is not possible to calculate the Proponent's residual section 94 liability given that the Proponent has not attempted to provide a valuation of the Koala management land. As such, the Council is not agreeable to entering into a works-in-kind agreement to offset the value of this land against the Proponent's section 94 liability at this stage.

The Department has reviewed the Proponent's justification and agrees that it is inappropriate to require the Proponent to pay a monetary contribution toward the acquisition of the 'E2' zoned land within Lot 141, as well as transfer this land to the Council free of cost. However, the Department considers that offsetting the value of the 'E2' zoned land against the Proponent's section 94 liability at this point in time is inappropriate on the basis that the Proponent has not established the quantum (i.e. the dollar value) of the offset it is seeking.

Notwithstanding, the Department notes that as the Contributions Plan permits works-in-kind it would be possible for the Proponent to come to an arrangement with the Council to offset the value of the Koala management land against its section 94 liability once the Council and the Proponent have agreed upon the value of the Koala management land. The Department also notes that this could occur regardless of whether Condition E1 is modified given that the Council's Contributions Plan already includes provisions to allow works-in-kind following the approval of an application.

Given the above, the Department has recommended:

- the inclusion of an advisory note in Condition E1 stating that it would be possible for the Proponent to offset its section 94 contribution against the value of the Koala management land, subject to it entering into an agreement with the Council that is consistent with the work-in-kind provisions of the Council's Contributions Plan; and
- the deletion of Condition E17 to ensure that the Proponent is only required to pay a monetary contribution toward the acquisition of the 'E2' zoned land.

It should be noted that the Department has discussed the proposed modifications to these conditions with the Council and Council has advised that the deletion of Condition E17 is acceptable on the basis that the Council can collect the funds required to acquire the Koala management land, and purchase this land from the Proponent at a later date.

6.4 Vegetation Management

The modification request seeks approval to amend conditions B11 and E18 to:

- specify that the Vegetation Management Plan (VMP) only applies to land within proposed Lot 161; and
- delete Condition E18 on the basis that the land within approved Lot 141 that is required to be transferred to the Council, or managed in perpetuity by the Proponent, has been incorporated into proposed lots 143 and 145 to 154.

The land proposed to be removed from the VMP is depicted in **Figure 11** overleaf.

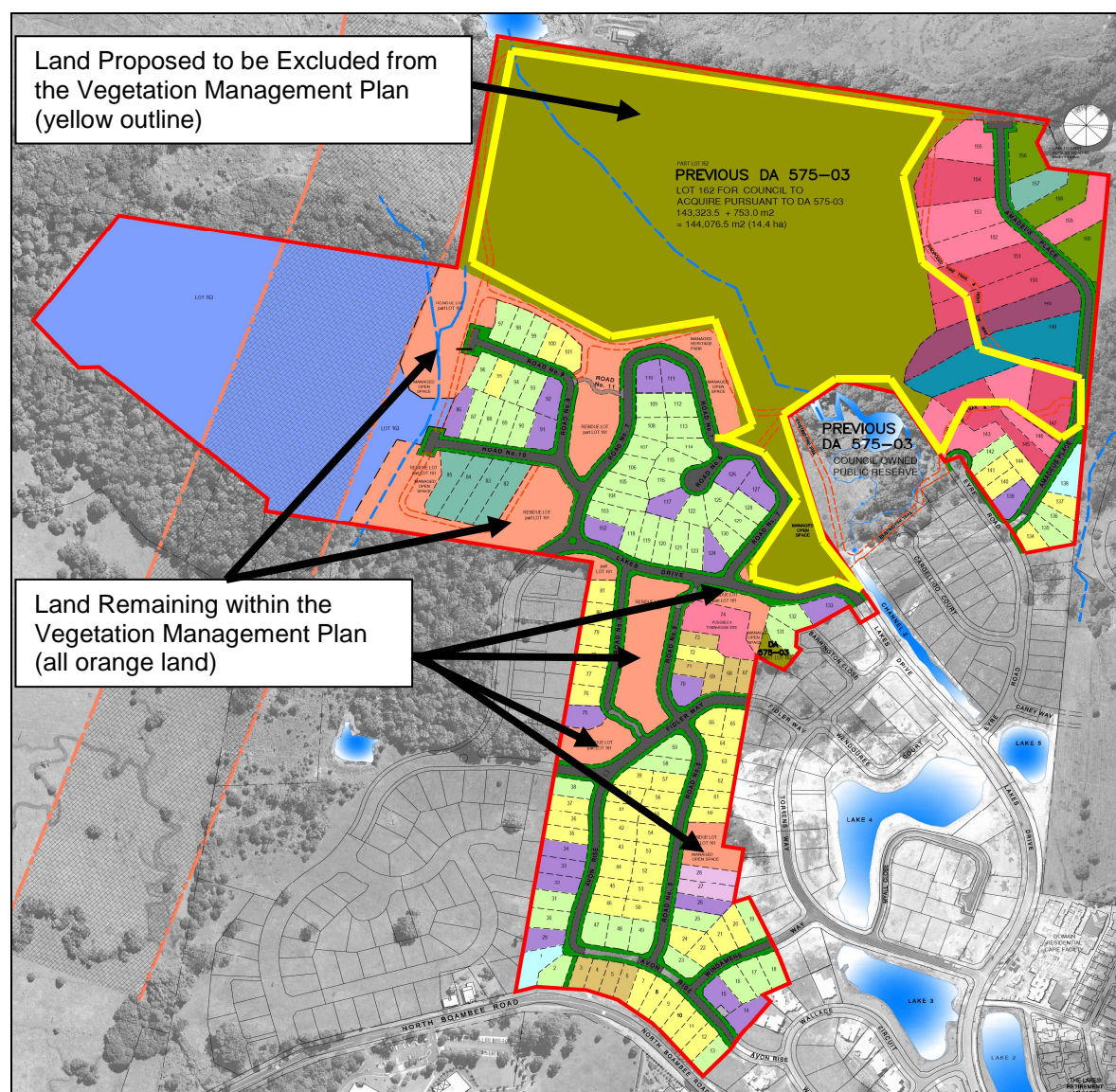


Figure 11: Land Proposed to be Removed from the VMP

The Department's assessment of these modifications is provided below.

6.4.1 Modifications to Condition B11

Condition B11 requires the Proponent to prepare and implement a VMP to offset the loss of Koala habitat, and provide for the on-going management of the residential zoned land containing significant environmental features (Koala habitat and EEC buffers) within Lot 141.

The Proponent is seeking to amend Condition B11 to:

- specify that that the VMP only applies to the land not required for dedication under DA 575/2003; and
- reflect the proposed lot numbers specified in the proposed plans of subdivision.

The Department notes that the Council objected to these modifications because it considers that the boundaries of DA 575/2003 and MP 05_0129 do not overlap, and that there is no outstanding land required to be dedicated under DA 575/2003.

As previously outlined, the Department has reviewed the Plan of Subdivision approved under DA 575/2003 and considers that this plan does not clearly distinguish that the land within proposed Lot 162 is included within the boundaries of DA 575/2003. Accordingly, the Department considers that the VMP should apply to all Koala management land identified for acquisition within the Council's Contributions DCP, as well as the Koala habitat and EEC buffer land within Stage 3 that is recommended to be included within proposed Lot 162.

In addition, the Department considers that it would be beneficial to undertake some additional changes to Condition B11 to:

- reference the Council's current biodiversity guidelines and Koala Plan of Management;
- require the Proponent to develop completion criteria for the works required to offset the loss of Koala habitat to clarify the time at which the maintenance phase will commence (i.e. maintenance to commence immediately after the completion criteria are met);
- identify the Proponent's maintenance obligations;
- identify the on-going management measures for the residential zoned land within Stage 3 in the event that the Council and the Proponent cannot agree on transfer arrangements; and
- include an advisory note at the end of the condition advising that in the event that the Council agrees that there is land left for dedication under DA 575/2003, the provisions of the VMP will not apply to the land dedicated to Council under that consent.

These changes are outlined in bold below.

"Vegetation Management

- B11 A Vegetation Management Plan (VPM) must be prepared for all land that is located within parts lots 161 and 162 and is:**
- (a) identified as Koala habitat in the Coffs Harbour City Koala Plan of Management; and**
 - (b) zoned 'E2 Environmental Conservation' in the Coffs Harbour Local Environmental Plan 2013; and**
 - (c) zoned 'R2 General Residential' in the Coffs Harbour Local Environmental Plan 2013 and required to be incorporated into Part Lot 162 in accordance with Condition A4A.**

The VMP must be prepared in accordance with the Council's Biodiversity Guideline 1a Preparing Vegetation Management Plan and the Coffs Harbour Koala Plan of Management. In addition, the VMP must also include the following details:

- (a) all vegetation rehabilitation works required to offset the loss of vegetation on-site in accordance with Biodiversity Guideline 4: Compensatory Planting Advice. Off-site compensatory planting may occur on publicly owned lands, subject to the approval of the landowner;**
- (b) identify whether any Koala lighting, fencing, or sign posting is required to facilitate compliance with the Coffs Harbour Koala Plan of Management;**
- (c) identify completion criteria for the vegetation rehabilitation works required to offset the loss of vegetation on-site;**
- (d) identify the management procedures for the management of the vegetation rehabilitated under c) above, once the rehabilitation completion criteria have been achieved;**
- (e) identify the management measures for the residential zoned land required to be incorporated into Part Lot 162 under Condition A4A;**

- (f) ensure all recognised buffers are established for threatened species under the EPBC Act 1999;
- (g) specific measures to manage edge effects in narrow areas of environmental lands;
- (h) specific measures to achieve compliance with the Department of Primary Industry's (Office of Water) Guidelines for Watercourse Crossings on Waterfront Land (2012) and Guidelines for Controlled Activities and Guidelines for Riparian Corridors (2012); and
- (i) specific measures to facilitate the long-term survival of the identified habitat and stag trees.

The vegetation rehabilitation works that are required to offset the impacts of clearing within stages 2 and 3 must start prior to the commencement of works within these stages. Following achievement of the rehabilitation completion criteria, the Proponent shall manage the rehabilitated vegetation for a period of 5 years. All vegetation rehabilitation and maintenance works required by a), d) and e) above must be undertaken by the Proponent at their cost.

The VMP must be prepared in consultation with Council and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: In the event that there is outstanding land that is transferred to the Council under DA 575/2003, the Vegetation Management Plan can be amended to remove this land from the provisions of the Plan”.

6.4.2 Deletion of Condition E18

Condition E18 requires the Proponent to either transfer the land zoned for residential purposes within approved Lot 141 to the Council free of cost, or manage this land in perpetuity in accordance with the VMP required under Condition B11. As previously outlined, the Proponent is seeking to delete this condition on the basis that the residential zoned land within approved Lot 141 has been incorporated into the boundaries of proposed lots 143 and 145 to 154, and therefore Condition E18 is no longer required. Condition E18 reads as follows:

“E18. Future ownership of the residentially zoned lands within Lot 141, to the west of Stage 3 between the end of Road No. 9 and the highway corridor, shall be the subject of negotiation between the Council and the Proponent. If any agreement cannot be reached over the transfer, the Proponent must manage the land in perpetuity in accordance with the requirements of the VMP”.

As previously outlined, the Department does not support the layout of proposed lots 143 and 145 to 154 due to these lots resulting in poor environmental and fire management outcomes. In order to address this issue the Department has recommended a new condition (Condition A4A) requiring the land to the west of the fire trails within lots 143 and 145 to 154 to be incorporated into Part Lot 162. Accordingly, the Department has recommended the following modifications to Condition E18 to ensure the ecological values of land to the west of the fire trails is conserved in perpetuity:

“E18 The residential zoned lands required to be incorporated into Part Lot 162 under Condition A4A shall be the subject of negotiation between the Council and the Proponent. If an agreement cannot be reached over the transfer, the Proponent must manage the land in perpetuity in accordance with the requirements of the Vegetation Management Plan approved under Condition B11”.

6.5 Road Design and Bulk Earthworks

Conditions B2 and B6 identify the circumstances in which the Proponent needs to obtain the Director-General's (now Secretary) approval prior to undertaking bulk earthworks, as well as the consultation requirements with the adjoining landowner prior to the completion of the final road design.

The modification request seeks approval to re-word conditions B2 and B6 to:

- remove the requirement in Condition B2 for all geotechnical specifications to be approved by the Director-General (now Secretary) prior to the issue of a Construction Certificate and replace it with a requirement specifying that the Secretary needs to approve all geotechnical specifications where contouring in excess of 2 m occurs within 1 m of a property boundary; and
- modify Condition B6 to clarify the extent of consultation the Proponent needs to undertake with the adjoining landowner immediately west of the site prior to the approval of the final road design.

The Department notes that the Council support the proposed modifications to these conditions.

The Department has reviewed the proposed modifications and has concluded that:

- the proposed modifications to Condition B2 are acceptable on the basis that it will clarify that the Proponent only needs to obtain the Secretary's approval for the bulk earthworks plans where contouring of more than 2 m is required within 1 m of the site boundary; and
- the proposed modifications to Condition B6 will ensure that the Proponent undertakes an acceptable level of consultation with the adjoining landowner prior to the finalisation of the road design. Notwithstanding, a minor revision is recommended to ensure the roads are designed in accordance with the Council's standards.

6.6 Administrative Changes

The modification request seeks to amend conditions A2, A3 and the Statement of Commitments to reflect revised lot numbers within stages 1 to 3. These changes are supported on the basis that they are administrative in nature.

7. CONCLUSION

The Department has assessed the modification request in accordance with the requirements of section 75W the EP&A Act, and has concluded that it is appropriate to modify the subdivision layout to permit the creation of 20 new residential lots across stages 1 to 3 of the development.

Notwithstanding, the Department does not support the incorporation of the land to the west of the approved fire trails within Stage 3 within proposed lots 143 and 145 to 154 on the basis that these changes would result in unacceptable ecological and bushfire management issues. Furthermore, the Department does not support the removal of the pedestrian and road links to the adjoining residential areas required within Stage 3 on the basis that the removal of these connections would result in unacceptable environmental, safety and amenity impacts. The Department has recommended appropriate conditions to reflect that these elements of the modification are not approved.

8. RECOMMENDATION

It is recommended that the A/Executive Director, Infrastructure and Industry Assessments:

- **consider** the findings and recommendations of this report;
- **approve** the modification under delegated authority, subject to conditions and
- **sign** the attached Instrument of Modification (**Tag A**).

Kate MacDonald
Team Leader
Industry Assessments

Chris Ritchie
Manager
Industry Assessments

Daniel Keary
A/Executive Director
Infrastructure and Industry Assessments

APPENDIX A – INSTRUMENT OF MODIFICATION

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning under delegation executed on 14 September 2011, I, the A/Executive Director, Infrastructure and Industry Assessments approve the modification of the Project Application referred to in Schedule 1, subject to the conditions in Schedule 2 and the revisions to the Statement of Commitments set out in Schedule 3.

Daniel Keary
A/Executive Director
Infrastructure and Industry Assessments

Sydney

2015

SCHEDULE 1

Project Approval: **MP 05 0129** granted by the Minister for Planning on 7 June 2013.

For the following: Residential subdivision, including:

- 162 allotments consisting of 160 residential allotments, one allotment (lot 141) containing lands for conservation, a Heritage Park and managed open space and 1 allotment (Lot 142) for future development;
- site remediation works;
- earthworks;
- vegetation rehabilitation and management; and
- infrastructure works including roads, drainage, sewerage works and utility services provision.

On land comprising: Part Lot 164 DP 1170833, Lot 10 DP 1071628, Lot 1 DP 1089778, Lot 2 DP 607602, North Boambee Road and Lakes Drive, North Boambee Valley.

Modification: MP 05_0129 MOD 1 to permit:

- administrative changes to conditions A2, A3, A4, B1, B2, B6, B10, B11, E1, E3, E5 and E18;
- the insertion of new Condition A4A;
- the deletion of Condition E17; and
- and administrative changes to the Statement of Commitments.

SCHEDULE 2

1. In the 'Definitions' table in Schedule 1, delete the definition of 'Director-General' and replace with the following:

Secretary: Secretary of the Department of Planning and Environment or nominee/delegate.

2. In the 'Definitions' table in Schedule 1, delete the definition of 'Department' and replace with the following:

Department: Department of Planning and Environment, or its successors.

3. In Schedule 2, replace all references to 'Director-General' with 'Secretary'.
4. In Schedule 2, Part A, delete Condition A2 and replace it with the following:

Project Description

- A2 Except as amended by the conditions of this consent, project approval is granted only to carrying out the project as generally described below:
- 160 residential allotments;
 - two allotments (Part Lot 161 and 162) containing lands for koala conservation, a heritage park and managed open space;
 - one superlot for future development (Lot 163);
 - site remediation works;
 - earthworks;
 - vegetation management within part lots 161 and 162 in accordance with a vegetation management plan approved by the Secretary; and
 - infrastructure works including roads, drainage, sewerage, and utility service provision.
5. In Schedule 2, Part A, delete Condition A3 and replace with the following:

Development in Accordance with Plans and Documents

- A3 The Applicant shall carry out the Project generally in accordance with the:
- a) 'Lakes Estate' Residential Subdivision Environmental Assessment Report, prepared by Habitat Planning, dated August 2009; and
 - b) Bushfire Hazard Assessment Report prepared by Building Code and Bushfire Hazard Solutions Pty Ltd, dated March 2013.

As amended by:

- c) Preferred Project Report Lakes Estate Residential Subdivision prepared by GLN Planning, dated August 2012;
- d) Section 75W Modification Lakes Estate Residential Subdivision, prepared by GLN Planning, dated May 2014;
- e) Lakes Estate Residential Subdivision – Submission Report prepared by GLN Planning, dated 5 November 2014; and
- f) The following drawings, except for:

- i) any modifications which are Exempt or Complying Development; or
- ii) otherwise provided by the conditions of this consent.

Architectural (or Design) Drawings prepared by Astoria Group Pty Ltd			
Drawing No.	Revision	Name of Plan	Date
A001	G	Location Plan	27/03/14
A002	G	Surrounding Developments Plan	27/03/14
A003	J	Zoning Plan	27/03/14
A004	J	Koala Habitat Plan	27/03/14
A005	J	Previous Banana Plantation Areas Plan	27/03/14
A006	J	Combined Constraints Plan	27/03/14
A007	K	Open Spaces Plan	27/03/14
A008	K	Roads and Movement Access Plan	27/03/14
A009	J	Services Plan	27/03/14
A010	G	Subdivision Layout Plan (Lot Sizes Mix)	27/03/14
A011	G	Subdivision Staging Plan	27/03/14
A012	F	Subdivision Stage 1 Plan Lots 1-58 and Part Lot 141 (Residual)	27/03/14
A013	G	Subdivision Stage 2 Plan Lots 59-115, Lot 142 and Part Lot 141 (Residual)	27/03/14
A014	G	Subdivision Stage 3 Plan Lots 116-140, Lot and Part Lot 141 (residual)	27/3/14
A015	D	Subdivision Staging Plan_Response to RFS	27/03/14
A016	D	Subdivision Stage 1 Plan_Response to RFS lots 1-58 and Part Lot 141 (Residual)	27/03/14
A017	D	Subdivision Stage 2 Plan_Response to RFS lots 59-115, Lot 142 and Part Lot 141 (Residual)	27/03/14
A018	E	Subdivision Stage 3 Plan_Response to RFS lots 116-140, Lot and Part Lot 141 (Residual)	27/3/14

6. In Schedule 2, Part A, delete Condition A4 and replace it with the following:

Staging

- A4. The project is to be constructed in three stages as per drawing A011 Subdivision Staging Plan Revision G dated 27 March 2014, as amended by Condition A4A below.

The scope, order and extent of works within each stage may be varied due to market conditions, servicing constraints, and the requirements of the conditions of approval, as agreed by Council. The progressive release of lots within each stage may occur

subject to separate subdivision certificates. Stage 2h may be subdivided progressively in conjunction with adjoining land.

7. In Schedule 2, Part A, insert the following new condition after Condition A4:

A4A Modifications to Part Lot 162 and the Layout of Stage 3

Prior to the issue of a Construction Certificate for any works within Stage 3, or prior to the commencement of any vegetation management works within Part Lot 162, whichever occurs first, the Proponent shall revise the drawings identified in a) to k) below to incorporate the land zoned 'R2 General Residential' that sits immediately west of the fire trails within lots 143 and 145 to 154 into Part Lot 162:

- a) A003 Zoning Plan, Revision J, prepared by Astoria Group, Pty Ltd, dated 27/03/14;
- b) A004 Koala Habitat Plan, Revision J, prepared by Astoria Group, Pty Ltd, dated 27/03/14;
- c) A005 Previous Banana Plantation Area Plan, Revision J, prepared by Astoria Group, Pty Ltd, dated 27/03/14;
- d) A006 Combined Constraints Plan, Revision J, prepared by Astoria Group, Pty Ltd, dated 27/03/14;
- e) A007 Open Spaces Plan, Revision K, prepared by Astoria Group, Pty Ltd, dated 27/03/14;
- f) A008 Roads and Movement Access Plan, Revision K, prepared by Astoria Group, Pty Ltd, dated 27/03/14;
- g) A009 Services Plan, Revision J, prepared by Astoria Group, Pty Ltd, dated 27/03/14;
- h) A010 Subdivision Layout Plan (Lot Sizes Mix), Revision G, prepared by Astoria Group Pty Ltd, dated 27/3/14;
- i) A014 Subdivision Stage 3 Plan Lots 116-140, Lot and Part Lot 141 (Residual), Revision G, prepared by Astoria Group Pty Ltd, dated 27/3/14; and
- j) A015 Subdivision Staging Plan_Response to RFS, Revision D prepared by Astoria Group, Pty Ltd, dated 27/03/14;
- k) A018 Subdivision Stage 3 Plan_Response to RFS Lots 116-140, Lot and Part Lot 141 (Residual), Revision E, prepared by Astoria Group Pty Ltd, dated 27/3/14.

8. In Schedule 2, Part B, delete parts a), c) and d) of Condition B1.

9. In Schedule 2, Part B, delete Condition B2 and replace with the following:

B2 Cut and Fill

Detailed plans and specifications must be prepared and submitted to the Principal Certifying Authority for earthworks prior to the issue of any Construction Certificate for earthworks on-site.

The plans must illustrate the proposed cut and fill depths and levels and address the site's geotechnical constraints.

In addition, specific consideration must be given to the geotechnical constraints identified in the Coffey Report (dated 27 February 2008) and the measures proposed to address these constraints.

The plans are also to include a clear description of the changes in water movement both to and from the site. The plans must also illustrate the relationship with neighbouring properties at the site boundaries.

If any natural grade level changes are required greater than plus or minus two metres within one metre of the site boundaries, the Secretary's approval is required prior to the Principal Certifying Authority issuing a Construction Certificate.

A copy of the plans and specifications supported by the Principal Certifying Authority shall be submitted to the Secretary for approval prior to the release of any Construction Certificate.

10. In Schedule 2, Part B, delete Condition B6 and replace with the following:

B6 Road Design

The road design must be undertaken by a qualified practicing Civil Engineer. The design must be prepared in consultation with the Council and comply with the Council's development design and construction specifications and relevant policies.

Prior to the construction of Amadeus Place, the Proponent shall demonstrate to the satisfaction of the Secretary that the final road design will not preclude the provision of a road connection between Amadeus Place and Kratz Drive.

Kerb and gutter, stormwater drainage, full road width pavement including traffic facilities (roundabouts, median islands etc.) and paved footpaths consistent with the design of existing roads within the estate are required along the full length of the new roads.

Final design plans shall be approved by the Principal Certifying Authority prior to the issue Construction Certificate. In the event that the subdivision works are staged, the Proponent shall ensure the design of the roads the subject of the Construction Certificate being applied for are approved by the Principal Certifying Authority prior to the issue of that Construction Certificate.

11. In Schedule 2, Part B, Condition B10, insert the following new words in paragraph two after the words "(Water Sensitive Urban Design)":

"and the requirements of section 4.1.3(3) *Planning for Bush Fire Protection 2006*".

12. In Schedule 2, Part B, Delete Condition B11 and replace with the following:

B11 Vegetation Management and Landscaping

A Vegetation Management Plan (VPM) must be prepared for all land that is located within part lots 161 and 162 and is:

- l) identified as Koala habitat in the *Coffs Harbour City Koala Plan of Management*; and
- m) zoned 'E2 Environmental Conservation' in the *Coffs Harbour Local Environmental Plan 2013*; and

- n) zoned 'R2 General Residential' in the *Coffs Harbour Local Environmental Plan 2013* and required to be incorporated into Part Lot 162 in accordance with Condition A4A.

The VMP must be prepared in accordance with the Council's *Biodiversity Guideline 1a Preparing Vegetation Management Plan* and the *Coffs Harbour Koala Plan of Management*. In addition, the VMP must also include the following details:

- o) all vegetation rehabilitation works required to offset the loss of vegetation on-site in accordance with *Biodiversity Guideline 4: Compensatory Planting Advice*. Off-site compensatory planting may occur on publicly owned lands, subject to the approval of the landowner;
- p) identify whether any Koala lighting, fencing, or sign posting is required to facilitate compliance with the *Coffs Harbour Koala Plan of Management*;
- q) identify completion criteria for the vegetation rehabilitation works required to offset the loss of vegetation on-site;
- r) identify the management procedures for the management of the vegetation rehabilitated under a) above, once the rehabilitation completion criteria have been achieved;
- s) identify the management measures for the residential zoned land required to be incorporated into Part Lot 162 under Condition A4A in the event that this land is not transferred to the Council;
- t) ensure all recognised buffers are established for threatened species under the EPBC Act 1999;
- u) specific measures to manage edge effects in narrow areas of environmental lands;
- v) specific measures to achieve compliance with the Department of Primary Industry's (Office of Water) *Guidelines for Watercourse Crossings on Waterfront Land* (2012) and *Guidelines for Controlled Activities and Guidelines for Riparian Corridors* (2012); and
- w) specific measures to facilitate the long-term survival of the identified habitat and stag trees.

The vegetation rehabilitation works that are required to offset the impacts of clearing within stages 2 and 3 must start prior to the commencement of works within these stages. Following achievement of the rehabilitation completion criteria, the Proponent shall manage the rehabilitated vegetation for a period of 5 years. All vegetation rehabilitation and maintenance works required by a), d) and e) above must be undertaken by the Proponent at their cost.

The VMP must be prepared in consultation with Council and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: In the event that there is outstanding land that is transferred to the Council under DA 575/2003, the Vegetation Management Plan can be amended to remove this land from the provisions of the Plan.

13. In Schedule 2, Part E, delete the advice note at the end of Condition E1 and replace it with the following:

Note: The Proponent may offset its section 94 contribution, subject to it entering into an agreement with the Council that is consistent with the work-in-kind provisions of the North Boambee Valley (East) Release Area Developer Contributions Plan 2013.

14. In Schedule 2, Part E, Delete Condition E3 and replace with the following:

E3 At the issue of Subdivision Certificate for each stage, a restriction to the land use pursuant to section 88B of the *Conveyancing Act, 1919* shall be placed on relevant lots within the subdivision requiring the provision of asset protection zones (APZ), to be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of *Planning for Bush Fire Protection 2006* and the NSW Rural Fire Service's document *Standards for asset protection zones*, as identified on the 'approved plans' and as follows:

- i) the APZ over southern portion of Lot 75 to increased to 9 metres;
- ii) the APZ over southern portion of Lots 82, 83, 84 and 85 be increased to 21 metres;
- iii) include a 10 metre wide APZ along the eastern boundary of Lot 101 – measured from the western edge of the unmanaged vegetation;
- iv) include a 10 metre wide APZ over Lot 163 along the western edge of Lot 86;
- v) the APZ over the eastern portion of lots 137 and 138 being increased to taper from 9 metres wide at the south to 12 metres wide at the north;
- vi) the APZ to the north-west of lots 143, 145 and 146 being increased to 21 metres;
- vii) the APZ over the northern portion of Lot 147 being increased to 13.5 metres; and
- viii) Details of the Restriction(s) are to accompany the application for Subdivision Certificate.

15. In Schedule 2, Part E, delete Condition E5 and replace with the following:

E5 Prior to the issue of a Subdivision Certificate for Stage 1, a Fire Management Plan shall be prepared with respect to the future undeveloped stages and proposed Lot 161 that addressed the following requirements:

- a) contact person / department and details; and
- b) schedule and description of works for the construction of asset protection zones and their continued maintenance.

16. In Schedule 2, Part E, Delete Condition E17.

17. In Schedule 2, Part E, Delete Condition E18 and replace it with the following:

E18 The residential zoned lands required to be incorporated into Part Lot 162 under Condition A4A shall be the subject of negotiation between the Council and the Proponent. If an agreement cannot be reached over the transfer, the Proponent must manage the land in perpetuity in accordance with the requirements of the Vegetation Management Plan approved under Condition B11.

SCHEDULE 3

1. Delete the Statement of Commitments in Schedule 3 and replace them with the following:

NUMBER	ISSUE	COMMITMENT	RESPONSIBLE	TIMEFRAME
C1	Urban Design and subdivision Layout	The development of the subdivision will be undertaken in accordance with the subdivision layout prepared by Astoria Group Pty. Ltd., dated March 2014 and outlined within this Modification.	Noubia Pty. Ltd.	Construction and operation
C2	Urban Design and subdivision Layout	A Construction Management Plan ("CMP") will be prepared for each stage of civil construction works associated with the subdivision and will be prepared prior to construction of each respective Stage of the proposed subdivision.	Noubia Pty. Ltd.	Prior to construction of stage 1
C3	Infrastructure - Utilities	Construction and operation of the utilities in the proposed residential subdivision will be in accordance with the principles outlined in the Engineering Assessment Engineering Assessment prepared by Resource Design Management in December 2007 and amended in November 2008 as modified for the current proposal.	Noubia Pty. Ltd.	Review 2007 assessment-prior to construction; Construction and operation at construction stage
C4	Infrastructure - Utilities	The proponent commits to providing electricity and telecommunication to all lots in the subdivision. Negotiation will be held with Council and relevant service providers to determine the extent of electricity, gas and telecommunications provision and extension of the existing service.	Noubia Pty. Ltd.	Negotiations and discussions - Prior to construction; Construction and operation at construction stage
C5	Infrastructure - Utilities	The proponent commits to make all necessary allowances to enable adjoining land developers to connect into the 66kV power line and the sewer mains.	Noubia Pty. Ltd.	Construction
C6	Infrastructure -land transfer	In accordance with the provisions of the North Boambee Valley (East) release Area Developer Contributions Plan 2013 (the CP); Lot 161 will be created for the purposes of being acquired by Coffs Harbour City Council. Lot 161 includes bushland and open space land on the subject	Noubia Pty. Ltd.	Lot 161 to be created and registered as part of the subdivision.
		development site. This can occur by way of a private treaty sale of the land to Council as provided for at page 7 of the CP. The proponent further commits to discuss with the Council, the timing of the transfer of this land.		Negotiations and discussions as per the CP - Prior to construction

C7	Infrastructure - land transfer	The proponent commits to transferring to Coffs Harbour City Council, all the land occupied by road carriageways and pedestrian paths (that are not located on lots 161, 162 & 163) as follows: <ul style="list-style-type: none"> ▪ Lakes Drive extension to be acquired by Council, consistent with previous similar negotiations; and ▪ LOCAL roads to be transferred at no cost to Council. 	Noubia Pty. Ltd.	Upon construction of roadworks
C8	Infrastructure – roadway works	The proponent commits to constructing roadworks on the subject site in accordance with the Roads and Movement Access Plan designed and built to the standards provided by Coffs Harbour Council.	Noubia Pty. Ltd.	Construction
C9	Infrastructure – roadway works	The proponent commits to restricting traffic flow and providing koala crossings in culverts under the roadway in the locations identified on the Roads and Movement Access Plan. The purpose of these actions is to minimize risk to koalas and other wildlife. The methods adopted in the various locations will vary according to the other purposes of the road in	Noubia Pty. Ltd.	Construction
C10	Infrastructure – roadway works	Street tree planting will be undertaken in accordance with Council's standard requirements with regards to tree sizes, spacing and methods for planting.	Noubia Pty. Ltd.	Construction and operation
C11	Infrastructure – roadway works	The proponent commits to initiating discussion with Roads and Maritime Services (RMS) for the construction of the Pacific Highway Bypass for the provision of noise mitigation measures. These measures should be undertaken by the RMS as part of the design and construction of the bypass.	Noubia Pty. Ltd.	During construction phase
C12	Infrastructure – Fire trails	The proponent commits to providing fire trails in the locations identified in the Roads and Movement Access Plan.	Noubia Pty. Ltd.	Construction
C13	Infrastructure – open space works	The proponent commits to providing a 'heritage park' in the location identified in the Open Spaces Plan. The heritage park will include any indigenous or non-indigenous heritage items found during the construction process. The purpose of the heritage park will, in addition to general recreation, provide some form of education of the local history. Note:	Noubia Pty. Ltd.	Construction
C14	Infrastructure – open space works	The proponent commits to providing a pedestrian and/or bicycle path network in the locations identified in the Roads and Movement Access Plan.	Noubia Pty. Ltd.	Construction
C15	Infrastructure – development contributions	The proponent commits to the payment of monetary contributions in accordance with the relevant sections of the CP.	Noubia Pty. Ltd.	Prior to release of subdivision certificate.

C16	Infrastructure – development contributions (water and sewerage)	The proponent commits to the payment of development contributions for water supply and sewerage in accordance with the Wastewater Treatment & Carrier System Development Servicing Plan 2008 and Water Supply Development Servicing Plan 2008.	Noubia Pty. Ltd.	Prior to release of subdivision certificate.
C17	Infrastructure – Stormwater drainage management	The proponent commits to providing standard pits and pipes drainage for all residential lots to the ‘five lakes and one wetland system’ designed by Umwelt in 2003, approved by Council and already constructed to manage the post-development peak flows as well as the water quality.	Noubia Pty. Ltd.	Construction and operation
C18	Stormwater drainage management	The proponent commits to obtaining any necessary permits pursuant to Part 3 of the Water Management Act for proposed development close to drainage lines.	Noubia Pty. Ltd.	Construction and operation
C19	Environmental Management	Vegetation removal for development of proposed lots, roads and other infrastructure under this Project Approval within Primary and Secondary Koala habitat areas will be restricted only to those areas identified “Trees proposed to be removed or pruned in a koala designated area” on the plan labelled ‘Koala Habitat Plan’. The proponent commits to compensatory planting on Lot 161 in accordance with the Coffs Harbour Koala Plan of Management.	Noubia Pty. Ltd.	Construction and operation
C20	Environmental Management	The proponent commits to incorporating within the discussions and agreements for the transfer of lot 161, arrangements to ensure that the Council’s relevant Plans of Management for the management of the bushland are complied with.	Noubia Pty. Ltd. & Coffs Harbour City Council	Prior to Construction
C21	Environmental Management	All domestic animals kept in association with future residential development must be registered with Council and not allowed outside the property unless on a lead or other restraint. This will be enforced through use of a covenant applied through s88B Instruments, and advisory signage will also be established within the estate.	Noubia Pty. Ltd.	Operation
C22	Flood management	All future dwellings will be constructed with a freeboard of 500 millimetres above the determined 1 in 100 year flood level. This requirement will be incorporated into any estate design guidelines or development Control Plan that applies to the subject site.	Noubia Pty. Ltd. & Coffs Harbour City Council	Operation

C23	Soil Contamination	<p>The proponent commits for each relevant stage to:</p> <ul style="list-style-type: none"> (a) Undertake a detailed site investigation of the areas of concern identified in Coffey report GEOTCOFH02233AA-AE dated 27 February 2008. The objective of this is to assess the extent and nature of soil contamination, and to inform the preparation of a Remedial Action Plan (RAP). (b) Based on the findings of the investigations prepare a RAP to remediate the areas of soil contamination. (c) Following consultation with Coffs Harbour City Council (CHCC) the need for a development approval to allow implementation of the RAP will be established and the RAP will be implemented on site with appropriate contractors and overseers; 	Noubia Pty. Ltd.	Prior to Construction
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C24	Geotechnical Engineering	<p>The proponent commits at each relevant stage to:</p> <ul style="list-style-type: none"> (a) Investigate the locations of proposed individual features such as retaining walls and road infrastructure, to allow structural engineers to undertake design of the features. Works would include preparation of detailed design parameters and pavement thickness designs as well as providing advice on foundations for culverts and other water sensitive infrastructure. (b) Provide guidance on where controlled filling should be undertaken to meet the guidelines of AS3798-2007 Guidelines on earthworks for commercial and residential developments. (c) Prepare site classification assessments to AS2870-2011 Residential Slabs and Footings. The site classification assessments can then be used to assess the site constraints at subdivision certificate stage. Where “P” classifications are noted, the reports shall include specific engineering advice on how to develop the site for residential use. This may include recommending further investigation an slope risk assessments on individual lots, or further investigation to allow provision of specific parameters and founding levels. (d) Investigate individual lots where site classifications note the need. Slope risk assessments should be undertaken in accordance with the Australian Geomechanics Society Practice. <p>Note: Guidelines for Landslide Risk Management (known as AGS 2007). The risk assessment process should include definition of site specific development guidelines for the individual lots. Based on the lot layout provided we do not expect a significant number of lots to be affected by slope stability constraints.</p>		
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C25	Roadway - activities	<p>The proponent acknowledges the unnamed Crown public road on its north western boundary and commits to ensuring that they or their representatives do not undertake the following activities on that road:</p> <ul style="list-style-type: none"> ▪ Encroachment upon the road; ▪ Removal of any vegetation from the road; or ▪ Stockpiling of any materials or the storing of any equipment, machinery or plant on the road. 		
C26	Bushfire protection	The proponent commits to the management of bushfire risk by reference to the Asset Protection Zone as identified by Australian Bushfire Protection Planners Pty Ltd (ABPP) on plans A012-A014.	Noubia Pty. Ltd.	Construction and operation
C27	Bushfire protection - Covenant	An 88B Covenant, in accordance with the provisions of the Conveyancing Act 1919, shall be created on the title of the future lots burdened by the Asset Protection Zones to ensure the ongoing management of the landscaped gardens/residual vegetation, in accordance with the prescriptions of an Inner Asset Protection Zone.	Noubia Pty. Ltd.	Construction of each stage.

C28	Bushfire protection – Additional provisions	<ol style="list-style-type: none"> 1. The ongoing management of the estate will include maintenance of the Asset Protection Zone as an Inner Protection Area in accordance with Appendix 5 of Planning for Bushfire Protection 2006 and the NSW Rural Fire Service's "Specifications for Asset Protection Zones". 2. All future dwellings erected on those lots which are adjacent to the bushfire prone vegetation and which are impacted by the provision of the recommended Asset Protection Zones shall be constructed with a minimum construction standard of Level 3, in accordance with the specifications of Australian Standard A.S 3959 - Second Edition 1999 and Amendment 1, 2000, "Construction of Buildings in Bushfire Prone Areas". 3. The development will include public access constructed to comply with the deemed-to-satisfy provisions of Section 4.1.3(a) of Planning for Bushfire Protection 2006. 4. The development will include extension of the existing water supply main to service the future residential development, in accordance with the specifications of Australian Standard A.S 2419.2. All hydrants shall have a flow rate of 10 litres / second with blue pavement marks provided to locate hydrant positions. 5. The development will ensure all fire hydrants shall be accessible and located such that a tanker can park within a maximum distance of 20 metres from the hydrant and the habitable building must be located such that a fire at the furthest extremity can be attacked by fire-fighters using two 30 metre hose lines and a 10 metre water jet. The hydrants will be allocated with regard to allowing a clear unobstructed path of 90 metres between the hydrant and the most distant point of the building. 6. The development will include blue hydrant markers to locate the positions of the hydrants and shall be positioned on the hydrant side of the centreline of the road pavement. 	Noubia Pty. Ltd.	<p>Operation</p> <p>to 6. Construction of each stage.</p>
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	Heritage – Indigenous and Non- indigenous	<p>The proponent commits to providing and designating an area as “Heritage Park” as shown on the modified subdivision plan. Any artefacts uncovered during the development process will be relocated to this area.</p> <p>The proponent further commits to transferring this land to the Council to ensure that the reserve can be protected in perpetuity.</p>	Noubia Pty. Ltd.	Construction and operation
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END OF MP 05_0129 MOD 1

APPENDIX B – PROPONENT'S EA AND RTS

See the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6478

APPENDIX C – SUBMISSIONS

See the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6478

