

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**).

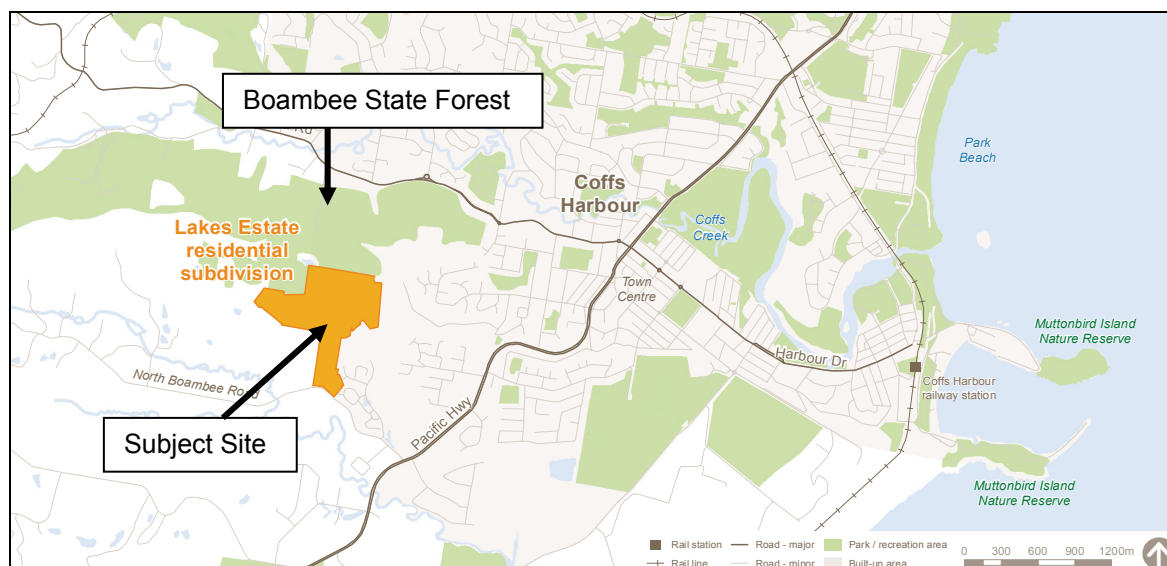


Figure 1: Regional Context

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).

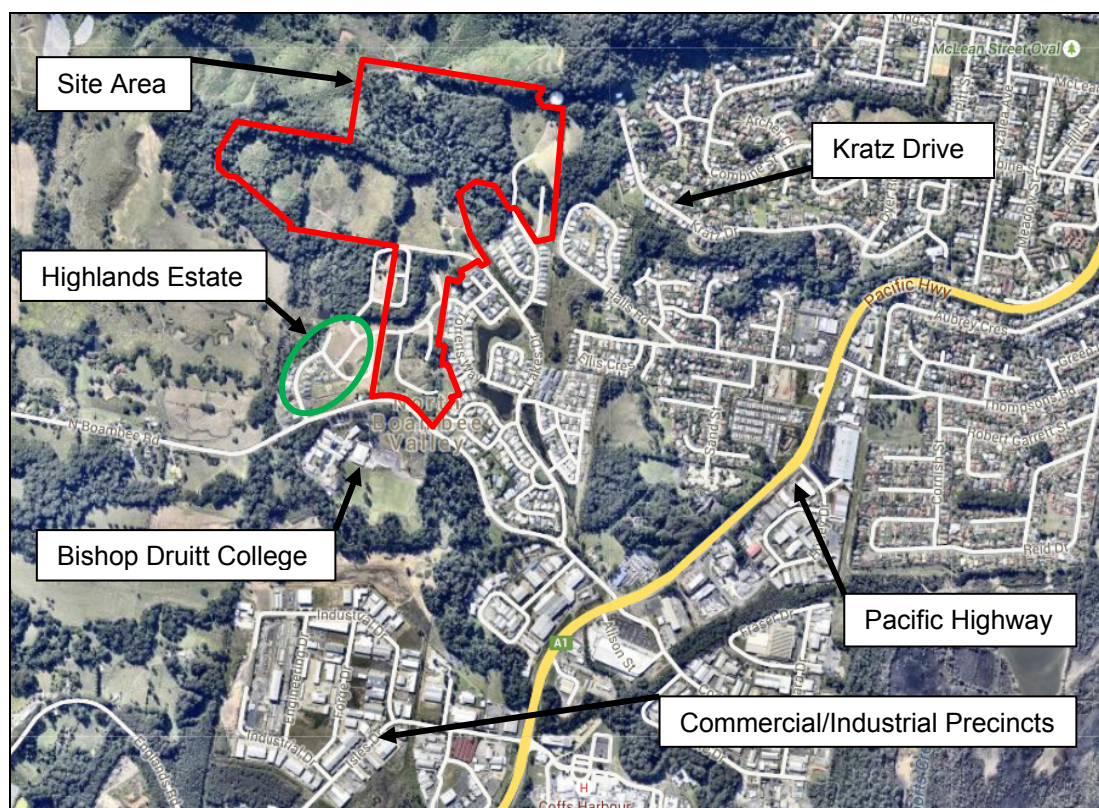


Figure 2: Site and Surrounding Development

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**).

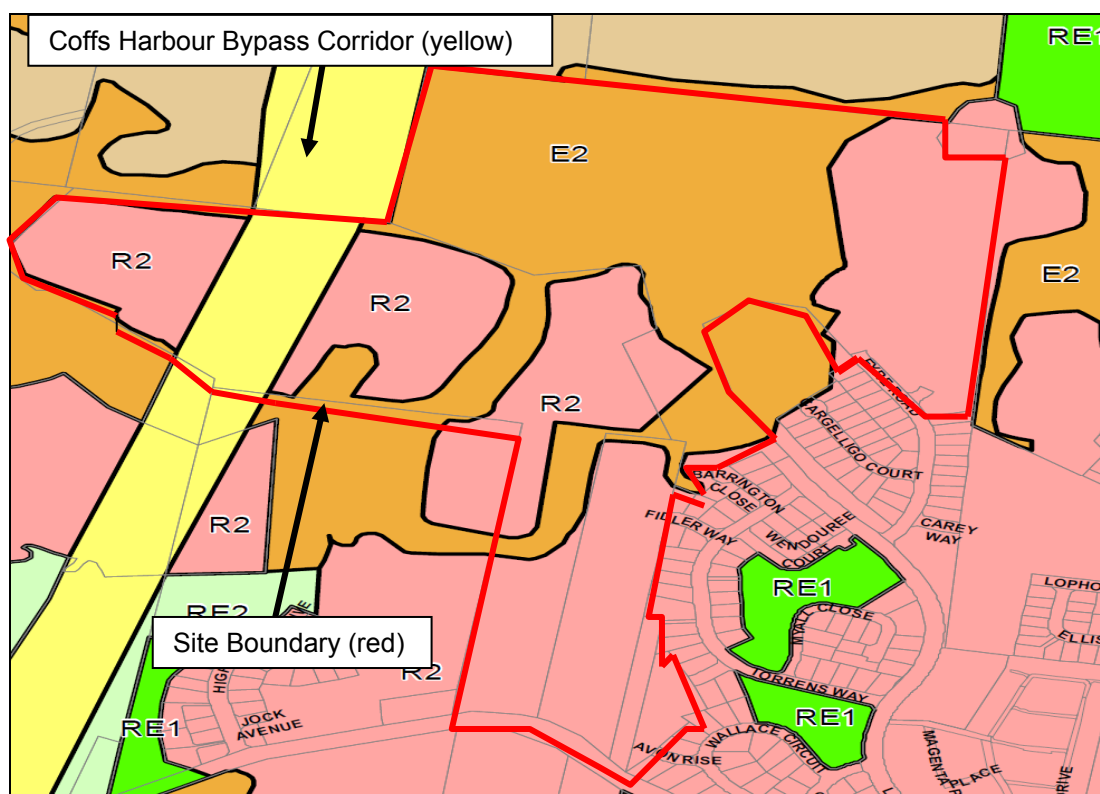


Figure 3: Site Zoning

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.

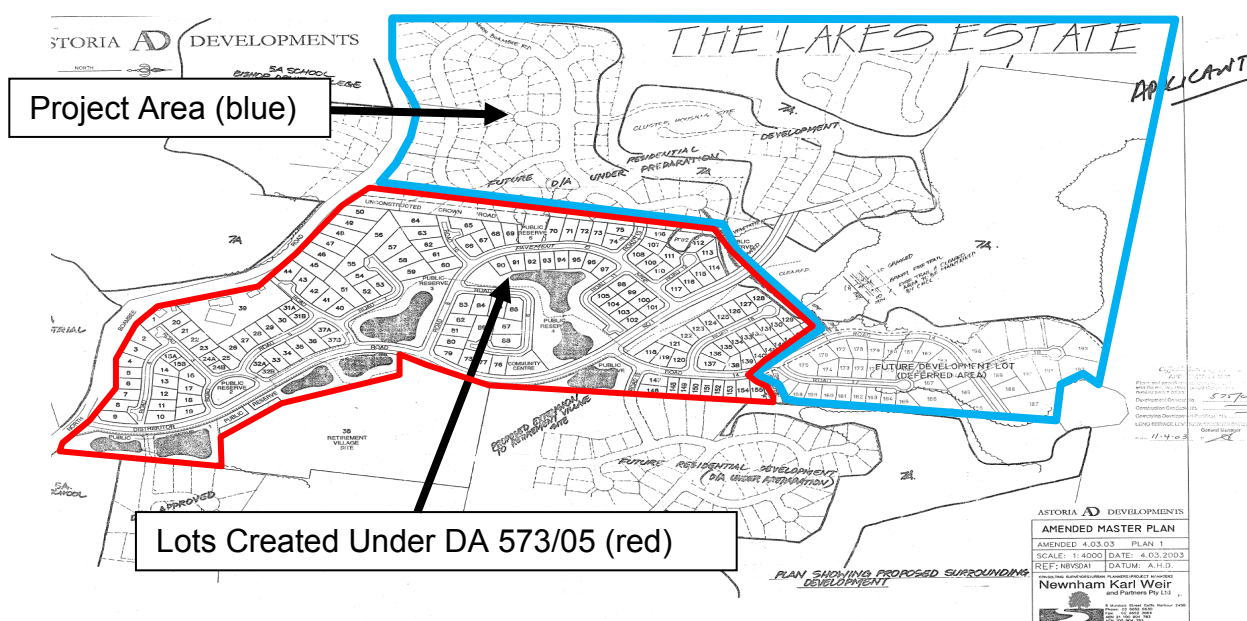


Figure 4: Council Approved Subdivision

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.

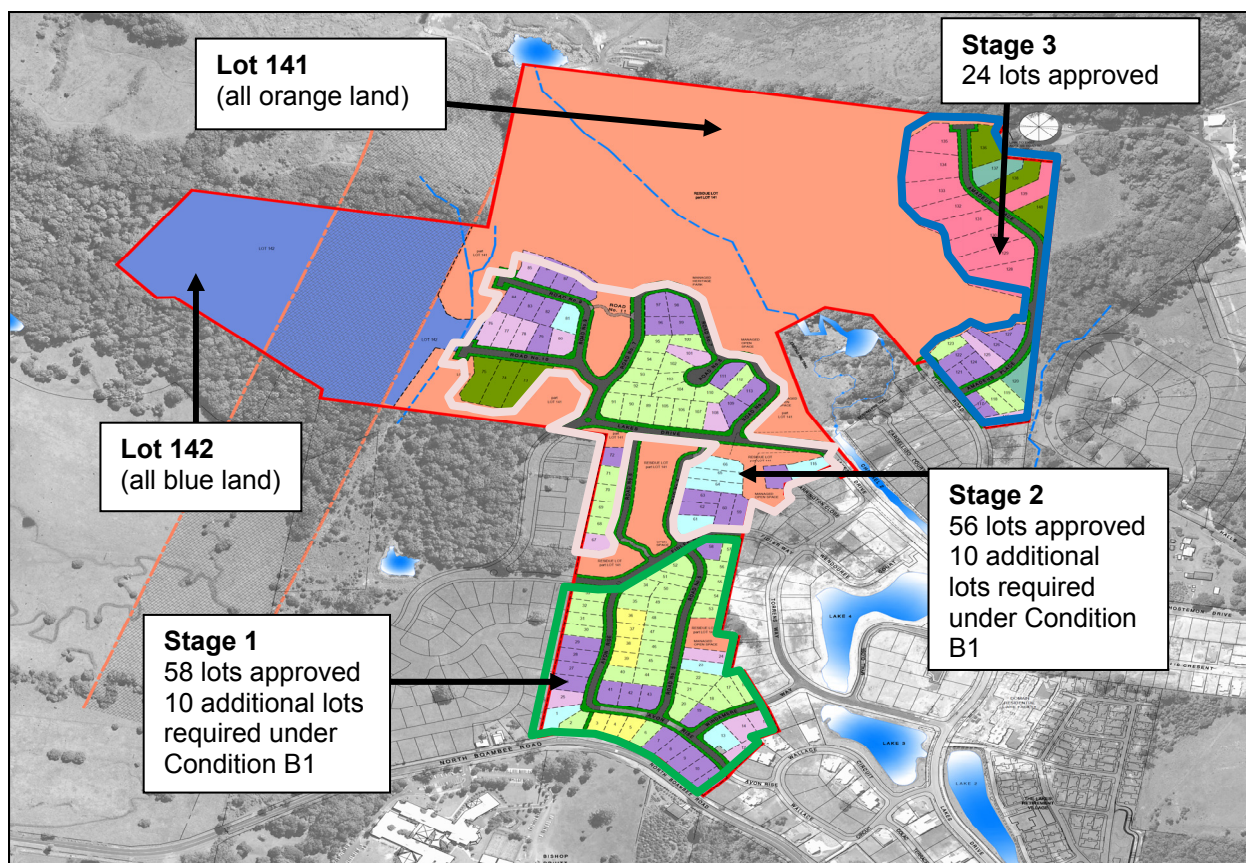


Figure 5: Approved Subdivision Plan

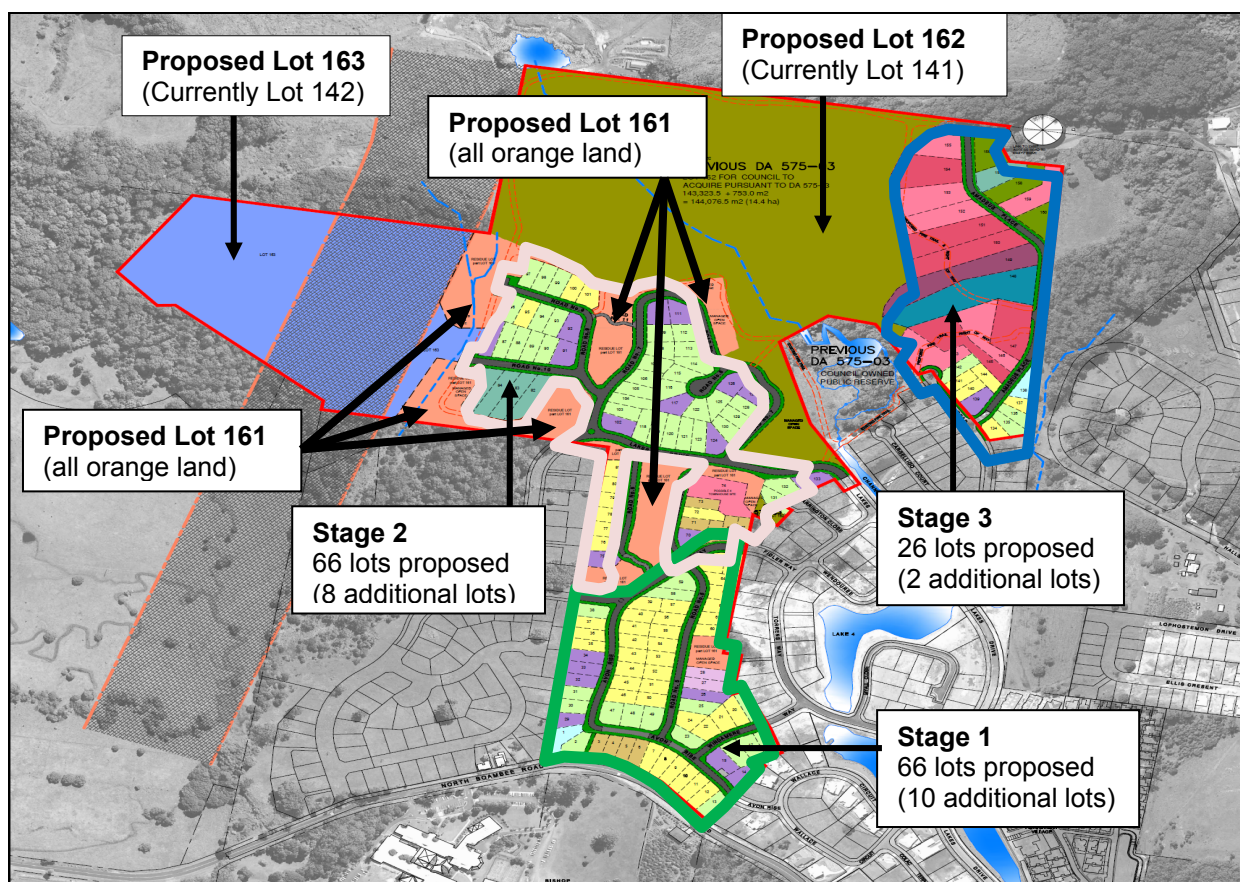


Figure 6: Proposed Subdivision Plan

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 withdrew its objection to the application on 14 July 2015, 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 transfer any residual land required for dedication to the Council under DA 575/03 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.

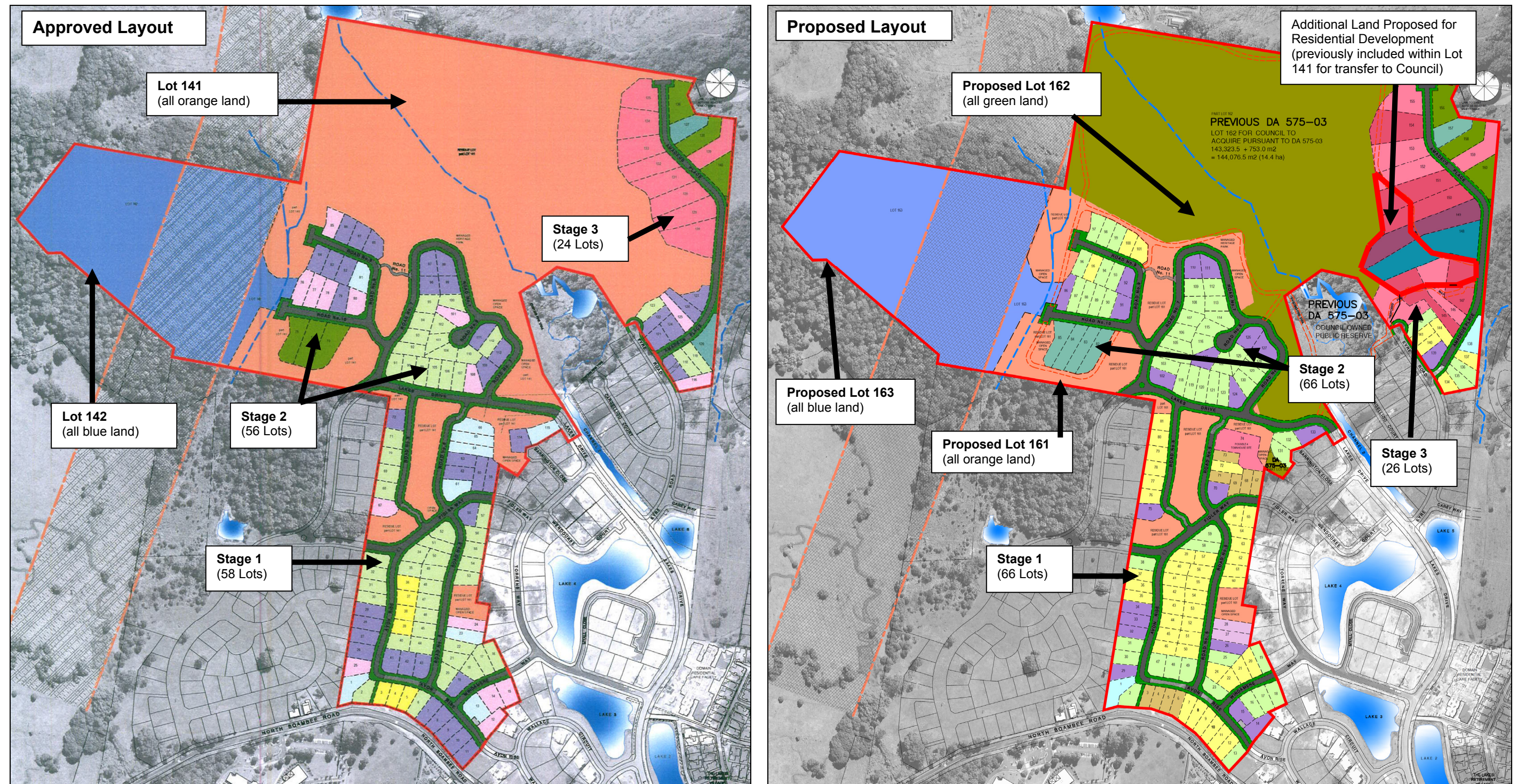


Figure 7: Comparison of Approved and Proposed Subdivision Layout (Approved Layout Left, Proposed Layout Right)

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.

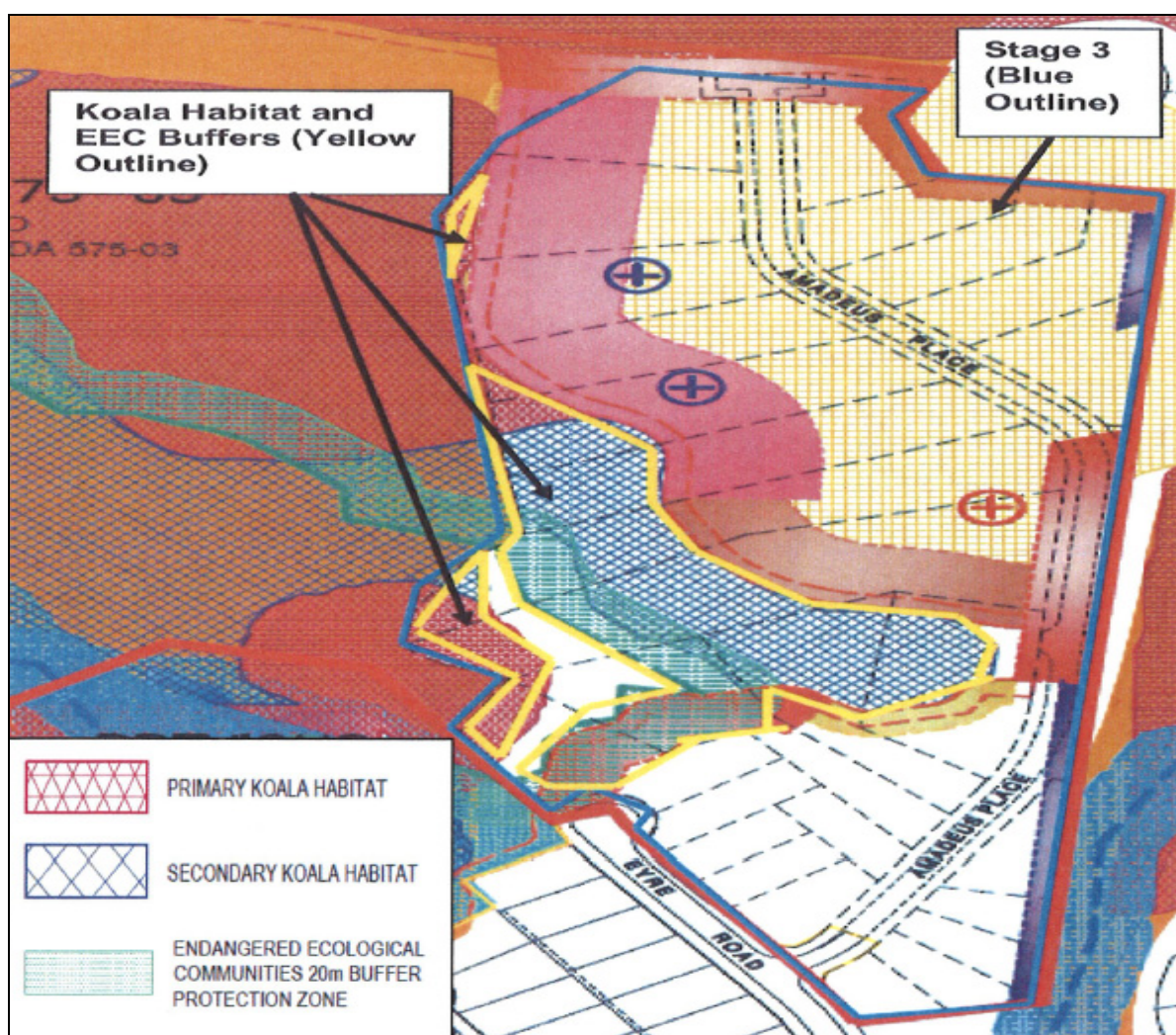


Figure 8: Location of Primary and Secondary Koala Habitat and EEC Buffers

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 requiring multiple landowners to manage this land in-perpetuity is likely to result in a poor environmental outcome, particularly in

comparison to the management measures contained in the current Project Approval (conservation of this land in one lot (Lot 141) and management in-perpetuity by either the Council or the Proponent); 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.

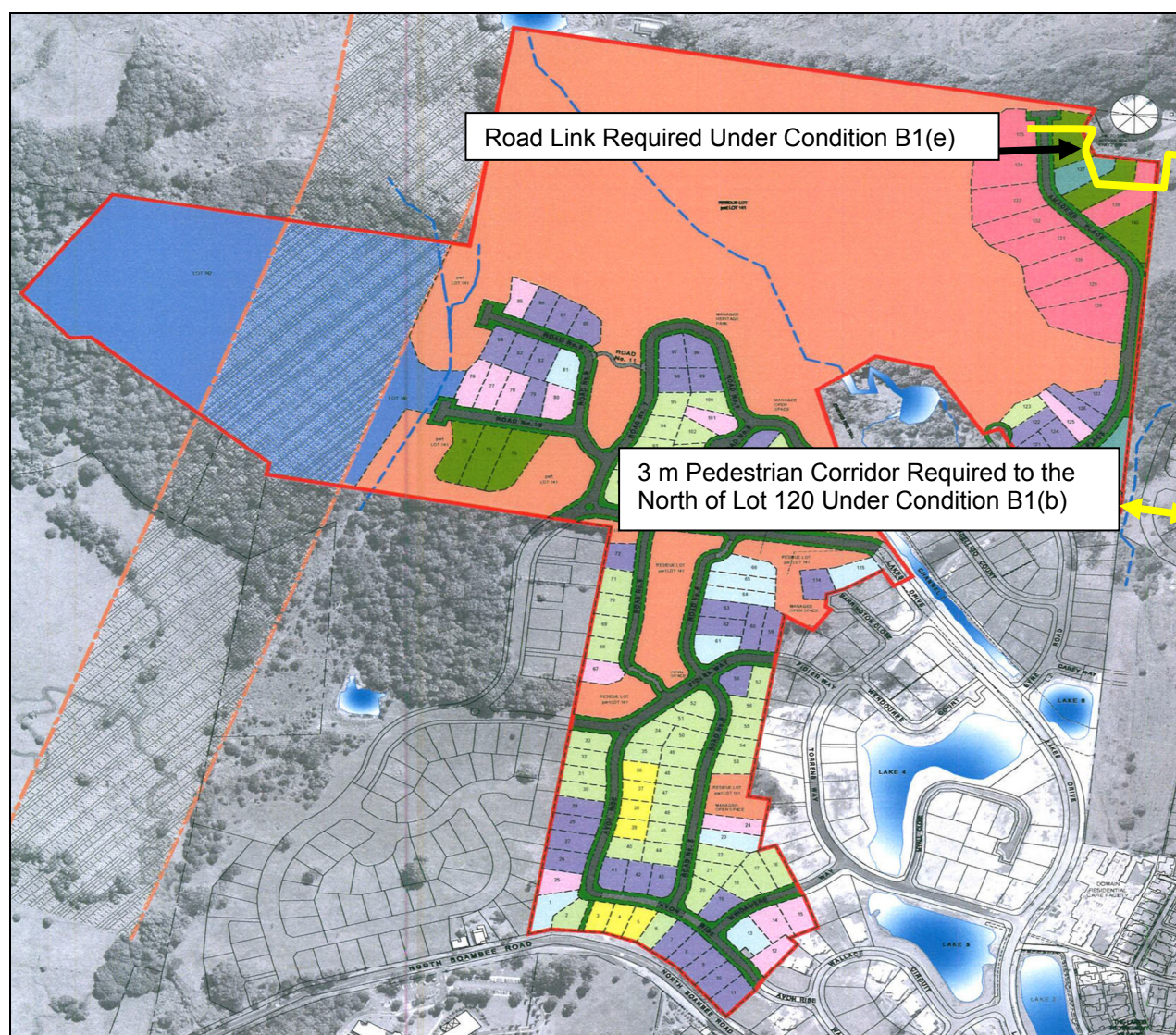


Figure 9: Pedestrian and Road Links Required under Condition B1(b) and (c)

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.

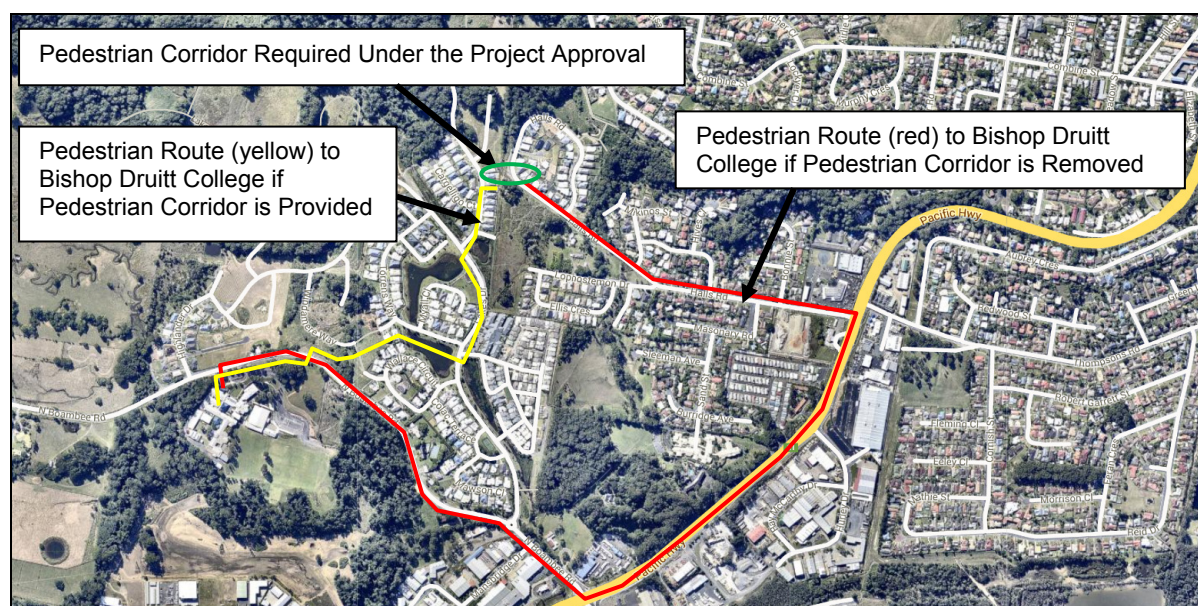


Figure 10: Access to Druitt Bishop College

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.

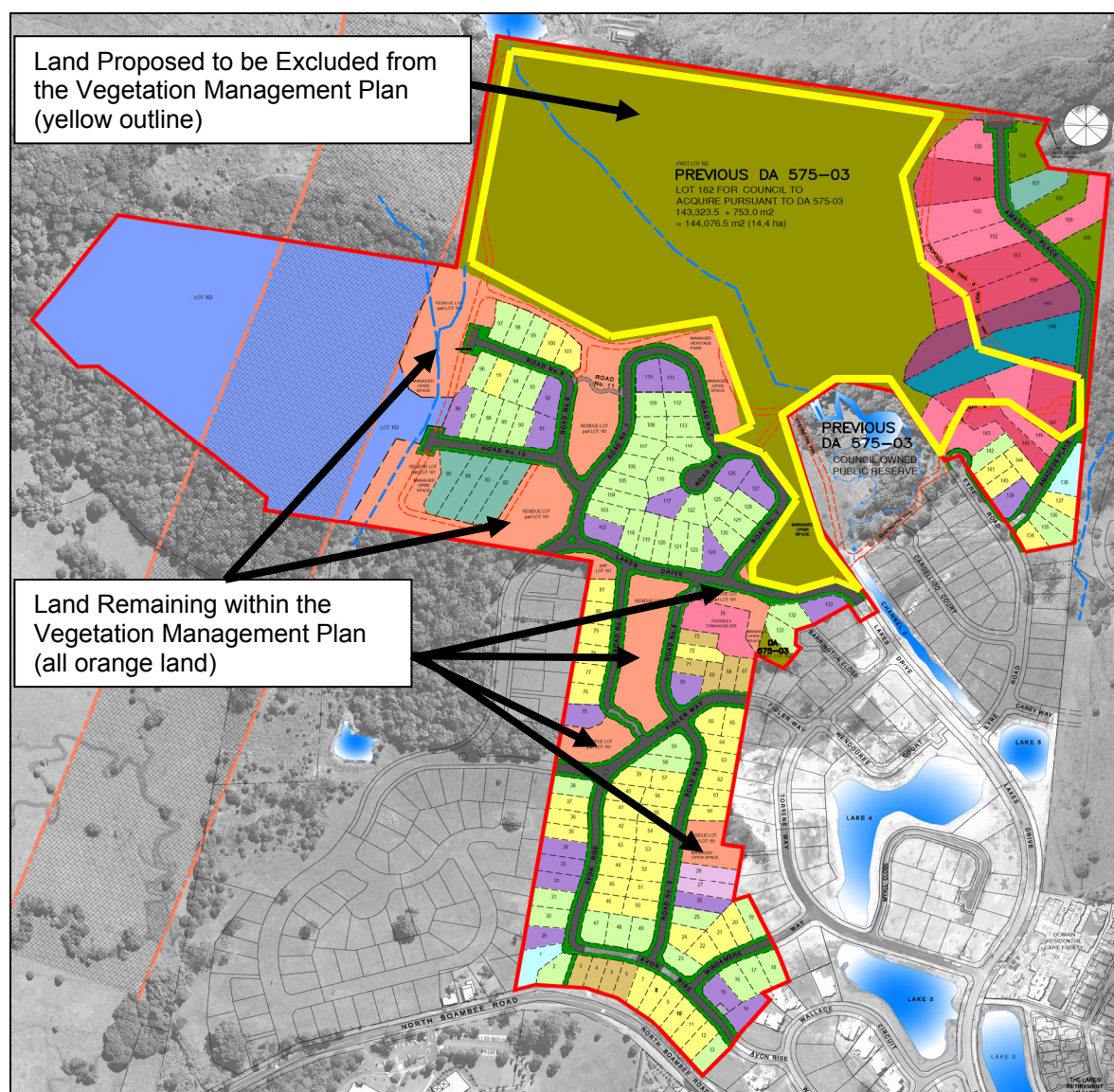


Figure 11: Land Proposed to be Removed from the VMP

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 revegetation works required to offset the loss of Koala habitat;
- identify the Proponent's maintenance obligations once the revegetation works have been completed;
- identify the on-going management measures for the residential zoned land within proposed Lot 162 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 any land transferred to the Council under DA 575/2003 will not be subject to the provisions of the Vegetation Management Plan.

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

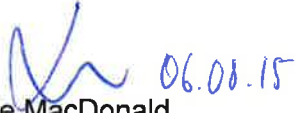
The Department has assessed the modification request in accordance with the requirements of section 75W the EP&A Act, and has concluded that it is appropriate to modify the subdivision layout to permit the creation of 20 new residential lots across stages 1 to 3 of the development.

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**).


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Manager
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