



Lakes Estate Residential Subdivision Modification 3

Modification to provide five additional lots within Stage 3A
and replace a fire trail with a public road.

State Significant Development Modification Assessment
(MP 05_0129 MOD 3)

May 2020

Published by the NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

Title: Lakes Estate Residential Subdivision Modification 3

Subtitle: Assessment Report

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Glossary

Abbreviation	Definition
AHD	Australian Height Datum
Council	Coffs Harbour Council
BCD	Biodiversity Conservation Division
Crown Lands	Crown Lands, DPIE
Department	Department of Planning, Industry and Environment
DPI	Department of Primary Industries, DPIE
EESG	Environment, Energy and Science Group, DPIE
EIS	Environmental Impact Statement
EPA	Environment Protection Authority
EP&A Act	Environmental Planning and Assessment Act 1979
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPBC Act	Environment Protection and Biodiversity Conservation Act 1999
EPI	Environmental Planning Instrument
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
RMS	Roads and Maritime Services, TfNSW
RFS	Rural Fire Service
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development

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1 Introduction

1.1 Background

This report provides an assessment of an application to modify the project approval for the Lakes Estate residential subdivision (MP 05_0129). The application seeks to provide five additional lots within Stage 3A, replace an approved fire trail with a public road and modify Conditions A1 and E28 relating to site remediation.

The application was lodged by Noubia Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

1.2 Subject site

The subject site is located in the North Boambee Valley on the New South Wales mid-north coast, in the Coffs Harbour local government area. It is approximately 2.5 kilometres (km) south-west of the Coffs Harbour central business district and 2 km east of the Boambee State Forest (**Figure 1**).

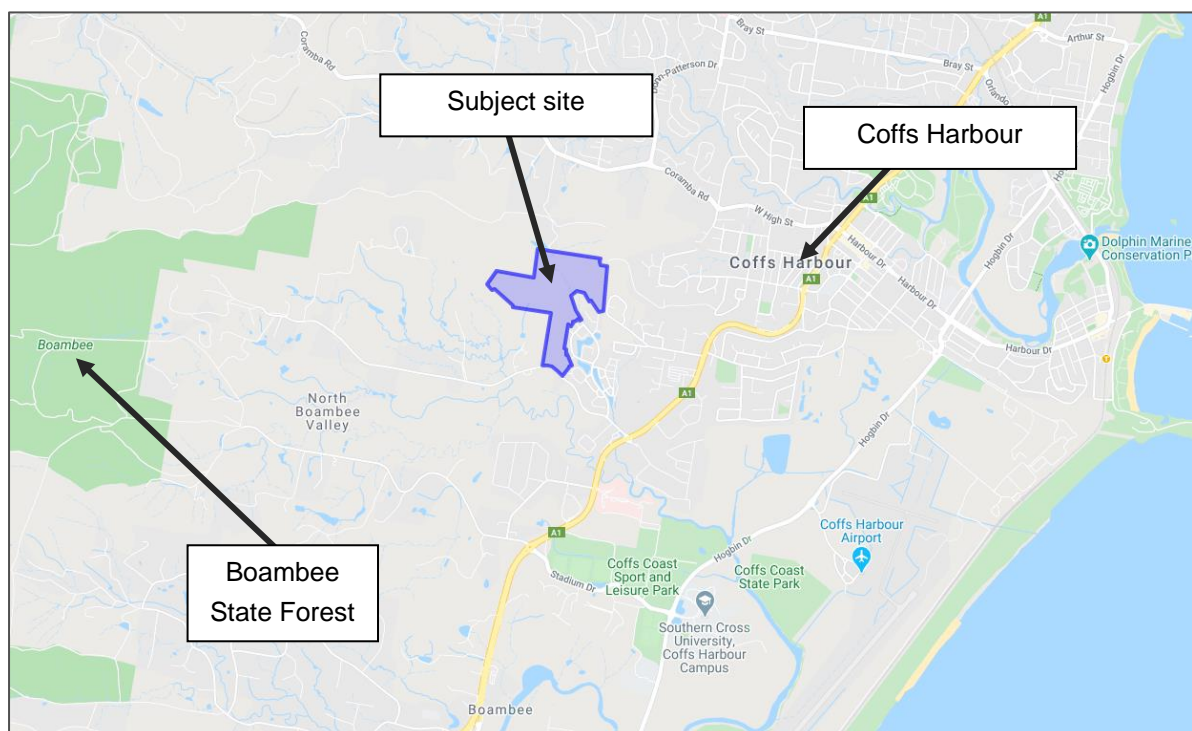


Figure 1 | Regional context

The site covers an area of approximately 53.15 hectares (ha) and is accessed by North Boambee Road to the south and Lakes Drive to the south east. It is bound by existing agricultural land 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 (**Figure 2**).

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). 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).

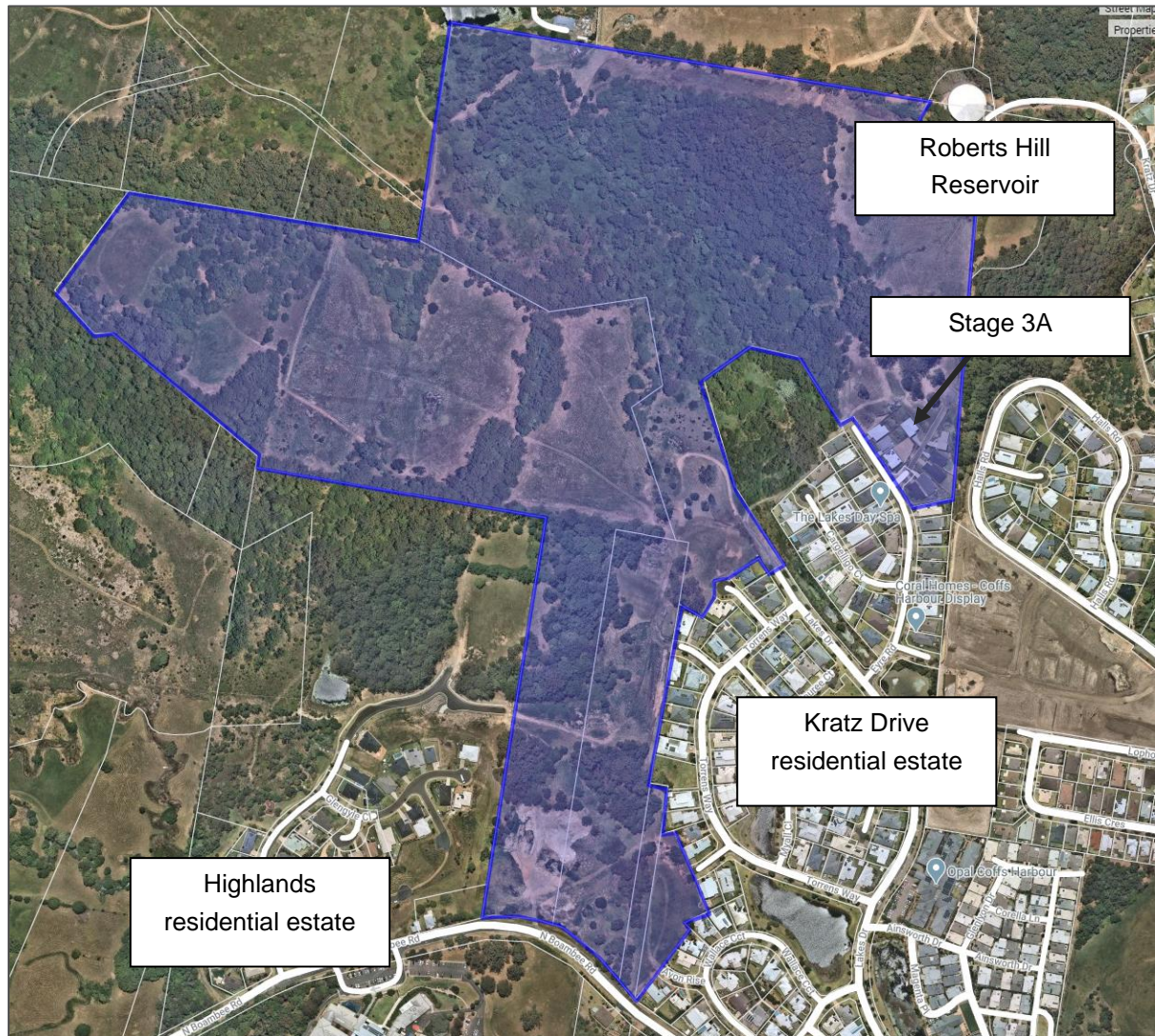


Figure 2 | Subject site (outlined in purple)

1.3 Approval history

On 7 June 2013, the then Minister for Planning granted project approval for the residential subdivision of the Lakes Estate site (MP 05_0129) under Part 3A of the EP&A Act. The project approval permits:

- a 162 lot subdivision constructed over three stages, comprising 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
 - one lot (Lot 142) for future development subject to a separate development application.

- site remediation and earthworks
- vegetation rehabilitation and management
- infrastructure works, including roads, drainage, sewerage works and utility services.

The proposal has been modified on one occasion as outlined in **Table 1** below.

Table 1 | Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Type	Status
MOD 1	Administrative changes to various conditions and the Statement of Commitments (SoC). New Condition A4A relating to staging. Replacement of Condition E17 with Condition E18 relating to the management of lands to be incorporated into Lot 162.	Department	75W	Approved on 7 August 2015
MOD 2	Modification of Conditions A1 and E28 relating to remediation.	-	75W	Withdrawn

2 Proposed modification

The application seeks to modify the project approval to:

- create five additional lots within Stage 3A, by replacing five large lots (between 755m² and 935m²) with 10 smaller lots (ranging from 455m² to 594m²)
- replace an existing fire trail along the boundary of Stage 3A with a public road
- modify Conditions A1 and E28 to clarify that the remediation requirements only relate to 'areas of environmental concern' as identified in the approved Geotechnical Assessment.

The proposal requires the removal of six trees to accommodate the new lots and public road.

The Applicant contends that the changes to the subdivision layout are proposed as the approved lots within Stage 3A are oversized and out of character with the neighbourhood. The perimeter road is proposed to provide improved bush fire safety. The modifications to Conditions A1 and E28 are proposed to remove inconsistency with Statement of Commitment C23.

A comparison of the approved and proposed subdivision layout is shown in **Figures 3** and **4** below.

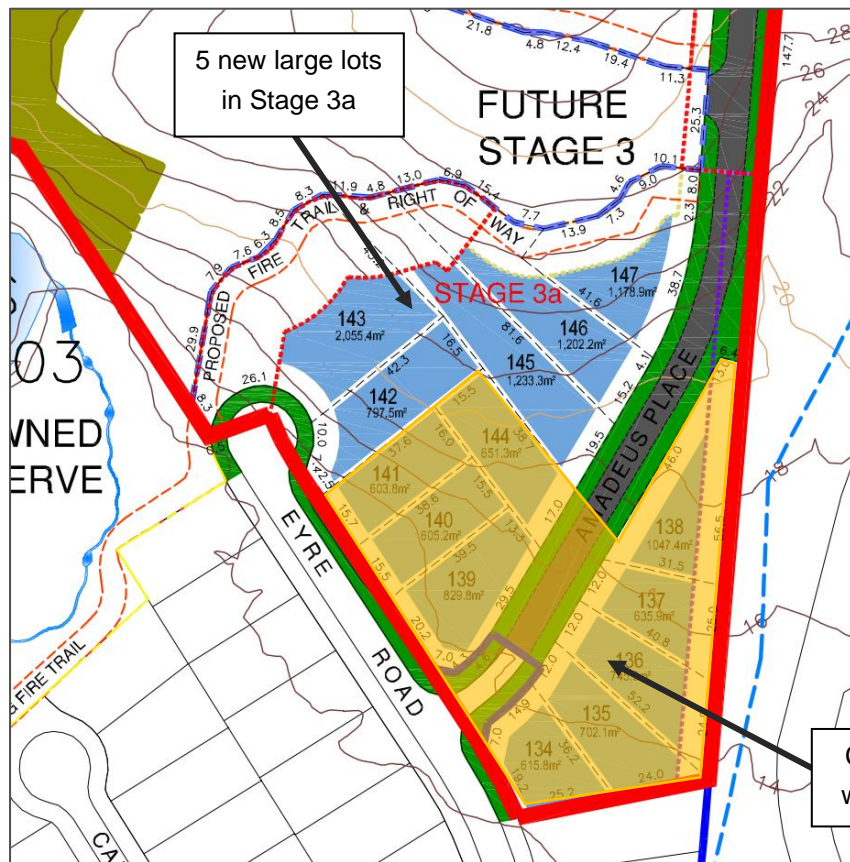


Figure 3 | Approved Stage 3A layout

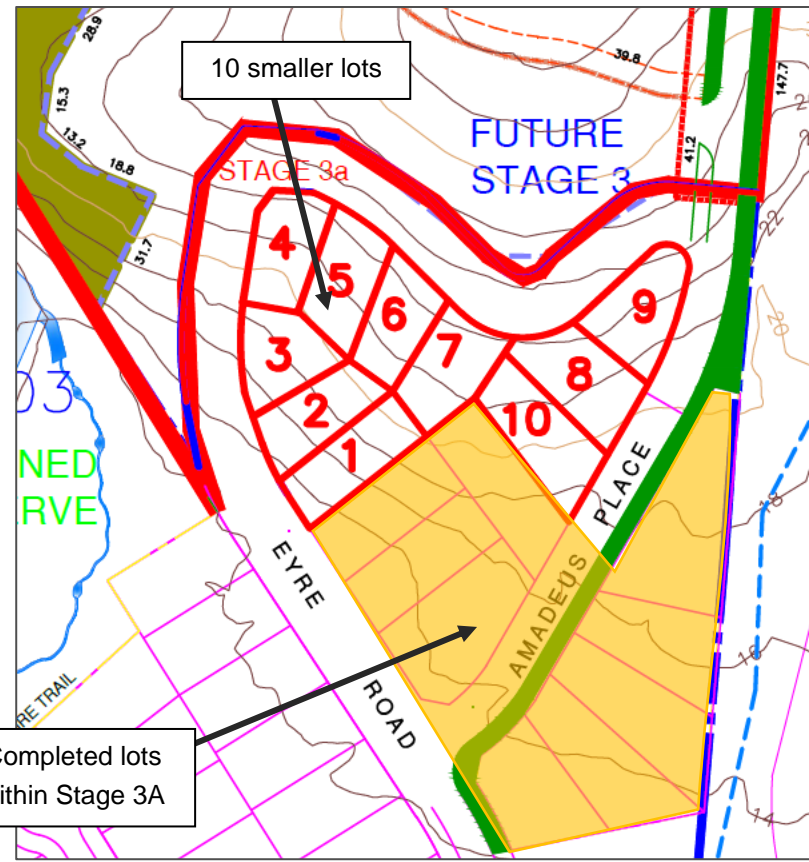


Figure 4 | Proposed Stage 3A layout

3 Statutory context

3.1 Part 3A transition to State significant development

The project approval (MP 05_0129) was originally granted under Part 3A of the EP&A Act. This means the project satisfied the definition of a 'transitional Part 3A project' under Clause 2(1) of Schedule 2 to the Environmental Planning & Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (ST&OP Regulation), which came into effect on 1 March 2018.

Under the ST&OP Regulation, projects the subject of existing Part 3A approvals remain transitional Part 3A projects until they are transitioned to State significant development (SSD) (clause 3(1)-(2), Schedule 2). As of 1 March 2018, new proposals to modify existing Part 3A project approvals can only be determined once the project has been declared to be SSD by the Minister for Planning, and the relevant provisions to modify an SSD consent under Part 4 of the EP&A Act apply.

On 23 August 2019, an Order was published in the New South Wales Government Gazette transitioning the Part 3A project approval (MP 05_0129) to SSD.

The effect of this order is that the project approval is taken to be a development consent under Part 4 of the EP&A Act for the carrying out of the development and may be modified under section 4.55 of the EP&A Act. The application has been lodged under section 4.55(1A) of the EP&A Act.

3.2 Scope of modifications

Section 4.55(1A) of the EP&A Act outlines the matters that a consent authority must take into consideration when determining an application that seeks to modify an SSD application and results in minor environmental impacts.

The matters for consideration under section 4.55(1A) of the EP&A Act that apply to the modification of the project approval have been considered in **Table 2**.

Table 2 | Section 4.55(1A) Modification involving minimal environmental impact

Section 4.55(1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	Section 5 of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the proposed modifications will have minimal environmental impacts.
b) that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted was modified (if at all), and	The Department is satisfied the modification is substantially the same development as originally granted as the proposed modification seeks approval for minor layout changes to a small portion of the subdivision.
c) the application has been notified in accordance with the regulations, and	The modification application has been notified in accordance with the Regulations. Details of the notification are provided in Section 4 .
d) any submission made concerning the proposed modification has been considered.	The Department received four public authority submissions on the proposal, as considered in Sections 4 and 5 .

Accordingly, the Department considers that the application may be assessed and determined under section 4.55(1A) of the EP&A Act.

3.3 Approval authority

The Minister for Planning and Public Spaces is the approval authority for the modification request. However, the Director, Regional Assessments may determine the request under delegation as:

- the relevant local council has not made an objection
- a political disclosure statement has not been made
- there are no public submissions in the nature of objections.

3.4 Mandatory matters for consideration

The original project approval (MP 05_0129) was assessed against the provisions of the following Environmental Planning Instruments (EPIs):

- State Environmental Planning Policy No.55- Remediation of Land
- State Environmental Planning Policy No. 71- Coastal Protection
- Coffs Harbour City Local Environmental Plan 2013.

The Department considers the proposed modification does not result in any significant changes that would alter the conclusions made as part of the original assessment.

The Department has also considered the proposed modification against relevant clauses in State Environmental Planning Policy No 44 — Koala Habitat Protection (**Section 5**) and is satisfied that the proposal is consistent with these provisions.

4 Engagement

4.1 Department's engagement

The modification request was made publicly available on the Department's website and notified to Coffs Harbour Council (Council), Biodiversity and Conservation Division (BCD), Rural Fire Service (RFS) and Environment Protection Authority (EPA).

The Department received submissions from Council, BCD, RFS and the EPA, which are summarised below (**Table 3**) and links to the submissions are provided in **Appendix A**. No public submissions were received.

4.2 Summary of submissions

Table 3 | Summary of Agency Submissions

Coffs Harbour City Council (Council)

Council raised no objection to the proposal but made the following comments:

- requested an Arborist Report and Tree Protection Plan prior to the issue of a Subdivision Works Certificate, with the construction plans being amended to reflect any recommendations
- noted the proposed road width does not comply with Planning for Bushfire Protection 2006, which requires a minimum width of 8m
- requested the removal of the northern extension of Road No. 1 as this does not service an approved residential area and creates an intersection that may not comply with Council's requirements
- noted that proposed lot 7 does not have 100% coverage as required by the sewer code, and suggests this may be addressed through a condition requiring minimum floor height for fixtures
- required amended plans clarifying the location of the retaining walls, noting that Council would not support retaining structures being located within the road reserve.

Rural Fire Service (RFS)

RFS raised no objection to the proposal, subject to compliance with recommended conditions requiring:

- proposed lots 1 to 10 being managed as an inner protection area (IPA)
- a restriction over proposed lots 1 to 9 to ensure future dwellings are not erected within the required APZ
- public road access, water, electricity and gas to comply with the requirements of section 4.1.3 of Planning for Bushfire Protection 2006.

Biodiversity Conservation Division (BCD)

BCD raised no objection to the proposal, subject to the following:

- the recommendations in Section 10 of the Ecological Report must be included as conditions of consent
- the following must be included as conditions of consent:
 - the five koala food trees proposed to be removed must be replaced by compensatory planting at a ratio of 1:5 (a total of 25 *Acacia melanoxylon* trees) in accordance with the Coffs Harbour Koala Plan of Management (KPOM) and Section E1.2 of the DCP
 - the two *Acacia melanoxylon* trees proposed to be removed must be replaced by compensatory replacement planting at a ratio of 1:2 (4 trees) in accordance with Section E1.2 of the DCP
 - a Vegetation Management Plan (VMP) must be prepared, to the satisfaction of Council, to manage compensatory plantings associated with the removal of the preferred koala food trees and native vegetation within Lot 10 DP 1240161
 - the Applicant must apply to have the hollow bearing tree (Tree 34) listed on Council's Significant Tree Register, with evidence of this being provided to the Certifying Authority prior to the issue of a construction certificate.

Environment Protection Authority (EPA)

EPA advised it did not have any comments on the proposal.

4.3 Response to Submissions

The Department provided the submissions to the Applicant and requested a response to the issues raised. On 3 April 2020, the Applicant provided a Response to Submissions (RTS) providing further information and updated plans in response to the comments raised by Council and agencies, including:

- amended plans showing:
 - removal of the northern extension of Road No. 1
 - amendments to the proposed public road to accommodate an 8m wide carriageway
 - amendments to the lot layout, and reduction in lot sizes to accommodate the 8m carriageway
 - clarification that six trees are to be removed (one less than originally proposed)
 - removal of retaining walls
- an Arborist Report assessing the impacts of the development on the hollow bearing tree (Tree 34) advising the tree will be retained.

The RTS was notified to Council, BCD and RFS and made publicly available on the Department's website. Comments from Council and BCD were received and are outlined in **Table 4**.

Table 4 | Summary of Agency Submissions on RTS

Coffs Harbour City Council (Council)

Council provided the following comments:

- the Ecological Report dated April 2020 includes inconsistent information regarding the number of trees to be removed
- recommends conditions requiring an offset replanting plan to be submitted and approved prior to works commencing and tree protection works to be undertaken in accordance with the Arborist Report
- current road design incorporates a verge of 3m, which does not meet the minimum Auspec requirement of 4m. If a reduced verge width is supported, it must be demonstrated that all services can be accommodated
- proposed grade of the new public road (20%) is not in accordance with Auspec requirements which requires a maximum of 16%
- speed to radius relationship of the new public road does not appear to be in accordance with Council's specifications
- verge slope for the extension of Amadeus Place should be in accordance with Austroads and Council Standards
- extension of Amadeus Place must have a carriageway width of 8m in accordance with Planning for Bushfire Protection.

Biodiversity Conservation Division (BCD)

BCD provided updated offset calculations for the removal of six trees. All other comments were consistent with the previous advice.

5 Assessment

In assessing the merits of the proposed modification, the Department has considered:

- the Modification Report and associated documents (**Appendix A**)
- the Environmental Assessment and conditions of approval for the original project and subsequent modifications
- submissions received on the proposal
- relevant EPIs, policies and guidelines
- the requirements of the EP&A Act.

The Department considers the key issue associated with the proposal is the biodiversity impacts and clarification of remediation requirements. An assessment of all other issues is set out in **Table 4**.

5.1 Biodiversity

The proposed additional lots and new public road results in the removal of six trees (in addition to those already approved for removal).

Four of the six trees proposed to be removed are preferred koala food trees (*Eucalyptus microcorys*) as identified in Council's KPoM and two of the trees (*Acacia melanoxylon*) are identified as requiring compensatory planting under the KPoM and DCP. A hollow bearing tree (Tree 34), located on the perimeter of the existing fire trail, will be retained. The location of the trees proposed to be removed and retained are shown in **Figure 4**.

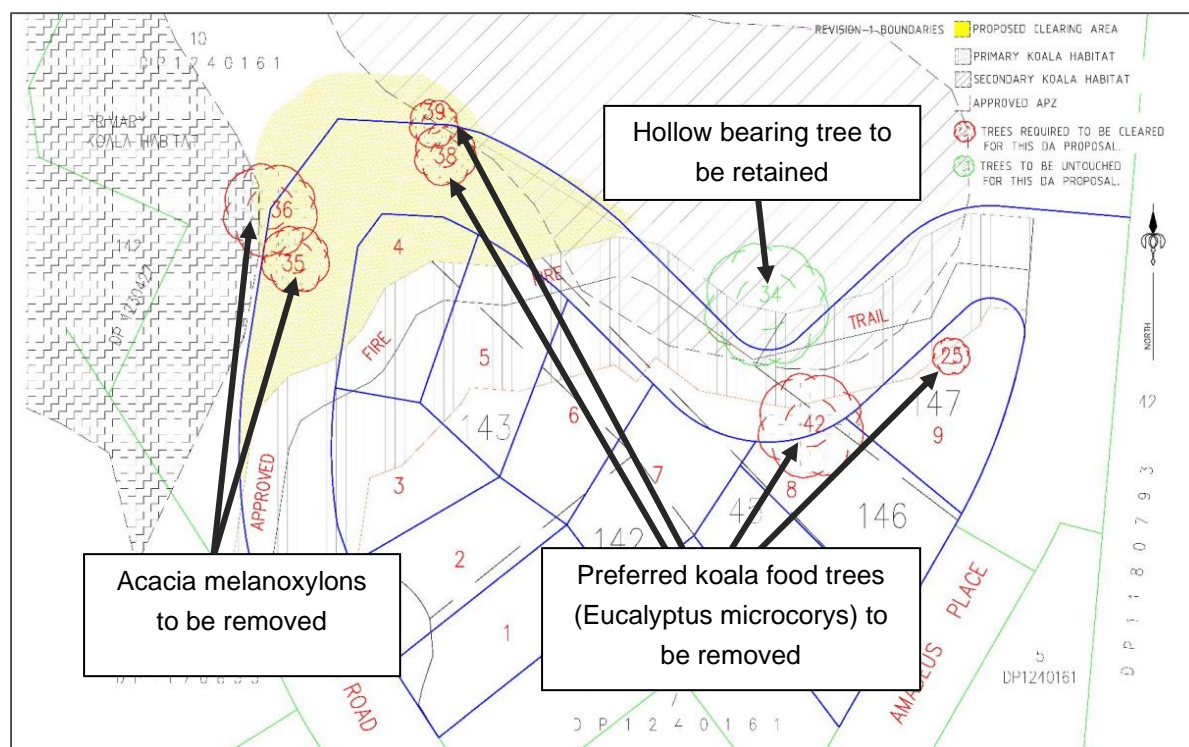


Figure 5 | Proposed tree removal

The Applicant provided an Ecological Report assessing the biodiversity impacts of the proposed additional lots and public road. It concludes that no threatened species were recorded during surveys on the site, and the vegetation does not qualify as an Endangered Ecological Community (EEC). It also concludes that, subject to the implementation of nine recommendations, the proposal would not adversely affect biodiversity outcomes on the site.

BCD did not object to the proposal but recommended several conditions to compensate for the tree removal. The conditions relate to:

- implementing the recommendations of the Ecological Report
- providing compensatory planting for the removal of the six trees
- preparation of a Vegetation Management Plan (VMP) for the compensatory plantings
- registration of the hollow bearing tree on Council's Significant Tree Register.

Noting the comments from BCD and the Applicant's Ecological Report, the Department is satisfied that the proposed removal of the six trees will not result in adverse biodiversity impacts, as no threatened species were recorded during the surveys, the vegetation is not EEC and the recommended conditions will ensure compensatory planting and a VMP. In addition, the Department is satisfied that the koala food trees will be adequately replaced, at a ratio of 1:5 (so 20 new trees), and the hollow bearing tree will be retained and appropriately protected through Council's listing.

The Department has also recommended a new Condition D15 requiring works in Stage 3A to be undertaken in accordance with the recommendations outlined in the Arborist Report and Tree Protection Plan, in accordance with Council's comments.

The Department is therefore satisfied the proposal, subject to the recommended conditions, would not result in adverse ecological impacts.

5.2 Clarification of remediation requirements

The proposal seeks to modify:

- Condition A1 to clarify that remediation works are only required (prior to construction) in areas of environmental concern, as identified in the Geotechnical Assessment
- Condition E28 to remove the requirement to provide a Site Audit Statement (SAS) prior to a Subdivision Certificate for any stage (thereby only requiring a SAS for those stages where remediation is required under Condition A1).

BCD, Council and EPA submissions did not comment on these proposed amendments.

In support of the original proposal, the Applicant provided a Geotechnical Assessment (Coffey Report) and a supplementary environmental study, which concluded that further investigation into three areas is required to inform a Remediation Action Plan (RAP) and that contamination could be suitably addressed and remediated subject to these recommendations.

The then Office of Environment of Heritage (OEH) reviewed these reports and advised it was satisfied with the level of assessment, but requested further investigation into three additional potential 'hot spots' for contamination (as listed in Condition A1).

The Department's assessment of the original application notes that the Applicant undertook a preliminary site investigation (phase 1) and identified three locations of potential contamination. The Department's assessment then noted that the Applicant undertook a more detailed investigation of these three areas of concern (phase 2) and recommended several approaches to remediate the contamination.

Through Statement of Commitment C23 (SoC C23) the Applicant committed to further site investigation and associated remediation of the three areas of concern identified in the Geotechnical Assessment, but not the additional 'hot spots' requested by OEH. Condition A1 was therefore included to require further intensive testing into all potential areas of contamination listed in Condition A1 (including those requested by OEH), the preparation of an associated RAP and Site Audit Statements.

While Condition A1 states that this is required prior to construction (without specifying a location or stage), the OEH advice states that the further investigation is required prior to construction on the areas identified as potentially contaminated.

Noting the above, the Department supports the intent of the proposed change to Condition A1 and Condition E28 to clarify the timing of the additional investigations and remediation and SAS, linking it to only potentially contaminated areas. However, the Department recommends that these conditions refer to all areas of potential contamination in Condition A1 (which includes the areas identified by OEH), consistent with OEH advice, rather than only the three areas identified in the Geotechnical Assessment (as proposed).

While SoC C23 only refers to the areas identified in the Geotechnical Assessment, the Department also notes that where there is an inconsistency between a SoC and a Condition, the Condition prevails so there is no need to update SoC C23.

The Department is satisfied these changes would ensure that all potential areas of contamination listed in Condition A1 would be further investigated and remediated and SAS provided, to ensure the land is able to safely accommodate the intended predominantly residential use prior to construction. This will also remove the requirement for testing and remediation in areas that were not identified in the original assessment as being at risk of contamination, consistent with OEH advice.

5.3 Other issues

Table 4 | Assessment of other issues

Issue	Findings	Recommendations
Subdivision layout	The proposal seeks to replace five large lots with 10 smaller lots, resulting in an overall increase of five lots within Stage 3A.	Modify Conditions A2 and A3 to reference the updated plans.
	The five additional lots are generally within the approved residential footprint, with the exception of a small portion of proposed Lot 4.	New Condition E14A requiring all lots to have sewer coverage.
	The Department considers the additional lots and lot layout are acceptable as:	

- the lots meet the minimum lot size of 400m² in accordance with the Coffs Harbour LEP 2013
- the amended lots are generally rectangular in shape
- existing conditions relating to stormwater and drainage would ensure the new lots are appropriately serviced
- biodiversity impacts associated with the revised lot layout would be addressed through recommended conditions
- the Department recommends a new condition E14A to ensure all lots have appropriate sewer coverage.

Road layout

The proposal seeks to replace an approved fire trail around the perimeter of Stage 3A with a public road.

Council initially raised concerns that the carriageway width did not comply with the required 8m in the PBP 2006. However, in response the Applicant provided amended plans showing an 8m wide carriageway as part of the RTS.

Council reviewed these plans and raised concerns that the detailed road design did not comply with relevant Council and Auspec specifications.

The Department notes these concerns relate to detailed engineering design matters, and has therefore recommended a new Condition A5A requiring amended plans showing the road designed in accordance with Auspec specifications to be approved by Council.

To avoid any changes to the road layout that might affect the hollow bearing tree (Tree 34), the Department also recommends a new condition ensuring its protection.

Subject to the recommended condition, the Department is satisfied the replacement of a fire trail with a public road would provide better access arrangements for residents and a better interface with the adjoining bush land.

New Condition A5A requiring amended plans to be approved by Council showing the road design amended to comply with Auspec specifications.

New Condition D15 requiring tree protection in accordance with the Arborist Report.

State Environmental Planning Policy No 44— Koala Habitat Protection	<p>The subject site contains Secondary Koala Habitat and adjoins Primary Koala Habitat, therefore State Environmental Planning Policy No 44—Koala Habitat Protection (SEPP 44) applies.</p> <p>SEPP 44 has been repealed and replaced by State Environmental Planning Policy (Koala Habitat Protection) 2019, but as the application lodged prior to and not determined before 1 March 2020 SEPP 44 remains applicable.</p> <p>SEPP 44 requires the determination of applications on land which an approved KPoM applies to be consistent with that approved KPoM.</p> <p>An assessment of the proposal against Council's KPOM was provided with the application, and concluded that the development can satisfy the KPOM.</p> <p>The Department is satisfied that, subject to recommended conditions requiring compensatory planting in accordance with the KPOM, the proposal is consistent with the requirements of SEPP 44.</p>	<p>No additional conditions or amendments to existing conditions necessary.</p>
Bushfire	<p>The proposal seeks to replace an approved fire trail along the northern boundary of Stage 3A with a public road.</p> <p>RFS raised no concerns with the proposal, subject to conditions requiring:</p> <ul style="list-style-type: none"> proposed lots 1 to 10 to be managed as an IPA a restriction placed over proposed lots 1 to 9 to ensure future dwellings are not erected within the required APZ public road access, water, electricity and gas to comply with the requirements of section 4.1.3 of Planning for Bushfire Protection 2006. <p>The Department notes that existing Condition E2 requires the entire area of all lots to be managed as an IPA and Condition E3 requires a restriction to be placed on the relevant lots requiring the provision of APZs prior to the issue of a Subdivision Certificate for each stage.</p>	<p>Amend Condition E2 and E3 to refer to Stage 3A.</p> <p>New Condition E3A requiring a restriction to ensure dwellings are not erected within the APZ.</p> <p>New Condition E7A requiring road access, water, gas and electricity in accordance with Section 4.1.3 or PBP 2006.</p>

The Department recommends Conditions E2 and E3 be amended to specifically refer to Stage 3A.

The Department also recommends a new Condition E7A requiring road access and utilities in accordance with PBP 2006 and E3A requiring a restriction prohibiting the erection of dwellings within the APZ.

Subject to the recommended conditions, the Department is satisfied the proposal is consistent with bushfire mitigation requirements.

The Department also considers the replacement of a fire trail with a public road is consistent with PBP 2006 and would provide a better outcome for residents.

Contributions

The Department notes the requirement to pay contributions is outlined at Statement of Commitment C15, which requires contributions to be paid in accordance with the relevant Contributions Plan prior to the release of a Subdivision Certificate.

Condition E1 requires contributions to be paid per lot for each stage prior to the issue of a Subdivision Certificate. The calculations are provided per lot, with no reference to the total number of lots in each stage.

The Department is therefore satisfied the existing commitment and condition relating to contributions would apply to the additional five lots and no updated calculations for the additional lots are required at this stage.

No additional conditions or amendments to existing conditions necessary.

6 Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department considers the proposal is acceptable on the basis that:

- the additional lots and amended layout provide a logical subdivision pattern and comply with Council's controls
- the biodiversity impacts associated with the tree removal would be appropriately mitigated by the recommended conditions
- the replacement of a fire trail with a public road would provide access to the new lots, a better interface to adjoining bush land, better emergency access and is consistent with PBP 2006.

The Department is satisfied that the modification is approvable, subject to the recommended conditions (**Appendix D**).

7 Recommendation

It is recommended that the Director, Regional Assessments as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **determines** that the application MP 05_0129 MOD 3 falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modify** the consent MP 05_0129
- **signs** the attached Modification of Development Consent (**Appendix D**).

Recommended by:



Emma Butcher
Planning Officer
Regional Assessments

Recommended by:



Silvio Falato
Team Leader
Regional Assessments

Determination

The recommendation is **Adopted** by:

A handwritten signature in black ink, appearing to read 'B. Roberts', with a long horizontal stroke extending to the right.

12 May 2020

Brendon Roberts

A/Director

Regional Assessments

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – Modification report

<https://www.planningportal.nsw.gov.au/major-projects/project/26226>

Appendix B – Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/26226>

Appendix C – Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/26226>

Appendix D – Notice of modification

<https://www.planningportal.nsw.gov.au/major-projects/project/26226>