



Planning &
Infrastructure

MODIFICATION REQUEST:
Pacific Pines Estate, Lennox Head –
Modification to Concept Plan and Project
Approvals
(07_0026 Mod 2)



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

June 2011

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EXECUTIVE SUMMARY

On 12 November 2008, the then Minister for Planning gave concept plan and part project approval to the Pacific Pines residential estate at Lennox Head in the Ballina local government area. The project included residential subdivision to create approximately 505 lots, development of a retirement community, neighbourhood centre, including a small-scale shopping centre, green space and an integrated road network. A modification request has been made by the new proponent, Petrac Lennox Head Pty Ltd (Receivers and Managers Appointed), seeking a number of modifications to both the concept plan and project approvals for the following:

- changes to the staging of the project with consolidation from 11 to 9 stages. This includes consolidation of Stage 1, for which project approval has been given, from 3 sub-stages to 2;
- creation of two additional super lots within Stage 1 to bring forward the development and release of residential lots in the north of the site;
- increase in the maximum allowable retail floor space within the neighbourhood centre from 3,000m² to 4,000m² and bringing forward the construction of the maximum allowable retail floor space;
- realignment of Montwood Drive within the site;
- increase in the size of the on-site conservation area; and
- other changes to the ecological conditions.

The Department is satisfied with the proposed changes to the staging of the project, noting that it will have inconsequential effects on the surrounding environment. Changes to the size of the maximum allowable retail floor space have been considered in the context of the site and broader region and the Department is satisfied that this increase will have minimal impacts. With respect to the bringing forward of its development, traffic modelling has identified that this can only satisfactorily occur by placing a restriction on the release of the final two stages of residential development. The Department is satisfied with this approach, noting that further detailed traffic assessments will occur with each future development application.

The change in alignment of Montwood Drive will have a positive impact on preserving a larger area of land where threatened species occur on the site and which would have been lost under the existing approval.

The Department supports the increase in size of the on-site conservation area but notes that this will need to be carefully managed to ensure that the habitat values of the area are maintained or improved and the viability of threatened species and communities on the site is preserved. To this end, conditions of approval requiring environmental management plans incorporating monitoring and rehabilitation programs have been updated to address the proposed modifications.

Overall, the Department is satisfied with the proposed modification and recommends it be approved subject to modifications to the concept and project approvals.

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1. BACKGROUND

On 12 November 2008, the then Minister for Planning granted approval to the Pacific Pines Estate. In particular, concept plan approval was given for:

- a **neighbourhood centre** comprising a local scale shopping centre with retail, small businesses, shop-top housing, medical centre, tavern, community centre and childcare centre. The centre would ultimately comprise up to 3,000m² of retail floor space, 800m² of commercial space and approximately 20-25 'shop-top' dwellings. Approximately 280 parking spaces will be provided on site;
- a **retirement community**, including approximately 113 retirement units with a mixture of assisted and independent living and approximately 124 retirement lots, on-site leisure, open space and recreational facilities;
- **residential subdivision** of approximately 505 lots varying from larger lots (>1,200m²) on the steeper parts of the site to lots of around 450m²;
- **medium density housing** of up to around 10 dwellings (density of around 1 dwelling per 250m²);
- 25.1 hectares of **green space** incorporating areas for conservation, revegetation and rehabilitation; and
- A **road network** connected to various existing roads such as Hutley Drive, Montwood Drive and Stoneyhurst Drive.

The concept plan is to be constructed in 11 stages (with Stage 1 separated into 3 sub-stages, making 13 stages) as shown in Figure 3.

Project approval was also given to the first stage of the project, involving subdivision of 63 lots in three sub-stages to provide:

- six super lots (for a neighbourhood centre, tavern, child care centre, community centre/ hall, retirement community and medium density housing);
- 54 residential lots in the south of the site averaging around 740m²;
- two open space lots;
- residual lot of 57.7 hectares;
- construction of Montwood Drive, Main Street, Hutley Drive and the western connection to the adjoining playing fields within the site; and
- associated earthworks across the site.

Figure 4 identifies the area for which project approval was given

The project location is shown in Figures 1 and 2.

Work is yet to commence on the site. Shortly after approval was given, a minor administrative modification was approved on 22 December 2008 to clarify the required timing of surrendering of an existing development consent. .

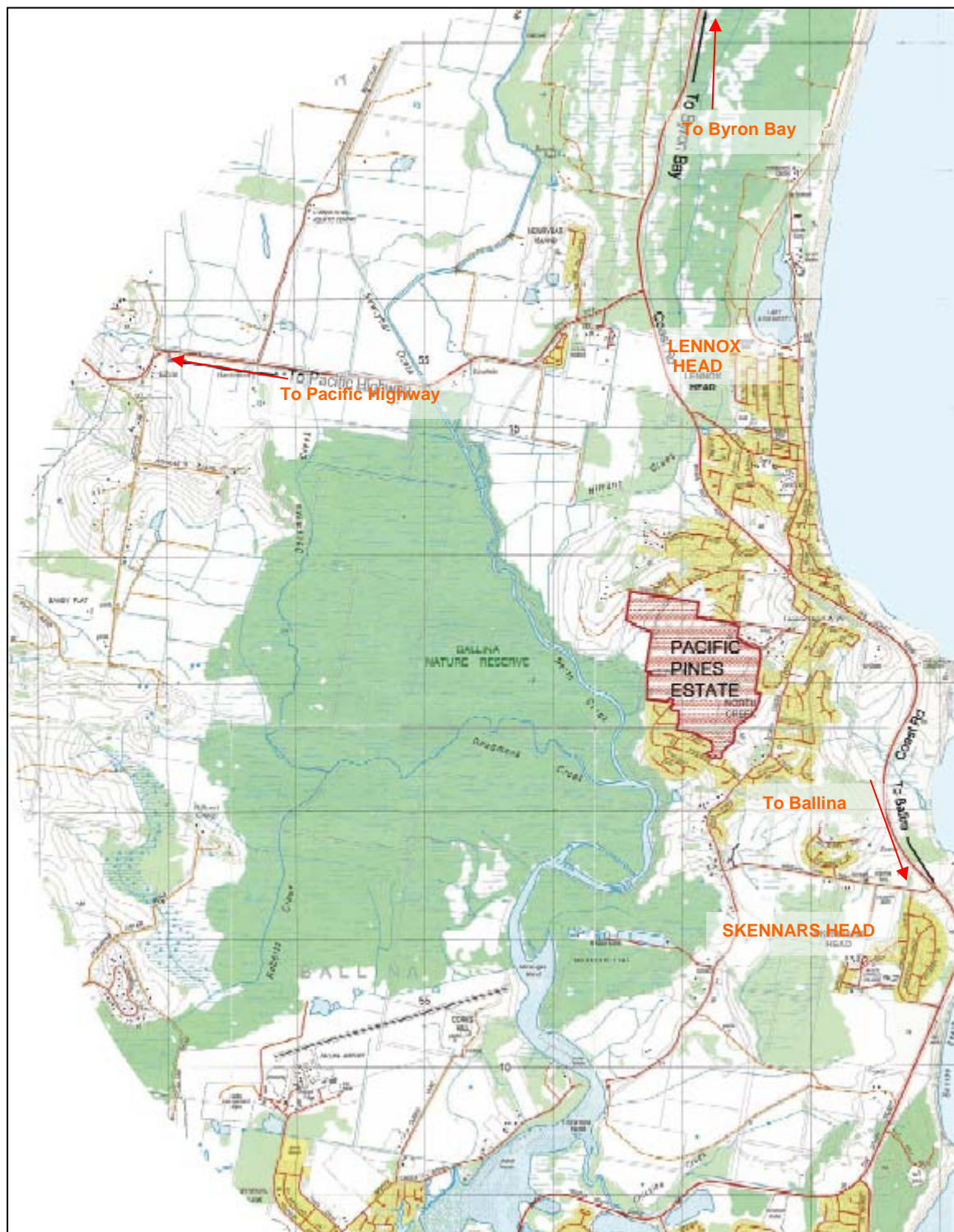


Figure 1: Site location (Source: Environmental Assessment)

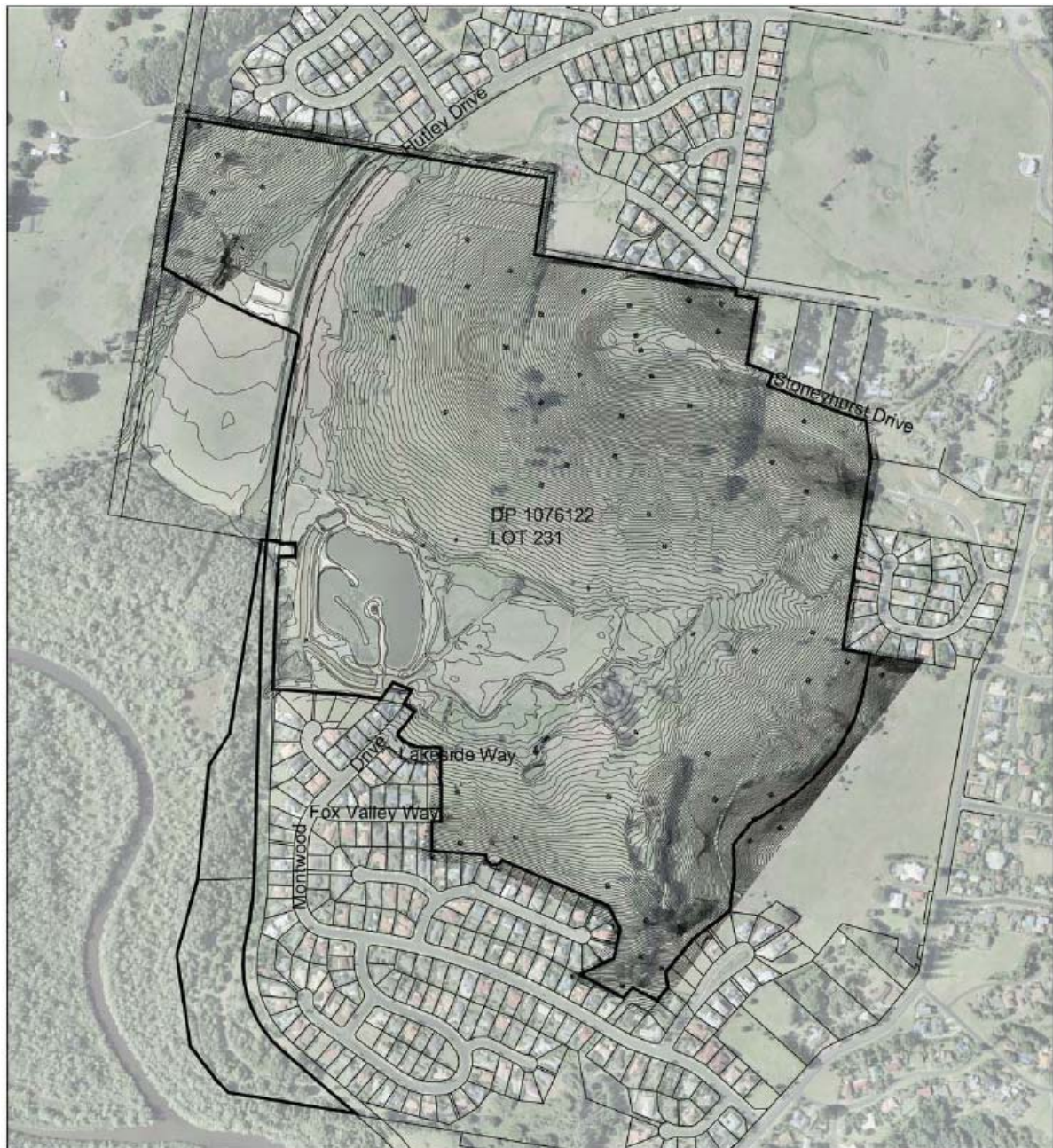


Figure 2: Aerial photo of site (Source: Environmental Assessment)

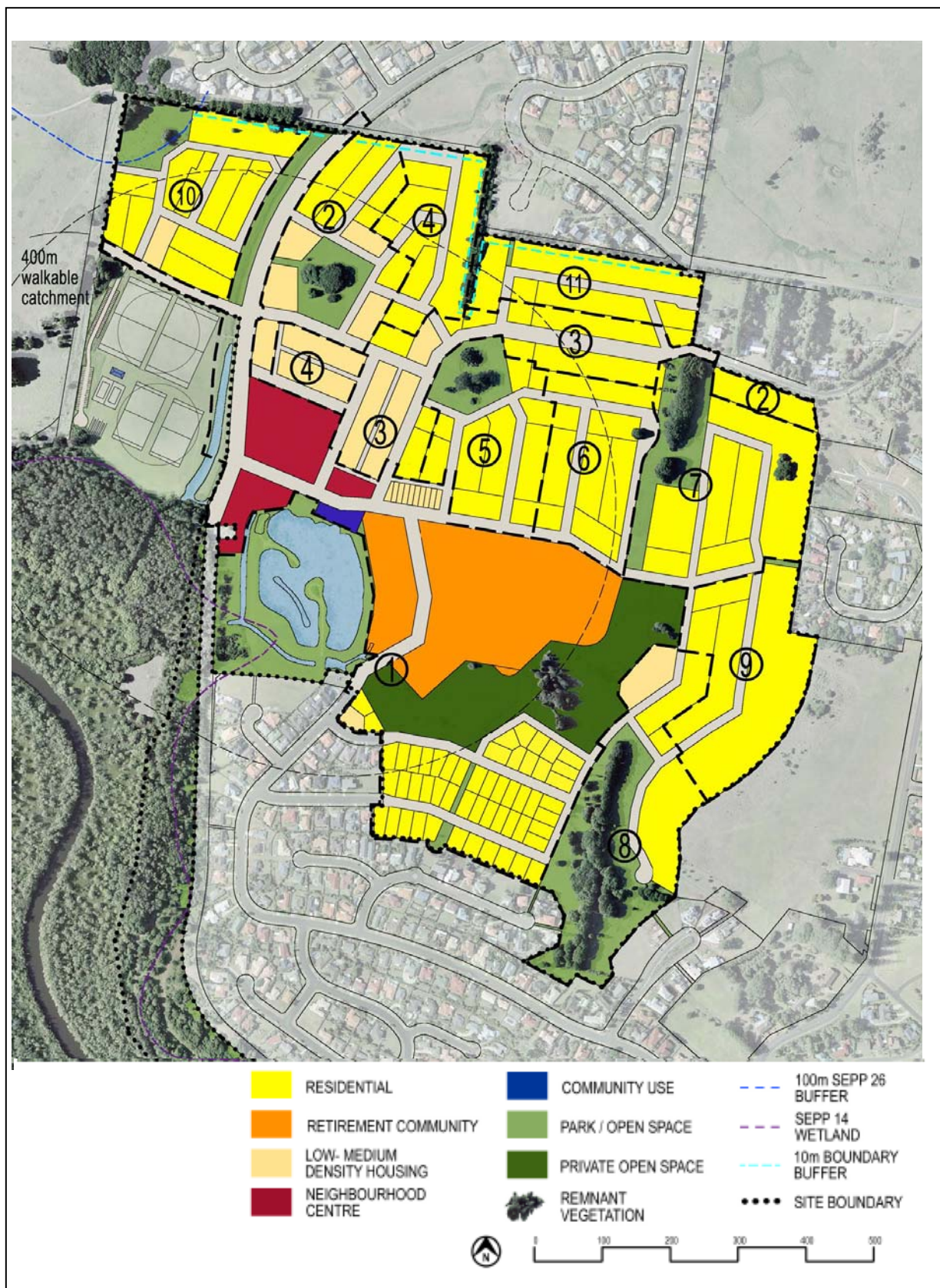


Figure 3: Approved concept plan layout indicating stages

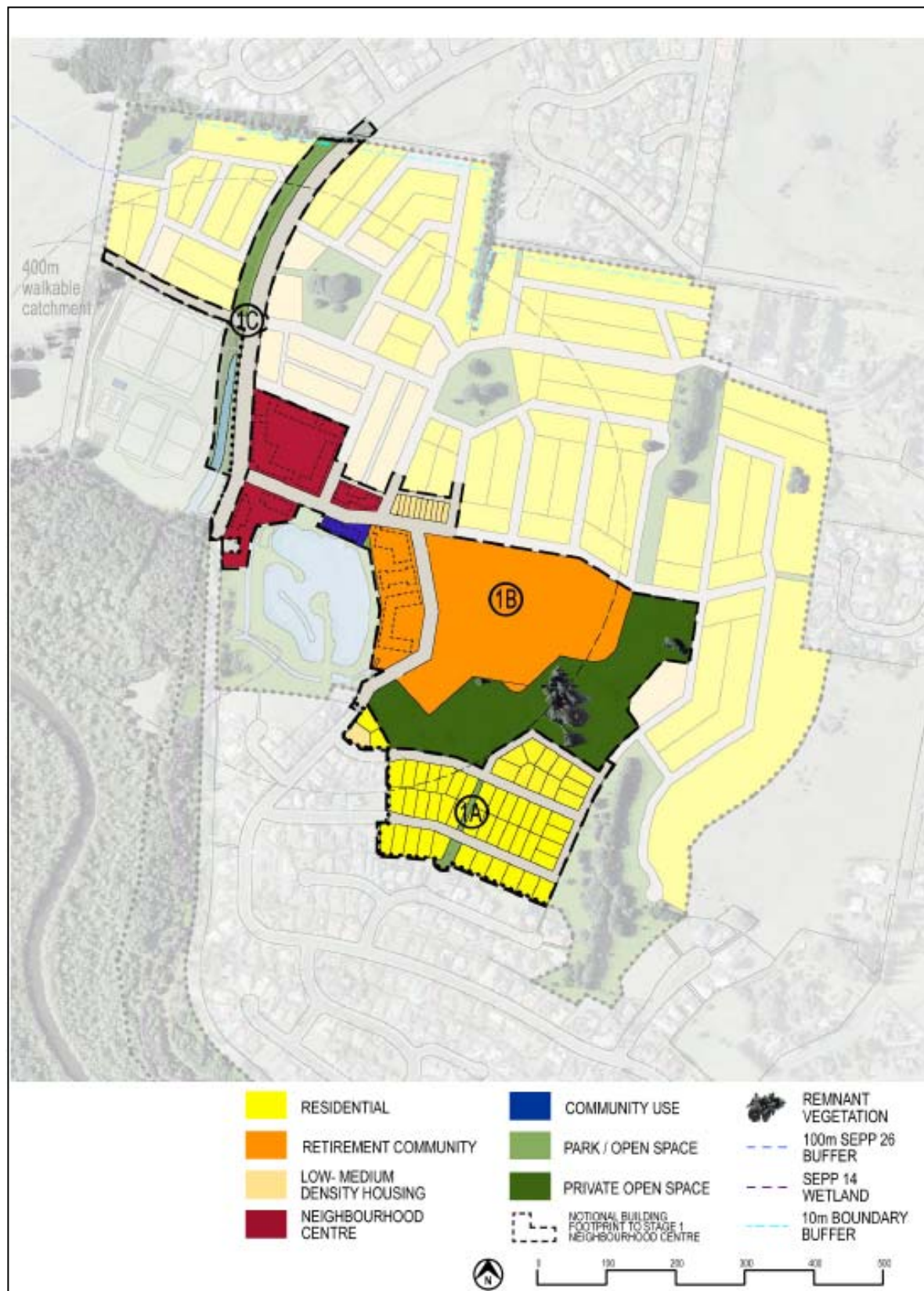


Figure 4: Approved Stage 1 project, including staging

The proponent is now seeking to modify the project to meet market demand with respect to the re-ordering of staging and increase in size of the retail area. Changes to the way in which the biodiversity impact of the project is mitigated are also proposed.

2. PROPOSED MODIFICATION

2.1 Modification Description

A number of modifications to both the concept plan and project approvals are sought as part of this request. A number of the modifications proposed require changes to both the concept plan and project approval to facilitate the change. Each modification is described below along with identification of each of the terms and conditions that are proposed to be amended. These amended terms and conditions can be found in Appendix C:

Changes to Staging

- As part of the original approval, concept plan approval was given for the project to be constructed in 11 stages as shown in Figure 3. As part of the modification request, the proponent seeks to consolidate the staging down to 9 stages (see Figure 5). This includes consolidation of Stage 1, for which project approval has been given, from 3 sub-stages to 2 (as shown in Figure 5);

This requires amendment to terms A2 (staging) and A3 (plans and drawings) of the concept plan approval.

This requires amendments to conditions A2 (staging) and A3 (plans and drawings) of the project approval.

- Project Approval was given to Stage 1 of the concept plan which is described in Section 1 and Figure 4. The modification seeks the addition of two super lots within Stage 1 to bring forward the development and release of residential lots in the north of the site. This will increase the footprint of land to which Stage 1 applies. Figure 5 shows the proposed additional land (identified as 1B);

This requires amendment to terms A2 (staging) and A3 (plans and drawings) of the concept plan approval.

This requires amendments to conditions A1 (project description), A2 (staging) and A3 (plans and drawings) of the project approval.

Changes to Retail Floor Space and Timing of Construction

- The original approval permitted a maximum allowable retail floor space of 3,000m² within the neighbourhood centre, although this was limited to only 1,200m² until such time as Hutley Drive had been extended to the north, owing to traffic issues. The modification request seeks to increase the maximum allowable retail floor space to 4,000m² and bring forward the construction of the entire maximum allowable retail floor space at the expense of the release of the final residential lots. That is, the limitation on the 1,200m² is proposed to be removed and instead, replaced with a limitation on the release of the final two stages of residential lots;

This requires amendments to terms A1 (project description), A2 (staging), A3 (plans and drawings), deletion of term B9 (retail floor space) and addition of new term B7A (Limits on Land release) of the concept plan approval.

This requires amendments to conditions A2 (staging) and A3 (plans and drawings) of the project approval.

Changes to Ecological Management

- Approval was given to the extension of Montwood Drive within the site. As approved, the retirement community straddled either side of part of this road. To provide for more on-site retention of threatened species and increase the conservation area on the site, the land to the western side of Montwood Drive which was to be part of the retirement community is now to be dedicated as conservation land. A minor re-alignment to the east of that approved is also proposed to allow for the retention of more existing threatened species;

This requires an amendment to terms A1 (project description), A3 (plans and drawings), B4 (height) and C1 (affordable housing) of the concept plan approval.

This requires an amendment to conditions A1 (project description) and A3 (plans and drawings) of the project approval.

- There is a discrepancy in the concept plan and project approvals in relation to the required ecological buffers to the retained ecological areas. The concept plan requires 20m, whilst the project approval only specifies 15m. The proponent originally sought to amend the concept plan to be consistent with the project approval, however, as discussed in section 5.1, this was not supported by any agency and the proponent withdrew this request.
- The concept plan approval sets up a framework for the management of the on-site conservation area and rehabilitation and compensatory works for the loss of threatened species and endangered ecological communities from the site. In particular, there is a requirement for:
 - the preparation of an Environmental Management Plan that addresses matters such as mapping of important vegetation on the site, how translocation of threatened species within the site is to occur, how threatened species and communities will be rehabilitated across the site, how the hydrological regime of the site will be managed, revegetation work to be done such as around the littoral rainforest, weed management, mosquito management, construction measures to protect important vegetation, public access arrangements and ongoing management methods to ensure a self-sustaining system;
 - the provision of a \$90,000 research fund over 3 years to compensate for the loss of hairy joint grass habitat and the Freshwater Wetlands endangered ecological community; and
 - a requirement to provide compensatory habitat at a ratio of 2:1 (or as otherwise agreed with the Director-General) for the loss of threatened species and endangered ecological communities across the site.
- As part of the modification request, the proponent sought to delete the requirement to provide the \$90,000 research fund. As discussed in section 5.1, this request has since been withdrawn.
- The modification request also seeks to remove the requirement for a compensatory plan noting that the proposed changes to the on-site management of the site, such as an increase in the size of the conservation area, increase in size of existing retained habitat, and translocation and other on-site rehabilitation measures, fulfils this objective of a 2:1 offset.

- The modification also seeks to amend the requirements for an environmental management plan and in particular, the proponent has sought to split this management plan in to three separate plans: an over-arching environmental management plan, a conservation zone management plan and a construction management plan. The original terms are proposed to remain, however, they will be split amongst the three new plans and where relevant, duplicated amongst the plans.

The original approval allowed for the detail of environmental works, including compensation to be determined at a later date with approval to be provided by the Director-General, following consultation with relevant agencies, prior to the issue of relevant construction certificates. This modification seeks to continue this approach, with the detail to be provided following approval. The modification does, however, provide some further information on likely on-site management techniques, including land forming and greater translocation of threatened species across the site, instead of being restricted to south of the existing constructed wetland, as currently proposed.

This requires amendments to terms B1 (Environmental Management Plan), B3 (ecological compensation) and addition of term B2 (Conservation Zone Management Plan) of the concept plan approval.

This requires changes to conditions C1 (Conservation Zone Management Plan) and C2 (Ecological Compensation) of the project approval.

Other Changes

- Approval was given to residential lots of varying sizes from 450m² to greater than 1,200m². The rear lane lots were approved as ranging from 450 to 600m². The modification request seeks to amend this definition to 250-400m² as it considers this will accord with the approved plans.

This requires changes to term A1 (Project Description) of the concept plan approval.

- As approved, the retirement community was to incorporate a 3 storey component. The conditions required compliance with the Seniors Living SEPP which included provisions for affordable housing in order to facilitate this height. As this component of the project is proposed to be deleted, the proponent also seeks to delete this redundant condition.

This requires changes to term B4 (Height) of the concept plan approval.

- Changes to the proposed staging of the project also necessitate changes to the references to staging in other conditions to be consistent with what is proposed.

This requires changes to terms C8, C10 and C13 of the concept plan approval.

This requires changes to conditions C6, J1, J2 and J3 of the project approval.

Changes to the Statement of Commitments are also proposed to reflect the proposed modification request.

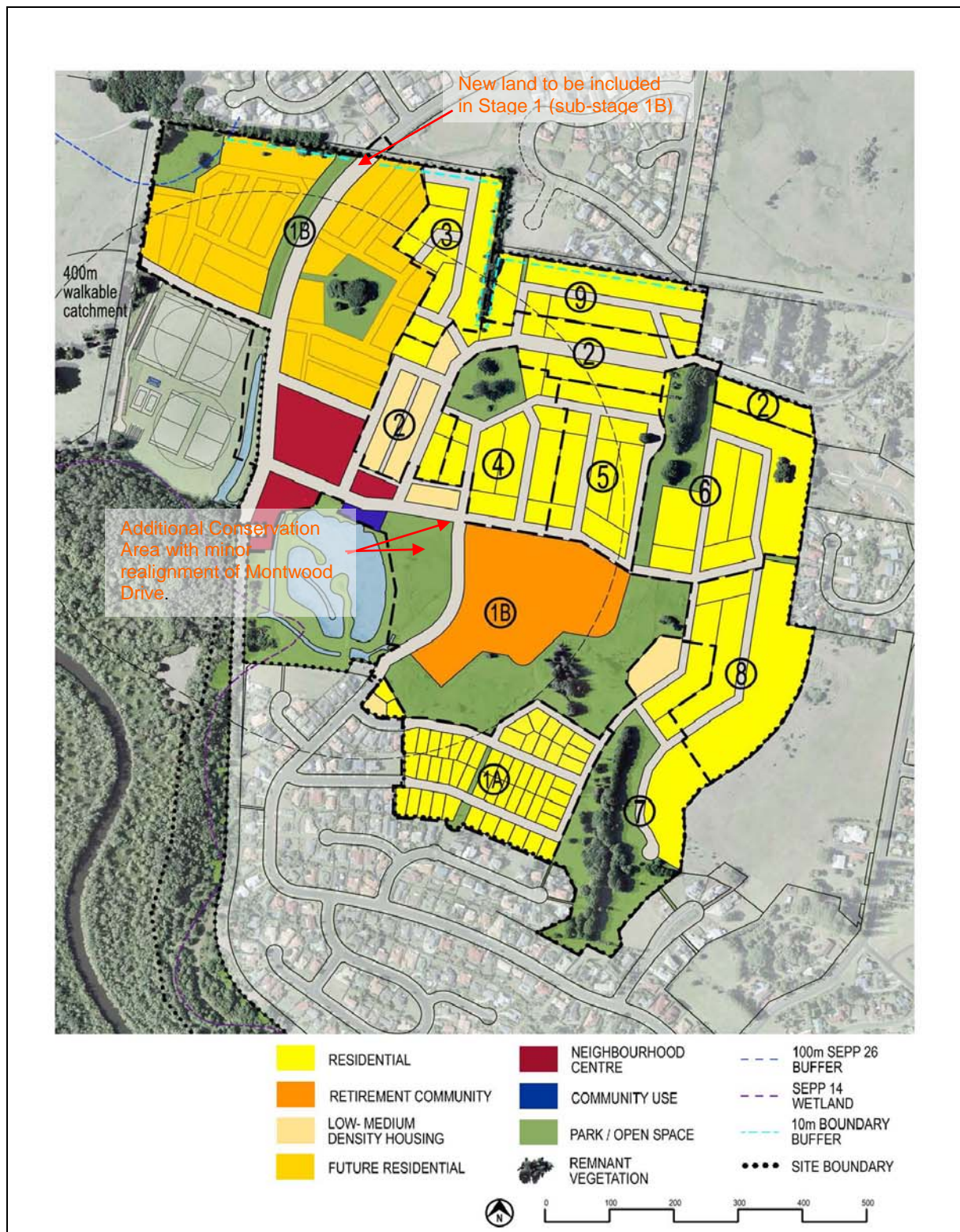


Figure 5: Proposed modified layout showing revised staging for the project. Stages 1A and 1B are proposed as part of the Stage 1 project approval.

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

Under section 75W(2) of the Act, a proponent may request the Minister to modify the Minister's approval for a project. As the proposed modifications are not consistent with the original approval, a request pursuant to section 75W of the Act is required.

Section 75W(3) of the Act provides that the Director-General may notify the proponent of environmental assessment requirements (DGRs). Following an assessment of the modification request, it is considered that DGRs are not required.

The following report describes the Department's assessment of the requested modification and supporting documentation as provided by the proponent. It is recommended the proposed modification request be approved subject to conditions.

3.2 Delegated Authority

Under the Instrument of Delegation dated 28 May 2011 from the Minister to the Planning Assessment Commission (PAC), the PAC is the determining authority for section 75W modification requests. However, the delegation also works in conjunction with the delegations given to senior Department staff under the Ministerial delegation issued on 25 January 2010. This allows the Director-General to determine a modification request under section 75W where there are fewer than 25 public submissions in the nature of objections to the modification request. The delegation is not exercised where the local council has made an objection.

Whilst the request was not formally exhibited, the Department received 9 objections from concerned members of the public. Further, Council did not object, however raised a number of concerns (see section 4). The Director-General may thus determine the modification request under delegated authority.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under Section 75X(2)(f) of the EP&A Act, the Director-General is required to make the modification request publicly available. In this regard, the Department made the request available on the Department's website.

The Department also provided copies of the request to Ballina Shire Council, the then Department of Environment, Climate Change and Water, the NSW Office of Water, the then Industry and Investment NSW – Fisheries Division and the Roads and Traffic Authority. Submissions were received from each of these agencies and a summary of each is provided below.

Council indicated that the request should have been publicly exhibited with submissions sought from the public, however, the Department is of the view that the minor nature of the proposed changes do not warrant formal public consultation. It is highlighted that the proposed changes do not permit the construction of any additional housing as part of Stage 1 and that the proponent is required to submit further applications in order to construct the neighbourhood centre and undertake further residential subdivision.

The Department notes that nine submissions were made by members of the public in response to the availability of the modification request on the Department's website. The nature of these submissions is summarised below.

4.2 Public Authority Submissions

Five submissions were received from public authorities. Apart from the Roads and Traffic Authority who did not object to the proposal, all other agencies expressed concern with the proposed modification and in some cases did not support particular amendments to the project.

Ballina Shire Council provided submissions in response to both the initial modification request and following the proponent's Response to Submissions report. Whilst Council did not express an overall position on the modification, it nonetheless raised a number of concerns and identified some aspects of the modification that it did not support. A summary of each submission is provided in turn below:

Initial Submission

- considers the modification should include all the changes to the layout and updates to monitoring required under the existing approval;
- does not support the proposed reduction in buffer distance between the residential/retirement lots and the retained ecological corridor from 20m to 15m;
- considers the requirement for a 2:1 offset and the monetary compensation of \$90,000 over three years identified in the concept plan approval be retained due to uncertainty over whether the methods proposed for compensation and offsets as part of this modification will be successful;
- does not support all proposed changes to the statement of commitments, particularly those relating to the ecological aspects of the project;
- raised concern with the timing of dedication of the Conservation Area;
- raised concern with the proposed method of on-site mitigation for increasing Freshwater Wetland EEC habitat by altering the existing surface level of part of the conservation zone and the translocation of Hairy Joint Grass and Square Stemmed Spike Rush due to the uncertainty of their success and unknown impacts. Council did, however, support the increased area of conservation area proposed to be provided on site.
- raised concern that the mapping of Hairy Joint Grass and Square Stemmed Spike Rush is incorrect;
- identified a number of other conditions that would need to be modified as a result of the proposed modification;
- requested that the plans for the open space areas delete reference to play equipment, tennis courts and other sports fields as these components are yet to be agreed to;
- in relation to the bringing forward of the retail component, requested more analysis of traffic impacts on Stoneyhurst Drive and the intersection treatment of Hutley Drive and North Creek Road;
- identified a need for updates to the section 94 and section 64 contributions;
- identified that the size of the supermarket (which will be located in the expanded retail area) is inconsistent with the Ballina Retail Strategy;
- raised concern with the traffic impacts on surrounding residents by bringing forward the retail component of the project as well as the impact on

businesses in Lennox Head who may have made business decisions based on the timing of the development of the neighbourhood centre;

- does not support the reduction in minimum lot size of rear lane lots from 450-600m² to 250-400m²;
- would like to preserve the requirement for affordable housing on the site; and
- identifies an inconsistency with the draft *Ballina Local Environmental Plan 2010* which only permits a minimum lot size of 600m² in the Pacific Pines Estate, but notes that it is reviewing submissions received on this with a view to better accord with the approved concept plan.

Further Submission

- reiterated that the modification should include all the changes and updates to monitoring required under the existing approval;
- does not support all proposed changes to the statement of commitments, particularly those relating to the ecological aspects of the project;
- raised concern with the timing of dedication of the Conservation Area;
- maintains its concerns with the proposed Environmental Impact Assessment and Mitigation Strategy, particularly in relation to translocation of species and artificial wetland construction. Considers that the 5 year monitoring program proposed is insufficient to identify impacts as they may not become apparent for some years after the development has commenced;
- provided photographs to show inaccuracies in the proponent's mapping of threatened species;
- raised concern with the proponent's classification of Freshwater Wetland EEC;
- overall, does not support the modifications to the ecological conditions;
- continued to raise concerns with how traffic on Stoneyhurst Drive would be managed as well as concerns with whether the hierarchical status of Hutley Drive could be met;
- does not support interim intersection arrangement for North Creek Road and Hutley Drive due to concerns with traffic queuing;
- requested a number of road works to be linked to the timing of release of certain lots;
- identifies that Option 5 of the traffic report is Council's preferred option for the development of Stages 6-9; and
- provides further information on the timing and revisions to the draft LEP to better align with the existing approval.

The **Department of Environment, Climate Change and Water** (DECCW, now Office of Environment and Heritage) provided submissions in response to both the initial modification request and following the proponent's Response to Submissions report. Whilst the then DECCW did not express an overall position on the modification, it nonetheless raised a number of concerns and identified some aspects of the modification that it did not support. A summary of each submission is provided in turn below:

Initial Submission

- considers that information concerning the hydrological regime and whether it will be maintained as a result of the project, should be provided upfront;

- supports the additional conservation area but reiterates the importance of ensuring the hydrological regime is appropriately managed;
- does not support the proposed reduction in buffer to the ecological corridor;
- does not support significant and experimental landscape modification as a means to recreate habitat for threatened species/ EECs lost from elsewhere on the site. In particular, highlights there is no information regarding whether these topographical changes will affect the hydrological regime;
- supports increased habitat for threatened fauna, but not at the expense of potential rehabilitation of other EECs;
- highlights uncertainty in translocating hairy joint grass and square stemmed spike rush and the need for the proponent to identify what steps might be taken if such works fail;
- supports the intended approach of the environmental management plans but notes that much rests on the actual details within this plan which are unable to be assessed at this time;
- highlights the responsibility of management and maintenance of the conservation area needs to be confirmed with Council;
- does not support removal of \$90,000 research fund; and
- wants to be involved in the assessment of any management plans.

Further Submission

- reiterates need to ensure hydrological function of the site is maintained;
- reiterates concerns with undertaking landforming to offset losses of threatened species/ EECs that may be at the expense of opportunities to rehabilitate other EECs suited to the existing site conditions;
- reiterates concerns with the translocation of threatened species into yet to be determined artificially created habitats; and
- maintains concern that the proponent has not specified what contingency measures will be undertaken in the event of failure, and suggests that such measures could include provision of alternative offsets and the imposition of a financial bond to fund any future works required to meet the obligations of the approval.

The **NSW Office of Water** (NoW) provided a submission in response to the initial modification request. Owing to the nature of its submission and the proponent's Response to Submissions Report, the Office was not consulted further. The NoW raised the following matters:

- Groundwater – does not generally support the water quality control pond approved under the concept plan* as it intercepts the groundwater table. For other water sensitive urban design measures, it notes that stormwater should adequately treat point source pollution prior to being discharged to the pond. Any groundwater interception will require a licence from NoW.
- Riparian management – notes that whilst a permit is not required, any works within 40 metres of a water course should be undertaken having regard to the guidelines developed by the then Department of Water and Energy.

* The Department notes that the water quality control pond referred to in NoW's submission was constructed under a separate development consent issued by Council.

The **Department of Industry and Investment** (I&I NSW Fisheries Ecosystem Division, now part of the Department of Trade and Investment, Regional Infrastructure and Services) provided a submission in response to the initial modification request. Owing to the nature of its submission and the proponent's Response to Submissions Report, I&I NSW was not consulted further. The I&I NSW raised the following concerns:

- the request to delete the 2:1 offset requirement is not supported highlighting that the condition exists to offset EECs and not simply the area of land they existed on;
- the request to delete the monetary compensation of \$90,000 is not supported as this money is needed for research into freshwater wetland and aquatic biodiversity;
- the request to reduce the buffer width from 20m to 15m is not supported. From a precautionary perspective, buffers should be as wide as possible.

The **Roads and Traffic Authority** provided a submission in response to the initial modification request stating that it has no issue with the proposal and that Ballina Council should be consulted as the relevant roads authority. Owing to the nature of its submission and the proponent's Response to Submissions Report, the RTA was not consulted further.

4.3 Public Submissions

Nine submissions were received from the public, all of whom objected to the proposal on the basis of traffic impacts. In particular, the issues raised included:

- Montwood Drive is a residential street that has a number of dangerous bends which is unsafe for large volumes of traffic and particularly heavy vehicles associated with construction;
- the residents of Montwood Drive will be exposed to unacceptable construction traffic impacts, notably noise and dust;
- the surface of Montwood Drive will be detrimentally affected by construction traffic;
- consider that Hutley Drive should first be extended so as to alleviate impacts of the project on Montwood Drive.

The Department has considered the issues raised in submissions in its assessment of the proposed modification.

5. ASSESSMENT

The Department considers the key issues for the proposed modification to be:

- Biodiversity
- Traffic
- Retail
- Staging of project

A number of other minor issues are also discussed.

5.1 Biodiversity

The loss of threatened species and endangered ecological communities as a result of the project was a key issue with the original application. To address this, the

proponent was required to undertake a variety of measures to offset this loss. This included retention of certain areas of habitat known to contain threatened species or endangered ecological communities (EECs) with further enhancement of this habitat, other on-site rehabilitation works and translocation of threatened species within the site. This was to be managed via an updated Environmental Management Plan. To address the residual impacts of the loss of habitat and the threatened species and EECs, the proponent was required to prepare a compensatory plan with a requirement for an offset of 2:1 (or as otherwise agreed with the Director-General) and a \$90,000 research grant to be funded over three years.

One of the key reasons for the proposed modification is to change the way in which the loss of threatened species and endangered ecological communities (EECs) across the site is mitigated. Section 2 discusses the proposed changes and the table below summarises these.

Table 1: Comparison of the measures approved and proposed by the proponent to mitigate against the loss of threatened species and EECs across the site.

Current Approval	Proposed
Enhancement of Existing Habitat with details to be determined through the Environmental Management Plan (EMP) <i>(term B1 of concept plan approval)</i>	Enhancement of Existing Habitat with details to be determined through the Environmental Management Plan, Conservation Zone Management Plan and Construction Management Plan <i>(amended term B1 and new term B2 of concept plan approval)</i>
Provision of a \$90,000 research fund <i>(term B3 of concept plan approval)</i>	(Provision of a \$90,000 research fund)* <i>(no change to term B3 of concept plan approval)</i>
Compensatory Plan for loss of threatened species and EECs with a 2:1 offset <i>(term B2 of concept plan approval)</i>	Increase in on-site conservation area by 1.65ha which includes provision for 2:1 offset to be provided on the site <i>(deletion of term B2 and incorporation into amended term B1 and new term B2 of concept plan approval)</i>
Translocation of Hairy Joint Grass (HJG) to south of the water quality control pond with detail to be provided in the EMP <i>(term B1 of concept plan approval)</i>	Active on-site rehabilitation works such as habitat modification and translocation of HJG and Square Stemmed Spike Rush (SSSR) across conservation area and not just one location with detail to be provided in the management plans <i>(amended term B1 and new term B2 of concept plan approval)</i>
Requirement for buffer to retained ecological corridor of 20m (in concept plan) and 15m (in project approval) <i>(term B10 of concept plan approval and condition B2(1) of project approval)</i>	(Request to provide consistency between approvals with buffer of only 15m to retained ecological corridor)** <i>(amended condition B2(1) of project approval)</i>

* Note: As discussed below, the proponent initially sought to remove this requirement, however, it has since agreed to retain this provision.

** Note: As discussed below, the proponent initially sought to amend the buffer to only 15m, however, it withdrew this request. To ensure intent of original approval is clarified, the Department recommends the buffer be amended to 20m for both approvals.

As shown in the table above, the key changes proposed are to increase the size of the on-site conservation area; undertake more active on-site rehabilitation works; and delete the specific requirement for a compensatory plan with the 2:1 offset being fulfilled through the on-site compensatory works. The implications of these changes are discussed in turn below.

On-site works

As part of the modification request, the proponent submitted details of an Environmental Impact and Mitigation Strategy (EIAMS). This EIAMS included information on how compliance with the environmental conditions would be achieved. The EIAMS contained information on the results of further surveys of threatened species and EECs, what physical changes were being proposed to the layout of the project and further detail on how on-site retention and enhancement of the threatened species and EECs's habitat could occur as a result of changes to the layout. In particular, the EIAMS included a proposal for the translocation of HJG and SSSR into the conservation zone and the reforming of parts of the site to allow for Freshwater Wetlands EEC recovery.

Translocation

The translocation of threatened species to an area south of the water quality control pond was proposed in the original project and conditions of approval were included which required the proponent to provide details of how such translocation was to occur (part of the Environmental Management Plan, term B1 of the concept plan approval). As part of the modification request, the proponent has sought to modify this condition so that it applies more generally to translocation across the conservation area and not just to an area south of the water quality control pond. Notwithstanding the general uncertainties with translocation of these species (as discussed below), the Department concurs that this condition should apply to the whole conservation area and has amended the condition accordingly.

Council and the then DECCW have expressed concern about the likelihood of success of translocating HJG and SSSR. The proponent has argued that the various methods of translocation proposed in the EIAMS, such as translocating at different stages of the life cycle, will minimise the risk of failure.

The Department shares the concerns over the viability of translocation, however, accepts that this is just one tool available to the proponent to mitigate impacts on the threatened species populations within the site. Nevertheless, to address the agency and Department concerns, a condition is recommended that clarifies that no translocation of threatened species into the conservation zone can occur unless it has first been approved through the Conservation Zone Management Plan (CZMP).

Habitat Modification

The proponent's EIAMS identifies land within the site that does not currently support wetland habitat due largely to its higher elevation. It notes, however, that with some earthworks, these areas could be lowered and active revegetation undertaken to merge these constructed wetlands with the adjoining natural wetlands. The EIAMS only identifies indicative locations and no details such as quantity of earthworks has been provided at this time.

Both Council and the then DECCW have raised concern with the viability of such works. In particular, Council notes that some of the areas identified by the proponent for future artificial wetlands would require alteration to the surface level of the land by up to two metres, the impacts of which are unknown.

The Department is unable to confirm Council's assertions but recognises that there is a degree of uncertainty regarding the appropriateness of landforming as a way in which to compensate for the loss of threatened species, particularly where this may be at the expense of recovering other threatened species that may be more suited to the existing site conditions.

Accordingly, the Department recommends a condition be imposed that clarifies that no habitat modification, such as through landforming in the conservation zone is permitted unless it has first been approved through the Conservation Zone Management Plan.

Contingency Measures

Furthermore, Council and the then DECCW stated in their submissions that due to the uncertainty of the on-site works, there was the need for suitable contingency measures in case of failure. It was considered that these should be detailed in any approval. Whilst the Department agrees that suitable contingency measures are required, it is satisfied that these measures can be identified as part of the CZMP. This plan is to be prepared in consultation with both Council and the Office of Environment and Heritage and approved by the Department prior to the release of a construction certificate for Stage 1B, that is, before the proponent can physically commence work within the conservation area.

Compensation Rate

During the original assessment of the project, Council and the then Department of Environment and Climate Change raised particular concern with the loss of Hairy Joint Grass immediately east of the water quality control pond which was of a higher density than some other areas of this species on the site. To offset this loss, the proponent committed to provide a \$90,000 research fund. The Department considered this did not go far enough to compensate for the loss of HJG, SSSR and Freshwater Wetlands EEC. Accordingly, the approval also required a further compensatory measure in the form of providing a 2:1 offset (or other ratio agreed to by the Department) for these flora.

As part of this modification request, the proponent no longer proposes to develop the land immediately east of the water quality control pond and instead has identified it for inclusion as part of the conservation area (this requires amendments to the approved plans and drawings and description of the project within the concept plan and project approval as identified in section 2 of this report). Furthermore, the proponent proposes to shift Montwood Drive slightly to the east to protect a greater proportion of identified threatened species habitat. This will result in an additional 1.65 hectares of land being incorporated into the conservation zone. Coupled with other on-site measures, the proponent proposes to delete the requirement to provide a 2:1 offset, however, notes that with the expanded conservation area, this offset could be achieved within the site.

The proponent provided an update to the ecological surveys undertaken with the original application. These surveys showed that whilst the broad areas of threatened species habitat stayed the same, the density and specific locations of individual specimens changed. This is emphasised by Council's submission which states that based on its own surveys, there are other areas which contain the threatened species which the proponent did not identify.

The Department has considered the arguments presented in relation to the 2:1 offset and recommends that a revised approach be taken towards the compensation for the loss of habitat. This is on the basis of uncertainty with the actual amount of habitat lost due to its continual change as well as the uncertainty over the exact area of land available within the conservation area for compensatory works. That is, within the 6.5 hectare conservation area, there can be an overlap where both HJG and SSR or Freshwater Wetlands EEC, or a combination of these, occur. Accordingly, the area over which these species could recolonise is likely to overlap.

Therefore, the Department recommends the deletion of term B2 of the concept plan approval which specifies a 2:1 compensatory ratio and instead recommends that as part of the Conservation Zone Management Plan, a requirement is included for the preparation of an On-site Compensation Strategy. That is, compensation for the loss of habitat is still required and the Department acknowledges that the proponent may be able to achieve 2:1 on-site, however, rather than specifying a ratio, the strategy will focus on identifying the goal of the compensation, such as maintaining a viable, self-sustaining ecosystem; methods for compensation; monitoring of the methods with a view to indicating whether the works have been a success. Importantly, should these results indicate that the compensation methods are not working, the proponent will be required to undertake contingency measures to address this issue. This may be in the form of undertaking off-site compensatory works, however, as discussed above, this will be determined as part of the development of the relevant management plans.

Monetary Contribution

As part of the original modification request, the proponent sought to delete the requirement for a \$90,000 research fund that was to compensate for the loss of Hairy Joint Grass habitat and the Freshwater Wetlands EEC. This money was to be paid to a research body. Following objections by Council, the then DECCW and then NSW I&I, the proponent retracted this request.

Notwithstanding, given the proposed modification request, the Department considers it opportune to further detail the intent of the term having regard to the Department's original assessment of the project. That is, the Department's original assessment stated that the purpose of the research money was to compensate for the loss of the Freshwater Wetlands EEC and HJG, with the specific aim to "*contribute to the development of a recovery plan for the EEC and Hairy Joint Grass*". This has been reflected in the amended term.

The proponent has been consulted with respect to the proposed change and did not raise any objection.

Buffers

The proponent originally sought to reduce the buffer width required under term B10 of the concept plan approval from 20m to 15m stating that this is in order to be consistent with condition B2(1) of the project approval which requires only a buffer of 15m between the retained ecological corridor and the boundary of the residential lots.

Following objections by Council, the then DECCW and then NSW I&I, the proponent retracted this request. The Department notes that condition B2(1) was a drafting error. A review of the Department's original assessment report clarifies that the intent was to require a minimum buffer of 20m. Accordingly, the Department recommends condition B2(1) be modified to require a 20m buffer. This will also ensure that there is consistency between the concept plan and project approvals.

Hydrology

Whilst Council and the then DECCW indicated cautious support towards an increased conservation area, they both highlighted the need to ensure that the pre-construction hydrological conditions are maintained. They highlighted that it was difficult to wholly support the proposal without better understanding the hydrological regime of the site and in this regard reiterated the importance of the stormwater and environmental management plans in providing this information.

In response, the proponent highlighted that work cannot proceed beyond Stage 1A unless certainty is provided in relation to the ecology and hydrology issues. Indeed, the Department notes that the terms and conditions of approval for this project require the proponent to submit a detailed water management plan prior to undertaking physical works within the conservation area that, as a minimum, maps the seepage areas within the site and details the design of the weirs to ensure the maintenance of the existing hydrological regime. This requirement will not change as part of the modification.

Dedication of Conservation Area

As part of the original approval, the proponent is required to dedicate all open space areas (which includes the conservation area) to Council. The timing of dedication is not specified except that as part of the project approval, arrangements are to have been made with Council for such dedication prior to issue of a subdivision certificate for Stages 1A and 1B (conditions H5 and I6 of the project approval). Furthermore, the proponent is to enter into an agreement with Council for the management and maintenance of this land prior to Council taking over these tasks. A timeframe is not specified for when Council is to take over maintenance as it is assumed this will be determined as part of the agreement.

The modification request includes a commitment to undertake the management and maintenance of the conservation area for a period of five years before handing over the area to Council. Both Council and the then DECCW have expressed concern with this time period with Council arguing that because the development of the Estate is expected to occur over many years, there is likely to be some lag before the true effects of development are known and hence, five years is not long enough.

The proponent acknowledged these concerns and accepted that the maintenance period will occur for a period of five years commencing at the completion of the final stages, or as otherwise agreed with Council. To reflect this commitment, no changes

need to be made to conditions H5 and I6, however, a new requirement within the revised environmental management plan (see section below) has been included that requires the proponent to manage the site from the commencement of construction until five (5) years after the release of the final subdivision certificate. This timeframe may be varied following consideration of the results of monitoring required under the approval being undertaken. This is considered an appropriate response to the concerns raised.

Management Plans

The modification proposes to separate the Environmental Management Plan (EMP) so as instead provide an overarching EMP that addresses the entire site and two sub-plans, the Conservation Zone Management Plan (CZMP), which relates specifically to the management of the conservation zone and a construction management plan, specifically for management of flora and fauna during construction.

The Department generally agrees with the proposed changes and has recommended modifying conditions which require the proponent to submit both an EMP and CZMP. Based on the current structure of the approvals, the Department does not consider it necessary to have a separate construction management plan and has instead, incorporated construction matters within both the EMP and CZMP.

Overall, the Department's assessment of the proposed modification concludes that the changes to the management of biodiversity on the site are capable of being supported, provided they are accompanied by the Department's recommended modifying conditions.

5.2 Traffic

As part of the traffic assessment that accompanied the original concept plan and project applications, the proponent identified that a number of road upgrades would be required to facilitate the development of the entire Estate. These road upgrades would be required at various stages of the development of the Estate. One upgrade in particular, being the extension of Hutley Drive to the north, would be required before all the retail component of the neighbourhood centre could be constructed (being a total of 3,000m²). Accordingly, conditions on the approval were imposed that restricted development of the final 1,800m² of the neighbourhood centre until Hutley Drive was extended north as well as conditions requiring subsequent development applications to provide updated traffic assessments which detailed the specific road works required at each stage of development. In terms of the project approval, it was determined that all of Stage 1 could be accommodated within the existing road network.

As identified in section 2 of this report, the proponent proposes changes to the staging of development of the Estate, including a proposal to bring forward the release of the entire neighbourhood centre super lot (which includes an increased retail component to 4,000m²). To facilitate this, it is proposed to remove the restriction that limits the release of all the neighbourhood centre (term B9 of the concept plan approval) so that the entire 4,800m² neighbourhood centre can be developed earlier than was otherwise envisaged with the original approval. To address the impacts of this change, the proponent provided a revised traffic assessment as part of its modification request.

In particular, the report identified road and intersection upgrades that would be required to accommodate the theoretical traffic generated by the early stages of the project. The traffic report concluded that with these road upgrades (which the Department notes are already identified as being required in the project approval), the entirety of the neighbourhood centre (including its increased size) could be accommodated without the need to extend Hutley Drive to the north, however, this would come at the expense of releasing the last stages of residential lots. Accordingly, as part of the modification request, the proponent proposes to delete term B9 of the concept plan approval which limits the release of the retail centre and instead, replace it with a condition that instead limits the release of the final stages of residential development until such time as Hutley Drive is extended to the north. No other changes to the traffic conditions are proposed.

Furthermore, to facilitate the development of the entire Estate, including the final residential lots, the report also provided an option for the connection from an extended Hutley Drive to North Creek Road in the event that Council's preferred intersection connection, which requires land acquisition, had not occurred before the final lots were ready for release. The option presented included an interim left in/ left out connection which utilised the existing road reserve. No approval was sought for this intersection at this time.

The Department sought further clarification from the proponent in respect of some of the assumptions made in the original assessment, including traffic generation rates for particular development types and the timing of construction of certain road/ intersection upgrades.

An updated traffic assessment was provided which included a table outlining the timing of necessary road infrastructure upgrading works brought about by the project. An extract of this table is provided below:

Table 2: Timing of Road and Intersection Upgrades Required in Response to Revised Staging of Project

Access Arrangement	Road/ Intersection Upgrades Required	Development Yield Potential (approx. external vehicle trips generated)
Vehicles use Montwood Drive (South)	None	= 4,800m ² retail/ commercial (total 1038 – 1,200m ² = 259, 3,600 – 778) = 78 assisted and independent living dwellings (117) = 59 seniors lots (44) = 196 dwellings (1176)
Vehicles use Montwood Drive (South) & Hutley Drive/ Henderson Lane (North)	Connect site to Hutley Drive (North)	= 4,800m ² retail/ commercial (1038) = 78 assisted and independent living dwellings (117) = 59 seniors lots (44) = 433 dwellings (2598)
Vehicles use Montwood Drive (South), Hutley Drive/ Henderson Lane (North) & Hutley Drive/North Creek Road intersection	Extend Hutley Drive to North Creek Road with new intersection	Remaining 126 lots (756)

This table shows that the theoretical traffic generated by Stage 1A and proposed Stage 1B can almost all be accommodated by vehicles using Montwood Drive to access the Estate. There is a predicted shortfall of 22 dwellings in Stage 1B that cannot be accommodated without road upgrades.

Notwithstanding, the Department notes that only 54 residential lots have been given project approval and can readily be accommodated by using Montwood Drive to the south. The project approval also requires the proponent to extend Montwood Drive through the site, construct Hutley Drive within the site boundaries, construct Main Street and internal roads adjoining the east and north boundaries of Super Lot 1 and the western link for the playing fields as part of Stage 1B. As such, these road upgrades will be constructed in time for future residents of Stage 1B and beyond.

Furthermore, the concept plan approval requires the proponent to submit a Traffic Management Plan prior to the issue of a Construction Certificate for Stage 1B that identifies interim and long term impacts of the project on the road network and how this will be managed. Each development application is required to submit a further traffic assessment to detail traffic impacts and necessary road upgrades.

Council's first submission raised concern with the timing of connections of roads and the consequent volumes of traffic that this may bring on to these roads. Council is particularly concerned that a 'rat-run' will be created when Stage 2 is developed and Stoneyhurst Drive is connected to the site. In response to this, the proponent has argued that the concept plan provides only for the connection to this road, with details of traffic measures needed to limit the use of this road to be provided with future development applications.

The Department highlights that these same concerns were raised during the original assessment of the application. To address these concerns, conditions were imposed that require the proponent to submit an updated traffic assessment for each stage and in relation to Stage 3 (as it was), include consideration of the potential for Stoneyhurst Drive to become a rat-run for future stages. The Department is satisfied that this issue has already been satisfactorily addressed. The only change required to the conditions is to update the reference from Stage 3 to new Stage 2.

In Council's further submission, it requested an additional condition which identified the timing of road works to be completed. The Department notes that the road upgrades and their timing requested by the Council are already a requirement of the existing approval and as such, no further condition is required in order for the proponent to comply with this request.

Whilst the modification was not formally exhibited, the Department nonetheless received a small number of submissions from concerned members of the public. A primary concern was the traffic impacts associated with the project and the ability of the road network to cope with the demands. The proponent provided a response to the concerns raised in some of the submissions which the Department concurs with. That is, in essence, the issues raised in respect of construction traffic were addressed in the original application. Whilst changes to the order of staging are proposed, this does not significantly alter the type of construction traffic that will utilise the roads. The Department highlights again that the Minister's approval does not approve physical construction of the development beyond Stage 1. The

proponent will be required to lodge development applications for the subsequent stages which will further address traffic impacts.

The proposed realignment of Montwood Drive within the site is in response to providing greater conservation area. Despite some resident's concerns, it is not to change the manner in which this road will be utilised from that which was approved.

Overall, the Department is satisfied that there are adequate measures in place to ensure that traffic generated by the Estate will be appropriately accommodated within the broader road network with the ability to require the orderly upgrade of roads and intersections.

Timing of Hutley Drive Extension

With respect to the timing of the extension of Hutley Drive to the north, the Department accepts the proponent's traffic assessment which identifies that the entire Estate could be accommodated within the existing network, including the expanded neighbourhood centre, however, this would come at the expense of the release of the final two stages of the project. In effect the proponent is 'swapping' the theoretical traffic generated by the residential lots with the theoretical traffic generated by the neighbourhood centre so that it results in the same restriction (in traffic volume terms) to the current approval.

Council has raised concern that the bringing forward of the whole neighbourhood centre without the extension of Hutley Drive will impact upon residents of Montwood, Hutley and Stoneyhurst Drives. The Department accepts that provided road and intersection upgrades occur at the right time, the proposed changes to staging will not alter the impact to these residents. This is because the proponent's traffic assessment (extract reproduced in Table 2) identifies that traffic generated by the neighbourhood centre versus residential traffic will be largely equivalent.

As such, the Department supports the removal of the restriction on retail development, however, requires that an alternative condition be included which limits the release of subdivision certificates for the final 126 lots until such time as Hutley Drive is extended. This ensures that the intent of the original concept plan to restrict development beyond a certain traffic volume generation point until such time as Hutley Drive is extended, is retained.

With respect to how this connection is made, the Department notes Council's concerns with the left in/ left out arrangement proposed by the proponent in that it is not the preferred approach. As highlighted by the proponent, this arrangement has only been shown to indicate that a solution exists in the event that relevant land acquisitions have not been made in order to pursue Council's preferred intersection.

It will be up to Council at the time the proponent lodges a development application for the final stages of the Estate to determine whether these lots can be released having regard to the latest traffic assessment and proposed roadwork upgrades. The Department notes that this does not create any new burden on Council as this is already a requirement under the existing approval, in that Council would have had to consider whether the remaining 1,800m² of retail area could be constructed based on the proponent submitting further traffic assessments with its development applications.

5.3 Retail

Increase in Retail Space

Under the original approval, the proponent was permitted to develop a neighbourhood centre that included a maximum retail space of 3,000m² gross leasable area and maximum commercial space of 800m² gross leasable area.

As part of the proposed modification, the proponent proposes to increase the amount of retail space by 1,000m² (proposed change to term A1 of the concept plan approval). Included in this expanded retail space is the identification of a proposed supermarket of 3,200m². The quantum of commercial space is not proposed to change. Further, the proponent proposes to remove the restriction of developing the retail space beyond 1,200m² until such time as Hutley Drive is extended to the north (term B9 of the concept plan approval). Traffic impacts associated with this change are discussed in section 5.2.

In order to justify the increase in the retail component of the project, the proponent engaged RPS to provide an Economic Retail Assessment which was submitted with the modification request. Overall, the report argues that the need for an increase in retail space was due to current retail trends and the way in which consumers undertake regular supermarket-based shopping.

With respect to the size of the supermarket, the report concludes that as supermarkets and convenience stores within Ballina are operating above industry standards, this marginal increase in retail area within the Pacific Pines Estate would not have a detrimental impact on existing retailers within Ballina or Lennox Head.

The Ballina Retail Strategy and the Lennox Head Strategic and Structure Plans provide a retail hierarchy that identifies the Lennox Head Village Centre as the principal commercial centre in Lennox Head with Pacific Pines providing retail and commercial activities at a neighbourhood scale (although this scale is not defined). The Strategy states that large supermarkets should be provided in Ballina. Council's submission notes that the supermarket proposed at Pacific Pines is not only larger than that in Lennox Head, but also of a number of supermarkets in Ballina and as such, is inconsistent with Council's policies.

In response, the proponent argues that the retail hierarchy of the area will not change with the increase in GFA proposed. Ballina will continue to sit at the top of the hierarchy. Lennox Head Village Centre, with approximately 6,850m² of retail floor space as at 2010 will still be larger than the Pacific Pines neighbourhood centre, which is only proposed to comprise 4,000m². As such, the project will continue to be consistent with the Strategy. With regard to the proposed supermarket, the proponent notes that whilst it will be larger than otherwise envisaged, such a facility could not be provided in the Lennox Head main street due to small lot sizes and fragmented ownership and there is a need for such a supermarket in the area. Council did not provide any further comment on this issue in its second submission.

The Department notes that as part of the original concept plan, the proponent's Preferred Project Report stated that initially, a small supermarket of around 450m² was proposed for the centre. Following the permitted expansion to 3,000m², the centre would look at housing a supermarket of up to around 1,700m². It was noted

that this detail would be the subject of future development applications submitted to Council.

In granting approval to the original concept plan, the Minister gave approval for a quantum of retail space within the neighbourhood centre of up to 3,000m². This approval did not specify what type and the gross floor area of individual components of the retail centre, such as the supermarket. This is acceptable as the purpose of the concept plan was to address impacts arising from the overall neighbourhood centre with the specific impacts from individual components being determined at the development application stage.

Therefore, for the purposes of assessing this modification request, the Department has considered whether the increase in size from 3,000m² to 4,000m² is acceptable having regard to existing policies and the likely future use of this space, but noting that any approval for the final uses within the neighbourhood centre will be the subject of a separate approvals process.

As shown above, the proposed neighbourhood centre will still be smaller in size than the Lennox Head Village, thereby maintaining the hierarchy identified in Council's policy documents. In terms of the quantum of increase, the retail assessment provided with the modification request highlights that there is a need for additional retail floor space in the Lennox Head area and the Pacific Pines estate is able to accommodate some of this demand. This is also acknowledged in the background paper, prepared by IBECON Pty Ltd in 2002, which fed into Ballina's Retail Strategy which identified a shortfall of 7,888 m² net selling area (approximately 10,500m² gross leasable area, GLA) in the Lennox Head area. This issue was discussed in the Department's original assessment. Accordingly, the Department is satisfied with the proposed increase in retail gross leasable area within the estate.

Whilst the concept plan approval has not approved a specific size of supermarket at the site, the Department notes that the IBECON report also identified that of the shortfall in retail floor space in Lennox Head at 2011, 4,300m² of this was in the supermarket sector. That is, there is clearly a need for a supermarket within Pacific Pines estate. As to the size, arguably a 3,200m² supermarket is required in the area, however, there is a question over whether the estate is the right location as it would be contrary to the Council's Strategy which states that large supermarkets should be provided in Ballina. Arguments put forward by the proponent identifying that such a supermarket could not be provided at Lennox Head Village have merit, however, the Department reiterates that this justification will need to be put forward in any future development application for a supermarket at Pacific Pines as the size of the supermarket is not a matter to be determined under the concept plan. That is, the concept plan approval does not approve a specific size of supermarket within the Estate.

Accordingly, the Department recommends the concept plan approval be amended to permit up to 4,000m² of retail gross leasable area.

Timing of Retail Centre Development

As discussed above, the original traffic assessment concluded that the bulk of the total project could be constructed without exceeding the capacity of the existing road network. This would leave only a proportion of the neighbourhood centre incomplete

until further external road works were undertaken. As part of this modification, the proponent has instead, sought to bring forward the construction of the whole retail component. The revised traffic assessment identifies and the proponent accepts that this would be at the expense of the release of the final residential lots.

Council's submission raised concern that the bringing forward of the entire retail component of the project could be detrimental to other retailers in the area. It argued that many of these retailers may have based their business around the timing of development in the Pacific Pines Estate.

In its response to Council's submission, the proponent highlighted that approval was given to the project in November 2008 and that it was entirely feasible that development of the site could have already occurred. The Department recognises Council's concerns but does not agree that the commercial decisions of other retailers are a relevant factor for consideration.

The Department has considered the proponent's request to alter the timing of construction of the retail component and is satisfied with this arrangement. It is reiterated that the concept plan approval does not approve the actual construction of the neighbourhood centre and that the details of this are to be the subject of further application(s) that require Council's approval.

5.4 Staging of Project Application

As part of the proposed modification, the proponent has sought a number of changes to the staging of the proposal. This includes a reduction in the number of stages from 11 to 9 and consequent renumbering of stages; consolidation of Stage 1 works from 3 sub-stages to 2; and re-ordering of some stages.

With respect to the reduction in number of stages and consequential renumbering, the Department considers this to be administrative only and does not raise any issues of concern.

In relation to the bringing forward of current Stage 10 and part Stage 2 in the north-west of the site into Stage 1B (that is, the proponent has sought to obtain project approval for the subdivision of these stages into two additional super lots), there has been some concern raised in the community about the timing of development of these lots and the ability of the road system to cater for these changes.

As discussed in sections 5.2 and 5.3, apart from the 54 residential lots in the south of the site, the Stage 1 project approval only grants consent to the subdivision of super lots for the neighbourhood centre and retirement village and residential area in the north-west. These super lots do not generate traffic. As identified by the proponent, further development approval will be required in order to develop these lots and it is at this time that a detailed traffic analysis will be undertaken.

The Department is satisfied with the proposed new staging of the project, including the addition of the two super lots into the project approval, and has recommended relevant changes to the concept plan and project approvals to facilitate this.

5.5 Other Issues

5.6.1 Rear Lane Lot Size

In its modification request, the proponent seeks an amendment to the permitted size of 'Rear Lane' lots from 450-600m² to 250-400m², arguing that it was an administrative error as the original plans showed these lots as ranging from 250-400m². No further assessment justifying this proposed change was provided.

The Department has considered the proponent's arguments and notes that whilst the plans appear to show smaller lot sizes, it is not possible to accurately identify the area given the resolution and scale of the plans. Furthermore, throughout both the Environmental Assessment and Preferred Project Report, the text repeatedly refers to 'Rear Lane' lots as being of 450-600m² in size. Illustration C8 which depicts the lot typologies for the proposed concept plan identifies the proposed area of several lots within the legend, including duplex and 'small affordable' lots, however, it does not identify an area for the 'Rear Lane' lots.

As such, the Department does not support the amendment of 'Rear Lane' lots at this time. It would be open to the proponent to seek a further modification at a later date, however, suitable justification will need to be provided. It should be noted that Council did not support this reduced size unless an accompanying condition was attached which required the proponent to treat these lots as integrated housing and submit details of the houses at the same time as seeking a subdivision for the lots.

5.6.2 Affordable Housing

As part of the proposed modification, the proponent is proposing to delete part of the retirement community lot and instead dedicate it as conservation area. This part of the retirement lot included a three storey component. As this is no longer proposed as part of the project, the proponent has sought to delete term B4(2) of the concept plan approval which: limits the height of the retirement building to 13m AHD; permits a maximum gross floor area of 1:1; and requires the future applications to comply with *State Environmental Planning Policy (Housing for Seniors of People with a Disability) 2004* in relation to provision of affordable housing and on-site support services.

Whilst Council acknowledges that the three-storey component of the retirement community is no longer proposed, it has requested that the requirement to provide affordable housing be retained.

In permitting taller buildings with a greater floor space ratio, the Seniors SEPP requires that at least 10% of the development is for affordable housing and that on-site support services are provided. Given that term B4(2) was as a direct consequence of this issue, the Department does not consider it appropriate to continue to mandate the provision of affordable housing pursuant to this section of the SEPP given it is no longer relevant.

Notwithstanding, the Department understands Council's position in requesting affordable housing and notes that this issue is recognised in the Far North Coast Regional Strategy as a need for the area. Consequently, the Department recommends that the approval be modified to delete term B4(2) and instead require a new term that requires future development applications to consider the provision of affordable housing and on-site services for residents.

5.6.3 Section 94 and Section 64 Contributions

The Department sought Council's input to provide updated section 94 and section 64 contributions arising from the proposed modification. The primary reason for these changes is to account for the two additional super lots proposed as part of Stage 1, however, it is also useful to update the figures due to indexing.

In providing its response, Council included a number of charges which had not previously been identified in the original approval. These included charges for regional community facilities and regional open space which apply under the Ballina 2008 Contributions Plan. This is because Council considers this to be the relevant plan upon which charges are to be calculated for this project.

It has become apparent that the rates referred to in the project approval, which were provided by Council, were actually based on the contributions plans that applied prior to 1 November 2008 and not the current Ballina 2008 Contributions Plan, as implied by the conditions. It appears that this situation arose due to the timing of Council providing the rates and the adoption of the 2008 plan which only occurred on 1 November 2008, shortly before the Minister approved the project.

Under the old plans, charges were only identified for roads and local community facilities which are identified in the approval. There was no identification for contributions towards regional community facilities and regional open space.

The Department has considered this issue and is of the view that it is appropriate to keep the charges based on the original amounts quoted in the project approval and adjust them only for the purposes of the addition of the two new super lots. This is because:

- almost three years have elapsed since approval was first given with public notice of the approval undertaken along with the charges payable;
- were it not for the addition of two new super lots, it would not be reasonable to revisit the section 94 conditions due to this modification request; and
- whilst the 2008 plan may have relevantly applied at the time of determination, it was reasonable to expect that the application would have been determined prior to this as the application was originally made to the Department in early 2007 and therefore the contributions would have been based on the old plans.

To avoid further confusion, the Department also recommends the condition be amended to remove reference to the 2008 plan and instead base it on those plans that applied prior to 1 November 2008. Indexed rates have been provided by Council and incorporated into the modifying instrument.

Council has also supplied indexed rates for the Water Supply and Infrastructure Development Servicing Contributions, which are not in question. The conditions have been updated accordingly.

Notwithstanding, the conditions will still enable Council to index the charges for both section 94 and section 64 to the amount relevant to the time of payment, as is usual practice.

Whilst the contributions recommended may not be Council's preferred position, the Department notes that this approach is only being taken in respect of the first stage of the Pacific Pines Estate. That is, when future development applications are lodged with the Council, the Council will be able to charge section 94 contributions having regard to the latest section 94 contributions plan and other section 64 plans.

5.6.4 Administrative Changes

The Department's recommended modifying instrument also includes minor administrative changes to update incorrect referencing in the original approvals as well as changes to reflect the change from 3 sub-stages in Stage 1 to only 2 sub-stages.

6. CONCLUSION AND RECOMMENDATIONS

The Department has reviewed the proponent's modification request and response to issues raised in submissions as well as all submissions received. The Department has identified that the key issues associated with the modification request relate to: biodiversity, traffic and retail impacts and other issues associated with the changes to the staging of the project.

The Department is satisfied with the proposed changes to the staging of the project, noting that it will have inconsequential effects on the surrounding environment. Changes to the size of the maximum allowable retail floor space have been considered in the context of the site and broader region and the Department is satisfied that this increase will have minimal impacts. With respect to the bringing forward of its development, traffic modelling has identified that this can only satisfactorily occur by placing a restriction on the release of the final two stages of residential development. The Department is satisfied with this approach, noting that further detailed traffic assessments will occur with each future development application.

The change in alignment of Montwood Drive will have a positive impact on preserving a larger area of land where threatened species occur on the site and which would have been lost under the existing approval.

The Department supports the increase in size of the on-site conservation area but notes that this will need to be carefully managed to ensure that the habitat values of the area are maintained or improved and the viability of threatened species and communities on the site is preserved. To this end, conditions of approval requiring environmental management plans incorporating monitoring and rehabilitation programs have been updated to address the proposed modifications.

Overall, the Department is satisfied with the proposed modification and recommends it be approved subject to modifications to the concept and project approvals.

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 27.6.11

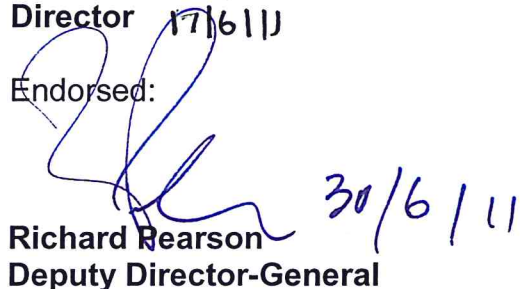
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