

# Modification of Minister's Approval

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

As delegate of the Minister for Planning and Infrastructure under delegation executed on 25 January 2010, I approve the modification of the project approval referred to in schedule 1, subject to the conditions in schedule 2.

*S. Madad*

Director-General

Department of Planning and Infrastructure

Sydney *8 August*

2011

### SCHEDULE 1

**Project Approval:**

07\_0026 granted by the then Minister for Planning on 12 November 2008

**For the following:**

A 63 lot subdivision comprising 54 residential lots, 6 super lots for future development, 2 open space lots and a residual lot

**On land comprising:**

Lot 234 DP 1104071 Montwood Drive, Lennox Head in the Ballina local government area

**Modification:**

07\_0026 Mod 2:

- consolidation of stages from 11 to 9;
- creation of two additional super lots within Stage 1 to create 8 superlots;
- increase in the maximum allowable retail floor space within the neighbourhood centre from 3,000m<sup>2</sup> to 4,000m<sup>2</sup> and bringing forward the construction of the maximum allowable retail floor space;
- realignment of Montwood Drive within the site; and
- increase in the size of the on-site conservation area and other environmental works.

Note: This modification description includes changes for both the concept and stage 1 project approval.

## SCHEDULE 2

The project approval is modified as follows:

- 1) deleting row 6 in **PART A – TABLE** of Schedule 1 and replacing with new row 6 as follows:

<b>For the carrying out of</b>	A 65 lot residential subdivision comprising 54 residential lots, 8 super lots for future development, 2 open space lots and a residual lot and roads and civil works
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- 2) replacing the word “63” in condition A1 with the word “65”.
- 3) replacing the word “6” in condition A1 b) with the word “8”.
- 4) replacing the word “8.18” in condition A1 b) v. with the word “4.65”.
- 5) inserting new conditions A1 b) vii. and A1 b) viii. immediately after condition A1 b) vi. as follows:

A1 b) vii. Super Lot 7 (5.59 ha)

A1 b) viii. Super Lot 8 (4.98 ha)

- 6) deleting condition A2 and replacing with new condition A2 as follows:

### **A2      *Staging***

The project shall be undertaken in two stages:

- (1) Stage 1A - Subdivision of 54 residential lots and 2 open space lots and associated roads and landscaping in the south of the site; and
  - (2) Stage 1B - Subdivision of Super Lots 1, 2, 3, 4, 5, 6, 7 and 8, the extension of Montwood Drive, the construction of Main Street, construction of internal roads adjoining the east and north boundaries of Super Lot 1, the construction of Hutley Drive and the western link for the playing fields adjacent to the site and revegetation of the 100m buffer to littoral rainforest in the north west of the site.
- 7) Deleting rows 1 to 10 in the table in condition A3 and replacing with new rows 1 to 10 as follows:

Design, Landscape and Survey Drawings			
Drawing No.	Revision	Name of Plan	Date
100603 2E		Illustration P1 Stage 1 Project Application	8/04/11
6501-DA2	Rev I	Illustration P2 Stage 1 Subdivision Plan	28/06/10

100603 13A		Illustration P3 Stage 1 Landscape Plan	28/10/10
		Illustration P4 Stage 1 Stormwater Concept Plan	28/06/10
		Illustration P5 Stage 1 Proposed Bulk Earthworks Plan	28/06/10
		Illustration P6 Stage 1 Design Contour Plan	28/06/10
		Illustration P7 Stage 1 Erosion and Sedimentation Control Plan	28/06/10
		Illustration P8 Stage 1 Erosion and Sedimentation Control Details	27/11/07

**8) immediately after term A4 e), inserting the following words:**

**Modification Documentation**

- f) *Pacific Pines Modification Report* including all appendices prepared by Geolink, dated 1 September 2010;
- g) *Pacific Pines Modification Application Response to Submissions 1439012*, including *Pacific Pines Addendum to Modification Report* prepared by Geolink and received 28 January 2011;
- h) *Design Note – Traffic and Transport – Addendum to Traffic Impact Assessment* prepared by Cardno and dated 5 January 2011; and
- i) updated drawings to reflect staging and dated 8 April 2011.

**9) inserting new condition A8 immediately after condition A7 as follows:**

**A8 *Lapsing of Approval***

This project approval shall lapse five (5) years after the date the approval is endorsed by the Minister, unless works the subject of this approval have physically commenced, on or before that lapse date. The Director-General may extend this lapse date if the proponent demonstrates to the satisfaction of the Director-General that the project remains current, appropriate and reflective of the best use of the site at the date the approval would otherwise lapse.

- 10) deleting the words “15m” in condition B2(1) and replacing with the words “20m”.
- 11) deleting the words “condition B5” in condition B3 and replacing with the words “term B6”.
- 12) deleting the word “Rod” in condition B6 and replacing with the word “Road”.
- 13) deleting the words “condition B16” in condition B7 and replacing with the words “term B17”.

14) Immediately after condition B8, inserting new condition B9 as follows:

15) deleting condition C1 and replacing with new condition C1 as follows:

**C1            *Conservation Zone Management Plan***

The Conservation Zone Management Plan referred to in term B2 of the concept plan, shall be submitted to and approved by the Department prior to the issue of a construction certificate for Stage 1B.

16) deleting condition C2 and replacing with new condition C2 as follows:

**C2            *Ecological Compensation***

The proponent shall prepare a brief for the research to be undertaken with the monies for ecological compensation (refer term B2 of concept plan approval), in consultation with the Office of Environment and Heritage, which includes details of who will carry out the research and how the money will be spent.

The brief is to be submitted for the Department's approval prior to the issue of the construction certificate for stage 1B.

17) deleting the words "condition B6" in condition C3 and replacing with the words "term B7".

18) deleting the words "condition B7" in condition C4 and replacing with the words "term B8".

19) deleting the words "condition B17" in condition C5 and replacing with the words "term B18".

20) deleting the words "and 1C" in condition C6.

21) inserting new condition C7 and heading immediately after condition C6 as follows:

**C7            *Hutley Drive***

Hutley Drive is to be constructed for its full length and ultimate width within the site. Detailed designs are to be provided to Council for approval prior to the issue of the Construction Certificate for Stage 1B.

22) deleting Part D and the condition contained therein.

23) deleting the word "condition" in condition E4 and replacing with the word "term".

24) deleting all words after "waste management," in condition E20 (6) and replacing with the following:

- (7) flora and fauna management, and
- (8) management of public access, particularly through the conservation zone.

- 25) **deleting the word “condition” in condition G6 and replacing with the word “term”.**
- 26) **delete conditions H1 to H3 inclusive and replace with new condition H1 to H3 as follows:**

#### ***H1 Monetary Contributions***

Prior to the issue of a Subdivision Certificate for Stage 1A, total payment to Council of non-refundable monetary contribution is to be made towards the provision of public services and amenities, which are required as a result of the project. These contributions are required in accordance with s94 of the Act and the relevant plans are as follows:

- Ballina Road Contribution Plan; and
- Section 94 Contributions Plan for Ballina Shire – Community Facilities.

The current contributions are:

- **\$69,606** for community facilities
- **\$129,276** for roads

Note: These contributions have been calculated as at July 2011. The rates will be adjusted in accordance with the procedures set out in Council's Section 94 Contributions Plans. The proponent is advised to confirm the contribution rate applicable at the time of payment as rates are revised periodically. Copies of the Contributions Plans may be viewed at the Council Chambers, corner of Cherry and Tamar Streets, Ballina

#### ***H2 Water Supply Contributions***

Prior to this issue of a Subdivision Certificate for Stage 1B, the proponent will have obtained, or at least be eligible to obtain, a certificate of compliance for development. To be eligible, all necessary water supply, sewerage and stormwater infrastructure would be completed and the proponent will have paid the following:

- **\$175,716** for the augmentation of water supply mains and storage within Ballina Shire,
- **\$238,788** for the augmentation of sewerage headworks.

Note: These charges have been calculated as at July 2011 and are levied in accordance with Section 64 of the *Local Government Act 1993* and Section 306 of the *Water Management Act 2000*. The developer charges are reviewed periodically by Council and the contribution amounts will be calculated at the rate applicable at

the time of payment. Copies of the Contributions Plans may be viewed at the Council Chambers, corner of Cherry and Tamar Streets, Ballina.

### ***I3 Infrastructure Development Servicing Contribution***

Prior to the issue of the subdivision certificate for Stage 1B payment is required to Council (as collection agent for Rous Water), of a non-refundable monetary contribution towards the provision of infrastructure development servicing in accordance with Section 64 of the *Local Government Act 1993* and Section 306 of the *Water Management Act 2000* for an amount of:

- **\$204,984** for the amplification and provision of water supply infrastructure to meet the demands generated by new development on headworks and distribution works.

Note: These charges have been calculated as at July 2011 and are reviewed periodically and the contribution amounts will be calculated at the rate applicable at the time of payment. Copies of the Development Servicing Plan may be inspected at the Council Chambers, however all enquiries in relation to the Rous Water Supply Development Servicing Plans should be directed to Rous Water (Lismore).

### **27) delete conditions I1 to I3, inclusive, and replace with new conditions I1 to I3 as follows:**

#### ***I1 Monetary Contributions***

Prior to the issue of a Subdivision Certificate for Stage 1B, total payment to Council of non-refundable monetary contribution is to be made towards the provision of public services and amenities, which are required as a result of the project. These contributions are required in accordance with s94 of the Act and the relevant plans are as follows:

- Ballina Road Contribution Plan; and
- Section 94 Contributions Plan for Ballina Shire – Community Facilities.

The current contributions are:

- **\$10,312** for community facilities
- **\$19,152** for roads

Note: These contributions have been calculated as at July 2011. The rates will be adjusted in accordance with the procedures set out in Council's Section 94 Contributions Plans. The proponent is advised to confirm the contribution rate applicable at the time of payment as rates are revised periodically. Copies of the Contributions Plans may be viewed at the Council Chambers, corner of Cherry and Tamar Streets, Ballina

## ***12 Water Supply Contributions***

Prior to this issue of a Subdivision Certificate for Stage 1B, the proponent will have obtained, or at least be eligible to obtain, a certificate of compliance for development. To be eligible, all necessary water supply, sewerage and stormwater infrastructure would be completed and the proponent will have paid the following:

- **\$26,062** for the augmentation of water supply mains and storage within Ballina Shire,
- **\$35,376** for the augmentation of sewerage headworks.

Note: These charges have been calculated as at July 2011 and are levied in accordance with Section 64 of the *Local Government Act 1993* and Section 306 of the *Water Management Act 2000*. The developer charges are reviewed periodically by Council and the contribution amounts will be calculated at the rate applicable at the time of payment. Copies of the Contributions Plans may be viewed at the Council Chambers, corner of Cherry and Tamar Streets, Ballina.

## ***13 Infrastructure Development Servicing Contribution***

Prior to the issue of the subdivision certificate for Stage 1B payment is required to Council (as collection agent for Rous Water), of a non-refundable monetary contribution towards the provision of infrastructure development servicing in accordance with Section 64 of the *Local Government Act 1993* and Section 306 of the *Water Management Act 2000* for an amount of:

- **\$30,368** for the amplification and provision of water supply infrastructure to meet the demands generated by new development on headworks and distribution works.

Note: These charges have been calculated as at July 2011 and are reviewed periodically and the contribution amounts will be calculated at the rate applicable at the time of payment. Copies of the Development Servicing Plan may be inspected at the Council Chambers, however all enquiries in relation to the Rous Water Supply Development Servicing Plans should be directed to Rous Water (Lismore).

- 28) immediately after the word “DA1999/248” and before the period in condition 14, inserting the words as follows:**

, with the exception of that part of the proposed conservation zone located between the water quality control pond and the extension to Montwood Drive

**29) deleting condition I7 and replace with new condition I7 as follows:**

***I7 Ecological Compensation***

The first payment of \$30,000 for ecological research (refer to term B2 of the concept plan approval) shall be paid to the nominated body(ies) prior to the issue of the subdivision certificate for stage 1B. Evidence of the payment shall be submitted to the Department.

Two additional payments shall be made on or before the anniversary of the first payment. Evidence of each subsequent payment is to be given to the Department.

**30) immediately after condition I7, inserting new conditions I8 to I10 as follows:**

***I8 Development Consent DA2004/1113***

Prior to the release of the subdivision certificate for Stage 1B, the proponent shall complete all the works approved by development consent DA 2004/1113 (as modified) and then surrender the consent.

***I9 Development Consent DA1999/248***

Prior to the release of the subdivision certificate for Stage 1B, the proponent shall complete all the works described in condition I4 of this approval and then surrender the development consent DA1999/248.

***I10 Development Consent DA2002/333***

Prior to the release of the subdivision certificate for Stage 1B, the proponent shall complete all the works approved by development consent DA 2002/333 and then surrender the consent.

**31) deleting Part J and the conditions contained therein.**

**32) deleting the words in Schedule 3 and replacing with the following:**

**07\_0026  
65 LOT SUBDIVISION  
MONTWOOD DRIVE, LENNOX HEAD  
STATEMENT OF COMMITMENTS  
(SOURCE: CORRESPONDENCE REFERRED TO IN CONDITION A4 f))**

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# Statement of Commitments – Project Plan

Issue	Commitment	Timing
General	The developer will carry out the development in accordance with this Environmental Assessment Report, prepared by GeoLINK and dated December 2007; in accordance with the Project Plan illustrations P1 – P8 (as modified); Modification Report prepared by GeoLINK, September 2010; Environmental Impact Assessment and Mitigation Strategy (Cardno, Aug 2010); and in accordance with the specialist supporting reports.	Engineering design plans and drawings will be provided to Council with an application for a Construction Certificate.
Environmental Management	An over-arching Environmental Management Plan (EMP) will be prepared and will detail specific management actions for all green space areas included in the Amended Project Plan. The EMP will address at a minimum: <ul style="list-style-type: none"> <li>▪ vegetation management;</li> <li>▪ fauna habitat management;</li> <li>▪ landscaping and revegetation requirements;</li> <li>▪ integrated weed management;</li> <li>▪ stormwater management;</li> <li>▪ mosquito management;</li> <li>▪ asset protection zone management; and</li> <li>▪ waste management.</li> </ul>	A copy of the EMP will be provided to DEWHA, DoP, DECCW and Ballina Shire Council for consideration and approval prior to issue of a Construction Certificate for Stage 1.
Conservation Zone Protection	After an agreed establishment and maintenance period, the Conservation Zone will be transferred to Ballina Shire Council for inclusion into the Environmental Protection Zone 7(a) - Wetlands pursuant to the Ballina Local Environmental Plan (E2 Environmental Conservation under the draft Ballina LEP 2010).	The maintenance period and regime will be agreed as part of the EMP.
Conservation Zone Management	A specific Conservation Zone Management Plan (CZMP) will be prepared and will detail specific management actions for the Conservation Zone that address the following issues: <ul style="list-style-type: none"> <li>▪ delineation of the proposed Conservation Zone;</li> <li>▪ protection measures for retained vegetation;</li> <li>▪ weed removal and control;</li> <li>▪ surface and sub-surface hydrology;</li> </ul>	A copy of the CZMP will be provided to DEWHA, DoP, DECCW and Ballina Shire Council for consideration and approval prior to issue of a Construction Certificate for Stage 1.

<i>Issue</i>	<i>Commitment</i>	<i>Timing</i>
	<ul style="list-style-type: none"> <li>revegetation and landscaping within the Conservation Zone;</li> <li>the provision of suitable access to facilitate management of Conservation Zone;</li> <li>community awareness and education;</li> <li>the staging of management actions and works;</li> <li>performance indicators against which the success of the CZMP is to be assessed at specified intervals;</li> <li>ongoing monitoring and maintenance;</li> <li>adaptive management mechanisms and processes;</li> <li>documentation and reporting; and</li> <li>roles and responsibilities.</li> </ul>	
Construction Environmental Management	<p>Prior to the commencement of any construction works on the site stage-specific Construction Environmental Management Plans (CEMP) will be prepared that clearly state the restrictions associated with the presence of threatened flora species and the Freshwater wetland EEC, and the penalties that will be enforced should construction activities result in any unauthorised disturbance to the retained populations and community. The CEMPs will be consistent with the requirements of the over-arching EMP but will be presented in a format that is targeted directly at contractors involved in the construction of the estate.</p> <p>Each Construction Environmental Management Plan (CEMP) shall include, but not be limited to:</p> <ul style="list-style-type: none"> <li>the manner in which public access will be managed during both construction and operation; and</li> <li>methods to be utilised to protect all threatened flora and fauna habitat and EECs on the site during construction.</li> </ul>	Each CEMP shall be submitted to and approved by DoP, DEECW and Ballina Shire Council prior to the issues of construction certificates for each stage of the development.
Integrated Water Cycle Management	The proponent will commit to constructing the creek corridors to convey major flood waters and to design the subdivision such that the flood planning levels are set at those recommended within Council's relevant Floodplain Management Plan;	Details of all stormwater management measures will be provided to Council for approval with the Construction Certificate application. Approved stormwater controls / management measures will be constructed prior to the issue of any Subdivision Certificate for the relevant stage.

<i>Issue</i>	<i>Commitment</i>	<i>Timing</i>
	The proponent will commit to the continued use of the existing Water Quality Control Pond as a tertiary treatment system and main detention dam/recycling source for the proposed development;	Details of all stormwater management measures will be provided to Council for approval with an application for a Construction Certificate. Approved stormwater controls / management measures will be constructed prior to the issue of any Subdivision Certificate for the relevant stage.
	The proponent will construct WSUD measures, including small dry detention systems upstream of the Water Quality Control Pond, above the 1% ARI flood extent;	Details of all stormwater management measures will be provided to Council for approval with the application for Construction Certificate. Approved stormwater controls / management measures will be constructed prior to the issue of any Subdivision Certificate for the relevant stage.
	The proponent also commits to ongoing monitoring of stormwater quality and continued maintenance of the stormwater treatment train.	Details of all stormwater management measures will be provided to Council for approval with the application for Construction Certificate. Management of the Water Quality Control Pond will be taken over by Council in 2010 whilst management of the stormwater conveyance systems will be split between Councils and land owners depending on specific land uses and future titling. Monitoring shall be carried out of the stormwater measures in each stage, for a period of two years following construction of that stage. Summary reports shall be provided to Council after twelve months and at the end of the monitoring period outlining the monitoring undertaken and the results obtained.
Acid Sulfate Soils	Sampling (at a rate of 1/1000 m <sup>3</sup> of excavated material) and laboratory analysis will be undertaken within areas of the site below RL 10 m, where excavation is proposed below natural ground level. The results will be used to determine appropriate liming rates and management requirements if necessary. It is not proposed to sample material borrowed from areas above the 10m AHD contour as these are unlikely to contain PASS.	An Acid Sulfate Soils Management Plan will be provided to Council for approval with the application for Construction Certificate.
Heritage and Archaeology	The Jali LALC will be engaged to monitor initial investigations; a recommended protocol will be adopted if any materials of an Aboriginal origin are found on the site during excavation works; and contractors will be advised of the statutory requirements of the National Parks and Wildlife Services Act 1974 in regard to any items / relics found during construction.	Representatives of Jali will be engaged prior to the commencement of construction for all future stages.

Issue	Commitment	Timing
	If, in the process of works within the site, that at any time it is believed materials of an Aboriginal origin are found, works at the location must stop immediately. The NSW DECC Regional Office – Coffs Harbour and Jali LALC must be advised and advice sought as to the most appropriate course of action to follow. Jali LALC may also wish to inform Traditional Owner respondents and seek their views as to how cultural heritage values might be impacted and to how best to mitigate potential impacts. Works must not proceed in the specific location without written consent of the DECC and Jali LALC.	A protocol relating to this requirement will be developed and all site construction staff will be trained in the protocol
	Prior to any vegetation clearing and initial earthworks contractors be advised of the statutory requirements of the <i>National Parks and Wildlife Act 1974</i> (NSW) that in regard to Aboriginal sites or relics: it is an offence to knowingly disturb, deface, damage or destroy, or to permit the disturbance, defacement, damage or destruction of a relic without first obtaining written consent to do so from the Director General of the DECC.	A protocol relating to this requirement will be developed and all site construction staff will be trained in the protocol
Infrastructure Provision	The proponent will provide reticulated potable and non-potable water supply, sewerage, telecommunications facilities and underground electricity to all lots.	Servicing plans will be provided to Council for approval with the application for Construction Certificate. All services will be constructed prior to the issue of any Subdivision Certificate for the relevant stage.
Traffic and Access	All internal roads will be constructed in accordance with the road types identified in Appendix F of the EA documentation (as amended) and in accordance with relevant local and Australian Standards.	Road layout plans will be provided to Council for approval with the application for Construction Certificate. Internal roads will be constructed prior to the issue of any Subdivision Certificate for the relevant stage. Roads will be maintained by the developer for a period of 12 months following completion of construction.
Community facilities	The proponent will provide a multi-purpose community hall, with a floor space of approximately 300 m <sup>2</sup> and associated car parking, located within the neighbourhood centre.	A 'super lot' will be created in Stage 1 (see Project Approval), with an area of approximately 1,990 m <sup>2</sup> . Following approval of the Project Application, a Development Application will be prepared and lodged with Ballina Shire Council seeking approval for the construction of the community building, and associated car parking, within the 'super lot' created during Stage 1B.

<i>Issue</i>	<i>Commitment</i>	<i>Timing</i>
Mosquito Management	A comprehensive mosquito management plan shall be prepared that addresses the commitments below and includes the details of the required monitoring program. The Plan shall address the management of exposure to <i>Verrallina funerea</i> , <i>Culex annulirostris</i> and <i>Aedes procax</i> associated with the conservation areas within the site.	<p>The management plan shall be provided with the application for Construction Certificate for Stage 1.</p> <p>Monitoring shall be carried out for the works in Stage 1, for a period of two years following completion of construction of that stage. Reports shall be provided to Council at the end of twelve months and at the end of the monitoring period summarising the effectiveness of the controls</p>

