

**MODIFICATION REQUEST:**  
**Residential Subdivision**  
**Belle O'Connor Street, South West Rocks**  
**08\_0167 MOD 1**



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

August 2013

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## 1. BACKGROUND

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This report is an assessment of a request to modify the project approval for Major Project 08\_0167 involving a 269 lot residential subdivision, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification request seeks to amend the approved stormwater management regime of the site, as well as aspects of the approved project staging and subdivision design.

The site is formally described as Lot 1 and Lot 2 DP 1128633, and Lot 84 DP 792945, Belle O'Connor Street, South West Rocks, in the Kempsey local government area.

Project approval for the site was granted by the Planning Assessment Commission (PAC) on 3 June 2011, in accordance with Part 3A of the EP&A Act. Approval was granted for:

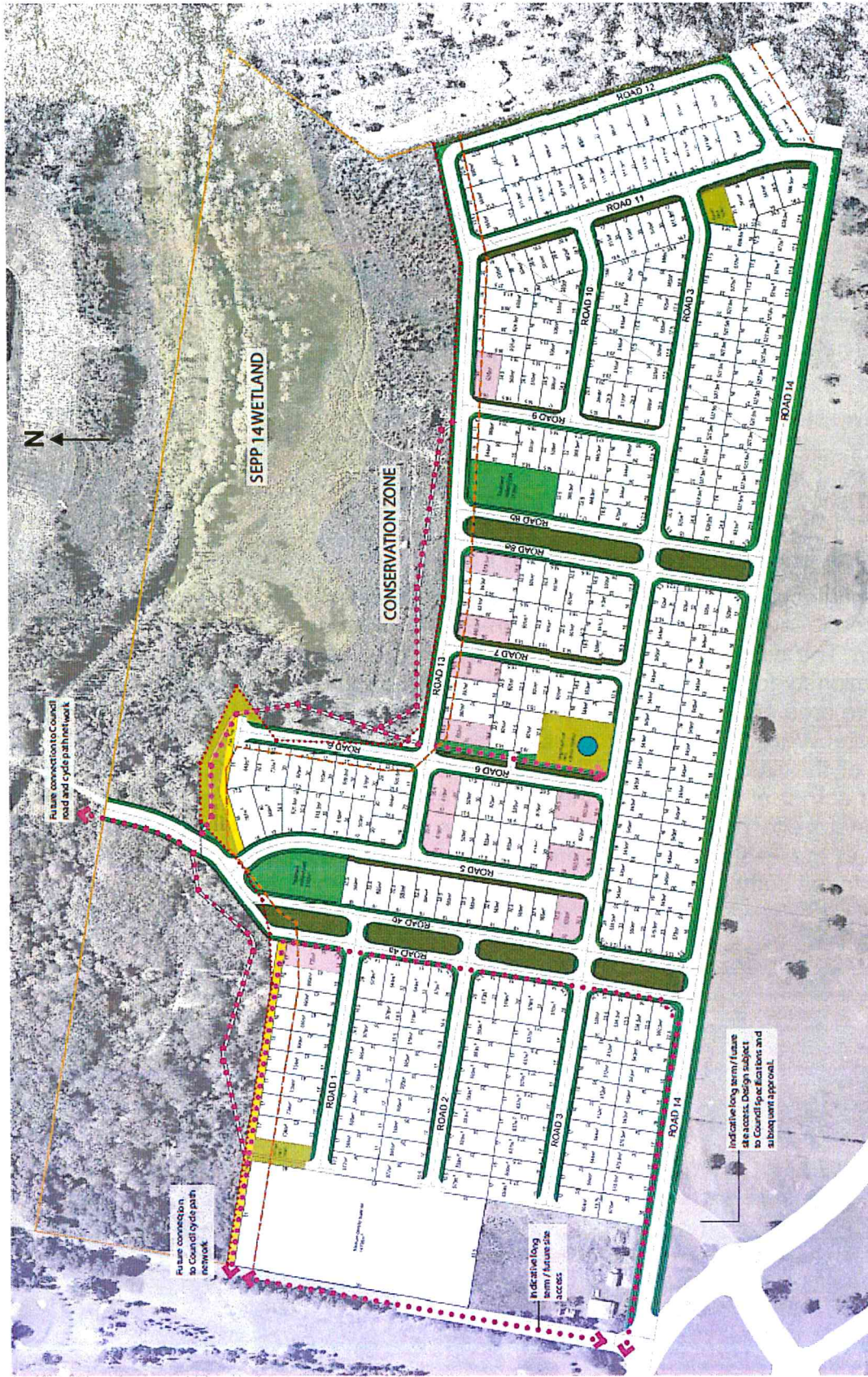
- 269 low density residential lots constructed in 11 stages;
- one medium density residue lot;
- internal public road network;
- public open space areas with recreation facilities;
- a network of pedestrian and cyclist pathways;
- a 14.9ha conservation zone;
- two stormwater treatment areas; and
- on-site landscaping works.

Figure 1 shows the approved subdivision layout.

### 1.1 Site Location and Surrounding Land Uses

The site is located within the South West Rocks township on the New South Wales mid-north coast, approximately 28km north-east of Kempsey and 65km south of Coffs Harbour. The site is bound to the north by an area of vacant land which has recently been rezoned for residential use. To the north-east is the Saltwater Lagoon and an extensive area of State Environmental Planning Policy No.14 – Coastal Wetlands (SEPP 14 Coastal Wetlands) which borders the lagoon and encroaches within the north-eastern portion of the site. The South West Rocks Sewage Treatment Plant adjoins the north-western corner of the site, and the South West Rocks Golf Course is located parallel to the western site boundary. A small number of rural-residential properties are located directly to the east. Recently approved low density residential housing development is located to the south-west.





**LEGEND**

	Zone Boundary
	10-20m Area of Protection Zone (SEPP)
	Special Vegetation Corridor
	Shannon Wetland Park / Large
	20m Wide Lake Beds
	Playground
	Public Open Space with Facilities
	SEPP 14 Wetland Area
	Future Access Trail
	Conservation Area

Proposed and existing roads subject to DA constraints

**Notes**

1. Lines parts in Conservation Zone are indicative positions only. Use patterns in this area to ensure correct trade, to ensure boundaries to natural vegetation. Part positions are subject to DA constraints and subsequent approval.
2. Long term future site access is indicative only and will be the subject of subsequent approval. The site access will be subject to DA constraints and subsequent approval.

Figure 1: Approved Site Layout – Belle O'Connor Street, South West Rocks (08\_0167)



The site has predominately been used for grazing and agricultural uses in the past. Figure 2 below shows the site and surrounding features.

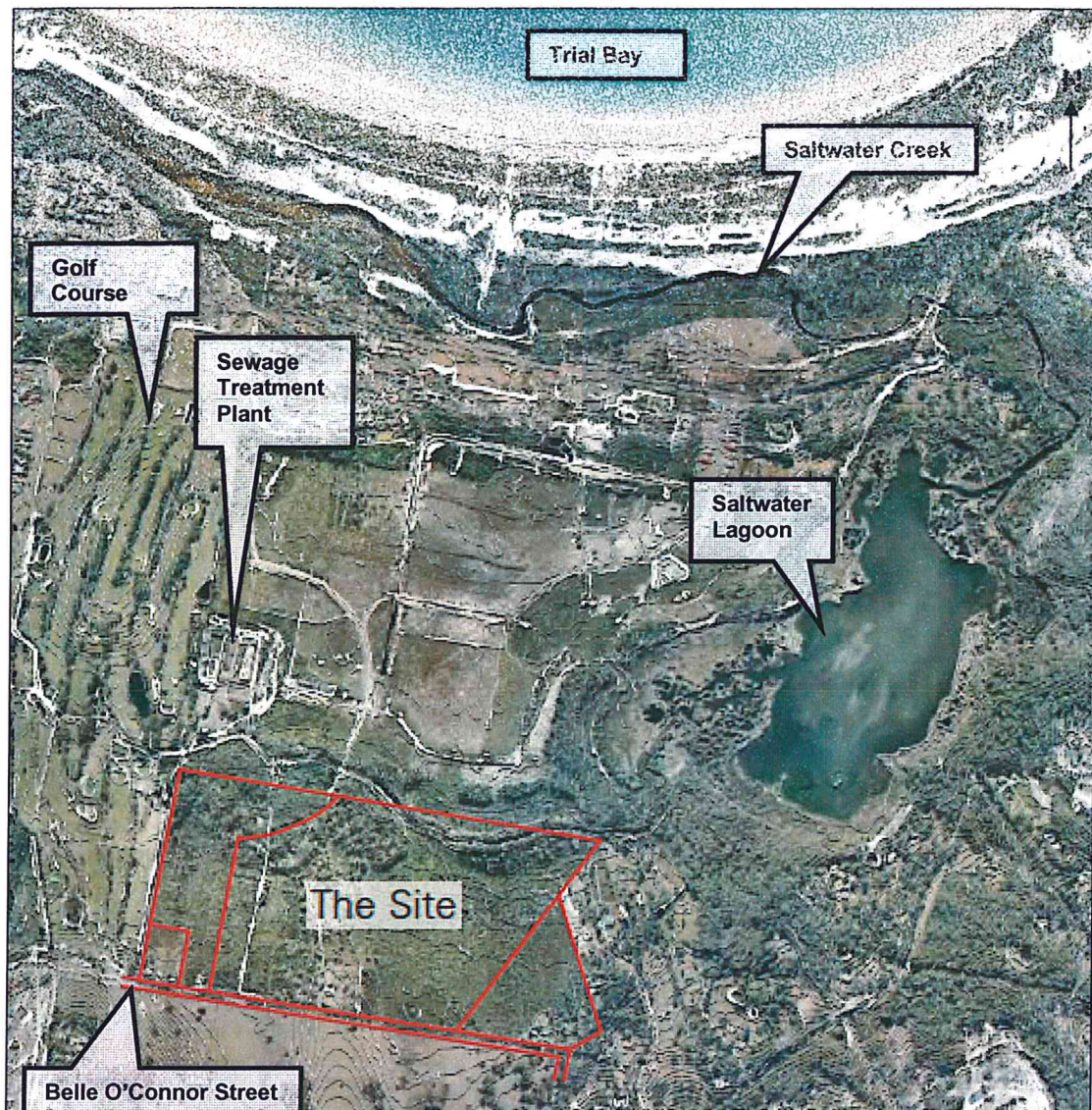


Figure 2: Site Context (source: Environmental Assessment)

## 1.2 Site History

The site was rezoned in August 2009 following adoption of amendment no. 55 to the *Kempsey Local Environment Plan 1987*. The land was rezoned from 1(c) Rural Small Holdings and 1(d) Rural Investigation; to 2(a) (Residential "A" Zone) and part 7(b) Environmental Protection (Habitat). The existing 7(a) Wetlands Protection Zone was retained.

Subsequent to the rezoning of the site, Malbec Properties Pty Ltd lodged a project application seeking to subdivide the site into 269 low density residential lots. The application was approved by the PAC on 3 June 2011.



## 2. PROPOSED MODIFICATION

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### 2.1 Modification Description

On 26 February 2013, Land Dynamics Australia (LDA), on behalf of Malbec Properties Pty Ltd (the proponent) submitted a section 75W modification request to the project approval of 08\_0167 (refer **Appendix B**). The modification request involves:

- redesign of the stormwater treatment train including deletion of the constructed wetlands;
- shifting approved road nos. 5 to 9 to the east to create a more efficient road network layout, preventing any lots from having a dual street frontage;
- four additional residential lots;
- revised public open space provisions; and
- revised project staging.

On 15 May 2013, the proponent submitted additional information in the form of correspondence from GHD Pty Ltd (GHD), dated 14 May 2013, which forms part of the modification request (**Appendix D**).

## 3. STATUTORY CONTEXT

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### 3.1 Modification of the Minister's Approval

Project approval for 08\_0167 was granted under section 75J of the EP&A Act. Section 75W of the EP&A Act provides for the modification of the Minister's approval.

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

Pursuant to section 75W(2) of the EP&A Act, the proponent may request the Minister to modify approval of a project. Any request is to be lodged with the Director-General. A copy of the proponent's modification request is included at **Appendix B**.

Section 75W(3) of the EP&A Act provides that the Director-General may notify the proponent of environmental assessment requirements (DGRs) with respect to the proposed modification. Given the relatively minor nature of the modification request, DGRs were not considered necessary.

### 3.2 Delegated Authority

Under the Instrument of Delegation dated 14 September 2011, the Minister has delegated his functions to determine section 75W modification requests to the Director – Industry, Social Projects and Key Sites, whereby:

- the relevant local council has not made an objection to the proposal;
- a political disclosure statement has not been made; and
- there are less than 10 public submissions in the nature of objections.

Kempsey Shire Council (council) did not object to the proposed modification, however, a number of concerns were raised – refer **Section 4.1**. The proponent has not made a political disclosure statement, and no public submissions in the nature of objections were received. The Director – Industry, Social Projects and Key Sites, is therefore delegated to determine the modification request.

## 4. CONSULTATION AND SUBMISSIONS

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### 4.1 Exhibition

Under section 75X(2)(f) of the EP&A Act, the Director-General is to make publicly available requests for modifications of approvals given by the Minister. In accordance with clause 8G of



the *Environmental Planning and Assessment Regulation 2000*, the request for modification was made publicly available on the department's website.

#### Kempsey Shire Council

The modification request was referred to council for comment. Council raised a number of concerns in regards to the proposed redesign of the stormwater treatment train. No concern was raised in regards to the proposed amendments to the approved road network layout and increase in lots (refer copy of council's submission at **Appendix C**).

## **5. ASSESSMENT**

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The department has assessed the proposed modification involving amendments to the approved stormwater management regime of the site (**Section 5.1**) and amendments to the approved subdivision design and project staging (**Section 5.2**).

### **5.1 Stormwater Management**

The approved stormwater drainage regime for the site involves the dispersion of treated stormwater flows to the conservation zone located in the north-eastern portion of the site. A number of ecologically sensitive environments are located directly adjoining and beyond the conservation zone including an area of SEPP 14 Coastal Wetlands, the Saltwater Lagoon, and Saltwater Creek. Due to the sensitive nature of the adjoining and upstream environments, the department thoroughly assessed the stormwater management regime proposed as part of the original application, which involved the engagement of GHD Pty Ltd (GHD) to undertake a peer review of the proponent's stormwater management documentation submitted as part of the application.

The PAC ultimately approved a stormwater treatment regime for the site involving a network of roadside drainage swales designed to convey runoff to two centrally-located drainage swales traversing the site. The central grassed drainage swales were designed to divert upslope catchment drainage to downstream receiving waters, whilst providing treatment measures prior to discharge including the removal of suspended solids and nutrients, and the capturing of pollutants. Two stormwater treatment wetlands of 2,100m<sup>2</sup> and 2,128m<sup>2</sup> in area were also approved as part of the proposal, designed to treat flows derived from the two central grassed swales. The wetlands were primarily required for water quality treatment measures prior to flows being discharged to the conservation zone.

The proponent has advised that during the preparation of construction certificate documentation for the first stage of the project, it became evident that the site topography does not have enough vertical change in elevation to provide sufficient conveyance of surface water flows through the approved drainage system. Therefore, an amendment to the approved stormwater management regime of the site is required.

#### Amended Stormwater Management Regime

The proponent engaged LDA to prepare a Stormwater Quality Report to support several amendments to the approved stormwater management regime. LDA advised that the site topography presents a challenge to runoff hydraulics as it is difficult to achieve sufficient grades on the site (without importing large quantities of fill material) to allow stormwater to be transferred from the central grassed open swales to the two treatment wetlands, and beyond to the conservation zone. The proponent specifically requests a redesign of the stormwater treatment train, including deletion of the stormwater treatment wetlands, based on the following reasons:

- slope from north to south across the site is <1% grade – the treatment wetlands require a degree of change in elevation to achieve effective inflow/outflow;



- the treatment wetlands lack hydrological effectiveness, contribute to the proliferation of aquatic weeds, and are potential breeding grounds for mosquitoes;
- ongoing maintenance of the treatment wetlands will be a burden on council;
- public safety is a concern with the treatment wetlands potentially needing to be fenced to prevent access; and
- the interallotment drainage system presents challenges (in the form of ongoing maintenance, landscaping, and prevention of blockages, etc.) given this area is located within nature strips on private land.

The following amendments are therefore proposed to improve the overall stormwater drainage regime of the site, and to avoid the need to import large quantities of fill material:

- deletion of the treatment wetlands with hydraulic treatment to instead be achieved within the two centrally-located bio-retention swales (which are to be dedicated to, and maintained by council);
- the two central bio-retention swales will be planted with broad leave native plant species (macrophyte and melaleuca) providing increased surface area for evapotranspiration processes to occur;
- deletion of the open swale system on private land and nature strips, to be replaced with piped interallotment drainage; and
- creation of a bio-retention swale along the northern periphery of the site for additional stormwater quality treatment area.

**Figure 3** below shows those features approved as part of the original application including the central grassed open swales, open interallotment drainage (swales) on private land, two stormwater treatment wetlands, and the conservation zone which is the ultimate location for treated stormwater to be discharged. **Figure 4** shows the site layout and stormwater management features as proposed to be modified.

The amended system involves the conveyance of stormwater flows via two main centrally-located swales running from south to north across the site (as approved). The central swales are to be designed so that 100% of the total developed site's three month runoff drains through them. During low flow conditions, the swales will act as bio-retention systems which will slow runoff and allow for infiltration to occur. The broad leave native plant species proposed to be planted within the swales will assist with nutrient removal and provide evapotranspiration opportunities. Both swales will discharge high flows (which do not require treatment) directly to the adjoining conservation area. The amended system involves the deletion of interallotment open drainage along nature strips, to be replaced by piped interallotment drainage which aims to avoid the need for drainage systems and treatment areas being located on private land.

The amended stormwater treatment train proposed by LDA has been designed to complement the work undertaken by Martens Consulting Engineers who prepared the Amended Water Cycle Management Plan (July 2010), submitted as part of the original application and referenced in the approved conditions of approval.

Council raised a number of concerns regarding the redesign of the stormwater treatment train, including consistency with the Saltwater Stormwater Management Strategy (BMT/WBM 2007), appropriateness of planting out the bio-retention swales, the impact of a high water table, gross pollutant pre-treatment, the impact of locating vegetated swales in the road reserve and appropriateness of the grass swale approach on a site with a grade of less than 1%.



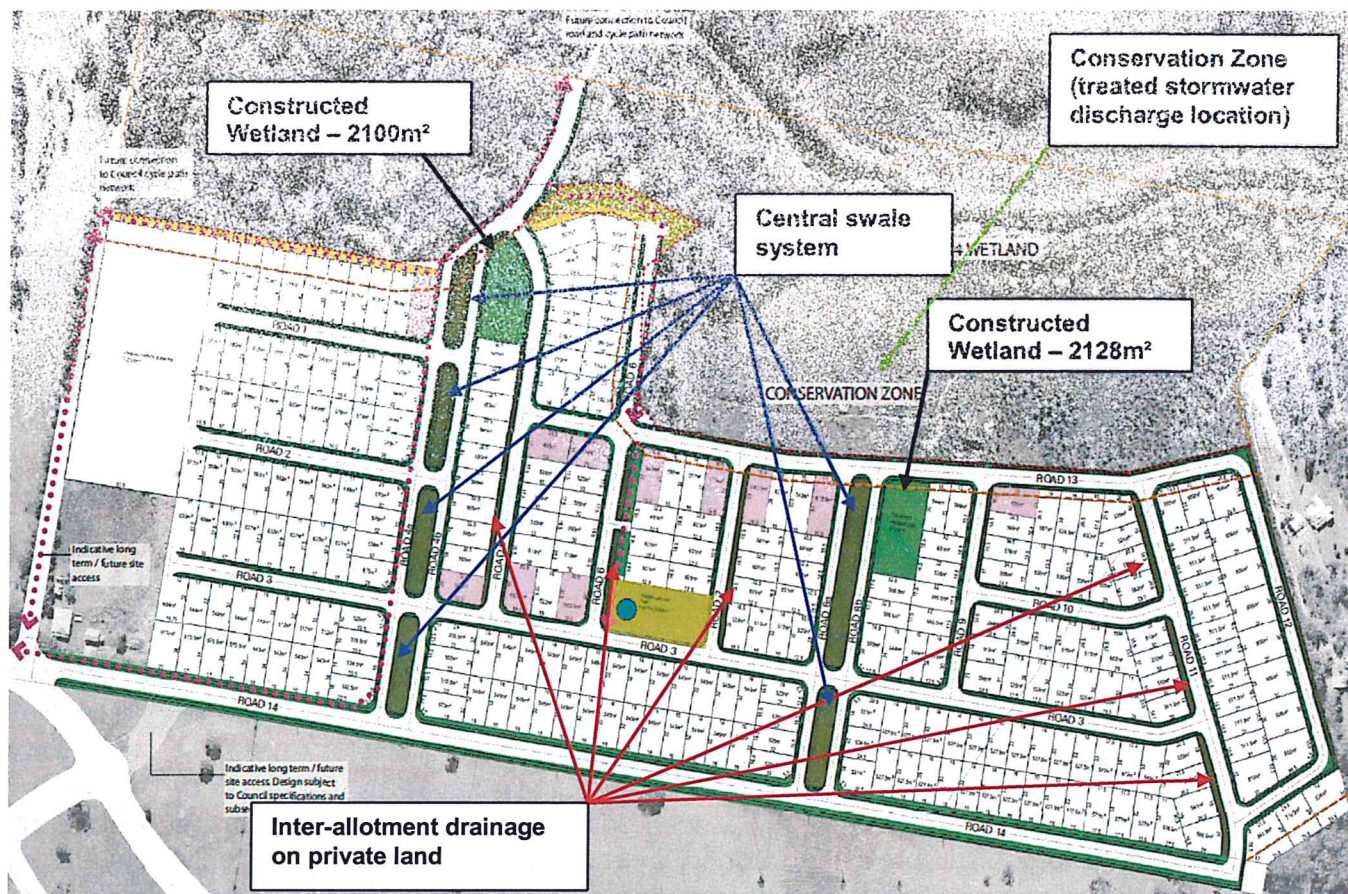


Figure 3: Stormwater Management Features – Approved Subdivision Plan

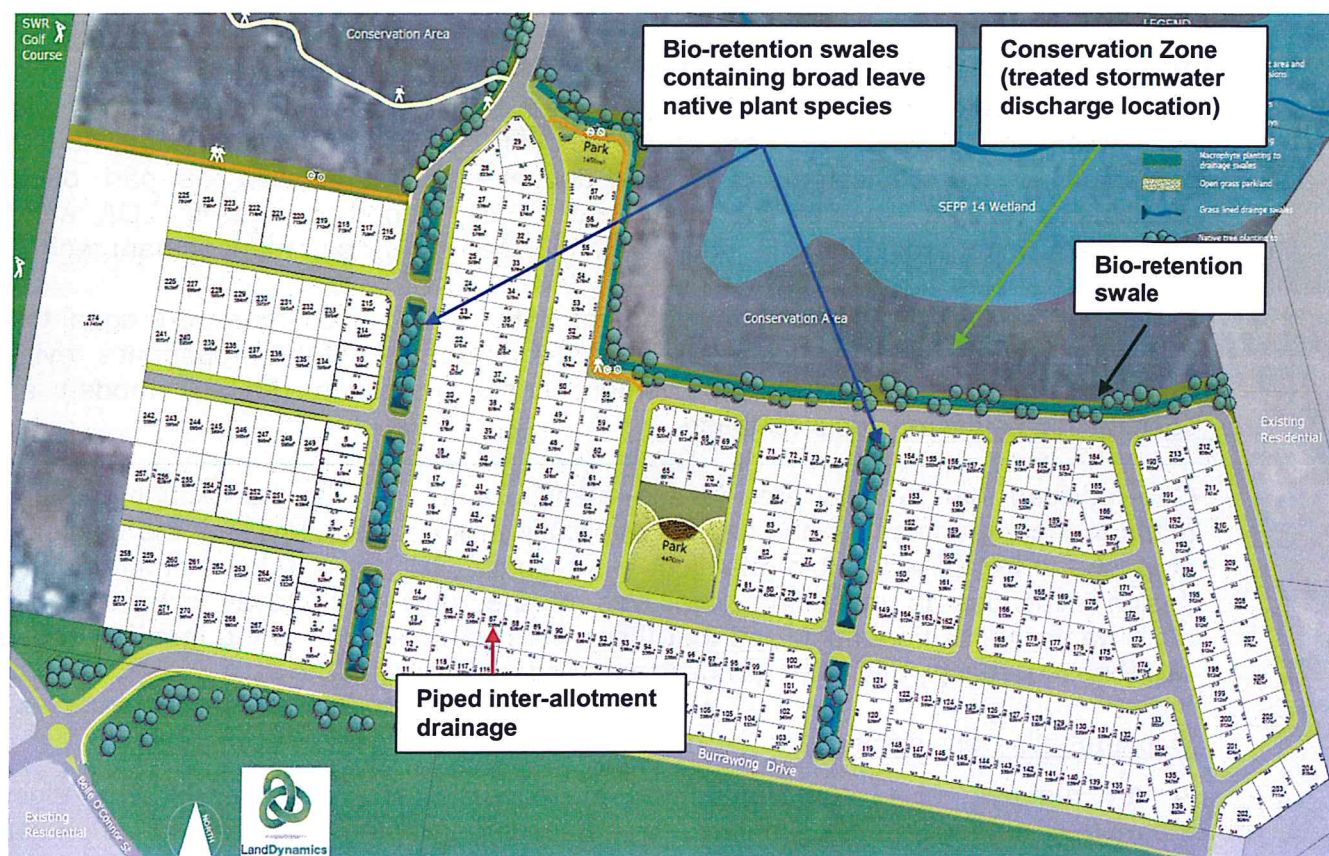


Figure 4: Proposed Stormwater Management Features – Revised Subdivision Plan (source: LDA)



Figure 5 shows a cross-section view of the proposed central grassed open swales, planted with broad leaved native plant species.

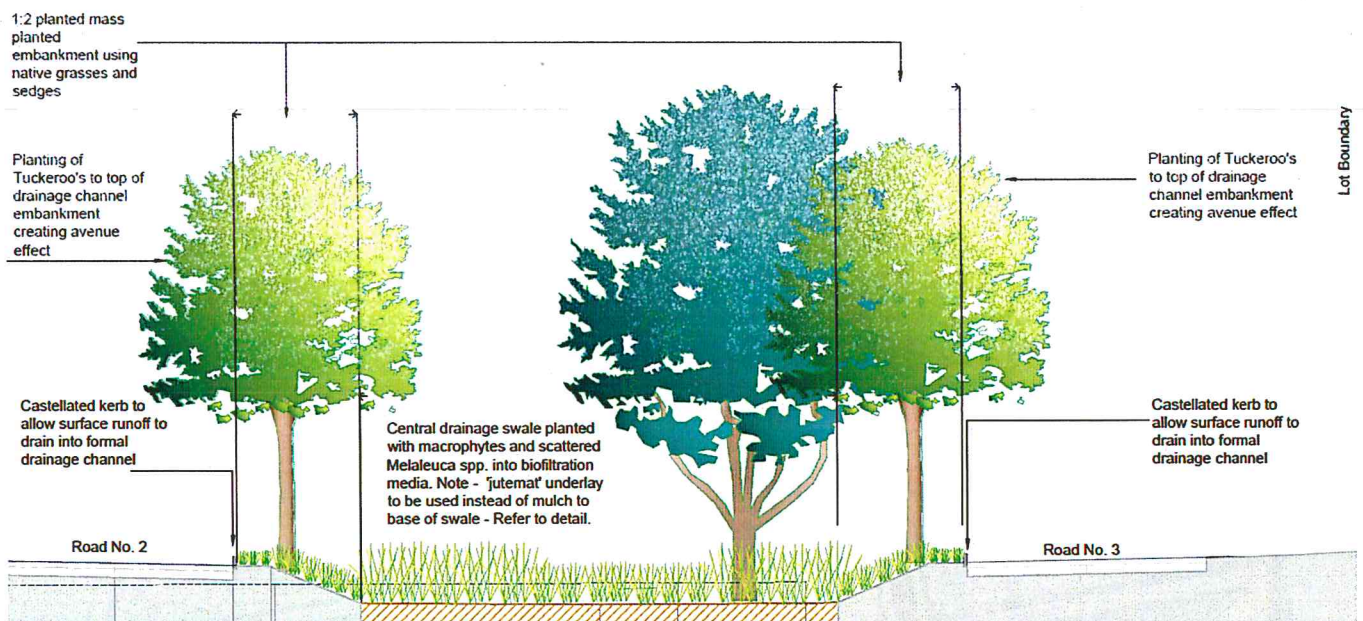


Figure 5: Cross-section View – Central Open Swale (source: LDA)

The proponent responded to the issues raised by council, which was subsequently forwarded to council for review. Council's response indicated that their only outstanding primary concern was the departure from the Bioretention Technical Design Guidelines. In particular, the insufficient longitudinal gradient combined with high seasonal water table and the lack of site-specific water sensitive urban design.

#### Review of Modification Documentation by Proponent – GHD Pty Ltd

The independent expert from GHD (engaged by the department to peer review documentation submitted as part of the original application) was engaged by the proponent to provide comment on the documentation submitted as part of the modification request – namely the Stormwater Quality Report prepared by LDA, and to provide advice regarding the adequacy of the modified stormwater management regime.

In determining whether the post-development water quality discharges were equal to or better than pre-development loads, GHD undertook a review of the proponent's revised model for urban stormwater improvement conceptualisation (MUSIC model) and construction certificate documentation.

GHD advised that the total area for bio-retention is in line with the recommendations made to the department on the original application with more than 1% of the catchment proposed to be utilised as bio-retention. In summary, GHD considered that the modified design continues to meet the objectives of the original approval with respect to stormwater quality treatment, and that there were no objections to the modified regime as proposed. A copy of GHD's advice is provided at **Appendix D**.

#### Department's Consideration

A key requirement of the department in recommending approval of the original stormwater management regime was for any post-development pollutant loads entering the conservation zone and downstream ecosystems to not exceed pre-development pollutant loads. The advice received from GHD and submitted as part of the modification



request notes that the stormwater management regime, as proposed to be modified, will continue to meet the objectives conditioned as part of the original approval in respect of water quality. GHD has also confirmed that the results of the MUSIC model demonstrate that the proposed treatment measures will improve water quality at the site.

The department has considered council's concerns regarding the need to incorporate quantity control into the stormwater system. This matter was addressed as part of the original approval and it was concluded that on-site detention (OSD) is not necessary on the site, as the minimal increase in flow from major, infrequent storms will not adversely impact downstream ecological systems and, as such OSD is not required as any local flow increases do not significantly impact on downstream infrastructure.

With respect to concerns regarding water quality and impacts on the downstream wetlands, the department has considered the concerns raised by council and the advice from the proponent's consultant and is satisfied that the amendments proposed as part of the revised stormwater management regime involving the deletion of stormwater treatment wetlands and piping of inter-allotment drainage, will not impact on the adjoining or downstream environments. It is considered that sufficient measures are proposed to be implemented as part of the revised stormwater drainage regime to ensure appropriate treatment occurs in place of the constructed wetlands, including bio-retention swales containing broad leaved native plant species for evapotranspiration processes to occur, and additional bio-retention area along the northern periphery of the site. The revised stormwater management regime for the site is therefore supported.

## **5.2 Amended Subdivision Design and Staging**

As a result of the proposed modifications to the site's stormwater management regime, the overall subdivision layout is proposed to be amended. Amendments are proposed to:

- the road network layout;
- the number of lots provided as part of the subdivision;
- public open space provisions; and
- project staging.

### Road Network

The road network layout is proposed to be amended to avoid any lots with dual street frontage. This is proposed to be achieved through a marginal shifting of the approved road network to the east. Council advised that there are no objections to the internal road network being shifted to the east to delete lots with rear street frontage and dual access, and did not raise any concern with the increase in residential lots. The department considers the proposed amendments to the approved road network layout are minimal and will not significantly alter the intended design of the approved subdivision.

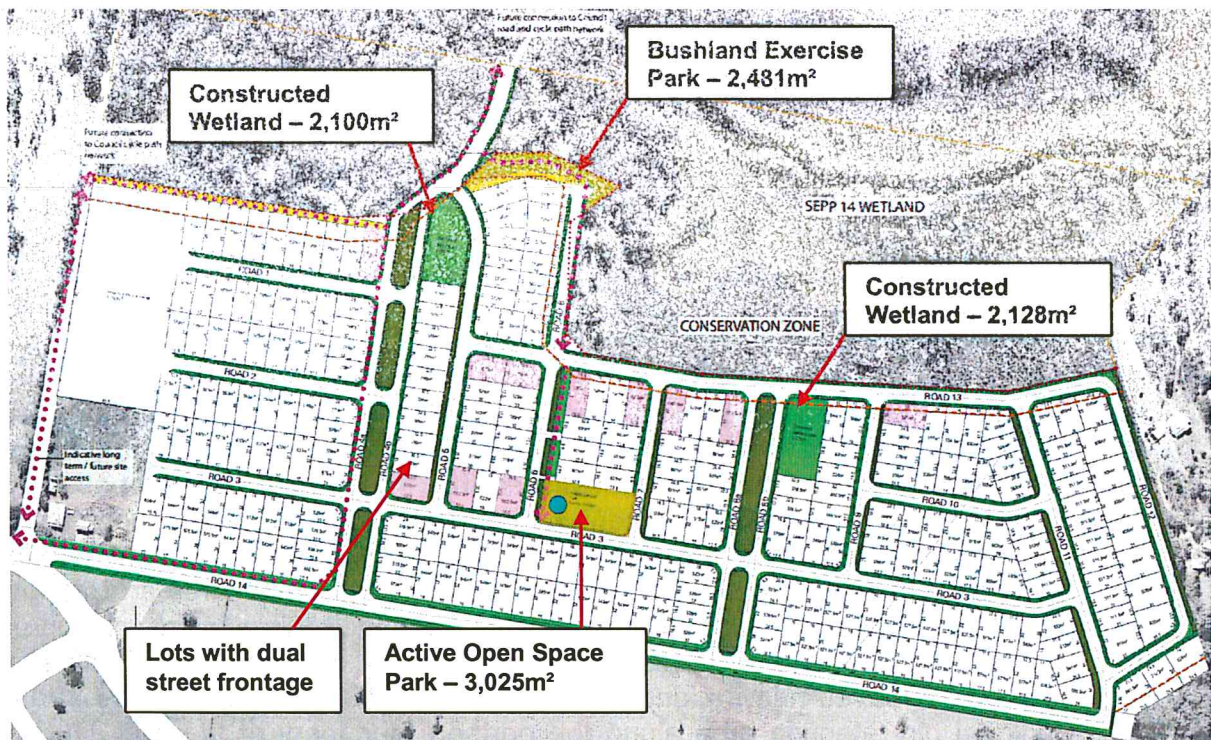
**Figure 6** below shows the location of the approved stormwater treatment wetlands and ten lots with dual street frontage.

### Increased Lot Yield

The proposed deletion of the stormwater treatment wetlands and revision of the road network layout has provided the proponent with sufficient area to include an additional four low density residential lots, increasing the site's lot yield from 269 to 273 in total (excluding the medium density lot).

The additional four lots are to be provided within the approved development footprint with no further encroachment into the adjoining conservation zone. The section 94 monetary contributions have subsequently been updated to reflect the increased number of lots.





**Figure 6: Approved Subdivision Layout**

### Public Open Space

The approved project includes a 3,025m<sup>2</sup> active open space park and a 2,481m<sup>2</sup> bushland exercise park. In addition, two constructed stormwater treatment wetlands of 2,100m<sup>2</sup> and 2,128m<sup>2</sup> are approved as passive open space areas when not required for stormwater treatment purposes. **Figure 6** above shows the location of the stormwater treatment wetlands and public open space areas.

The modification application originally sought to delete both the stormwater treatment wetlands and the exercise park. The department and council raised concern with the proposed deletion of the exercise park as this would significantly reduce the amount of public open space to service the future population of the site, particularly as the stormwater treatment wetlands (to be used intermittently as passive open space) are also proposed to be deleted.

The proponent subsequently submitted a revised subdivision plan which proposes to increase the central active open space park from 3,025m<sup>2</sup> to 4,470m<sup>2</sup> in area. In addition, the bushland exercise park (initially proposed to be deleted) is now proposed to be retained as part of the subdivision, albeit reduced in size from 2,481m<sup>2</sup> to 1,450m<sup>2</sup>. In total, the revised proposal includes 5,920m<sup>2</sup> of active open space, which is a 414m<sup>2</sup> increase compared to the approved development (excluding the stormwater treatment wetlands, which were proposed to intermittently act as passive open space). The revised subdivision design showing the location of public open space is provided at **Figure 7** below.





**Figure 7: Public Open Space Provisions – Revised Subdivision Design (source: LDA)**

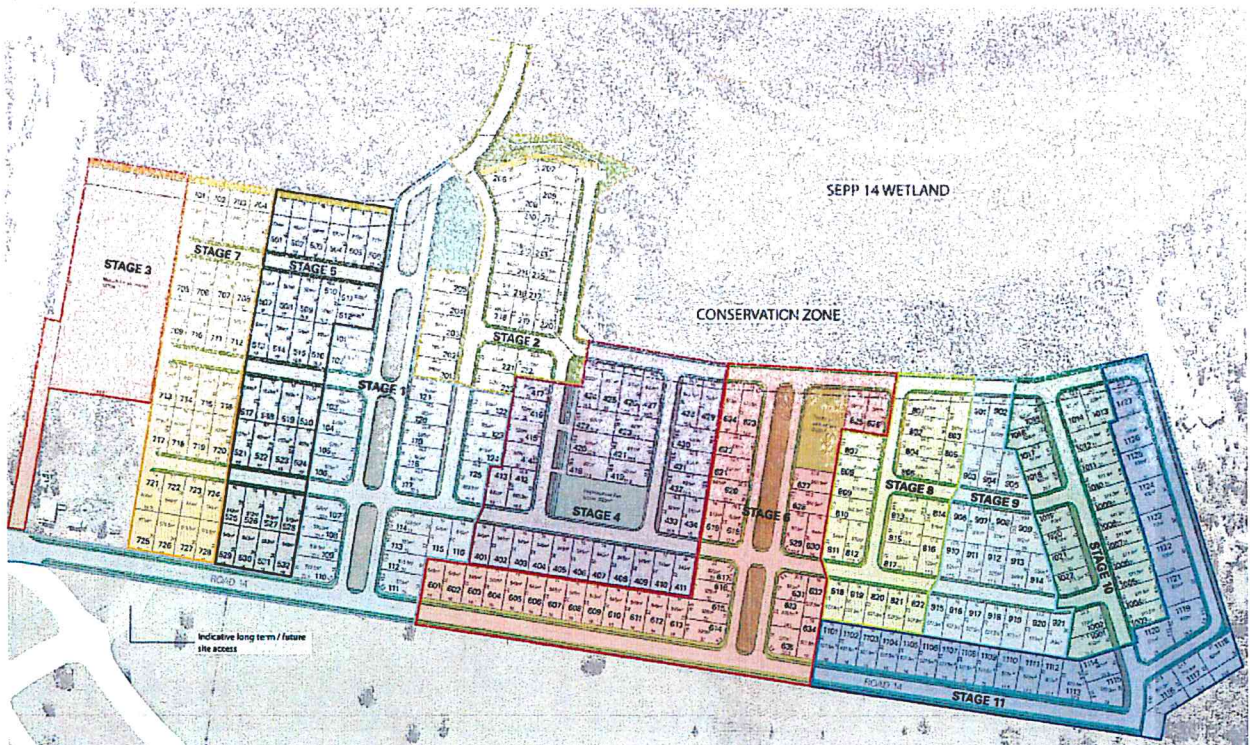
Council advised that the revised public open space provision is an acceptable outcome for the site. The department is satisfied that the revised proposal provides sufficient public open space that is generally consistent with both the size and location of public open space approved as part of the original proposal.

#### Revised Project Staging

The proponent seeks to modify the staging regime of the site, which was originally approved to be developed across 11 stages. **Figure 8** below shows the approved staging plan.

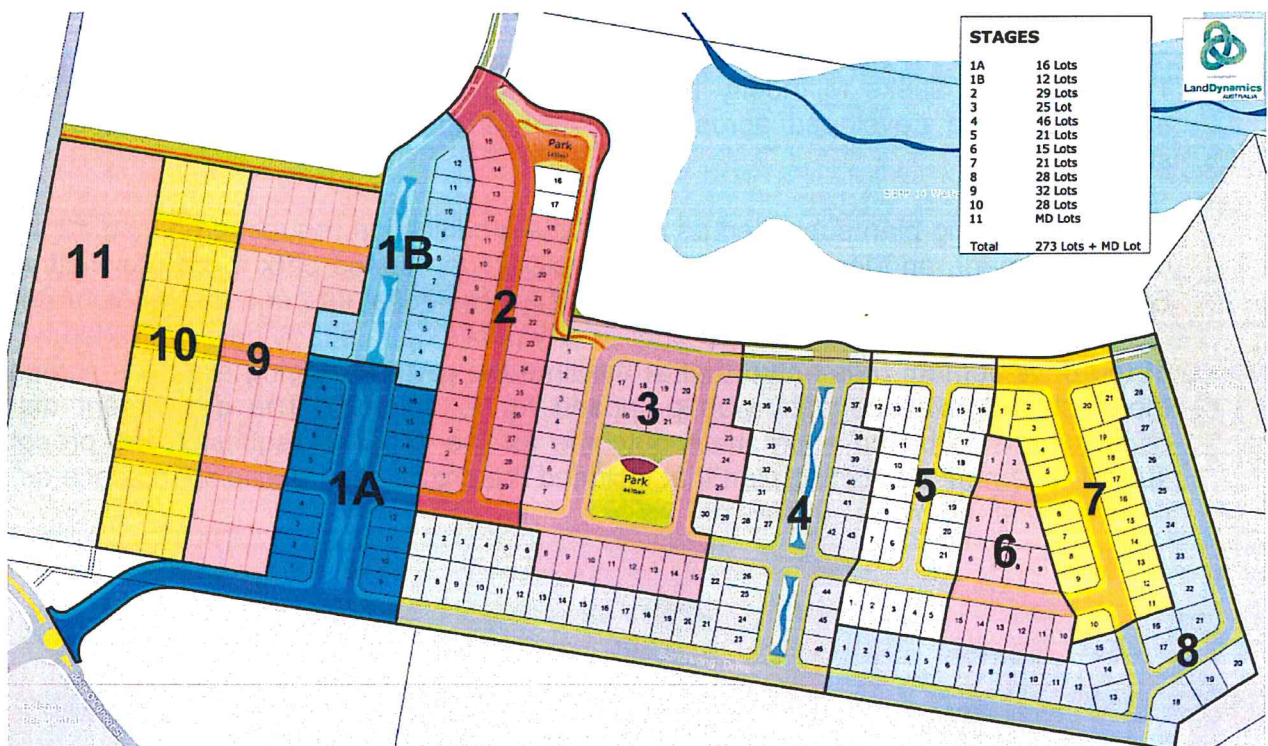
A revised staging plan submitted as part of the modification request proposed 12 stages of development, and included the central active open space park to be provided within Stage 6. This would see up to 128 low density residential lots and the medium density residential lot (Stage 3) developed prior to any public open space being provided as part of the development (it is noted that at the time the revised staging plan was submitted, the bushland exercise park was proposed to be deleted). The department did not consider this to be an appropriate outcome for the site and requested the proponent submit an amended staging plan that included the provision of public open space as part of an early stage of the subdivision.





**Figure 8: Approved Staging Plan**

The proponent subsequently submitted an amended staging plan which includes the bushland exercise park within Stage 2, and the central active open space park within Stage 3. **Figure 9** below shows the amended staging plan.



**Figure 9: Proposed Staging Regime (source: LDA)**

The department considers the amended staging regime is appropriate for the site, and that sufficient public open space will be provided in the early stages of the subdivision to service the future population of the site.



The proponent has also requested a degree of flexibility in regards to the sequencing of future stages. A new condition of approval is therefore recommended (Condition A7 – Staging) that requires the proponent to construct Stages 1A, 1B, 2 and 3 first, with the order of subsequent stages able to be varied, only upon receiving written approval from the Director-General. The requirement to construct Stages 1A, 1B, 2 and 3 first is required to ensure sufficient public open space is provided prior to the development of any subsequent stages.

## 6. CONCLUSION

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The department considers the proposal, as modified, achieves the same objectives as assessed under the original approval including the provision of additional low density residential lots within the Kempsey Shire, protection of adjoining sensitive environments, and the creation of jobs during construction works. The proposed modification ensures this objective can still be achieved. It is therefore recommended that the modification request be approved.

## 7. RECOMMENDATION

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It is recommended that the Director – Industry, Social Projects and Key Sites, as delegate of the Minister for Planning and Infrastructure, under section 75W of the EP&A Act, approve the proposed modification (08\_0167 MOD 1) as detailed in **Section 2** of this report; and vary the terms of approval as set out in the modifying instrument included at **Appendix A**.

Prepared by:  
Brent Devine, A/Senior Environmental Planner  
Industry, Social Projects and Key Sites

Endorsed by:



Sally Munk  
**A/Team Leader**  
**Industry, Social Projects and Key Sites**



## **APPENDIX A    MODIFYING INSTRUMENT – 08\_0167 MOD 1**

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