



Gwandalan Residential Subdivision Modification 5

Modification to Condition B11 relating to ecosystem and
species credits for Stage 7
State Significant Development Modification Assessment
(MP 10_0205 MOD 5)

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Glossary

Abbreviation	Definition
BCD	Biodiversity Conservation Division
Council	Central Coast Council
Department	Department of Planning, Industry and Environment
EESG	Environment, Energy and Science Group, DPIE
EIS	Environmental Impact Statement
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
SEARs	Planning Secretary's Environmental Assessment Requirements
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development

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1 Introduction

1.1 Introduction

This report provides the Department of Planning, Industry and Environment's assessment of an application to modify an approved residential subdivision at Gwandalan (MP 10_0205).

The application seeks approval to modify Condition B11 to remove the requirement for ecosystem and species credits for Stage 7 to be located within the Central Coast and/or Lake Macquarie local government area (LGA).

The application was lodged by ADW Johnson Pty Limited on behalf of Lakeside Living Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 Background

The subject site is located approximately 100 kilometres (km) north of Sydney and 26 km south of Newcastle, in the Central Coast LGA. The site has an area of approximately 26 hectares. The site adjoins the eastern side of Kanangra Drive, with the Point Wolstoncroft section of Lake Macquarie State Conservation Area adjoining the northern boundary. The southern boundary adjoins Gwandalan Public School and the rear of residential properties in the existing township of Gwandalan. The eastern-most boundary adjoins Lake Macquarie (see **Figures 1 and 2**).

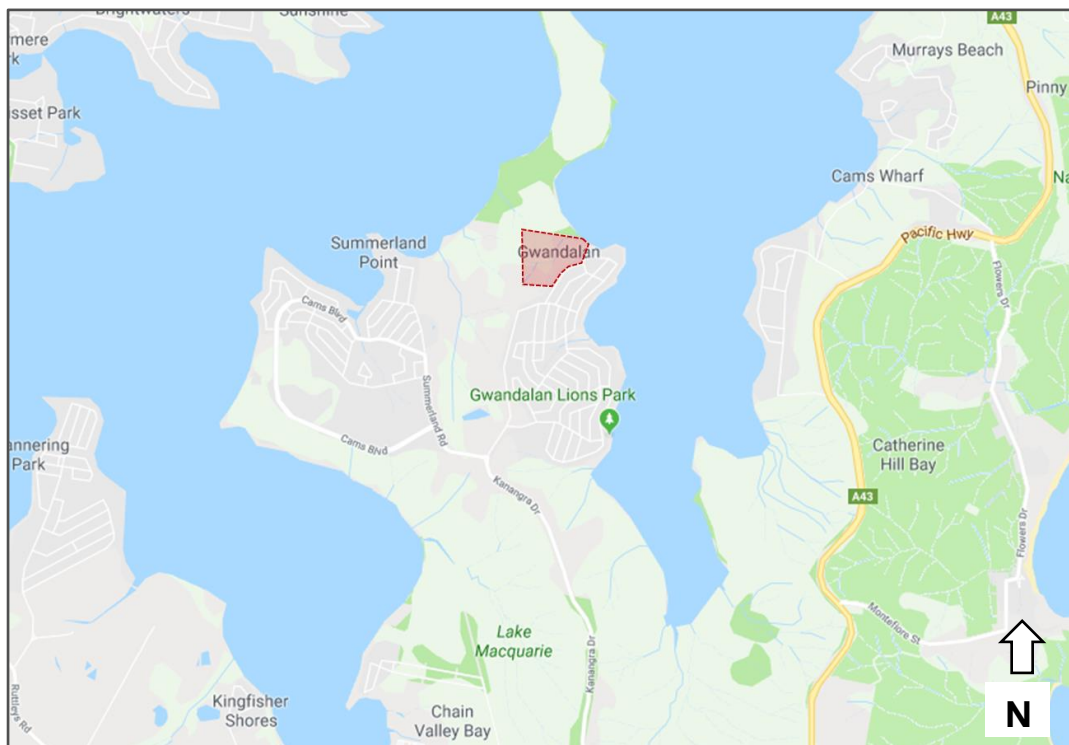


Figure 1 | Site Location (Base Source: Google Maps)



Figure 2 | Subject Site outlined in red (Base Source: Nearmap)

1.3 Approval history

On 3 May 2011, the then Planning Assessment Commission (the Commission) granted Project Approval 10_0205 for a residential subdivision at Gwandalan. The approval, as modified includes:

- 187 new residential lots;
- 1 residential lot to retain an existing dwelling;
- 1 public open space lot;
- associated bulk earthworks;
- infrastructure including drainage and utility services; and
- landscaping works.

This subdivision was approved over 7 stages, with Stages 1 to 6 having now been completed.

The development consent has been modified on four occasions (see **Table 1**).

Table 1 | Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Type	Approval Date
MOD 1	Modifications to subdivision staging, deletion of two conditions relating to road upgrades and amendment of a commitment relating to community consultation.	Planning Assessment Commission	Part 3A MOD	3 May 2011

MOD 2	Reconfiguration of the approved subdivision layout, modification to a condition relating to a T intersection, removal of a requirement for a raised pedestrian crossing and increased options for a wildlife management strategy.	Department	Part 3A MOD	22 September 2015
MOD 3	Updates to the staging plan and reconfiguration of part of the approved subdivision layout.	Department	4.55(1A)	6 September 2018
MOD 4	Modification of Condition B11 regarding the provision of nest boxes and inclusion of biodiversity credit requirements for Stage 7.	Department	4.55(1A)	9 August 2019

Relevant to the proposed modification, Condition B11 was modified as part of MOD 4 to allow nest boxes and salvaged hollows installed within Stage 7 to be removed and required the Applicant to secure and retire ecosystem credits of one or more Plant Community Types impacted by the development.

The wording of Condition B11 was suggested by the Applicant in response to agency concerns with the original proposal to require funding for a research project and was supported by the Department.

2 Proposed modification

The proposal seeks to modify Condition B11(h) to remove the requirement that ecosystem and species credits for Stage 7 be located within the Central Coast and/or Lake Macquarie LGA.

The proposed wording of condition B11(h) is as follows:

B11 Habitat Restoration Plan

(h) Stage 7: Within 24 months after the commencement of clearing within Stage 7 or prior to the issue of a subdivision certificate for any lots within Stage 7, whichever occurs first, the Proponent shall provide evidence to the satisfaction of the Secretary of the Department of Planning, Industry and Environment, confirming:

- h) it has secured and retired*
 - i) ecosystem credits of one or more Plant Community Types impacted by the development, or*
 - ii) species credits for hollow dependent fauna impacted by the development,*
 - 1. to the value of no less than \$62,000 (ex GST)*
 - ~~2. the retired credits are located within the Central Coast and/or the Lake Macquarie LGA~~*
 - 3. if ecosystem credits are retired – that the retired ecosystem credits contain hollow-bearing trees*

The Applicant contends that Condition B11(h)(2) cannot be complied with, as there are currently no suitable credits available on the open market within the Central Coast or Lake Macquarie LGA to secure and retire. Correspondence from Biodiversity Conservation Trust (BCT) has confirmed that it can secure and retire credits on behalf of the Applicant, but it cannot guarantee the location of the credits.

The Applicant has advised that the release of subdivision certificates for Stage 7 is pending the satisfaction of Condition B11(h)

3 Statutory context

3.1 Part 3A transition to State significant development

The Project Approval (MP 10_0205) was approved under Part 3A of the EP&A Act. On 1 March 2018, the transitional arrangements for Part 3A approvals ended. In order to modify a Part 3A approval, it must be declared SSD by the Minister for Planning and modified under section 4.55 of the EP&A Act.

Under clause 6 of Schedule 2 of *the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, the Project Application was transitioned to SSD by an Order, which took effect by publication in the NSW Government Gazette on 6 July 2018.

The application has been lodged under section 4.55(1A) of the EP&A Act for a modification involving minimal environmental impact.

3.2 Scope of modifications

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

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

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

Section 4.55 (1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	Section 5 of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the modification is of minimal environmental impact.
b) that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	The proposed modification seeks approval for minor changes and does not result in any additional impacts on the surrounding area. The modification will not involve any further disturbance outside the approved development footprint. On this basis, the proposal would result in development that is substantially the same as the originally approved development.
c) the application has been notified in accordance with the regulations, and	The modification application has been notified in accordance with the regulations. Details of the notification are provided in Section 4 of this report.
d) any submissions made concerning the proposed modification have been considered.	The Department received one submission on the proposal. The issues raised in the submissions have been considered in Section 5 of this report.

3.3 Consent authority

The Minister for Planning and Public Spaces is the consent authority for the application. However, under the Minister's delegation dated 9 March 2020, the Director, Regional Assessments may determine the application as:

- a political disclosure statement has not been made, and
- no public objections were received.

3.4 Mandatory matters for consideration

The following EPIs are relevant to the application:

- State Environmental Planning Policy No. 55- Remediation of Land;
- State Environmental Planning Policy (Coastal Management) 2018
- Wyong Local Environmental Plan 2013.

The Department has considered the proposed modification against these above-mentioned EPIs in its original assessment and previous modification assessments. The Department considers the modification does not result in any significant changes that would alter the conclusions made as part of the original assessment.

4 Engagement

4.1 Department's engagement

The Department notified the application for 7 days, between 27 November 2020 and 4 December 2020. It was made publicly available on the Department's website and notified to landowners within the site, Central Coast Council (Council) and Biodiversity Conservation Division (BCD).

4.2 Summary of submissions

BCD advised it does not have any comments on the proposal to remove condition B11(2)(h)(2) and that Planning and Assessment Group will determine if the condition should be removed or modified.

Council did not provide any comments, but in separate correspondence was supportive resolving the issue to allow for subdivision certificates for Stage 7 to be issued.

No **public** submissions were received.

5 Assessment

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

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

5.1 Modification to Condition B11

The proposal seeks to modify Condition B11(h) to remove the requirement that ecosystem and species credits for Stage 7 be located within the Central Coast and/or Lake Macquarie LGA.

The Applicant seeks these changes to allow for Condition B11 to be satisfied, as there are currently no suitable credits available within the Central Coast or Lake Macquarie LGA on the open market. Correspondence between the Applicant and a Biodiversity Offset Credit Broker dated 29 October 2020 confirms that the Applicant enquired about securing credits shown as available within Wyong Sub-IBRA (Central Coast LGA), but that they had already been secured to offset another development at the time of enquiry.

Under the NSW Biodiversity Offsets Scheme (BOS), Applicants may choose to pay into the Biodiversity Conservation Fund (BCF) as an alternative to retiring biodiversity credits to meet their project offset obligation.

Accordingly, the Applicant requested that the Biodiversity Conservation Trust (BCT) coordinate the retirement of credits to a value of at least \$62,000 into the BCF. BCT advised that it can acquit the offset obligations in accordance with the offset rules set out for the BCT within the *Biodiversity Conservation Regulation 2017*, but it cannot commit to retiring credits from the Central Coast and/or Lake Macquarie LGA.

The Department's assessment of MOD 4 recommended that Condition B11(h) clearly set out that the retired credits must contain hollow-bearing trees and are located within the Central Coast LGA and/or the Lake Macquarie LGA. However, it is noted that the wording of Condition B11(h) referring to the location of the credits was suggested by the Applicant.

Given the Applicant has endeavoured to secure and retire credits in the Central Coast and Lake Macquarie LGAs and was unable to as credits were not available in these LGAs, and as the release of subdivision certificates for Stage 7 is pending the satisfaction of Condition B11(h), the Department considers it is reasonable to amend the condition.

Additionally, the Department is satisfied the changes would ensure that Condition B11 is able to be satisfied, while maintaining the requirement for appropriate biodiversity credits to be secured and retired. Although the credits may not be located in the immediate surrounding area, the condition would still ensure they are valued at \$62,000. It is also noted that Clause 6.6 of the *Biodiversity Conservation Regulation 2017* which outlines the offset rules applying to the BCT does not include any locational requirements. The Department therefore recommends Condition B11(h) be modified to

delete the requirement for the credits to be located within the Central Coast and/or Lake Macquarie LGA.

6 Evaluation

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

- it would enable Condition B11(h) to be satisfied and facilitate the release of subdivision certificates for Stage 7
- it would maintain the requirement that ecosystem or biodiversity credits be secured and retired to offset biodiversity impacts of the development in accordance with the *Biodiversity Conservation Regulation 2017*.

The Department is satisfied that the modification can be approved, subject to the recommended conditions (**Appendix C**).

7 Recommendation

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

- **considers** the findings and recommendations of this report
- **determines** that the application MP 10_0205 MOD 5 falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modifies** the consent MP 10_0205
- **signs** the attached approval of the modification (**Appendix C**).

Recommended by:



Emma Butcher
Senior Planner
Regional Assessments

8 Determination

The recommendation is **Adopted** by:

A handwritten signature in blue ink, consisting of the letters 'K' and 'T' followed by a horizontal line.

7 December 2020

Keiran Thomas

Director

Regional Assessments

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – Modification report

<https://www.planningportal.nsw.gov.au/major-projects/project/40661>

Appendix B – Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/40661>

Appendix C – Notice of modification

<https://www.planningportal.nsw.gov.au/major-projects/project/40661>