

**MODIFICATION REQUEST:
Pacific Pines Estate, Lennox Head
(07_0026 Mod 4)**

**Modification to Concept Plan and
Project Approval**



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

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1. BACKGROUND

On 12 November 2008, the then Minister for Planning granted approval to the Pacific Pines Estate in Lennox Head on the Far North Coast. 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 project location is shown in **Figure 1** and **Figure 2**. 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 proposal has been modified on three occasions. The first modification was approved on 22 December 2008, shortly after the original application was approved. This was a minor administrative modification to clarify the required timing of surrender of an existing development consent that related to the site.

The second modification was approved on 8 August 2011. This modification involved changes to both the concept plan and project approvals and included:

- changes to the staging of the project with consolidation from 11 to 9 stages (concept plan approval). This included the consolidation of Stage 1, for which project approval has been given, from three sub-stages to two (concept plan and project approvals)
- the creation of two additional super lots within Stage 1 to create 8 super lots (concept plan and project approvals)
- an increase in the size of the retail component of the neighbourhood centre from 3,000 m² to 4,000 m² (concept plan approval)
- removing the restriction on developing the full retail centre until such time as Hutley Drive is extended to the north and instead, putting a limit on the release of the final two residential stages until this road is extended (concept plan approval)
- changes to the way in which the loss of threatened species and endangered ecological communities (EECs) across the site is mitigated. This included an increase in the size of

the on-site conservation area such that offsets would be provided wholly on the site, and amendments to the environmental management plan to include a specific plan for the on-site conservation area which incorporates an on-site compensatory strategy for the loss of certain threatened species and EECs from the site (concept plan and project approvals)

- realignment of Montwood Drive within the site.

The third modification was approved on 8 September 2011. This modification was required to correct a number of administrative errors arising from the second modification.

Work is yet to commence on the site.

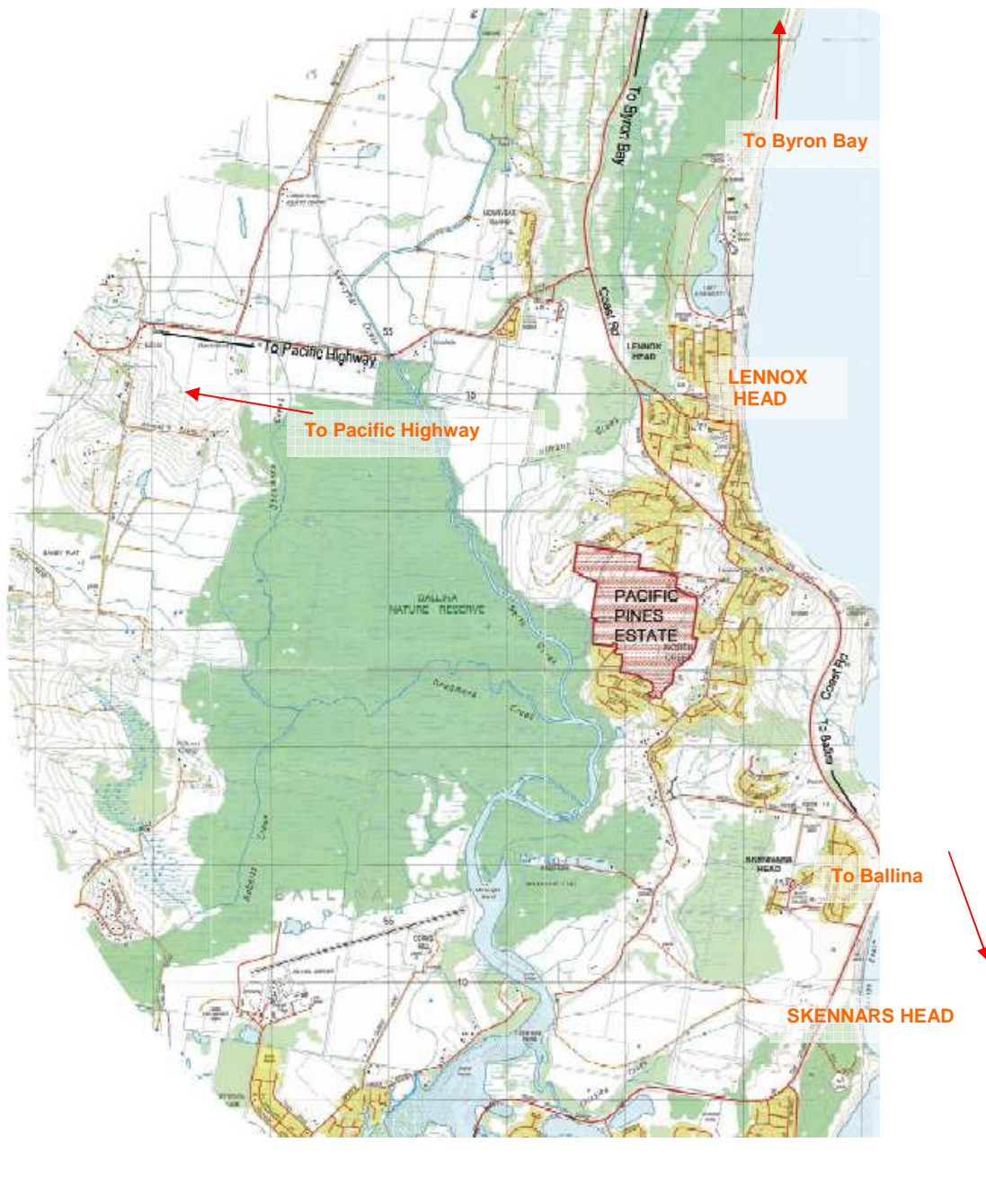


Figure 1: Site location (Source: Environmental Assessment)

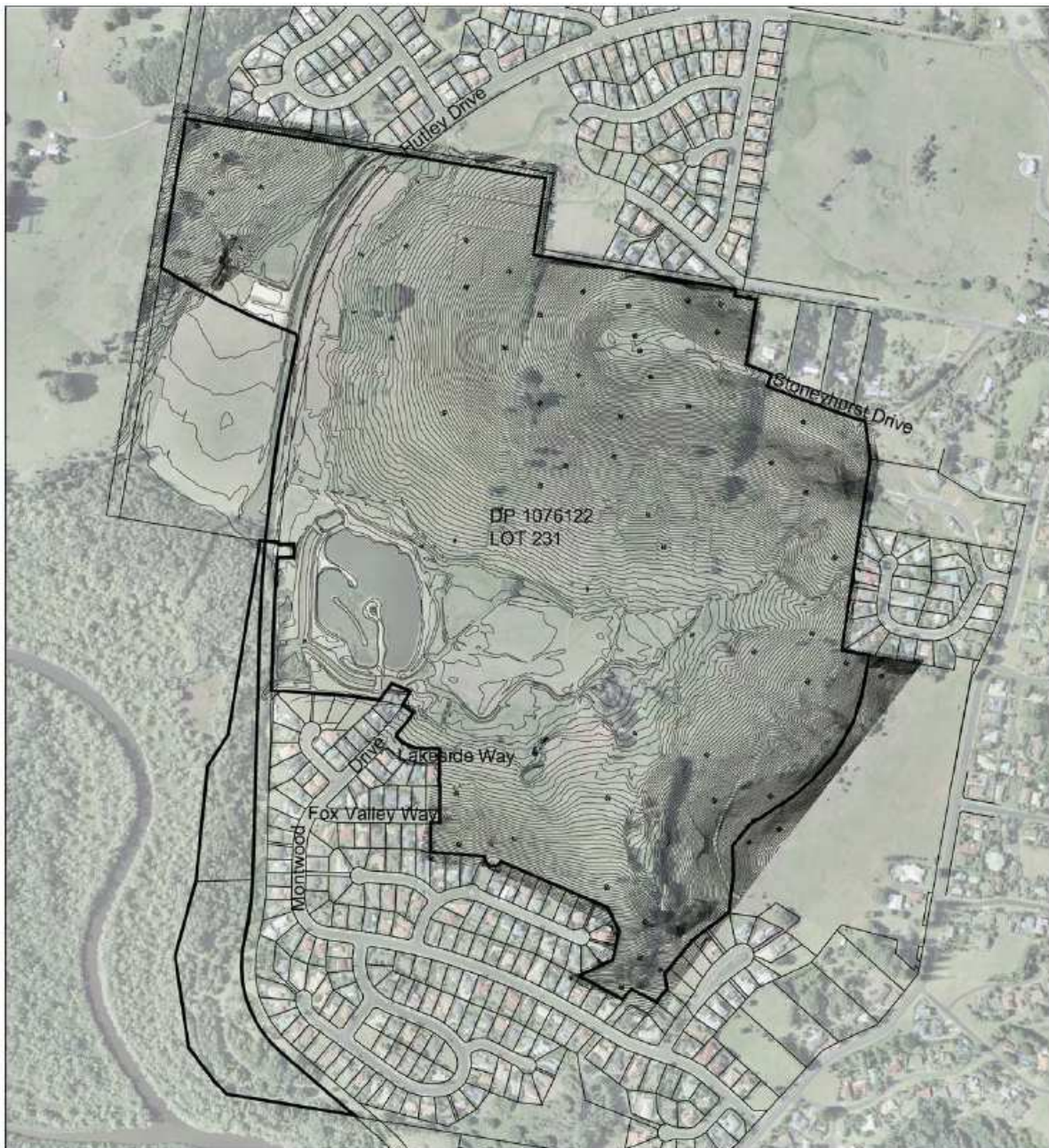


Figure 2: Aerial photo of site (Source: Environmental Assessment)

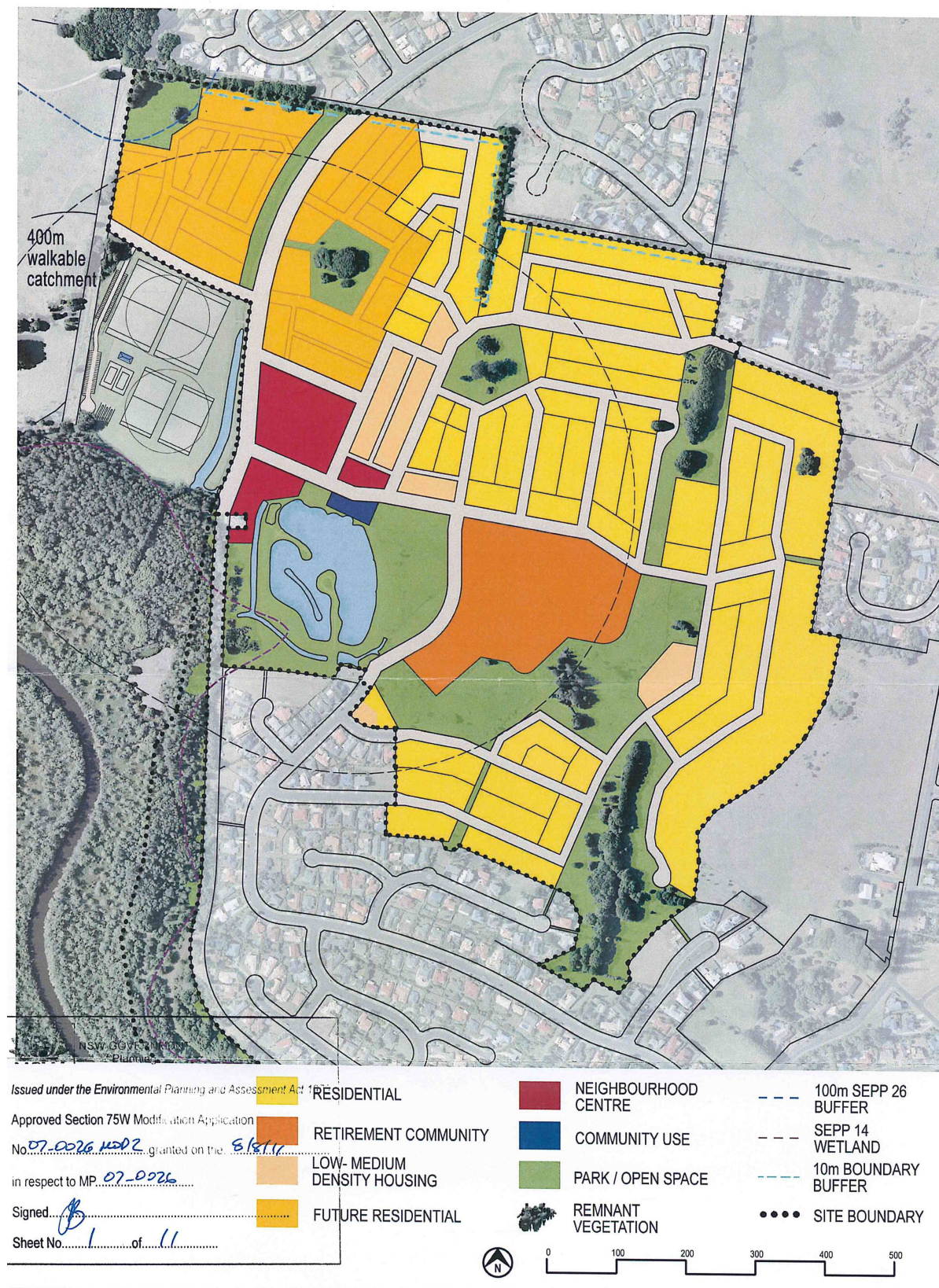


Figure 3: Approved Concept Plan (as modified) (Source: Modification Report Mod 2)

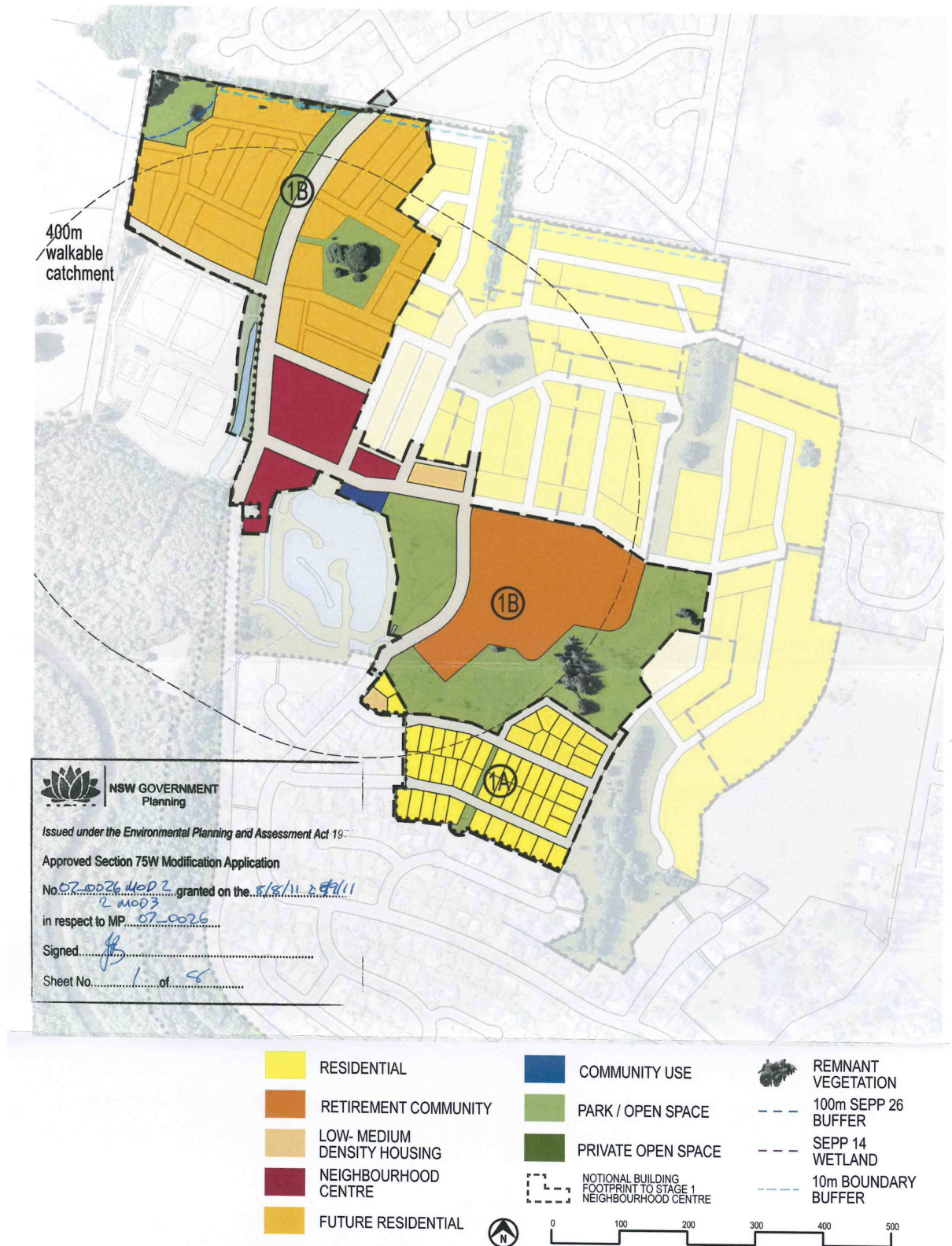


Figure 4: Approved Project Plan (as modified) (Source: Modification Report Mod 2)

2. PROPOSED MODIFICATION

2.1 Modification Description

On 23 July 2012, Geolink, on behalf of The Royal Bank of Scotland (the proponent), lodged an application to modify both the concept plan and project plan approvals (07_0026 Mod 4). The key changes proposed for the approved development are as follows:

- increasing the total area of conservation zone from 7.6ha to 17.3 ha;
- removing the 18 residential lots (approx 2 ha) with direct frontage to the conservation zone, such that the whole of this zone will now be bounded by road reserve;
- reducing the area of Super Lot 5 (the retirement village site) by approximately 0.5 ha, to enhance the connection from the conservation zone east to the conservation zone west;
- removing Super Lot 2 (the tavern site) (5,750 m²) to enhance connectivity of the conservation zone around the perimeter of the water quality pond;
- relocating Super Lot 4 (the community hall site) to improve the conservation zone connectivity; and,
- amending the staging of development to reflect removal of Super Lot 2 and reduction in the number of residential lots.
- deleting the requirement to be consistent with the Pacific Pines Design Guidelines for development controls on the site
- amending the lapsing date of the concept plan approval

As a result of discussion and negotiations with the proponent, the extent of the conservation zone was reduced to 14.07ha in response to concerns raised by council that there would be a conflict between council maintenance activities for the existing water quality control pond in the west of the site and the objectives of the conservation zone. This resulted in an area of approximately 2.6ha of conservation zone surrounding the pond being identified and managed as council operational land.

The proposed modified layout is shown in **Figure 5**.

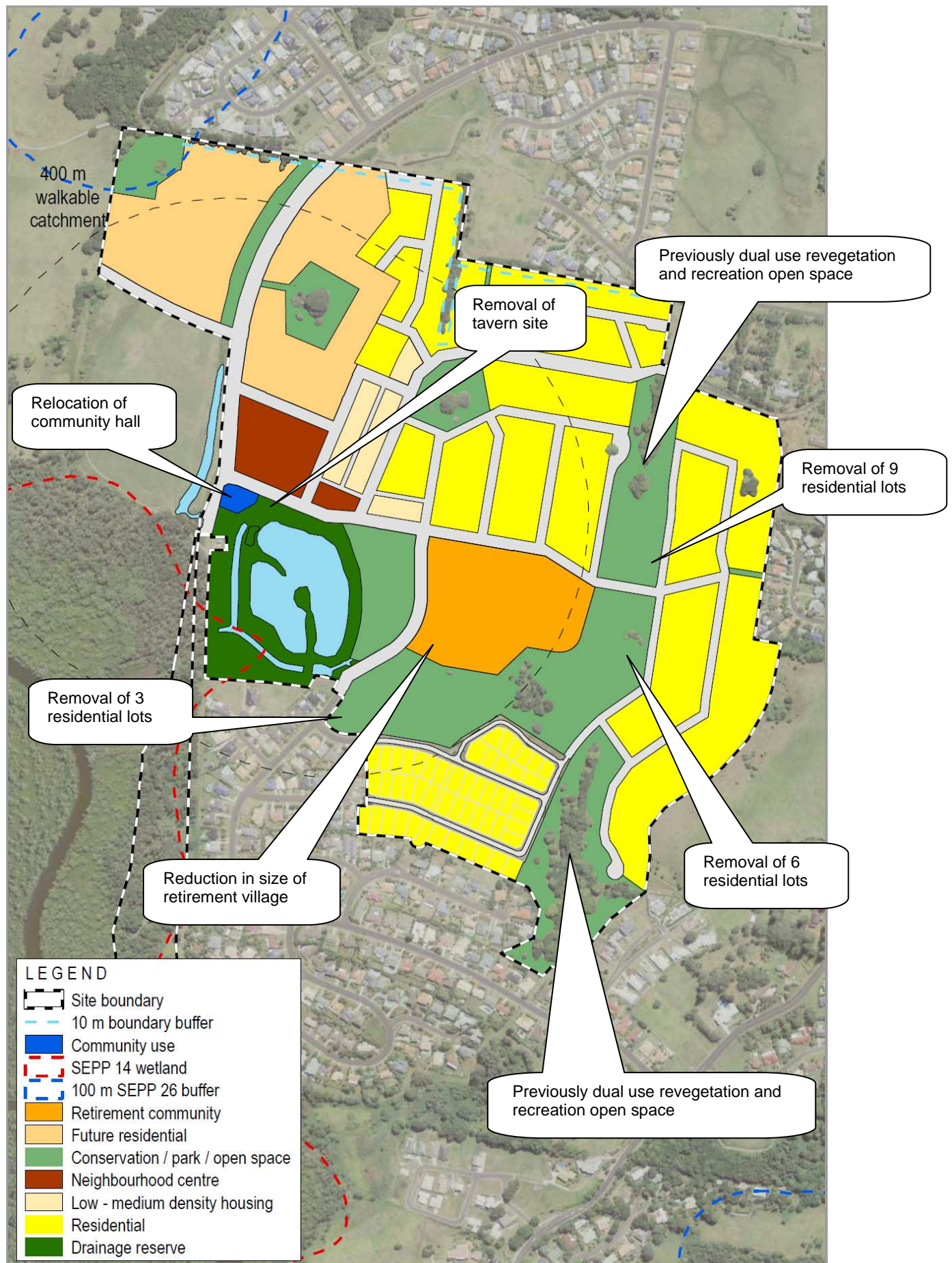


Figure 5: Proposed Modified Concept Plan (Source: Modification Report Mod 4)

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

The Minister has delegated his functions to determine section 75W modification requests to the Director, Metropolitan and Regional Projects North, 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.

While the council did object to the removal of the note regarding the 2:1 offset ratio, council did not object to the modification as a whole. The proponent has not made a political disclosure statement. No public submissions in the nature of objections were received. The Director, Metropolitan and Regional Projects North, is therefore delegated to determine the modification request.

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 and the Office of Environment and Heritage. Submissions were received from each of these agencies and a summary of each is provided below.

No submissions were received from the general public or special interest groups.

A summary of the issues raised in submissions is provided below.

4.2 Public Authority Submissions

The issues raised in the submissions are summarised below.

Ballina Shire Council does not support the removal of the requirement to achieve a 2:1 offset ratio for the loss of EECs and threatened species on the site as set out Term B2 of the concept plan, but does not object to the modification as a whole. Council is strongly of the opinion that the removal of the 2:1 offset ratio from Term B2 of the concept plan approval will significantly undermine the environmental safeguards incorporated into the project to date. Council also raised concern about the following:

- the relationship between Modification 4 to approved Modification 2 is unclear
- inclusion of dual use / revegetation areas into the conservation zone will have impacts on the provision of public open space
- inconsistencies in representation of the conservation zone across various plans

- inconsistency between information presented to the Department of Sustainability Environment Water Population and Communities (SEWPaC) and included as part of Modification 4 to the department (SEWPaC have a role as HJG is listed as a vulnerable species under the Environment Protection and Biodiversity Conservation Act 1999)
- mass planting /translocation proposed is an unsustainable outcome, as it will place an unreasonable burden on council to maintain the site in perpetuity
- Council objects to the establishment of HJG habitat and the extension of the conservation zone to include operational land that is adjacent and surrounding the existing stormwater pond
- the proposal to SEWPaC regarding the retention of HJG is inconsistent with the Landscape Plan currently before the department
- Council strongly supports the removal of all infrastructure from the conservation zone, however, this commitment does not form part of the modification request
- Construction Certificate plans for Stage 1B depict major stormwater infrastructure within the conservation zone. In this respect, areas nominated as HJG retention areas with the Plan submitted to SEWPaC are also nominated as stormwater detention areas within the plans currently before council
- the Modification Report fails to provide commentary to justify proposed changes to the staging of development

Office of Environment and Heritage supports the expansion of the conservation zone noting however, that OEH did not support Modification 2 which removed the off site offsetting requirements and as such the current approved development will not consider or require offsetting for the impacts to threatened species and ecological communities outside of the conservation zone. A further submission was made that raised the following issues:

- the conservation zone expansion is not sufficient in size to adequately compensate for the threatened species habitat proposed to be removed (approximately 3ha)
- the approach to the provision of compensation on the site has changed from translocation and habitat modification to ecological rehabilitation of the conservation zone, as such the applicant's previous advice regarding the ability to offset 2:1 into the conservation zone is unlikely to be achievable
- without adequate expansion of the conservation zone to compensate/offset damage to threatened species habitat, OEH will recommend alternative compensatory works in the development of the CZMP - the aim of those compensatory works would be to make up any short comings in the area of the conservation zone and, as indicated in Mod 2, may include off-site compensatory works

The Commonwealth Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) was not formally consulted on the modification, however, the department liaised with SEWPaC in relation to the management and protection of HJG to ensure that the proposed modifications to the Commonwealth EPBC approval in relation to HJG were compatible with the modified concept plan and project applications. The department also co-ordinated a joint meeting between the SEWPaC, Ballina Shire Council, OEH, the department and the proponent to discuss the proposed changes to the development layout and the proposed management of threatened species and EECs across the site.

4.3 Public Submissions

No submissions were received from the public.

The department has considered the issues raised in the public agency submissions in its assessment of the proposed modification.

5. ASSESSMENT

The department considers the key issues for the proposed modification primarily relate to the following matters:

- expansion of the conservation zone
- compensation strategy and compensation ratio
- maintenance of existing hydrological regime
- contingency measures and ongoing wetland management
- location of stormwater and sewer infrastructure
- design guidelines, and
- lapsing of approval.

5.1 Expansion of the Conservation Zone

The primary aim of the modification request is to expand the conservation zone in order to facilitate an on-site compensation strategy to offset the loss of Freshwater Wetland EEC, Hairy Joint Grass (HJG) and Square Stemmed Spike Rush (SSSR), and achieve the goal of establishing a viable self-sustaining ecosystem, as required by Term B2 of the modified concept plan approval.

The expanded conservation zone contains significant areas of threatened species and endangered ecological communities (EECs), including:

- 4.4ha of Freshwater Wetland EEC
- 2.4ha of Littoral Rainforest EEC
- 0.3ha of Swamp Sclerophyll Forest EEC
- 3.85ha of HJG habitat which includes 1.4ha of actual HJG present on the site (vulnerable under TSC Act 1995 and EPBC Act 1999), and
- 2.0ha of SSSR (endangered under TSC Act 1995).

The proposed expansion of the conservation zone from 7.6ha to 14.07ha, includes 5.6ha of land that was originally marked as “*dual use revegetation and recreation space*”; specifically, the north/south littoral rainforest corridor (refer **Figure 5**). In addition, around 2 ha of developable residential land has been converted to conservation zone, resulting in the loss of 18 residential lots. A previously approved ‘Super Lot’ for the tavern site located north-west of the water quality control pond has also been removed, and an approved ‘Super Lot’ for the community hall site has been relocated in its place to improve connectivity around the north of the pond, as shown on **Figure 5**.

In addition to the physical increase in size of the conservation area, the conservation focus has also been refined across the conservation area to focus more on the regeneration of important ecosystems utilising traditional rehabilitation techniques and increasing connectivity between important vegetation remnants within and adjacent to the site. The intention of this is to clearly designate conservation as being the key function / outcome for this wider area.

The proponent has also requested that the requirement for pedestrian linkages across the conservation zone be removed from the concept plan.

While council is supportive of an expansion of the conservation zone, council was concerned that the provision of public open space may be compromised as a result of the inclusion of the dual use revegetation and recreation space in the north-east and south-east corners of the development site into the conservation zone. Term A1 of the concept plan approval describes the project as having 2.1 ha of open space. Council also raised concern that there would be a conflict between maintenance activities required on council operational land surrounding the existing water quality control pond and the proposed management activities in the conservation zone, particularly HJG in the north western corner of the conservation zone. Regular slashing and vehicle access to this area would be detrimental to the health of any translocated plants. Council considered it unacceptable to be restrained by having drainage infrastructure and access pathways abutting the conservation zone.

As such the proponent revised the conservation zone plan, removing the area around the pond from the nominated conservation zone area and identifying this 2.6ha of land as council operational land. This has resulted in a final overall conservation zone area of 14.07ha.

OEH supports the expansion of the conservation zone as it will provide protected habitat for threatened species and ecological communities.

There was no objection to the removal of the pedestrian linkages across the conservation zone.

Department's Consideration

The modified layout provides for a total of 27.6 ha of passive open space that is proposed to be dedicated to council. While the inclusion of the open space / revegetation areas into the conservation zone reduces the total area of public open space on the site, the actual area accessible to the public as identified in the approved layout has not been affected. Previously, only Areas 3 and 5 (as shown on **Figure 6**) were specified as being accessible public open space. These areas have not been modified as a result of the revised layout. Therefore, the project description in regards to public open space does not need to be modified.

Public access will be restricted from the Ballina Nature Reserve, drainage reserve and conservation zone (refer **Figure 6**). While these areas will not be accessible to the public, they will provide significant natural features with aesthetic attributes and environmental benefits for the community.

The exclusion of council operational land from the conservation zone has resulted in a reduction in the overall extent of the conservation zone as originally proposed as part of this modification by 2.6 ha. However, there is still an overall net increase in the size of the conservation zone of 6.47 ha over the approved Modification 2 concept plan layout. This is seen as a positive environmental outcome and is supported by the department.

Notwithstanding, the department was concerned that the expansion of the conservation zone into the areas previously identified as '*dual use revegetation and open space*' will mean that there will be no buffer between some of the residential lots in Stages 1A, 2 and 5 that are directly adjacent to the conservation zone. This is not ideal as often this leads to dumping of rubbish, weed growth and general inappropriate usage of the conservation zone abutting the residential allotments. It was therefore recommended that the perimeter road be extended in these areas to create a buffer between the residential development lots and the expanded conservation zone. This was rejected by the proponent on the basis that, in the case of Stages 1A and 5, the extension of the road adjacent to these areas would create very short dead ends with limited public benefit. Furthermore, the provision of a road adjacent to Stage 2 would provide a connection point to Stonyhurst Road, potentially creating a 'rat run', increasing through traffic in this part of the site.

To address the issue, the proponent proposes a 1.8m high transparent fence to establish a boundary between public and private property. This would encourage surveillance of the conservation zone and discourage residents from throwing rubbish over the side or rear fence as the rubbish would be visible from their own property.

The department accepts the proponent's reasons for not providing an extension of the perimeter roads to create a buffer between the conservation zone and residential development in Stages 1A, 2 and 5. A condition of approval requires perimeter fencing in this area to be transparent and constructed to the satisfaction of council prior to the issue of a subdivision certificate for the relevant stages.



LEGEND

- Approved concept layout
- Open space

- 1: Dedicated to Council as Public Reserve: Stage 1B, accessible to public (0.9 ha)
- 2: Dedicated to Council as Drainage Reserve: Stage 1B, not accessible to public (0.7 ha)
- 3: Dedicated to Council as Public Reserve: Details to be determined as part of subsequent DAs, accessible to public (2.0 ha)
- 4: Dedicated to Council as Public Reserve (conservation): Timing as per EMP, not accessible to public (14.1 ha)
- 5: Dedicated to Council as Public Reserve: Stage 1A, accessible to public (0.1 ha)
- 6: Dedicated to Council as Drainage Reserve: Timing as per DA 2002/333, not accessible to public (5.1 ha)
- 7: Dedicated as addition to Ballina Nature Reserve: Timing to be determined, not accessible to public (4.7 ha)

Figure 6: Open Space Plan (Source: Response to Submissions, Mod 4)

Overall the department considers that the expansion of and shift in conservation focus for the conservation zone is commendable and results in a significant improvement in conservation outcomes on the site. The revised approach will facilitate the establishment of an integrated suite of ecosystems, minimise maintenance requirements through the establishment of a viable self-sustaining system and enhance the value of the ecological communities on the site. The proposal has been formalised through the on-site compensation strategy that forms part of the Conservation Zone Management Plan, as required by term B2 of the concept plan approval. This is discussed further in Section 5.2 below.

5.2 Compensation Strategy and Compensation Rate

In the current modification request the proponent has requested deletion of the note in Term B2(5) – Conservation Zone Management Plan, that states the following:

“Note: the proponent has indicated that an offset ratio of at least 2:1 is achievable on the site”.

The note refers to offsetting for the loss of Freshwater Wetlands EEC, HJG and SSSR.

In its assessment of the second modification of the project the department recommended that a revised approach be taken towards the compensation for the loss of habitat and species on the site. This was on the basis of uncertainty with the actual amount of habitat lost due to its continual change (due to the seasonal nature of the species) as well as the uncertainty over the exact area of land available within the conservation area for compensatory works. That is, within the conservation area, there could 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 recommended the deletion of term B2 - *Conservation Zone Management Plan* of the concept plan approval which specified a 2:1 compensatory ratio and instead recommended that as part of the CZMP, a requirement for the preparation of an On-site Compensation Strategy. That is, compensation for the loss of habitat is still required however, rather than specifying a ratio and requiring off-site compensation, the strategy will focus on identifying the goal of the compensation, such as maintaining a viable, self-sustaining ecosystem on-site; methods for compensation; and monitoring of the methods with a view to indicating whether the works have been a success. Notwithstanding, the department acknowledged that the proponent may be able to achieve 2:1 compensation ratio on-site, and, rather than mandating this through a condition of approval, it was simply noted in the modified term B2 of the concept plan approval. It is the removal of this note that is now the subject of the current modification.

OEH understands that the note regarding the 2:1 offset ratio may have been a previous reference to OEH's recommendation and the department's condition for offsetting impacts that existed as part of the originally approved development. OEH acknowledges that this requirement was removed as part of Modification 2, despite OEH and council objecting to its removal. OEH is of the view that a 2:1 offset is still required to offset the damage to the threatened species and ecological communities outside of the conservation zone. Additionally, OEH considers that the proponent's advice that a 2:1 offset could be achieved on site was based on the proposal to translocate significant areas of HJG and create artificial wetland habitat, not through traditional rehabilitation techniques, as is now proposed through the CZMP, and considers it unlikely the 2:1 offset can now be achieved. OEH has therefore recommended alternative compensatory works through the CZMP. The aim of those compensatory works would be to make up any short comings in the area of conservation zone and, as indicated in Modification 2, may include off-site compensatory works.

Council strongly objects to the removal of the note and is “strongly of the opinion that the removal of the 2:1 offset ratio from Condition B2 will significantly undermine the environmental safeguards incorporated into the project to date”. Council also comments that whilst the department's assessment of Modification 2 concludes that seasonal fluctuations are responsible for species distribution movements on site, it is council's view that the different survey methods and variations in survey effort undertaken throughout the historical lifespan of the project by the applicant is largely responsible for the variations in each species' distribution.

Department's Consideration

The department's decision to remove the requirement for a 2:1 offset ratio in Modification 2 was partly based on the fact that the proponent had indicated a 2:1 offset for the loss of threatened species and EECs was achievable on the site as a result of the expansion of the conservation zone. Hence the note was included in Term B2. As it was not intended that this would be enforced, it was only written as a note. The department's decision was also based on the fact that there was

uncertainty about 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. Therefore, the manner in which this note is written does not require a 2:1 offset to be provided, it is simply noting that it may be achievable.

Since the determination of Modification 2 the proponent has undertaken additional threatened species survey work throughout the site. Therefore, some of the uncertainty over threatened species lost and the area of proposed compensatory works has been resolved.

To inform its assessment of this issue, the department requested that the proponent provide sufficient information to demonstrate what kind of offset ratios were achievable on the site for all threatened species and EECs impacted by the development. The following table shows the overall impacts of the proposed modified development.

Species / Community	Area within site (ha)	Area to be removed (ha)	Area retained in CZ (ha)	Onsite Compensation (retained: removed)
HJG	3.56	1.85	1.40	0.76:1
HJG Habitat	7.25	3.39	3.85	1.14:1
SSSR	2.79	0.69	2.00	2.9:1
Freshwater Wetland EEC	5.17	0.77	4.40	5.7:1
Littoral Rainforest EEC	3.87	0	2.4	NA
Swamp Sclerophyll EEC	0.3	0	0.3	NA

It is clear that the on-site compensation strategy will achieve a 2:1 off-set ratio (retained: removed) for SSSR and Freshwater Wetlands. While the offset provided for the loss of actual HJG on the site is only 0.76:1, the ratio of suitable HJG habitat to be removed versus retained and protected is 1.14:1. The conservation zone rehabilitation strategy ensures that 3.85ha of suitable habitat will be retained in the conservation zone and also ensures that a viable population of HJG persists within the conservation zone. SEWPaC have advised that they are satisfied with this strategy and the proposed provision of offsets.

There are also areas that are suitable for revegetation to Littoral Rainforest EEC incorporating HJG in slightly elevated areas adjacent to areas of existing HJG. It is, however, expected that the edges of the revegetated area will expand as the vegetation matures, leading to an overall decrease in the open area. This, in turn, will impact on the area of HJG as less light reaches the ground. The conservation zone rehabilitation strategy as proposed is illustrated in **Figure 7**.

While the ratio analysis above indicates that there is a significant loss of HJG on the site, HJG in particular has a scattered and variable distribution over time and across the site, and it is therefore difficult to quantify. The department is satisfied that with the conservation and enhancement of a significant area of existing threatened species habitat on the site, particularly suitable habitat for HJG, HJG will persist on the site. This may mean the reduction in the distribution of HJG and variations in the number / extent of other threatened species across the site but that the habitat management and proposed funded research on the threatened wetland species' ecology (as required by Term B3 of the concept plan approval), would ultimately lead to better long term conservation outcomes. Details regarding management of the site and details of contingency measures have been provided within the CZMP.

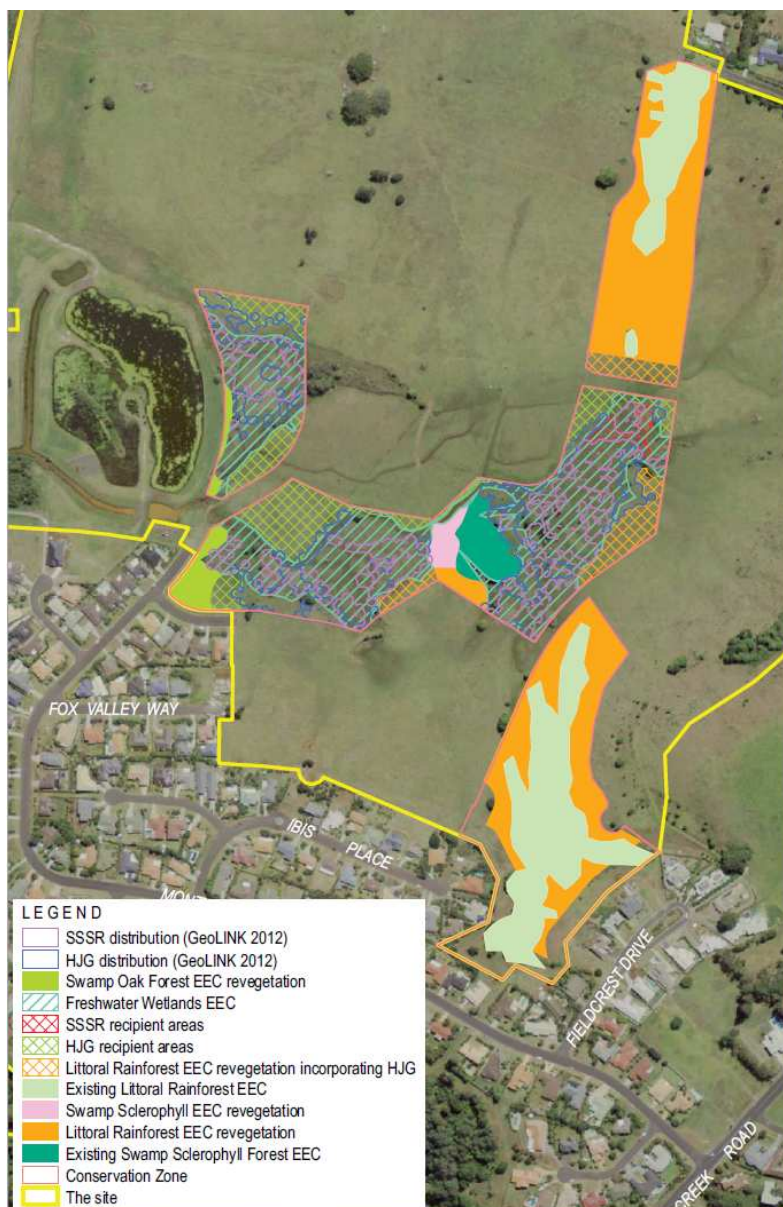


Figure 7: Conservation Zone Rehabilitation Strategy (Source: CZMP, December 2012)

OEH's "Principals for Biodiversity Offsets in NSW" state:

'Reconstruction of ecological communities involves high risks and uncertainties for biodiversity outcomes and is generally less preferable as an offset than other management strategies, such as enhancing existing habitat'.

The department is therefore supportive of a more traditional rehabilitation approach within the conservation zone to enhance and protect existing habitats, rather than mass translocation and recreation of habitat as previously proposed.

The department is satisfied with the proposed conservation and enhancement of a significant area of existing threatened species habitat on the site, with management of the site and details of compensation provided within the CZMP.

In addition, the proponent's Statement of Commitments includes a commitment to transfer the land to council for consideration for inclusion into the Environmental Protection Zone 1(a) – Wetlands pursuant to the Ballina LEP (or E2 Environmental Conservation under the draft Ballina LEP 2010). This zoning is supported across the entire conservation zone to ensure the ongoing protection of this area.

5.3 Maintenance of Existing Hydrological Regime

Maintenance of the existing pre-development hydrological regime is critical to the viability of the on-site freshwater wetland ecosystem and on-site offsetting arrangements agreed to by the department as part of the second modification to the approval. The department, OEH and council expressed concern that the proposed development may change the hydrology of the site which may impact on the habitat of threatened species and ultimately the proposed on-site offsetting arrangements, which are the subject of the current modification.

Term B2(7) of the concept plan approval requires a Water Management Plan (WMP) that addresses the manner in which the hydrological regime of the Freshwater wetlands EEC and associated threatened species will be maintained throughout the life of the project. This is required to be submitted prior to the issue of a Construction Certificate for Stage 1B of the approved subdivision as part of the Conservation Zone Management Plan (CZMP), pursuant to Condition C1 of the project approval.

While it is not necessary to approve the WMP as part of the current modification, the department considered it beneficial for the draft WMP and over-arching Environmental Management Plan (EMP) for the site to be submitted for review as part of the current modification to address concerns raised by council and OEH regarding the hydrology of the site and the impacts on the on-site compensation strategy proposed as part of this modification. The proponent was satisfied with this approach and submitted the CZMP (which contains the WMP) and the EMP to the department for review.

Council advised that, in their view, the WMP does not address the following:

- the impacts of filling of land on the site, construction of roads and cut and fill
- protection of the long-term hydrological regime throughout the life of the project
- protection of seepage areas in Stage 1A, and
- sufficient detail to confirm that the proposed stormwater treatment train will not alter the existing hydrology of the catchment

The department, council and OEH raised the following specific concerns about the modelling undertaken in the WMP:

- the MEDLI model used for estimating the groundwater recharge characteristics of the pre-developed site and estimating the volume of water required to maintain the saturation level of the seepage zones in the WMP was inappropriate, and
- it was unclear whether modelling of the pre-development and post-development hydrological regime addressed the hydrological impacts across the whole of the developed site, or just Stage 1A.

The proponent maintains that the use of MEDLI is appropriate for the purposes of the assessment of site hydrology and confirmed that the WBNM and MUSIC modelling was undertaken for the whole of the developed site, not just Stage 1A. However, the detailed design to accommodate deep drainage or seepage devices relates to the development of Stage 1A only and the designed infiltration device replaces and replicates the function of the infiltration area affected by the development of Stage 1A. Similar detailed design is proposed to be undertaken for each subsequent stage of the development with the lodgment of subsequent development applications.

Department's Consideration

To further investigate the issues relating to the hydrological modelling, the department engaged an independent expert hydrologist, BMTWBM, to review the WMP. The hydrologist confirmed that the WMP does consider all aspects of the catchment that would impact upon the hydrology for the life of the project, not just for Stage 1A, consistent with the requirements of Term B2 (7) of the concept plan approval. However, the hydrologist agreed that, in his opinion, the model used, MEDLI, was not appropriate for modelling the groundwater characteristics at the site as it was developed for modelling effluent reuse schemes and effluent irrigation, not wetland dynamics. The MEDLI model does not adequately represent the groundwater movements that may be of most importance to the Freshwater Wetland EEC at the subject site. More appropriate modeling could be achieved

through the use of the MUSIC stormwater model. The review identified a number of other issues relating to the modelling approach and assumptions.

The department's independent hydrologist also advised that the MUSIC modelling undertaken by the proponent indicates that it is proposed to use a treatment train approach to mitigate against the impacts of the development using biofiltration and/or infiltration systems. This is agreed as being a suitable methodology to use. However, the MUSIC modelling would need to be revisited to ensure the final detailed design of these and other stormwater management structures across the site are appropriate in terms of water quantity and water quality. As the concept plan approval requires all future applications for development on the site to include a detailed stormwater management plan for the proposal (Term C12 of the concept plan approval) some refinements may be made to the stormwater system as part of future stages of development. It would therefore be prudent to also require a review and update of the WMP concurrently with finalisation of the detailed design for the stormwater system for each development stage.

Therefore, as a further measure to ensure the ongoing health of the wetland, a new requirement for all future applications on the site requires the proponent to review and update (as appropriate) a revised WMP with all future development applications for the site.

The current approval requires the submission of the final WMP prior to the issue of a construction certificate for Stage 1B. Based on the above concerns raised by the independent review and the need to address Term B1(6) of the concept plan approval, the department is of the opinion that the revised WMP should be submitted as part of the EMP prior to the issue of a Construction Certificate for Stage 1A. The department therefore proposes to modify Term B1 on the concept plan approval to require submission and approval of a final WMP as part of the final EMP. This is required to be submitted and approved by the department prior to the issue of a construction certificate for Stage 1A, in accordance with Condition B1 of the project approval. Council is supportive of this approach. The proponent has agreed.

The department is of the opinion that this will also more appropriately address Term B1(6) of the concept plan approval which requires an EMP that, amongst other matters, details the methods to be used to protect all threatened flora and fauna habitat and EECs throughout the life of the project. This includes demonstrating that the post-development hydrological regime mimics that of the existing natural state as changes in this regime would potentially impact on the threatened flora and fauna habitat and EECs in the conservation zone.

For the purposes of the current modification, the department is satisfied that, with the existing and modified conditions of approval, the proposed mitigation measures across the site will be adequate to maintain the existing hydrological regime for the freshwater wetland and protect the on-site offsetting arrangements. The department is currently liaising with the proponent to revise the WMP to satisfy B1 of the project approval.

5.4 Contingency Measures and Ongoing Wetland Management

Contingency Measures

In discussions between council, OEH, SEWPaC and the proponent it was agreed that should the conservation zone compensation strategy fail, a suite of tiered contingency measures should be proposed. These were to be outlined in the CZMP, to be submitted in accordance with Term B2 of the concept plan approval and C2 of the project approval.

Although the CZMP was not required to be submitted to the department until prior to the issue of a construction certificate for Stage 1B, it was agreed that the draft CZMP was likely to address some of the concerns regarding this modification request and as such the proponent agreed to submit the draft CZMP for review as part of the considerations for this modification.

The proponent proposed the following contingency measures in the CZMP, should the on-site compensation strategy fail:

1. adaptive management, including a modification to vegetation management techniques

2. retention of genetic material, including a program of seed collection and propagation for HJG and SSSR for re-establishment on-site or offsite
3. research opportunities to investigate ecology, enhancement and translocation of SSSR, HJG and Freshwater Wetland EEC to make a monetary contribution of \$50,000 to undertake further research into the ecology, enhancement and translocation of HJG.

Department's Consideration

The department considers these measures are insufficient to address failure of the compensation strategy for the following reasons:

- it only addresses HJG and SSSR and not the Freshwater Wetland EEC, other than further research
- Term B3 of the concept plan approval already requires a monetary contribution of \$30,000 per year for a period of three years to compensate for the loss of HJG habitat and Freshwater Wetlands EEC, and
- there is insufficient detail regarding adaptive management measures for the Freshwater Wetland if the hydrology is changed. As such, it does not satisfy Term B2(5)(e) of the concept plan approval which requires details of contingency measures such as off-site compensation measures, bonding arrangements and the like.

The department therefore requested that the proponent expand the suite of contingency measures to include off-site offsets (like for like) or biobanking (ecosystem or species credits) as part of the suite of contingency measures to address the potential failure of the on-site compensation strategy.

The revised CZMP does not provide details of contingency measures for failure of the Freshwater Wetland EEC compensation strategy and does not address the requirements of Term B2(5) of the concept plan approval. The department has requested that the CZMP be revised to further address this. This will need to be approved prior to the issue of a Construction Certificate for Stage 1B in accordance with the project approval.

Long-Term Freshwater Wetland Management

Rehabilitation of the freshwater wetland will be achieved by annual slashing and brushcutting in target areas supporting HJG and SSSR during the dormant period (winter) to stimulate seedling germination and vegetative spread. Studies by ECOS Environmental (2004) at Koala Beach near Pottsville and the Ballina Bypass Project have shown that persistence of HJG in areas of previously cleared pasture is dependent on ongoing biomass removal by grazing of stock, slashing or brushcutting.

OEH, council and the department believe that an ongoing slashing regime to maintain areas of HJG and SSSR is not likely to be sustainable once the conservation zone is dedicated to council due to lack of resources. OEH is of the opinion that a greater environmental benefit would be achieved from the grassland areas being rehabilitated to their pre-cleared extent within the conservation zone, rather than slashing to mimic the artificial environment of grazing land.

Department's Consideration

As handover of the conservation zone area to council is not likely to occur for a number of years (probably at least 10 to 15 years from now), the department does not object to the proponent undertaking an ongoing slashing regime to establish areas of translocated HJG and to maintain areas of existing HJG habitat in the short-term. The department accepts that after this time, council may decide not to continue with this regime and as such, the extent of HJG on the site may decline.

Clearing of the land, as suggested by OEH, is not supported as HJG is a protected species under Commonwealth legislation, and the Commonwealth has not agreed to such an approach.

The main elements that the department considers important in terms of the management and success of the conservation zone as a whole and to ensure a viable self-sustaining ecosystem, are

maintenance of the hydrology and reduction of exotic grass species that the threatened species are competing with and no encouragement of expansion of forested wetland which may eliminate potential habitat for HJG and SSSR. It is considered that if the WMP is revised as discussed in Section 5.3 of this report, and the proposed weed management strategy and management actions with the CZMP are implemented, the department is satisfied that these key elements will be satisfactorily addressed.

5.5 Location of Sewer and Stormwater Infrastructure

There was some concern that the plan of the proposed stormwater system included a stormwater detention basin and a gross pollutant trap within the conservation zone area, despite the proponent stating that no such infrastructure would be contained within the conservation zone.

The proponent has confirmed that all drainage / water quality infrastructure will be provided within the development areas, wholly outside of the conservation zone. The stormwater plan submitted as part of the modification application simply included a notation that the freshwater wetland area performs a detention function naturally, and that this function or characteristic would be unaffected by the development.

Similarly, the proponent has confirmed that the gross pollutant trap shown indicatively on the modification plans would be located within the adjoining road reserve, with the exact location to be determined as part of the detailed design of the adjacent stage of subdivision. The stormwater plan has been updated to clarify this and a modified term of the concept plan approval (B6(2)) ensures that all stormwater infrastructure is to be located outside of the conservation zone.

A small section of sewer rising main is proposed across the mid south-western corner of the HJG conservation zone which cannot be relocated due to site grades and connection points, as shown on **Figure 8**. As this will be installed underground the proponent considers it will not have any long-term impact on surface vegetation.

Department's Consideration

Mapping of HJG provided in the current CZMP indicates that there is no HJG or SSSR present along the alignment of the proposed sewer main. However, as there is potential suitable habitat for these species in this area, a condition of approval requires a ground survey to detect any presence of these species to be undertaken prior to commencement of works to lay the sewer main. Should SSSR or HJG be found to be present, the department recommends an additional condition of approval that restricts the laying of the sewer rising main to the winter months as during this time HJG and SSSR seedlings have not yet emerged, and as the winter months are traditionally the driest, heavy rainfall is less likely to create soil erosion and potentially deposit destructive weed seedlings into the habitat area. This is the same approach taken by the department for a residential subdivision at Survey Street in Lennox Head where a sewer main was laid across an area of HJG habitat.



Figure 8: Location of proposed sewer rising main (Source: EMP for SEWPaC)

5.6 Design Guidelines

The original Environmental Assessment approved as part of the original concept plan approval included a set of Design Guidelines. The guidelines were generally consistent with the form, content and controls outlined within Chapter 16 - Lennox Head of the Ballina Shire Combined Development Control Plan, however, it contained key exceptions relating to building height and setbacks, with alternate controls proposed for some precincts within the site.

The proponent now seeks to remove any approval for these guidelines such that they do not apply to the site and is satisfied that future development would be assessed against relevant council and State government development controls and consistency with the concept plan approval.

Department's Consideration

With the exception of the three storey retirement village the concept plan approval restricted heights on the site to the maximum allowable heights in the Ballina LEP 1987. Modification No.2 subsequently deleted the three storey height limit for the retirement village as height for this component of the development is now controlled by the Seniors Living SEPP, which includes provisions for affordable housing to facilitate its height. Height limits across the site are now controlled by Term B4 of the concept plan approval. As such, there is no need for the design guidelines with respect to controlling building heights on the site.

With respect to setbacks, key considerations in the original concept plan assessment report related to reduced setbacks specified in the design guidelines for development adjacent to the water quality control pond and for the design of residential development. As modifications to the concept plan have now deleted much of the development adjacent to the pond, and the proponent is satisfied that future residential development can be assessed against the existing local controls, the reduced setbacks as specified in the design guidelines are unnecessary.

The department also notes that council did not support the increased heights or reduced setbacks in the original concept plan approval and as such recommended that any concept plan approval issued by the department clearly indicate that the approval does not include the approval of the Design Guidelines.

As such, the department supports the proposed notation on Term A4 of the concept plan approval to exclude any approval of the Design Guidelines as part of the approved Environmental Assessment.

5.7 Lapsing of Approval

Term A6 of the concept plan approval and Condition A8 of the project approval specify that the approval shall lapse five (5) years after the date the approval is endorsed by the Minister, unless works the subject of any related application (other than works relating to Stage 1) are physically commenced, on or before that lapse date (being 12 November 2013). The proponent originally requested that the words in brackets – “other than works relating to Stage 1” – be removed. However, upon further consideration, the proponent sought a further extension of time to allow for uncertainties in the timing of subsequent approvals (construction certificates and approval of the CZMP, EMP and WMP) required before works could physically commence on the site. The proponent argues that there have been a number of unforeseen delays to commencement of works on site which have been out of its control, including the following:

- as the original proponent, Petrac, went into receivership at about the same time as the project was approved, there were significant delays (approximately two years) during which receivers arranged for the Royal Bank of Scotland to take on ownership of the site, in partnership with Lend Lease
- significant time has been invested in addressing the environmental issues on the site to ensure the environmental compensation strategies and requirements of local, State and Commonwealth governments are appropriately addressed.

Further to the above, the roadworks associated with Stage 1B of the approval will provide the internal connecting roads that will effectively ‘open’ the remainder of the site for the future development stages. The fact that the proponents have never sought to change the timing of these approved roadworks is an indication that they intend to complete the whole of the approved concept plan.

Department's Consideration

The wording of Term A6 and Condition A8 was considered appropriate at the time of the original concept plan approval (granted in November 2008), as the department wanted certainty that the development would proceed beyond Stage 1 in a timely manner. As Pacific Pines is a significant development in terms of housing supply for the Lennox Head area, the department wanted certainty that housing demand would be met. In addition, as development controls and governmental policy is continuously updated, the project design may not remain current, appropriate and reflective of the best use of the site, depending on future controls, if the remainder of the concept plan had not commenced construction within 5 years.

However, given the nature of the market at the moment and in the foreseeable future the department agrees that there will be insufficient time to commence Stage 2 by November 2013. The department agrees that Stage 1A and 1B are integral components of the approved development and will deliver a majority of the project's major infrastructure components. Furthermore, over the last few years the proponent has demonstrated their commitment to ensure the environmental aspects of the development are appropriately addressed as part of the first

stage of development. This has involved a significant amount of time and financial resources. It is agreed that it is appropriate that the lapse date to be tied to physical commencement of works on the site for any related application, rather than Stage 2.

The department therefore agrees to modify the wording of Term A6 of the concept plan approval and Condition A8 of the project approval to give the proponent an additional 3 years to commence the project (a lapsing date of 8 November 2016). Term A6 of the concept plan approval has been revised accordingly.

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 expansion of the conservation zone, the compensation strategy, the impacts on site hydrology and subsequent impacts on the proposed on-site compensation strategy, contingency measures and ongoing management of the conservation zone and the location of stormwater and sewer infrastructure.

The department is satisfied that the proposed expansion of the conservation zone and the on-site compensation strategy is commendable and will sufficiently address the loss of threatened species and EECs on the site. The department is satisfied with the proposed conservation and enhancement of a significant area of existing threatened species habitat on the site, with management of the site and details of compensation provided within the CZMP. The deletion of the note regarding a 2:1 offset ratio is supported as the requirement for a specific ratio has already been assessed and approved as part of Mod 2 of the project.

The assessment of impacts on site hydrology as outlined in the WMP has been found to be lacking, and as such the proponent has been requested to revise the WMP accordingly and submit this prior to the issue of a construction certificate for the first stage of development on the site. In this regard, the department can be satisfied that the pre- and post-development hydrology will be accurately modelled and appropriate mitigation measures adopted prior to any works commencing on site. Both the CZMP and EMP are to be revised in accordance with the recommendations of the department and relevant agencies and submitted in accordance with the conditions of project approval. Issues relating to compensation strategy contingency measures and ongoing wetland management are to be addressed as part of the revised CZMP and EMP to be submitted by the proponent in accordance with the relevant conditions of the approval.

Overall the department is satisfied with the proposed modification and recommends it be approved subject to modifications to the concept plan and project approval.