



## ASSESSMENT REPORT

### Section 75W

#### Settlers Ridge Concept Plan, Kempsey Local Government Area MP 10\_0103 MOD 1

#### 1. BACKGROUND

This report is an assessment of a request to modify the Settlers Ridge Concept Plan (MP 10\_0103 MOD 1). The request has been lodged by Planners North, on behalf of Eric Norman Developments Pty Ltd, Eastland Construction Pty Ltd, Machro Pty Ltd and Shannon Pacific Pty Ltd pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The modification request, as amended by the Proponent's Response to Submissions (RTS) seeks approval to increase the total number of residential lots from 137 to 138 and delete terms B1 to B3 and C3 on the basis that the revised biodiversity, bushfire and public open space assessments address the requirements of the above terms of approval. In addition, the request seeks approval to modify the staging definitions contained in Part B of the Concept Approval and undertake administrative modifications to terms A1, A2, A5, C2, C4, C12 and C13 and Statement of Commitments (SOCs) 1 and 5 to reflect the recommendations of the technical reports submitted to support the modification request.

#### 2. SUBJECT SITE

The subject site is located at South West Rocks approximately 37 kilometres (km) north-east of Kempsey and 65 km south of Coffs Harbour (see **Figure 1**). The site is bound by Keith Andrews Avenue and an established low density residential development to the north, low density residential development and Steve Eagleton Drive to the south-east, Spencer Creek Road to the south and bushland to the west (see **Figure 2**). The site is undulating with a visible ridge that extends through Lot 57.

The subject site is approximately 40.4 hectares (ha) and comprises Lot 31 and Lot 223 in DP 754396 and Lot 57 in DP 1117398.

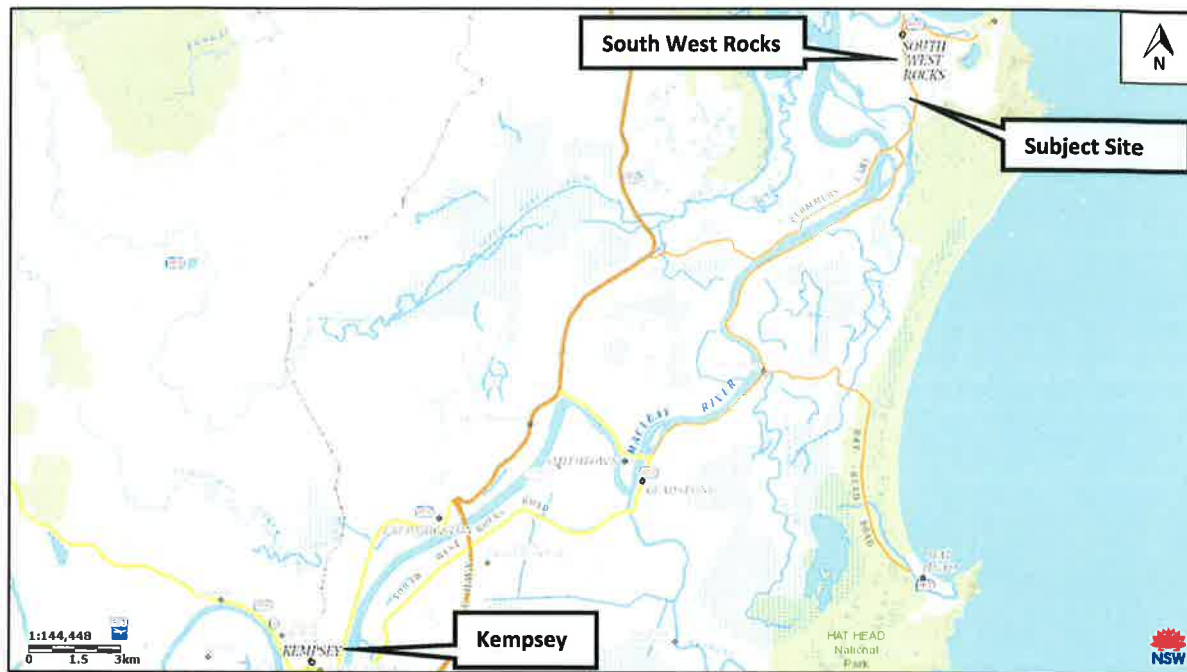


Figure 1: Site Location



Figure 2: Subject Site

### 3. APPROVAL HISTORY

#### 3.1 Part 4 Applications

On 26 September 2003, Kempsey Shire Council (Council) granted development consent for the subdivision of Lot 223 into 35 residential lots under DA T6-02-042.

On 30 October 2003, Council granted development consent to two separate development applications (DA T6-03-186 and DA T6-03-191) permitting the subdivision of Lot 57 into 46 residential lots.

The validity of all three consents was challenged in the NSW Land and Environment Court. The Court determined all three consents to be void and of no effect.

### 3.2 SEPP 71 Masterplan

A draft Master Plan (GRA 6323464) for the subdivision of Lot 57 was submitted to the Department in accordance with the requirements of SEPP 71. On 23 October 2008, the draft Master Plan was rejected by the Department on the basis it:

- would result in the overdevelopment of the site;
- would result in clearing of mature native forest vegetation; and
- did not consider the suitability of the site for future residential development.

### 3.3 Concept Plan

On 25 July 2013, the then Executive Director, Development Assessment Systems and Approvals approved a Concept Plan (MP 10\_0103) permitting:

- a conceptual subdivision layout for 137 residential lots;
- the establishment of on-site and off-site biodiversity offset requirements;
- a conceptual open space network; and
- a conceptual road network.

To date, no development applications have been lodged to facilitate the development approved under the Concept Plan.

## 4. PROPOSED MODIFICATION

On 3 October 2014, the Proponent lodged a section 75W modification request (MP 10\_0103 MOD 1) seeking approval to revise the lot layout, increase the number of lots from 137 to 140, clarify the public open space requirements and amend terms A1, A2 A5, B5, C2, C4, C12 and C13 and SOC's 1 and 5 to reflect the final biobanking calculations for the site and the recommendations of the revised bushfire management, traffic, geotechnical and Aboriginal cultural heritage assessments. The request also sought approval to delete terms B1 to B3, C3, C5 and C11 on the basis that the revised technical reports satisfy the above terms of approval.

The modification request was subsequently amended via the Proponent's RTS to reduce the number of additional lots sought (140 originally sought and 138 sought in the RTS) and remove the request to delete terms C5 and C11 on the basis that these terms are required to identify the information required to be submitted to Council with future development applications.

## 5. STATUTORY CONSIDERATION

### 5.1 Section 75W

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

The modification request has been lodged with the Secretary pursuant to section 75W of the EP&A Act. The Minister's approval is not required if the project, as modified, remains consistent with the original approval. As the modification request seeks to modify the terms of the approval, the Minister's approval is required.

The proposed changes constitute a modification, are within the scope of section 75W of the EP&A Act, and do not constitute a new application. Therefore, the Minister (or his delegate) has the ability to determine the modification request.

Consequently, this report has been prepared in accordance with the requirements of Part 3A of the EP&A Act and the *Environmental Planning and Assessment Regulation 2000* (EP&A Reg). The Minister (or his delegate) may approve or disapprove of the modification under section 75W of the EP&A Act.

## 5.2 Approval Authority

On 16 February 2016, the then Minister for Planning delegated the function to determine Part 3A modification requests to managers and directors who report to executive directors in the Planning Services Division where:

- the relevant local council has not made an objection;
- there are no public submissions in the nature of objection; and
- a political disclosure statement has not been made.

The Director, Industry Assessments may determine the modification request as Council has not objected to the modification request, the Proponent has not made a reportable political donation and no public submissions were received.

## 6. CONSULTATION

The modification request was made publicly available on the Department's website on 3 November 2014. The Department also referred the request to Kempsey Shire Council (Council), the Office of Environment and Heritage (OEH), the Rural Fire Service (RFS) and Roads and Maritime Services (RMS) for comment. Given the minor nature of the modification request, it was not publicly exhibited or notified to other agencies.

The Department received submissions from Council, RMS, OEH and RFS. These submissions are summarised below.

**Council** raised no objection to the application, however, it provided the following comments:

- the proposed open space is below Council's requirement of 1.13ha/1000 persons, and any open space calculations should exclude unusable areas such as the tree of Aboriginal significance and any buffer around it;
- the request does not identify how the tree of Aboriginal cultural heritage significance will be protected if proposed Lot 900 is used for recreation purposes;
- the modification request does not identify whether any access restrictions are required to accommodate the proposed modifications to the conceptual road network; and
- the Proponent should undertake additional network analysis to determine the extent of water, stormwater and sewer upgrades required to support the residential lots permitted under the Concept Plan.

The Department has reviewed Council's comments and agrees the Proponent should provide additional justification to support the proposed modifications to the public open space network and the deletion of Term C5, which removes the requirement for the Proponent to provide a traffic assessment with each future development application. The Department requested the Proponent address these issues in its RTS.

The Department has also reviewed the Council's comments in relation to servicing requirements and notes that terms C8 and C15 of the Concept Approval require the Proponent to prepare a detailed stormwater management plan and servicing strategy to demonstrate each residential lot can be serviced with appropriate infrastructure. As only one additional residential lot is proposed on-site, the Department does not agree additional network analysis is required to support the modification request.

**OEH** raised no objection to the application, however, it advised the Biobanking calculations for Phase 1 were incorrect. The Department requested the Proponent include the correct calculations in its RTS.

**RFS** objected to the application on the basis the proposed modifications to the subdivision layout do not meet the radiant heat value, road layout or fire trail requirements of *Planning for Bushfire Protection 2006* (PBP 2006).

The Department requested the Proponent address these matters in its RTS.

**RMS** did not object to the application, however it advised it does not support the deletion of Term C5 of the Concept Approval on the basis the revised traffic report does not:

- address the impacts of the revised road layout on the Trevor Judd Street/Steve Eagleton Drive intersection;

- identify flows at the Frank Cooper Street and Gregory Street intersection against the requirements of the *Austrroads Guide to Road Design Part 4A*;
- identify the upgrades required at the Frank Cooper Street and Gregory Street intersection; or
- address the impact of additional vehicles using Bruce Field Street.

In addition, RMS advised the Department should ensure the site is capable of being connected to external footpath and cycle paths prior to removing Term C13 of the Concept Approval.

The Department requested that Proponent revise its Traffic Report to address the matters raised by the RMS.

As previously outlined, no public submissions were received.

## 6.1 Response to Submissions

The Proponent provided an RTS on 18 December 2015. The RTS revised the lot layout and removed the request to delete terms C5 and C11 on the basis that these terms are required to identify the traffic and geotechnical assessments that must be submitted to Council with future development applications.

The RTS was made publicly available on the Department's website on 4 January 2016, and was referred to Council, the OEH, RFS and RMS for comment. Submissions were received from Council, OEH, RFS and RMS. These submissions are summarised below.

**Council** advised the RTS addressed its concerns in relation to the shortfall in public open space across the site and the protection of the Aboriginal scarred tree. However, it advised it had the following residual concerns:

- the Potential Pedestrian Movement Plan does not reflect the pedestrian access corridors in the locality, or the likely needs of future residents. To resolve this issue the Proponent should be required to provide pedestrian paths on one side of each road within the Concept Plan area;
- Council does not support the extension of Keith Andrews Avenue, or the construction of a pedestrian path on the section of Keith Andrews Avenue between Gregory Street and the first internal access road;
- Keith Andrews Avenue will need to be widened to service lots proposed 66 to 75 and extended to service lots 63 and 65 and there is no legal or practical requirement for this section of road;
- the Traffic Report should be amended to analyse the impacts of Bruce Field Street being used to access Gregory Street via Frank Cooper Street;
- the water quality controls for catchments 2, 3, 4 and 5 should be included in the Drainage Strategy Plan as part of this modification;
- due to site servicing constraints, a sewer reticulation strategy should be incorporated into this modification.

The Department has reviewed Council's comments and agrees the Potential Pedestrian Movement Plan should be revised to integrate with existing connections in the locality. This issue is discussed in further detail in **Section 7** of this report. In terms of the traffic and servicing issues, the Department has concluded:

- the road layout approved under the Concept Plan currently requires the extension of Keith Andrews Avenue and the modification request will not require further extensions to this road. In addition, Term C1 of the Concept Approval requires the Proponent to lodge an application with NSW Trade and Investment to purchase the Crown reserve prior to the lodgement of any development application that requires development within the Crown reserve;
- the modification request would result in the creation of one additional lot which will not generate any significant traffic impacts, or the need for additional servicing infrastructure beyond that contemplated under the current Concept Approval. In addition, terms C5 and C15 of the Concept Approval require the Proponent to:
  - provide traffic assessments with each development application to address the impacts of development on Gregory Street, Frank Cooper Street and Bruce Field Street;
  - prepare a Servicing Strategy with each development application to demonstrate how each lot will be provided with reticulated water, sewer and electricity; and
  - given the above, the Department has concluded additional servicing analysis is not required to support the modification request.



**OEH** advised the RTS addressed its outstanding concerns in relation to the biobanking credits applicable to the site.

**RMS** reiterated the need to identify and implement suitable measures to address the impacts of the development on the safety and efficiency of the road network. In addition, RMS advised appropriate connections should be provided to the existing pedestrian and cycle networks in South West Rocks.

**RFS** advised Terms A2, B2, C2, C3 and C4 require minor modification to address the RFS' residual concerns in relation to bushfire management. The Department has included the RFS' suggested changes to the above terms in the recommended Instrument of Modification.

## 7. ASSESSMENT

In its assessment of the modification request the Department has considered the following:

- the planning report and supplementary information provided to support the proposed modification (see **Appendix A**);
- the Department's assessment report for the original Concept Plan; and
- the agency submissions.

Based on the above, the Department considers the key issues for assessment are:

- modification of the subdivision layout;
- changes to the biobanking requirements;
- bushfire management;
- Aboriginal cultural heritage;
- pedestrian access; and
- open space.

These issues are discussed in detail below.

### 7.1 Modifications to the Subdivision Layout

The modification request seeks approval to revise the subdivision layout to:

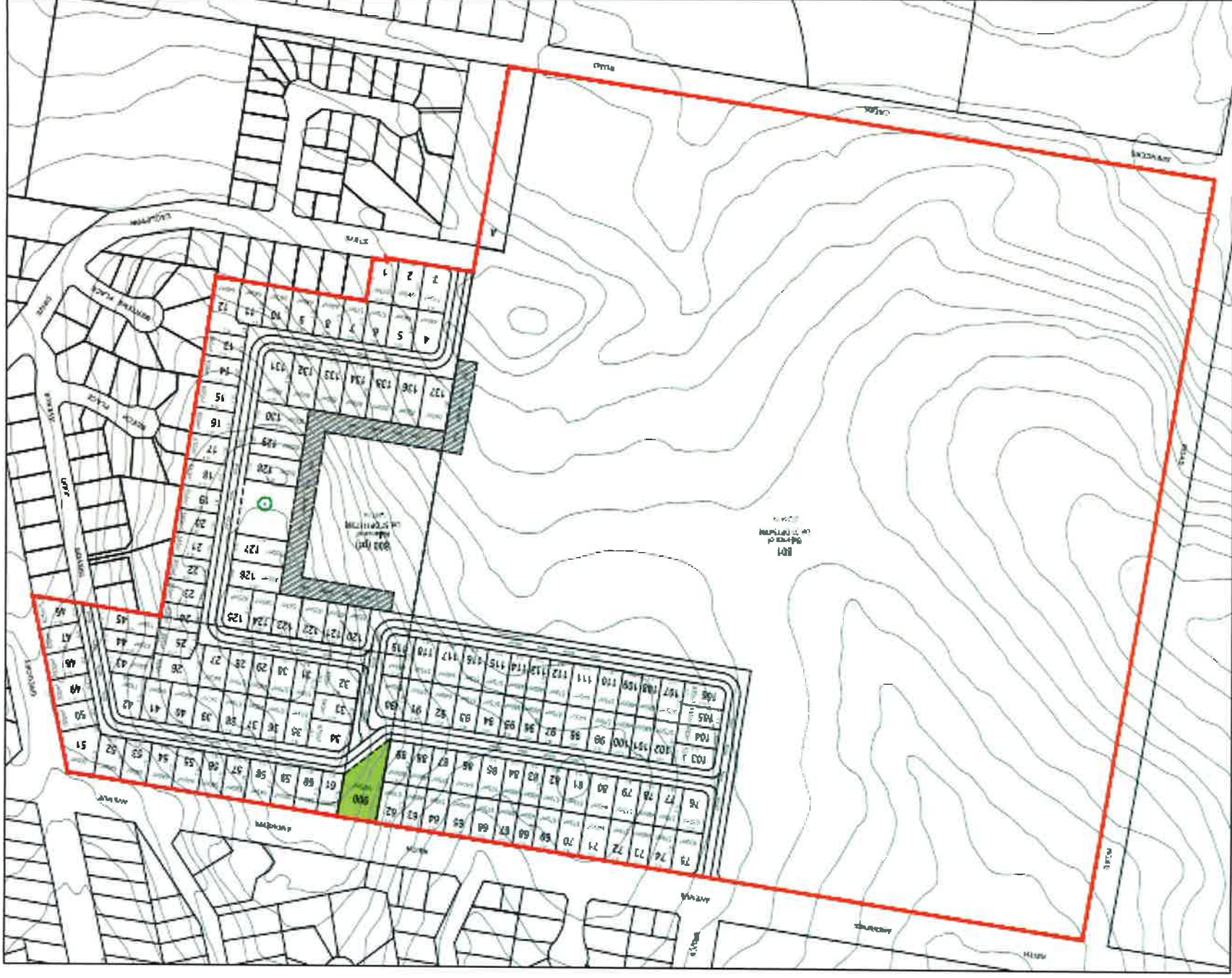
- remove eight lots that were not approved due to bushfire safety concerns;
- increase the total number of residential lots from 137 to 138 lots;
- reconfigure the internal road network and add a new connection to Keith Andrews Avenue; and
- consolidate the public open space and the Aboriginal scarred tree at one location.

The key changes to the approved plan of subdivision are shown in **Figure 3** and **Figure 4** overleaf.

The Department has assessed the changes to the subdivision layout and has concluded the proposed modifications are acceptable for the following reasons:

- the revised subdivision layout addresses the bushfire safety requirements of Term B2 and the public open space requirements of Term B3;
- the RFS has advised the proposed road network and APZs comply with the requirements of PBP 2006; and
- Council has confirmed that deficiencies in public open space can be addressed by way of a section 94 contribution at the development application stage.

Accordingly, the proposed modifications to the subdivision layout are supported.



**Figure 3: Approved Layout**

## 7.2 Biobanking

The modification request seeks approval to delete Term A5 3) and Term B1 on the basis the biobanking calculations submitted with the modification request satisfy the requirements of these terms of approval. In addition, the request seeks approval to insert new Term A5 3) to specify the maximum disturbance area within Phase 1, and the timing for the retirement of the biobanking credits for phases 1 and 2 of the development.

The Department has reviewed the revised biobanking calculations in consultation with the OEH and has concluded 31 Brush-tailed Phascogale species and 116 ecosystem credits must be retired prior to the commencement of works within Phase 1 of the development. The Department notes the Proponent's RTS proposes to retire the above credits prior to the creation of the lots in Phase 1, which is consistent with the intent of Term A5 of the Concept Approval. As such, the Department is satisfied the proposed modifications to terms A5 and B1 are appropriate, subject to Term A5 3) being modified to specify the number of species and ecosystems credits that must be secured prior to the commencement of works within phases 1 and 2 of the development. The Department has recommended modifications to Term A5 3) to ensure this occurs.

## 7.3 Bushfire

The modification request seeks approval to re-word Term B2 to ensure all dwellings within proposed lots A, 3, 4, 55, 56, 75, 76, 101 to 116, 127 to 131, and lots 133 to 138 are sited within the proposed building envelopes to ensure compliance with the requirements of PBP 2006. In addition, the request seeks approval to:

- modify term C2 to identify the fire trails that must be constructed and dedicated to Council prior to the issue of a Subdivision Certificate; and
- delete Term C3 on the basis the revised subdivision layout complies with the requirements of PBP 2006.

The Department has reviewed the proposed modifications to terms B2, C2 in consultation with the RFS and has concluded the revised subdivision layout complies with the requirements of PBP 2006. Accordingly, the Department supports the proposed modification to Term B2 and the deletion of Term C2.

## 7.4 Aboriginal Cultural Heritage

The modification request seeks approval to amend Term C12 to ensure all development is undertaken in accordance with the requirements of the Aboriginal Cultural Heritage Management Plan provided with the modification request.

The Department notes the OEH did not raise concerns with the revised Aboriginal Cultural Heritage Management Plan and advised the SOCs will ensure the Aboriginal cultural heritage values of the site will be protected in the future. Given the above, the Department has concluded it is appropriate to modify Term C12 to require the Proponent to ensure future developments are consistent with the requirements of the amended Aboriginal Cultural Heritage Plan.

## 7.5 Pedestrian Access

The Proponent's supplementary RTS included a revised pedestrian access plan to address the issues in the Council's RTS submission. The Department has reviewed the revised plan and notes the plan proposes the construction of pedestrian paths along one side of each road within the Concept Plan area, as well as the removal of the footpath proposed between Gregory Street and the first internal access road from Keith Andrews Avenue (see **Figures 5 and 6**). Given the above, the Department is satisfied the revised Potential Pedestrian Movement Plan will provide appropriate levels of pedestrian access for future residents. The Department has recommended revisions to Term A2 to include this plan within the schedule of approved drawings.





**Figure 5: Pedestrian Movement Plan Provided in the Proponent's RTS**



**Figure 6: Pedestrian Movement Plan Provided in the Proponent's Supplementary RTS**

## 7.6 Open Space

The modification request seeks approval to remove Term B3 and amend Term C13 on the basis that the revised subdivision layout satisfies the requirements of these terms.

The Department has reviewed the proposed modifications to the open space network and agrees the open space is centrally located within the site and meets the requirements of Council's *South West Rocks Open Space Strategy*. As such the Department supports the deletion of Term B3.

The Department has also reviewed the proposed modifications to Term B13, and supports the deletion of Term C13 1) on the basis that the revised subdivision layout addresses the open space requirements outlined in Term B2. However, the Department has recommended minor revisions to Term C13 to require the Proponent to include the following information in the first development application lodged with Council:

- identify the timing for the embellishment and dedication Lot 900 to Council free of cost for open space purposes; and
- ensure all public open space is provided with appropriate connections to existing pedestrian and cycle networks in the locality

The proposed modifications to Term B13 have been included within the recommended Notice of Modification.

## 7.7 Consequential Administrative Changes

The application seeks approval to amend the development description in Schedule 1, the definitions within Part B of the approval, Terms A2, A5 and C6, and the Statement of Commitments to reference the updated plans, documentation and biobanking calculations submitted to support the modification request. A number of other conditions require references to specific lot numbers to be updated to reflect the revised subdivision layout.

The Department has reviewed these modification and has concluded they are necessary to facilitate development in accordance with the proposed subdivision layout. As such, the Department supports these modifications.

## 8. CONCLUSION

The Department considers the proposed modification is appropriate on the basis that:

- the changes meet the requirements of Part B of the concept approval;
- the amendments to the subdivision layout are more conducive to bushfire management;
- the development footprint will remain unchanged; and
- it will not result in any additional environmental impacts beyond those assessed under the original development application.

Consequently, the Department has concluded that the modification application should be approved subject to the terms recommended in the Instrument of Modification at **Appendix B**.

## 9. RECOMMENDATION

It is RECOMMENDED that the Director, Industry Assessments, as delegate of the Minister for Planning, approve MP 10\_0103 MOD 1, subject to the terms recommended in the Notice of Modification at **Appendix B**.



15/07/16

Kate MacDonald  
**Team Leader**  
**Industry Assessments**



15/7/16.

Chris Ritchie  
**Director**  
**Industry Assessments**

## **APPENDIX A: MODIFICATION REQUEST**

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Refer to the Department's website at:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=6725](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6725)



## APPENDIX B: INSTRUMENT OF MODIFICATION

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