

ASSESSMENT REPORT

Section 75W Modification Rainbow Beach Estate Concept Plan (MP 06_0085 MOD 1)

1. INTRODUCTION

This report is an assessment of a request to modify the Rainbow Beach Estate Concept Plan (MP 06_0085). The request has been lodged by King and Campbell Pty Ltd, on behalf of St Vincent's Foundation Pty Ltd (the Proponent), pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The modification request seeks approval to increase the areas of environmental management land and residential land across the site, in addition to reducing the area of the Southern School Site.

2. BACKGROUND

The subject site is located at Rainbow Beach, Bonny Hills approximately 16 kilometres (km) south of Port Macquarie (see **Figure 1**). The site is bound by Ocean Drive to the north and west and a residential area to the south. Land immediately to the east of the site includes the Lake Cathie/Bonny Hills Sewerage Treatment Plant, as well as a residential subdivision (presently under construction), Crown Land Reserve and Rainbow Beach. The land is low-lying and has primarily been used for agricultural activities such as cattle grazing.

The subject site is approximately 177.4 hectares (ha) in area and comprises Lot 1 in DP 1193553 (part of former Lot 1232 DP 1142133), Lots 1, 2, 3 and 4 in DP 1150758 and Lot 5 in DP 25886 (Lot 5) and is located along Ocean Drive, Bonny Hills in the Port Macquarie-Hastings local government area. The site location is shown in **Figure 1** and the approved Concept Plan area is shown in **Figure 2**.

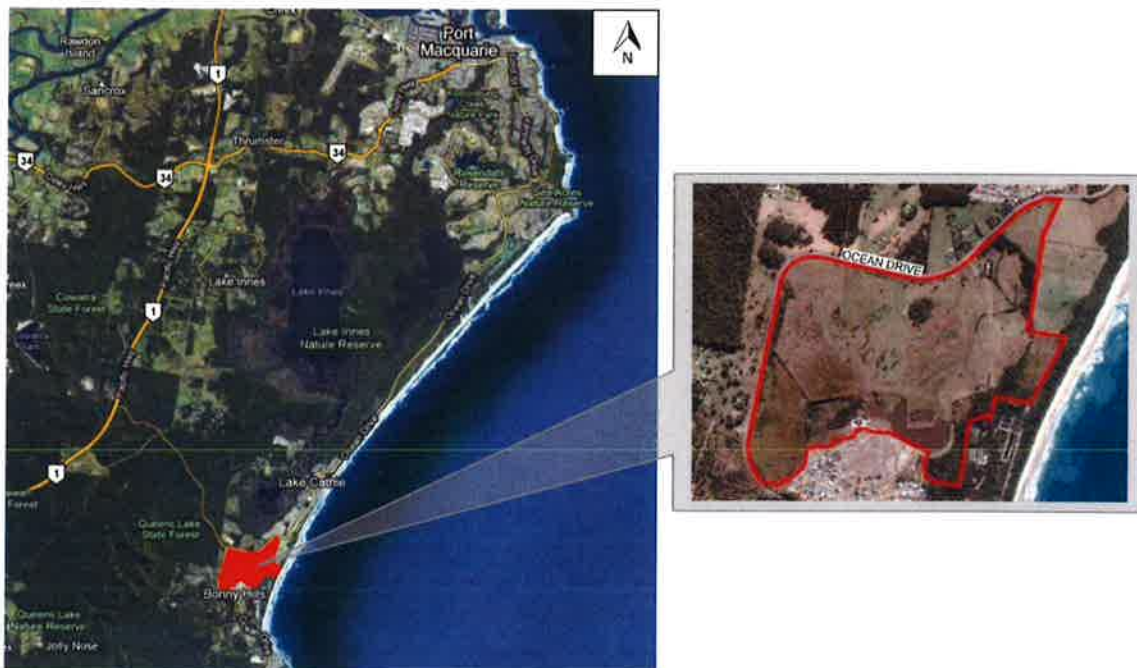


Figure 1: Site Location

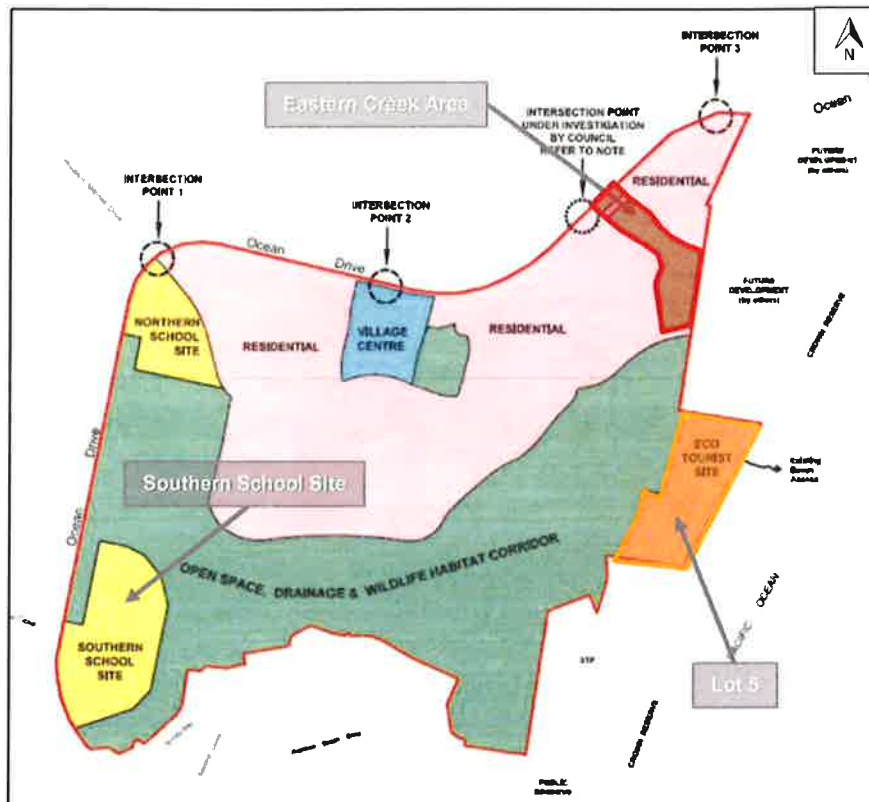


Figure 2: Approved Concept Plan

3. APPROVAL HISTORY

Both a Concept Plan and Stage 1 Project Application were approved by the then Deputy Director-General, as delegate for the then Minister for Planning on 1 March 2012, under Part 3A of the EP&A Act.

The Concept Plan was granted for the delineation of land uses within the 177.4 ha site as follows:

- residential subdivision;
- three adopted intersections with Ocean Drive and the location of an additional intersection with Ocean Drive (under investigation by Port Macquarie-Hastings Council at the time);
- future school sites;
- the general location of the Greater Lake Cathie Bonny Hills Village Centre;
- delineation of the development land of Lot 5; and
- a Central Corridor area comprising both recreational and environmental areas.

The Stage 1 Project Approval provides for construction of the 75.2 ha (752,000 m²) Central Corridor that encompasses eight recreational and environmental precincts.

4. PROPOSED MODIFICATION

On 10 May 2016, the Proponent lodged a section 75W modification request (MP 06_0085 MOD 1) to:

- amend the boundaries of the Swamp Oak Forest EEC within the Eastern Creek area to correctly identify and appropriately conserve Swamp Oak EEC;
- amend the extent of the vegetated buffer area required on Lot 5;
- alter the re-vegetation of Lot 5;
- amend the extent and location of Eastern Chestnut Mouse habitat across the site; and
- delineate the area of Crown Land Reserve to be managed by the Proponent.

This is presented within **Figure 3**.

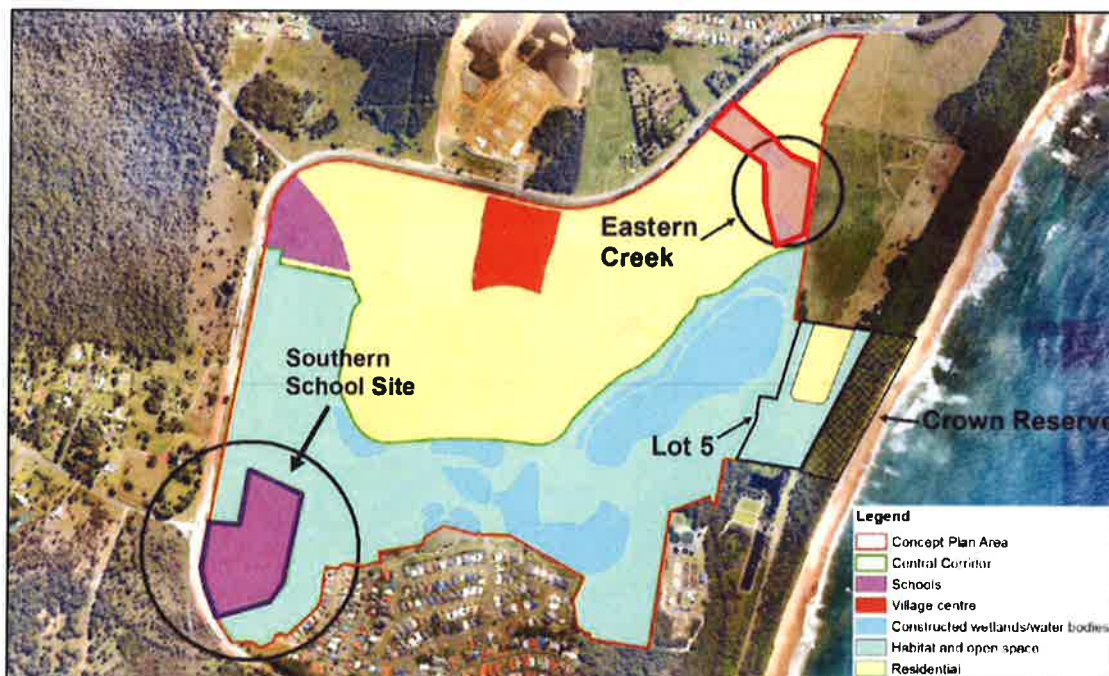


Figure 3: Proposed modification to the concept plan

The proposed modification would increase the overall residential land across the site (north of the Eastern Creek area and surrounding Lot 5), by 9,330 m², and increase overall environmental management land across the site by 7,130 m². These increases result in a decrease to the area of the Southern School Site. These changes are outlined within **Table 1**.

Table 1: Changes in areas across the site

Subject Site Area	Area classification	Approved Concept Plan area (m ²)	Proposed modification area (m ²)	Change (m ²)
Eastern Creek (Total: 100,130m ²)	Residential Land (north)	51,940	56,830	+ 4,890
	Environmental Land	48,190	43,300	- 4,890
Lot 5 DP 25886 (Total: 75,015m ²)	Residential Land	16,675	21,115	+ 4,440
	Environmental Land	58,340	53,900	- 4,440
Southern School Site	N/A	89,760	73,300	- 16,460 (reduction in overall area)
Central Corridor Environmental Management Land	N/A	687,640	704,100	+ 16,460 (increase in overall area)

5. STATUTORY CONTEXT

5.1 Approval Authority

The Minister for Planning is the approval authority for the request. Under the Minister's delegation of 16 February 2015, the Director, Industry Assessments, may determine the request under delegation as:

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

5.2 Section 75W

In accordance with Clause 12 of Schedule 6A of the EP&A Act, section 75W of the Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

The Department notes that:

- the primary function and purpose of the approved project would not change as a result of the proposed modification;
- the modification is of a scale that warrants the use of section 75W of the EP&A Act; and
- any potential environmental impacts would be minimal and appropriately managed through the existing or modified conditions of approval.

Therefore, the Department is satisfied the proposed modification is within the scope of section 75W of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the request should be assessed and determined under section 75W of the EP&A Act rather than requiring a new development application to be lodged.

6. CONSULTATION

The modification request was made publicly available on the Department's website from 2 August 2016 to the 16 August 2016. The Department also referred the request to Port Macquarie-Hastings Council (Council), the Office of Environment and Heritage (OEH), the Rural Fire Service (RFS), Department of Primary Industries (DPI) (DPI subsequently referred the request to Department of Industry – Lands), and North Coast Local Land Services (LLS) for comment. The Department notified previous submitters and landowners in the vicinity of the development by letter.

The Department received submissions from Council, OEH, RFS and two public submissions. These submissions are summarised below. LLS and DPI Water advised they would not be making a submission.

OEH and **Council** raised no objections to the modification request and both noted that the Proponent had consulted both agencies prior to lodgement. Both agencies indicated the concerns identified pre-lodgement had been addressed.

The **RFS** raised no objection and advised that future development at the site is to comply with the requirements of *Planning for Bushfire Protection*. The Department notes this is currently required in the Concept Plan approval and no modification to this provision has been requested.

The Department received two public submissions, one from an individual and one from a community group. These submissions did not object to the modification request, however raised concerns regarding the ongoing maintenance of ecological values at the site and maintenance of the proposed public reserves.

The Department requested the Proponent to address matters raised within the submissions as part of a Response to Submissions (RTS) document.

6.1 Response to Submissions

In September 2016, the Proponent lodged an RTS to address the matters raised in the submissions received. To address the concerns regarding ongoing management of the ecological values at the site, the Proponent provided details of an executed Voluntary Planning Agreement (VPA) between the Proponent and Council. The VPA requires the Proponent to manage the environmental land within the Central Corridor for a period of 20 years prior to dedicating these lands to Council. As part of the RTS, the Proponent indicated that they are currently in discussions regarding a second VPA that would apply to environmental lands across other areas of the site, including areas within the vicinity of Eastern Creek and Lot 5. This second VPA would be on similar terms to the executed VPA, requiring the Proponent to manage the land for 20 years prior to dedicating the land to Council.

To address the matter of ongoing maintenance, the RTS indicated that ongoing maintenance is currently directed through the existing Concept Plan, which requires the preparation of a management plan for the threatened species and ecological communities that occur at the site, along with preparation of annual monitoring reports.

The Department has considered the issues raised in submissions, and the RTS in its assessment of the requested modification.

7. ASSESSMENT

The Department has assessed the merits of the proposed modification. During this assessment, the Department has considered the:

- EIS and assessment report for the original Concept Plan application;
- existing conditions of approval;
- the assessment supporting the requested modification (**Appendix B**);
- submissions received during notification of the modification request (**Appendix C**);
- the Proponent's RTS (**Appendix C**);
- relevant environmental planning instruments, policies and guidelines; and
- requirements of the EP&A Act, including the objects of the EP&A Act.

The Department considers the key issues of the proposed modification to be the alteration of land use boundaries and appropriate designation of environmental management land. Details of the Department's assessment are provided in **Section 7.1** and **7.2**.

7.1 Environmental Management Land boundaries

The modification request seeks to amend the boundaries of environmental land at three locations across the site (see **Figure 3**); Eastern Creek, Lot 5 and around the Southern School Site.

An ecological assessment, including both desktop and field surveys was undertaken across the three subject areas by Naturecall Environmental. To support the modification request, the Proponent also engaged the services of Regional Geotechnical Solutions to undertake a geotechnical investigation in the Eastern Creek area.

7.1.1 Eastern Creek

The Eastern Creek area is located in the north-east of the site (see **Figure 2**) and comprises a vegetated drainage depression, the adjacent footslopes and parts of a ridgeline. Swamp Oak Forest EEC was identified to occur within the Eastern Creek area during the assessment of the Concept Plan (see **Figure 4**).

The modification request seeks to amend the boundary of the Swamp Oak Forest EEC within the Eastern Creek area to more accurately reflect the extent of the Swamp Oak Forest EEC. The Proponent has requested that the extent of this EEC be revised to take into consideration updated soil information and the legal precedents that link the identification of an EEC to its associated soil and landscape criteria. The proposed changes to the Eastern Creek area are shown in the **Figure 5**.

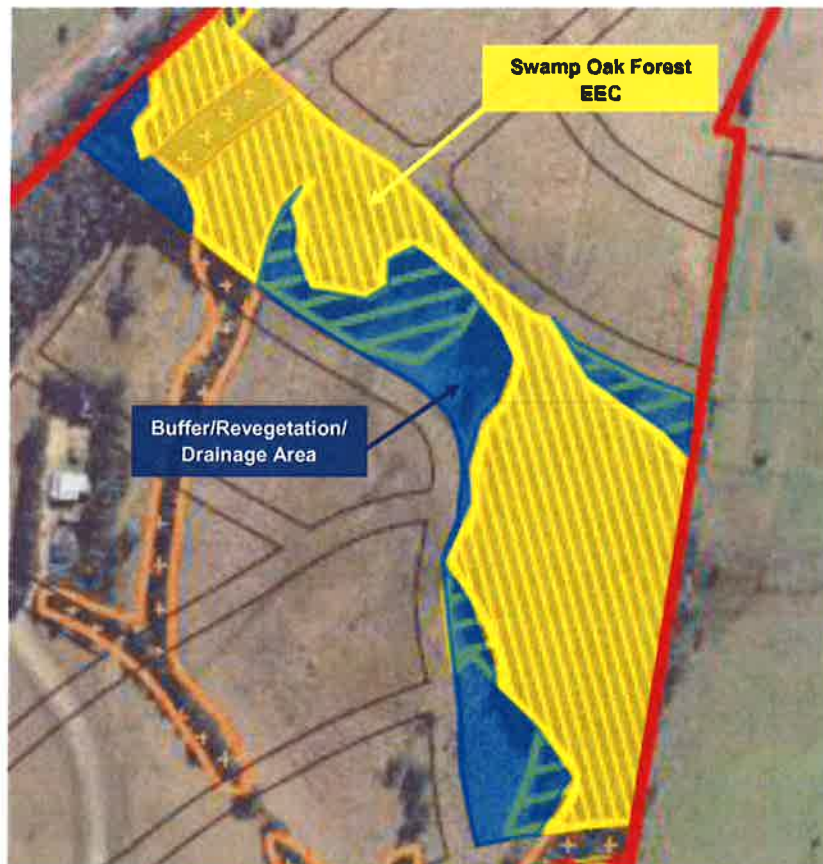


Figure 4: Approved Eastern Creek Area



Figure 5: Proposed Eastern Creek area

The Proponent's assessment indicates the mapping provided as part of the Concept Plan application overestimated the extent of Swamp Oak Forest EEC. The mapping presented as part of the Concept Plan assessment:

- relied on broad mapping undertaken for other, more large scale projects; and
- did not adequately consider the soil landscape and flooding criteria presented within the NSW Scientific Committee's Final Determination for *Swamp oak floodplain forest of the NSW North Coast, Sydney Basin and South East Corner bioregions* (OEH 2011) (Final Determination).

As part of this modification request, the Proponent undertook ecological surveys and geotechnical investigations to compare the mapped area of Swamp Oak Forest EEC with the soil and landscape criteria presented within the Final Determination. These surveys indicated that whilst much of the vegetation in the Eastern Creek area matched the Final Determination, only the vegetation on areas of alluvial soils up to the 1:100 ARI comprise the EEC. The Proponent has based this conclusion upon the interpretation of the Final Determination provided by legal standards that link the identification of an EEC to its associated soil and landscape criteria. The legal precedent includes consideration of the soil type and landform patterns, in addition to the vegetation assemblage.

The Department assessed the Proponent's request in consultation with OEH. OEH were supportive of the requested modifications and considered them to be adequately justified. The Department supports the position of OEH and considers the request to modify the boundary of the EEC (taking into account the vegetation assemblage, soils and landform) to be justified in this instance. In supporting the request, the Department notes that a 25 metre (m) buffer area that formed part of the original approval would remain between the Swamp Oak Forest EEC and the residential areas. Further, the area of environmental management land that is to be modified to residential land is presently un-vegetated, which would require no further clearing.

Accordingly, the Department supports the more accurate delineation of Swamp Oak Forest EEC within the Eastern Creek area and has subsequently recommended modifications to the terms of the Concept Plan.

7.1.2 Lot 5

Buffer Realignment

Lot 5 occurs in the eastern section of the site (see **Figure 2**). Under the approved Concept Plan, Lot 5 comprises a residential area, vegetated buffer areas (of minimum 50 m to the Crown Land Reserve) and an access path to the beach (see **Figure 6**). The Concept Plan requires a fully vegetated buffer of 50 m between the residential area and the Crown Land Reserve (see **Figure 6**). An area of *State Environmental Planning Policy 26 Littoral Rainforest* (SEPP 26) occurs in the Crown Land Reserve, immediately east of Lot 5. Patches of the EEC Littoral Rainforest and Coastal Vine Thickets of Eastern Australia (Littoral Rainforest EEC) also occur in the Crown Land Reserve.

The Proponent is requesting to modify the vegetated buffer to increase the residential yield in the area, whilst maintaining the environmental management buffer of the adjoining ecological assets. The modification request seeks to provide a buffer of 50 m to the north of the Lot, tapering to 35 m at the southern extent. To compensate for this realignment, the Proponent has proposed to assist regeneration of an additional 1.5 ha of land to the south and west of the buffer (see **Figure 7**). The Proponent's assessment indicates that the proposed modified buffer is unlikely to alter the ecological value of the vegetated buffer as approved in terms of the corridor effectiveness, habitat provision, edge effects and/or carrying capacity.

The Department has considered the realignment of the buffer area in consultation with OEH. The increase in the area of re-vegetation overall is supported and it is considered that the changes to the ecological value of the buffer are negligible. The Department's assessment has concluded that the realigned buffer area would result in similar corridor effectiveness and potentially increased habitat through improved connectivity with the increase in area to the south and west. As such, the Department supports this modification to the Concept Plan and has recommended modifications to the Concept Plan.

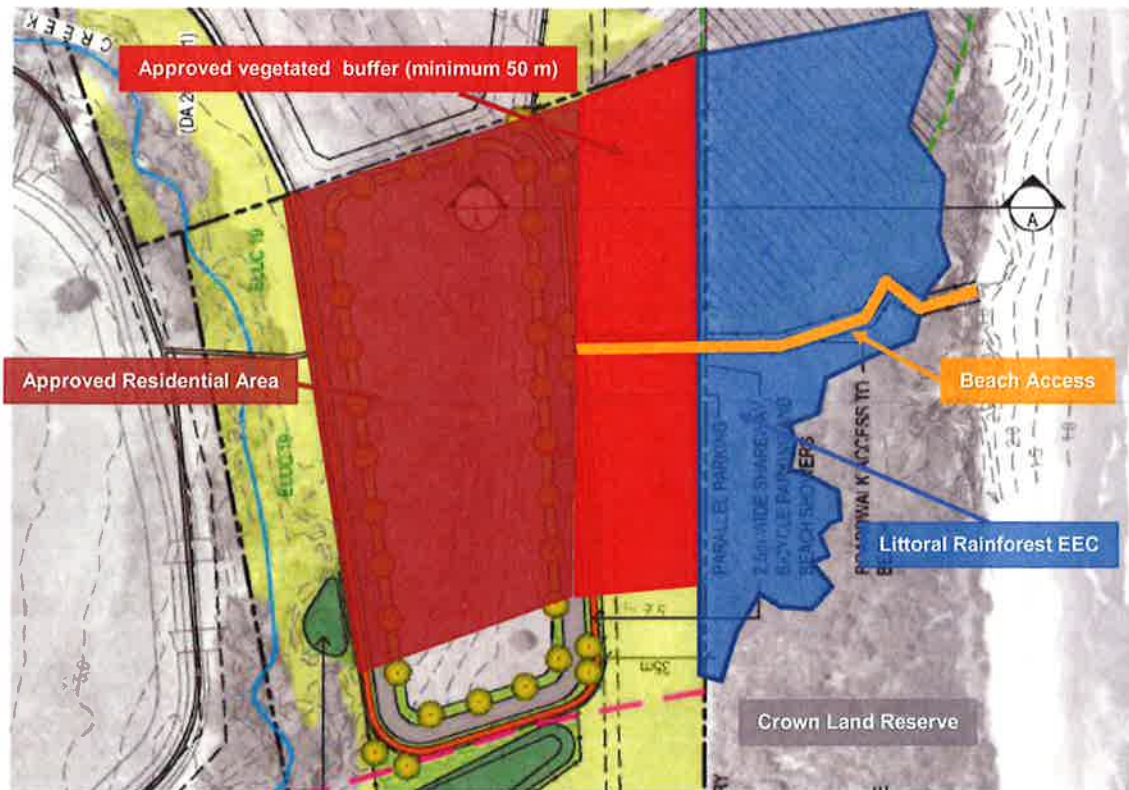


Figure 6: Approved Lot 5 area

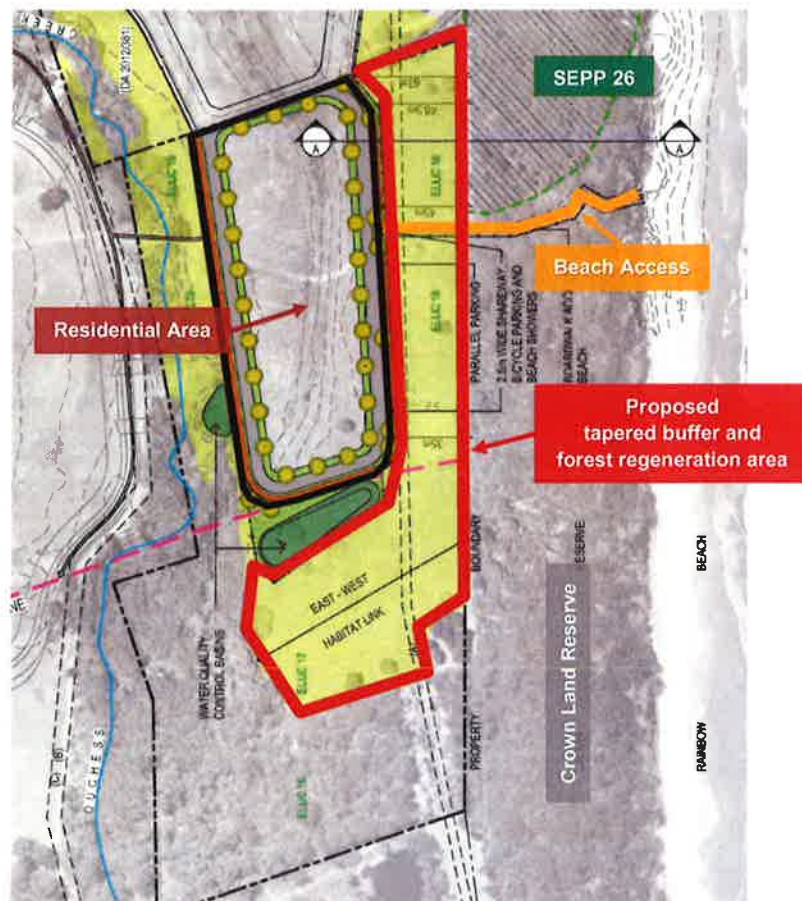


Figure 7: Proposed modifications to Lot 5

Revegetation within Lot 5

Regeneration works are required within the buffer area of Lot 5 under the Concept Plan. The realignment of the buffer area would not alter the requirements for regeneration works and the regeneration would be required across the area, as modified.

The Concept Plan currently requires the area to be revegetated to a Coastal Sands Forest and managed to enhance Eastern Chestnut Mouse habitat. The Proponent is seeking to remove the requirement to manage the area for the Eastern Chestnut Mouse and instead regenerate the area to fully structured Coastal Sands Blackbutt Forest. The Proponent considers that this would provide a more effective habitat linkage with the surrounding vegetation and provide habitat for a larger range of native species.

The approved Concept Plan required the establishment and management of 1.5 ha of Coastal Sands Forest in the surrounds of Lot 5 for the purposes of enhancing habitat for the Eastern Chestnut Mouse. Recent surveys undertaken by the Proponent have indicated that the Eastern Chestnut Mouse no longer occurs in the area, or within the vicinity of Lot 5. The field investigation indicated that the species is unlikely to re-colonise the area. Further, the Proponent has advised that, to achieve optimal habitat for the Eastern Chestnut Mouse, the area would require intensive long-term management to ensure a community consistent with Coastal Sands Forest is established.

The Proponent is seeking a modification to rehabilitate the vegetation buffer around Lot 5 to fully structured Coastal Sands Blackbutt forest and remove the requirement to manage the area for the Eastern Chestnut Mouse (see **Figure 8**). This approach would provide a more effective habitat linkage with the surrounds and provide habitat for a larger range of local native species. In addition, the Proponent proposes to increase habitat for the Eastern Chestnut Mouse at the Southern School Site, where recent field studies have indicated a population of the species currently occurs (see **Section 7.1.3**).

The Department has assessed the proposed modification to the revegetation community in the area of Lot 5. In addition, OEH considered the modifications requested. The Department acknowledges that the establishment of a Coastal Sands Blackbutt forest community is likely to enhance the provision of habitat and the linkages through the site towards the area of Crown Land. In addition, the Department considers that habitat enhancement for the Eastern Chestnut Mouse would be more effective in areas where the species is known to occur (see **Section 7.1.3**). As such, both the Department and OEH support the requested modifications to the revegetation of the buffer around Lot 5 and modifications to the Concept Plan have been recommended.

7.1.3 Southern School Site

The Southern School Site is located in the south-western portion of the site and comprises an area of 89,760 m² (see **Figure 2**). The approved Concept Plan requires the ongoing management of the area for the Eastern Chestnut Mouse and the inclusion of an adjacent buffer area, to ensure habitat availability is appropriately conserved and enhanced (see **Figure 8**).

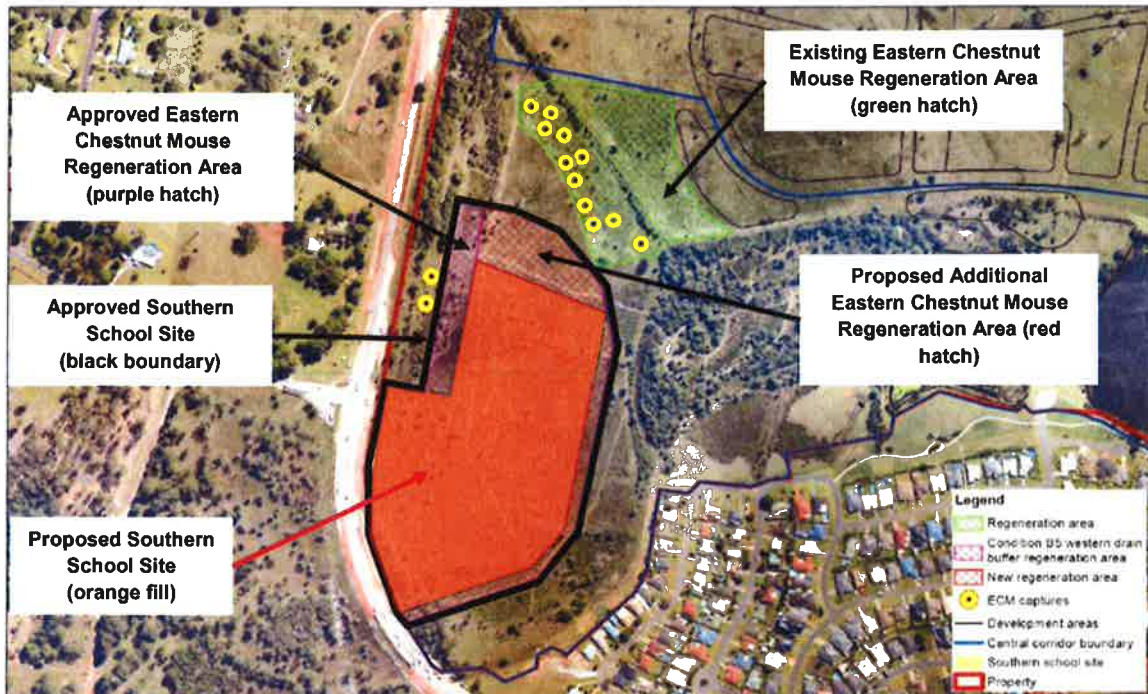


Figure 8: Eastern Chestnut Mouse Capture Sites and Proposed Regeneration and Buffer Areas

Recent field studies undertaken by the Proponent have indicated that the area surrounding the Southern School Site continues to be suitable habitat for the Eastern Chestnut Mouse. Surveys undertaken in 2012 recorded the Eastern Chestnut Mouse in increased numbers to the west and north of the Southern School Site.

Based on the results of field studies, the Proponent has indicated that by increasing habitat for the Eastern Chestnut Mouse, there would likely be an increase in the Eastern Chestnut Mouse population.

The modification proposes to increase the environmental management land by 16,640 m². This would result in a correlating decrease in the size of the Southern School Site (see **Table 1**). This area would be integrated into the Central Corridor (see **Figure 3**) and managed as open space, drainage and wildlife habitat, as required by the Concept Plan as approved.

The Department considered the requested modification in consultation with OEH. OEH generally supported the request, however advised that fencing and bush regeneration should be implemented in accordance with a vegetation management plan. In response to matters raised by OEH, the Department notes that the Proponent's Statement of Commitments includes the preparation of a vegetation management plan during the development application stage. Further, the Department notes that the Proponent has entered into a VPA with respect to managing the environmental land within the Central Corridor for a period of 20 years, prior to handing over the land to Council (see **Section 6.1**). The modified area would be incorporated into the Central Corridor and subject to this agreement.

The Department has assessed the proposed changes and supports the proposed modification as it would result in an increase to the habitat area for the Eastern Chestnut Mouse, potentially resulting in an increase in the population of this species at the site. In addition, the Department agrees with the OEH and supports the increase in environmental management land at the site and the overall improved ecological outcome.

7.2 Crown Land Reserve VMP

The Crown Land Reserve is located immediately east of the site, extending beyond the northern and southern extent of the site. The Crown Land Reserve is to the immediate east of Lot 5 and comprises native vegetation including SEPP 26 areas and Littoral Rainforest EEC. A beach access track occurs through the Crown Land Reserve between the site and the beach (see **Figure 9**). The Concept Plan requires that a Vegetation Management Plan (VMP) for the Crown Land Reserve be prepared and

implemented to the satisfaction of Council (identified as R754444). The VMP is to include detail regarding weed removal, regeneration and fencing.

As the Concept Plan does not delineate the extent to which the VMP applies, the Proponent is seeking a modification to the Concept Plan to delineate the area to which the VMP apply. The Proponent has requested that the VMP apply to the area presented within **Figure 9**. This area includes vegetation 25 m to the north and south of the beach access path in addition to a 10 m wide strip along the length of the Crown Reserve along the interface with the site.

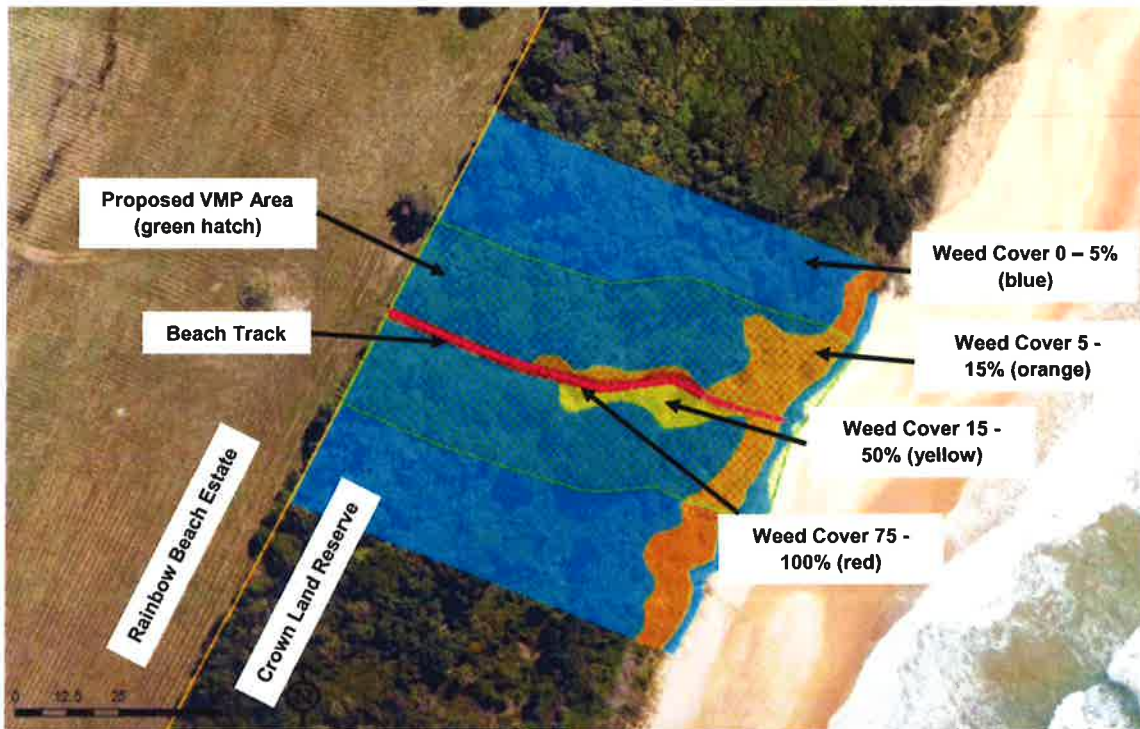


Figure 9: Crown Land Reserve VMP Area

The Proponent has identified the area immediately adjacent to the access track as having the highest level of weed infestation in the Crown Land Reserve. As such, this area is likely to require ongoing management, particularly given the presence of the beach access pathway and potential edge effects. The Proponent also indicated that areas beyond the 25 m buffer have previously undergone significant bush regeneration works and are currently subject to ongoing management by Landcare. These areas were considered by the Proponent to be in good condition and are unlikely to be susceptible to invasion of weeds.

The Department assessed the proposed modifications and considered matters raised by agencies. The Department notes that the Department of Industry (Lands) did not provide comments regarding the proposed modification request and Council advised it supported the proposed limits to the extent of VMP which would provide additional certainty to both Council and the Proponent.

The Department has concluded that the proposed modification is acceptable and supports the requested delineation of the VMP area, as the vegetation outside of this area within the Crown Land reserve is in good condition and is not likely to require ongoing management. Accordingly, the Department has recommended modifications to the terms of the Concept Plan.

8. CONCLUSION

The Department considers the proposed modifications are appropriate on the basis that:

- they will result in an overall increase to the lands managed for environmental conservation; and
- they will not result in additional environmental impacts beyond those assessed under the original development application.

The Department is satisfied that the modification should be approved, subject to conditions.

9. RECOMMENDATION

It is RECOMMENDED the Director, Industry Assessments:

- **consider** the findings and recommendations of this report;
- **approve** the proposed modification under section 75W of the EP&A Act; and
- **sign** the attached Instrument of Modification (in **Appendix A**).



Rebecca Sommer
Senior Planner
Industry Assessments


Chris Ritchie 24/11/16.
Director
Industry Assessments

APPENDIX A – INSTRUMENT OF MODIFICATION

APPENDIX B – ENVIRONMENTAL ASSESSMENT

Refer to: http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7652

APPENDIX C – RESPONSE TO SUBMISSIONS AND SUBMISSIONS

Refer to: http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7652