

ASSESSMENT REPORT

North Cooranbong Concept Plan MP 07_0147 MOD 4

1. INTRODUCTION

This report is an assessment of a request to modify the Concept Plan for the North Cooranbong residential estate in the Lake Macquarie City Council local government area (LGA).

The request has been lodged by Johnson Property Group (JPG) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to:

- amend the alignment of the local road servicing the southern part of the site
- amend the Concept Plan boundary to include a new lot.

2. SUBJECT SITE

The site is located approximately 40 kilometres (km) south-west of Newcastle and 5 km north-west of the Morisset Regional Centre. The site is approximately 355 hectares (ha) and is located within the Lake Macquarie City Council LGA (see **Figure 1**).



Figure 1: Site Location Plan (Source: North Cooranbong Environmental Assessment)

The site formerly accommodated the Avondale Aerodrome and has been split into two development areas referred to as the 'Main Development Site' and the 'Town Commons' (see **Figure 2**).

The land uses surrounding the Main Development Site and Town Commons are summarised below:

- Onley State Forest is located adjacent to the northern and western boundaries of the Main Development Site
- Cooranbong Town Centre and Avondale Shopping Village are located between the Main Development Site and the Town Commons
- existing residential developments are located adjacent to the southern boundaries of the Main Development and Town Commons sites.

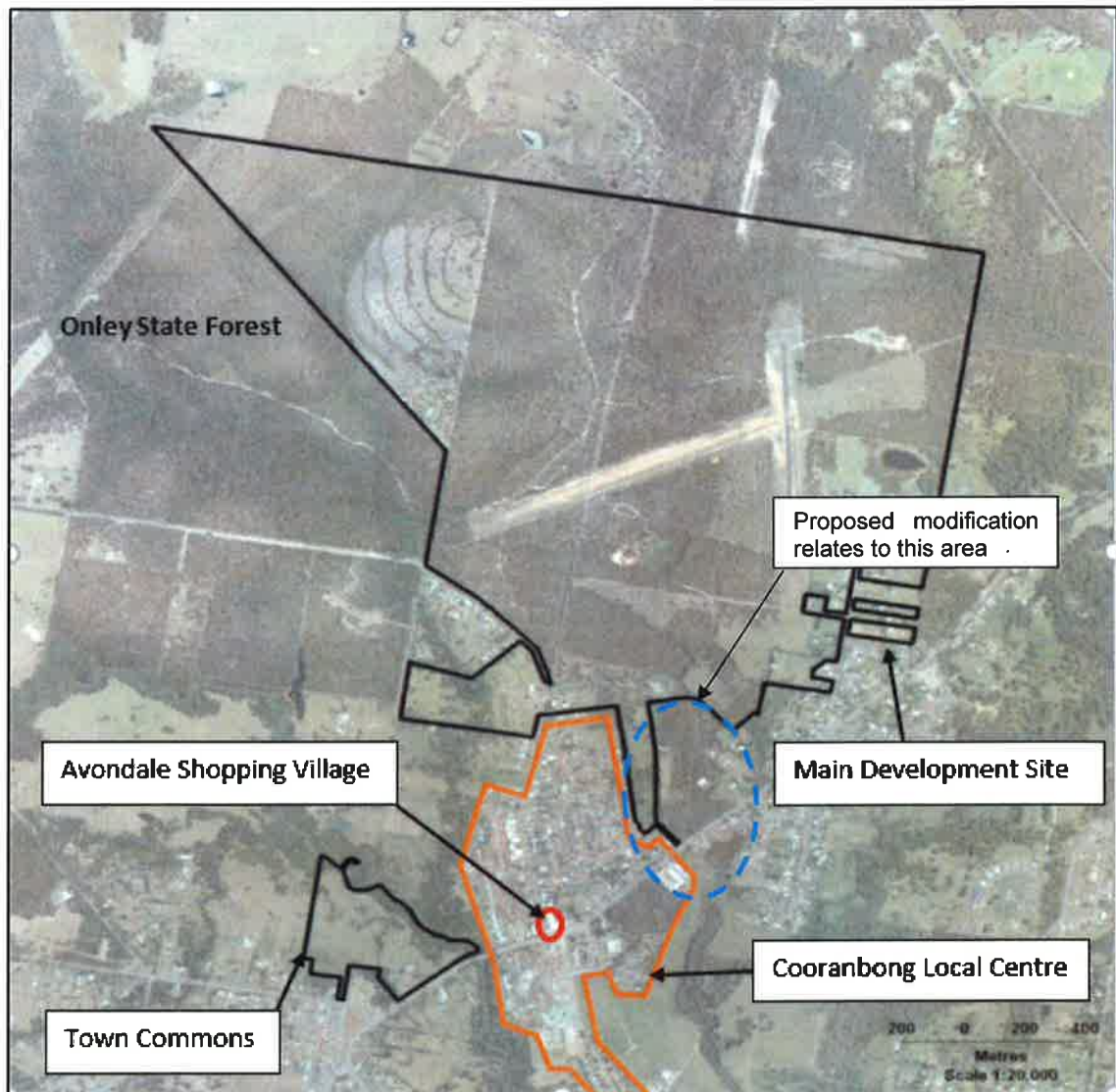


Figure 2: Development Sites and Surrounding Land Uses (Source: Lake Macquarie Development Control Plan 2014)

3. APPROVAL HISTORY

3.1.1 Concept Approval and Approved Modifications

On 15 December 2008, the then Minister for Planning granted Concept Approval to guide the development of 355 ha of land at North Cooranbong for the following purposes:

- 201.42 ha for future residential development
- 2.75 ha for future commercial development
- 17.70 ha for schools (existing and proposed)
- 15.2 ha for public open space /recreation and community facilities
- 119.13 ha for environmental conservation.

The Concept Plan has been modified on three occasions to:

- decrease the amount of land identified for residential development (201.42 ha to 200.43 ha), and specify the requirements for development on potentially contaminated land and the minimum width of the core riparian zones across the site (MOD 1)
- include additional land in the Concept Plan area and reference the Regional Voluntary Planning Agreement (VPA) applicable to the site (MOD 2)
- revise the Statement of Commitments to reflect the contributions to public authorities outlined in the Regional VPA (MOD 3).

3.1.2 Voluntary Planning Agreements

Local and regional voluntary planning agreements (VPAs) apply to the redevelopment of the site.

The local VPA between Lake Macquarie City Council (Council) and the Proponent was executed on 26 October 2008, and sets out the requirements for the provision of open space and recreation facilities, environmental offsets and road works.

The Regional VPA between the Minister for Planning (the Minister), the Australasian Conference Association Ltd, Avondale Greens Developments Pty Ltd and Johnson Property Group Pty Limited was executed on 12 January 2010, and sets out the requirements for the provision of the following environmental offsets and regional infrastructure:

- payment of either, \$2.64 million, or the acquisition of environmental offset lands acceptable to the Minister
- upgrades to Dora Creek and Morisset Roads
- dedication of land for public schools.

The regional VPA has been modified on one occasion to:

- amend the schedule of land to which the VPA applies
- reduce the size of the public schools land
- set a monetary contribution per hectare of developable land
- identify requirements for bank guarantees.

3.1.3 Part 4 Development Applications

To date, Council has issued 15 development consents permitting the creation of 1,080 residential lots and associated servicing infrastructure (see **Figure 3**).

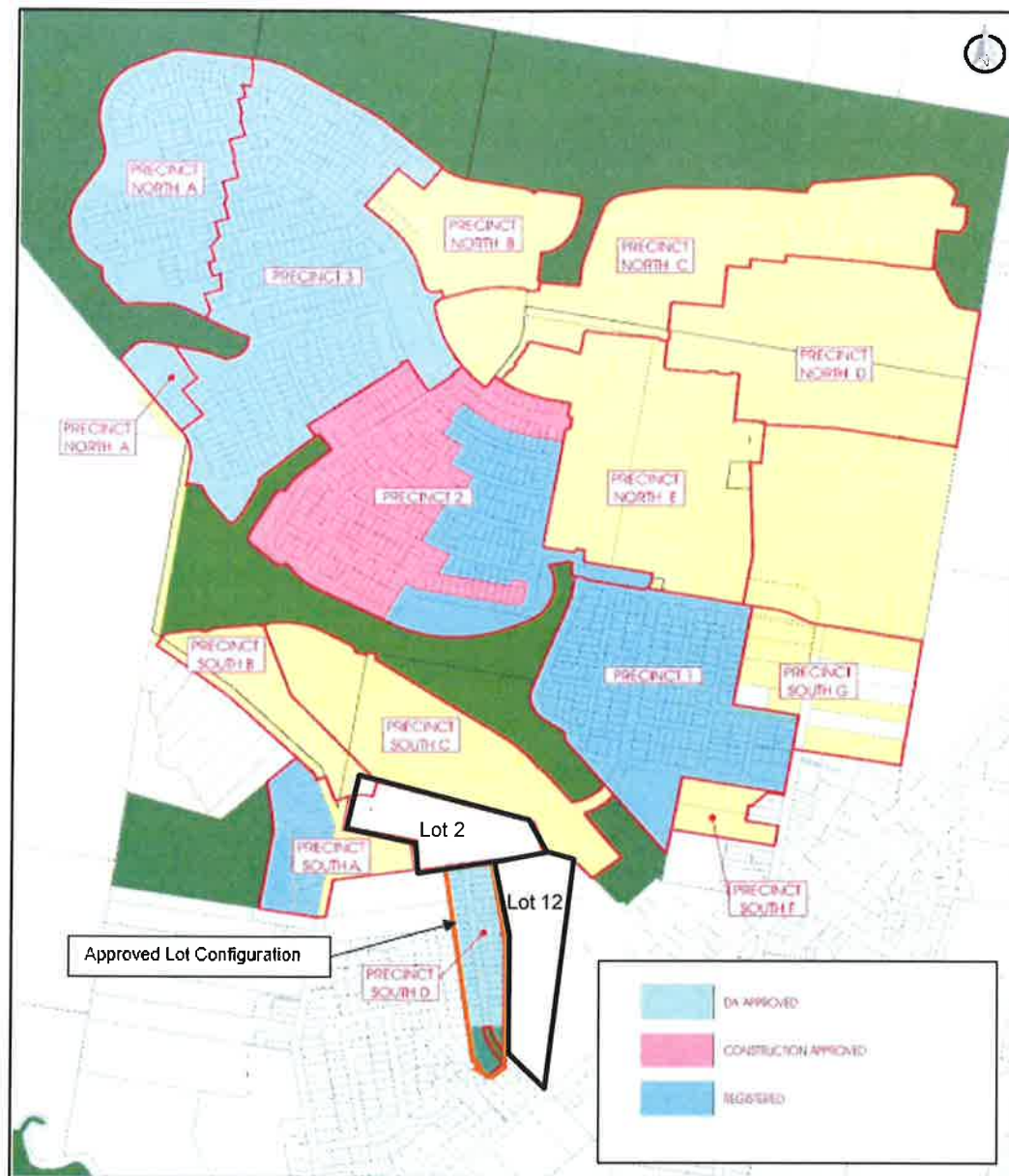


Figure 3: Concept Plan area (shown coloured) with lots approved as at October 2016. Lot 2 and Lot 12 (outside of the Concept Plan) outlined in black. (Source: Proponent's Modification Request)

In addition, on 30 August 2016, the NSW Land and Environment Court (LEC) approved a development application (DA/714/2014) permitting the construction and operation of a water recycling facility on Lot 12. This facility will treat waste water generated by developments within the Concept Plan area.

3.1.4 Planning Proposal

On 27 January 2017, the Department approved a Planning Proposal to rezone Lot 12 in DP 1158508 from RU6 Transition to R2 Low Density Residential and E2 Environmental Conservation, and permit additional water treatment uses within the RU2, RU3, RU4, R1, R2, R3, IN4, SP1, SP2, SP3, RE1 and RE2 zones. The boundaries of the R2 and E2 zones within Lot 12 are identified in **Figure 4**.

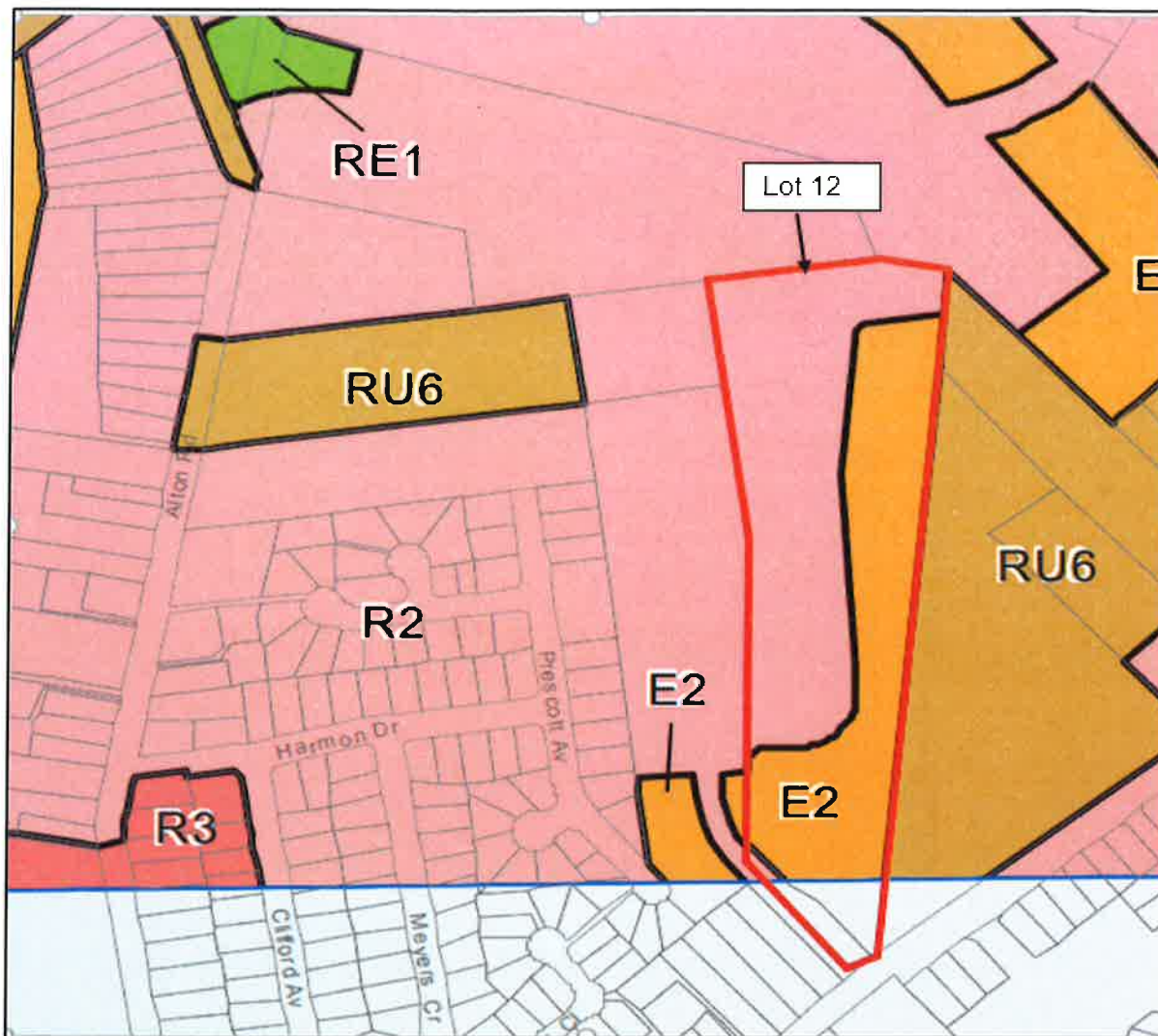


Figure 4: Lake Macquarie Local Environmental Plan (LEP) 2014 Land Use Zoning Map (Source: Lake Macquarie LEP 2014)

4. PROPOSED MODIFICATION

On 19 October 2016, the Proponent lodged a section 75W modification request (MP 07_0147 MOD 4) seeking approval to:

- provide a new road running through Lot 12 in DP 1158508 (Lot 12), and remove a north-south connection running through neighbouring Lot 2 in DP 825266 (Lot 2)
- incorporate Lot 12 as land to which the Concept Plan applies.

The approved and proposed alignment of the local road servicing the southern catchment is depicted in **Figure 5**.

The Proponent has advised the modification is sought to provide an alternate local road alignment on land under JPG's control. Lot 2 shown outlined in blue in **Figure 5**, is not owned by JPG and does not form part of the Concept Approval.

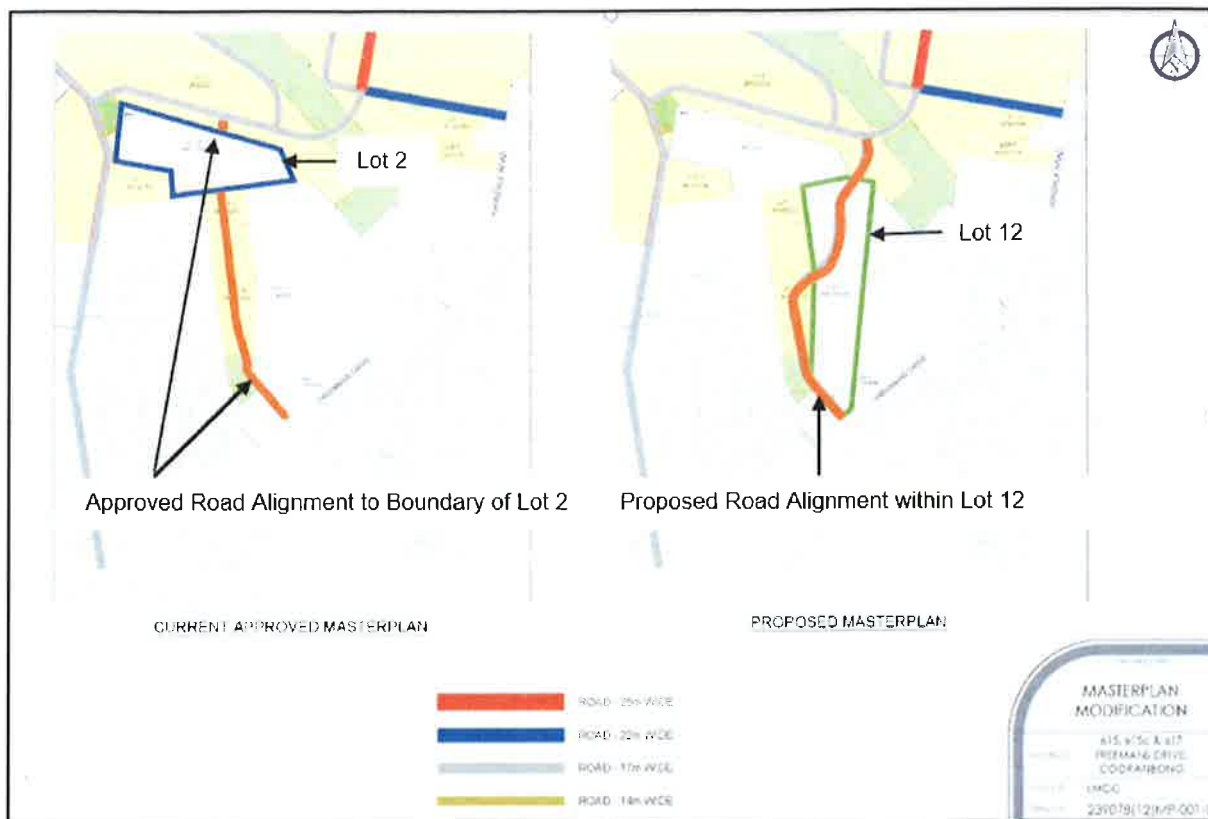


Figure 5: Approved and Proposed Alignment of the Local Road Servicing the Southern Catchment (Source: Environmental Assessment for MP 07_0147 Mod 4)

5. STATUTORY CONSIDERATION

5.1 Section 75W

The Concept Plan was originally approved under Part 3A of the EP&A Act. Although Part 3A was repealed on 1 October 2011, the concept remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act, and hence any modification to this approval must be made under the former section 75W of the EP&A Act.

The Department is satisfied the proposed changes are within the scope of section 75W of the EP&A Act, and the proposal does not constitute a new application.

5.2 Approval Authority

The Minister for Planning is the approval authority for the modification request. However, the Executive Director, Key Sites and Industry Assessments may determine the modification request under delegation as:

- the relevant local council has not made an objection, and
- a political disclosure statement has been made but only in respect of a previous related application, and
- there are less than 10 public submissions in the nature of objections.

6. CONSULTATION

The Department made the modification request publicly available on its website, and consulted with Council, Roads and Maritime Service (RMS), and the Office of Environment and Heritage (OEH). The Department also notified the surrounding landowners.

Submissions were received from Council, RMS, and the OEH. Three public submissions objecting to the proposal were also received. The agency and public submissions are summarised below.

6.1 Agency Submissions

Council raised no objection to the proposal. However, it provided the following comments:

Road Design and Site Access:

- Council supports the width of the proposed road reserve and carriageway (17 metre (m) wide road reserve and 9 m wide carriageway proposed). However, the Proponent should demonstrate the following design requirements can be met prior to the determination of the modification request:
 - a minimum curved radii of 120 m can be provided
 - the road design speed would not exceed 50 km/hr
- the Proponent should demonstrate how access will be provided to Lot 2.

Vegetation Impacts:

- the alignment of the proposed local road should be revised to correspond with the boundary of the E2 and R2 zones on Lot 12
- a 30 m wide vegetation corridor should be provided along the eastern boundary of the site to provide consistency with the NSW Land and Environment Court judgement for DA/714/2014
- the proposed development will result in the removal of two plant species listed as 'vulnerable' under the *Threatened Species Conservation Act 1995* (TSC Act) and the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) and offsets should be provided to compensate for their loss
- all offsets should be calculated in accordance with the OEH's Biobanking Methodology and secured in perpetuity.

RMS raised no objection to the proposal and advised the proposed modifications to the road layout would not impact on the State road network.

OEH did not object to the proposal, however it provided the following comments:

- the proposal will remove 0.39 ha of vegetation, including 11 Charmhaven Apple (*Angophora inopina*) and seven clumps of Black-eyed Susan (*Tetralochea juncea*), both of which are listed as vulnerable species under the TSC and EPBC Acts
- the proposed modification to the road layout will sever the connectivity of the bushland to the north of the site
- the removal of vegetation on Lot 12 is not covered by the offsetting arrangements outlined in the local and regional VPAs. The removal of all additional vegetation should be offset in accordance with the requirements of the *NSW Biodiversity Offsets Policy for Major Projects* and the *Framework for Biodiversity Assessment* (FBA).

6.2 Public Submissions

Three public submissions were received, all of which objected to the proposal. The key issues raised in the public submissions are summarised below:

Site Access, Road Upgrades and Servicing Infrastructure:

- the proposed modification would result in Lot 2 becoming land locked and would also increase the landowner's reliance on JPG to facilitate the redevelopment of this land
- the proposed connection to Freemans Drive should be provided closer to Nellinda Road and the Proponent should pay for upgrades to the existing road network
- the relocation of the waste water treatment plant is not supported.

Impacts on Vegetation Corridors:

- the proposed alignment of the revised local road would fragment existing vegetation corridors and reduce connectivity to land on the southern side of Freemans Drive.

General Comments:

- new land should not be added to the Concept Plan
- the Concept Plan has been subject to too many modifications.

The Department has reviewed the public submissions and provides the following comments:

- proposed changes to the access to Lot 2 are discussed in **Section 8.2** of this report
- the proposed modification does not seek to alter the location of the new intersection at Freemasons Drive, and upgrades to the local and regional road network will be provided in accordance with the local and regional VPAs for the site
- the proposed modification does not relate to or include any changes to the waste water treatment plant
- impacts on vegetation are considered in **Section 8.1** of this report
- section 75W of the EP&A Act permits the lodgement of modification requests to alter the terms of approved concept plans. There is no restriction on the number of modification requests that can be lodged or determined for an approved concept plan or project approval.

7. RESPONSE TO SUBMISSIONS

The Proponent provided a Response to Submissions (RTS) on 20 April 2017. The RTS included the following information:

- a plan overlaying the proposed road alignment and the land use zones on Lot 12
- revised road alignment and cross section plans identifying the curved radii of the north-south local road, the proposed works zones and the location of the services corridor approved under DA/714/2014
- correspondence from Council outlining its in-principle agreement to the proposed biodiversity offsetting arrangements (an on-site biodiversity offset), to be formalised during the assessment of a future development application for the subdivision of Lot 12
- a response to each agency and public submission.

The RTS was referred to Council, RMS, the OEH and the adjoining landowner for comment. A summary of the agency and public submissions on the RTS is provided in **Section 7.1** below.

On 20 July 2017, the Proponent provided the additional information regarding access and connectivity to Lot 2, including:

- a letter providing additional justification to support the provision of a new road through Lot 12, and proposing the retention of the access point adjacent to the northern boundary of Lot 2 via the inclusion of a new term of approval

- a plan overlaying the works approved under DA/714/2014 and the proposed road alignment to demonstrate the proposed road alignment will not impact on the north-south vegetation corridor required under Condition 11 of DA/714/2014.

7.1 Agency Submissions

Council advised it would not be making a formal submission on the RTS. However, Council's Subdivision Engineer confirmed the design of the road traversing Lot 12 is consistent with Council's engineering requirements.

RMS advised it has no comments on the RTS.

OEH advised the on-site offset would be sufficient to mitigate the impact of clearing the additional vegetation on Lot 12. However, it requested the provision of revised maps identifying the outcomes of the NSW Land and Environment Court's determination for DA/714/2014. Revised mapping was provided to the OEH on 18 May 2017, which subsequently confirmed it had no outstanding concerns with the proposal.

7.2 Public Submissions

One public submission was received in response to the RTS. This submission advised the RTS does not address the access issues associated with the future redevelopment of Lot 2. The proposed access arrangements for Lot 2 are discussed in detail in **Section 8.1.2** below.

8. ASSESSMENT

The Department considers the key issues associated with the proposed modification are:

- the environmental and design issues associated with relocating the local road; and
- site access and connectivity to Lot 2.

These issues are discussed in **Sections 8.1** and **8.2** below.

All other issues are considered in **Section 8.3**.

8.1 Environmental Issues

The modification request seeks approval to remove the north-south road connection designed to run through Lot 2 and provide a new north-south road further to the east running through Lot 12. The proposed road alignment would result in the removal of 0.39 ha of protected vegetation on Lot 12 (see **Figure 6**).

As identified in the agency submissions, the removal of vegetation within Lot 12 is not covered by the offsetting arrangements outlined in the local and regional VPAs for the site, as Lot 12 did not form part of the original Concept Plan approval.

To address this issue, the Proponent amended its modification request to seek approval to provide the following offset prior to any roadworks occurring on Lot 12:

- conservation of 2,510 m² coastal plains scribbly gum woodland and 7,915 m² of red mahogany - apple paperbark forest, characteristic of swamp sclerophyll (swamp sclerophyll) forest on coastal floodplains endangered ecological community (EEC)
- conservation of 71 clumps of *Tetratheca juncea* and 55 *Angophora inopina* individuals
- rehabilitation and revegetation of 1,489 m² of cleared land adjacent to the swamp sclerophyll forest EEC
- revegetation of 3,175 m² of cleared land adjacent to infrastructure batters in Precinct 2
- revegetation of the future detention basin batters in Precinct C
- the conservation and management of the above land in perpetuity.



Figure 6: Additional Vegetation Proposed for Removal (Source: Environmental Assessment for MP 07_0147 Mod 4)

The Department has assessed the potential environmental impacts associated with the relocation of the local road, and has concluded the proposed alignment is acceptable for the following reasons:

- the proposed road alignment has been revised to generally align with the boundaries of the R2 and E2 zones (see **Figure 7**)
- Council and the OEH have advised the proposed offset arrangements would be sufficient to mitigate the impact of additional vegetation clearing on Lot 12. This offset can be obtained via the inclusion of a new assessment requirement for suitable arrangements to be in place to secure the proposed offset prior to the determination of any development application proposing to clear *Tetraetheca juncea* or *Angophora inopina* on Lot 12
- the application would not remove vegetation within the corridor required under Condition 11 of DA/714/2014 (see **Figure 7**)
- the technical reports prepared to support recent development applications on Lot 12 confirm the area within the proposed road reserve is not subject to flooding or mine subsidence, and does not contain any contaminated or acid sulphate soils
- the Aboriginal Heritage Impact Assessment prepared to support the recent rezoning of Lot 12 confirms the site does not contain any known archaeological or cultural heritage items.

Given the above, the Department's assessment concludes the creation of a new local road through Lot 12 would not result in any unacceptable environmental impacts, subject to the recommended conditions of approval.

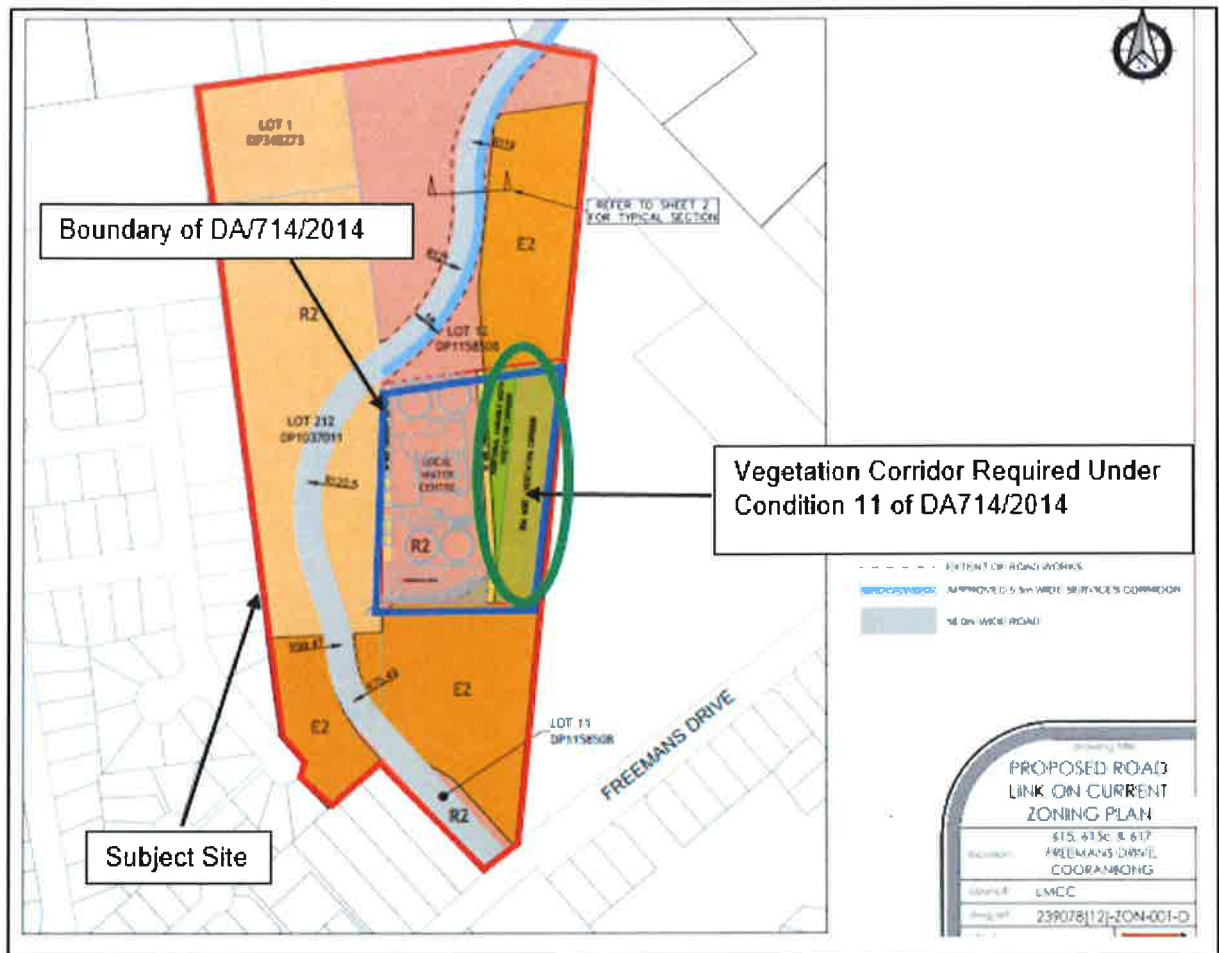


Figure 7: Location of 30 m wide Vegetation Buffer Required under Condition 11 of DA/714/2014 (Source: Supplementary Information Provided by JPG dated 21 July 2017)

8.2 Site Access and Connectivity to Lot 2

The approved Concept Plan includes a north-south road running through Lot 2. However, this connection is now sought to be removed and replaced with a new road running through Lot 12, further to the east (see **Figure 8**).

Lot 2 does not form part of the Concept Approval as the owner of Lot 2 did not consent to being part of the original application. The owner of Lot 2 raised concerns about the removal of the north-south road adjacent to Lot 2, as it would:

- remove the opportunity to provide north-south connectivity within and to Lot 2, and reduce the potential design options available for the redevelopment of this lot
- potentially alter the timing for the redevelopment of Lot 2, as the redevelopment of this lot would rely solely on the provision of the road connection adjacent to the western boundary of the site on land controlled by the Proponent.

The Department notes access to Lot 2 is currently constrained as it only has a five-metre wide frontage to a bend on Alton Road. Access to Lot 2 is currently provided via an unconstructed road (known as Alton Road North) which is controlled by the Proponent. Alton Road North does not form part of the approved Concept Plan and instead, this area will be occupied by a small park and a new access roadway to Lot 2 (**Figure 8**).

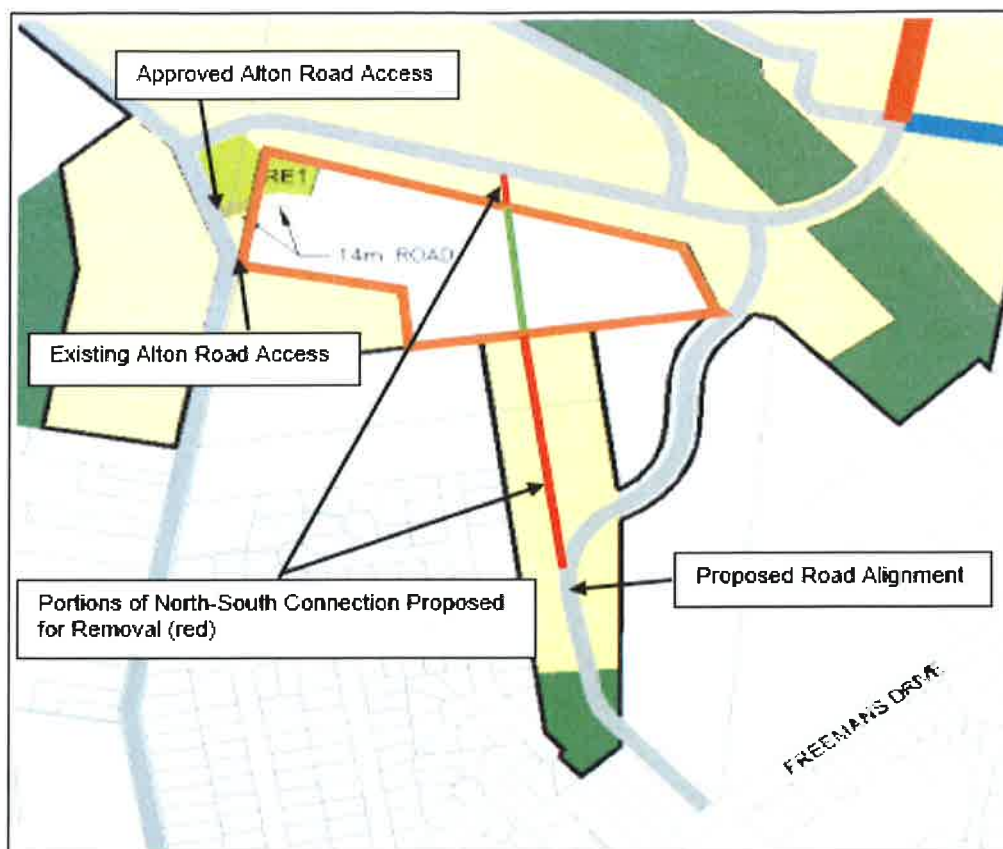


Figure 8: Removal of North-South Road to Lot 2 (Source: North Cooranbong Concept Plan RTS)

The Department requested the Proponent address the impacts of the proposed modification on connectivity within and to Lot 2 in its RTS. In this regard, the Proponent advised the removal of the north-south road through Lot 2 would not result in any adverse impacts on the basis that:

- it will not delay the redevelopment of Lot 2, as this lot currently relies on the provision of new access arrangements on land owned by others, and the proposed modification would not alter this arrangement
- whilst the relocation of the north-south road would remove two of the site access points to Lot 2, the proposed modification would continue to provide orderly development in the locality as it would retain the eastern access point to Lot 2 (adjacent to the new park required on Alton Road).

The Department reviewed the Proponent's RTS and requested additional information to demonstrate the relocation of the north-south road would not reduce connectivity within the southern catchment of the site, or adversely impact the redevelopment options for Lot 2. In response to these concerns, the Proponent provided supplementary information on 19 July 2017, advising a second road connection could be provided by condition at the northern boundary of Lot 2 and would achieve the connectivity outcomes identified by the Department. To ensure suitable connectivity is provided to Lot 2, the Proponent suggested modifying the terms of the Concept Approval to require the retention of the road adjoining the northern boundary of Lot 2.

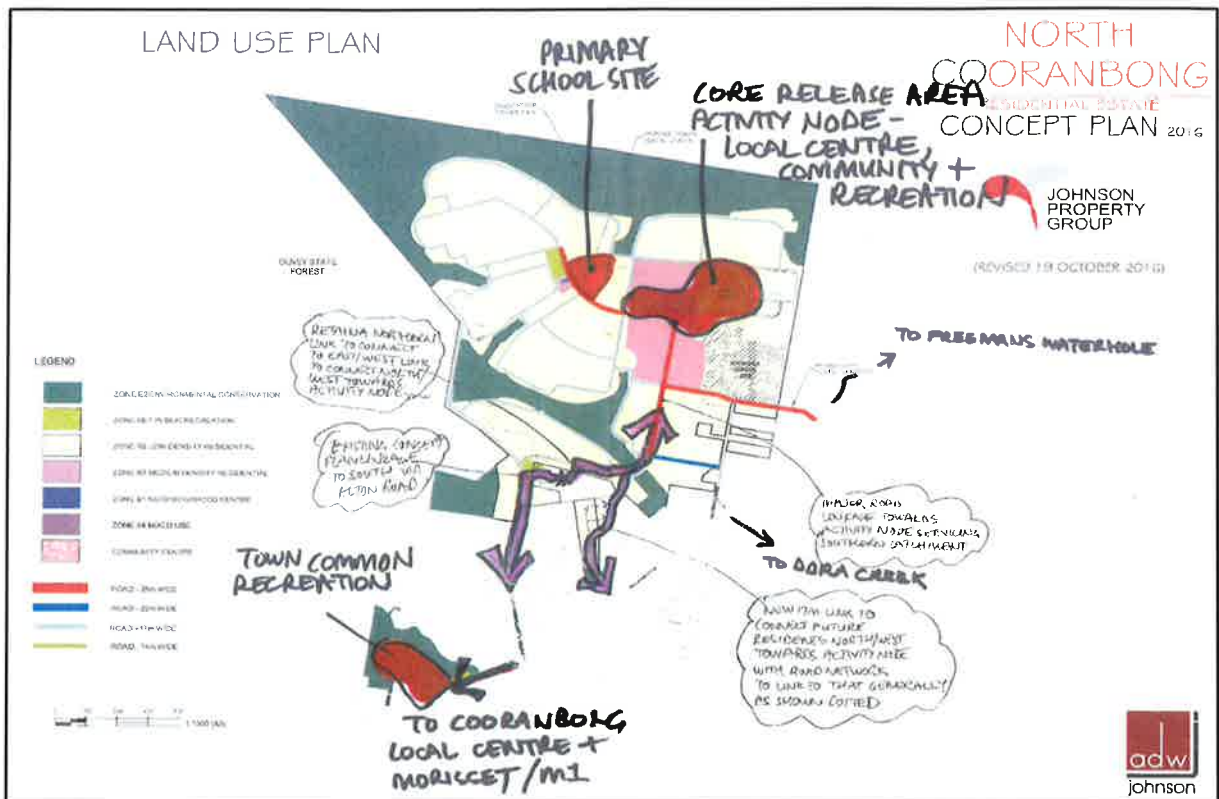


Figure 9: Connectivity Plan (Source: Proponent's Supplementary Information dated 19 July 2017)

The Department considers the revised proposal, which retains two of the three approved connections, is acceptable as it would provide appropriate levels of access and connectivity and appropriate development options for the future redevelopment of Lot 2. In particular, the Department considers:

- the approved access along the western boundary of the site would provide sufficient access and connectivity to Alton Road, Freemans Drive, the Avondale Shopping Village, Cooranbong and the Pacific Highway/M1 to the south
- retaining a road connection along the northern boundary of the site would provide suitable connectivity to future parks, shops and community facilities located to the north of the site
- removal of the southern access to Lot 2 would not materially impact on the development potential for subdivision of Lot 2 and subject to minor design amendments, would not preclude the delivery of lots in the general configuration identified in the local VPA, (see **Figure 10**).

The Department notes the Concept Plan does not identify the timing for the delivery of the roads adjacent to the northern, southern or eastern boundaries of Lot 2. Further, the proposed modification does not seek to identify timing for the construction of any of the roads adjacent to Lot 2. The Department considers the timing for the construction of new roads and site access arrangements is a matter that should be negotiated separately between landowners.

The Department's assessment therefore concludes, subject to the retention of the northern road connection to Lot 2, the removal of the southern road connection and its replacement with a new road alignment to the east, would provide an acceptable level of connectivity all for lots within and adjoining this part of site. The Department has, therefore, recommended a new modification to the Concept Plan (Modification 2.4) requiring the retention of the access road/access point adjacent to the northern boundary of Lot 2.



Figure 10: Indicative Lot Layout (Source: Local VPA)

8.3 Other Issues

The Department notes the proposed modifications to the road layout would necessitate administrative changes to several conditions to reference the proposed engineering drawings and the inclusion of Lot 12 within the Concept Plan area. In addition, the Department notes the concept approval:

- references several government agencies that no longer exist and contains some minor typographical errors
- incorrectly identifies *State Environmental Planning Policy No. 55 – Remediation of Land* (SEPP 55) only applies to the assessment of future applications for residential development.

To address these issues the Department has recommended modifications to the approval to:

- include references to the revised engineering drawings and supporting technical assessments
- identify SEPP 55 applies to the assessment of all future development applications
- update the references to government agencies and correct minor typographical errors within the concept approval.

9. CONCLUSION

The Department has assessed the modification request and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that subject to the inclusion of the recommended conditions of approval, the proposed modification is appropriate as it would:

- maintain north-south connectivity through the Main Development Site
- would not result in any adverse biodiversity impacts in the locality.

Consequently, it is recommended that the modification be approved subject to the recommended conditions.

10. RECOMMENDATION

It is RECOMMENDED that the Executive Director, Key Sites and Industry Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report
- **approves** the modification request under section 75W, subject to conditions
- **signs** the notice of modification (**Appendix A**).

Natasha Harras:
Team Leader
Modification Assessments

Anthony Witherdin
Director
Modification Assessments

APPENDIX A: NOTICE OF MODIFICATION

A copy of the Notice of Modification can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8034

APPENDIX B: SUPPORTING INFORMATION

The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8034

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8034

3. Response to Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8034