



Residential and Tourism Subdivision, Tea Gardens Modification

*Part 3A Modification
Assessment
(MP 10_0136 MOD 1)*

April 2019

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Cover photo: Proponent's Environmental Assessment

Aerial view of the Tea Gardens site (Source: Proponent's Environmental Assessment)]

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Glossary

Abbreviation	Definition
AHD	Australian Height Datum
Council	Mid Coast Council
Department	Department of Planning and Environment
DPI	Department of Primary industries
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
EPL	Environment Protection Licence
ESD	Ecologically Sustainable Development
LEP	Local Environmental Plan
Minister	Minister for Planning
OEH	Office of Environment and Heritage
RMS	Roads and Maritime Services
RTS	Response to Submissions
SEARs	Secretary's Environmental Assessment Requirements
Secretary	Secretary of the Department of Planning and Environment
SEPP	State Environmental Planning Policy



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1. Introduction

1.1 Introduction

This report provides an assessment of a section 75W modification request to amend the Concept Plan for an 880 lot residential and tourist subdivision at Tea Gardens (MP 10_0136 MOD 1) in the Mid Coast local government area (LGA).

The proposed modification, as amended by the Proponent's Response to Submissions (RTS), seeks approval to:

- amend the Concept Plan layout to reduce the development footprint, delete the Tourism Precinct and expand the conservation lands to facilitate the retention of 17.45 hectares (ha) of additional Koala habitat
- amend the Concept Plan boundary to remove 10.4 ha of land within and adjacent to the Tourism Precinct and include 5.83 ha of additional land to facilitate the reconfiguration of the Myall Street Commercial Precinct
- reduce the indicative lot yield from 880 to 725 lots and dwelling yield from 945 to 935 and increase the number of development stages from 14 to 16
- amend the terms of approval and Statement of Commitments (SOCs) to:
 - facilitate the implementation of a revised Biodiversity Offset Package and permit the staged delivery of the proposed biodiversity offsets
 - permit the creation of a borrow pit in proposed stages 15 and 16 to provide fill for bulk earthworks in proposed stages 2 to 5
 - facilitate the implementation of the revised Integrated Water Cycle Management Plan, Stormwater Management Plan, Groundwater Monitoring Plan, Acid Sulfate Soils Management Plan, Geotechnical Assessment, and Aboriginal Cultural Heritage Management Plan
 - remove the requirements to prohibit the keeping of cats, provide a Stage 2 contamination assessment, provide a road traffic noise impact assessment, and construct a 'third pipe' to facilitate the use of recycled water on-site.

The request has been lodged by Tatersall Lander Pty Ltd, on behalf of SGD 1 Pty Ltd and SGT 2 Pty Ltd (the Proponent), pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 The Site and Surrounds

The site is located on the north-western edge of the coastal town of Tea Gardens on the NSW North Coast, approximately 45 kilometres (km) north of Newcastle (see **Figure 1**).

The site is approximately 222.5 ha in area and comprises five land parcels (Lots 1, 10, 19 and 40 in DP 270100 and Lot 1 in DP 270561). The land is currently vacant and comprises a mixture of cleared lands and remnant vegetation that supports four endangered ecological communities (EECs) and Koala and Wallum Froglet habitat (see **Figures 2 and 3**).

The eastern portion of the site contains a wetland listed under State *Environmental Planning Policy No. 14 - Coastal Wetlands* (SEPP 14) which connects to the Myall River immediately east of the site. The Myall River forms part of the Port Stephens and Great Lakes Marine Park and the Myall Lakes National Park. These parks connect a system of RAMSAR listed wetlands and subsurface aquifers linking estuary and marine ecosystems which support habitat for several migratory bird species protected under the JAMBA and CAMBA agreements (see **Figure 4**).

Land uses within the vicinity of the site include:

- the North Shearwater rural residential development and rural lands to the north
- the Myall River and the Myall Lakes RAMSAR Wetlands and the Port Stephens Great Lakes Marine Park to the north-east
- the Myall Quays residential estate to the south and a portion of the Myall Lakes RAMSAR Wetlands to the south-west
- the Tea Gardens light industrial estate to the west.



Figure 1 | Site Location and Surrounding Context



Figure 2 | Existing Site Features

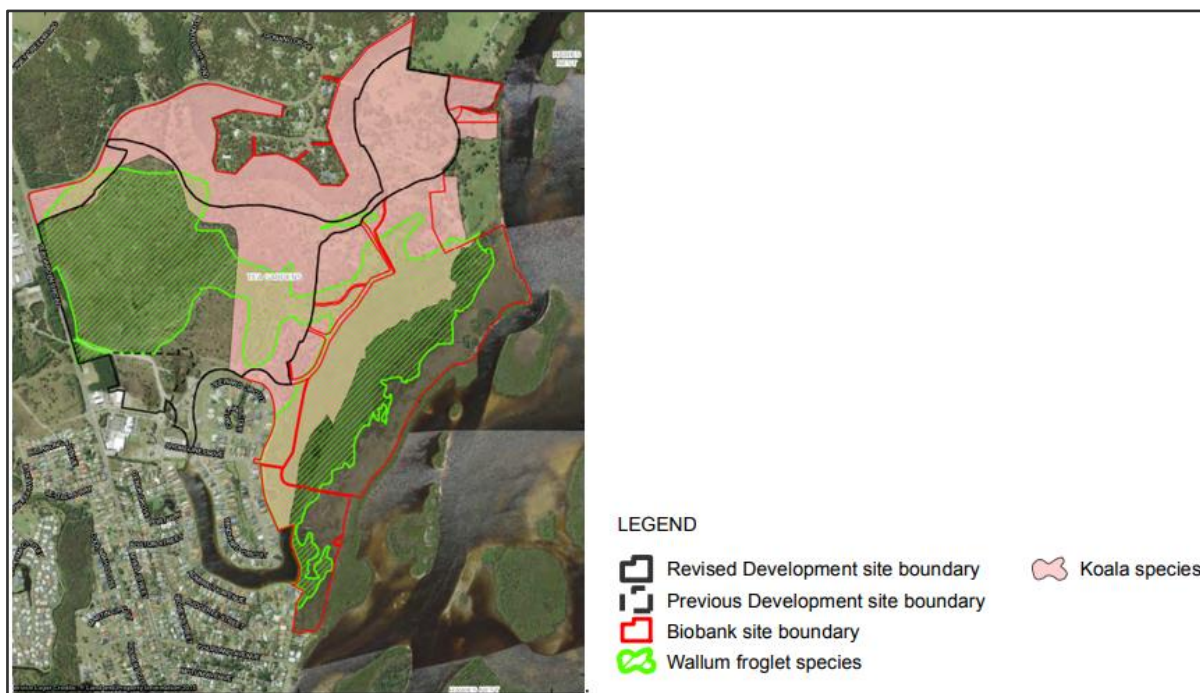


Figure 3 | Koala and Wallum Froglet Habitat

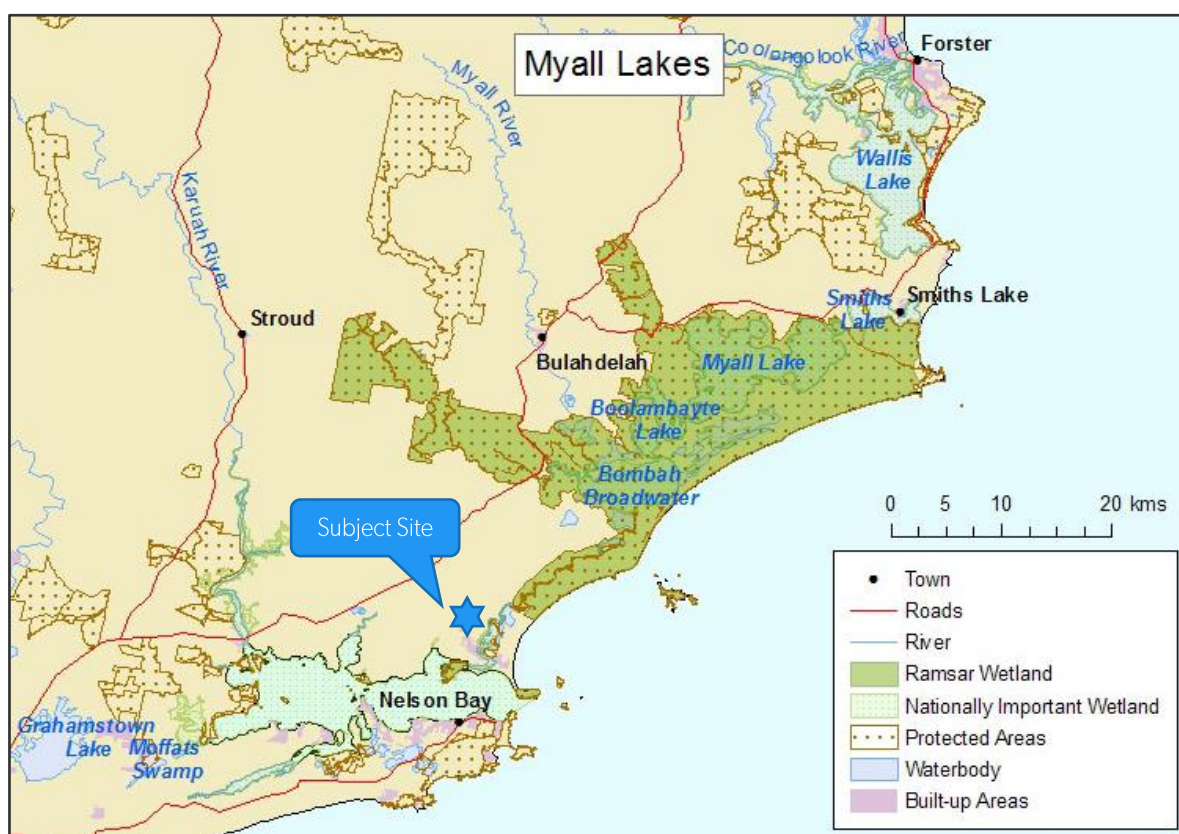


Figure 4 | RAMSAR Wetlands within the Port Stephens and Great Lakes Marine Park and the Myall Lakes National Park

1.3 Approval History

Concept Plan and Project Approval (MP 10_0136)

On 27 June 2013, the then Executive Director, Development Assessment Systems and Approvals, granted Concept and Project Approval for a residential and tourist subdivision. The approved development is described in **Table 1** below.

Table 1 | Summary of Concept Plan and Project Approval

Aspect	Concept Plan
Uses	<ul style="list-style-type: none">residential, eco-tourism, conservation and open space.
Subdivision Works	<ul style="list-style-type: none">Community Title subdivision for approximately 880 residential lots and associated open spacefilling and bulk earthworks.
Environmental and Water Management	<ul style="list-style-type: none">implementation of water sensitive urban design measuresidentification of wildlife corridors, biodiversity offset areas and conservation precincts.
Infrastructure	<ul style="list-style-type: none">road works and upgrades and a conceptual pedestrian and cycle networkidentification of conceptual utility services infrastructure.
Aspect	Project Approval
Subdivision Works	<ul style="list-style-type: none">subdivision to excise the conservation lands as one or more lots with a total area of 116.1 ha.

Commonwealth Approval

On 7 November 2013, the Proponent referred the proposal to the Commonwealth to determine whether it requires approval under the provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). This referral was required as the proposal has the potential to impact three flora, one bird and three mammal species identified as either vulnerable or endangered under the EPBC Act, as well as ten migratory species protected under this Act.

On 13 August 2018, the Commonwealth advised the Proponent the proposal is a controlled action and requires approval under the EPBC Act. At the time of writing this report, the project had not received Commonwealth approval.



2. Proposed Modification

2.1 Original Modification Request

On 9 November 2016, the Proponent lodged a section 75W modification request (MP 10_0136 MOD 1) seeking approval to:

- alter the boundaries of the Concept Plan to reduce the development footprint, expand the conservation lands, delete the Tourism Precinct and facilitate the reconfiguration of the northern portion of the Myall Street Commercial Precinct
- increase the number of development stages from 14 to 16
- decrease the indicative lot yield from 880 lots to 725 lots and decrease the approved dwelling yield from 945 dwellings to 935 dwellings
- establish a boardwalk along the eastern boundary of the conservation lands
- amend Term A5 facilitate the implementation of a revised Biodiversity Offset Package and alter the timing for the delivery of the biodiversity offsets
- delete terms B3, C13 and C19 to:
 - remove the requirement to prohibit the keeping of cats (Term B3)
 - provide a Stage 2 contamination assessment (Term C13)
 - provide a road traffic noise impact assessment (Term C19)
- amend Term B6 to permit the establishment of a borrow pit within stages 15 and 16 to provide fill for bulk earthworks in stages 2 to 5
- amend terms B5 and C21 to revise the scope of intersection upgrades along Myall Street and require the upgrades to be delivered via Council's Section 94 Plan
- amend terms C6 to C10 to facilitate the implementation of the revised Integrated Water Cycle Management Plan, Groundwater Monitoring Plan, Acid Sulfate Soils Management Plan and Geotechnical Assessment
- amend terms C11 and C12 to facilitate the implementation of the proposed Bushfire Threat Assessment and Cultural Heritage Management Plan
- amend Term C17 to remove the requirement to provide recycled water
- undertake administrative changes to the conditions and SOC's to reflect the changes outlined above.

2.2 Revised Modification Request

The Proponent provided a Response to Submissions (RTS) and a supplementary information package to address the issues raised in the agency and public submissions. The RTS and supplementary information package revised the scope of the proposal to remove the request to establish a boardwalk along the eastern boundary of the conservation lands and clarified the proposed changes to the approved development footprint, lot and dwelling yield and staging arrangements.

In addition, the RTS and supplementary information package included revised biodiversity, traffic, bushfire, acid sulfate soils and Aboriginal cultural heritage assessments and a Groundwater Management Plan.

The proposed modifications to the Concept Plan layout are summarised in **Figures 5 and 6**.

The Proponent has advised the request, as amended by the RTS and the supplementary information package, is required to:

- increase the area of the proposed BioBank site from 107.35 ha to 113.79 ha to minimise Koala habitat clearing, facilitate the retention of higher quality habitat, and widen the approved ecological corridors
- update the Biodiversity Offset Package to ensure 100% of the Koala species credits are retired within the proposed BioBank site, and reduce the number of residual ecosystem and Wallum Froglet species credits retired off-site
- facilitate changes to the Integrated Water Cycle Management Strategy to reflect the proposed changes to the Concept Plan layout, address the requirements of terms C8 and C9 of the Concept Approval, and the outcomes of Council's revised Flood Study
- ensure terms B5 and C21 of the Concept Approval are consistent with the road upgrade requirements outlined in the Tea Gardens District Section 94 Development Contributions Plan (Contributions Plan)
- facilitate future design improvements to the Myall Quays Shopping Village and the future design and layout of the Myall Street Commercial Precinct
- ensure the approved servicing strategy is consistent with Council and MidCoast Water's servicing requirements
- reduce the traffic impacts and costs associated with the bulk earthworks.



Figure 5 | Approved Concept Plan Layout

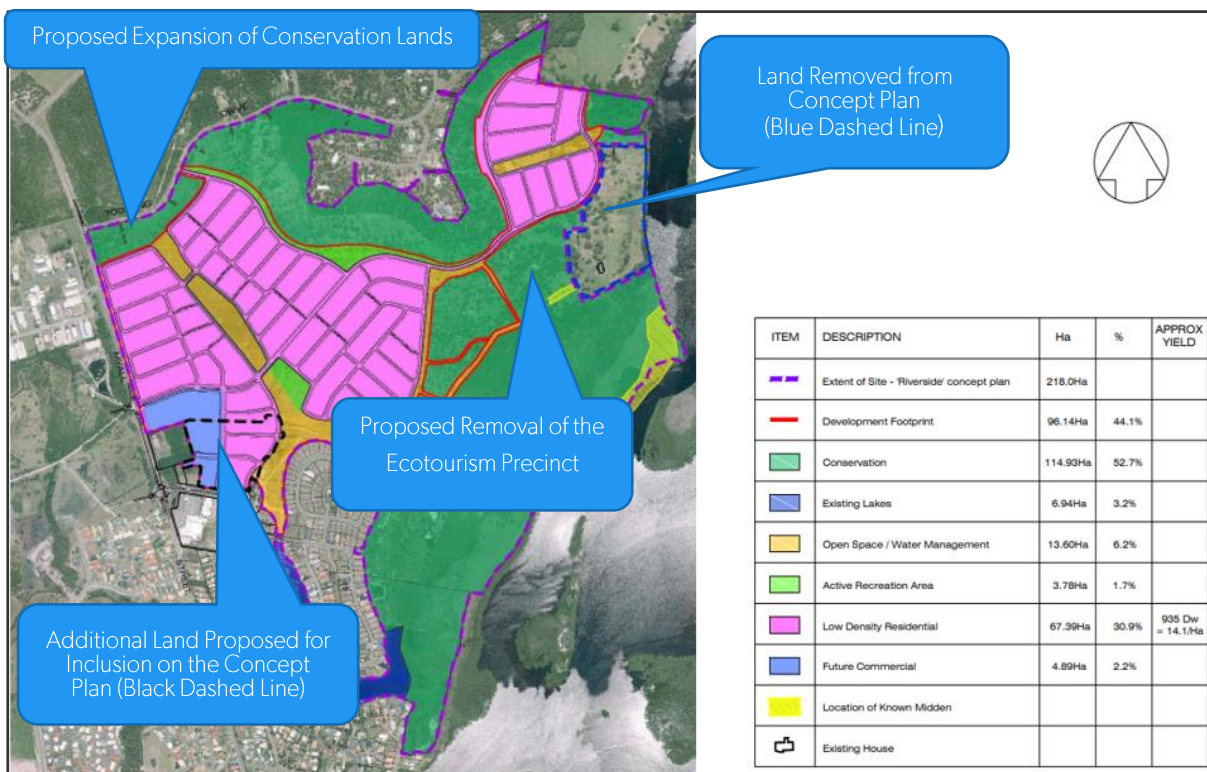


Figure 6 | Proposed Concept Plan Layout



3. Strategic Context

3.1 Hunter Regional Plan 2036

The Hunter Regional Plan (Regional Plan) seeks to ensure the Hunter is a leading regional economy with a biodiversity rich natural environment, thriving communities and access to a wide range of housing choices close to jobs, services, transport and open space.

The Department considers the proposal is consistent with the goals, directions and actions outlined in the Regional Plan as it would:

- facilitate the delivery of up to 725 new residential lots and 953 new homes in the Tea Gardens Urban Release Area and assist Council achieve its housing targets (Goal 4)
- continue to provide a range of low and medium density housing options to improve housing choice across the region (Goal 4 and Directions 22 and 23)
- increase the area of conservation lands, improve the quality of the biodiversity corridors on-site and ensure the biodiversity impacts of the project are offset as per the intent of the Concept Approval (Goal 2, Direction 2.4)
- update the Integrated Water Cycle Management Plan to reflect changes to Council's flood model to improve the region's resilience to flooding and ensure the project incorporates water sensitive urban design and achieves neutral or beneficial water quality outcomes (Goal 2, Direction 16 and Action 16.1).

3.2 Tea Gardens Hawks Nest Housing Strategy 2006

The Tea Gardens Hawks Nest Housing Strategy (Housing Strategy) provides guidance for preparation of local environmental plans, masterplans and development control plans (DCPs) for the coastal towns of Tea Gardens and Hawks Nest. In addition, it seeks to ensure masterplans and DCPs promote the creation of new neighbourhoods that:

- provide a range of dwelling types to improve housing choice, diversity and affordability
- achieve a minimum net density of 13 dwellings/ha
- ensure 10 per cent of new lots are between 300 and 450m² in size to facilitate small lot housing.

The Department has reviewed the proposal and has concluded it is consistent with the objectives of Council's Housing Strategy as it seeks to provide a range of lot sizes to improve housing choice, diversity and affordability and will achieve a net density of 14 dwellings/ha.

3.3 Koala Management Strategies and Recovery Plans

The subject site contains habitat for the Hawks Nest and Tea Gardens Koala Population. This population occurs in the immediate vicinity of the townships of Hawks Nest and Tea Gardens and is listed as an Endangered Population under the *Biodiversity Conservation Act 2016* (see **Figure 7**).

As the site contains Koala habitat the provisions of the NSW Koala Strategy, the NSW Koala Recovery Plan and the Hawks Nest and Tea Gardens Endangered Koala Population Recovery Plan apply to the assessment of the proposal. These strategies and plans aim to stabilise and increase koala populations across the State by:

- identifying threats to Koala survival and actions to aid the recovery of the species
- working with landowners to facilitate the conservation and management of high biodiversity value lands in private ownership
- assisting local communities deliver on the ground assistance to address risks to Koala populations
- coordinating Koala rehabilitation services and establishing a State-wide information base to increase knowledge about Koalas and their habitat
- using appropriate zoning, active management and monitoring to protect and restore Koala habitat and linkages and implementing a Koala Plan of Management to assist the recovery of the Hawks Nest and Tea Gardens Endangered Koala Population.

The Department has assessed the proposal against the provisions of the NSW Koala Strategy, the NSW Koala Recovery Plan and the Hawks Nest and Tea Gardens Endangered Koala Population Recovery Plan and concludes the proposal is consistent with these documents as it would:

- facilitate the retention of 17.45 ha of additional Koala habitat to ensure 100 % of the Koala offsets are provided on-site to assist the recovery of the Hawks Nest and Tea Gardens Endangered Koala population
- continue to ensure the retained Koala habitat will be conserved in-perpetuity via the establishment of the proposed BioBank site
- continue to require the provision of a Koala Management Strategy to facilitate the active management and monitoring of Koala habitat on-site.

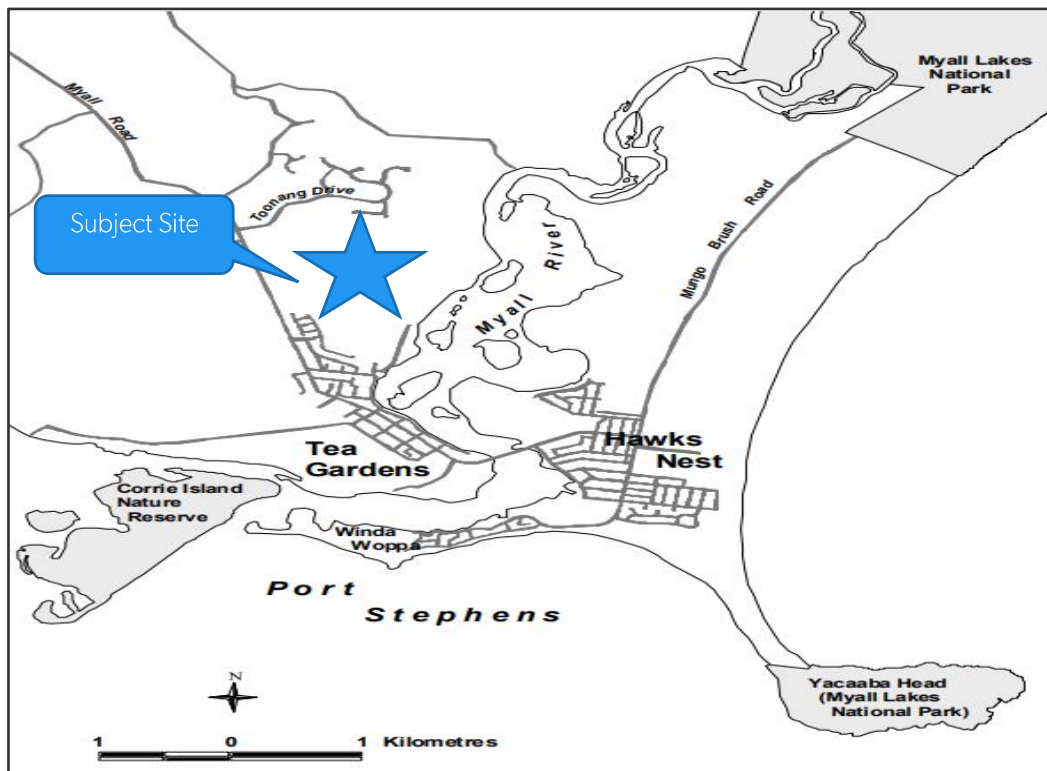


Figure 7 | Geographic Distribution of the Hawks Nest and Tea Gardens Endangered Koala Population (Source: Hawks Nest and Tea Gardens Endangered Koala Population Recovery Plan)



4. Statutory Context

4.1 Scope of Modifications

The project was originally approved under Part 3A of the EP&A Act. The project is a transitional Part 3A project under Schedule 2 to the EP&A (Savings, Transitional and Other Provisions) Regulation 2017. The power to modify transitional Part 3A projects under section 75W of the Act as in force immediately before its repeal on 1 October 2011, is being wound up – but as the request for this modification was made before the ‘cut-off date’ of 1 March 2018, the provisions of Schedule 2 (clause 3) continue to apply. Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove the carrying out of the project under 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.

4.2 Approval Authority

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

- Council has not made an objection
- a political donation disclosure statement has not been made
- less than 25 public submissions of objection were received.

5. Engagement

5.1 Department's Engagement

Modification Request

The Department placed the modification request on public exhibition and made it publicly available on the Department's website. The Department also consulted with Council, relevant State agencies, surrounding landowners and local community groups about the proposed modification.

The Department received a total of 14 submissions, comprising four submissions from public authorities and 10 submissions from the general public.

Response to Submissions (RTS) and Supplementary Information

The Department made the RTS and the Proponent's supplementary information package publicly available on its website and notified Council, OEH and the RFS of the revisions to the proposal. Submissions were received from each agency. No public submissions were received in relation to the RTS.

5.2 Public Authority Submissions

The issues raised by public authorities are summarised in **Table 2**.

Table 2 | Summary of Public Authority Submissions

Council	
Modification Request	Council did not provide a submission on the modification request.
RTS and Supplementary Information Package	<p>Council did not object to the revised proposal and provided the following comments:</p> <p><u>Strategic Planning</u></p> <ul style="list-style-type: none"> the proposed modifications to the boundaries of the R2, B2 and B4 zones of the Myall Road Commercial Precinct are supported. <p><u>Road Upgrades</u></p> <ul style="list-style-type: none"> Council's Section 94 Contributions Plan (Contributions Plan) does not collect money for the upgrade of the Myall Street/Second Access and Myall Street /Myall Quay Boulevard intersections no other contributions have been identified beyond the section 94 plan and no works in kind are required. <p><u>Biodiversity</u></p> <ul style="list-style-type: none"> Council will accept the dedication of the proposed BioBank site, subject to the Proponent: <ul style="list-style-type: none"> ensuring the management funds are directed to Council; and updating the Biobanking Statement to remove the boardwalk from the conservation lands; the keeping of cats should be prohibited on all lots within 200 m of the proposed BioBank site. <p><u>Stormwater Management and Flooding</u></p> <ul style="list-style-type: none"> The Integrated Water Cycle Management Strategy is suitable subject the Proponent identifying the works required to decommission and replace Basin 8C in the first development application for subdivision works. <p><u>Earthworks/Erosion and Sediment Management</u></p> <ul style="list-style-type: none"> Council supports the establishment of a borrow pit in Stages 15 to 16 to provide fill to facilitate earthworks within Stages 2 to 5. However, the use of the borrow pit should be managed to minimise potential dust and sedimentation impacts.
DPI	
Modification Request	<p>DPI did not object to the proposal and provided the following comments:</p> <ul style="list-style-type: none"> the proposed water monitoring network should be revised in consultation with DPI Water (now Lands and Water) to protect the water source and groundwater dependant ecosystems over the life of the development additional information should be provided to justify the selection of the proposed monitoring sites all excavated water bodies should be lined with an impervious non-toxic material to prevent groundwater contamination all permanent water take must be accounted for via a water access licence, unless an exemption applies.
RTS and Supplementary Information Package	Lands and Water raised no objection to the supplementary information package and confirmed it supports the implementation of the proposed Groundwater Monitoring Plan.
OEH	

Modification Request	<p>OEH did not object to the proposal, however it raised the following concerns:</p> <ul style="list-style-type: none"> the Biodiversity Offset Package should be revised to assess the impact of clearing 5.83 ha of land within the proposed Commercial Precinct and ensure all credits are retired prior to any development occurring on-site the Aboriginal Cultural Heritage Assessment should be revised to assess the impact of works within the proposed Commercial Precinct the Aboriginal Cultural Heritage Management Plan should be revised to: <ul style="list-style-type: none"> incorporate the land within the proposed Commercial Precinct clarify the final boundaries of the Riverside 01 midden outline the monitoring requirements for the Riverside 01 and 02 middens update the unexpected finds protocol to ensure the Proponent obtains the OEH's approval prior to the implementation of any salvage or mitigation measures.
RTS and Supplementary Information Package	<p>The OEH raised no objection and provided the following comments:</p> <ul style="list-style-type: none"> the revised Biodiversity Offsets Package addresses the impacts of development within the proposed commercial precinct the prohibition on the keeping of cats should be retained the revised Aboriginal Cultural Heritage Assessment and Cultural Heritage Management Plan address the impact of development within the Commercial Precinct, clarify the boundaries and monitoring requirements for the Riverside 01 and 02 middens, and provide a suitable unexpected finds protocol Term C3 of the Concept Plan should be updated to ensure future development applications include a flood assessment that addressed potential off-site impacts and the compatibility of the development with the land flood hazard.
RMS	
Modification Request	<p>RMS did not object to the proposed modification, however it raised the following concerns:</p> <ul style="list-style-type: none"> the proposal seeks to delete terms B5 and C21 on the basis the intersection upgrades required along Myall Street have been included in Council's Contributions Plan the proposed intersection upgrades do not reflect the scope of works required under terms B5 and C21 and additional information is required to determine the suitability of the proposed designs a Works Authorisation Deed (WAD) is required prior to the Proponent undertaking road works on Myall Street stormwater discharged from the development should not exceed the capacity of the Myall Street stormwater drainage system.
RTS and Supplementary Information Package	<p>RMS did not object to the revised proposal and provided the following comments:</p> <ul style="list-style-type: none"> the Myall Street / Myall Quays Boulevard and Myall Street / Riverside Boulevard intersections should be signalised in accordance with Council's Section 94 Plan, following the construction of a fourth leg at each intersection an interim upgrade of the Myall Street / Myall Quays Boulevard should be undertaken prior to signalisation the Myall Street / Toonang Drive intersection should be upgraded in accordance with Council's Contribution Plan prior the release of the 700th lot, or prior to the site being connected to Toonang Drive, whichever occurs first.
RFS	
Modification Request	<p>RFS did not object to the proposed modification, however it raised the following concerns:</p>

- no objection is raised to the proposed modifications to the Concept Plan layout, however, the Bushfire Management Plan does not address the requirements of *Planning for Bushfire Protection 2006* (PBP 2006). Given the above, the RFS does not support the proposed modifications to Condition C11 and SOC 10.

RTS and Supplementary Information Package	<p>The RFS did not object to the revised proposal and provided the following comments:</p> <ul style="list-style-type: none"> ▪ no objection is raised to the removal of the second egress point on Toonang Drive ▪ the Bush Fire Threat Assessment does not provide a suitable level of detail ▪ Term C11 of the Concept Plan should be retained to ensure detailed bushfire assessments are provided with future development applications.
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TFNSW

Modification Request	TNSW did not provide a submission on the modification request.
RTS and Supplementary Information Package	<p>TNSW did not object to the proposed modification and provided the following comments:</p> <ul style="list-style-type: none"> • the proposed bus route can be serviced, however future traffic conditions may require the implementation of revised measures, such as parking restrictions, to manage clearances for bus travel paths.

5.3 Public Submissions

The Department received 10 public submissions. The majority of submissions (90%) were in the nature of objection. No submissions were received in relation to the Proponent's RTS or supplementary information package. The key concerns raised in the public submissions included:

- the adequacy of the revised biodiversity assessment and the suitability of the Biodiversity Offsets Package
- potential ecological impacts associated with the construction and use of a boardwalk in the proposed BioBank site
- adverse ecological impacts associated with removing the prohibition on the keeping of cats
- the adequacy of the Traffic Impact Assessment, changes to the road upgrade requirements and potential road safety/traffic impacts
- potential impacts associated with the proposed cut and fill operations (ecological, dust, traffic, noise and potential impacts on road infrastructure)
- the adequacy of the Bushfire Management Plan and the impacts of removing the second egress point on Toonang Drive
- the removal of the vegetation corridor along the Myall Way
- changes to the site boundaries, the Concept Plan layout, the proposed modifications to the dwelling and lot yields, and the potential impacts of the proposed modifications on open space and existing infrastructure
- potential adverse water quality and flooding impacts associated with the proposed revisions to the Integrated Water Cycle Management Strategy
- the future zoning and land use(s) for the eco-tourism precinct
- insufficient detail regarding the future dwelling types and fencing requirements
- the use of section 75W to undertake the proposed modifications.



6. Assessment

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

- the modification request and associated documents
- the Environmental Assessment and conditions of approval for the Concept Plan
- all submissions received on the proposal
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act.

The Department considers the key issues associated with the proposed modification are the changes to the Concept Plan layout and the lot and dwelling yields, and potential biodiversity, water management, and traffic impacts. These issues are discussed in detail below. All other issues are discussed in **Table 8**.

6.1 Changes to the Concept Plan Layout, Lot and Dwelling Yields

The Concept Approval permits the staged development of 880 residential lots accommodating approximately 945 homes, an eco-tourism precinct, a central open space and water management corridor and conservation lands.

The proposal seeks approval to modify the Concept Plan layout to:

- reduce the development footprint and the size of the central open space and water management corridor
- increase the area of the conservation lands
- delete the eco-tourism precinct
- include the Myall Street Commercial Precinct and the existing lake to the south of the site within the boundary of the Concept Plan area
- decrease the approved lot and dwelling yield and increase the number of development stages from 14 to 16.

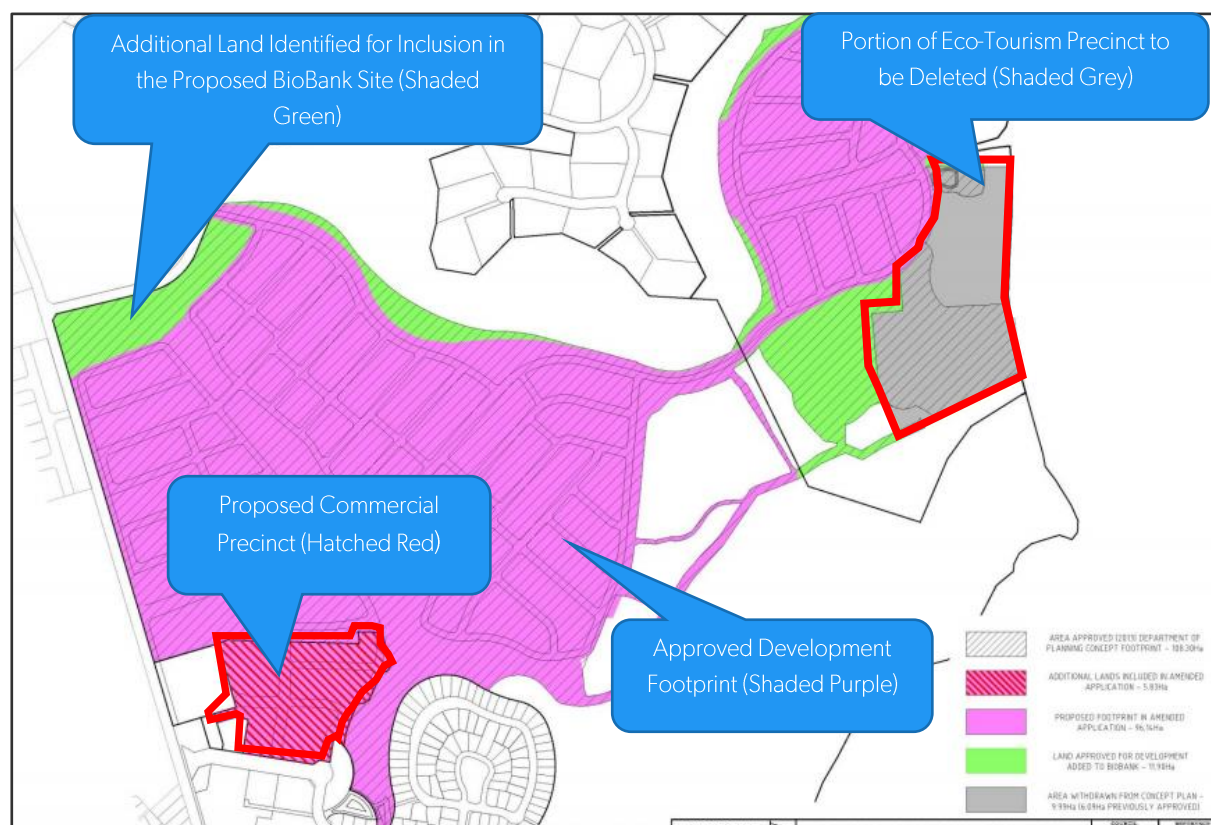
A comparison of the approved project and proposed development footprint and key development metrics is provided in **Table 3** and **Figure 8** below.

The Proponent advises the proposed modifications are required to:

- facilitate the conservation of high-quality Koala habitat adjacent to Toonang Drive and within the eco-tourism precinct
- increase the size of the conservation land to ensure 100 % of the koala offsets are provided on-site (i.e. within the proposed BioBank site)
- increase the width of the east-west corridor to improve connectivity to the existing environmental assets adjacent to the site
- reflect in-principle agreements with Council regarding the reconfiguration of the commercial lands along Myall Street
- include the main site access road (Myall Quays Boulevard) within the Concept Plan area.

Table 3 | Comparison of Key Development Metrics

Aspect	Concept Approval	Modification Request	Difference
Site Area	222.5 ha	218.08 ha	- 4.42 ha
Development Footprint	99.7 ha	96.14 ha	- 3.56 ha
Development Stages	14	16	+ 2 stages
Residential lots	880	725	- 155 lots
Residential dwellings	945	935	- 10 dwellings
Open Space and Water Management Area	15.4 ha	13.6 ha	- 1.8 ha
Existing Lake	6.7 ha	6.94 ha	+ 0.24 ha
Active Recreation Area	1.4 ha	3.78 ha	+ 2.38 ha
Conservation Lands	107.3 ha	114.93 ha	+ 7.63 ha
Ecotourism Precinct	10.4 ha	Deleted	- 10.4 ha
Commercial Precinct (Local Centre and Mixed Uses)	Nil	5.83 ha	+ 5.83 ha
Potential BioBank Site	107.35 ha	113.79 ha	+ 6.44 ha

**Figure 8** | Summary of Proposed Changes to the Development Footprint

The Department's assessment of the proposed modifications to the development footprint and Concept Plan layout is provided below. The biodiversity, water management, traffic and servicing aspects of the proposal are assessed in **Sections 6.2 to 6.6** and **Table 8** of this report.

Proposed Modifications to the Concept Plan Layout

The Department notes the proposed changes to the Concept Plan Layout would:

- reduce the development footprint to facilitate the retention of 17.45 ha of additional Koala habitat and 1.41 ha of additional Wallum Froglet habitat, and increase the size of the proposed BioBank site
- reconfigure the approved block layouts
- amend the boundary of the Concept Plan area incorporate the B2 zoned land immediately south of Myall Quays Boulevard
- reconfigure the R2 Low Density Residential, B2 Local Centre and B4 Mixed Use zones adjacent to the southern and western boundaries of the site.

The Department also notes the proposal seeks to rely on the provisions of Section 75W to amend the relevant zone boundaries within the *Great Lakes Local Environmental Plan 2014* (Great Lakes LEP 2014) (see **Figure 9**).

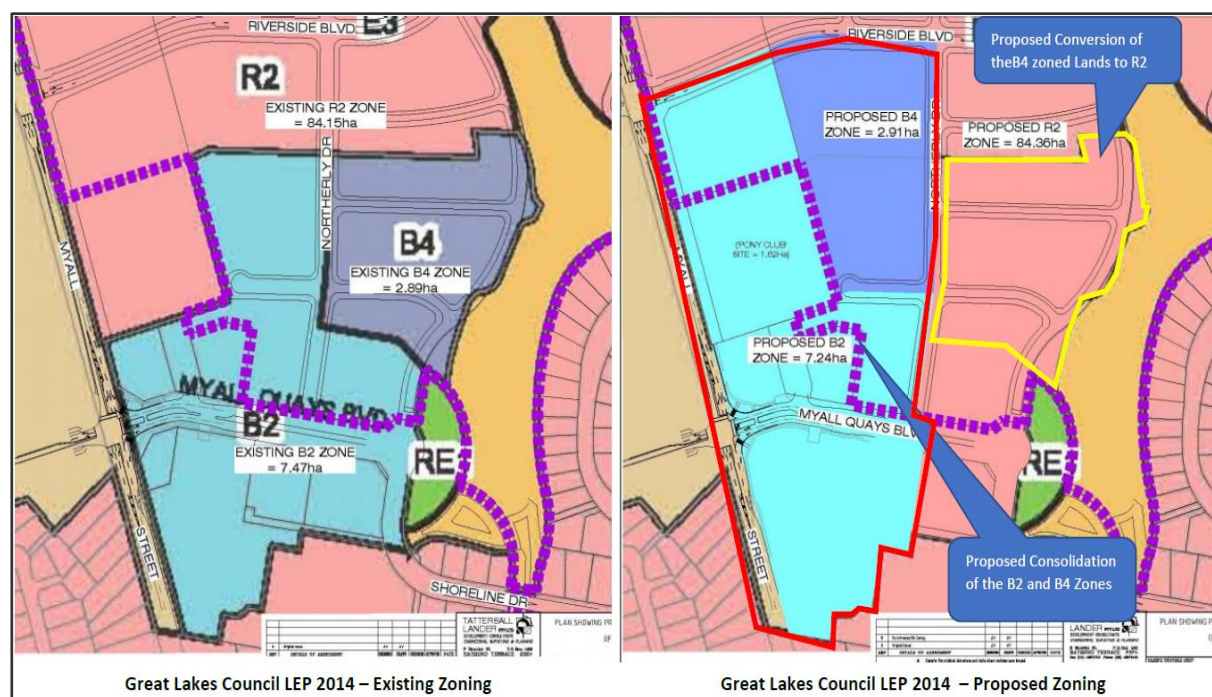


Figure 9 | Summary of Proposed Changes to the Development Footprint

Council advised it supports the proposed reconfiguration of the R2, B2 and B4 zones on the basis the proposal would rationalise the zone footprints, reduce the potential conflicts between residential and commercial uses near the zone boundaries, and introduce less noise sensitive land uses along Myall Street. Council also advised it raises no objection to the Proponent using the provisions of Section 75W to change the current zone boundaries, as it previously advised the Proponent it would support a similar Planning Proposal for the site.

The public submissions raised concern with the traffic impacts of the proposed road layout, potential bushfire safety impacts, the visual impacts of the proposal from Myall Way, the need for fencing details for future development along the Myall Way, the quantum of active open space provided across the Concept Plan area, and future use of the Ecotourism Precinct.

The Department's assessment of the traffic and bushfire impacts of the proposal is provided in **Sections 6.4** and **6.5** of this report. In terms of the visual impacts of the proposal, the Department notes the proposed modifications to the subdivision layout would result in a minor reduction to the approved setback to Myall Street (see **Figure 10**). In addition, based on the indicative lot layout, the proposed modifications to the layout of stages 11 to 14 would require fencing along the Myall Way frontage (see **Figure 11**).

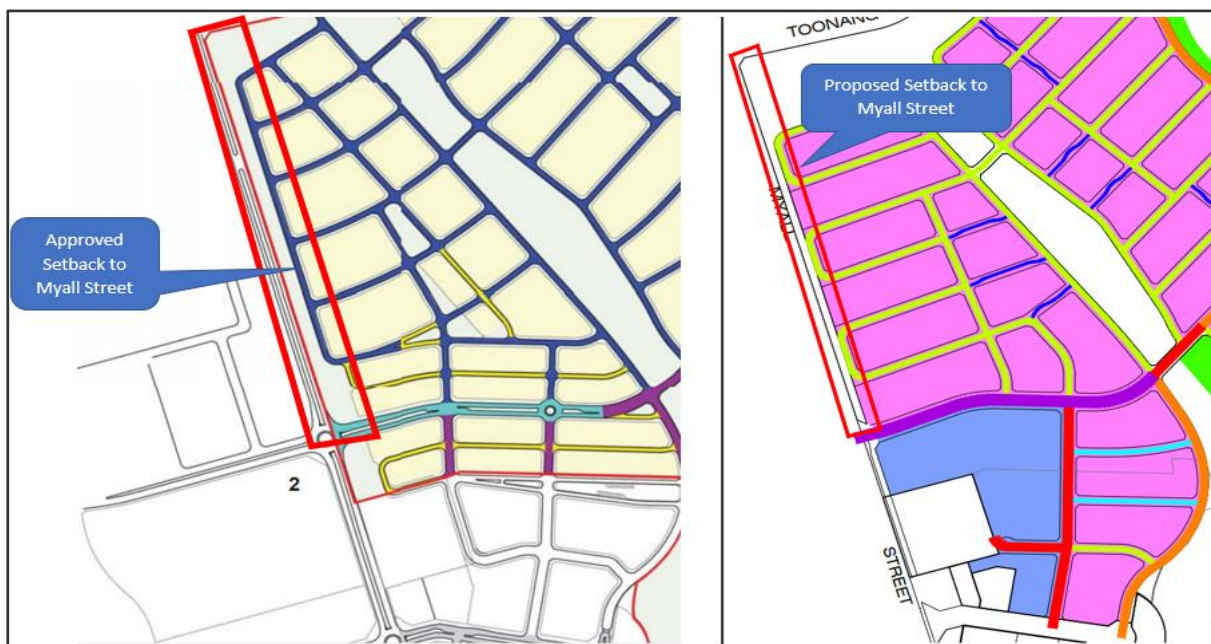


Figure 10 | Comparison of Approved and Proposed Setback to Myall Street

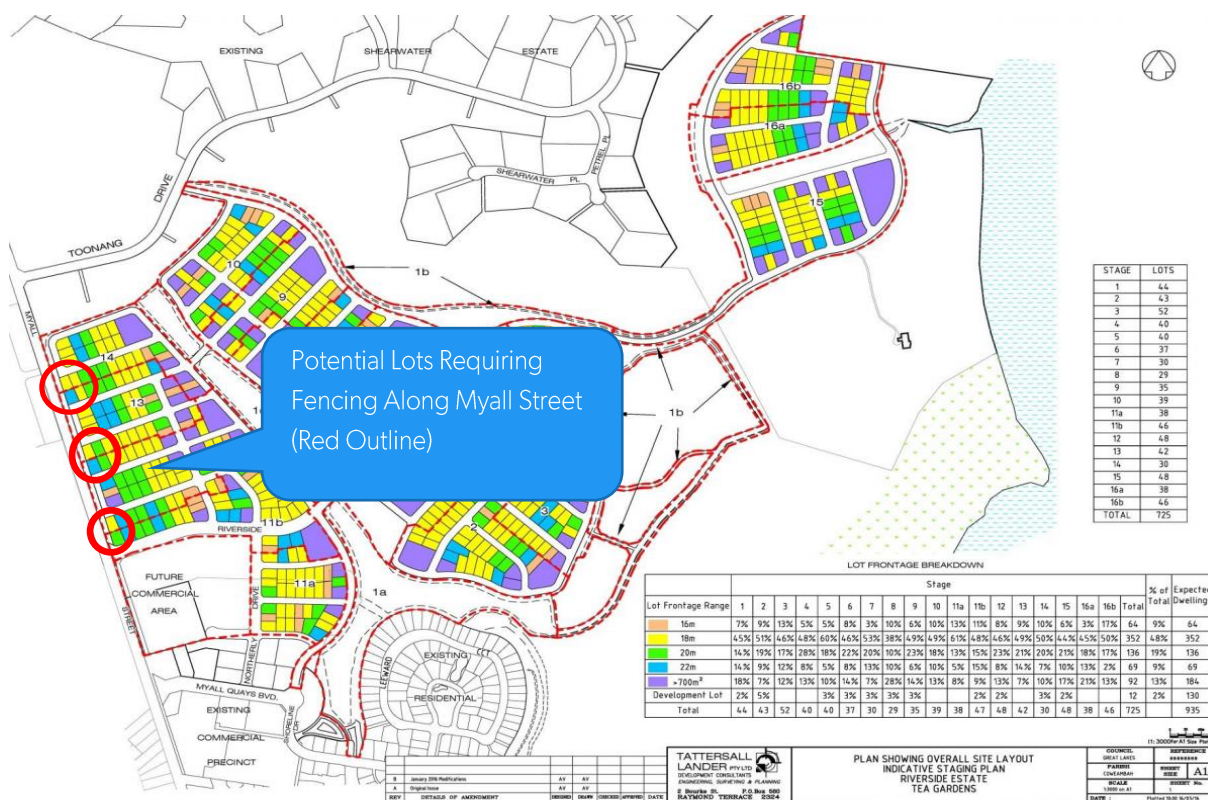


Figure 11 | Indicative Lot Layout

The Department also notes the proposal seeks to consolidate the pocket parks approved across the site into two larger parks located adjacent to the central water management and open space corridor and the proposed BioBank site (see **Figures 12 and 13**).

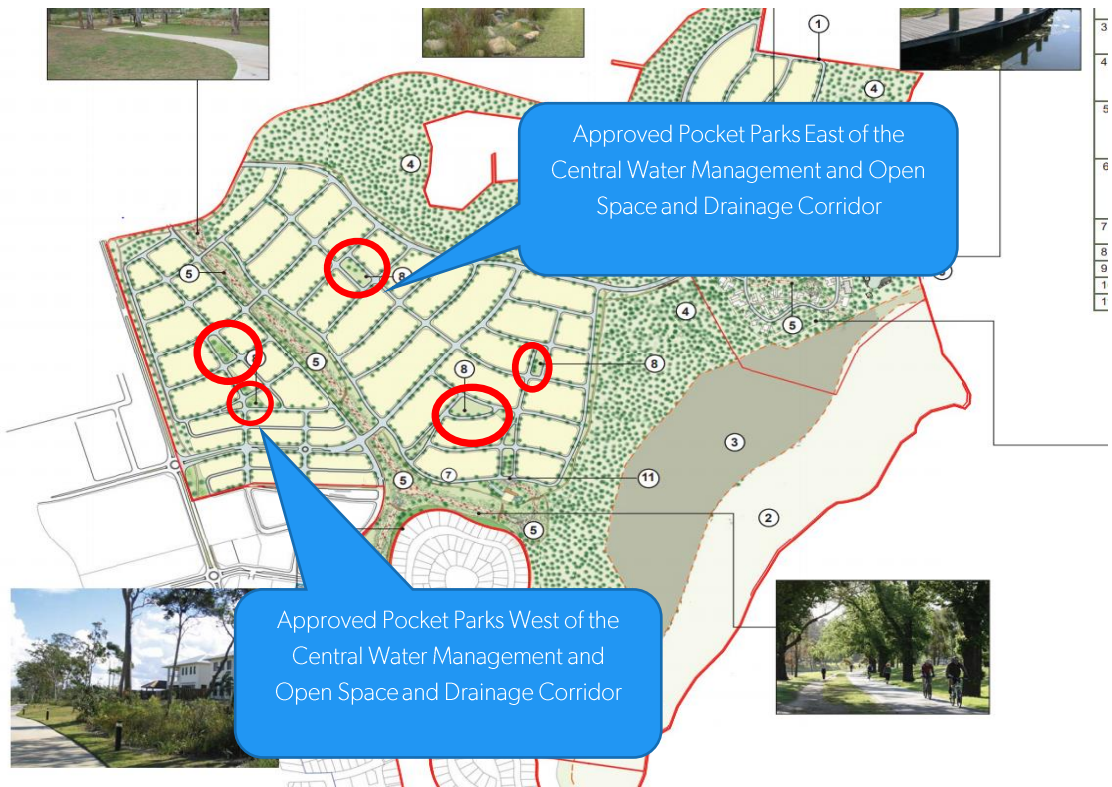


Figure 12 | Approved Open Space Network



Figure 13 | Proposed Open Space Network

The Department has reviewed the proposed modifications to the block layouts and zone boundaries and supports the proposed modifications to the Concept Plan layout for the following reasons:

- the deletion of the eco-tourism precinct and the proposed reduction to the open space and water management areas would facilitate the expansion of the conservation lands and would provide improved environmental outcomes for threatened species, including the Hawks Nest and Tea Gardens Endangered Koala Population, in comparison to the approved project
- the open space and water management areas are generally configured as per the approved Concept Plan and Council has confirmed the proposed changes to the Integrated Water Cycle Management Strategy are acceptable (see the detailed assessment at **Section 6.2**)
- the proposed reconfiguration of the zone boundaries would improve the layout and economic viability of the Myall Quays Shopping Village and the adjoining Myall Street Commercial Precinct by maximizing the site’s exposure to passing traffic. Further, it would not significantly alter the quantum of B2 and B4 zoned lands within the Tea Gardens Urban Release Area
- the proposed modifications to the residential block configurations are generally consistent with the approved Concept Plan. However, the Department has included an advice note in Term C11 (Bushfire Assessment) to ensure the final block layouts and road configurations comply with the requirements of PBP 2006
- the proposed modification to the Myall Street setback is minor and the Department has recommended modifications to Term C16 (Landscape Plans) to ensure the Landscape Concept Plans identify suitable treatments to mitigate the visual impacts of the proposal from Myall Street
- the proposal would provide two central areas of open space and increase the quantum of active open space by 2.38 ha (1.4 ha approved, 3.78 ha proposed)
- the majority of the Eco Tourism Precinct is included within the proposed Biobank site and will comprise conservation uses. Further, as the residual lands within the Eco Tourism Precinct are proposed to be removed from the Concept Plan area, future development on this land must comply with the land uses identified in Council’s LEP.

Proposed Modifications to the Lot and Dwelling Yield

The proposal seeks approval to reduce the approved lot and dwelling yield to facilitate the proposed expansion of the conservation lands. The Department notes that whilst the proposed lot yield has been reduced commensurate with the proposed reductions to the approved development footprint, the proposed dwelling yield has only been reduced by 1.3 % (see **Table 4**).

Table 4 | Comparison of Approved and Proposed Changes to the Development Footprint and Lot and Dwelling Yields

Aspect	Approved Footprint	Modification Request	% Decrease
Development Footprint	108.3 ha	96.14 ha	11.22%
Lot Yield	880	725	17.6%
Dwelling Yield	945	935	1.3%

The Department notes the public submissions raised concerns the proposed lot sizes are significantly smaller than lots in the adjoining Myall Quays Development (600 to 700 m² lots) and are inconsistent with the semi-rural areas. In addition, the public submissions raised concern the proposal would increase the number of dwellings permitted across the Concept Plan area and place strain on services and infrastructure in the locality.

The Department has assessed the proposed changes to the lot and dwelling yield and notes the proposal seeks approval to alter the mix of single dwellings, dual occupancy and small lot housing developments to offset the reduction to the development footprint.

The Department's assessment concludes the proposed changes to the lot and dwelling yields are suitable for the following reasons:

- the proposed reduction to the development footprint is required to facilitate the retention of additional Koala and Wallum Froglet habitat on-site
- the proposal would result in a 1.3% reduction to the indicative dwelling yield and would not result in any additional environmental impacts beyond those contemplated under the original Concept Approval
- increasing the percentage of dual occupancy and small lot housing developments would strike a suitable balance between retaining the important biodiversity values of the site, and delivering the dwelling targets identified in the Tea Gardens Hawks Nest Housing Strategy 2006 (a minimum of 13 dwellings/ha recommended, 14.1 dwellings/ha proposed)
- the proposed mix of traditional lots, dual occupancies and small lot housing developments would improve housing choice and affordability, as per the objectives of Tea Gardens Hawks Nest Housing Strategy 2006
- Term C2 (Housing Density and Typology) will ensure future developments within the Concept Plan are designed to address the local character objectives of the Tea Gardens Hawks Nest Housing Strategy 2006
- the approved servicing strategy has been designed to accommodate 945 dwellings and additional works would not be required to support the proposed changes to the dwelling yield.

Department's Conclusion

The Department's assessment concludes the proposed modifications to the Concept Plan layout would improve the environmental outcomes on-site by facilitating the retention of 17.45 ha of additional Koala and 1.41 ha of Wallum Froglet habitat. Further, the proposed modifications would facilitate a 6.44 ha increase in the proposed BioBank site and provide for the conservation of a broader range of habitat and increase the quantum and mix of habitat offsets provided on-site in comparison to the approved project.

The Department also concludes the proposed modifications to the lot and dwelling yield provide a suitable balance between retaining the significant ecological values of the site and achieving Council's dwelling targets for the area. In addition, the proposed modifications to the lot mix would improve housing diversity and affordability consistent with the desired future character of the Tea Gardens Urban Release Area.

Further, the Department is satisfied the inclusion of 5.83 ha of commercial land along the southern boundary of the site would facilitate improvements to the layout and functionality of the Myall Quays Shopping Village and Myall Street Commercial without significantly alter the quantum of B2 and B4 zoned lands within the Tea Gardens Urban Release Area. The Department therefore supports the proposed modifications to the Concept Plan layout.

6.2 Biodiversity

The modification request, as amended by the RTS and the Proponent's supplementary information package seeks approval to:

- revise the Biodiversity Offset Package to amend the quantum and location of the biodiversity offsets
- amend Term A5 (Limits of Approval) to revise the timing for the delivery of the proposed biodiversity offsets
- delete Term B3 (Domestic Animals) to permit the keeping of cats on-site.

The Department's assessment of the proposed modifications is provided below.

Quantum and Location of Biodiversity Offsets

The Concept Approval currently permits the clearing of 101.77 ha of native vegetation that supports habitat for five plant community types (PCTs), including three endangered ecological communities (EECs), and 14 threatened fauna species, subject to the implementation of a Biodiversity Offset Package comprising:

- the creation of a 107.35 ha BioBank site capable of generating 847 ecosystem credits and 426 Koala and 280 Wallum Froglet species credits
- the retirement of 2,035 ecosystem credits and 269 Koala and 405 Wallum Froglet species credits via the registration of an off-site BioBanking Agreement(s), or other conservation mechanisms, as agreed with the OEH and the Department.

The modification request, as amended by the RTS and supplementary information package, seeks approval to amend the Biodiversity Offset Package to:

- retain 12.81 ha of additional habitat on-site and increase the size of the proposed BioBank site by 6.44 ha
- retire 921 ecosystem credits and 428 Koala and 338 Wallum Froglet species credits within the proposed BioBank site
- retire 1,396 ecosystem and 327 Wallum Froglet species credits off-site via the establishment of an off-site BioBank, or via the payment of funds to the Biodiversity Conservation Fund.

The Proponent advises the proposed modifications to the Biodiversity Offset Package are required to:

- facilitate the retention of 12.81 ha of additional high-quality habitat on-site
- reduce the extent of Koala habitat clearing and ensure 100% of the Koala species credits are retired on-site
- reduce the quantum of the residual ecosystem and Wallum Froglet species credits required to be retired off-site
- increase the width of the wildlife corridors
- reflect the proposed changes to the development footprint.

The approved and proposed on-site offset areas are depicted in **Figures 14** and **15** and a summary of the approved and proposed disturbance areas and offset requirements is provided in **Tables 5** and **6**.



Figure 14 | Approved BioBank Site Location

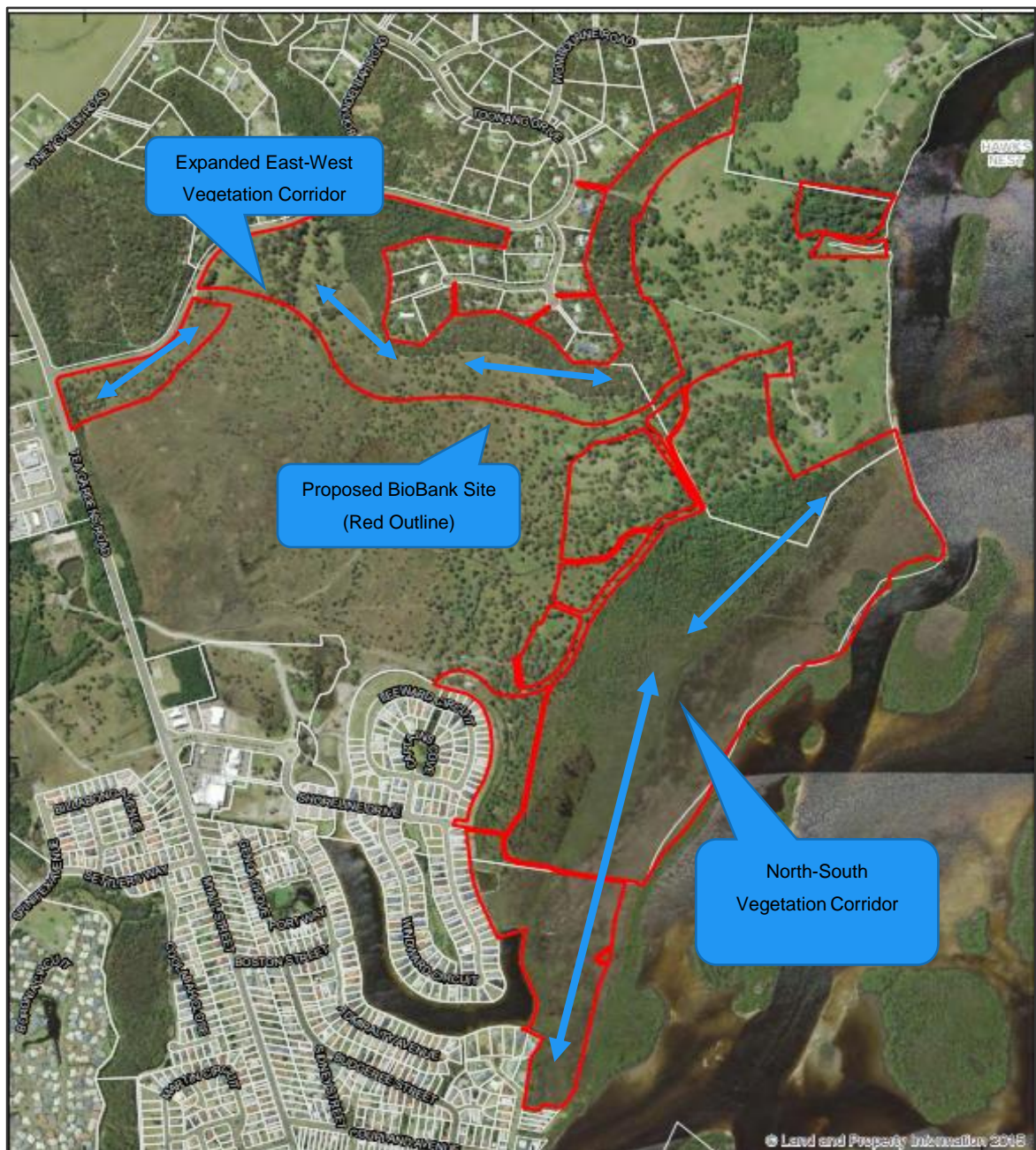


Figure 15 | Proposed BioBank Site Location

Table 5 | Summary of Approved and Proposed Vegetation Clearing and Ecosystem Credit Requirements

Vegetation Type (PCT)	Approved Vegetation Clearing (ha)	Current Ecosystem Credit Requirement	Proposed Vegetation Clearing (ha)	Proposed Ecosystem Credit Requirement
HU533: Coastal freshwater lagoons of the Sydney Basin and South East Corner*	0.58	24 credits on-site	0.58	24 credits
HU566: <i>Malaluca sieberi</i> – Tall Saw-sedge closed shrubland in drainage lines on the Central Coast, Sydney Basin*	33.45	1,247 credits comprising: <ul style="list-style-type: none"> 1 credit on-site 1,246 credits off-site 	17.34 ²	646 credits off-site
HU633: Swamp Mahogany swamp forest on coastal lowlands of the North Coast and northern Sydney Basin ¹	17.36	379 credits comprising: <ul style="list-style-type: none"> 192 credits on-site 187 credits off-site 	32.08	700 credits comprising: <ul style="list-style-type: none"> 191 credits on-site 509 credits off-site
HU509: Blackbutt – Smooth-barked Apple shrubby open forest on coastal sands of the southern North Coast	45.66	1,049 credits comprising: <ul style="list-style-type: none"> 226 credits on-site 823 credits off-site 	35.55	790 credits comprising: <ul style="list-style-type: none"> 253 on-site 537 credits off-site
HU511: Blackbutt – Tallowwood on dry grassy open forest of the southern North Coast	4.72	183 credits comprising: <ul style="list-style-type: none"> 51 credits on-site 132 credits off-site 	4.05	157 credits comprising: <ul style="list-style-type: none"> 59 on-site 98 credits off-site
Total	101.77	2,882	89.59	2,317

Note¹: Denotes PCTs that correspond with EECs listed under the now repealed provisions of the *Threatened Species Conservation Act 1995*

Note²: HU566 has been reclassified as Smooth-barked Apple – White Stringybark – Red mahogany – *Maleluca sieberi* shrubby open forest on lowlands of the Lower North Coast (HU832) in the proposed Biodiversity Offset Strategy to reflect the revised PCTs for the Hunter Central Rivers CMA.

Table 6 | Summary of Approved and Proposed Koala and Wallum Sedge Frog Impact Areas and Species Credit Requirements

Species	Approved Impact Area (ha)	Credits Required Under Proposed Offset Package	Proposed Impact Area (ha)	Proposed Credit Requirements
Koala	57.65	695 species credits comprising:	40.2	482 species credits comprising:
		426 credits on-site		516 credits on-site
		269 credits off-site		Nil credits off-site
Wallum Froglet	51.41	685 species credits comprising:	50	665 species credits comprising:
		280 credits on-site		338 credits on-site
		405 credits off-site		327 credits off-site

The Department notes the public submissions raised concern about the adequacy of the revised Biodiversity Offsets Package as several species known to occur in the area were not included in the biodiversity assessment. In addition, the public submissions also raised concern about the off-site biodiversity credits being sourced outside of the Tea Gardens area, the potential adverse ecological impacts associated with the proposed boardwalk, and the future ownership arrangements for the BioBank site.

The Department has reviewed the revised Biodiversity Offset Package in consultation with Council and the OEH and notes the proposal has been amended to remove the proposed boardwalk. In addition, it seeks to ensure all Koala offsets are provided on-site to minimise impacts on the Hawks Nest and Tea Gardens Endangered Koala Population and reduce the extent of biodiversity credits sourced off-site.

Further, the Department notes the OEH has confirmed the proposed offset package has been prepared in accordance with the BioBanking Assessment Methodology (BBAM), and where relevant, the species identified in the public submissions have been captured in the ecosystem credit calculations. In addition, both the OEH and Council confirmed:

- the credit profiles of the proposed BioBank site are comparable and suitable for the partial retirement of credits on-site
- Council is willing to accept dedication of the proposed BioBank site, subject to the management funds flowing to Council to facilitate on-going management works
- the long-term ownership arrangements for the proposed BioBank site should be determined in consultation with Council and the Biodiversity Conservation Trust (BCT) prior to the registration of a BioBanking Agreement (now Biodiversity Stewardship Agreement).

Given the above, the Department concludes the proposed revisions to the development footprint and the proposed expansion of the BioBank site would provide an improved environmental outcome by:

- maximising the amount of high-value Koala and other habitat retained on-site and increasing the width of the approved wildlife corridors
- ensuring all impacts on Koala habitat are off-set on-site, via the retirement of credits in the proposed BioBank area
- reducing the quantum of ecosystem and Wallum Froglet species credits required to be sourced off-site
- retaining a broader range of PCTs and associated species habitat within the proposed BioBank site to minimise biodiversity losses in the Tea Gardens area.

Further, the Department is satisfied the purchase and retirement of ecosystem and species credits on and off-site will ensure the biodiversity impacts of the proposal are offset in perpetuity, in accordance with the requirements of the NSW Government's Biodiversity Offsets Scheme.

Accordingly, the Department's assessment concludes the proposal would provide improved environmental outcomes in comparison to the approved project and has recommended modifications to terms A5 (Limits of Approval) and C14 (Land Zoned E2) to:

- require the implementation of the revised Biodiversity Offset Package
- ensure the ownership arrangements for the proposed BioBank site are determined in consultation with Council and the BCT prior to the registration of the BioBanking Agreement (now Biodiversity Stewardship Agreement).

Timing for the Delivery of Offsets

Term A5 (Limits of Approval) currently requires the Proponent to enter into satisfactory arrangements to secure the biodiversity offsets (ecosystem and species credits) prior to phases 1 to 3 of the Concept Plan becoming operational. This requirement was imposed to:

- ensure stages 1 to 7 (Phase 1 and part of Phase 2) of the project do not commence until satisfactory arrangements are in place to secure the on-site biodiversity offsets (847 ecosystem credits)
- restrict development in the residual phases (the balance of Phase 2 plus Phase 3) until satisfactory arrangements are in place to secure the remaining ecosystem and species credits (2,035 ecosystem credits, 695 Koala and 685 Wallum Froglet species credits)
- enable the previous owners of the site to develop their lots independently of one another, provided the biodiversity offset requirements were satisfied.

The proposal seeks to amend Term A5 and SOCs 9A to 10B to:

- reduce the number of development phases (3 approved, 2 proposed)
- revise the timing for the delivery of the biodiversity offsets
- permit the lodgment of a single development application for proposed phases 1 and 2 of the project.

The Proponent advises the proposed staging arrangements remain consistent with the intent of Term A5 on the basis that Phase 1 (stages 1 to 8) would continue to comprise the clearing of approximately 37 ha of poorer quality vegetation, and the proposed BioBank site would generate approximately 921 ecosystem credits, which equates to approximately 43% of the ecosystem credits required to offset the development as a whole (i.e. the clearing of 89.59 ha of vegetation).

The Department has considered the proposed modifications to the staging arrangements for the biodiversity offsets and has concluded the proposal is generally consistent with the intent of Term A5, as it seeks to ensure offsets are secured prior to impacts occurring. However, as the Proponent is seeking to clear Koala and other habitat in Stages 15 and 16 to establish the proposed borrow pit to provide fill for proposed stages 2 to 5, the Department has concluded all vegetation clearing associated with the proposed borrow pit should be offset prior any vegetation clearing within stages 15 and 16. The Department has therefore recommended modifications to Term A5 to ensure this occurs.

Cat Prohibition

The proposal seeks to delete Term B3 (Domestic Animals) of the Concept Plan to remove the prohibition on the keeping of cats. In addition, it seeks approval to manage the potential impacts of domestic (pet), roaming (stray)

and feral cats within the proposed BioBank site via an Environmental Management Plan (EMP) and resident education program.

The Proponent seeks to delete this prohibition on the basis that cats are permitted in the residential areas to the north and south of the site, and the EMP for the proposed BioBank site will include a suite of measures to actively manage the potential biodiversity impacts associated with domestic cats.

The Department notes the OEH does not support the removal of the prohibition on the keeping of cats due to the potential impacts on threatened fauna both on and off-site. Further, the Department notes approximately 50% of the public submissions objected to the deletion of Term B3 due to potential impacts on protected bird species and other wildlife, both within the proposed BioBank site and the surrounding SEPP 14 and RAMSAR wetlands.

The Department also notes Council advised a blanket exclusion on the keeping of cats is not required, and recommended modifications to Term B3 to prohibit the keeping of cats within 200 m of the proposed BioBank site.

The Department has reviewed the biodiversity assessments provided to support the proposed modification, and notes these assessments confirm the site contains habitat for the Black Bittern, Squirrel Glider, Common Blossom-bat, Little bent-wing bat, and the Eastern bent-wing bat, all of which are identified as threatened species under the *Threatened Species Conservation Act 1995* (now the *Biodiversity Conservation Act 2016*) and are known to be at risk of predation by cats.

The Department also notes the EA prepared to support the original Concept Plan recommended the use of restrictive covenants requiring domestic cats to be contained indoors between sunrise and sunset to manage potential impacts on native fauna. The Department reviewed these measures prior to determining the Concept Plan and concluded a restriction on the keeping of cats was required to minimise the environmental risk to the above species from the incursion of domestic cats into bushland areas and to protect the broader biodiversity values of the site.

The Department has reviewed the request to remove the prohibition on the keeping of cats having regard to recent Australian and international research on the impacts of domestic cats on native species and their environments which indicates:

- domestic cats occur at higher densities and in smaller geographic areas in comparison to feral cats, however the impact of domestic cats can be substantial on native fauna, including threatened species, as domestic cats can destroy up to 25 times more animals/unit area than feral cats
- domestic cats occur in relatively higher densities in suburban contexts and permitting cats in these locations creates the potential for hyper-predation on local wildlife
- the proximity of domestic cats to natural environments may amplify cat impacts, with studies showing that domestic cats in these locations destroy more native animals than domestic cats in traditional urban settings
- cat containment or curfew bylaws are not effective in reducing cat impacts, with only 12 to 34% of domestic cats being contained in accordance with existing regulations.

The Department acknowledges the social and health benefits associated with keeping domestic pets and these benefits must be balanced against the potential impacts on native fauna, noting the site and surrounding areas provide habitat for numerous threatened fauna species, including migratory species protected under the EPBC Act and the RAMSAR, JAMBA and CAMBA conventions.

The Department also notes other domestic pets, such as dogs, are permitted on the site, providing opportunities for similar health and social benefits without the same level of impact on native fauna.

The Department's assessment concludes there is insufficient evidence to demonstrate suitable management measures could be implemented to prevent the incursion of pet cats into the surrounding bushland and to prevent stray cats from becoming feral. Further, based on recent Australian and international research which demonstrates cat containment bylaws are only partially effective, the Department has concluded the removal of Term B3 could result in significant adverse impacts on native fauna and the overall biodiversity values of the site and the surrounding area.

Whilst the Department notes cats are permitted in the residential areas surrounding the site, the Department considers the impact of increasing the density of cats within the locality is likely to compound existing impacts on native fauna and would increase the risk of hyper-predation of threatened species that are known to be impacted by domestic and feral cats. On this basis, the Department concludes a precautionary approach should be applied to the management of cats on the subject site, and therefore the total prohibition on the keeping of cats should be retained.

6.3 Ground and Surface Water Management and Flooding

The proposal seeks to amend terms C6 (Groundwater Management) and C8 (Stormwater Management and Water Quality Monitoring) and SOC's 14 and 15 to require future development applications to demonstrate consistency with the requirements of the revised Integrated Water Cycle Management Plan (IWCMP). In addition, the proposal seeks to delete Term B4 (Existing Water Basins) and amend Term C9 (Flooding and Climate Change) and SOC's 16 to 18 to require the implementation of the Groundwater Monitoring Plan approved by the Natural Resource Access Regulator (NRAR) under Term C9(2).

The Proponent advises the proposed modifications to Terms C6, C8 and C9 and the corresponding SOC's are required to:

- ensure the IWCMP reflects the proposed amendments to the Concept Plan layout which include the reclassification of 2.88 ha of land from 'open space/water management' to 'conservation' uses
- ensure future developments are consistent with the Water Sensitive Urban Design Principles and stormwater treatment train identified in the Stormwater Management Plan included in the IWCMS
- ensure future DAs are consistent with the revised flooding assessment provided in the Stormwater Management Plan
- facilitate the construction of a new drainage basin (proposed basin 8C) to replace the existing basins which are excluded from the Concept Approval under Term B4.

The Department's assessment of the revised IWCMS, Stormwater Management Plan, Groundwater Monitoring Plan and the proposed modifications to the conditions of approval and SOC's is provided below.

Revisions to the IWCMS

The proposal includes a revised IWCMS which outlines the ground and surface water management measures and assesses the proposed modifications to the Concept Plan layout and the revisions to the flood planning levels for the site, as outlined in the Lower Myall River and Myall Lakes Flood Study. In summary, the IWCMS comprises:

- a revised stormwater drainage concept plan
- a final Stormwater Management Report and flood assessment
- a revised water quality management concept
- an updated groundwater model and groundwater management strategy.

The IWCMS has been revised to provide DA level detail and the proposal seeks to amend Term C9 to require future DAs to implement the recommendations of the IWCMS. The revised IWCMS concludes the proposed

modifications would maintain or improve water quality downstream of the site and reduced the extent of groundwater drawdown in comparison to the approved project.

The Department notes Council raised concerns with the cut and fill plan included in the Stormwater Management Report on the basis the areas requiring cut between 1.1 m and -2 m AHD may cause ponding, algal blooms, the proliferation of aquatic weeds, and mosquito issues (see **Figure 16**).

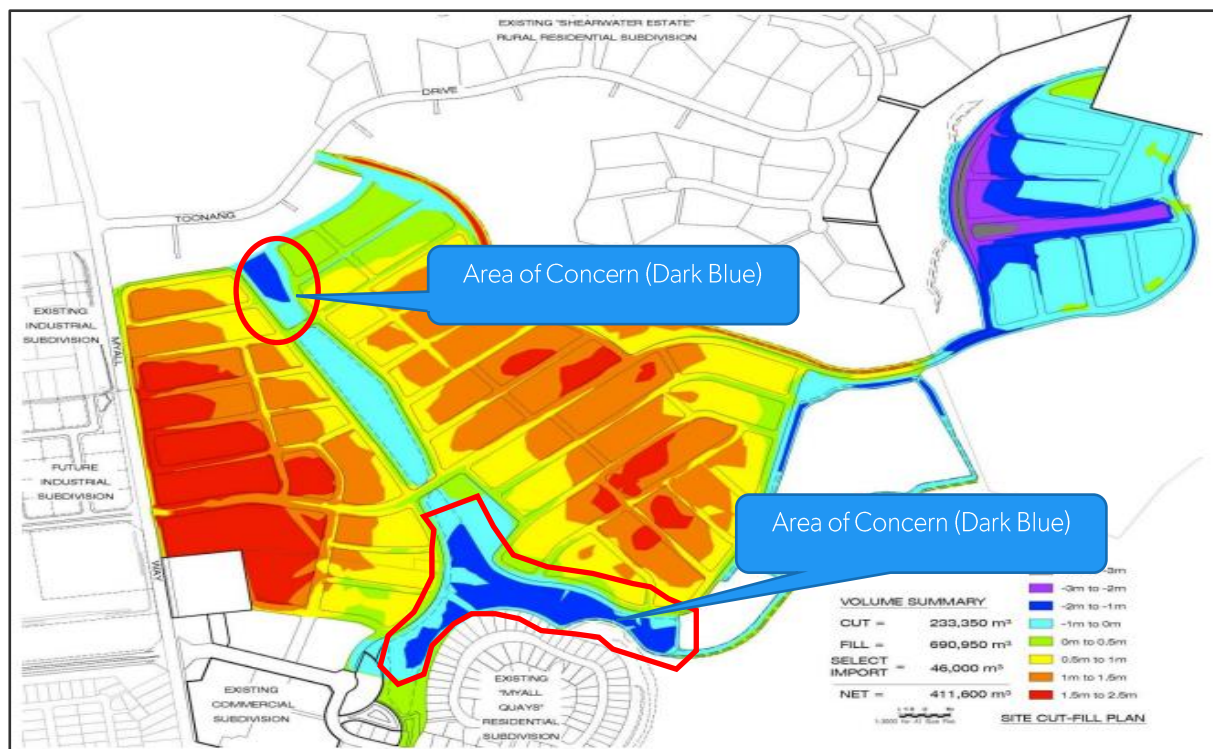


Figure 16 | Proposed Cut and Fill Plan (Source: Proponent's Stormwater Management Report)

Council advised the proposed groundwater recharge areas may intercept groundwater and create 'window lakes' which are inconsistent with the intent of the Concept Approval and would create an unacceptable risk and maintenance burden for the Community Title Association.

Council raised no objection to the design of the proposed bioretention systems and recommended these systems should not come on line until 80% of houses have been constructed in each catchment to avoid clogging and/or the need to replace filter material.

The Proponent provided additional advice from its water management expert (Martens Consulting Engineers) to address the issues raised by Council. This advice confirmed:

- the proposed cut and fill levels are generally consistent with the cut and fill plan included in the approved ICWMS
- the approved IWCMS modelled the impacts of the development intercepting groundwater at several locations and permits the establishment of 'window lakes' in restricted areas across the site
- the approved IWCMS was based on extensive water quality modeling which demonstrated the development contemplated under the Concept Approval would not impact on ground or surface water systems. Further, the proposal has been designed to ensure flows minimise the potential for aquatic weeds or mosquitoes.

In addition, the Proponent provided conceptual designs for the replacement of the existing basins located to the north and east of Shoreline Drive to address Council's concerns regarding the suitability of the water quality treatment devices for the southern branch floodway.

Council reviewed the supplementary information package and advised the proposed groundwater interactions are generally consistent with the approved ICWMS, and the conceptual designs for the proposed upgrades to the drainage basins to the south-east of the site would ensure there is no net change to the treatment of stormwater discharge as part of the final design of the southern branch floodway. In addition, Council advised it supports the Proponent's commitment to replace the basins located to the south-east of the site as part of the DA for the first stage of the development.

In addition, the OEH reviewed the IWCMS and raised no objection to the final flood planning levels for the site, and advised the revised Strategy addresses the flooding and climate change issues identified in Term C9 of the Concept Approval. Further, the Natural Resources Access Regulator has reviewed the proposed Groundwater Monitoring Plan and advised it incorporates suitable measures to protect groundwater quality, and water quality within the Myall River to ensure the health and integrity of the groundwater dependent ecosystems downstream of the project as per the requirements of Term C6 of the Concept Approval.

Given the complex nature of the ground and surface water flows and the site's proximity to the SEPP 14 wetlands, the Department engaged Alluvium consulting to peer review the IWCMS, Stormwater Management Report and the Groundwater Monitoring Program. This review concluded the IWCMS, Stormwater Management Report and Groundwater Monitoring Program satisfy the requirements of terms C6, C8 and C9 of the Concept Approval subject to the following minor revisions:

- the Proponent providing detailed drawings to:
 - demonstrate the stormwater treatment measures can be placed in the locations identified in the Precinct Plan
 - identify the invert levels and filter media required to ensure of the biofilter underdrains are free draining
- the Groundwater Management Plan being updated to require the monitoring of two additional boreholes and identify suitable bore sampling methods.

Based on the advice provided by Council, the OEH the Natural Resources Access Regulator and Alluvium Consulting, the Department's assessment concludes the proposed IWCMS and Groundwater Management Plan are capable of satisfying the requirement of Terms C6, C8 and C9 of the Concept Approval subject to the Proponent updating the IWCMS and Groundwater Monitoring Plan to include the additional information outlined in the Alluvium Peer Review. Accordingly, the Department has recommended modifications to Terms C6 and C8 of the Concept Plan to ensure the IWCMS and Groundwater Monitoring Program are updated prior to the determination of the first development application.

In addition, the Department has recommended modifications to Term B4 to ensure the Proponent:

- enters into suitable arrangements with Council to decommission and replace the existing drainage basins to the south-east with suitable stormwater treatment devices prior to the determination of the first DA
- demonstrates suitable replacement drainage infrastructure will be installed prior to the determination of the first DA.

6.4 Bushfire

The proposal originally included a Bushfire Management Plan (BMP) which outlined the interim and final APZs, dwelling construction standards and landscaping and property maintenance measures for the proposal. Further,

the proposal originally sought approval to amend Term C11 (Bushfire Assessment) and SOC 11 to require future development applications to demonstrate consistency with the proposed BMP.

The Department notes the RFS raised no objection to the proposed modifications to the subdivision layout, however it advised the BMP does not fully address the requirements of PBP 2006 and does not include sufficient information to enable a detailed assessment of the bushfire management measures for each stage of the project, as per the requirements of Term C11. Given the above, the RFS did not support the proposed modifications to Term C11 or SOC 11.

The Department also notes the public submissions raised concern that the site access/egress arrangements and bushfire management measures outlined in the BMP were inconsistent with the requirements of PBP 2006.

The Proponent's RTS sought to address the issues raised in the agency and public submissions by withdrawing the request to amend Term C11 and SOC 11. Whilst the Department supports the retention of Term C11 and SOC 11 on the basis that it would ensure future development applications demonstrate compliance with the requirements of PBP 2006, it requested the Proponent provide a revised bushfire assessment to:

- identify any potential changes in the bushfire risks associated with the proposed modifications to the Concept Plan layout
- outline the conceptual bushfire management measures for the proposal.

The Proponent provided a Bushfire Risk Assessment in September 2018, which concluded the proposed modifications to the Concept Plan layout would not increase this risk of bushfire on adjoining properties, or within the broader Tea Gardens area. In addition, it identified conceptual APZs for the proposal and included a Bushfire Management Plan.

The Department notes the RFS advised the revised Bushfire Threat Assessment does not include DA level detail to enable an assessment of the suitability of the final subdivision layout. As such, the RFS advised Term C11 and SOC 11 should be retained as per the current approval to ensure future applications are required to demonstrate compliance with the requirements of PBP 2006.

Whilst the Department supports this approach on the basis the proposed development footprint, lot and dwelling yields are generally consistent with the approved Concept Plan, it notes the proposal seeks approval to remove the second access point on Toonang Drive (see **Figures 17 and 18**).

As the removal of this access point may affect the Proponent's ability to demonstrate future compliance with the access and egress requirements of PBP 2006, the Department sought additional advice from RFS to confirm whether this aspect of the proposal would generate any unacceptable safety impacts. This advice confirmed RFS raised no objection to the deletion of the second access point on Toonang Drive.

Whilst the RFS raised no objection to the deletion of the second northern egress point, the Department has recommended modifications to Term C11 requiring the Proponent to verify the removal of the northern egress point complies with the access and egress requirements of PBP 2006 prior to the determination of the first development application. Subject to the inclusion of this condition, the Department is satisfied the potential bushfire impacts of the proposal are acceptable.



Figure 17 | Approved Access/Egress Arrangements

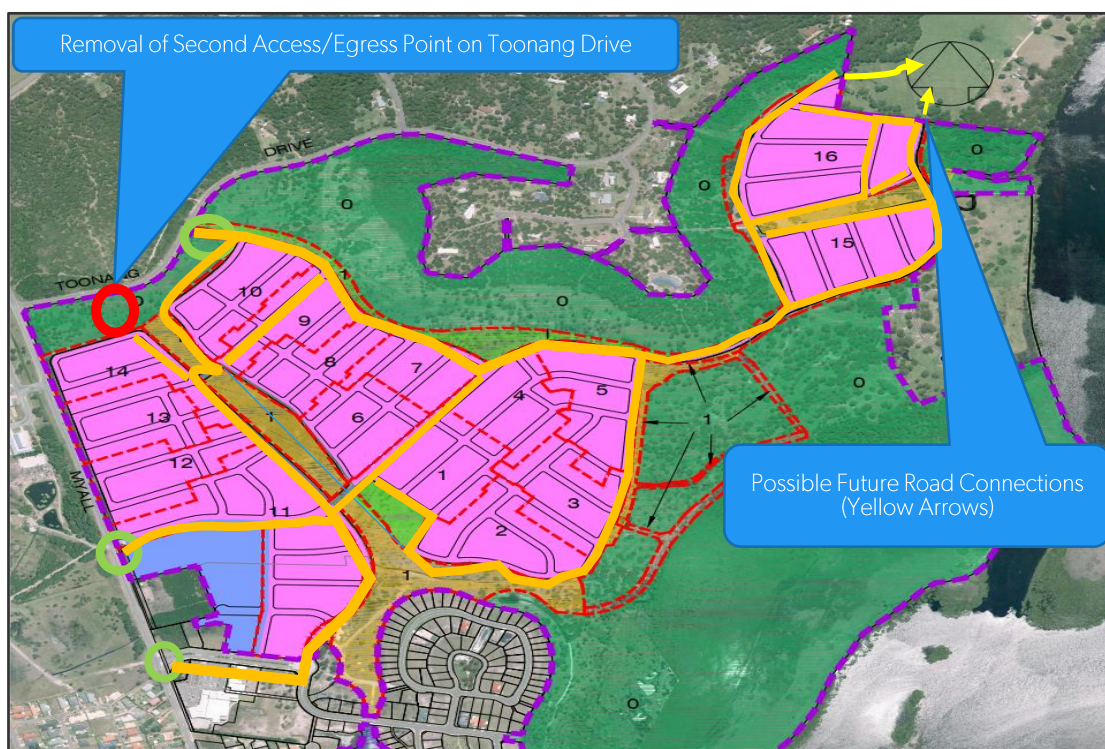


Figure 18 | Proposed Access/Egress Arrangements

6.5 Traffic Impacts

Terms B5 (Intersection Upgrades) and C21 (Roadworks) require the Proponent to upgrade three intersections along Myall Street to address the traffic impacts of the proposal. The approved road upgrade works are identified in **Figure 19**.

The proposal seeks approval to amend terms B5 and C21 to require the delivery of the approved intersection upgrades via Council's Contribution Plan. The Proponent advises the proposed modifications are required on the basis that:

- the approved intersection upgrades were negotiated on the basis the traffic generating developments along Myall Street were in single ownership (previously Crighton Properties)
- the Traffic Impact Assessment (TIA) prepared to support the proposed modification demonstrates there are no specific road upgrades required as a direct result of the proposal, and the Myall Street/Myall Quay Boulevard and Myall Street/Second Myall Street Access intersections would operate at a satisfactory level of service if designed as three-way intersections. Further, both intersections could accommodate a future fourth access leg if the land to the west of Myall Street is redeveloped
- Council has recently incorporated the Myall Street intersection upgrades in its Contributions Plan
- Council supports the proposed designs for the Myall Street intersections.

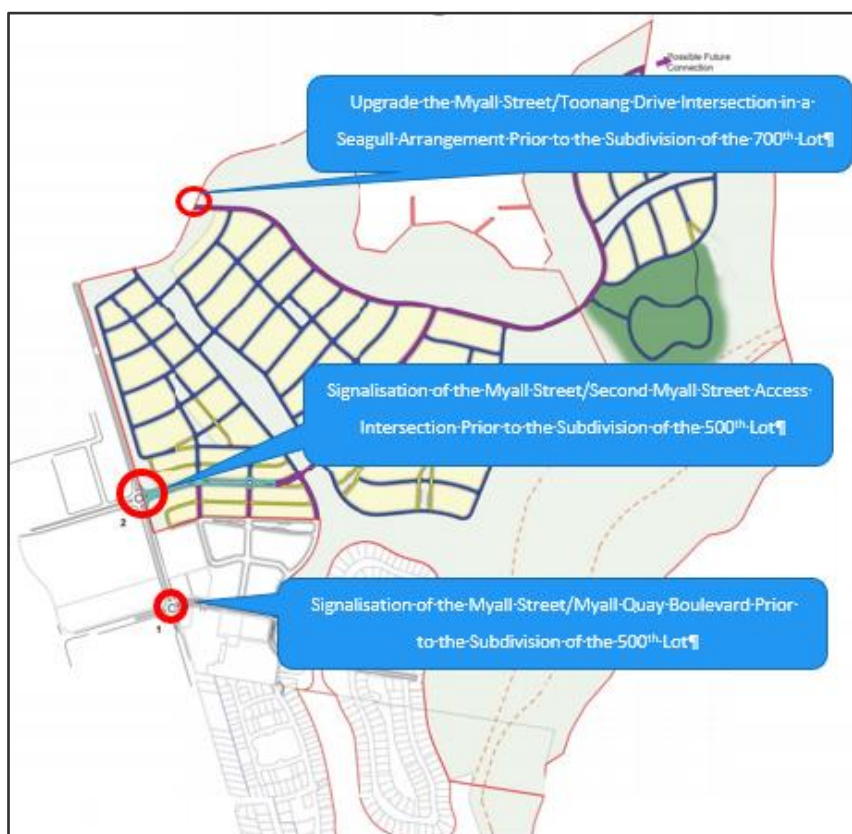


Figure 19 | Approved Road Upgrade Requirements

The Department notes Council initially advised its Contribution Plan collects money to facilitate the upgrade of the Toonang Drive/Myall Way intersection in a seagull arrangement, as per the requirements of the Concept Approval. However, the Plan does not identify or collect money for the residual intersection upgrades required along Myall Street.

The Department also notes the RMS and public submissions raised concern with the suitability of the proposed intersection designs and the accuracy of the Proponent’s Traffic Impact Assessment (TIA).

The Proponent provided an amended TIA and evidence of additional consultation with Council and RMS in its RTS and supplementary information package. The revised TIA and supplementary information package included SIDRA analysis and confirmed:

- there is existing capacity in the existing road network and no additional upgrades are required at the Myall Street/ Myall Quay Boulevard intersection, and the intersection would only require further modification when a fourth leg is constructed to provide access to future developments on the western side of Myall Street (i.e. when Council signalises this intersection)
- the Myall Street/ Second Myall Street Access intersection will be upgraded prior to the subdivision of the 500th lot as per Council’s Contributions Plan. Further, if the fourth leg of this intersection is constructed prior to the construction of the second Myall Street access, this intersection will be upgraded to a signalized intersection in accordance with RMS requirements
- the Myall Street/Toonang Drive intersection will be upgraded in accordance with Council’s Contribution Plan prior to the subdivision of the 700th lot.

The RMS and Council reviewed the RTS and supplementary information package and advised:

- the revised TIA accurately describes the traffic impacts of the proposal
- Council’s Contribution Plan collects money for the signalisation of the Myall Street/Myall Quay Boulevard intersection, however, this Plan does not collect money for the construction of the Myall Street/Second Myall Street access intersection
- the proposed modifications to terms B5 and C21 to require the upgrade of the Myall Street/Myall Quay Boulevard intersection in accordance with the requirements of Council’s Contributions Plan is supported
- the proposal does not warrant the signalisation of the Myall Street/ Second Myall Street access intersection. However, channelisation of this intersection is recommended to manage the potential traffic impacts of the proposal.

Based on the advice provided by Council and the RMS the Department’s assessment concludes it is appropriate to modify terms B5 and C21 to facilitate the upgrade of the Myall Street/Myall Quay Boulevard and Myall Street/Toonang Drive intersections in accordance with the requirements of Council’s Contribution Plan. Further, the Department supports the channelisation of the Myall Street/ Second Myall Street access intersection to manage the traffic impacts of the proposal. As such, the Department has recommended modifications to Terms B5 and C21 to reflect the above.

6.6 Other Issues

Table 8 | Summary of other issues raised

Issue	Findings	Recommended Condition
Road noise impacts	<ul style="list-style-type: none">• Term C19 (Road Traffic Noise Impact Assessment) requires the preparation of a road traffic noise impact assessment for each development precinct adjoining Myall Street.• The proposal seeks approval to delete Term C19 on the basis that:<ul style="list-style-type: none">▪ traffic volumes on Myall Street are below the 40,000 vehicles/day (vpd) screening threshold identified in	<ul style="list-style-type: none">• Revise Term C19 to require the implementation of the noise attenuation measures identified in the Interim Noise Guideline.

Issue	Findings	Recommended Condition
	<p>the <i>Development Near Rail Corridors and Busy Roads Interim Guideline</i> (5,000 vpd on Myall Street)</p> <ul style="list-style-type: none"> ▪ Myall Street will be widened by 11 m, providing an opportunity to create a vegetated buffer to minimise noise impacts ▪ all future dwellings will be setback a minimum of 18 m from Myall Street, which is significantly greater than the 4.5 m setback applicable to similar developments to the south of the site ▪ Council has indicated it is seeking to reduce vehicle speeds along Myall Street from 80km/hr to 50km/hr, thereby reducing potential road noise impacts. <ul style="list-style-type: none"> • The Department has reviewed the Proponent's request and agrees traffic volumes on Myall Street are below the screening threshold identified in the <i>Development Near Rail Corridors and Busy Roads Interim Guideline</i> (Interim Noise Guideline) and a noise impact assessment is not required. • However, the Department notes the Interim Noise Guideline includes a screening test for single/dual occupancy dwellings near busy roads where vehicle speeds exceed 60 km/hr. This test recommends the use of noise attenuation measures where dwellings are set back less than 20 m from roads where traffic volumes exceed 5,000 vpd. • As the final vehicle speeds along Myall Street have not been determined by Council, and the current speed limit exceeds 60 km/hr, the Department has recommended modifications to Term C19 requiring future developments to incorporate the noise attenuation measures identified in Appendix C of the Interim Noise Guideline. 	
Bulk earthworks	<ul style="list-style-type: none"> • Term B6 (Earthworks) requires bulk earthworks to be staged to minimise the area of the site that is open during subdivision works. However, Term B6 permits earthworks required to facilitate drainage or roadworks that are out of sequence (i.e. in a later stage) if the exposed area is landscaped to minimise the environmental impacts associated with exposed soil. • The proposal seeks to amend Term B6 to facilitate the establishment of a borrow pit in proposed stages 15 and 16 to provide fill for use in proposed stages 2 to 5. The Proponent advises the proposed modification is required to: <ul style="list-style-type: none"> ▪ minimise the importation of fill in the early stages of the project ▪ reduce the disposal of excess fill in the latter stages of the development ▪ minimise traffic impacts associated with the importation and/or disposal of excess fill. • Council raised no objection to the establishment of the proposed borrow pit. However, it advised the Proponent should review the development program to minimise the time the borrow pit is exposed and in use. In addition, it advised future DAs should incorporate suitable measures to manage erosion sediment and the rehabilitation of the borrow pit. • Public submissions also raised concern with potential impacts of bulk earthworks, the establishment of a borrow pit in stages 15 and 16, and the importation of fill to the site. 	<ul style="list-style-type: none"> • Amend terms A5 and B6 and to permit the establishment of a borrow pit in stages 15 and 16 and the retirement of biodiversity credits prior to clearing in these stages.

Issue	Findings	Recommended Condition
	<ul style="list-style-type: none"> The Department has considered the issues raised in the agency and public submissions and notes the establishment of a borrow pit in stages 15 and 16 to would reduce the number of trucks accessing the site to import and/or dispose fill. However, the Department agrees the Proponent should review the development program to minimise the time the borrow pit is open and in use. To ensure this occurs, the Department has recommended modifications to Term B6 to require the Proponent to prepare a Bulk Earthworks Staging Plan to demonstrate how exposed areas will be minimised and managed during each stage of the development. The Department also notes proposed stages 15 and 16 contain Koala habitat and other significant vegetation. As such, the Department has recommended modifications to Term A5 of the approval to ensure the biodiversity impacts associated with clearing within stages 15 and 16 are offset prior to the establishment of the borrow pit. 	
Aboriginal cultural heritage	<ul style="list-style-type: none"> The proposal seeks approval to amend Term C12 (Cultural Heritage) to require future development applications to demonstrate consistency with the recommendations of the proposed Cultural Heritage Management Plan. The OEH advised the proposal does not include an assessment of the Aboriginal cultural heritage values of 5.83 ha of land proposed for inclusion in the Concept Plan area, and requested the Proponent update its Aboriginal Cultural Heritage Assessment and the proposed Aboriginal Cultural Heritage Management Plan to address this issue. The Proponent's supplementary information package included a revised Aboriginal Cultural Heritage Assessment and Management Plan. The OEH reviewed the revised assessments and advised they provide suitable measures to manage the Aboriginal cultural heritage values of the site. Based on the advice provided by the OEH, the Department's assessment concludes the revised Aboriginal Cultural Heritage Assessment and Management Plan accurately describe the cultural heritage values of the site and include suitable measures to protect these values during the construction and operational phases of the project. The Department has therefore recommended modifications to Term C12 to ensure the recommendations of the Aboriginal Cultural Heritage Assessment and Management Plan are implemented over the life of the project. 	<ul style="list-style-type: none"> Amend Term C12 to require future DAs to demonstrate compliance with the recommendations of the Aboriginal cultural heritage assessment and management plan.
Geotechnical Assessment and Acid Sulfate Soils Management Plan	<ul style="list-style-type: none"> Terms C7 (Acid Sulfate Soils Management Plan) and C10 (Geotechnical Assessments) require the submission of detailed Acid Sulfate Soils Management Plans and geotechnical assessments to be submitted with each DA. The proposal includes a final Acid Sulfate Soils Management Plan (ASSMP) and Geotechnical Assessment and seeks approval to amend terms C7 and C10 to require future DAs to implement the recommendations of the final ASSMP and Geotechnical Assessment over the life of the project. The Department has reviewed the final ASSMP and Geotechnical Assessment and notes they do not fully address the requirements of terms C7 and C10. As such, the 	<ul style="list-style-type: none"> Amend Terms C7 and C10 to require further updates to the Geotechnical Assessment and Acid Sulfate Soils Management Plan.

Issue	Findings	Recommended Condition
Contamination Assessment	<p>Department has recommended modifications to terms of approval to ensure the ASSMP and Geotechnical Assessment are updated incorporate the residual information prior to the determination of the first DA for subdivision works.</p> <ul style="list-style-type: none"> • Term C13 (Contamination Assessment) requires each development application to be supported by a Stage 2 contamination assessment. • The proposal seeks approval to delete Term C13 on the basis that: <ul style="list-style-type: none"> ▪ The Phase 1 Contamination Assessment (Contamination Assessment) prepared to support the approved Concept Plan concluded the subject land is unlikely to be contaminated ▪ the site has generally been fenced with locked gates since the early 1990s, therefore the likelihood of encountering contaminants associated with illegal dumping is low ▪ the site has been routinely slashed and inspected for the past 25 years and therefore potentially contaminating activities would have been identified and addressed. • The Department reviewed the recommendations of the Contamination Assessment prepared to support the Concept Approval and agrees the assessment demonstrates the likelihood of contamination is low. However, the Department notes this assessment also concluded there is potential for localised contamination due to potential illegal dumping. • As the Contamination Assessment did not include preliminary soil sampling to identify potential areas of localised contamination, or conceptual remediation strategies, the Department's assessment concludes a detailed site investigation is necessary to confirm whether localised remediation works are required in order to satisfy the requirements of <i>State Environmental Planning Policy No. 55 – Remediation of Land</i>. Accordingly, the Department concludes Term C13 should be retained as per the current approval. 	<ul style="list-style-type: none"> • No change recommended
Servicing arrangements	<ul style="list-style-type: none"> • Term C17 (Sewer and Water Supply) requires all future applications to demonstrate a recycled water supply (third pipe) will be provided in accordance with the Concept Integrated Water Management Strategy. • The proposal seeks approval to amend Term C17 to remove this requirement to comply with MidCoast Water's current servicing requirements. • The Department notes MidCoast Water has confirmed a 'third pipe' waste water supply is no longer required on-site. Given the above, the Department's assessment concludes Term C17 should be amended to reflect MidCoast Water's current requirements. 	<ul style="list-style-type: none"> • Amend Term C17 to reflect MidCoast Water's servicing requirements.
Bus services	<ul style="list-style-type: none"> • Term C18 (Public Transport/Bus Network) requires all future applications to include a bus network implementation plan to ensure suitable public transport services are provided on-site. In addition, Term C18 requires the Proponent to amend the bus routes identified in the Concept Plan drawings to reflect the local bus operator's requirements. 	<ul style="list-style-type: none"> • Amend Term C18 to require the implementation of the revised Transport Access Plan.

Issue	Findings	Recommended Condition
	<ul style="list-style-type: none"> • The proposal includes a revised Transport and Access Plan which seeks to amend the location of the bus routes and bus stops previously identified in the Concept Plan drawings. • The Department notes TNSW advised the proposed bus route can be serviced. However, future traffic conditions may require the implementation of revised measures, such as parking restrictions, to manage clearances for bus travel paths. • The Department's assessment concludes the proposed modifications to the Transport and Access Plan are acceptable and will support the delivery of future public transport services. Given the above, the Department has recommended modifications to Term C18 to require the implementation of the revised Transport and Access Plan and identify modifications, such as parking restrictions, may be required in the future to manage bus clearances along the approved route. 	



7. Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department has carefully considered the issues raised in the agency and public submissions and has concluded the proposal is acceptable as:

- it would reduce the development footprint to facilitate the retention of 17.45 ha of additional Koala habitat and 1.41 ha of additional Wallum Froglet habitat, and increase the size of the proposed BioBank site
- it would assist Council achieve its minimum target of 14 dwellings/ha and provides a range of housing types to improve housing choice and affordability as per the objectives of Tea Gardens Hawks Nest Housing Strategy 2006
- it would provide appropriate biodiversity credits to offset the loss of habitat on-site, and the recommended conditions of approval would ensure the Proponent demonstrates satisfactory arrangements are in place to offset the biodiversity impact of the proposal prior to the approval becoming operational
- the ICWMS and the Groundwater Monitoring Program are consistent with relevant terms of the Concept Approval and would ensure ground and surface water is managed to minimise flood risks and potential impacts on GDEs and the SEPP 14 wetlands located downstream of the site
- the Myall Street/Myall Quay Boulevard and Myall Street/Toonang Drive intersection upgrades reflect the requirements of Council's Contributions Plan, and the proposed modifications to the upgrade of the Myall Street/ Second Myall Street access intersection are supported by Council and the RMS.

Notwithstanding the above, the Department does not support the proposal to remove the prohibition on the keeping of cats as it may result in significant adverse impacts to threatened species and the overall biodiversity values of the area. As such, the Department has recommended the retention of Term B3 to address this issue.

Further, the Department does not support the deletion of Term C19 to remove the requirement to provide a Stage 2 contamination assessment on the basis insufficient soil testing has occurred to confirm the site is free of potential contaminants. Accordingly, the Department recommends the retention Term C19 to ensure future development applications comply with the requirements of SEPP 55.

Based on the above, the Department has recommended modifications to terms of the Concept Approval to facilitate the proposed modifications to the subdivision layout, the implementation of the revised Biodiversity Offset Package and management plans, and the proposed modifications to the intersection upgrades required along Myall Street.

The Department's assessment therefore concludes the modification request is approvable, subject to the recommended conditions outlined in **Appendix D**.



8. Recommendation

It is recommended that the Executive Director, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report
- **Determines** that the request falls within the scope of 75W of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application
- **agrees** with the key reasons for approval listed in the draft notice of decision;
- **modify** the consent MP 10_0136 MOD 1
- **signs** the attached approval of the modification (**Appendix D**)

Recommended by:

Anthony Witherdin

Director

Regional Projects



9. *Determination*

The recommendation is: **Adopted by:**

Anthea Sargeant

Executive Director

Key Sites and Industry Assessments



Appendices

Appendix A – Environmental Assessment

Appendix B – Submissions

Appendix C – Consolidated Consent

Appendix D – Notice of Modification