



# ***Settlers Ridge Residential Subdivision***

*Modification Assessment  
(MP 10\_0103 MOD 3)*



May 2019

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### **Cover photo**

Residential area. Port Macquarie, NSW.

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## Glossary

Abbreviation	Definition
AHD	Australian Height Datum
Consent	Development Consent
Council	Kempsey Shire Council
Department	Department of Planning and Environment
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
LEP	Local Environmental Plan
Minister	Minister for Planning
OEH	Office of Environment and Heritage
RtS	Response to Submissions
SEARs	Secretary's Environmental Assessment Requirements
Secretary	Secretary of the Department of Planning and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>



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# 1. Introduction

## 1.1 Background

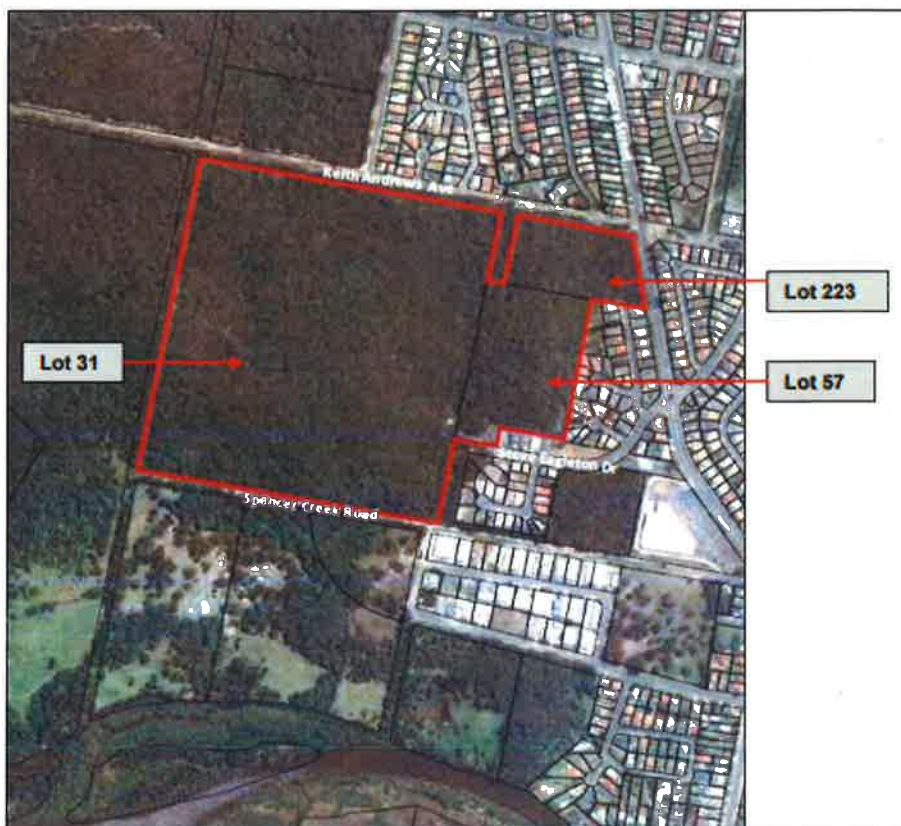
This report is an assessment of a request to modify a Concept Plan for a 138 lot residential subdivision at South West Rocks in the Kempsey Shire Council local government area (LGA). The request has been lodged by GHD, on behalf of Voyee Pty Ltd and Supaeast Pty Ltd (the Proponents) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The proposal seeks to modify Condition A5 to reduce the number of ecosystem and species credits required to be secured for Phases 1 and 2 of the development and split the number of ecosystem and species credits required to be secured between the various landowners.

## 1.2 The Site

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

The subject site is approximately 40.4 hectares (ha) and comprises Lot 31 and Lot 223 in DP 754396 and Lot 57 in DP 1 117398



**Figure 1** | Subject Site

## 1.3 Approval History

### Concept Plan

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

- the conceptual subdivision layout for a 137 residential lot subdivision
- the establishment of on and off-site biodiversity offsets
- a conceptual open space network
- a conceptual road network.

The development consent has been modified on two occasions (see **Table 1**).

**Table 1.** Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Type	Approval Date
MOD 1	<ul style="list-style-type: none"><li>• increase the total number of residential lots from 137 to 138</li><li>• confirm the total number of ecosystem and species credits required to offset the biodiversity impacts of future applications within the Concept Plan area</li><li>• amend the bushfire management, Aboriginal heritage conservation, public open space, and site access arrangement requirements for future development applications within the Concept Plan area.</li></ul>	Department	75W	15 July 2016
MOD 2	<ul style="list-style-type: none"><li>• extend the lapse date of the approval by 2 years</li><li>• reduce the number of ecosystem credits required.</li></ul>	Department	75W	25 September 2017



## 2. Proposed Modification

The proposal seeks to modify Condition A5 to:

- reduce the number of ecosystem and species credits required to be secured for Phases 1 and 2 of the development
- split the number of ecosystem and species credits required to be secured between the various landowners.

The proposed modified condition A5 (3) and (4) is outlined below.

#### **A5 Limits of Approval**

3) Prior to the commencement of works within Phase 1 (**within part Lot 31 DP754396**), the Proponent (**Voyee Pty Ltd and Supaeast Pty Ltd**) shall provide evidence to the satisfaction of the Secretary confirming it has secured 90 ecosystem credits and 27 Brush-tailed Phascogale species credits in accordance with the BioBanking credit report prepared by GHD (~~March 2017~~ **April 2019**), and the credit profiles listed in the credit report prepared by Peter Parker (April 2014), to offset the removal of native vegetation for Phase 1 of the development; and

4) Prior to the commencement of works **within each separate component and/or stage** in Phase 2, the **relevant** Proponent shall provide evidence to the satisfaction of the Secretary confirming it has secured 966 ecosystem credits and 283 Brush-tailed Phascogale species credits **as per the following**:

- **Phase 2 Stage 1 (within part Lot 31 DP754396) – Voyee Pty Ltd and Supaeast Pty Ltd requires 166 ecosystem credits and 49 Brush-tailed Phascogale species credits**
- **Phase 2 Stage 2 (within part Lot 31 DP754396 and crown road reserve)– Voyee Pty Ltd and Supaeast Pty Ltd requires 89 ecosystem credits and 26 Brush-tailed Phascogale species credits**
- **Phase 2 (within part Lot 57 DP1117398 and part Lot 31 DP754396)– Eric Norman Developments Pty Ltd requires 295 ecosystem credits and 87 Brush-tailed Phascogale species credits**
- **Phase 2 (Lot 223 DP754396 – Machro Pty Ltd requires 204 ecosystem credits and 60 Brush-tailed Phascogale species credits**

**The credits will be secured** in accordance with the Biobanking credit report prepared by GHD (~~March 2017~~ **April, 2019**), and the credit profiles listed in the credit report prepared by Peter Parker (April 2014) to offset the removal of native vegetation for Phase 2 of the development.

Conditions A5(1) and (2) are not proposed to be modified.

The modification is requested on the basis that the original development impact calculations were based on an incorrect development area. Based on the correct site area, the number of credits required is reduced by 212 ecosystem and 61 species credits.

The splitting of the biodiversity credits is requested to allow three separate landowners to secure credits and progress with development on their portion of the site.



## **3. Statutory Context**

### **3.1 Section 75W**

The Concept Approval was originally approved under Part 3A of the EP&A Act. The power to modify concept plans approved under Part 3A of the EP&A Act under former section 75W of the EP&A Act is being wound up. Clauses 3BA(2) and (3) of Schedule 2 to the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (EP&A (ST&OP) Regulations) provide that an approved concept plan cannot be

modified under section 75W on or after the cut-off date of 1 March 2018, unless the request to modify was lodged before 1 March 2018.

However, Clause 3BA(5) of Schedule 2 to the EP&A (ST&OP) Regulations provides that a concept plan may continue to be modified under section 75W in response to a request lodged before or after 1 March 2018 if the Minister is satisfied that:

- a) the proposed modification is to correct a minor error, misdescription or miscalculation, or*
- b) the proposed modification is of minimal environmental impact, or*
- c) the project to which the concept plan as modified relates is substantially the same as the project to which the concept plan currently relates (including any modifications previously made under section 75W).*

This proposal seeks to modify an existing Condition. The Department is satisfied that the proposal is within the scope of clauses 3BA(5)(b) and (c) as it is of minimal environmental impact and the project as modified is substantially the same as the project to which the Concept Plan currently relates.

### 3.2 Consent Authority

The Minister for Planning is the approval authority for the request. However, the Director, Regional Assessments may determine the request under delegation as:

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



## 4. Engagement

The modification request was made publicly available on the Department's website, and it was referred to Kempsey Shire Council (Council) and Office of Environment and Heritage (OEH) for comment.

**Council** raised no concerns with the proposal.

**OEH** provided the following advice:

- based on the revised figure of 12.178 hectares, a reduction of the biodiversity credits is warranted
- the apportioning of credits has been accurately calculated based on this revised figure
- the staging and phases of development have not been reviewed, and the Department should be satisfied the proposed changes are appropriate.

No **public** submissions were received.



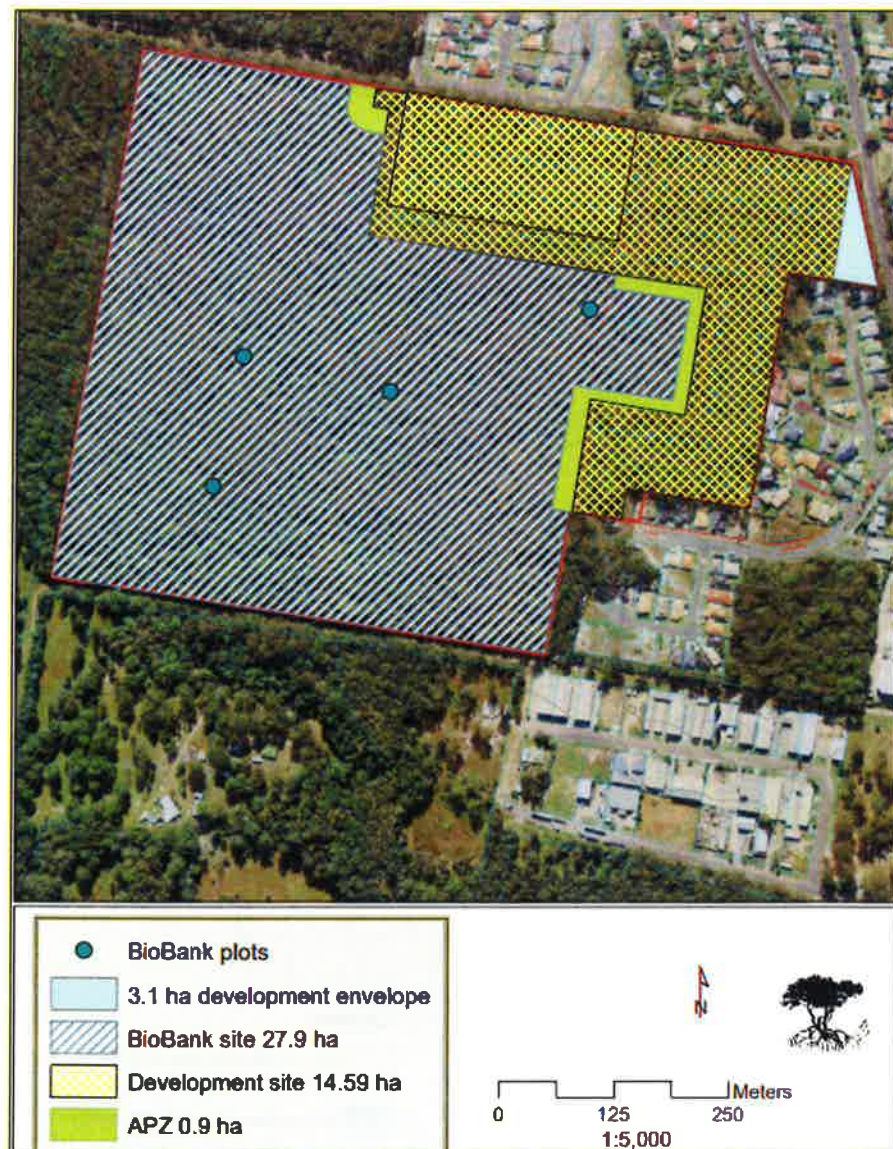


## 5. Assessment

### 5.1 Site Impact Area Calculation

The proposal seeks to reduce the number of species and ecosystem credits required to offset the development, due to an error in the original development impact area calculation.

In 2014, the Proponent engaged a consultant to prepare a Biodiversity Assessment Report to determine the required offsets for the development. A development impact area of 14.59 ha (see **Figure 2**) was used in the BioBanking Credit (BBAM) Calculator to calculate the number of biodiversity credits required.



**Figure 2** | Original development site area

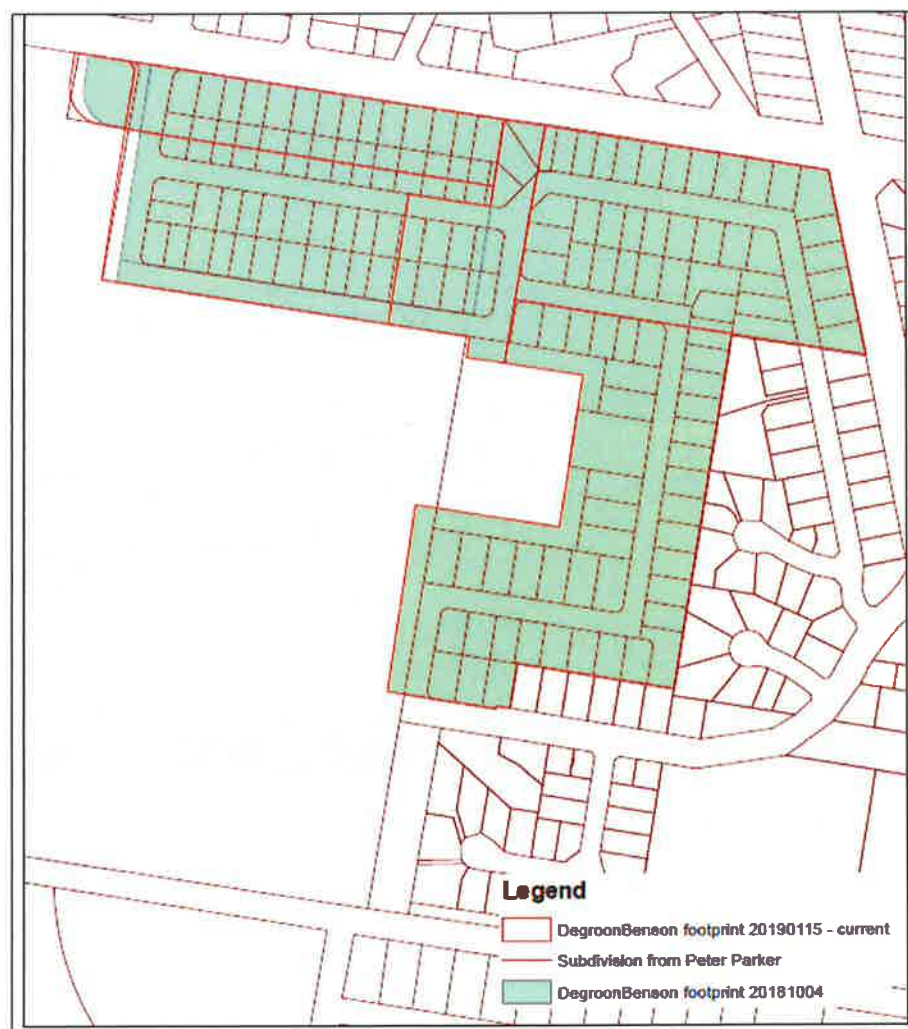
Since this study was completed, GHD (a new consultant) was engaged to calculate the portion of biodiversity credits required to be secured by each separate landowner of the site. During this process, GHD noticed that the original BBAM calculations were based on an incorrect figure for the development impact area.

GHD undertook GIS analysis and detailed survey work, which confirmed the correct figure for the development impact area is 12.35 ha instead of 14.59 ha. Based on this revised figure of 12.35 ha, the number of credits required is reduced as outlined in **Table 2** below.

**Table 2** | Comparison of credits required

	Original	Updated	Difference
Development Impact Area (ha)	14.59	12.35	- 3.24
Ecosystem credits	1056	844	- 212
Species credits	310	249	-61

The Department requested screenshots of the GIS files showing the site impact area originally used to calculate the number of biodiversity credits required, and the area used for the updated calculations. The Proponent provided an overlay of the original and updated footprints (**Figure 3**).



**Figure3** | Comparison of site impact area

As demonstrated above, the site impact area used for the updated credit calculations (Degroon Benson) has not changed from the area originally used (Parker). The Department is therefore satisfied the difference between the

original and updated site impact area figures (14.59 ha and 12.35 ha) is due to an error with the original calculation, and does not represent a reduction in the area being offset.

OEH reviewed the proposal and advised that the area calculation of the development footprint may have been incorrect and based on the updated development impact area, the reduction in biodiversity credits is appropriate.

The Department therefore considers the proposal to reduce the number of biodiversity credits is appropriate, based on the updated figure of 12.35 ha for the site impact area.

## 5.2 Apportioning of Biodiversity Credits

The proposal seeks to apportion the ecosystem and species credits required to be secured for Phases 1 and 2 of the development between each separate landowner.

The subject site has three separate landowners including: Voyee and Supaeast, Eric Norman Developments Pty Ltd and Machro Pty Ltd. The development includes a Biobank site which will be used to secure biodiversity credits to offset the development. The Biobank site is owned by Voyee and Supaeast only.

The current condition requires the securing of credits in two phases as follows:

**Phase 1**- area of development that can be offset via the biodiversity credits from the onsite biobank site

**Phase 2**- area of development that can be offset via off site biodiversity credits

The proposal seeks to further split Phase 2 into three stages, one for each of the separate landowners, as demonstrated in **Figure 4**. This would allow for each landowner to secure credits and begin development on their portion of the site.

The breakdown of proposed credit requirements is outlined in **Table 2** below.

**Table 2** | Breakdown of Biodiversity Credits

Development phase	Area of development phase/stage (ha)	Ecosystem credits required	Species credits required
Phase 1	1.33	90	27
Phase 2 Stage 1 (Voyee and Supaeast)	2.43	166	49
Phase 2 Stage 2 (Voyee and Supaeast)	1.29	89	26
Phase 2 Eric Norman Developments Pty Ltd	4.31	295	87
Phase 2 Machro Pty Ltd	2.99	204	60
<b>Total</b>	<b>12.35</b>	<b>844</b>	<b>249</b>

The Department considers the proposed breakdown of the ecosystem and species credits is acceptable as:

- it would not alter the total number of credits being secured
- works on each phase would not be permitted to commence until the relevant credits have been secured
- it would allow each landowner to secure the required credits and progress with development on their portion of the site



- OEH raised no objection to the apportioning of the credits and noted the number of credits proposed for each landowner has been calculated correctly.

The Department is therefore satisfied the proposal is acceptable, and would not impact the number of biodiversity credits to be secured.



**Figure 4** | Land Ownership Map





## 6. Evaluation

The Department has assessed the modification request and supporting information in accordance with the relevant requirements in the EP&A Act. The Department's assessment concludes the proposed modification is appropriate on the basis that:

- the revised development impact area of 12.35 ha is accurate, and reflects the area required to be offset
- the reduction in biodiversity credits required is a result of the correction of an error in the original calculation
- the apportioning of biodiversity credits would allow each landowner to secure the required credits and progress with development, and would not affect the overall number of credits to be secured.

Consequently, the Department recommends the modification be approved in accordance with the modification instrument as at **Appendix A**.



## 7. Recommendation

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

- **considers** the findings and recommendations of this report
- **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
- **modify** the consent MP 10\_0103
- **signs** the attached approval of the modification (Appendix A)

Recommended by:

**Emma Butcher**  
Planning Officer  
Regional Assessments

Recommended by:

**Silvio Falato**  
Team Leader  
Regional Assessments



## 8. Determination

The recommendation is: **Adopted by:**

*Adopted: 7/5/19*

**Anthony Witherdin**

Director

Regional Assessments



# Appendices

## 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=9871](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9871)

## **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:

### **Modification Request**

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9871](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9871)

### **Submissions**

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9871](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9871)

### **Response to Submissions**

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9871](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9871)