

Date: 9<sup>th</sup> July 2019  
Our Ref: 14/351

Department of Planning & Environment  
GPO Box 39  
SYDNEY NSW 2001

Attention: Ms Michelle Niles – Senior Planner (Regional Assessments)

Dear Madam,

**Re: MP07\_0026 – Epiq Estate Lennox Head (Mod 6)**

Newton Denny Chapelle (NDC) has been instructed by Clarence Property Pty Ltd to respond to the government agency submissions received for the proposed Modification to M007\_0026 relating to Lot 7 DP 1239938 within the Epiq Estate Lennox Head.

**Government Agency Submissions**

Four (4) submissions were received from Government Agencies during the notification period for Modification 6 (Mod 6). Submissions were received from the following government agencies.

- Ballina Shire Council;
- Office of Environment & Heritage;
- Department of Primary Industries;
- Transport for NSW.

Through a series of meetings coordinated with Ballina Shire Council to discuss the issues raised and the subsequent completion of further technical work and modifications to the proposed development, Council has identified the information provided generally addresses Council's previous concerns in relation to this proposed modification and accordingly, Council raises no objection this modification, subject to suitable conditions being imposed by the Department of Planning and Environment. A copy of Council's letter responding to the latest design as included within this submission is provided within this documentation.

To assist the Department of Planning & Environment in reviewing our response to the submissions, the matters raised by the listed agencies are outlined within **Table 1** below, together with the proponent's response.

Furthermore, the following technical information and correspondence is also included within this response package for inclusion within the Departments assessment.

- **Attachment 1** – Ecological Response (GeoLINK)
- **Attachment 2** – Modified Subdivision layout and civil design package
- **Attachment 3** – Ballina Shire Council Letter 21 June 2019

- **Attachment 4** – Bushfire Assessment Report (Bushfire Certifiers)
- **Attachment 5** – Updated Design Specification (RPS)

**Table 1: Government agency Submissions & Project Response**

Government Agency	Agency Comments	Proponent Response
Ballina Shire Council	1. Impact of Public Infrastructure on Littoral Rainforest	<p>Batters illustrated in the bulk earthworks plan lodged with the Modification are 'in close proximity' to the proposed buffer, however do not extend within the 10m buffer area which is also known as Management Zone 1.</p> <p>Reference is made to the fact the existing Littoral Rainforest community is actually located within the road reserve of Henderson Lane and does not occur on the site. As noted in the vegetation monitoring reports for this zone, the canopy of this community overhangs Management Zone 1 (estimated canopy cover of 15 percent overhanging). Minor native regeneration of Guoia, Tuckeroo and Native Ginger is occurring through the exotic pasture grasses which dominate this portion of the zone.</p> <p>GeoLINK's assessment (refer <b>Attachment 1</b>) has identified the required Tree Protection Zone (TPZ) in accordance with AS 4970-2009 'Protection of trees on development sites', is required from the centre of the trunks of the trees on Henderson Lane. The average Diameter at Breast Height (DBH) for trees on Henderson Lane is 40 cm which would require a TPZ of 5 m (based on calculation in accordance with AS 4970-2009). The maximum DBH recorded for any tree in the road reserve is 1.1 m which would require a TPZ of 13 m in accordance with AS 4970-2009 requirements. A conservative approach has been applied with the approved 10 m buffer, which was accepted by the Department of Planning &amp; Environment as part of the original Concept Approval.</p>
	2. Building Setbacks (Lots 51-54)	<p>The 10m buffer within Management Zone 1 is different from the situation that Ballina Shire Council are encountering where residents are requesting for trees to be removed from Management Zone 2 which comprises established Littoral Rainforest and planted rainforest species within the private lots given as indicated in item 1 above, the existing Littoral Rainforest community is actually located within the road reserve of Henderson Lane (i.e. is off-site).</p> <p>It should also be acknowledged that the 10 m buffer was approved by the Department of Planning &amp; Environment in the Concept Approval (refer <b>Illustration C1 – Concept Plan</b>).</p> <p>The project ecologist is of the view the point of concern regarding this matter is Council's view that the 10 m buffer area actually contains or will eventually contain rainforest and therefore the buffer should extend from the edge of the eventually restored rainforest. However, the Littoral Rainforest community is located within the road reserve of Henderson Lane and despite weed control works within the 10 m buffer area (Management Zone 1) over the past five years, a closed canopy has not been achieved. This area therefore requires assisted</p>

	regeneration in the form of planting rainforest species, however this will then create land use conflicts with the proposed lots. GeoLINK have advised no conflict currently exists (refer <b>Attachment 1</b> )
3. Rainforest Restoration on adjoining land parcels	<p>The Biodiversity Assessment Report (BAR) submitted for the proposed development focused on what is proposed within the Epiq Estate, not Council's adjoining land. The public road reserve is under Council's management and is not impacted by the proposed development. This position is reflected in the fact the existing Concept Plan already permits development activity within 10m of the northern boundary where the prescribed 10m buffer is illustrated on the approved Concept Plan (Illustration C1).</p> <p>Prospective buyers may be educated to discourage disposal of waste/illegal dumping and a TPZ could be established to Lots 1 and 18.</p> <p>It is unlikely that the potential rainforest regeneration would increase the bushfire threat as it is located upslope and would have a short fire run. Review of Planning for Bushfire Protection (PBP) 2018 indicates that a potential Asset Protection Zone (APZ) of 10m is required from upslope rainforest (refer bushfire assessment contained within <b>Attachment 4</b>). This APZ could coincide with the suggested TPZ.</p>
4. Retention of Bush Nut Trees	<p>Threatened Rough-shelled Bush Nut (<i>Macadamia tetraphylla</i>) are located within proposed lots 1 and Lot 51.</p> <p>Following consultation with Ballina Shire Council it was determined the removal of the Rough-shelled Bush Nut specimen from the site was the preferred option over the use of the covenant to protect the species. A five-part test of significance has been prepared in accordance with Section 7.3 of the BC Act which concludes that removal of the subject Rough-shelled Bush Nut specimens would not result in a significant impact, given the retention of numerous other Rough-shelled Bush Nut at the site. This would then permit legal removal of the specimens.</p>
5. Bushfire Assessment	<p>A bushfire assessment report was lodged with DPE as part of the Modification documentation. Notwithstanding this point, an amended bushfire assessment report from Bushfire Certifiers, as contained within <b>Attachment 4</b>, addresses NSW Rural Fire Service query (email dated 23 November 2018) relating to the future subdivision to the west which is required to revegetate a 50-60m strip of littoral rainforest vegetation adjacent to proposed Lots 1 and 18.</p> <p>In response to the APZ requirements, Lot 18 has been consolidated with Lot 17 from the originally proposed subdivision layout to create a suitable dwelling site.</p>
6. Internal Roads	<p>The road reserve width has been modified to increase the width to 7m. The proposed road design width has been discussed with Council's Development Engineer and is reflected in Council's letter of support for the Modification (<b>Attachment 3</b>).</p>

7. Groundwater	Geotechnical report has been provided to Ballina Shire Council. The initial Geotechnical feedback suggested wet areas are generally associated with current poor surface drainage. Test pits near the areas of proposed cut (TP2, TP8 and TP7) do not note the intersection of groundwater before refusal on rock. Notwithstanding, additional geotechnical investigations will be undertaken prior to the Construction Certificate as necessary.
8. Existing Services	The electrical line will be removed/undergrounded as part of the development
9. Intended Land Uses	No objection is raised to the use of the live/work lots for business and/or office premises as recommended by Ballina Shire Council. We note other uses may occur under the home occupation provisions as contained under the Ballina Local Environmental Plan 2014.
10. Work-Live Design	<p>The following comments are provided for Council's review in respect to the design guidelines:</p> <ul style="list-style-type: none"> <li>• <i>Internal access is to be provided between ground and upper floors</i>, Agreed – this may be included with greater clarity within the design guidelines.</li> <li>• <i>The entire work component (business/office) shall be provided on the ground floor</i>, Agree - Section 10 of the RPS guidelines encompasses this requirement.</li> <li>• <i>All residential components shall be located on the upper floors (i.e. no residential component shall be provided on ground floor)</i> – We do not concur with this requirement as flexibility is required for the scale of office or business requirements. In this regard, a ground floor kitchen may service both the office and residential needs.</li> <li>• <i>The work component must have high ceilings with a minimum of 3.3m floor to ceiling height. The live component must have a minimum 2.7m floor to ceiling height.</i> We note, the heights nominated within Council's letter have been adopted for the Burns Point Ferry Road live/work project. We however submit, in this case we are dealing with a sloping site and thus compliance with the design provisions which apply to the Burns Point Ferry Road which is a flat site creates design issues for the Epiq live/work product. Accordingly, we seek to adopt a 2.7m ceiling height for the first two floors and 2.5m for the second floor of the residential component to ensure compliance with the prescribed 8.5m building height is achievable for the live/work precinct.</li> <li>• <i>Development must be designed so that garbage collection areas and noise and odour generating operations are located away from living areas.</i> No objection is raised to this point and is noted the illustrations provided within Section 10 of the RPS Guidelines support this point.</li> <li>• <i>The business (work) operator shall reside within the live component of the building on the same site. No part of the live/work development shall be separately leased or occupied.</i> – No objection is raised to this point.</li> </ul> <p>Ballina Shire Council has concurred with these points in raising no objection to the Modification, whilst acknowledging detailed assessment of subsequent development applications will be undertaken.</p>

	<p>11. Discrepancies in Plans</p>	<p>The discrepancy between the mixed-use lots and live/work lots has been rectified as evidenced with the attached plan <i>SK004 Lot Layout</i> prepared for the project. The plan has been amended to consolidate residential Lots 17 &amp; 18 and the three mixed use lots into two lots now that Ballina shire Council is not pursuing the community childcare use on Super Lot 7.</p> <p>The amended subdivision layout now incorporated the following lot yield:</p> <ul style="list-style-type: none"> <li>• 33 residential lots;</li> <li>• 26 live/work lots;</li> <li>• 2 mixed use lots (Lot 61 – Tavern &amp; Lot 60 – Storage Premises).</li> </ul> <p>Th revised subdivision layout is provided within <b>Attachment 2</b> of this submission. The project design guidelines which also form part of the Modification have been updated to address the interface with the CMZ and associated APZ provisions (refer <b>Attachment 5</b>).</p>
	<p>12. Staging</p>	<p>We concur a separate set of conditions should be provided for each Super Lot (i.e. Super Lots 5 &amp; 7). We raise no objection to the conditions for Modification 6 and Modification 7 being contained in separate stages under the project approval in the same manner as completed for Stages 1C and 1D, as these developments will not be undertaken at the same time.</p>
	<p>13. Conditions</p>	<p>Should conditions from the original approval be reapplied, no objections are raised to ensure the conditions refer to current legislation, standards and practices.</p>
<p><b>Department of Environment &amp; Heritage</b></p>	<p>OEH have reviewed the documents and have advised no issues to raise with the proposed modification. OEH support adoption of the three recommendations detailed in the Aboriginal Cultural Heritage Assessment report prepared by Everick (March 2018).</p>	<p>The recommendations contained within the Everick report will be applied to all future works completed for the site.</p>
<p><b>Transport for NSW</b></p>	<ul style="list-style-type: none"> <li>• Analysis on how public transport demand will be affected by population change from the development and how it will be managed.</li> <li>• Documentation demonstrating</li> </ul>	<ul style="list-style-type: none"> <li>• Reference is made to the traffic assessment lodged with the Modification Proposal. In this regard, the modification does not seek to modify the approved road standard, footpath network and public transport accessibility already approved for the Epiq Estate as the modifications themselves do not significantly alter the population for the estate. In this regard, the Engineering Services Report addresses the road network based on traffic volumes generated by the development which have been supported by Ballina Shire Council in letter dated 21 June 2019, based on the increase in minimum width of the internal road to 7m.</li> </ul>

	<p>local bus operator (Blanch's) has been consulted surrounding future bus routes and to ensure bus capable infrastructure will be provided.</p> <ul style="list-style-type: none"> <li>• Pedestrian facilities should include links to public transport and address: <ul style="list-style-type: none"> <li>○ DDA compliance, i.e, footpaths should be 1.8m wide minimum near retail facilities to meet Austroads guidelines for wheelchair accessibility.</li> <li>○ The 1.8m standard be provided to connect to the existing footpaths at the boundaries of the site and continuous footpaths are provided to existing and planned bus stops.</li> </ul> </li> <li>• The proponent is proposing to provide 1.3m wide footpaths on one side of the road only. With the increase in density, TfNSW supports footpaths on both sides of the road around mixed use and retail facilities.</li> </ul>	<ul style="list-style-type: none"> <li>• The Concept Plan for the Epiq Estate has been approved under the Major Project with designated bus routes and associated bus bays. The current proposed modification does not alter the accessibility to these bus bays, nor impact the accessibility for buses to service the Estate.</li> <li>• Blanch Bus services currently services Lennox Head via North Creek Road (Service 641). The proposed modification does not alter or restrict the ability for a bus service to access the Epiq Estate. With respect to the population of the estate, the modification does not significantly alter the current population yield for Super Lot 7, hence no impact on the demand or capacity of the bus service will result in this instance.</li> <li>• Pedestrian access from the proposed land uses on Super Lot 7 will be DDA compliant. This proposal does not modify the site grades in a manner which impacts the future ability for pedestrian access from the Tavern to the already approved bus set down. In this regard, the Tavern will connect to the approved and already constructed footpath network which was developed in Stage 1B of the Epiq Estate. Reference is made to approved Concept Plan (<b>Plan C6</b>) which demonstrates the approved pedestrian/cycleway for the Estate.</li> <li>• A 1.8m footpath is now proposed along the western side of Road 1 and Road 4 in front of the live/work lots. Dual footpaths are not proposed along Road 1 as the 2.5m footpath to the east of the larger commercial lots is considered to provide pedestrian access to the sites. Dual footpaths along the front of the live/work lots along Road 4 are not proposed as the road only has a single frontage in this location</li> </ul>
<p><b>Department of Industry</b></p>	<p>The Department has advised it has no comments</p>	<p>No response required.</p>

The proponent has consulted with Ballina Shire Council to address all issues raised within their submission dated 27 November 2018. As a result of the consultation and supply of additional information to Ballina Shire Council, the proponent has received correspondence from Council within letter dated 21 June 2019, stating:

*The information provided generally addresses Council's previous concerns in relation to this proposed modification. Accordingly, Council raises no objection this modification, subject to suitable conditions being imposed by the Department of Planning and Environment.*

We trust this response to submissions is the necessary information required for the Department to finalise the assessment of this Section 75W Modification to MP07\_0026. However, should you have any questions regarding this matter, please do not hesitate contacting Damian Chapelle of this office.

Yours sincerely,

**NEWTON DENNY CHAPELLE**

A handwritten signature in black ink that reads "Damian Chapelle". The signature is written in a cursive, flowing style.

**DAMIAN CHAPELLE**  
Town Planner. BTP. CPP.