



# ***Nords Wharf Concept Plan***

*Part 3A Modification  
Assessment  
(MP 10\_0088 MOD 1)*

January 2020

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# Glossary

Abbreviation	Definition
BCD	Biodiversity Conservation Division
Council	Lake Macquarie Council
Department	Department of Planning, Industry and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
STOP Regulation	<i>Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i>
EPI	Environmental Planning Instrument
LEP	Local Environmental Plan
LGA	Local Government Area
Minister	Minister for Planning
OEH	Office of Environment and Heritage
Proponent	Nords Wharf Development Company Pty Ltd
RFS	Rural Fire Service
RMS	Roads and Maritime Services
RtS	Response to Submissions
Secretary	Secretary of the Department of Planning and Environment
SEPP	State Environmental Planning Policy
TfNSW	Transport for NSW



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# Executive Summary

This report provides an assessment of a request to modify the concept approval for the Nords Wharf residential subdivision (MP 10\_0088).

The modification request (as revised by the updated Response to Submissions) seeks to:

- increase the number of lots from 90 to 96
- modify the intersections, including:
  - upgrade the Pacific Highway and Awabakal Drive to a left-in, left-out only intersection
  - upgrade the Nords Wharf Road and Pacific Highway to a signalised seagull intersection
- reduce the required \$1 million contribution to \$415,000
- modify the Statement of Commitments (SoC) and Voluntary Planning Agreement (VPA) to remove the requirement for bank guarantees.

The modification request is made by Nords Wharf Development Company Pty Ltd (the Proponent) pursuant to section 75W of the Environmental Planning and Assessment Act 1979 (EP&A Act).

## Engagement

The Department of Planning, Industry and Environment (the Department) notified the application between 18 May 2017 and 15 June 2017. A total of 157 submissions were received, comprising five public authority submissions and 152 submissions from the public (all in the nature of objections).

Key issues raised in public submissions included traffic impacts on local roads, safety impacts associated with increased traffic, additional pressure on infrastructure and services, and the removal of the \$1 million contribution.

Lake Macquarie Council, Roads and Maritime Services (now Transport for NSW, Roads and Maritime), Office of Environment and Heritage (now Biodiversity Conservation Division), Rural Fire Service and Transport for NSW did not object to the proposal, but provided comments, which are considered in the Department's assessment.

## Response to Submissions

On 20 March 2019, the Proponent lodged a Response to Submissions (RtS), which proposed to:

- reduce the number of additional lots proposed from 101 to 100
- provide \$250,000 in lieu of the \$1 million contribution (instead of removing the contribution completely)
- remove the requirement for upgrades to either intersection.

On 24 May 2018, the Proponent submitted an updated RtS (the modification request), changing the number of lots proposed, the contribution amount and the proposed intersection upgrades, in response to submissions received on the RtS.

## Conclusion

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act and has carefully considered the issues raised in public and agency submissions. The Department is satisfied the proposed changes to the subdivision layout and associated increase in lots is acceptable as:

- it provides a logical subdivision pattern and generally complies with the requirements of Council's DCP

- it would contribute towards the provision of additional housing in the Hunter region
- Council raised no objection to the proposed subdivision layout, and this was not a major issue raised in public submissions.

The Department does not support the proposed changes to the intersections as:

- the community has raised significant concerns (102 of 152 submissions) about the potential additional traffic and safety impacts on local roads associated with the proposal
- Council prefers that the approved layout be maintained, and TfNSW advised the proposal would adversely impact on bus operations
- the approved intersection layout provides a more logical outcome and increased options for the local community, particularly in the event of an emergency
- the restriction of the Awabakal Drive and Pacific Highway to left-in, left-out, in conjunction with an increase in the number of approved dwellings within Nords Wharf does not represent orderly development of land in accordance with objective (c) of the EP&A Act
- the Proponent has advised the key reason for the proposal is to provide a more cost-effective option, but inadequate information addressing the traffic and safety impacts on local roads has been provided.

The Department does not support the proposed removal or reduction the \$1 million contribution as:

- it was a contribution in the original approval that would directly benefit local people, and there has been no change in circumstances to support the removal or reduction of this requirement
- it is not in the public interest, noting that 71 of 152 submissions raised concerns about the loss of contributions.

The modification request is referred to the Independent Planning Commission for determination as the Department received more than 25 submissions objecting to the proposal.



# 1 Introduction

## 1.1 Preamble

1.1.1 This report provides an assessment of a request to modify the concept approval for the Nords Wharf residential subdivision (MP 10\_0088).

1.1.2 The modification request seeks to:

- increase the number of lots from 90 to 96
- change two intersections, including:
  - upgrade the Pacific Highway and Awabakal Drive to a left-in, left-out only intersection
  - upgrade the Nords Wharf Road and Pacific Highway to a signalised seagull intersection
- reduce the required \$1 million contribution to \$415,000
- modify the Statement of Commitments (SoC) and Voluntary Planning Agreement (VPA) to remove the requirement for bank guarantees.

1.1.3 The modification request is made by Nords Wharf Development Company Pty Ltd (the Proponent) pursuant to section 75W of the Environmental Planning and Assessment Act 1979 (EP&A Act).

## 1.2 Background

1.2.1 The site is located approximately 90 kilometres north of Sydney and 30 kilometres south of Newcastle, in Lake Macquarie local government area (LGA). It is part of the Coal & Allied Southern Estates, comprising land holdings at Nords Wharf, Gwandalan and Catherine Hill Bay (**Figure 1**), located on the South Wallarah Peninsula, and within the Lower Hunter Region.



**Figure 1** | Regional Context, with Coal and Allied Southern Estates shown in blue

- 1.2.2 The site is located adjacent to the southern extent of the existing township of Nords Wharf. It is situated on the eastern shore of Lake Macquarie, and to the west of the Pacific Highway. The site area is approximately 127 hectares comprising a developable area of 10.18 hectares (shown in blue in **Figure 2**) and 116.6 hectares of conservation lands (shown in green in **Figure 2**).



**Figure 2** | Subject Site

### 1.3 Approval History

- 1.3.1 On 12 July 2012, the then Planning Assessment Commission approved a concept plan (MP 10\_0088) for a residential subdivision comprising 90 residential lots in a developable area of 10.18 hectares and dedication of 116.6 hectares of conservation land at Nords Wharf.
- 1.3.2 Project approval was also granted for the subdivision of land to enable the transfer of the conservation lands to a public authority, being a Minister or the Crown.
- 1.3.3 In September 2014, Council approved DA 640/2013 for the subdivision of the site into 84 lots. A modification request was lodged with Council in June 2018 seeking to increase the number of lots from 84 to 100. This



modification request is currently on hold, pending the determination of the subject modification request to the concept approval (MP 10\_0088 MOD 1).

## 1.4 Background Relevant to the Proposed Modification

### Intersection Upgrades

- 1.4.1 The concept approval includes Further Environmental Assessment Requirement (FEAR) 1.25 requiring the detailed design for the upgrade of the Pacific Highway and Awabakal Drive intersection be prepared in accordance with RMS's requirements.
- 1.4.2 During the assessment of the concept approval, RMS stated that the Pacific Highway and Awabakal Drive intersection shall be upgraded to a to signalised seagull intersection.

### Contributions

- 1.4.3 The approved Statement of Commitments requires the payment of \$1 million for the provision of social infrastructure and community development for Nords Wharf (**Figure 3**).

Description	
	conservation in perpetuity
2.	Section 94 contributions to open space, recreation and community facilities as noted above
3.	Contribution to the provision of emergency services for the region
4.	Upgrading of the Pacific highway / Awabakal Dr intersection at the landowners cost which will provide the Nords Wharf/ Cams Wharf community a safer exit to Pacific highway
5.	<p>\$5M allocated by Coal &amp; Allied for the provision of social infrastructure and community development for the southern estates. Costs allocations and timing are included in Appendix C. Allowances made for Nords Wharf include the following:</p> <ul style="list-style-type: none"> <li>• Provide additional trailer parking for the Branter Road boat launching ramp.</li> <li>• Contribute to the upgrade of the Branter Road boat launching ramp.</li> <li>• Contribute to the upgrade of existing boat ramp facilities near Cams Wharf.</li> <li>• Contribute to a local playgroup</li> <li>• Upgrading Gathercole Reserve</li> <li>• Sustainability contributions</li> <li>• Extend 1.2m foot path in Government Road from closest bus stop to the proposed new estate to the public school. The Owner will enter into a Voluntary Planning Agreement with Lake Macquarie City Council.</li> <li>• Aboriginal community scholarships</li> <li>• Provision of walkways (subject to DECCW approval) external to the Coal &amp; Allied development land</li> </ul>

**Figure 3 |** Contributions outlined in Statement of Commitments

- 1.4.4 The approval requires a staging plan be prepared in consultation with Council and submitted to the satisfaction of the Director-General prior to the first subdivision application, detailing the schedule of delivery for the contributions.
- 1.4.5 While a staging plan has not been provided to the Department, DA 640/2013 (approved by Council for the subdivision works) includes a schedule of proposed contributions, and timing for the payment (**Figure 4**).

In accordance with the Nords Wharf Revised Statement of Commitments contained within the Concept Approval the following shall be provided:-

<b>Stage 1 – Prior to the release of the Subdivision Certificate for Stage 1</b>		
<b>Item</b>	<b>Description</b>	<b>Amount</b>
Parks / Open Space	Contribute to local playgroup	\$10,000
Aboriginal Community	Establish scholarship for Archaeology students from the local aboriginal community	\$5,000
<b>Stage 2 – Prior to the release of the Subdivision Certificate for Stage 2</b>		
<b>Item</b>	<b>Description</b>	<b>Amount</b>
Boat Ramp Facilities	Contribute to the upgrade of the existing boat ramp facilities near Cams Wharf	\$150,000
Parks / Open Space	Contribute to Upgrade of Gathercole Park	\$100,000
Footpath Extension	Footpath to be provided from Bus Stop in Government Road (adjacent to development) to Public School	\$85,000
Aboriginal Community	Establish scholarships for Archaeology students from the local aboriginal community	2 x \$5,000
Walkways	Provision of walkways (subject to DECC) external to the development land.	\$400,000
<b>Stage 3 – Prior to the release of the Subdivision Certificate for Stage 3</b>		
Boat Ramp Facilities	Provide additional trailer parking for Branter Road boat launching ramp and contribute to the upgrade of the Branter Roads boat launching ramp	\$230,000
Aboriginal Community	Establish scholarships for Archaeology students from the local aboriginal community	2 x \$5,000

The above schedule is indicative only and will be subject to further negotiation with Lake Macquarie City Council.

**Figure 4 |** Schedule of Contributions

- 1.4.6 No subdivision certificates have been issued for any stage of the development and no contributions have been paid to date.
- 1.4.7 In addition to these contributions, the Proponent is required to pay section 94 contributions in accordance with the *Lake Macquarie City Council Section 94 Contributions Plan No. 1 – Citywide 2004*. In May 2018 the *Belmont Contributions Catchment- 2017 Contributions Plan* was adopted by Council, which currently applies to the subject site.



## 2 Proposed Modification

### 2.1 Modification

2.1.1 The proposal (as revised) seeks approval to:

- increase the number of lots from 90 to 96 and modify the internal road layout
- change the intersections, including:
  - upgrade of the Pacific Highway and Awabakal Drive to a left-in, left-out only intersection
  - upgrade of Nords Wharf Road and Pacific Highway to a signalised seagull intersection
- change the requirement for a \$1 million contribution to a \$415,000 contribution for additional parking at the Branter Road boat ramp, upgrade of Gathercole Park and a connecting pathway to the nearest bus stop
- modify the Statement of Commitments and Voluntary Planning Agreement to remove the requirement for bank guarantees.

2.1.2 The approved and proposed subdivision plans and intersection layouts are shown in **Figures 5 to 8**.

### 2.2 Changes to Proposal

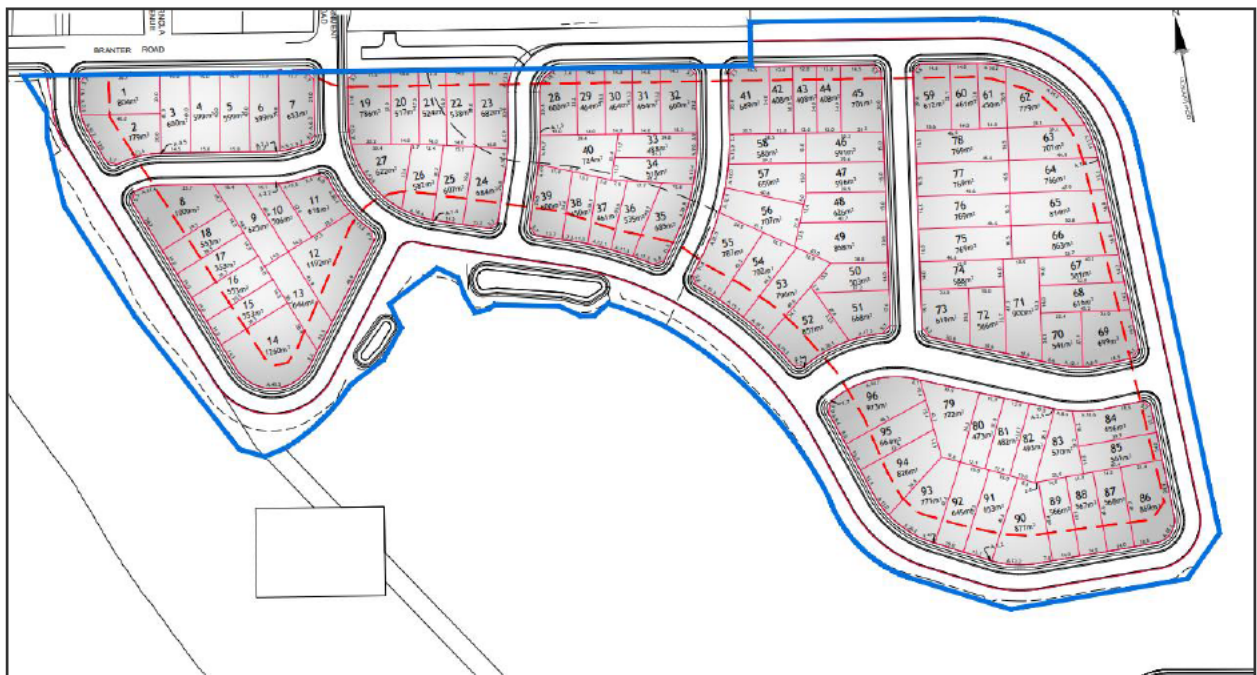
2.2.1 The Proponent amended the proposal on 24 May 2018 and 20 March 2019 in response to concerns raised in submissions. Key aspects of the proposal that were amended are outlined in **Table 1**.

**Table 1** | Changes to Proposal

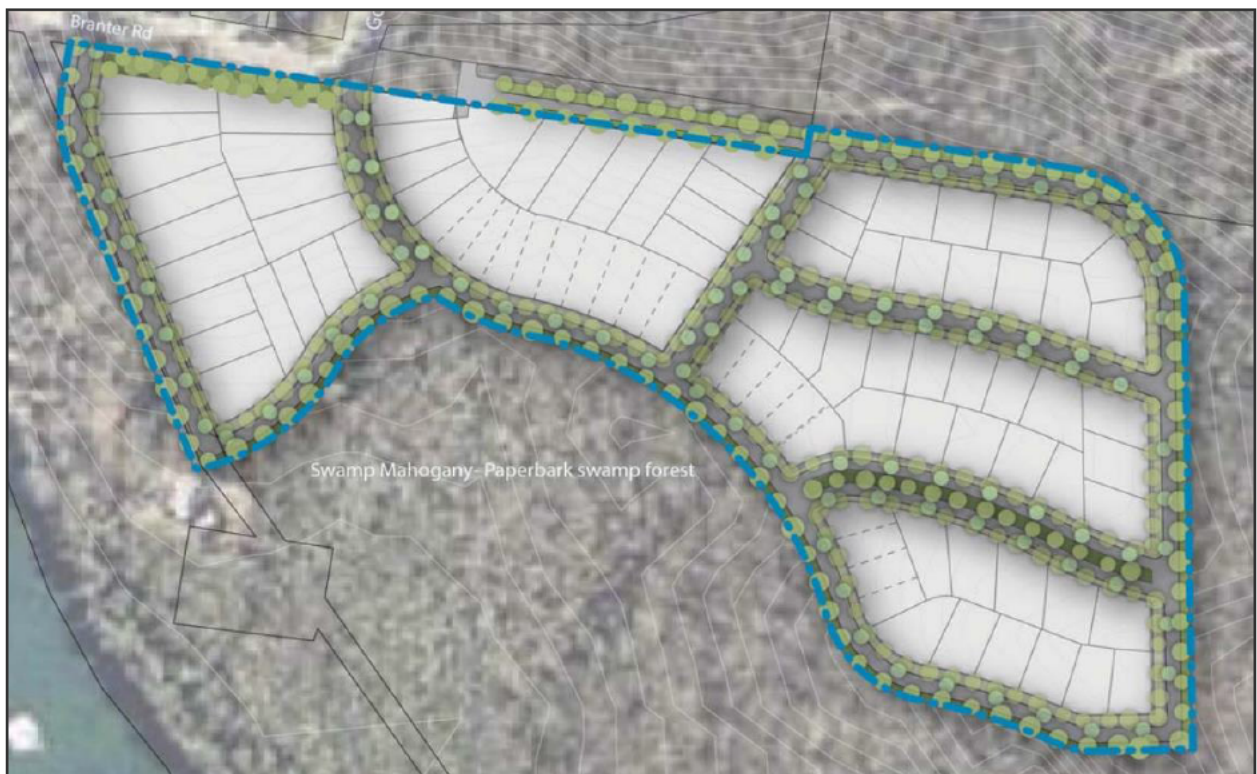
	<b>Modification as Lodged</b>	<b>Response to Submissions</b>	<b>Updated Response to Submissions</b>
<b>Number of lots</b>	Increase from 90 to 101 (11 additional)	Increase from 90 to 100 (10 additional)	Increase from 90 to 96 (6 additional)
<b>Intersection upgrades</b>	Pacific Highway and Awabakal Drive to a left-in, left-out only intersection Nords Wharf Road and Pacific Highway to a signalised seagull intersection	No upgrades to either intersection	Pacific Highway and Awabakal Drive to a left-in, left-out only intersection Nords Wharf Road and Pacific Highway to a signalised seagull intersection
<b>Contributions</b>	Remove the requirement to pay a \$1 million contribution	Reduce the \$1 million contribution to \$250,000	Reduce the \$1 million contribution to \$415,000

### 2.3 Proponent's Justification

2.3.1 The modification to the intersections is proposed to provide a more cost-effective option and would improve the safety of the Awabakal Drive intersection. The proposed modifications to the subdivision layout are proposed to provide a more cost-effective, efficient layout, and the proposed removal of the requirement to pay the \$1 million contribution is requested as it is above and beyond the required section 94 (now Section 7.11) contributions.



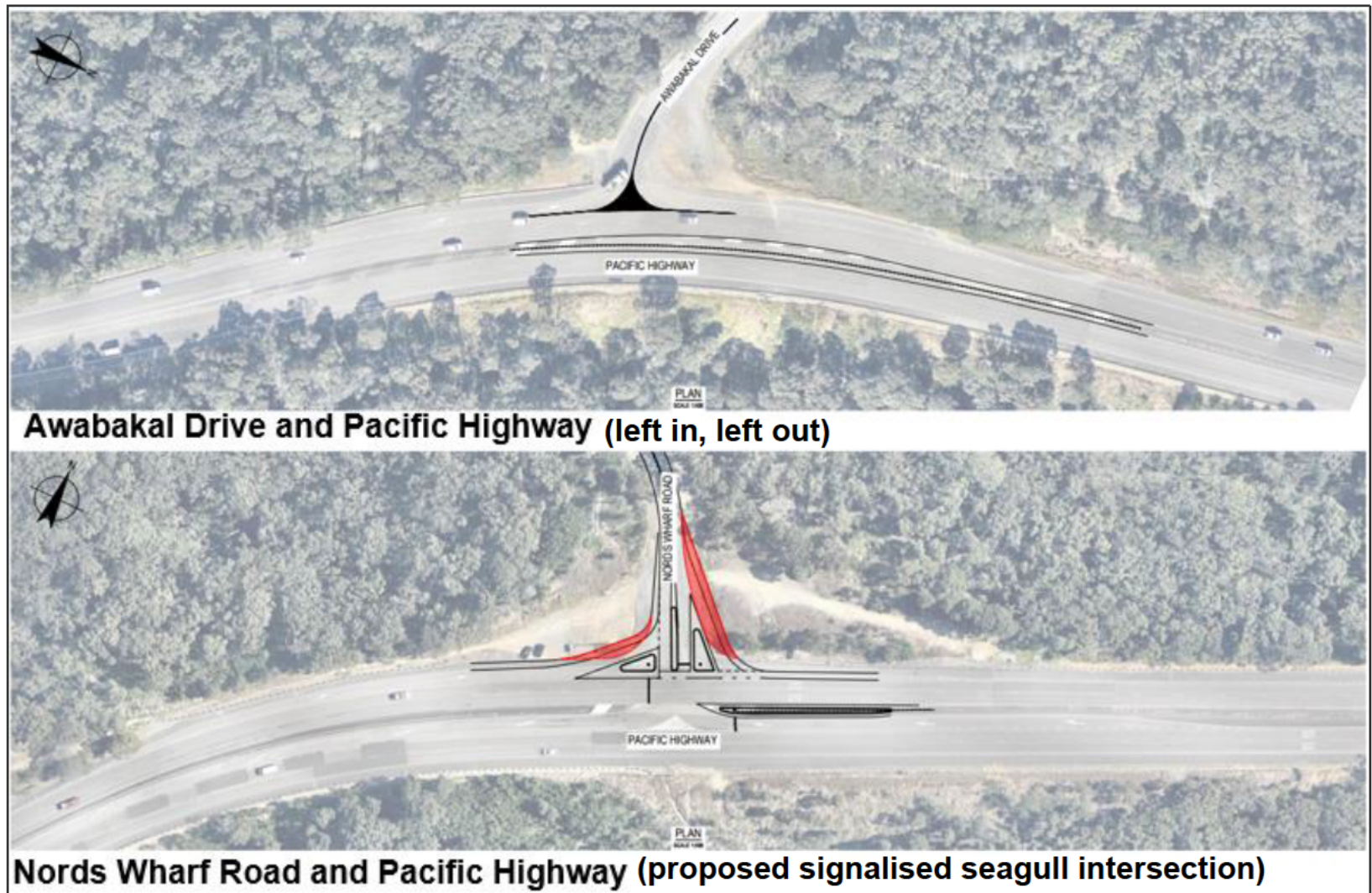
**Figure 5** | Proposed subdivision layout



**Figure 6** | Approved subdivision layout



**Figure 7** | Approved and proposed intersection treatment



**Figure 8** | Proposed intersection design



## 3 Strategic Context

- 3.1.1 The Department considers the proposed modification to increase the number of lots is consistent with the strategic context for the area, and in particular the:
- NSW State Priorities to make housing more affordable by increasing housing supply
  - Hunter Regional Plan 2036 objective to provide 70,000 more houses by 2036
  - Lake Macquarie Local Environmental Plan 2014 which identifies the site for low density residential development
  - Lower Hunter Regional Strategy (LHRS) 2006, where the site is identified as an area for part conservation and part urban area.



## 4 Statutory Context

### 4.1 Section 75W

- 4.1.1 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 (STOP Regulation). The power to modify transitional Part 3A projects under section 75W of the EP&A Act is being wound up. However, as this modification request was made before the 'cut-off date' of 1 March 2018, the provisions of Schedule 2 (clause 3) of the STOP Regulation 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 modification request under section 75W of the EP&A Act.
- 4.1.2 The Department is satisfied that 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 Consent authority

- 4.2.1 The Minister for Planning is the consent authority for the modification request. However, the Independent Planning Commission (Commission) may determine the request under delegation as more than 25 public submissions have been received that object to the proposal.

### 4.3 Environmental Planning Instruments

- 4.3.1 The original concept plan (MP 010\_0088) was assessed against the provisions of the following Environmental Planning Instruments (EPIs):
- State Environmental Planning Policy No. 44 – Koala Habitat Protection
  - State Environmental Planning Policy No. 71 – Coastal Protection
  - State Environmental Planning Policy No. 55 – Remediation of Land

- State Environmental Planning Policy No. 14 – Coastal Wetlands
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Lake Macquarie Local Environmental Plan 2004.

4.3.2 The Department is satisfied the proposed modification remains consistent with these EPIs.



## 5 Engagement

### 5.1 Department's engagement

- 5.1.1 The Department notified the modification request for 28 days between 18 May 2017 and 15 June 2017. The request was made publicly available on the Department's website and notified to Lake Macquarie Council (Council), Roads and Maritime Services (RMS), Office of Environment and Heritage (OEH) [now the Division of Biodiversity & Conservation, Department of Planning Industry and Environment (BCD)], Rural Fire Service (RFS) and Transport for NSW (TfNSW).
- 5.1.2 The Department also met with the Nords Wharf Progress Association on site to discuss the proposal in June 2017.

### 5.2 Authority Submissions

- 5.2.1 The Department received submissions from Council, RMS, BCD, RFS and TfNSW. A summary of issues raised in submissions is provided in Table 2.

**Table 2** | Public Authority Submissions on Modification Request

#### Lake Macquarie Council (Council)

Council provided comments on the proposal.

- Asset Protection Zones (APZs) should be located within the road reserve, which Council maintains, rather than extending into bushland which Council does not maintain
- the relocation of APZs in accordance with the above is likely to increase the area of APZs within residential lots, and result in building footprints within the BAL 40 area which is unlikely to be supported
- the Crown road reserve (proposed lots 301-306) has been approved to become a public road and not transferred to private ownership
- inadequate details about proposed cut and fill have been provided
- the impacts of the proposed intersection changes on the local road network have not been sufficiently addressed
- the approved layout includes large lots adjacent to the Branter Road landscape buffer and the proposed lot layout includes smaller lots which may have a negative impact on achieving the buffer
- the proposed modifications are inconsistent with the Urban Design Guidelines approved for the site.



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### Rural Fire Service (RFS)

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RFS provided comments on the proposal.

- insufficient information has been provided to demonstrate that the public road layout complies with Section 4.1.3 - Standards for Bush Fire Protection Measures for Residential and Rural Residential Subdivisions of *Planning for Bushfire Protection 2006*, which states a perimeter road is the preferred option to separate bushland from urban areas.
- the layout should be amended so that lots are separated from the unmanaged bushfire prone vegetation by a perimeter road.

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### Biodiversity Conservation Division (BCD)

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BCD provided comments on the proposal.

- insufficient assessment of indirect impacts of the increase in lot yield on the adjoining national park reserve have been provided, including:
  - increases to stormwater run-off and changes to drainage in relation to swamp sclerophyll forest on coastal floodplains (Endangered Ecological Community)
  - visual impacts on adjoining national park as a result of changes to lot and road layout
  - impacts of proposed changes from batters to retaining walls adjoining the national park reserve
  - impacts of removal of the perimeter road separating the development from the reserve.
- it is recommended that the perimeter road be reinstated and all APZs are contained within the R2 zoned land.

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### Roads and Maritime Services (RMS)

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RMS provided comments on the proposal.

- the traffic impact study should be updated to consider the impacts of the proposal on:
  - the local roads in consultation with Lake Macquarie Council and the local community
  - the Pacific Highway
  - the future connection of Murrays Beach to Cams Wharf, noting that signalisation may draw motorists to this intersection and towards the local school
  - approved U-turn bay on the Pacific Highway associated with the Cams Wharf Road and Flowers Drive intersection upgrade.
- an updated Traffic Impact Statement should be provided including:
  - current traffic counts for intersections and routes in the study area
  - the distribution of trips generated by the proposed development and the redistribution as a result of the proposed intersection changes
  - consideration of future expansion of the school to accommodate increased students in the catchment.

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### Transport for NSW (TfNSW)

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TfNSW provided comments on the proposal.

- any redesign of the intersections should ensure that surrounding transit stops are retained
- the proposed left-in, left-out design for the Awabakal Drive intersection would adversely impact on bus operations

- the traffic review has limited information about the provision of active and public transport and should be revised to review these provisions.

### 5.3 Public Submissions

5.3.1 The Department received 152 public objections in response to the exhibition of the original modification request (including 73 form letters).

5.3.2 A summary of the key issues raised is shown in **Table 3**.

**Table 3** | Percentage of public submissions raising each issue

Issue	% of Submissions
Additional traffic on local roads	72
Reduced safety of local roads	66
Safety impacts on local school	57
Pressure on Government and Nords Wharf Road intersection	48
Removal of contributions not supported	47
Pressure on infrastructure and services	46
Construction traffic	38
Pressure on parking	36
Increase in number of lots not supported	11
Inconvenience of proposed intersection changes	9
Reduced safety for evacuation	7
Biodiversity impacts	3
Impact on bus routes	2

### 5.4 Response to Submissions

5.4.1 The Department provided the submissions to the Proponent and requested a response.

5.4.2 On 24 May 2018, the Proponent provided a Response to Submissions (RTS) amending the proposal in response to concerns raised in submissions.

5.4.3 The RTS provided the following further clarification and amendments to the proposal:

- reduce the number of proposed lots from 101 to 100 (an overall increase of 10 lots)
- provide \$250,000 in lieu of the \$1 million contribution
- remove the requirement to upgrade the Awabakal Drive and Pacific Highway intersection (as required by Further Environmental Assessment Requirement 1.25) and remove the proposed upgrades to the Nords Wharf Road and Pacific Highway intersection.

5.4.4 The RTS was notified to agencies and made publicly available on the Department’s website.

5.4.5 A summary of issues raised in the submissions on the RTS is provided in **Table 4** below.

**Table 4** | Public Authority Submissions on Response to Submissions

<b>Lake Macquarie Council (Council)</b>	
Council provided comments on the amended proposal.	<ul style="list-style-type: none"><li>• the APZs include drainage swales which may be periodically overgrown, and this potential fuel load should be included in the assessment of bushfire risk</li><li>• the lots along the southern and western part of the subdivision are still significantly impacted by bushfire, and building footprints are likely to be within the BAL 40 area</li><li>• Council prefers maintaining the 'all movements' configuration of the Awabakal Drive and Pacific Highway intersection</li><li>• the updated Urban Design Guidelines include a revised treatment for the Branter Road landscape buffer. The widening of the road reserve by 4m to include additional plantings is supported, however, the buffer is 6m narrower than approved</li><li>• contributions for all lots will be levied in accordance with the new Belmont Contributions Plan, not just the 10 additional lots</li><li>• details of how the proposed \$250,000 contribution would be spent are required.</li></ul>
<b>Rural Fire Service (RFS)</b>	
RFS provided comments on the amended proposal.	<ul style="list-style-type: none"><li>• requirement for an updated subdivision plan demonstrating that the required APZs can be achieved within the proposed residential lots and showing the location of future dwelling footprints within BAL 29 or lower area</li><li>• an updated BAL plan that includes information regarding APZs and future dwellings footprints is required.</li></ul>
<b>Biodiversity Conservation Division (BCD)</b>	
BCD provided comments on the amended proposal.	<ul style="list-style-type: none"><li>• the following information is still outstanding:<ul style="list-style-type: none"><li>○ an adequate assessment of the impact of the proposal on visual amenity, referencing the adjoining national park</li><li>○ analysis of direct and indirect impacts associated with the proposed retaining walls</li><li>○ reinstatement of the perimeter road to ensure there is a defined management boundary between the development and the bushland</li><li>○ clarification of the proposed water cycle management system, including analysis of runoff volumes and rates</li><li>○ consideration of Clause 11(1) of SEPP (Coastal Management) 2018, relating to land in proximity to littoral rainforests, is required.</li></ul></li></ul>

## Roads and Maritime Services (RMS)

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RMS provided comments on the amended proposal.

- the safety impact of the additional trips generated by the development on the Pacific Highway and Awabakal Drive intersection have not been adequately considered, and concerns are raised regarding the proposal to not upgrade either intersection, as it would reduce safety for motorists and future residents.
- the following options are available regarding this application, and either option could provide an acceptable safety and efficiency outcome:
  1. Maintain Condition 1.25 of MP10\_0088, which requires the intersection of the Pacific Highway and Awabakal Drive be upgraded to a signalised seagull intersection
  2. Amend the consent to require the upgrade of Nords Wharf Road to a signalised seagull intersection and require turn restrictions on Awabakal Drive at the Pacific Highway.
- it is recommended that the Department determine the appropriate intersection treatment from the above options following consultation with the local community
- either option would require a Works Authorisation Deed (WAD) to be entered into, and recommended conditions should be included in relation to this.

## Transport for NSW (TfNSW)

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TfNSW provided comments on the amended proposal.

- the removal of the proposal to restrict the intersection of Awabakal Drive and the Pacific Highway to left-in, left-out would resolve issues relating to bus accessibility previously raised.

## 5.5 Updated Response to submissions

5.5.1 On 20 June 2019, additional information and changes were submitted in response to public authority submissions, proposing to:

- reduce the number of proposed lots from 101 to 96 (an overall increase of 6 lots)
- change the intersections, including:
  - o upgrade of the Pacific Highway and Awabakal Drive to a left-in, left-out only intersection
  - o upgrade of Nords Wharf Road and Pacific Highway to a signalised seagull intersection
- change the requirement for a \$1 million contribution for social infrastructure to a \$415,000 contribution for additional parking at the Branter Road boat ramp, upgrade of Gathercole Park and a connecting pathway to the nearest bus stop.

5.5.2 The Updated Response to Submissions (URTS) was notified to Council, RFS and BCD, and made publicly available on the Department's website.

5.5.3 A summary of issues raised in the submissions on the URTS is provided in **Table 5** below.

**Table 5** | Public Authority Submissions on URTS

### Lake Macquarie Council (Council)

Council provided comments on the amended proposal.

- the road fronting lots 19 to 23 is not a perimeter road as required by RFS, as it does not connect to Government Road. Council does not support the extension of the perimeter road to connect to Government Road because of the proximity to the intersection with Awabakal Drive, but a gated fire trail access would be accepted
- any final solution for the intersections shall consider any additional impact on local roads and make provision for mitigation measures for this impact
- it is unclear how the requirement outlined in Condition 1.11 regarding the provision of a landscape buffer is to be achieved
- the offer of \$415, 000 for infrastructure should be expanded to include the upgrade of parking at the Branter Road and /or Cams Wharf Road boat ramps, with the distribution of these funds to be decided by Council.

### Rural Fire Service (RFS)

RFS advised that it did not object, subject to the imposition of recommended conditions to ensure compliance with *Planning for Bushfire Protection 2006*.

### Biodiversity Conservation Division (BCD)

BCD advised that all previous comments relating to biodiversity, floodplain and coastal management have been addressed.



## 6 Assessment

- 6.1.1 In assessing the merits of the proposed modification, the Department has considered:
- the Modification Report and associated documents (Appendix A)
  - the Environmental Assessment and conditions of approval for the original project
  - submissions received on the proposal and the Proponent's response to the submissions
  - relevant environmental planning instruments, policies and guidelines
  - the requirements of the EP&A Act.
- 6.1.2 The Department considers the key issues associated with the proposal are:
- intersection upgrades
  - contributions
  - bushfire hazard.
- 6.1.3 An assessment of all other issues is set out at **Table 7**.

## 6.2 Intersection Upgrades

6.2.1 The proposal seeks to change the intersection of the Pacific Highway and Awabakal Drive to left-in, left-out only, and modify the intersection of Nords Wharf Road and the Pacific Highway to a signalised seagull intersection (as summarised in **Table 6** and outlined in **Figure 8**).

**Table 6** | Approved and Proposed Intersection Design

Intersection	Current	Approved	RTS	Proposed
Awabakal Drive	Unsignalised T-intersection	Signalised seagull	No upgrade	Left-in, left out
Nords Wharf Road	Unsignalised T-intersection	No change	No upgrade	Signalised seagull

6.2.2 The Proponent has advised the changes are requested as the approved arrangements are cost prohibitive, and the proposed upgrade of the Nords Wharf Road intersection would be cost effective as it already has the required lane configuration for a signalised seagull intersection.

6.2.3 Council advised it prefers maintaining the approved intersection layout, and advised the final intersection arrangement must consider and mitigate any additional impact on local roads.

6.2.4 TfNSW advised that the proposed left-in, left-out design for the Awabakal Drive intersection would adversely impact on bus operations through increased journey times and route extensions.

6.2.5 RMS advised that either option (approved or proposed) could provide an acceptable safety and efficiency outcome. It recommended that the Department may determine the appropriate intersection treatment following consultation with the local community, to allow full consideration of the environmental impacts of the proposed changes to intersection upgrades.

6.2.6 Based on the advice of RMS, the Department acknowledges that either option could provide a safe and efficient outcome in relation to the ingress and egress from the Pacific Highway. However, following a review of all environmental impacts and consultation with the community, the Department does not support the proposed changes to intersections.

6.2.7 The Department notes that the proposal would alter the local road traffic flows in the area, as residents wishing to travel south along the Pacific Highway would need to travel north along a local road (Government Road) to use the Nords Wharf Road intersection (**Figure 7**). This would increase the amount of traffic on local roads and inconvenience residents (particularly those in the south of Nords Wharf).

6.2.8 The Proponent submitted a Traffic Impact Assessment (TIA) as part of the modification request, stating that an additional travel time of 2 minutes for 20% of residents would be incurred as a result of the proposed changes. However, RMS disagrees and notes it is likely that more than 20% of residents would be affected, as the distribution diagrams do not consider that people are likely to use the closest intersection.

6.2.9 The Department consulted with the community and received 102 submissions (67%) raising concerns about the increased traffic and potential safety impacts associated with the proposal. Key concerns included

- reduced safety of pedestrians as there are no footpaths along Government Road
- reduced safety of children during school drop off and pick up times
- increased use of the Government Road and Nords Wharf Road intersection.

- 6.2.10 The Department considers the concerns raised by the community are reasonable, and notes that they have not been addressed by the Proponent. RMS and Council also requested additional information regarding the traffic and safety impacts of the proposal on the local road network.
- 6.2.11 The Proponent provided an updated TIA as part of the RTS, however, it did not address the impacts of the proposed intersection changes on the local roads. Instead, it proposed to remove the requirement for upgrades to either intersection.
- 6.2.12 The Department notes that the proposed intersection changes are unlikely to result in the capacity of the local roads being exceeded. However, insufficient information to address the safety and amenity impacts on local roads as a result of the proposal has been provided.
- 6.2.13 The Department also considers having two intersections with the option to travel north and south is a better outcome for new and existing residents as this allows greater choice depending on where they live, and where they are travelling. It also increases the evacuation options in the event of an emergency.
- 6.2.14 Noting the above, the Department considers the potential traffic and safety impacts for residents have not been adequately addressed and mitigated, and the approved intersection arrangement is a better outcome for existing and future residents.
- 6.2.15 The Department has considered the impacts of the proposal on the local roads and existing and future residents of Nords Wharf and consulted with the local community. While RMS noted that both options could provide an acceptable safety and efficiency outcome, the Department does not support the proposed intersection changes, and considers the retention of the approved arrangement is appropriate as:
- the community has raised significant concerns about the potential additional traffic and safety impacts on local roads associated with the proposed layout
  - Council prefers that the approved layout be maintained, and TfNSW advised the proposal would adversely impact on bus operations
  - the approved layout provides a more logical outcome and increased options for the local community, particularly in the event of an emergency
  - the restriction of the Awabakal Drive and Pacific Highway to left-in, left-out, in conjunction with an increase in the number of approved dwellings within Nords Wharf does not represent orderly development of land in accordance with objective (c) of the EP&A Act
  - the Proponent has advised the key reason for the proposal is to provide a more cost-effective option, but inadequate information addressing the traffic and safety impacts on local roads has been provided.
- 6.2.16 The Department therefore recommends FEAR 1.25 is maintained in its current form, requiring the upgrade of Nords Wharf Road and Pacific Highway to a signalised seagull intersection and no changes to the intersection of Awabakal Drive and the Pacific Highway.
- 6.2.17 RMS advised that a Works Authorisation Deed (WAD) would be required for either option, and provided recommended conditions relating to this. The Department has recommended a new FEAR 1.25A requiring the Proponent to enter into a WAD with RMS for the intersection upgrades.

## 6.3 Contributions

- 6.3.1 The proposal originally sought to remove a requirement to pay \$1 million contribution for social infrastructure within Nords Wharf.
- 6.3.2 The Proponent contends that the \$1 million contribution was proposed in the Statement of Commitments in the original approval as Council’s section 94 contribution plan did not consider the proposed development.
- 6.3.3 In response to agency and public concerns, the Proponent proposed a contribution of \$415,000 to cover infrastructure works within Nords Wharf (highlighted in green at **Figure 9** below).

<b>Stage 1 – Prior to the release of the Subdivision Certificate for Stage 1</b>		
<b>Item</b>	<b>Description</b>	<b>Amount</b>
Parks / Open Space	Contribute to local playgroup	\$10,000
Aboriginal Community	Establish scholarship for Archaeology students from the local aboriginal community	\$5,000
<b>Stage 2 – Prior to the release of the Subdivision Certificate for Stage 2</b>		
<b>Item</b>	<b>Description</b>	<b>Amount</b>
Boat Ramp Facilities	Contribute to the upgrade of the existing boat ramp facilities near Cams Wharf	\$150,000
<b>Parks / Open Space</b>	<b>Contribute to Upgrade of Gathercole Park</b>	<b>\$100,000</b>
<b>Footpath Extension</b>	<b>Footpath to be provided from Bus Stop in Government Road (adjacent to development) to Public School</b>	<b>\$85,000</b>
Aboriginal Community	Establish scholarships for Archaeology students from the local aboriginal community	2 x \$5,000
Walkways	Provision of walkways (subject to DECC) external to the development land.	\$400,000
<b>Stage 3 – Prior to the release of the Subdivision Certificate for Stage 3</b>		
<b>Boat Ramp Facilities</b>	<b>Provide additional trailer parking for Branter Road boat launching ramp and contribute to the upgrade of the Branter Road boat launching ramp</b>	<b>\$230,000</b>
Aboriginal Community	Establish scholarships for Archaeology students from the local aboriginal community	2 x \$5,000

**Figure 9** | Proposed contributions

- 6.3.4 The Department has carefully considered the merits of the proposal and the public and agency submissions and does not support the proposal to reduce the \$1 million contribution to \$415,000.
- 6.3.5 The Department notes the \$1 million contribution was included in the original approval as a suite of measures supported by the local community. The Department notes that this was an important contribution that would benefit local people directly, and there has been no change in circumstance to support to removal of this requirement.



- 6.3.6 The Department also notes that section 94 contributions were required under the original approval for open space, recreation facilities and management facilities, and does not therefore agree that the \$1 million contribution was a replacement for section 94 contributions.
- 6.3.7 The Department also notes that the Environmental Assessment (EA) for the original application states that the contribution was proposed to provide social infrastructure in the form of sustainability initiatives, additional infrastructure to support existing and future residents, educational and/or community programs. This is distinctly different to the purpose of section 94 contributions which is to cater for increased demand for services or amenities as a result of development. Therefore, the removal of the contribution would reduce the community benefits that were considered at the time of approval, and the payment of section 94 contributions would not provide the same benefits.
- 6.3.8 A total of 71 public submissions (47%) were received objecting to the proposed removal of the \$1 million contribution, noting it was part of the original approval, and the proposal would further increase pressure on community facilities.
- 6.3.9 Council did not object to the proposed reduction of the contribution but requested as part of its recent submission that the contributions should include the upgrade of parking at the Branter Road and /or the Cams Wharf Road boat ramps. The Department has therefore recommended an amended FEAR 1.14 requiring the schedule of contributions be updated to state that the parking upgrade could be for either the Branter Road or Cams Wharf Road boat ramp, as requested by Council.
- 6.3.10 The Department also notes that as Council has detailed knowledge of any local projects needing funds, flexibility should be provided to allow Council to allocate the funds locally as it deems appropriate. The Department therefore recommends that FEAR 1.14 be modified to state that the contributions outlined in the SoC are subject to final approval and the initiatives and staging may be altered by Lake Macquarie Council.
- 6.3.11 The Department therefore considers the retention of the \$1 million contribution, and the recommended conditions to allow suitable flexibility for the distribution of the funds, is in the public interest and would maintain the community benefits as originally approved.

## 6.4 Bushfire Hazard

- 6.4.1 The proposed subdivision layout, which provides an additional 6 lots, results in the relocation of APZs and the extent of Bushfire Attack Level (BAL) within the residential lots. RFS and Council initially raised concerns with the proposal relating to the perimeter road and the location of APZs, but have advised that these concerns may be addressed through recommended conditions.

### *Perimeter Road*

- 6.4.2 The proposed subdivision plan includes a perimeter road terminating in a cul-de-sac before the intersection with Government Road and Branter Road, as circled in red at **Figure 10**.



**Figure 10** | Termination of perimeter road

- 6.4.3 RFS advised that the proposed layout is supported subject to this proposed road being amended to provide a through road, which connects Branter Road and Government Road.
- 6.4.4 Council advised that it is unlikely to support a connection to Government Road due to the proximity to the existing intersection with Awabakal Drive, and has recommended that a fire trail could be provided instead.
- 6.4.5 The Department notes the original approval included the provision of a full perimeter road with a connection to Government Road, and FEAR 1.26 required future subdivision applications to demonstrate that the intersections of Branter Road, Government Road and Awabakal Drive can safely cater for additional vehicular traffic. The assessment noted that if this could not be achieved, the Proponent would need to identify an alternative access arrangement to the satisfaction of Council and RFS, although this was not reflected in the conditions.
- 6.4.6 The Department considers the provision of a perimeter road connecting to Government Road would satisfy RFS requirements. However, the Department also notes that the surrounding intersections must be able to operate safely and to Council's satisfaction. The Department therefore recommends FEAR 1.24 be modified to require the provision of a perimeter road connecting to Government Road and Branter Road, or an alternative solution agreed to by Lake Macquarie Council and RFS.

#### *Building Envelopes and APZs*

- 6.4.7 Council and RFS initially raised concerns that the proposal would result in APZs encroaching further into residential lots, and building envelopes would be located within BAL 40 area.
- 6.4.8 In response to concerns raised by Council and RFS, the Proponent modified the layout and provided amended plans demonstrating that APZs would be located to minimise encroachment into residential lots and building envelopes could be located outside the BAL 40 zone.
- 6.4.9 RFS reviewed the amended plans, and advised it raised no objection to the proposal subject to the imposition of conditions to ensure compliance with Planning for Bushfire Protection 2006. RFS also recommended restrictions

be imposed to ensure future buildings are not constructed within the flame zone, and to ensure appropriate management of APZs.

6.4.10 Council advised that the amended APZs are contained within the road carriageway and are therefore acceptable.

6.4.11 The Department considers the amended subdivision layout would meet the provisions of PBP and is appropriate, subject to the conditions recommended by RFS.

## 6.5 Other Issues

6.5.1 An assessment of all other issues is set out at **Table 7** below.

**Table 7** | Assessment of other issues

Issue	Findings	Recommended Condition
<i>Subdivision layout</i>	<ul style="list-style-type: none"> <li>• The proposal seeks to modify the subdivision layout to increase the number of lots from 90 to 96.</li> <li>• The Department considers the proposed subdivision layout is acceptable as:               <ul style="list-style-type: none"> <li>○ the majority of lots meet the minimum lot size of 450m<sup>2</sup> and lot width of 14m in accordance with the Lake Macquarie LEP 2014</li> <li>○ the battle-axe blocks, proposed as part of the original modification request, have been removed</li> <li>○ it would contribute to the provision of additional housing in the Hunter region in accordance with the regional plan.</li> </ul> </li> <li>• The Department also notes that the proposal relates to a concept plan, therefore the layout is indicative only, and the design will be finalised as part of future DAs assessed by Council.</li> </ul>	Modified Condition 1.4 stating that the approved subdivision plan is indicative only.
<i>Visual impact</i>	<ul style="list-style-type: none"> <li>• BCD raised concerns about the impacts of the proposal on visual amenity of the adjoining national park and requested an assessment be provided.</li> <li>• The Proponent responded, noting that the development footprint would remain largely the same as approved, and the increased yield is a result of smaller lot sizes.</li> <li>• BCD reviewed the response and raised no further concerns regarding the visual impact of the proposal.</li> </ul>	No additional conditions or amendments to existing conditions necessary.
<i>Buffer to national park</i>	<ul style="list-style-type: none"> <li>• BCD raised concerns about indirect impacts of the proposed retaining walls along the edge of the development on the adjoining national park.</li> </ul>	No additional conditions or amendments to existing conditions necessary.

- The Proponent responded, noting that the provision of retaining walls would provide a defined edge between the development and the national park, and would prevent unnecessary access.
- The Department notes this approval is for an indicative concept plan only, and the detailed design, including drainage and retaining structures will be determined by Council as part of future DAs.
- Council has advised that it will work with the Proponent to achieve satisfactory outcomes for the civil infrastructure on the site at the DA stage.
- The Department considers a suitable buffer between the development and the national park will be determined as part of future subdivision applications.

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***Biodiversity***

- BCD raised concern about the potential for increased runoff affecting the adjoining swamp sclerophyll forest endangered ecological community (EEC).
- The Proponent provided analysis demonstrating that the stormwater runoff would not exceed that approved, as no extension of the development footprint is proposed.
- BCD reviewed the Proponent’s response, and advised the previous concerns relating to biodiversity have been addressed.

No additional conditions or amendments to existing conditions necessary.

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***Urban Design Guidelines***

- The approval included a set of Urban Design Guidelines comprising a public domain plan and built form design guidelines.
- An updated set of Design Guidelines were provided as part of the RtS, however, they have not been updated to reflect the latest subdivision layout dated 5 June 2019.
- The Department therefore recommends a new Condition 1.10A requiring updated Urban Design Guidelines to be submitted to the satisfaction of Council prior to determination of any future subdivision application.

New Condition 1.10A requiring the Urban Design Guidelines to be updated to reflect the revised subdivision layout.

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***Landscaped buffer***

- The approved Urban Design Guidelines require the provision of a 10 m wide landscaped buffer to Branter Road to screen the development from existing residents.
- Condition 1.11 requires the landscaped buffer be offered for dedication to Council, and if Council does not accept, the buffer is to be incorporated into the residential lots.

No additional conditions or amendments to existing conditions necessary.

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- Council has previously advised that it does not accept ownership of the buffer, and a restriction on the lots with a frontage to Branter Road is required.
- The approved plan includes three lots with a restriction for the landscape buffer, and the proposed layout would increase this to six lots.
- Council raised concern that the increased number of lots with a frontage to Branter Road could compromise the management of the buffer.
- The Department considers the increase in number of lots is negligible, and the management of the buffer is unlikely to be compromised.
- The Department also notes the proposal relates to a concept plan, therefore Council will be responsible to confirm the maintenance arrangements for the landscaped buffer as part of the assessment of future DAs.
- Council also raised concern about the proposed width of the landscaped buffer being reduced by 6m (from 10m to 4m).
- The Department notes the distance between the new and existing residential lots is 18.3m, which includes Branter Road (8m) and a 10.3m wide road reserve with a 2.5m wide footpath and 7.8m for planting.
- The Department considers the width of the landscape buffer (7.8m for planting and a 2.5m footpath) is consistent with the approval, and the proposed footpath would improve amenity whilst maintaining an appropriate buffer.

***Removal of bank guarantees***

- The proposal seeks approval to remove all bank guarantees from the Concept Approval and the VPA as they duplicate guarantees required by other government authorities.
- The Department notes the conditions and Statement of Commitments for the concept approval do not require bank guarantees.
- However, the VPA that was executed on 22 March 2012 included bank guarantees as outlined at **Appendix B**.
- As there are no references to the terms of the VPA in the conditions or the SoC, modification of the concept plan is not required.
- The request to modify the VPA can be formalised via a Deed of Amendment and executed by all parties.
- The Department therefore considers the proposal to remove bank guarantees is outside of the scope of this modification request.

No additional conditions or amendments to existing conditions necessary.

**Section 94  
contributions**

- The approved Statement of Commitments, dated June 2011, requires local contributions in accordance with the Lake Macquarie City Council Section 94 Contributions Plan No 1 – Citywide 2004.
- However, since approval of the concept plan and Council’s DA for 84 lots (DA 640/2013), this plan has been replaced with the Belmont Contributions Plan 2017 (which is now applicable to the subject site).
- Council’s submission advises that contributions for all lots be levied in accordance with the new Belmont Contributions Plan, not just the additional lots sought under this modification.
- The Department notes that the approval is for concept only and local contributions are levied in accordance with the contributions plan relevant to the site at the time of determining a development application(s). It is ultimately a matter for Council to decide how to apply its contributions in the consideration of modifications.
- The Department therefore recommends that the Statement of Commitments be amended to require contributions be paid in accordance with the relevant contributions plan at the time of determining development applications(s).

Amended SoC requiring contributions be paid in accordance with the relevant Lake Macquarie Council contributions plan at the time of determining the development application(s).



## 7 Evaluation

7.1.1 The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department considers the proposed modification to the subdivision layout, and increase of 6 additional lots, is appropriate as:

- it provides a logical subdivision pattern and generally complies with the requirements of Council's DCP
- it would contribute towards the provision of additional housing in the Hunter region
- Council raised no objection to the proposed subdivision layout.

7.1.2 The Department has assessed the proposed intersection changes and the removal or reduction of the \$1 million contribution in accordance with the relevant requirements of the EP&A Act and does not consider they are appropriate as:

- the community has raised significant concerns (102 of 152 submissions) about the potential additional traffic and safety impacts on local roads associated with the proposed intersection upgrades
- Council prefers that the approved intersection arrangements be maintained, and TfNSW advised the proposed changes would adversely impact on bus operations
- the approved intersection layout provides a more logical outcome and increased options for the local community, particularly in the event of an emergency
- the restriction of the Awabakal Drive and Pacific Highway to left-in, left-out, in conjunction with an increase in the number of approved dwellings within Nords Wharf does not represent orderly development of land in accordance with objective (c) of the EP&A Act
- the Proponent has advised the key reason for the proposed intersection changes is to provide a more cost-effective option, but inadequate information addressing the traffic and safety impacts on local roads has been provided.
- the \$1 million was a contribution in the original approval that would directly benefit local people, and there has been no change in circumstances to support the removal of this requirement
- the removal of the \$1 million contribution is not in the public interest, noting that 71 of 152 submissions raised concerns about it.

7.1.3 The Department is satisfied that the modification to the subdivision layout only, should be approved, subject to the recommended conditions outlined in **Appendix C**. This assessment report is hereby presented to the IPC for determination.

**Brendon Roberts**

Acting Director  
Regional Assessments

**Anthea Sargeant**

Executive Director  
Compliance, Industry and Key Sites



# Appendices

## Appendix A – Relevant Supporting Information

The following supporting documents and supporting information to this assessment report can be found on the Department's website at:

1. Modification Request

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8352](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8352)

2. Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8352](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8352)

3. Response to Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8352](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8352)



## Appendix B – Bank Guarantees

Each Bank Guarantee will be:

- (a) in favour of the favouree;
- (b) in the amount;
- (c) as security for the Secured Obligation ,

as set out in the table below.

Favouree	Bank Guarantee Amount	Secured Obligation
Minister for Planning and Infrastructure, Department of Planning and Infrastructure ABN 38 755 709 681	\$17,639.10	Landowner's obligations under paragraphs 2 and 5 of this Schedule 4
Minister for Planning and Infrastructure, Department of Planning and Infrastructure ABN 38 755 709 681	\$1,735,842	Landowner's obligations under paragraph 3 of this Schedule 4
Minister administering the National Parks and Wildlife Act 1974, Office of Environment and Heritage ABN 30 841 387 271	\$1,000,000	Landowner's obligations under paragraph 4 of this Schedule 4
Minister administering the National Parks and Wildlife Act 1974, Office of Environment and Heritage ABN 30 841 387 271	\$200,000	Landowner's obligations under paragraph 6 of this Schedule 4

## Appendix C – Recommendation

The recommended modification of Concept Plan approval can be found on the Department's website at:  
[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8352](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8352)