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## 5.0 PROPOSED MODIFICATIONS

This Section summarises, describes and justifies the key proposed modifications.

### 5.1 Definitions – Land Proposed to be Dedicated to Tweed Shire Council

This definition is in the following terms:

*“Land to be Dedicated to Council in the Future means the land to be dedicated to Council as identified on the Council Dedicated Land Plan.”*

The proposed amended definition is as follows:

**Potential Council Land means the land identified as ‘potential Council land’ on the Potential Council Land Plan.**

The current term implies that the land must be dedicated to Council however, dedication is subject to reaching an appropriate agreement with Council and this is not reflected in the current definition.

The new term *“potential Council land”* will also make the provision more readable and will require the adoption of a new plan with a new title *“Potential Council Land Plan with Work Areas”* (see **Annexure B**).

The current definition is as follows:

*“Council Dedicated Land Plan means the ‘Plan of Proposed Areas to be Dedicated to Council with Work Areas’ prepared by Landsurv Pty Ltd dated 2 October 2012, Revision D.”*

The new term *“Potential Council Land Plan with Work Areas”* means the plan with that title prepared by Landsurv dated 6 December 2013, Revision E, which is contained at **Annexure B** of this report.

As a consequence of this change, Conditions A13, 3, 49 and 149 are proposed to be amended by deleting the term *“land to be dedicated to Council in the future”* and inserting the new term *“Potential Council Land with Work Areas”*.

These amendments will achieve consistency with the Concept Plan Approval No. 06\_0318 (MOD 2) including proposed amended Conditions B5 and C29.

The proposed amended term *“Council Dedicated Land Plan”* will also be consistent with the proposed amended terms in Concept Plan Approval No. 06\_0318 (MOD 4).

### 5.2 Establishment Period

This definition is in the following terms:

*“Establishment Period means the period commencing with the implementation of the relevant approved environmental management plan(s) and ending when the works specified in that plan meet the establishment phase performance criteria (as defined by the relevant approved environmental management plan) to the satisfaction of the approval authority. The establishment period represents time necessary to carry out initial environmental repair, restoration and monitoring prior to ongoing maintenance. ”*

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The definition of Establishment Period is ambiguous because it requires sign off by an approval authority before the Establishment Period is taken to end but does not say who that approval authority actually is. Also the definition envisages that the period for different Environmental Management Plans may end at different dates and it is apparently inconsistent with Condition 49.

To clarify this issue, it is proposed to replace the term "approval authority" with "Director General".

It is also proposed to amend Condition 49 by deleting "establishment phase" and inserting "establishment period" to achieve consistency between the conditions and the definition.

The proposed amended definition is as follows:

**Establishment Period means the period commencing with the implementation of the relevant approved environmental management plan(s) and ending when the works specified in that plan meet the establishment period performance criteria (as defined by the relevant approved environmental management plan) to the satisfaction of the Director-General. The establishment period represents time necessary to carry out initial environmental repair, restoration and monitoring prior to ongoing maintenance.**

### **5.3 Maintenance Period**

This definition is in the following terms:

*"Maintenance Period means the period commencing immediately after the end of the establishment period during which environmental and monitoring works specified in the relevant approved environmental management plan(s) are to be carried out in accordance with the maintenance phase performance criteria (as defined by the relevant approved environmental management plan) to the satisfaction of the approval authority."*

The purpose of the definition of Maintenance Period is unclear but it is apparently related to the definition of Establishment Period. The term does not appear to be used in Schedules 1 or 2 of the Instrument of Approval. If it is not used it should be omitted.

Having regard to the above the Department is requested to delete the term "Maintenance Period".

### **5.4 Land to be Dedicated to the Office of Environment and Heritage**

This definition is in the following terms:

*"Offset Area means the land proposed to be dedicated to the Office of Environment and Heritage as identified on the 'Plan of Proposed Areas to be Dedicated to NPWS Kings Forest Development' prepared by Landsurv Pty Ltd dated 23 August 2012, Revision C."*

Reference to an "offset area" is a misnomer as at no stage has Project 28 indicated that the Future OEHLand was to be dedicated as some form of offset or compensation for areas to be developed. The future OEHLand was always offered by Project 28 on a voluntary basis. The changes to the definition reflect this position.

In view of the above, it is proposed to change the term "offset area" to "future OEHLand".

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As a consequence of this change, Conditions A13, 3 and 149 are proposed to be amended by deleting the term "offset area" and inserting the new term "future OEH land".

The proposed amended definition is as follows:

Future OEH Land means the land identified in the "Plan of Proposed Areas to be Dedicated to NPWS Kings Forest Development" prepared by Landsurv Pty Ltd dated 23 August 2012, Revision C.

## 5.5 Condition A1(2) – Bulk Earthworks and Civil Works

This condition is in the following terms:

*"A1(2) Staged bulk earthworks across the site to lower site levels in Precincts 2, 4, 5, 12, 13 and 14 in order to provide fill to create development pads for the residential areas in Precincts 1 and 6 to 11 and contour the future golf course in Precincts 12, 13 and 14."*

Modification is requested to rationalise the condition and make it more flexible. During consultations DOPI advised that the proposed amended condition appears satisfactory.

The condition is unnecessarily prescriptive and should refer to the approved Bulk Earthworks Plans rather than describe the proposed bulk earthworks in detail.

Proposed amended Condition A1(2) achieves this objective, however the originally proposed condition has been adjusted to exclude bulk earthworks in Precinct 3 consistent with Condition A12(4).

The proposed amended condition is as follows:

A1(2) Staged bulk earthworks across the site in order to create development pads for development areas in Precincts 1 and 2 and 4 to 14 in accordance with the plans referred to in Condition A3.

## 5.6 Condition A13 – Management and Maintenance of Environmental Lands

This condition is in the following terms:

*"The Proponent is responsible for the management of all land to be dedicated to Council in the future and the Offset Areas for conservation purposes and the implementation of ongoing management and maintenance activities specified in all Environmental Management Plans from the date of the Stage 1 project approval (08\_0194), until such time that an agreement is reached with OEH and/or Tweed Shire Council regarding the dedication of that land."*

Condition B7 of Concept Plan Approval No. 06\_0318 does not require an agreement in relation to management it requires the land to be managed in accordance with the Environmental Management Plans. The agreement is in relation to the terms, etc. of dedication.

The reasons for the proposed modified condition are simply to expressly authorise the applicant to carry out the actions required by the Environmental Management Plans and to clarify the ambiguity of the existing wording.

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This condition also requires the proponent to undertake ongoing management and maintenance of the land to be dedicated to Tweed Shire Council and the offset areas in accordance with the Environmental Management Plans from the date of the Stage 1 Project Approval (11 August 2013).

Compliance with this condition cannot be achieved because Condition 39 requires all EMPs to be revised and in addition, final approval under the Commonwealth Environmental Protection and Biodiversity Conservation Act has not been issued.

The requested modified condition proposes that the obligation to commence management and maintenance in accordance with the EMPs is only triggered when the approval is implemented and the land use changes from agriculture to urban.

This is the earliest practicable time for commencement given the need for other approvals (EPBC Act) and having regard to commercial considerations.

The proposed amended condition is as follows:

**A.13.**

- 1) From the commencement of any Bulk Earthworks in a Precinct, the Proponent must (and is authorised to) manage any contiguous area of Potential Council Land immediately adjacent to that Precinct in accordance with the requirements of all relevant Environmental Management Plans. This obligation does not apply in relation to any Potential Council Land if a Dedication Agreement is entered into between Council and the Proponent in respect of that land.
- 2) From the commencement of any Bulk Earthworks in a Precinct, the Proponent must (and is authorised to) manage any contiguous area of Future OEH Land immediately adjacent to that Precinct in accordance with the requirements of all relevant Environmental Management Plans until such time as an agreement is made for the Dedication of such Land to the Office of Environment and Heritage in accordance with Term C3 of the Concept Plan Approval.

## **5.7 Condition A15 – Director General as Moderator**

This condition is in the following terms:

*“A15. Where this approval requires further approval from public authorities, the parties shall not act unreasonably in preventing an agreement from being reached. In the event that an agreement is unable to be reached within 2 months or a timeframe otherwise agreed to by the Director-General, the matter is to be referred to the Director-General for resolution. All areas of disagreement and the position of each party are to be clearly stated to facilitate a resolution.”*

The proposed amended condition is as follows:

A15. Where this approval requires further approval from public authorities, the parties shall not act unreasonably in preventing an agreement from being reached. In the event that an agreement is unable to be reached within 2 months or a timeframe otherwise agreed to by the Director-General, the matter is to be referred to the Director-General for resolution. All areas of disagreement and the position of each party are to be clearly stated to facilitate a resolution.

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This condition does not allow the Director-General to give approval or make agreement in lieu of the Proponent.

The last sentence has been inserted into Condition A15 to make it clear that the Director General does not have the power to impose a "resolution" on Project 28 and the Council under Term A15. This is on the basis that any agreement should be at the sole discretion of Council and Project 28 Pty Ltd.

The proposed amendment will be consistent with Condition B8 of Concept Plan Approval No. CP06\_0318 as proposed to be modified (MOD 4).

## 5.8 Condition 1(1) – Subdivision of Kings Forest Estate

This condition is in the following terms:

"1(1). The Proponent shall subdivide the entire site prior to commencing any bulk earthworks across the site. The subdivision at this stage shall be generally in accordance with the following plans:"

<b>Plan of Subdivision prepared by Landsurv Pty Ltd</b>			
<b>Drawing No.</b>	<b>Revision</b>	<b>Name of Plan</b>	<b>Date</b>
Sheet 1 of 5	E	Plan of Proposed Staged Subdivision Kings Forest Development For Stage 1 Project Application	05.02.13
Sheet 2 of 5	E	Plan of Proposed Staged Subdivision Kings Forest Development For Stage 1 Project Application	05.02.13
Sheet 3 of 5	E	Plan of Proposed Staged Subdivision Kings Forest Development For Stage 1 Project Application	05.02.13
Sheet 4 of 5	E	Plan of Proposed Staged Subdivision Kings Forest Development For Stage 1 Project Application	05.02.13
Sheet 5 of 5	E	Plan of Proposed Staged Subdivision Kings Forest Development For Stage 1 Project Application	05.02.13

This condition purports to require the subdivision of the entire Kings Forest site prior to commencing any bulk earthworks across the site.

Condition 1(1) is unreasonable and unnecessary. It is inconsistent with Condition 3 and cannot be complied with until bulk earthworks are completed and infrastructure is provided to each lot. Condition A5 of the approval requires all works to be carried out generally in accordance with Tweed Development Control Plan 2008, Section A5 – Subdivision Manual.

In addition, Condition 31 of the approval requires water and sewer services to be provided to all lots within the project.

Section A5.4.13 of Section A5 – Infrastructure sets out Council's requirements for the creation of urban lots which includes:

### "A5.4.13 Infrastructure

#### CRITERIA

#### Infrastructure required

- All lots created in urban areas for private occupation must be fully and individually serviced with sealed road (equipped with kerb and gutter both sides of the road) frontage, water supply, sewerage, underground electricity and telecommunications.
- A drainage system that provides Q100 immunity from local stormwater flooding and must have surface levels above the Q100 flood levels of regional river/creek flooding.

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- *Utilities and services are to be designed to minimise long term maintenance and ownership costs.*
- *Urban subdivision infrastructure must be provided in accordance with Table A5-10."*

As reflected in the above requirements, the site cannot be subdivided prior to commencing any bulk earthworks because bulk earthworks need to be undertaken to enable the necessary infrastructure to be provided (including roads and appropriately drained and serviced allotments) as a prerequisite to the issue of a Subdivision Certificate.

Modification of this condition is therefore proposed as follows:.

- 1(1). The Proponent shall subdivide the entire site ~~prior to commencing any bulk earthworks across the site~~. The subdivision at this stage shall be generally in accordance with the following plans:

Plan of Subdivision prepared by Landsurv Pty Ltd			
Drawing No.	Revision	Name of Plan	Date
Sheet 1 of 5	E	Plan of Proposed Staged Subdivision Development For Stage 1 Project Application Kings Forest	05.02.13
Sheet 2 of 5	E	Plan of Proposed Staged Subdivision Development For Stage 1 Project Application Kings Forest	05.02.13
Sheet 3 of 5	E	Plan of Proposed Staged Subdivision Development For Stage 1 Project Application Kings Forest	05.02.13
Sheet 4 of 5	E	Plan of Proposed Staged Subdivision Development For Stage 1 Project Application Kings Forest	05.02.13
Sheet 5 of 5	E	Plan of Proposed Staged Subdivision Development For Stage 1 Project Application Kings Forest	05.02.13

## 5.9 Condition 3 – Environmental Offset Areas

This condition is in the following terms:

*"3. Within 3 months of the date of this approval, or as otherwise agreed with the Director-General, the Proponent shall:*

- a) engage a registered surveyor to prepare a survey plan(s) and permanently mark the boundaries of the land to be dedicated to Council in the future and the Offset Area;*
- b) where relevant, submit amended plans of proposed subdivision to the Director-General for approval that show the land to be dedicated to Council in the future and the Offset Area as separate lots;*
- c) ensure that the boundaries marked by the surveyor remain marked at all times in a permanent manner that allows operating staff, the landowner and inspecting officers to clearly identify those boundaries; and*
- d) submit for the Director-General's approval, a form of dealing(s) to be registered on the title to the land to be dedicated to Council in the future and the Offset Area that must:*
  - i. bind all future landowners;*
  - ii. provide for the management of the land to be dedicated to Council in the future and the Offset Area for conservation purposes including the implementation of relevant Environmental Management Plans, in perpetuity;*

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- iii. *permit access to the land to be dedicated to Council in the future and the Offset Area by the Department, the OEH and Council at all times for the purpose of monitoring compliance with relevant covenants and the Environmental Management Plans; and*
  - iv. *provide for a release of any registered dealings in circumstances where all or part of the land to be dedicated to Council in the future or the Offset Area are transferred to a public authority.*
- e) *Where land to be dedicated to Council in the future or the Offset Area is not subject to any amended plans of subdivision, the Proponent must within 1 month of the Director-General's approval of the dealing(s) referred to in condition 3(1)(d), lodge for registration the dealing(s) on the relevant titles to the land to be dedicated to Council in the future or the Offset Area and provide to the Director-General evidence of such registration within 10 days of the dealing(s) being registered.*
- f) *Where land to be dedicated to Council in the future or the Offset Area is subject to any amended plans of subdivision, the Proponent must within 3 months of the later of the Director-General's approval of the amended plans of subdivision under condition 3(1)(b) or the Director-General's approval of dealing(s) referred to in condition 3(1)(d), lodge for registration the dealing(s) on the relevant titles to the land to be dedicated to Council in the future or the Offset Area to the Director-General evidence of such registration within 10 days of the dealing(s) being registered."*

It is submitted that an applicant is not bound by Project Approval conditions until the applicant chooses to implement the Project Approval and commence construction of the development. We therefore consider that the current requirements of Condition 3 to commence work within 3 months is unreasonable and inappropriate and therefore request that it be amended such that compliance with Condition 3 is not required until prior to commencement of bulk earthworks.

It is inappropriate for the drainage reserves to be subject to the same regime that applies to the environmental protection areas and ecological buffers.

The condition is also onerous and unreasonable in that it would require the placement of approximately 3000 survey pegs at a cost of several hundred thousand dollars in areas where bulk earthworks may not be undertaken for many years.

The requested modified condition addresses these concerns by only requiring boundary definition and plan preparation for areas of Potential Council Land and Future OEH Land which are contiguous with actual work areas.

A separate Modification Application in respect of MP08\_0194 (MOD 1), Amended January 2014, has been lodged and that application also seeks to amend Condition 3 by extending the time period from 3 months to 9 months as an interim measure. The intention is that MOD 1 will be approved reasonably promptly given that the 3 month period required for compliance has already lapsed and the amendments to Condition 3 proposed in this modification deal with more substantive issues which are likely to take some time to finally resolve.

Having regard to the above it is proposed to amend Condition 3 as follows:

3. **Prior to commencing any Bulk Earthworks in a Precinct, or as otherwise agreed between the Proponent and with the Director-General, the Proponent shall:**

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- a) engage a registered surveyor to prepare survey plan(s) and permanently mark the boundaries of the:
- i) the contiguous area of Potential Council Land; and
  - ii) the contiguous area of Future OEH Land;
- immediately adjacent to the Precinct (unless the relevant contiguous area has already been so marked prior to the earlier commencement of Bulk Earthworks in another Precinct);
- b) where relevant, submit amended plans of proposed subdivision to the Director-General for approval that show the relevant contiguous area of Potential Council Land and the relevant contiguous area of Future OEH Land;
- c) ensure that the boundaries so marked remain marked at all times in a permanent manner that allows operating staff, the landowner and inspecting officers to clearly identify those boundaries;
- d) submit for the Director-General's approval, a form of dealing(s) to be registered on the title to the relevant contiguous area of Potential Council Land and the relevant contiguous area of Future OEH Land that must:
- i. bind all future landowners;
  - ii. provide for the management of the contiguous Potential Council Land and the contiguous Future OEH Land for conservation purposes including the implementation of relevant Environmental Management Plans, in perpetuity;
  - iii. permit access to the contiguous Potential Council Land and the contiguous Future OEH Land by the Department, the OEH and Council at all times for the purpose of monitoring compliance with relevant covenants and the relevant Environmental Management Plans;
  - iv. provide for a release of any registered dealings in circumstances where all or part of the contiguous Potential Council Land and the contiguous Future OEH Land is transferred to a public authority; and
  - v. provide that the registered dealings cease to have effect if all of the following occur:
    - A) a consent authority or the Minister for Planning and Infrastructure makes a written determination to that effect; and
    - B) that determination is made in connection with the determination of an application or request to carry out development (or modify a consent or approval to carry out development) under the *Environmental Planning and Assessment Act 1979*; and
    - C) the particular circumstances nominated in that determination (such as the carrying out of development under the authority of a development consent or project application granted on determination of an application) arise.
- e) Where the relevant area of contiguous Potential Council Land and the relevant area of contiguous Future OEH Land referred to in condition 3(a) above are not subject to any amended plans of subdivision, the Proponent must within 1 month of the Director-General's approval of the dealing(s) referred to in condition 3(d), lodge for registration the dealing(s) on the relevant titles of the contiguous Potential Council Land and the contiguous Future OEH Land and provide to the Director-General evidence of such registration within 10 days of the dealing(s) being registered. The Proponent is not in breach of this condition if there is a failure by the Council or the OEH to execute the dealings.

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- f) Where land to be dedicated to Council in the future or the Offset Area is subject to any amended plans of subdivision, the Proponent must within 3 months of the later of the Director-General's approval of the amended plans of subdivision under condition 3(1)(b) or the Director-General's approval of dealing(s) referred to in condition 3(1)(d), lodge for registration the dealing(s) on the relevant titles to the land to be dedicated to Council in the future or the Offset Area to the Director-General evidence of such registration within 10 days of the dealing(s) being registered.

#### **5.10 Condition 13 – Compressible Clay Material in Precincts 11, 12 to 14**

This condition is in the following terms:

- "1) Areas of compressible clay material in Precincts 11, 12-14 (Bulk Earthworks Sequences / Stages 3 & 4) are to be to the satisfaction of a practicing geotechnical engineer.*
- 2) No filling is to occur in these areas until certification is provided by a practicing geotechnical engineer. The certification is to state that no settlement will occur and the proposed areas are capable of being developed without the need for special construction techniques. Settlement plate information is to be provided with geotechnical certification from a qualified geotechnical engineer to validate that settlement has terminated."*

It is unreasonable and inappropriate to require certification that no settlement will occur. The proposed modified condition represents standard practice and in any case compressible clays were only encountered at three locations which constitute a small area of the site.

In view of the above, modification of Condition 13 is proposed as follows:

13.

- 1) Areas of compressible clay material in Precincts 11, 12-14 (Bulk Earthworks Sequences / Stages 3 & 4) are to be to the satisfaction of a practicing geotechnical engineer.
- 2) No filling is to occur in these areas until certification is provided by a practicing geotechnical engineer. The certification is to state that **the earthworks have been undertaken in accordance with AS 3798-2007 (Guidelines on Earthworks for Commercial and Residential Development)**. Settlement plate information is to be provided with geotechnical certification from a qualified geotechnical engineer to validate that settlement has terminated.

#### **5.11 Condition 37 – Baseline Monitoring**

This condition is in the following terms:

- "1) Prior to the issue of a construction certificate for bulk earthworks, the Proponent must demonstrate to the satisfaction of the department that all baseline monitoring has commenced in accordance with the relevant Environmental Management Plans, including the following:*
- a. Flora and Fauna Monitoring Report*
  - b. Groundwater Management Plan*
  - c. Overall Water Management Plan*
  - d. Stormwater Management Plan"*

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It is unreasonable and unnecessary to require baseline monitoring to commence prior to the issue of a Construction Certificate as works may not commence for many months or years after the Construction Certificate is issued. 3 months prior to the commencement of bulk earthworks is the most appropriate trigger.

Having regard to the above, amendment of Condition 37 is proposed as follows:

- 37(1) **3 months prior to the commencement of bulk earthworks**, the Proponent must demonstrate to the satisfaction of the department that all baseline monitoring has commenced in accordance with the relevant Environmental Management Plans, including the following:
- a. Flora and Fauna Monitoring Report
  - b. Groundwater Management Plan
  - c. Overall Water Management Plan
  - d. Stormwater Management Plan

## 5.12 Condition 45 – Koala Plan of Management

This condition is in the following terms:

*“The Koala Plan of Management shall be revised as follows:*

- 1) *A revised offset strategy for the loss of Koala food trees incorporating the following:*
  - a. *the restoration and planting of Koala food trees offsite (a 27ha area of land has been nominated by OEH and identified in Map 1. (attached)).*
  - b. *planting of Koala food trees in the new east-west corridor as required by Term B4 of the concept plan approval*
  - c. *planting of Koala food trees in other suitable locations across the site should commence within one month of the revised KPoM being approved.*
  - d. *Koala food tree plantings are to be minimised in areas that are identified as naturally regenerating.”*

Amendment is required to clarify where plantings are required given that completion of earthworks will be required in some cases before plantings can be undertaken.

A separate Modification Application in respect of MP08\_0194 (MOD 1), Amended January 2014, has been lodged and that application seeks to amend Condition 45(2) by extending the time period from 6 months to 24 months as an interim measure.

Having regard to the above Condition 45(1)(c) is proposed to be amended as follows:

45. The Koala Plan of Management shall be revised as follows:
- 1) A revised offset strategy for the loss of Koala food trees incorporating the following:
    - a. the restoration and planting of Koala food trees offsite (a 27ha area of land has been nominated by OEH and identified in Map 1. (attached)).
    - b. planting of Koala food trees in the new east-west corridor as required by Term B4 of the concept plan approval
    - c. planting of Koala food trees in other suitable locations across the site **within each relevant stage of the development at the time of commencement of bulk earthworks in each relevant stage.**
    - d. Koala food tree plantings are to be minimised in areas that are identified as naturally regenerating.

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### 5.13 Condition 48 – Summary of Management Plans

This condition is in the following terms:

*"48. The Summary of Management Plans (SOMP) shall be revised to ensure consistency with all relevant management plans to the satisfaction of the Director-General within 12 months of this approval or prior to issue of any construction certificate, whichever occurs first."*

The timeframe for compliance with this condition is unreasonable and unnecessary as construction may not commence for many months or years. The appropriate trigger is prior to the issue of a Construction Certificate.

In view of the above, amendment of Condition 48 is proposed as follows:

48. The Summary of Management Plans (SOMP) shall be revised to ensure consistency with all relevant management plans to the satisfaction of the Director-General **prior to issue of any construction certificate.**

### 5.14 Condition 49 – Environmental Audit Reports

This condition is in the following terms:

- "1. Within 3 months of the establishment phase performance criteria specified in all relevant Environmental Management Plans being met for each part of the land to be dedicated to Council in the future, the Proponent must submit to the Director-General for approval, an environmental audit ("Initial Audit") for each part of the Council Dedicated Land to confirm that the all establishment phase performance and any relevant maintenance phase criteria have been met. The Initial Audit(s) must be prepared by a suitably qualified independent environmental consultant, reviewed by Council and approved by the Director-General.*
- 2. Within 3 months after each of the first and third anniversaries, and then subsequently every 2 years, of the Director-General's approval of the Initial Audit(s) for each part of the Council Dedicated Land, the Proponent shall submit to Council for review, and the Director-General for approval, environmental audits prepared by a suitably qualified independent environmental consultant. Those environmental audits must review the condition of the Council Dedicated Land against the agreed maintenance phase performance criteria specified in each Environmental Management Plan until the affected lands have been transferred into public ownership. Environmental audit reports shall itemize all costs associated with the implementation, monitoring and reporting of all maintenance phase works and include audited financial statements.*
- 3. In the event that an environmental audit carried out in accordance with this clause (48) indicates non-compliance with any of the relevant environmental management plans, approval for further stages of the development will not be granted."*

This condition has been amended to be consistent with the new term "Potential Council Land". The condition is also ambiguous as is the definition of Establishment Period. The proposed amendments will clarify and rationalise the existing condition.

In addition, this condition is clearly inappropriate and unreasonable. Its legal status is ambiguous and it lacks merit. In the event that an Environmental Audit identifies noncompliance, other remedies are available to address such an issue.

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During consultations the Department agreed to forward alternative conditions and those conditions are included as the new Conditions 49(3) and (4).

In light of Condition 49, it is also proposed to revise the definitions for 'Establishment Period' and 'Maintenance Period' (in Schedule 1) (see definitions).

In view of the above, modification of this condition is proposed as follows:

49.

1. Within 3 months of the establishment **period the** performance criteria specified in all relevant Environmental Management Plans being met for each part of the **Potential Council Land**, the Proponent must submit to the Director-General for approval, an environmental audit ("Initial Audit") for each part of **that land**, to confirm that the establishment phase performance **criteria have been met**.

The Initial Audit(s) must be prepared by a suitably qualified independent environmental consultant, reviewed by Council and approved by the Director-General.

2. Within 3 months after each of the first and third anniversaries, and then subsequently every 2 years, of the Director-General's approval of the Initial Audit(s) for each part of the **Potential Council Land**, the Proponent shall submit to Council for review, and the Director-General for approval, environmental audits prepared by a suitably qualified independent environmental consultant. Those environmental audits must review the condition of the **Potential Council Land**, against the agreed maintenance phase performance criteria specified in each Environmental Management Plan. Environmental audit reports shall itemize all costs associated with the implementation, monitoring and reporting of all maintenance phase works and include audited financial statements. **This obligation (under condition 49(2)) does not apply in relation to any part of the Potential Council Land that has been transferred into public ownership.**
3. **Within 6 weeks of completing this audit, or as otherwise agreed by the Director-General, the Proponent shall submit a copy of the audit report to the Director-General with a response to any recommendations contained in the audit report.**
4. **Within 3 months of submitting an audit report to the Director-General, the Proponent shall review and if necessary revise the relevant management plans and undertake additional mitigation measures as required under this approval to the satisfaction of the Director-General.**

#### **5.15 Condition 50 – Bond for Environmental Restoration Works**

This condition is in the following terms:

*"a) Prior to the issue of a construction certificate a cash bond or bank guarantee shall be lodged with Council to ensure that all the environmental management plans are implemented. The amount of such bond will be based on 135% of the cost of the environmental repair, enhancement and maintenance works for the establishment period specified in the approved environmental management plans or for a period of 5 years, whichever is longer. In this regard, two written quotes from suitably experienced and qualified contractors (to the satisfaction of the General Manager or delegate) must be submitted to Council which detail the cost of all works required.*

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- b) *The cash bond or bank guarantee will be refunded on the satisfactory completion of works providing acceptable arrangements have been made for the long term ownership and management of the relevant lands.*
  - c) *Monitoring of the effectiveness of the of the environmental repair, enhancement and maintenance works are to be undertaken in accordance with Condition 49 of the modified approval (08\_0194). Any supplementary or approved adaptive management works deemed necessary by the independent contractor shall be promptly undertaken once the need is identified."*

This condition does not clearly define the land that it is referring to and because the condition does not provide for a refund of the bond it appears to be in fact a monetary contribution and therefore must be justified in terms of Section 94. In the circumstance we consider that the condition should be deleted on the basis that it is unreasonable and unlawful.

For the reasons discussed above deletion of this condition is proposed.

~~"a) Prior to the issue of a construction certificate a cash bond or bank guarantee shall be lodged with Council to ensure that all the environmental management plans are implemented. The amount of such bond will be based on 135% of the cost of the environmental repair, enhancement and maintenance works for the establishment period specified in the approved environmental management plans or for a period of 5 years, whichever is longer. In this regard, two written quotes from suitably experienced and qualified contractors (to the satisfaction of the General Manager or delegate) must be submitted to Council which detail the cost of all works required.~~

~~b) The cash bond or bank guarantee will be refunded on the satisfactory completion of works providing acceptable arrangements have been made for the long term ownership and management of the relevant lands:~~

~~c) Monitoring of the effectiveness of the of the environmental repair, enhancement and maintenance works are to be undertaken in accordance with Condition 49 of the modified approval (08\_0194). Any supplementary or approved adaptive management works deemed necessary by the independent contractor shall be promptly undertaken once the need is identified."~~

## **5.16 Condition 82 – Dust Mitigation**

This condition is in the following terms:

- "82. Adequate measures shall be taken to prevent dust from affecting the amenity of the neighbourhood during construction for each stage of the project. In particular, the following measures must be adopted:*
- a) *Physical barriers shall be erected at right angles to the prevailing wind direction or shall be placed around or over dust sources to prevent wind or activity from generating dust emissions.*
  - b) *Earthworks and scheduling activities shall be managed to coincide with the next stage of project to minimise the amount of time the site is left cut or exposed.*
  - c) *All materials shall be stored or stockpiled at the best locations.*
  - d) *The surface should be dampened slightly to prevent dust from becoming airborne but should not be wet to the extent that run off occurs.*
  - e) *All vehicles carrying soil or rubble to or from the site shall at all times be covered to prevent the escape of dust or other material.*
  - f) *All equipment wheels shall be washed before exiting the site using manual or automated sprayers and drive through washing bays.*

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- g) Gates shall be closed between vehicle movements and shall be fitted with shade cloth, and
  - h) Cleaning of footpaths and roadways shall be carried out regularly.
  - i) All topsoil stockpiles are to be sprayed with dust suppression material such as "hydro mulch", "dustex" or equivalent. All haul roads shall be regularly watered or treated with dust suppression material or as directed on site.
  - j) All construction activities that generate dust shall cease when average wind speeds exceed 15m/s(54 km/h). The applicant shall be responsible for providing a calibrated wind meter on site to monitor wind speeds. The wind meter must be located so that it is easily accessed by relevant supervisors and Council Officers. This data must be able to be produced to Council on request."

Condition 82 is onerous and unreasonable. Adequate dust mitigation can be achieved by the proposed condition and the suite of other conditions intended to mitigate potential impacts (eg. 52, 53, 54 and 78). In addition, Condition 9 contains detailed and prescriptive requirements to manage and mitigate potential impacts during the bulk earthworks phase, including generally limiting the maximum exposed disturbed area to 5 hectares at any time and requiring exposed areas to be topsoiled, mulched and seeded within 7 days.

Moreover, the Construction Management Plan (which forms part of the Environmental Assessment Report, Darryl Anderson Consulting Pty Ltd, October 2012) and the appended Bulk Earthworks Management Plan and Bulk Earthworks Sequencing Drawing No. 12301-ALL-041, Amendment B, dated 16.10.12 provide further detailed mitigation measures.

In the circumstances it is considered that the existing suite of conditions and Management Plans adequately ensure that potential dust impacts can be appropriately managed and mitigated.

Having regard to the above, Condition 82 is proposed to be amended as follows:

**82. The Proponent shall construct and operate the project in a manner that minimises dust emissions from the site, including wind-blown and traffic-generated dust. All activities on the site shall be undertaken with the objective of preventing visible emissions of dust from the site. Should such visible dust emissions occur at any time, the Proponent shall identify and implement all feasible dust mitigation measures, including cessation of relevant works, as appropriate, such that emissions of visible dust cease.**

#### **5.17 Condition 148 – Dedication of Public Open Space**

This condition is in the following terms:

*"The Proponent must make necessary arrangements for the progressive dedication of the public open space areas to council within Precinct 5 prior to the release of the subdivision certificate for that stage of the subdivision works in Precinct 5. Areas to be dedicated are to be consistent with the Plan of Development in Appendix 5 of the Proponent's PPR (Plan Nos 12, 13 and 14 dated 15 August 2012). This condition does not apply to the land dedicated to Council in the future."*

There is some ambiguity in terms of what is meant by public open space. The condition does not make sense as dedication occurs upon registration of the Plan of Subdivision. The amended condition addresses these issues and clarifies its intent.

Having regard to the above, modification of this condition is proposed as follows:

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## 148. Public Reserves and Drainage Reserves

The Proponent must make necessary arrangements for the progressive dedication of the public reserves and drainage reserves within Precinct 5 on the registration of the relevant plan of subdivision for each stage. Areas to be dedicated are to be consistent with sheets 1 to 11 'Plan of Proposed Subdivision of Lot 2 (Precinct 5) Kings Forest For Stage 1 Project Application' dated 5 September 2012, revision D, prepared by Landsurv Pty Ltd.

### 5.18 Condition 149 – Dedication of Land to OEH

This condition is in the following terms:

*"149. In accordance with the terms of the Concept Plan approval (06\_0318), the Proponent must provide evidence of an agreement for the dedication to OEH of approximately 150ha of Offset Land as addition to the Cudgen Nature Reserve prior to the release of a subdivision certificate for Precinct 5. The land to be dedicated is that land shown on the 'Plan of Proposed Areas to be Dedicated to NPWS Kings Forest Development' Revision C, dated 23 August 2012 in Appendix 9 of the PPR. Such an agreement must outline the Proponent's commitment to establish boundary fences, access trails and fire trails satisfactory to the needs of OEH prior to the Offset Land being added to the Cudgen Nature Reserve. The Proponent must ensure suitable funding for the amendment of existing reserve specific fire, pest and weed management plans. The funding should be sufficient to ensure actions within the Environmental Management Plans, as amended under this approval, relevant to the new additions are able to be completed."*

Minor changes have been made to make it clear that at least 150ha is to be added to the Nature Reserve and the term "offset area" has been deleted and replaced with "the land" consistent with the amended definitions which delete reference to "offset area".

Having regard to the above modification of this condition is proposed as follows:

149. In accordance with the terms of the Concept Plan approval (06\_0318), the Proponent must provide evidence of an agreement for the dedication to the OEH of at least approximately 150ha land as addition to the Cudgen Nature Reserve prior to the release of a subdivision certificate under Part 4 of this approval for Precinct 5. The land to be dedicated is that land shown on the 'Plan of Proposed Areas to be Dedicated to NPWS Kings Forest Development' Revision C, dated 23 August 2012 in Appendix 9 of the PPR. Such an agreement must outline the Proponent's commitment to establish boundary fences, access trails and fire trails satisfactory to the needs of [the] OEH prior to the land being added to the Cudgen Nature Reserve.

The Proponent must ensure suitable funding for the amendment of existing reserve specific fire, pest and weed management plans. The funding should be sufficient to ensure actions within the Environmental Management Plans, as amended under this approval, relevant to the new additions are able to be completed.

### 5.19 Condition 156 – Telephone and Electricity Services and Federal Government's National Broadband Network (NBN)

This condition is in the following terms:

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- 1) *In accordance with the Federal Government's National Broadband Network (NBN) initiatives (as may be in force at the time), the Proponent is required (at the Proponent's expense) to install a fibre ready, pit and pipe network (including trenching, design and third party certification) to NBN CO's Specifications, to allow for the installation of Fibre To The Home (FTTH) broadband services, or a complying alternative to the satisfaction of the relevant Federal Government Agency.*
  - 2) *The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of the allotment has been completed must be submitted prior to the issue of a Subdivision Certificate for each stage of the project.*
  - 3) *The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity has been completed prior to the issue of a Subdivision Certificate for each stage of the project.*
  - 4) *The reticulation is to include the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.*
  - 5) *The submission to the Certifying Authority and subsequent registration of the required right of carriageway / easement for services / restrictions as to users is required."*

The requirement for telecommunications infrastructure to be completed and commissioned is onerous and unreasonable, particularly given that the timing of the provision of this infrastructure (particularly NBN) is beyond the control of the developer. The appropriate arrangements are reflected in the amended condition which is consistent with Council's normal practice up until recently.

Having regard to the above, it is proposed to modify Condition 156(2) as follows:

156.

- 2) The production of written evidence from the local telecommunications supply authority certifying that **satisfactory arrangements have been made** for the provision of underground telephone supply at the front boundary of the allotment must be submitted prior to the issue of a Subdivision Certificate for each stage of the project.

## **6.0 ENVIRONMENTAL ASSESSMENT**

Modification of the Project Approval as proposed involves general changes to conditions to enable the project to proceed in an efficient, viable and timely manner.

The proposed modifications do not change the scale, layout and yields of the project.

In the circumstances, it is therefore submitted that the Environmental Assessment accompanying the original Concept Plan Approval provides an adequate Environmental Assessment of the modified project.

## **7.0 CONCLUSION**

Modification of the conditions and terms of the approval as proposed is authorised by Section 75W (1)(a) and (b) of the Environmental Planning and Assessment Act, 1979 (as amended).

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