

Replacement Report

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

6 [PR-PC] Submission to Planning and Infrastructure for the Kings Forest Concept plan and Project approval Modification applications

SUBMITTED BY: Development Assessment

FILE REFERENCE: GT1/51 Pt13 and DA11/0565 Pt8



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

1	Civic Leadership
1.1	Ensure actions taken and decisions reached are based on the principles of sustainability
1.1.1	Establish sustainability as a basis of shire planning and Council's own business operations

SUMMARY OF REPORT:

NSW Planning and Infrastructure (P&I) have invited Council to make submissions on separate modification requests for the Kings Forest Concept Plan approval and the Project Approval. P&I advise that the modifications seek general amendments to various terms and conditions of the Concept Plan and Stage 1 Project Approvals including amendments to:

- Definitions;
- Dedication of land;
- Establishment and management of environmental areas;
- Public reserves and drainage reserves;
- The role of the Director-General as moderator;
- Provisions of affordable housing; and
- Dust mitigation.

The proposed amendments were assessed, and recommendations are provided in this report either in support, supported with some changes or not supported.

P&I have indicated the Planning Assessment Commission will determine the applications as delegate of the Minister.

The Concept Plan was approved by the Minister for Planning on 19 August 2010 with two modifications approved and two pending modifications including this request. The Project Approval for Stage 1 was approved on 11 August 2013 by the Planning Assessment Commission as delegate for the Minister for Planning with two pending modifications including this request.

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RECOMMENDATION:

That Council endorses that this report be referred to NSW Planning and Infrastructure as Council's submission to the proposed modification requests for the Kings Forest Concept Plan (MP06_0318 MOD 4) and Stage 1 Project Approval (MP08_0194 MOD 2).

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REPORT:

Only the proposed modifications that Council is affected by are being commented on in this report. Modifications that the Office of Environment and Heritage (OEH) and other agencies have an interest in will be assessed by those agencies.

Tables prepared by the applicant for each of the modifications showing the current condition and proposed condition and reasons for the requests are provided in the attachments.

CONCEPT PLAN COMMENTS

Part C Definitions

The proponent is seeking to redefine the following terms to reflect the voluntary nature of the proposed dedication to Council:

- *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.
- *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 proponent is seeking to change this to:

- **Potential Council Land Plan With Work Areas** means the plan with that title prepared by Landsurv dated 06.12.13, Revision E.
- **Potential Council Land** means the land identified as 'potential Council land' on the Potential Council Land Plan.

Condition B5 currently reads:

B5 Dedication of Land to Tweed Shire Council

- 1) *The Council Dedicated Land Plan shall be amended to identify each precinct (as shown in the Precinct Plan in the Preferred Project Report 2012) and the land to be dedicated to the Council for each precinct. The amended plan is to include a reconciliation table showing each precinct and the corresponding land to be dedicated to the Council. The Council Dedicated Land Plan shall be amended such that the extent of lands to be dedicated should include any environmental protection areas adjacent to the proposed stage extending to where such areas are intersected by any approved road alignment or adjoin environmental buffers to adjacent stages.*
- 2) *The amended Council Dedicated Land Plan shall be reviewed by Council and submitted to the Director-General for approval within 12 months of the date do the first project approval (MP08_0194) or prior to the lodgement of the first development application for the project or prior to the issue of the first construction certificate for the project whichever occurs first.*

Note: If no agreement is reached the land to be dedicated to Council in the future will not be dedicated to Council and term B7 will continue to apply.

The plan referred to in the proposed new definition of *Potential Council Land Plan With Work Areas* above is attached to the proposed modification application as Annexure B.

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With respect to these changes no objection is raised to the change of title for the Plan, however the plan itself is essentially the same as that previously exhibited in the PPR (November 2012) and remains inconsistent with the Condition B5 which requires the plan to be amended:

....such that the extent of lands to be dedicated should include any environmental protection areas adjacent to the proposed stage extending to where such areas are intersected by any approved road alignment or adjoin environmental buffers to adjacent stages.

The Council report of 24 January 2012 provides further detail on the rationale behind Council's view on this matter. Four reasons are given for Council's view:

It is considered that due to:

- (1) The large scale of the development;*
- (2) Uncertainty around future economic conditions which are likely to affect the timing,*
- (3) The scope and possibly the viability of the proposed stages; and*
- (4) Possible changes to ownership of the land, it is in the public interest to ensure the dedication of environmental lands is more closely linked to specific stages of the development. Accordingly a number of principles for the staging of any dedications are suggested:*
 - 1. Dedication should occur as soon as practical after subdivision.*
 - 2. The extent of lands to be dedicated should include any environmental protection areas adjacent to the proposed stage extending to where such areas are intersected by any approved road alignment or adjoin environmental buffers to adjacent stages.*
 - 3. Environmental buffers directly adjacent to a proposed stage should be dedicated with the approval of that stage.*
 - 4. Buffers to adjacent stages to be dedicated with the approval of those stages.*

It should be noted that Council's response was in respect to the following Director Generals Requirement:

DGR 2.4 - Provide details of any staging that demonstrates the lots will be released in an orderly and coordinated manner.

In further considering this issue the Director General formed the following view:

Department's Consideration

The department considers that council's arguments are reasonable. If the dedication of the 49.66ha of environmental land is linked to the subdivision of Precinct 5, this would reduce the total area to be dedicated as part of the Golf Course subdivision from 80.41ha to a more manageable 30.75ha. Should council accept dedication of the environmental offset lands in the future, this would provide council with an opportunity to refine management practices in the environmental offset lands within the 49.66ha area before taking over management responsibility for the entire 80.41ha parcel. A term of the modified concept plan approval requires the plan of proposed dedication lands to be revised to reflect the above change.

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Council in its submission to the PAC (5 July 2013) also subsequently advised:

Dedication of Environmental Lands

In relation to the proposed dedication of environmental lands, Council considers it in the public interest to ensure that any dedication of land is more closely linked to specific stages of the development. This is primarily due to the large scale of the development, uncertainties around the timing of development of future stages and possible changes in ownership over time.

The Department agrees with Council and proposes to modify the concept plan approval such that the extent of lands to be dedicated should include any environmental protection areas adjacent to the proposed stage extending to where such areas are intersected by any approved road alignment or adjoin environmental buffers to adjacent stages.

*Consistent with this approach a recommended land dedication plan is presented in **Attachment 5**.*

The plan referred to in Attachment 5 above which is consistent with Condition B5 is reproduced below.

Recommendation. Retain Condition B5 as is, but for clarity include the plan below as Attachment B and permit a change of title as indicated in red below:

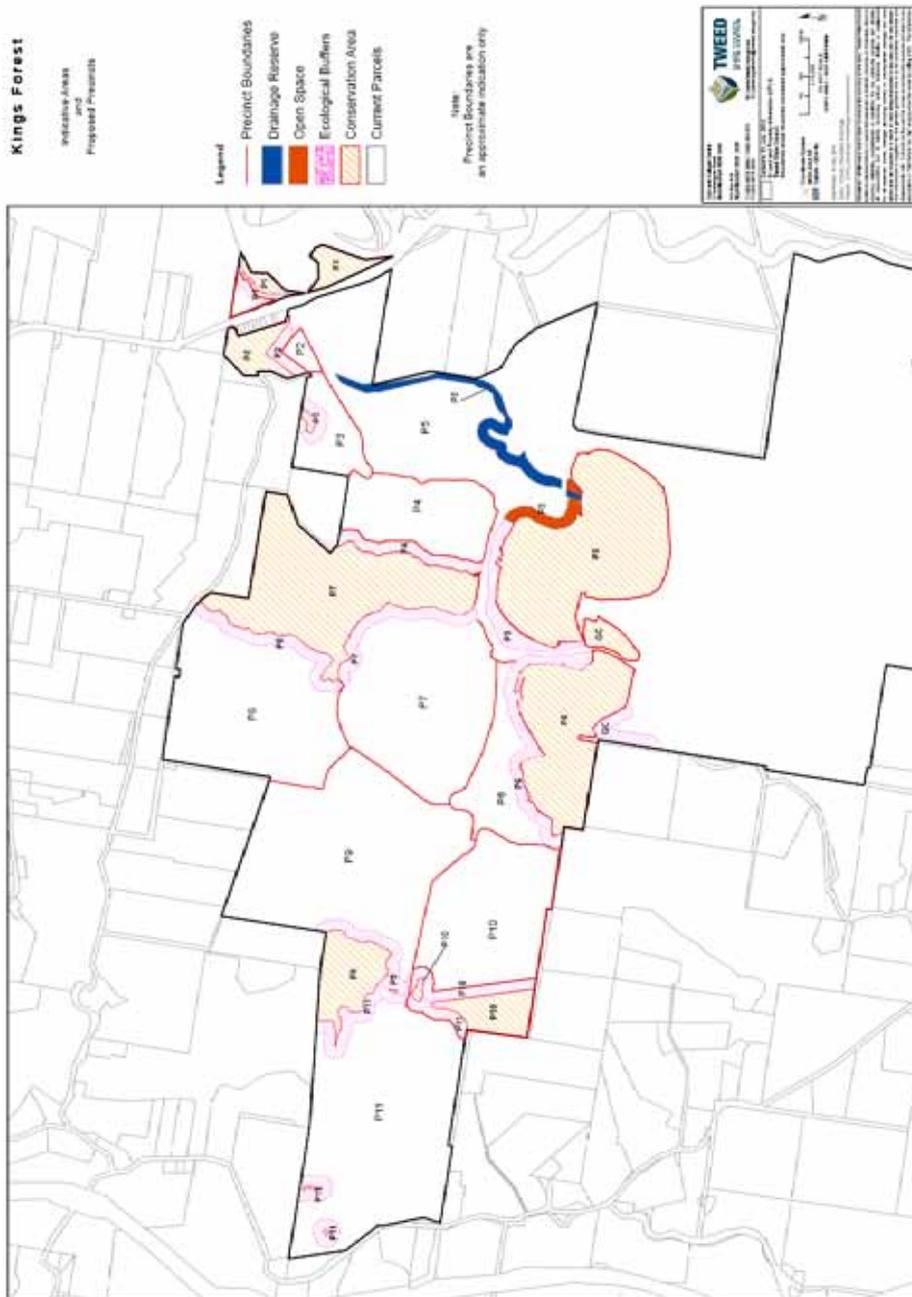
B5 Dedication of Land to Tweed Shire Council

- 1) *The Council Dedicated Land Plan shall be **renamed as Potential Council Land Plan with Work Areas and** amended to identify each precinct (as shown in the Precinct Plan in the Preferred Project Report 2012) and the land to be dedicated to the Council for each precinct. The amended plan is to include a reconciliation table showing each precinct and the corresponding land to be dedicated to the Council. The Council Dedicated Land Plan shall be amended **consistent with Attachment B** such that the extent of lands to be dedicated should include any environmental protection areas adjacent to the proposed stage extending to where such areas are intersected by any approved road alignment or adjoin environmental buffers to adjacent stages.*
- 2) *The **renamed and** amended Council Dedicated Land Plan **referred to in (1) above** shall be reviewed by Council and submitted to the Director-General for approval within 12 months of the date of the first project approval (MP08_0194) or prior to the lodgement of the first development application for the project or prior to the issue of the first construction certificate for the project whichever occurs first.*

Note: If no agreement is reached the land to be dedicated to Council in the future will not be dedicated to Council and term B7 will continue to apply.

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Plan referred to as Attachment B recommended for inclusion in Condition B5



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Condition B7 Implementation of Environmental Management Plans

The proponent is seeking to rationalise the wording of B7 to reflect their concerns about the voluntary nature of any land dedication to Council and OEH.

As noted previously, there does not appear to be any issue with this.

Recommendation Accept the proposed modification of Condition B7.

Condition C29 Dedication of Land to Tweed Shire Council

The proponent is seeking to rationalise the wording of C29 to reflect their concerns about the voluntary nature of any land dedication to Council.

As noted previously, there does not appear to be any major issue with this, however the proponent's suggested modification does not explicitly reflect Condition B5.

Recommendation Revise Condition C29 as follows:

*All future development applications for subdivision shall provide details of the land to be dedicated to Council in the future in accordance with the **Potential Council Dedicated Land Plan** as required by Term B5 of this approval.*

Condition A2

Condition A2 lists the approved plans. The proposed modification seeks to delete the reference to "to be dedicated to Council or NPWS" from three of the approved plans. No objection to the change is raised given the comments above and the proposed modifications referring to potential dedication.

Condition B8

B8 currently reads:

B8 Director –General as Moderator

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 requested modification is to add the last sentence shown in red as follows:

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

The reason given for the modification is as follows:

"The last sentence has been inserted into Condition B8 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 B8. This is on the basis that any agreement should be at the sole discretion of Council and Project28 Pty. Ltd."

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Comment

On the basis of the reason above the last sentence should read:

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

Condition C30

The current condition is shown in italics below with the proposed amendment shown in red, no objection is raised other than adding the words “or equivalent”.

The development application for subdivision of Precinct 7 shall provide details of how affordable housing will be provided within this precinct, in accordance with the recommendations of the Kings Forest Affordable Housing Study, Prepared for Project 28 Pty Ltd, dated December 2010 and the Preferred Project Report dated October 2012. The provision of affordable housing is subject to the successful application for National Rental Affordable Housing Scheme (NRAS) or equivalent funding.

PROJECT APPROVAL COMMENTS

Definitions

The proponent seeks to redefine a number of terms:

1. Existing definition:

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.

- 1a. Proposed definition:

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

Comment: No objection is raised to this proposed change (1a) above.

2. Existing definition:

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.

- 2a. Proposed definition:

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.

Comment: Consistent with the comments on the proposed modification to the Concept Plan (Mod4) the map referred to in the proposed definition above is not consistent with Condition B5.

Recommendation It is recommended that the following definition be used in place of 2a above:

Potential Council Land Plan with Work Areas means the plan with that title prepared in accordance with Concept Plan 06_0318 Condition B5 as revised by revised by Modification 4 (DATE). by Landsurv dated 6 December 2013, Revision E, which is contained at Annexure B of this report.

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3. Existing definition:

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.

3a. Proposed definition:

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 phase~~ performance criteria (as defined by the relevant approved environmental management plan) to the satisfaction of the ~~approval authority~~ Director-General. The establishment period represents time necessary to carry out initial environmental repair, restoration and monitoring prior to ongoing maintenance.

Comment: No objection is raised to this proposed change (3a) above.

4. Existing definition:

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 proponent seeks to delete the term *Maintenance Period* as it is not used elsewhere in the approval.

Comment: The definition of an *establishment period* and an ongoing *maintenance period* are fundamental to each of the environmental management plans on which the approval relies. These terms are used to distinguish between those works necessary for initial environmental repair, restoration and monitoring (establishment period) and ongoing maintenance and monitoring works (maintenance period) and are particularly important in this case where the proponent seeks to transfer its maintenance period responsibilities under the approval, to Council. Clearly, for Council to contemplate such an arrangement all parties need to understand the scope (and cost) of the maintenance works required.

Although the term “maintenance period” is not used in the Stage 1 approval (08_0194) it is used in the Concept Plan approval (06_0318) Condition C2 (underlined):

All future applications are to include precinct-specific management plans providing details on timelines for implementation of recommended works including both establishment and maintenance periods and measurable performance criteria. Each plan is to include an annual maintenance schedule of works following the initial establishment period and ongoing monitoring requirements.

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Each plan must consider all other existing plans for the site to ensure management strategies do not conflict and that each plan can be implemented without negatively impacting on the objectives of another.

Final plans are to be prepared in consultation with Council and endorsed by the Director-General prior to the lodgement of the relevant development application for each stage.

It is also referred to albeit less precisely as “maintenance activities” and “maintenance phase” under Conditions A13, 39 and 49. Rather than remove this important definition it is suggested that amendments are made to these conditions to clarify the situation.

Recommendations Revise the following terms as follows:

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

Condition A13 – Management and Maintenance of Environmental Lands

*The Proponent is responsible for the management of all **Potential Council Land and Future OEH Land land to be dedicated to Council in the future and the Offset Areas** for conservation purposes and the implementation of **all establishment period and maintenance period works 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.*

Note: Further amendments to Condition A13 are considered later in this report.

Condition 39 Environmental Management Plans

- 1) *All Environmental Management Plans shall be revised to address management actions to be undertaken throughout the life of the project as relevant to the development precincts that the plan covers. This includes a detailed set of agreed establishment and maintenance **phase period** performance criteria, ongoing monitoring and an annual maintenance schedule of works following the initial establishment period. This includes the following plans:*
 - a) *Flora and Fauna Monitoring Report*
 - b) *Buffer Management Plan*
 - c) *Vegetation Management Plan*
 - d) *Koala Plan of Management*
 - e) *Feral Animal Management Plan*
 - f) *Weed Management Plan*
 - g) *Threatened Species Management Plan*
- 2) *Performance criteria for all management plans are reviewed to ensure they are specific to each precinct and action, measurable, achievable, relevant and timely*

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- 3) *The implementation schedule of all Environmental Management Plans shall be revised to include the following details as relevant to the precincts that the plan covers:*
- a) *Actions that are specific to the precinct for which they are addressing*
 - b) *Specific map references to identify locations of works for all actions*
 - c) *Total areas to be planted (m²)*
 - d) *Planting density (per m²)*
 - e) *Number of permanent signs to be erected and maintained*
 - f) *Total areas for weed management activities (m²)*
 - g) *Length of any fencing (temporary and permanent)*
 - h) *Total areas for heath regeneration and revegetation (m²)*
 - i) *Locations and areas (m²) of proposed threatened species habitat*
 - j) *Timing and frequency of actions*
 - k) *Monitoring requirements (frequency) that are specific to the action*

49. Environmental Audit Reports

- 1) *Within 3 months of the establishment ~~period phase~~ performance criteria specified in all relevant Environmental Management Plans being met for each part of the Potential Council Land Council-Dedicated Land, the Proponent must submit to the Director-General for approval, an environmental audit ("Initial Audit") for each part of the Potential Council Land Council-Dedicated Land to confirm that the all establishment ~~period phase~~ performance and any relevant maintenance ~~period 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 Potential Council Land 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 Potential Council Land Council-Dedicated Land against the agreed maintenance ~~period phase~~ performance criteria specified in each Environmental Management Plan until the affected lands have been transferred into public ownership. Environmental audit reports shall itemise all costs associated with the implementation, monitoring and reporting of all maintenance ~~period phase~~ works and include audited financial statements.*
- 3) *In the event that an environmental audit carried out in accordance with this clause (489) indicates non-compliance with any of the relevant environmental management plans, approval for further stages of the development will not be granted.*

Note: Further amendments to Condition 49 are considered later in this report.

Condition A1 (2) Bulk Earthworks and Civil Works currently states:

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 Precinct 12, 13 and 14.

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The proponent states the following in relation to amending Condition A1(2):

“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 application proposes the following amendment to condition A1(2) (amendments shown in red).

Proposed modification of Condition A1(2)

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 Condition A3.

Recommendation

The amendment is considered minor housekeeping detail. No objection to the proposed modification of condition A1(2).

Condition 1(1) Subdivision of Kings Forest Estate currently states:

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 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

The proponent states the following in relation to amending Condition 1(1):

“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 water and sewer services to be provided to all lots within the project.

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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.
- 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.”

Proposed modification of Condition 1(1)

The Proponent shall subdivide the ~~entire site prior to commencing any bulk earthworks across the site~~. The subdivision at this stage shall generally be 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 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

Recommendation

Amendment of condition 1(1) is supported. As referenced above in the applicant’s submission to the Department of Planning; Council’s DCPA5 – Subdivision Manual (A5.4.13 Infrastructure) requires access and services to be provided for all newly created allotments.

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Condition A15- Director General as Moderator

The current condition reads:

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 requested modification is to add the last sentence shown in red 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. **This condition does not allow the Director-General to give approval or make agreement in lieu of the Proponent.***

The reason given for the modification is as follows:

“The last sentence has been inserted into Condition B8 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 Project28 Pty. Ltd.”

Comment

On the basis of the reason above the last sentence should read:

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

Condition A13 – Management and Maintenance of Environmental Lands

The existing condition is as follows:

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.

The proponent seeks to make a number changes to this condition on the basis of the following:

1. The issue of management is not relevant to any agreement regarding dedication.

Comment: This is not the case as Council has previously indicated that it would only accept the dedication of conservation lands if suitable arrangements were in place to cover the management obligations (and costs) under the relevant environmental management plans.

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2. The condition requires environmental management work from the date of the stage 1 approval but that compliance with the condition cannot be achieved due to Condition 39 requires the environmental management plans to be revised and because of the pending EPBC Act decision.

Comment: Condition A13 would only be triggered by commencement following the issue of the first construction certificate, presumably for bulk earthworks. This is the same as the timing for revision of the environmental management plans under conditions 39-48. In relation to possible delays due to the EPBC Act process it is noted that the EPBC Act decision is to be made by 10 April 2014.

In addition the proponent's suggested modification to condition A13 (reproduced in red below) raises a number of other issues.

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.*

Comment: Firstly, the proposed modification limits the scope of environmental works to areas contiguous to specific precincts. This change is not supported as the approval is for the entire site, not just parts of it, the timing of the disturbance to the site is not clear and the environmental repair works will take many years to complete. It is not considered acceptable allow such works to be delayed indefinitely. Secondly, the proposed condition limits the scope of any dedication agreement. Council has consistently stated that it would only accept the dedication of conservation lands if suitable arrangements were in place to cover the management obligations (and costs) under the relevant environmental management plans. In these circumstances, it is not considered appropriate for such a condition to close off options that may be otherwise appropriate. For example, it may be appropriate and convenient for the lands to be transferred to Council on subdivision while some or all of the obligations for establishment and management remain with the proponent until certain performance criteria are met or funding is secured for Council to undertake the works.

Recommendation Allow amendment of Condition A13 as below (includes amendments previously recommended above):

Condition A13 – Management and Maintenance of Environmental Lands

The Proponent is responsible for the management of all Potential Council Land and Future OEH Land ~~land to be dedicated to Council in the future and the Offset Areas for conservation purposes and the implementation of all establishment period and maintenance period works ongoing management and maintenance activities specified in all Environmental Management Plans from the~~ issue of the first construction

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~~*certificate for the project 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 3 Environmental Offset Areas

This condition currently reads:

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;*
 - 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.*
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The proponent seeks to make substantive changes to this condition which was recommended by the DP&I to ensure that the lands proposed to be dedicated are appropriately identified and bind any future landholder to the conditions of approval, namely the ongoing implementation of the environmental management plans. Apart from changes related to terminology around land proposed to be dedicated to Council or OEH, the proponent seeks to limit the scope of the existing condition by:

1. Linking the timing of the condition to commencement of bulk earthworks.

Comment: While it is important that this issue be resolved as soon as possible it is noted that the current timing is inconsistent with Concept Plan Condition B5 which requires that the amended council dedicated land plan be:

.....be reviewed by Council and submitted to the Director-General for approval within 12 months of the date do the first project approval (MP08_0194) or prior to the lodgement of the first development application for the project or prior to the issue if the first construction certificate for the project whichever occurs first.

2. Confining survey work to areas adjacent to precinct under construction.

Comment: The approval included bulk earthworks over the entire site apparently to facilitate the necessary transfer of fill between different parts of the site. In this context, a piecemeal approach to the management of environmental areas is not supported.

3. Providing additional circumstances for release of the registered dealings

Comment: No objection.

Recommendations

1. That the amendment of Condition 3 be permitted to reflect changes in terminology around land proposed to be dedicated to Council or OEH as below.
2. That the timing of Condition 3 be amended consistent with Concept Plan Condition B5 as below.

3. *Prior to the lodgement of the first development application for the project or prior to the issue if the first construction certificate for the project whichever occurs first. 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 Potential Council Land and Future OEH Land 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 Potential Council Land and Future OEH Land 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 Potential Council Land and Future OEH Land land to be dedicated to Council in the future and the Offset Area that must:*

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- i. *bind all future landowners;*
 - ii. *provide for the management of the Potential Council Land and Future OEH Land ~~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;*
 - iii. *permit access to the Potential Council Land and Future OEH Land ~~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 Potential Council Land and Future OEH Land ~~land to be dedicated to Council in the future and the Offset Area~~ are transferred to a public authority.*
- e) *Where Potential Council Land and Future OEH Land ~~land to be dedicated to Council in the future and 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 Potential Council Land and Future OEH Land ~~land to be dedicated to Council in the future and the Offset Area~~ and provide to the Director-General evidence of such registration within 10 days of the dealing(s) being registered.*
- f) *Where Potential Council Land and Future OEH Land ~~land to be dedicated to Council in the future and 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 Potential Council Land and Future OEH Land ~~land to be dedicated to Council in the future and the Offset Area~~ to the Director-General evidence of such registration within 10 days of the dealing(s) being registered.*

Condition 13 – Compressible Clay Material in Precincts 11, 12 to 14 currently states:

- 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 practising 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 engineer to validate that settlement has terminated.

The proponent states the following in relation to amending Condition 13:

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

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Proposed modification to Condition 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 ~~no settlement will occur and the proposed areas are capable of being developed without the need for special construction techniques.~~ 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.

Recommendation

The proposed modification of Condition 13 is **not supported**.

Areas of compressible clay are usually preloaded with stockpiles of soil for a period of time which compress the clay material until no future settlement occurs. Settlement plate information measures the settlement to allow the geotechnical engineer to determine when the area is ready for residential/commercial development without the need for additional and expensive special construction techniques such as piled or piered foundations/footings. This is considered standard geotechnical practice.

Tweed Shire Council have many areas around the shire which contain compressive clay material and prior to creating new lots or roads these areas are required to ensure settlement had terminated prior to future construction. This practice protects the future land owner and Council to ensure no future settlement will occur otherwise costing hundreds of thousands of dollars to rectify.

Future allotment owners should not be required to use expensive footing/foundation construction techniques such as piered or piled foundations to construct a dwelling.

Future purchases have an understanding that newly created allotments on flat land (such as Stage 1 of the Kings Forest Estate) will be ready for a dwelling with normal foundation requirements such as slab on ground construction.

To place additional expense on the future land owner is considered unreasonable and not justifiable with such large earthworks proposed for the estate.

In addition having potential future settlement after the dwelling has been constructed is also considered negligent. Any settlement which causes damage is open for litigation and lengthy court cases.

The applicant's reference to replace the wording '*no settlement will occur and the proposed areas are capable of being developed without the need for special construction techniques*' with '*AS3798-2007 (Guidelines on Earthworks for Commercial and Residential Development)*' is also a double up of conditions. AS3798-2007 Guidelines on Earthworks for Commercial and Residential Development is already referenced in Condition 135 – Geotechnical Certification.

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Condition 37 Baseline Monitoring

This condition contains the following:

- 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*
- 2).....

The proponent is seeking to alter the timing for the commencement of baseline monitoring for a number of management plans including the Flora and Fauna Monitoring Report from prior to the issue of a construction certificate to 3 months prior to bulk earthworks. The proponent highlights the possibility that works may not commence for *many months or years after the construction certificate is issued*.

This change is opposed as there have already been significant delays to the baseline monitoring under the Concept Plan Modification 1 of 22 December 2010. As a consequence of this modification the Flora and Fauna Monitoring Report was delayed until prior to the Stage 1 Project Application, however the draft outline provided at this stage was not considered adequate. A detailed assessment of the issues with baseline monitoring is provided in the Council Report on PPR of 13 December 2012 which contained the following summary:

"It was a condition of the Concept Plan that a draft outline of an annual Flora and Fauna Monitoring Report (FFMR) which collated and synthesised all monitoring and reporting requirements contained in the various management plans within 12 months of the Concept Plan approval. A report has been included in the current Preferred Project Report but it fails to adequately address all requirements of Concept Plan Condition B2. Most notably the Flora and Fauna Monitoring Report lacks any baseline data, adequate direction or summary of survey and monitoring effort and any detail on proposed monitoring of potential impacts of development on the Cudgen Nature Reserve. It is also noted that the performance criteria in the Flora and Fauna Monitoring Report do not relate to those that are outlined in the management plans and are not clearly linked to stated management objectives. It is considered in the interests of both the proponent and the consent authority that there is consistency and care in preparation of meaningful performance criteria."

Recommendation. Retain Condition 37 as is.

Condition 45 Koala Plan of Management

This condition contains the following:

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:*
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- 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.*

2).....

The proponent is seeking to amend subclause 1c as follows:

- c. *planting of Koala food trees in other suitable locations across the site ~~should commence within one month of the revised KPoM being approved. within each relevant stage of the development at the time of commencement of bulk earthworks in each relevant stage.~~*

The proponent's reason for the proposed change is stated as:

"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."

This rationale is not accepted as there are to be no earthworks in the ecological buffers under Condition A12 Limits of Approval and Condition 5 Earthworks Prohibited in Ecological Buffers and the proponent has also sought an extension of time to revise the koala management plan under another modification (MP08_0194, Mod 1 as amended Jan 2014) due to possible requirements under the pending EPBC Act process. Furthermore it is not considered acceptable to delay planting of koala food trees which will take many years to establish while the approval and the impacts potentially cover the entire site.

Recommendation Retain Condition 45 as is.

Condition 48 Summary of Management Plans

This condition is as follows:

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 proponent seeks to alter the timing such that the Summary of Management Plans is provided prior to the issue of any construction certificate.

The issue here is essentially the same as addressed under the NRM response to the amended Modification 1 to Stage 1 Major Project 08_0194 for which an extension of time was requested for the revision of the environmental management plans due to the pending EPBC Act decision.

Recommendation: Allow an extension of time to 10 April 2015 for Conditions 48.

Condition 49 Environmental Audit Reports

Recommended changes to this clause are suggested above in relation changes in terminology around land proposed to be dedicated to Council and the establishment and maintenance periods.

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The proponent also seeks to:

1. Limit the obligation to produce environmental audit reports if land has been transferred to Council under part 2 of Condition viz:

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.

Comment: As noted previously under the response to condition A13, this proposed amendment limits the scope of any dedication agreement and is therefore opposed. Council has consistently stated that it would only accept the dedication of conservation lands if suitable arrangements were in place to cover the management obligations (and costs) under the relevant environmental management plans. In these circumstances it is not considered appropriate for such a condition to close off options that may be otherwise appropriate. For example, it may be appropriate and convenient for the lands to be transferred to Council on subdivision while some or all of the obligations for establishment and management remain with the proponent until certain performance criteria are met or funding is secured for Council to undertake the works.

2. Provide formal opportunity for the proponent to comment on and respond to the independent audit viz:

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.

Comment: These additional subclauses are considered reasonable and are not opposed.

3. Delete part 3 of the condition which prevents the granting of approval for further stages of the development if an environmental audit indicates non compliance with the relevant approved management plans.

Comment: The deletion of part 3 of the existing subclause is opposed as it provides a strong incentive to ensure that the necessary environmental works are carried out in accordance with the Concept Plan and the Project Approval which as noted previously applies to the entire site. Allowing further stages to progress while the existing stages of the development are not compliant would clearly undermine the Concept plan, the approval process and the public interest.

Recommendation: Allow amendment of Condition 49 as follows:

49. Environmental Audit Reports

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

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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 Potential Council Land 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 Potential Council Land Council-Dedicated Land against the agreed maintenance period 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 period phase works and include audited financial statements.*
- 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.*
- 35) *In the event that an environmental audit carried out in accordance with this clause (489) indicates non-compliance with any of the relevant environmental management plans, approval for further stages of the development will not be granted.*

Condition 50 Bond for Environmental Restoration Works

This condition is as follows:

- 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.*

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The proponent suggests that:

1. This condition does not clearly define the land that it is referring to.

Comment: The land subject to the bond will be those areas subject to establishment period management and monitoring actions as specified in the environmental management plans. Although these plans were supposed to be completed under the Concept Plan prior to the Stage 1 Project Approval, the consent authority have allowed the finalisation of the relevant plans to be delayed 12 months or until prior to construction certificate whichever occurs first and further delays have been requested under the amended Modification 1 to Stage 1 Major Project 08_0194 due to the pending EPBC Act decision.

2. This 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.

Comment: Subclause (b) very clearly states the conditions under which the bond will be refunded. It is not a monetary contribution nor is it related to Section 94.

This condition is based on a standard condition used by Tweed Shire Council in accordance with Council's DCP and is considered necessary because construction certificates will need to be issued prior to any proposed dedication to Council.

Also, the condition is not inconsistent a letter of offer included in the PPR by the proponent to inform a potential VPA with Council viz:

7. *For the provision of security for the enforcement of the agreement by a bond (or bonds) or guarantee (or guarantees) in the event of a breach of the agreement by Project 28 Pty Ltd, the amount of such security (or securities) to be determined with respect to Project 28 Pty Ltd's remediation and maintenance obligations in relation to each separate parcel of land to be dedicated.*

Recommendation: Retain Condition 50 as is.

Condition 82 – Dust Mitigation currently states:

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.*

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- f) *All equipment wheels shall be washed before exiting the site using manual or automated sprayers and drive through washing bays.*
- 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 (54km/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.*

The proponent states the following in relation to amending Condition 82:

"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 detailed mitigation measures.

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

Proposed Modification to Condition 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.

Recommendation

The proposed modification of Condition 82 is **not supported**.

The Tweed coast and inland areas are affected the majority of the year round by strong prevailing northerly or southerly winds. A number of subdivisions in the Tweed area have had significant problems in the past with dust nuisance during extreme windy periods. This has significantly affected the amenity and health of residents in the area.

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Works have been required to cease during extremely windy events on previous subdivisions due to the application of a condition similar to Condition 82 – Dust Mitigation. i.e. if the average wind speed exceeds 15m/s (54km/h) then works are required to cease. Please note wind speeds of 15m/s (54km/h) are extreme and generally do not occur often, therefore not significantly affecting the project works.

Due to such a huge area of Kings Forest being approved for Bulk Earthworks operations (421.62 hectares of disturbed area shown on the Kings Forest Bulk Earthworks plans) large amounts of dust are inevitable.

Condition 82 (Dust mitigation) as is currently approved clearly details the responsibility of the contractor and developer in relation to dust management. This is essential on a site such as Kings Forest which has substantial earthworks operations. The developer and contractor also have a responsibility to the community to ensure dust nuisance is mitigated.

The current condition is specific in relation to compliance with dust mitigation measures and the proposed amended condition is considered vague and difficult to ensure compliance for the benefit of the community.

Condition 148 Dedication of Public Open Space

The condition currently reads:

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.

The applicant states:

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.

The proposed amended condition is as follows:

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.

The proposed modified condition is supported.

2.1 Condition 156 – Telephone and electricity services and Federal Government's National Broadband Network (NBN)

Condition 156 – Telephone and electricity services and Federal Government's National Broadband Network (NBN) currently states:

- 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*
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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.

The proponent states the following in relation to amending Condition 156:

"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."

Proposed Modification to Condition 156

- 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 ~~the provision and commissioning~~ **that satisfactory arrangements have been made for the provision** 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.

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- 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.

Recommendation

The proposed amendment is **not supported**.

Council's standard condition in relation to underground telephone supply states:

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.

The above mentioned condition has been standard practice in relation to telecommunications supply for subdivisions. Unless Telstra or the local telecommunications authority advises otherwise the amendment to the condition is not supported.

OPTIONS:

1. That Council endorse the recommendations within this report as a submission to NSW Planning and Infrastructure; or
2. Resolve to submit an alternate submission to NSW Planning and Infrastructure.

Council officers recommend Option 1.

CONCLUSION:

Council's submission will assist the PAC assess and determine the modified proposals for the Kings Forest Concept plan and Project approvals.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not applicable

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c. Legal:

Not applicable

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Proponent's table summarising the proposed amendments for the Concept Plan (ECM 3313479)

Attachment 2. Proponent's proposed modifications for the Project Approval (ECM 3313480)

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