

MODIFICATION REQUESTS:

Transitional Part 3A projects

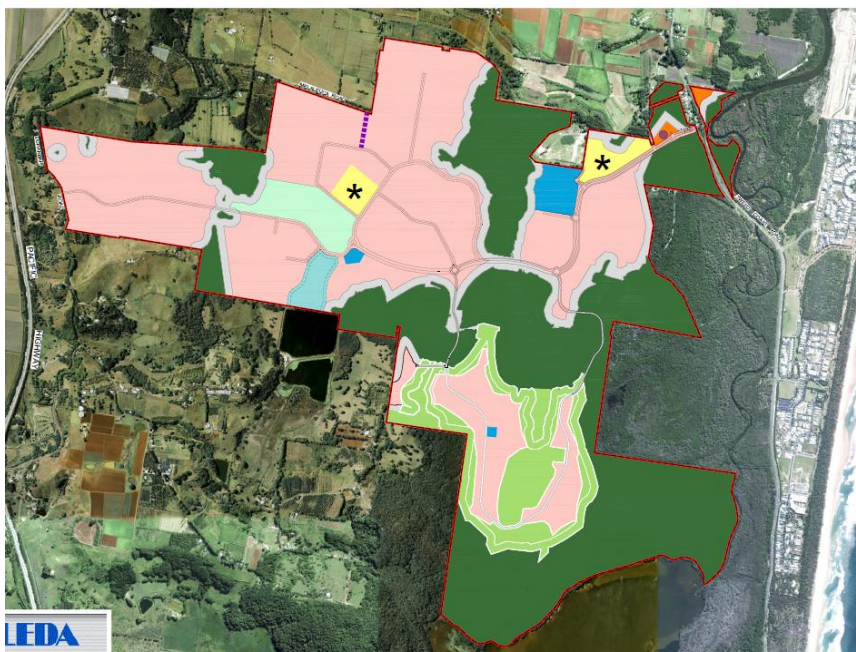
MP06_0318 MOD 3 (Concept Plan)

MP08_0194 MOD 1 (Stage 1)

Kings Forest Residential Community

Minor and administrative amendments to terms and conditions, including:

- the lapsing date of the concept plan approval;
- land to which the approvals apply (to include closed roads);
- amended and additional definitions;
- precinct specific management plan details;
- timeframes for the submission and approval of environmental management plans and further details; and
- section 94 development contribution credits.



Secretary's Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

May 2014

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1. BACKGROUND

1.1 Introduction and Scope

This report is an assessment of two requests made by Project 28 Pty Limited (the proponent) to modify the concept plan (06_0318) and the project approval (08_0194) for the Kings Forest residential community subdivision (within the Tweed local government area), pursuant to section 75W of the *Environmental Planning & Assessment Act 1979* (EP&A Act), as it continues to apply to transitional Part 3A projects under Schedule 6A of the EP&A Act.

The modification requests seek to make primarily minor and/or administrative amendments to the concept plan and stage 1 project approvals, in relation to various matters, including the lapsing date of the concept plan approval; land to which the approvals apply (to include closed roads); amended and additional definitions; precinct specific management plan details; timeframes for the submission and approval of plans and other further details; and section 94 development contributions.

1.2 Site Location and Surrounding Land Uses

The site has an area of around 880 hectares, comprising 19 parcels of land (including subsequently closed roads). It is located approximately 15km south of Tweed Heads, in the Tweed LGA close to the townships and coastal suburbs of Bogangar, Cabarita Beach and Casuarina. The location of the site is shown in **Figure 1**.



Figure 1: Location of the Site

The site is surrounded by agricultural and pastoral lands to the north, south and west. Cudgen Lake, and the wetland habitat surrounding the lake, borders the south-eastern site boundary. The lake covers an area of approximately 160 hectares and is located within the Cudgen Nature Reserve. The Cudgen Nature Reserve extends alongside much of the eastern site boundary. Further east on the opposite side of Cudgen Nature Reserve there is the coastal suburb of Casuarina. Surrounding features of the site are shown in **Figure 2**.

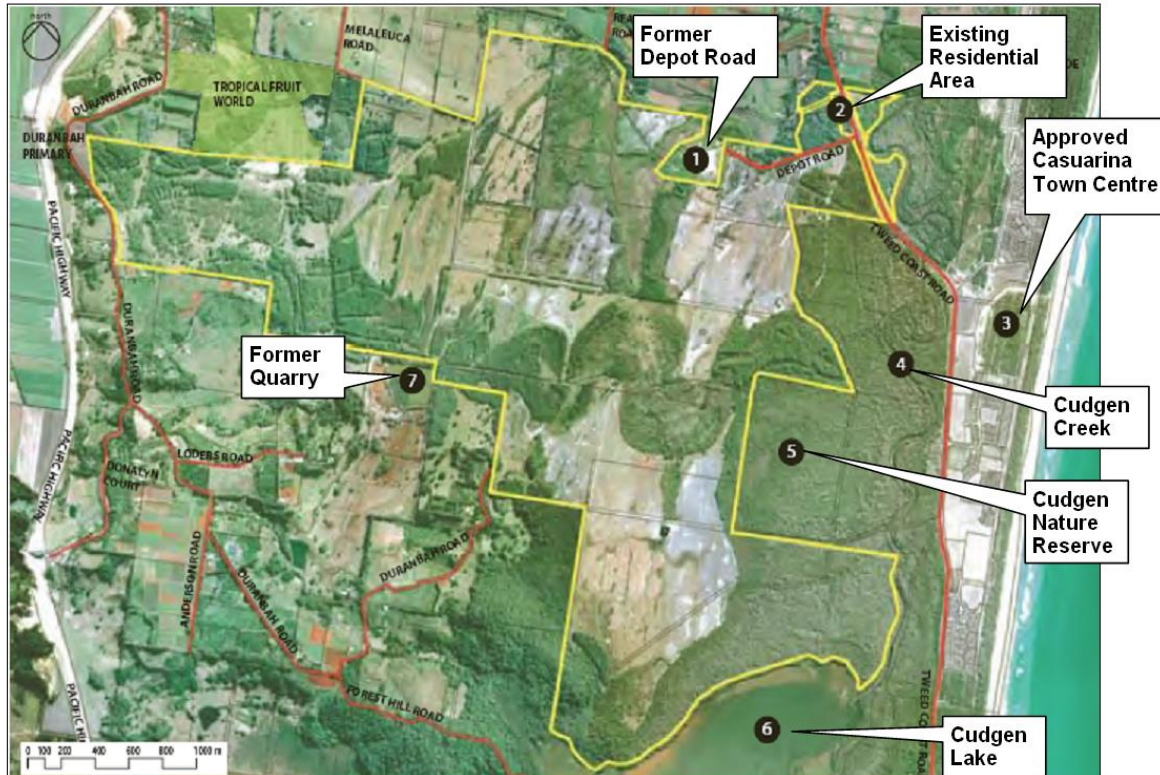


Figure 2: Surrounding Environment (source: JBA Urban Planning 2008)

1.3 Previous Approvals

MP06_0318 – Concept Plan

On 19 August 2010, the then Minister for Planning approved the concept plan for the Kings Forest estate. This followed a review by the independent Planning Assessment Commission (PAC) of the Assessment report, provided to the Minister on 16 July 2010. While the PAC review concluded that the department's assessment, conclusion and recommendations were reasonable, the PAC was of the opinion that certain issues required strengthened requirements, which were largely supported by the department and incorporated into the final approval.

The approved concept plan comprised:

- residential development for approximately 4500 dwellings;
- town centre and neighbourhood centre for future retail and commercial uses;
- community and education facilities;
- employment land;
- golf course;
- open space;
- wildlife corridors;
- protection and rehabilitation of environmentally sensitive land;
- utility services infrastructure;
- water management areas and lake; and
- roads, pedestrian and bicycle paths.

The concept plan layout is shown in **Figure 3** (as modified by MOD 2).

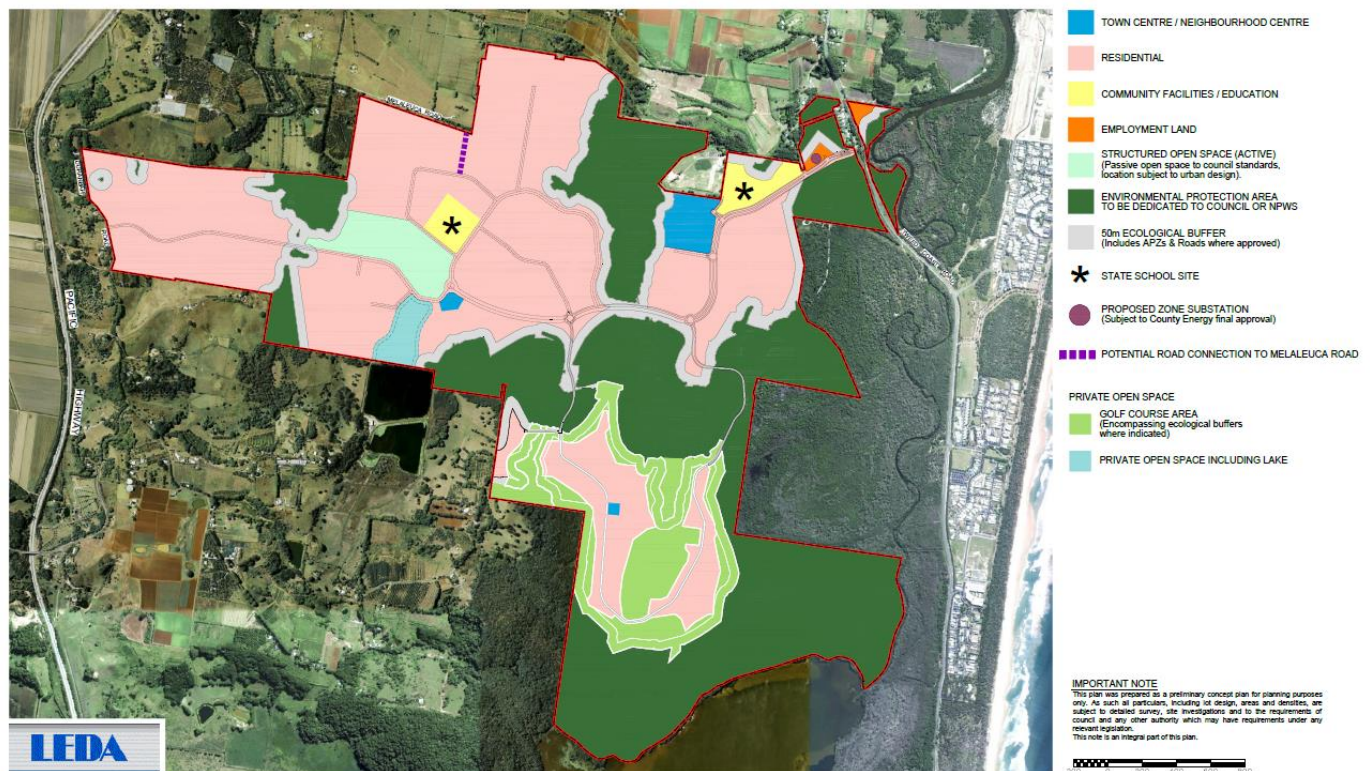


Figure 3: Concept plan layout (as modified, refer to MP06_0318 MOD 2)

MP 08_0194 – Stage 1 - Bulk Earthworks and subdivision of Precinct 5

On 11 August 2013 the PAC, as delegate for the then Minister, issued project approval to MP08_0194 (in conjunction with 06_0318 MOD 2). The project approval included the following:

- bulk earthworks across the site;
- a plan of development and subdivision of Precinct 5 into 376 residential lots;
- development of a rural supplies building and access arrangements (Precinct 1); and
- construction of subdivision and infrastructure works along Kings Forest Parkway and within precincts 1 and 5.

The outline of the project approval for stage 1 is shown in **Figure 4**.

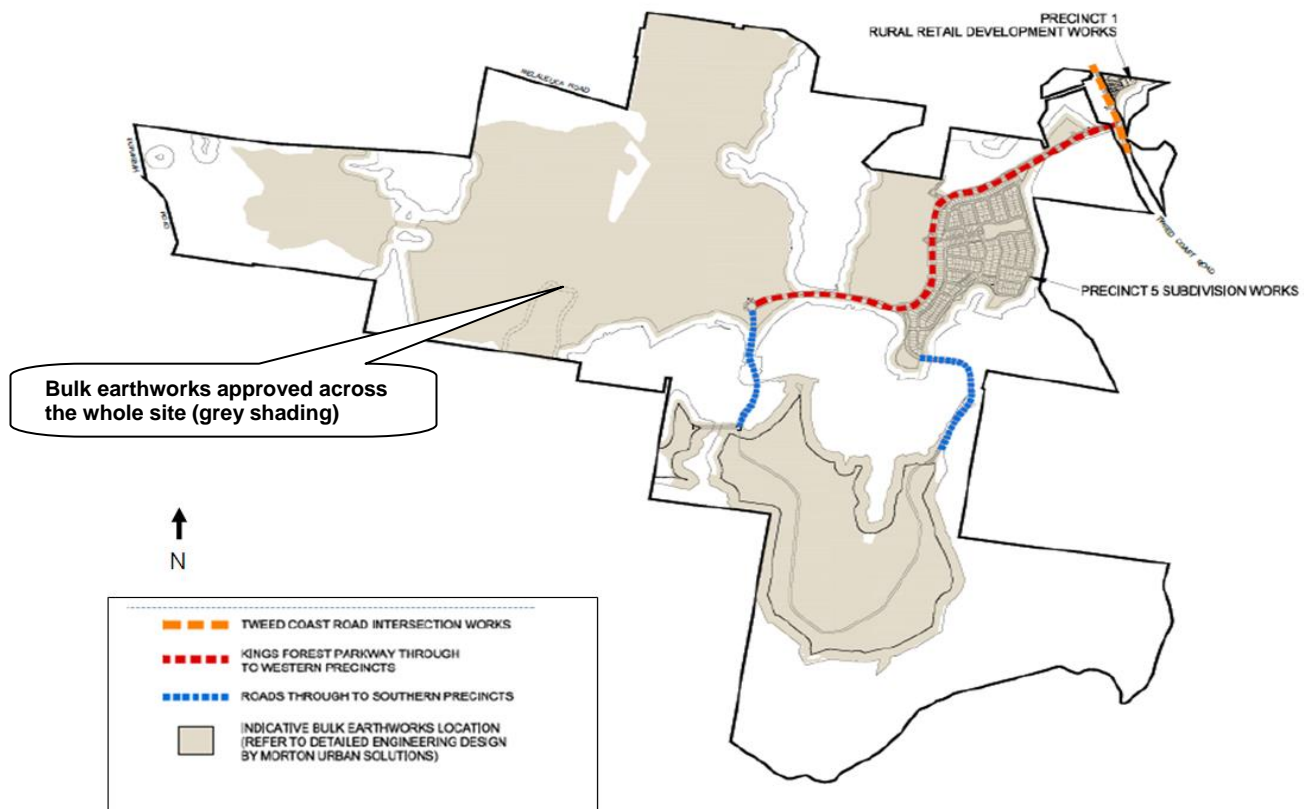


Figure 4: Outline of Stage 1 Project Approval

1.4 Modifications to Concept Plan (06_0318 MOD 1 and Mod 2)

The Concept Plan has been modified on two occasions, as outlined below.

On 22 December 2010, the then Acting Director Regional Projects, as the delegate for the Minister for Planning, approved MOD 1 to incorporate the Kings Forest Development Code into the concept plan approval. This provided for exempt and complying development provisions to apply to the estate and to set out controls for development requiring a development application. Eleven other amendments to the terms of approval and the Statement of Commitments clarified terms of approval related to flora and fauna monitoring, environmental management plans and groundwater and modified requirements for the submission of Acid Sulphate Soil Management plans.

On 11 August 2013, the PAC as delegate for the then Minister for Planning approved MOD 2, which included the following matters:

- amendments to the approved concept plan drawings;
- a new east-west wildlife corridor;
- a revised plan of land dedication;
- minor amendments to the Development Code;
- implementation of all management and maintenance activities in the environmental management plans in perpetuity;
- environmental auditing and reporting on all environmental lands;
- further traffic assessment for the future upgrades to the Tweed Coast Road and Kings Forest Parkway intersection;
- embellishment and dedication requirements for casual and structured open space;
- a Rehabilitation Plan for Blacks Creek;
- a management plan for the new east-west wildlife corridor; and
- a requirement that all future development applications for subdivision provide details of proposed land dedications to Tweed Shire Council.

2. PROPOSED MODIFICATION

2.1 Modification Description

The modification requests seek to make minor and/or primarily administrative amendments to the concept plan and stage 1 project approvals, including amendments to:

- extend the lapsing date of the concept plan approval;
- update the land to which the approvals apply (to include closed roads);
- provide for amended and additional definitions;
- amend terms and conditions related to precinct specific management plan details;
- extend timeframes for the submission and approval of environmental management plans; and
- include reference to credits that apply under the relevant contribution plan in the section 94 development contributions condition.

The proposed modification will involve amendments to the following terms and conditions of approval:

- MP06_0318 MOD 3
Schedule 1 (table) and Schedule 2, terms A5, B4, B5, B6, C2 and C15
- MP08_0194 MOD 1
Schedule 1 (table) and Schedule 2 conditions A9, A10, 3, 25, 27, 31, 40, 41, 42, 43, 44, 45, 47, 48, 63, 99, 135, 136 & 142.

The amendments are set out in more detail in **Tables 1 and 2** in **Appendix A**.

The proposed modifications do not involve any changes to the approved concept plan layout (as already modified) or the approved stage 1 project layout (refer to **Figures 3 and 4**).

2.2 Modification Justification

The proponent contends that the modifications are justified on the basis that they involve minor changes to terms and conditions, being primarily of an administrative or housekeeping nature, to enable the project to proceed in an efficient, viable and timely manner. The proponent's justification also indicates that the amendments will not change the approved scale, layout and yields of the project.

3. STATUTORY CONTEXT

3.1 Major Development SEPP

Both the modification to the concept plan and the project application are transitional Part 3A projects by virtue of Schedule 6A of the EP&A Act. The Minister for Planning is the approval authority.

3.2 Modification of the Minister's Approval

The concept approval MP06_0318 was granted under section 75O and project approval MP08_0194 was granted under section 75J of the EP&A Act. Section 75W of the Act provides for the modification of the Minister's approvals, issued under sections 75J and 75O.

In accordance with clause 3 of Schedule 6A of the Act, section 75W as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Pursuant to section 75W(2) of the Act, the proponent may request the Minister to modify approval of a project. Any request is to be lodged with the Secretary.

Section 75W(3) of the EP&A Act provides that the Secretary may notify the proponent of environmental assessment requirements (EARs) with respect to the proposed modification.

Given the nature of the modification requests, DGRs were not considered necessary, as sufficient information was submitted to assess the applications and the proposed modifications do not involve any changes to the approved concept plan layout (as modified) or the approved stage 1 project layout, nor any additional lots.

3.3 Delegated Authority

On 14 September 2011, the functions and powers of the Minister for Planning to determine section 75W modification requests were delegated to Directors in the Major Projects Assessment Division in cases where:

- (a) the relevant local council has not made an objection, and
- (b) a political disclosure statement has not been made, and
- (c) there are less than 10 public submissions in the nature of objections.

There are no public submissions to the modification requests.

Council has made a submission on each of the modification requests. Council provided advice on the modifications and objected to the proponent's proposed amendments to term C2 of the Concept Plan approval. Council however has subsequently advised that there is no objection to amendments to term C2 based upon the revised wording now recommended following the assessment in this report.

No objection was received from council, no political disclosure statement was made and there were less than 10 relevant public submissions. Therefore, the Director, Industry, Key Sites & Social Projects may determine the modification request under delegated authority.

3.3 Statement of Permissibility

The Kings Forest site is listed as a State Significant Site in Schedule 3 of the SEPP (Major Development) 2005 and sets out planning provisions which apply to the land including applicable land use zones, which are Zone 2(c) Urban Expansion; Zone 7(a) Environmental Protection (Wetlands and Littoral Rainforests); and Zone 7(l) Environmental Protection (Habitat).

The approved concept plan sets out the proposed uses within the applicable zones and the project approval is consistent within these controls. The modification requests will not alter the approved concept plan and stage 1 project approval layout, and therefore do not alter the consistency of the approved development within the applicable controls.

4. CONSULTATION AND SUBMISSIONS

4.1 Notification and Consultation

In accordance with section 75X of the EP&A Act and clause 8G of the EP&A Regulation; the modification request was made available on the department's website. Due to the minor nature of the proposed modification, the modification request was not exhibited by other means. No public submissions were received on the modification request.

The request was referred to Tweed Shire Council and relevant agencies for their review.

4.2 Submissions

The following submissions were received from Tweed Shire Council and relevant agencies.

Tweed Shire Council has commented regarding the proposed modification requests, as set out in **Table 3**.

Table 3: Tweed Shire Council – Submission Summary

MP06_0318 - MOD 3	
<p><i>Term B4 – details of East/west wildlife corridors;</i></p> <p><i>Term B5 – Plan for dedication of land to council; and</i></p> <p><i>Term B6 – revised Kings Forest Development Code.</i></p>	<p>Council suggests that the timeframe for meeting requirements in Terms B4 and B6, be extended to 12 months of the expected decision date (14 April 2014) for the application for approval under the provisions of the Commonwealth <i>Environment Protection and Biodiversity Conservation Act</i> (EPBC Act).</p> <p>Council however rejects the need to extend the timeframe of Term B5 of the concept plan approval related to submission of a plan of land to be dedicated to council.</p>
<i>Term C2 - Management Plans</i>	<p>Council <u>strongly objected</u> to amendments to term C2, seeking to remove establishment periods from the management plans and include a reference to 'agreed completion criteria'.</p> <p>The proponent has agreed to retain a reference to establishment periods and accepts council's revised wording of this term. On this basis council has withdrawn its objection.</p>
<i>Term C15 – Open Space establishment and dedication</i>	Council generally supports the proposed amendments but suggests that proposed clause C15(e), which refers to a lot intended to be further subdivided, needs further clarification.
MP08_0194 - MOD 1	
<i>Condition A10 - Road Works</i>	Council considers that the proposed amendment to the condition referring to contribution credits is unnecessary, as the Tweed Road Contribution Plan (CP No. 4) clearly sets out council's credit policy and the proposed amendment is too broad and open to interpretation.
<i>Condition 31 – provision of Water and Sewer reticulation</i>	Council <u>does not support</u> the proposed amendments as it could result in land (other than residential lots) which should be connected to water and sewer not being provided with these services by the developer.
<i>Condition 42 – Weed Management</i>	Council supports the inclusion weed management of ecological buffers, instead of Cudgen Nature Reserve, but notes this is a matter for OEH.
<i>Condition 63 – SEPP 14, delineation of boundaries</i>	Council <u>does not support</u> the amendments to this condition which seeks to limit the condition requirements for only to those areas adjacent to or adjoining proposed works, as bulk earthworks and civil works are to occur over the entire development site.
<p><i>Condition 27 - Old Bogangar Road Access, detailed design;</i></p> <p><i>Condition 40 – Vegetation Management Plans;</i></p> <p><i>Condition 41 – Buffer Management Plans;</i></p> <p><i>Condition 42 – Weed Management Plans;</i></p> <p><i>Condition 43 – Threatened Species Management Plans;</i></p>	<p>Council has suggested that the extended timeframes for meeting requirements of various conditions should be generally extended to 12 months of the expected decision date (14 April 2014) for the application for approval under the provisions of the Commonwealth <i>Environment Protection and Biodiversity Conservation Act</i> (EPBC Act).</p> <p>No comments were made in relation to condition 99</p>

<i>Condition 44 – Feral Animal Management Plan;</i> <i>Condition 45 – Koala Plan of Management;</i> <i>Condition 47 – Flora and Fauna Monitoring</i> <i>Condition 48 – Summary of Management Plans; and</i> <i>Condition 99 – Amendments to Design of Rural Supplies Building.</i>	
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Office of Environment & Heritage (OEH) provided advice, in particular about condition 42 (Weed Management) and the intent that there is a buffer area (100m) of weed management within Cudgen Nature reserve, to account for edge effects and indirect impacts to the nature reserve from the approved development. OEH would support amendment of condition 42 to reflect this intent.

NSW Rural Fire Service reviewed the modification and has no objections, in particular in relation to the deletion of condition 142(1)(h) of the project approval MP08_0194, regarding a positive covenant for bushfire asset protection zones.

NSW Trade & Investment – Mineral Resources reviewed the modification and has raised no issues.

Department of Primary Industries (DPI) agencies, NSW Office of Water, Fisheries NSW, & Crown Lands, reviewed the modification requests and no issues were raised by these agencies.

The issues raised by council and OEH, and the proponent's response to these issues are further considered in section 5.

5. ASSESSMENT

The key issues arising from the modification request of the concept plan relates to:

- Lapsing provisions of the concept plan approval (Term A5);
- Extended timeframes for meeting requirements of certain terms (Terms B4, B5, & B6);
- Precinct management plans details (Term C2); and
- Open space requirements (Term C15).

The key issues arising from the modification request of the project approval relate to:

- Extended timeframes for meeting requirements of certain conditions (conditions 3, 27, 40, 41, 42, 43, 44, 45, 47, 48 and 99);
- SEPP 14 wetlands/Cudgen Nature Reserve requirements (condition 63);
- Weed management requirements (condition 42); and
- Water and sewer reticulation (condition 31).

5.1 Lapsing of the Approval – Term A5 (Concept Plan)

Section 75Y(2) of the Act provides that a condition of approval which provides for the lapsing of the approval may be modified to extend the lapsing period. This also requires that the approval is reviewed before extending the lapsing period and that other modifications may be made to the approval, whether or not requested by the proponent.

There are no apparent terms or conditions of approval (as already modified) which would be affected by the proposed modification to extend the lapsing date.

The proponent has requested that the lapsing date of the concept plan approval be extended until the end of 2016; however the proponent has not nominated a specific lapsing date.

A specific date needs to be nominated, to provide certainty in the lapsing of the approval. Accordingly, the department considers that 31 December 2016 can be nominated, being consistent with the proponent's request that the approval lapse at the end of 2016. This will provide a reasonable extended time frame, with an additional 16 months, enabling the proponent to finalise matters required by the stage 1 project approval conditions prior to commencing the project.

The extended lapsing date will be generally consistent with the provisions of schedule 6A, where transitional Part 3A projects will lapse on 1 October 2016, in the absence of a valid lapsing provision otherwise applying. The requested lapsing date will provide a further two months beyond the default lapsing provision in Schedule 6A, which would not be unreasonable.

The department therefore agrees with the proponent's request to extend the lapse date and has recommended that term A5 be modified accordingly.

5.2 Extended Timeframes – Various Terms and Conditions (Concept Plan and Project Approval)

The proponent is seeking to extend the timeframes of various terms and conditions of the concept plan and stage 1 project approval that require the submission of various plans and environmental management plans (refer to **Tables 1 and 2** in **Appendix 1**).

The proponent has justified the need for extended timeframes due to the outstanding determination by the Commonwealth Department of Environment under the EPBC Act, in relation to proposed actions (works approved under the concept plan and stage 1 project) which affect federally listed species or communities, in particular Koalas and Wallum Sedge Frogs.

The construction of the Kings Forest development was declared by the Commonwealth as a controlled action in November 2012, requiring assessment and approval under the EPBC Act. The proponent indicates that the Commonwealth's determination is required to enable the project to proceed and enable the terms of the concept plan and the conditions of the project approval to be addressed in a comprehensive and integrated manner, having particular regard to the terms or conditions of any Commonwealth approval.

The department considers that it would be unreasonable to provide for a period of 24 months for the proponent to submit further details required in terms B4 (East/West wildlife corridor) and B6 (revised Kings Forest Development Code) and to submit the various environmental management and environmental management plan requirements set out in conditions 3, 40, 41, 42, 43, 44, 45, 47 & 48. This would have the potential to unduly delay finalisation of these matters.

The department considers that an extended timeframe of 6 months, from the expected date of determination of the EPBC Act approval (likely to be May 2014), will provide for a reasonable period to meet the requirements of the above terms and conditions of approval. Based on the current expected date of determination, this will therefore require that these terms and conditions are finalised by late 2014. This provides at least for a further 4 months period compared to the current requirements in most of these specified terms and conditions. The proponent has agreed to these amended timeframes.

There are three other matters where the proponent is seeking extended timeframes, related to submission of amended or revised plan details, which are not specifically related to environmental management matters. These terms and conditions are term B5 for provision of a plan of land to be dedicated to Tweed Shire Council; condition 27 for provisions of details of Old Boganagar Road access; and condition 99 for amended design details for the Rural Supplies Building (Precinct 1).

The department notes, as indicated by council in relation to term B5, that the proponent has provided no explanation as to how the EPBC Act decision will affect these matters. However the department considers that it is not unreasonable to provide for the extended timeframes requested by the proponent, having regard to the lapse of time since the project approval in August 2013, and noting that the submission of plan/s under term B5 is also tied to the lodgement of first development application or issue of first construction certificate. The proponent's requested changes to term B5 and conditions 27 and 99 are therefore reasonable and supported.

5.3 Precinct-Specific Management Plans – Term C2 (Concept Plan)

The concept plan approved a series of overarching environmental management plans containing broad management principles. The plans, however, lacked detailed actions and measurable performance criteria. Accordingly, term C2 was imposed to address these matters. Term C2 (as modified) requires future applications to include precinct-specific management plans to provide details on timelines for implementation of recommended works including both establishment and maintenance periods and measurable performance criteria.

The suite of management plans includes the following:

- Koala Plan of Management;
- Vegetation Management Plan;
- Feral Animal Management Plan;
- Weed Management Plan;
- Buffer Management Plan; and
- Threatened Species Management Plan.

The proposed amendments to Term C2 of the concept plan would remove the requirements for management plans to provide details on implementation of timelines for implementation of recommended works for the establishment period.

The proponent is also seeking to include a sentence within this term, so that it is unnecessary for a new management plan to be prepared, if a future application relies on a plan that was included with an earlier application, relating to the same precinct.

The current requirements in term C2 arise out of the department's and the PAC's detailed consideration and deliberations on the proposed development, including consideration and determination of MP08_0318 MOD 2 in August 2013 (in conjunction with the stage 1 project application MP08_0194). The proponent has provided limited justification for the proposed amendments, indicating they will provide for rationalisation and clarification of the requirements of this term.

Council strongly objected to amendments to term C2, seeking to remove establishment periods from the management plans and include reference to 'agreed completion criteria', as it was crucial to retain a distinction between establishment and maintenance periods in the management plans. It is unlikely council will accept responsibility for any environmental lands until establishment works have been successfully completed (as measured by performance criteria). Council also considered that the separation of these two phases allows for transparent estimation of costs for works to be paid for by the proponent related to ongoing maintenance of environmental values. Council is also concerned that the introduction of the reference to "completion criteria" would imply that there is no requirement for ongoing environmental management, by the proponent.

The department agrees with council's position, particularly that the management plans should retain the need to address establishment period/s. The proponent has reviewed council's comments and has agreed to retain the current provisions in term C2 in relation to the establishment period. Council has subsequently withdrawn its objection, on the basis that the proponent has agreed to retain reference to establishment periods.

Council did not object to the intent of the further amendments proposed by the proponent, to insert a sentence within this term, that it is unnecessary for a new management plan to be prepared, if a future application relies on a plan that was included with an earlier application, relating to the same precinct. However, council has suggested the insertion of the following additional underlined words for clarity:

It is not necessary for new plans to be prepared if an application relies on and does not affect a plan that was included with an earlier application relating to the same period.

The proponent has accepted the changes that council has proposed. The department therefore recommends that term C2 be modified in accordance with council's recommendations.

5.4 Open Space requirements – Term C15 (Concept Plan)

Term C15 relates to the timing for the establishment and dedication of land for active open space. The provision of open space is tied to thresholds related to the initial release of a subdivision certificate for precinct 4 or release of the 750th lot, then subsequently at construction of 1750th lot, 2750th lot and 3,750th lot. The proponent is seeking to amend the condition so that this applies only to 'residential lots' (as per the definition specified in **Table 1**).

The department considers that this amendment is reasonable as the demand or need for active open space areas will be primarily generated by residential development, rather than other development, such as commercial lots, within the estate.

Term C15 is recommended to be modified accordingly.

5.5 SEPP 14 Wetlands/Cudgen Nature Reserve Requirements – Condition 63

Condition 63 requires the delineation of the boundaries of SEPP 14 wetland and Cudgen Nature Reserve, prior to commencement of works, to facilitate the implementation of measures to prevent unauthorised access.

The proponent is seeking to remove the reference to SEPP 14 in condition 63 and refer instead to 'environmental protection zones and buffers', while retaining reference to Cudgen Nature Reserve. The proponent indicates that the environmental protection zones, as well as adjacent buffer areas, will encompass the SEPP 14 wetlands (refer to **Figure 5** which shows SEPP 14 wetlands in relation to environmental protection areas).

The proponent is also seeking to amend the condition so that the delineation of these areas is only carried out adjacent to or adjoining the relevant stage of the project.

While council does not object to the first of the proposed amendments to this condition, council does not support further amendments to limit the condition requirements only to those areas adjacent to or adjoining proposed works. Council notes that condition 63 relates to bulk earthworks and civil works to occur over the entire development site, and that condition A12 prohibits bulk earthworks in the ecological buffers. On this basis council does not support limiting the condition to specific areas as requested by the proponent.

The department accepts that the first of the proponent's proposed amendments to condition 63 is reasonable on the basis that the environmental protection zones and buffers contain the SEPP 14 wetlands. The department however notes council's concern's regarding the second amendment to this condition, particularly the potential impacts arising from bulk earthworks and civil works across the whole site, and the need for potential impacts from these works to be appropriately addressed.

The proponent is also seeking to amend the condition so that the delineation of these areas is only carried out adjacent to or adjoining the relevant stage of the project.

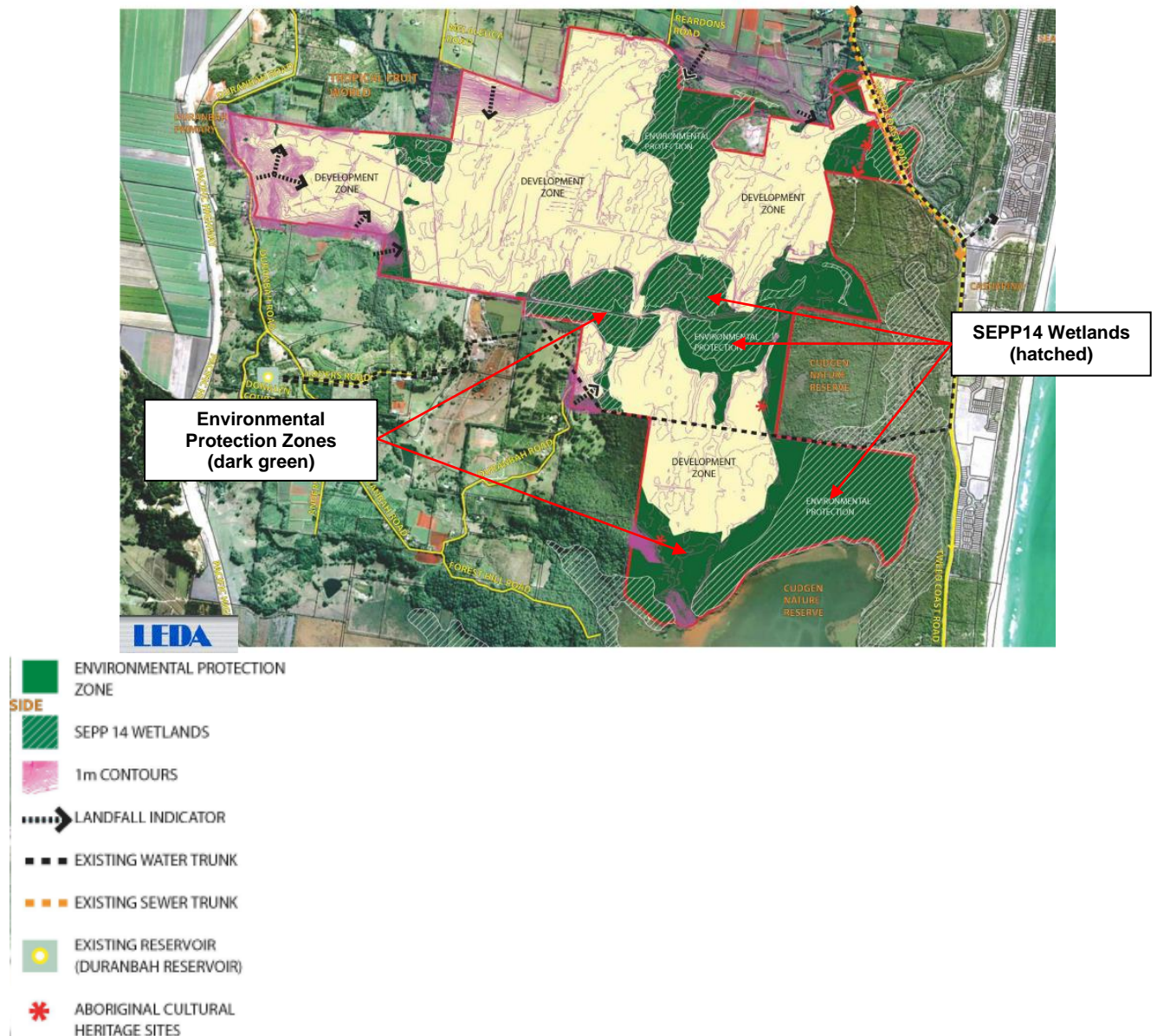


Figure 5: Site Analysis Plan – showing SEPP 14 wetlands and environmental protection areas

At a meeting between the proponent and the department on 27 March 2014, to discuss the progress of the modification requests, the proponent suggested that the condition be adjusted to require a staging plan to be submitted prior to the issue of a construction certificate. The proponent subsequently provided revised wording for the condition, which is generally as follows (as further adjusted by the department):

*Prior to the commencement of works for any stage of the project, the **environmental protection zones and buffers** and Cudgen Nature Reserve boundaries **adjacent to or adjoining that stage** must be clearly delineated on-site to prevent unauthorised access to these areas. **Staging Plans shall be submitted to the satisfaction of the Director-General, prior to the issue of a Construction Certificate for bulk earthworks within each relevant Precinct, showing the area of works to be undertaken and with the boundaries of adjoining environmental protection zones and buffers being clearly delineated within each Precinct.** Temporary signage should be erected to ensure that construction workers are aware of the need to avoid and protect these sensitive areas. Design of the temporary fence should allow movement of native fauna present in the area. Temporary fencing and signage*

should incorporate all Environment Protection Zones including any of the ecological buffers proposed for dedication as part of Cudgen Nature Reserve.

The department supports the proposed wording to the condition. Condition 63 is recommended to be modified, accordingly.

5.6 Weed Management Requirements – Condition 42 (Project Approval)

The proponent is seeking to replace the requirement in condition 42 that weed management plans ensure the control of weeds within environmental protection zones and in Cudgen Nature reserve, with a requirement that the management plans instead ensure the control of weeds within environmental protection zones and ecological buffers. The proponent considers that it is unreasonable and inappropriate to undertake weed removal within the Cudgen Nature Reserve (part of the NSW National Parks and Wildlife Service park system, managed by the OEH) with the current condition implying that this weed management would be required across the full extent of the Nature Reserve.

An important component of weed management for the development relates to slash pine trees (*Pinus elliotti*), an exotic species established in timber plantations, which spreads into native forest and potentially shades out other endemic species. Council has noted in its submission on the modification, and in respect to condition 42, that the development site is the only area in the vicinity of Cudgen Nature Reserve that supports considerable stands of slash pines. It is highly likely that any infestations within Cudgen Nature Reserve originate from the development site.

The inclusion of required weed management within the nature reserve arose from the OEH's consideration of the proposed development, with the current wording taken from the OEH's submission following its consideration of the preferred project report. The OEH has reviewed the modification request and has advised that:

- Cudgen Nature Reserve is managed by the OEH National Parks and Wildlife Service (NPWS) and NPWS was consulted during the formulation of condition 42;
- The intent of this condition was for the proponent to include a buffer area (100m) of weed management within Cudgen Nature Reserve as part of the weed management for the site;
- OEH considers this buffer is relevant to account for the edge effects and indirect impacts to Cudgen Nature Reserve from the approved development; and
- OEH would support the amendment of the condition to reflect the intent to provide for weed management of a 100m buffer within the reserve.

At the meeting between the proponent and the department on 27 March 2014, to discuss the progress of the modification requests, the proponent contended that following previous meetings and agreements with OEH regarding weed management, a buffer of 20m into the reserve had been accepted and there was no agreement for weed management extending up to 100m.

The department agrees that it is unreasonable for the proponent to be expected to undertake unlimited weed management within the Cudgen Nature Reserve, but that weed management should be undertaken with buffer areas extending into the reserve. The extent of these buffers can be subject to the satisfaction of the Secretary, based upon advice from OEH following further negotiations with the proponent about their appropriate extent.

Accordingly it is recommended that the condition be amended to delete the words "including Cudgen Nature Reserve" and insert instead the words "and within ecological buffers including a buffer area within Cudgen Nature Reserve (which is to be determined to the satisfaction of the Secretary, upon advice from the Office of Environment & Heritage)".

5.7 Water and Sewer Reticulation – Condition 31 (Project Approval)

The proponent is seeking to limit water and sewer provision to residential lots only, excluding lots as listed in the proposed definition of 'residential lots' (refer to **Table 2**). The proponent has not specifically justified these amendments; however its intent is clear in that it avoids the need for the proponent or developer to provide these services to all lots within the estate.

Council does not support these amendments as it could result in land (other than residential lots) which should be connected to water and sewer not being provided with these services by the developer. Lots or land which should be provided with reticulated sewer and water, but would not be required to be serviced under the proposed amendments, would include land to be dedicated to council for community and public purposes, parks, and recreation, land within community title subdivisions and other land that may have some residential and commercial entitlement.

The department agrees with the concerns raised by council that the proposed amendments to this condition would lead to a lack of water and sewer reticulation to land where this should be provided by the proponent.

The proponent has reviewed the council's submission and has suggested the following amended wording, to address council's concerns:

*Reticulated water supply and outfall sewerage reticulation shall be provided to ~~all lots~~ **all residential lots and all lots for private occupation, community facilities lots, sports fields, parks, play areas, other utility facilities (pump stations, etc.) but not including proposed environmental open space lots**, within the project in accordance with council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications (as in force at the date of this approval).*

The department supports these amendments suggested by the proponent, which will clarify the lots which will require the provision of reticulated water and sewer, by the proponent, apart from lots to be developed for residential purposes.

On this basis, the inclusion in the words defined in schedule 1 of the project approval of a new definition for a 'residential lot' is unnecessary and unwarranted, as it will not otherwise be relevant to the project approval conditions.

5.8 Road Works and Section 94 Contributions – Condition A10 (Project Approval)

Condition A10 requires that all road works associated with the proposal will be at no cost to council. The proponent is seeking to amend the condition to include reference to developer contribution credits that can apply under the Tweed Road Contribution Plan (TRCP). The proponent proposes that following sentence be added to the condition:

Contribution credits will apply for any works undertaken on the Tweed Coast Road which are included in the TRCP, Section 94 Plan No.4.

The TRCP enables council to levy developer contributions for the provision of additional road capacity to service increased traffic loading as a result of urban growth and/or development demands. The TRCP works program, in schedule 5, makes provision for intersection works (installation of traffic lights) at the intersection of Tweed Coast Road and Kings Forest Parkway, to the value of \$972,400.

Conditions 26 and 28 of the project approval require that the proponent undertake intersection works (provision of a two lane roundabout) at Tweed Coast Road and Kings Forest Parkway. Accordingly, due to the allowance for intersection works in the TRCP, the proponent considers the credit provision of clause 2.11 of the TRCP will apply. These credits apply where development approvals require the construction of works identified in the works program, and are applied in accordance with council's policy, which is set out in schedule 2 of the TRCP.

Council considers that the proposed amendment to the condition is unnecessary, as the TRCP clearly sets out council's credit policy and the proposed amendment is too broad and open to interpretation. The department notes these concerns and therefore considers that the reference to credit provisions in the TRCP can be added as a note to this condition, which would read:

Note: Clause 2.11 and Schedule 2 of Tweed Road Contribution Plan, CP No 4 (TRCP) sets out council's policy in relation to contribution credits for construction of works identified in the Works Schedule of the TRCP.

Condition A10 is recommended to be modified accordingly.

5.9 Other Issues with Proposed Amendments to Terms and Conditions

The department's consideration of the proposed amendments to other terms and conditions is provided in **Table 4** below. These amendments do not raise any significant issues.

Table 4: Consideration of other proposed amendments

Provisions to be amended	Consideration of proposed amendments
<i>Schedule 1 Land</i>	There are no issues related to the inclusion of lots encompassing former and now closed roads within the description of the land to which the project approval applies.
<i>Statutory requirements (condition A9)</i>	<p>The proponent is seeking to include reference to the former section 75U (as continues to apply to transitional Part 3A projects) which lists certain legislative approvals that do not apply to an approved project. The proponent has suggested that the following words be added to the condition:</p> <p>"For avoidance of doubt, nothing in this condition derogates from section 75U of the EP&A Act".</p> <p>The department considers that the intent of this amendment can be more simply dealt with and expressed in a note added to the condition, to read:</p> <p>"Note: This condition does not override the provisions of section 75U of the EP&A Act.</p>
<i>Geotechnical certification (condition 135)</i>	<p>The proponent indicates that certification for building design and construction required under condition 135(1)(b), is normally the responsibility of the future owners or developers of the lots. Condition 135(1)(a) retains a requirement for certification for earthworks.</p> <p>The department supports the deletion of condition 135(1)(b).</p> <p>Council also supports the deletion of condition 135(1)(b) and notes that soil tests will be required to address the bearing capacity of the soil required for footing design in accordance with AS2870 <i>Residential Slabs and Footings Construction</i>, at building construction stage.</p>
<i>Damage to property (condition 138)</i>	<p>The proponent is seeking to amend the condition to clarify that rectification of damage to property applies to public property.</p> <p>The department supports this amendment and clarification.</p> <p>Council also raised no objection to insertion of 'public' in the condition as council's infrastructure is protected. Council notes that any damage to private property may be a civil action between the relevant parties.</p>

<i>Registration of easements/ Restrictions to Use/ Rights of Carriageway (condition 142)</i>	<p>The proponent seeks deletion of condition 142(1)(h), relating to positive covenants to ensure that bushfire asset protection zones are in force in perpetuity, on the basis that it is unreasonable and unnecessary and as the Land and Environment Court does not generally support covenants to enforce approval conditions.</p> <p>The RFS has reviewed this matter and has no objection to the deletion of the condition. The RFS noted that it is not a condition that they had recommended.</p> <p>Council does not object to the removal of condition 142(1)(h) on the basis that condition 142(1)(c) is proposed to be retained, which requires a restriction to be place in title on lots containing asset protection zones requiring them to be maintained, in accordance with relevant provisions of Planning for Bushfire Protection 2006. Council notes that it has a duty of care to ensure that landowners of affected lots are aware of their obligations and it is standard practice for council to apply such conditions to newly created lots on bushfire prone land.</p> <p>On the basis of the above, the department supports the deletion of condition 142(1)(h).</p>
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6. CONCLUSION AND RECOMMENDATIONS

The department has considered the modification requests having regard to the proponent's justifications for the amendments, the intent and objectives of the relevant terms and conditions as set out in the concept plan approval and stage 1 project approval, and the submissions from Tweed Shire Council and the OEH. The department supports in part the proposed amendments to the terms and conditions of the approvals.

The department does not support proposed amendments to term C2 of the concept plan approval, and does not support inclusion of a new definition for residential lots in the project approval, nor the amendments to conditions A9, and A10. The department considers that the amendments to these terms and conditions are either unnecessary, or are inconsistent with the intent and objectives of the existing approved terms and conditions, having regard to previous assessment and deliberations on the proposed development by the department and the PAC.

As indicated in section 5, the department met with the proponent on 27 March 2014 to discuss the progress of the modification requests. The proponent has agreed to various revisions to the amended terms and conditions, as set out in **Appendix C**. The department therefore recommends modification of the instruments of approval, in accordance with the details as set out in **Appendix C**.

Prepared by:
Ray Lawlor, Senior Planner
Industry, Key Sites & Social Projects

Endorsed by:



Chris Ritchie
A/Director
Industry, Key Sites & Social Projects

16/5/14

APPENDIX A MODIFICATION REQUEST

The proponent's submissions on each of the modification requests are available on the department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6349

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6351

The proposed amendments are set out in detail in the following **Tables 1 and 2**:

Table 1: Proposed amendments to the concept plan – MP06_0318 MOD 3

Modification	Description
1. <i>Land subject of the approval</i> (Schedule 1)	The following former roads (now closed and owned by Project 28 Pty Ltd) which are included in the concept plan, are to be added to the description of the land to which the concept plan approval applies: <ul style="list-style-type: none">• Lot 2 DP115923;• Lot 11 DP 1178256; and• Lots 1, 2, and 3 DP 1157616
2. <i>Lapsing of the Approval</i> (Term A5)	Term A5 provides that the approval lapses 5 years from the determination, which is 19 August 2015. The proponent is seeking to extend the lapsing period to the end of 2016, to take account of the time needed to meet conditions and requirements of the stage 1 project approval (MP08_0194), before works can commence.
3. <i>Time frames</i> (Terms B4, B5 & B6)	The proponent is seeking to extend the time frames for meeting the requirements of certain terms of the concept plan approval (where these timeframes are currently related to the date of the modified approval, MP06_0318 MOD2, 11 August 2013, or lodgement of the first development application, or prior to the issue of the first construction certificate, whichever occurs first). <ul style="list-style-type: none">• In term B4 (<i>East-West Wildlife Corridors</i>), extend from 12 months to 24 months the time for submission of details for regeneration/revegetation and long term protection of the corridor.• In term B5 (<i>Dedication of Land to Tweed Shire Council</i>) extend from 12 months to 24 months the time for submission of a plan of land to be dedicated to council.• In term B6 (<i>Kings Forest Development Code</i>) extend from 3 months to 12 months the time for submission of a revised development code.
4. <i>Preparation of Precinct specific Management Plans</i> (Term C2)	The proponent is seeking to amend this term by removing requirements for reference to an establishment period in the management plans, and include reference to agreed completion criteria. The proponent is also seeking to include a sentence within this term, so that it is unnecessary for a new management plan to be prepared, if a future application relies on a plan that was included with an earlier application, relating to the same precinct.
5. <i>Open Space -</i>	Term C15 relates to the timing for the establishment and dedication of land

Modification	Description
<i>establishment and dedication</i> (Term C15)	<p>for active open space, which is tied to thresholds related to the initial release of a subdivision certificate for Precinct 4 or release of the 750th lot, then subsequently at construction of 1750th lot, 2750th lot and 3,750th lot.</p> <p>The proponent is seeking to add additional words to this term so as to clarify that the thresholds for the establishment and dedication of land for active open space are only triggered by release of 'residential lots', which would be defined to exclude:</p> <ul style="list-style-type: none"> a) lots intended to be dedicated or transferred to a public authority; b) public utility lots; c) any community title association property; d) lots for open space, recreation, environmental purposes or drainage; and e) lots to be further subdivided by or on behalf of the proponent (which the proponent has subsequently clarified is intended to relate to residue lots or master lots).

Table 2: Proposed amendments to stage 1 project approval – MP08_0194 MOD 1

Modification	Description
1. <i>Land subject of the approval</i> (Schedule 1)	The proponent is seeking to include former roads (closed and now owned by Project 28 Pty Ltd) in the description of the land to which the project approval applies. This is the same as the proposed amendment to schedule 1 of the concept plan.
2. <i>New Definition 'Residential Lot'</i> (Schedule 1)	The proponent is seeking to include a new definition of a 'residential lot' in the list of definitions in the project approval. This new definition is the same as the definition the proponent is also seeking to include in term C15 of the concept plan approval.
3. <i>Statutory requirements</i> (condition A9)	Condition A9 relates to the proponent obtaining and maintaining any further required licences, permits and approvals. The proponent is seeking to amend this condition to include reference to the former section 75U (as continues to apply to transitional Part 3A projects) which lists certain legislative approvals that do not apply to an approved project.
4. <i>Road works and Section 94 contributions</i> (condition A10)	The proponent is seeking to amend condition A10, which requires that road works are at no cost to council, to include reference to developer contribution credits that can apply under the Tweed Road Contribution Plan.
5. <i>Time frames</i> (Conditions 3, 27, 40, 41, 42, 43, 44, 45, 47, 48, and 99)	<p>The proponent is seeking to extend the time frames to meet requirements of various conditions of the project approval for submission of further details for the D-G's approval or satisfaction (where these timeframes are currently related to the date of approval, 11 August 2013, or lodgement of the first development application, or prior to the issue of the first construction certificate, whichever occurs first).</p> <p>In condition 3 (Environmental Offset Areas) extend from 3 months to 9 months the time for the engagement of surveyors to delineate boundaries of offset areas and submission of details of dealings to be registered on title for the land to be dedicated.</p> <p>In the following conditions extend from 12 months to 24 months the time for submission of final plans or reports:</p>

<i>Modification</i>	<i>Description</i>
	<ul style="list-style-type: none"> • Condition 27 - Old Bogangar Road Access; • Condition 40 - Vegetation Management Plans; • Condition 41 - Buffer Management Plans; • Condition 43 - Threatened Species Management Plan); • Condition 42 - Weed Management Plans); • Condition 44 - Feral Animal Management Plans); • Condition 47 - Flora and Fauna Monitoring Report); and • Condition 48 – Summary of Management Plans. <p>In the following conditions extend from 6 months to 24 months the time for submission of a final plan, or amended design:</p> <ul style="list-style-type: none"> • Condition 45 - Koala Plan of Management; and • Condition 99 - Amendments to Design of Rural Supplies Building.
6. <i>Water and sewer (condition 31)</i>	The proponent is seeking to amend condition 31 so that reticulated water and sewer is only required to be provided to 'residential lots' (as proposed to be newly defined in the definitions), and not to all lots.
7. <i>Weed management (condition 42)</i>	<p>Condition 42 requires that weed management plans are amended to provide for the control of weeds within environmental protection areas, including Cudgen Nature reserve.</p> <p>The proponent is seeking to amend condition 42 to remove the need for weed management within Cudgen Nature reserve and instead replace this with weed management within ecological buffers.</p>
8. <i>SEPP 14 wetlands (condition 63)</i>	<p>Condition 63 requires the delineation of the boundaries of SEPP 14 wetland and Cudgen Nature Reserve, prior to commencement of works, in order to prevent unauthorised access.</p> <p>The proponent is seeking to remove reference to SEPP 14 and refer instead to 'environmental protection zones and buffers'.</p> <p>The proponent is also seeking to amend the condition so that the delineation of these areas is only carried out adjacent to or adjoining the relevant stage of the project.</p> <p>The proponent's revised amendments to the condition include provision of staging plans to delineate these areas.</p>
9. <i>Geotechnical certification (condition 135)</i>	The proponent is seeking to delete condition 135(1)(b) related to the need for geotechnical certification, that would certify lots within Precinct 5 as sound for building construction.
10. <i>Damage to property (condition 138)</i>	The proponent is seeking to amend the condition to clarify that rectification of damage to property applies to public property.
11. <i>Registration of easements/ Restrictions to Use/ Rights of</i>	The proponent is seeking to delete condition 142(1)(h) which requires a positive covenant to ensure that bushfire asset protection zones are in force in perpetuity.

Modification	Description
Carriageway (condition 142)	
12. <i>Typographical error</i> (condition 25 - cycleways/footpaths)	A minor typographical error is required to be corrected in condition 25.

APPENDIX B RECOMMENDED MODIFYING INSTRUMENTS

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning under delegation executed on 14 September 2011, I approve the modification of the concept plan approval referred to in Schedule 1, subject to the terms in Schedule 2.



Chris Ritchie

A/Director

Industry, Key Sites and Social Projects

Sydney

16 MAY

2014

SCHEDULE 1

Concept Approval:

06_0318 granted by the then Minister for Planning on 19 August 2010, as modified on 22 December 2010 MOD 1 and 11 August 2013 MOD 2.

For the following:

Residential subdivision, Kings Forest, Tweed LGA

Modification:

MP06_0318 MOD 3:

The modification amends:

Schedule 1, Table, and Schedule 2, terms A5, B4, B5(2), B6, C2 and C15(2).

SCHEDULE 2

The above approval is modified as follows:

SCHEDULE 1

PART A – TABLE

- 1) In row three titled in column 1 “On land comprising”, in column 2, at the end of the list of allotments, insert the following additional allotments: “Lot 2 DP 1159231 (closed road); Lot 1 DP1178256 (closed road) and Lots 1, 2, & 3 DP1157616 (closed roads)”.

SCHEDULE 2

PART A

- 2) In term A5, in the first sentence, delete the words “5 years after the commencement date of the approval” and insert instead the following words “on 31 December 2016”.

PART B

- 3) In term B4, in the last sentence, after the words “for approval within” delete the words “12 months of the date of the modified approval (06_0318 Mod 2)” and insert instead the words “6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth *Environment Protection and Biodiversity Conservation Act*”.
- 4) In term B5(2), after the words “submitted to the Director-General for approval” delete the words “within 12 months” and insert instead “within 24 months”.
- 5) In term B6, in the last sentence, after the words “submitted to the satisfaction of the Director-General” delete the words “within 3 months of the date of the approval” and insert instead the words “within 6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth *Environment Protection and Biodiversity Conservation Act*”.
- 6) In term C2, following the first two sentences, insert the following sentence:

“It is not necessary for new plans to be prepared if an application relies on, and does not affect, a plan that was included with an earlier application relating to the same period.”

- 7) In term C15(2), at the end of the condition, insert the following:

“In this clause a ‘lot’ means a residential lot identified in a registered plan of subdivision, and, for the avoidance of doubt, does not include a lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to a public authority; or
 - (b) for any public utility undertaking (within the meaning of the Standard Instrument (Local Environmental Plans) Order 2006 as at the date of approval; or
 - (c) to be association property within the meaning of the *Community Land Development Act, 1989*; or
 - (d) for open space, recreation, environmental conservation, drainage or riparian land management; or
 - (e) a residue or master lot, which is to be further subdivided (by or on behalf of the proponent).
-

- 121 traditional detached dwellings
(minimum lot size 400sqm)

Modification:

MP08_0194 MOD 1:

The modification amends;

Schedule 1, Land

Schedule 2, Conditions A9, A10, 3, 25(3), 27(1), 31(1),
40(2), 41(1), 41(2), 42(2), 43(5), 44(3), 45(2), 47(6),
48, 63, 99(2), 135(1), 138(1) &142(1).

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning under delegation executed on 14 September 2011, I approve the modification of the project application referred to in Schedule 1, subject to the conditions listed in Schedule 2.



Chris Ritchie

A/Director

Industry, Key Sites and Social Projects

Sydney *16 MAY* 2014

SCHEDULE 1

Project Approval:

08_0194 granted by the then Minister for Planning and Infrastructure on 11 August 2013.

For the following:

Kings Forest - modification requests (minor amendments), including:

- subdivision of the site into ten development lots in 4 stages;
- bulk earthworks across the site;
- roadworks comprising:
 - construction of the entrance road and associated intersection works with Tweed Coast Road;
 - construction of the Kings Forest Parkway from Tweed Coast Road via Precincts 4 and 5 through to the western site precincts; and
 - construction of two roads providing access to the southern site precincts;
- Plan of Development for Precinct 5;
- development of 2,036sqm of floorspace for a rural supplies building and access arrangements to Precinct 1;
- construction of subdivision and infrastructure works along Kings Forest Parkway and within Precincts 1 and 5
- subdivision of Precinct 5 into 376 residential lots comprising:
 - one townhouse lot (7,860sqm)
 - 37 terrace house lots (minimum lot size 150sqm)
 - 25 plexes (minimum lot size 450sqm)
 - 192 zero lot dwellings (minimum lot size 240sqm)

SCHEDULE 2

The above approval is modified as follows:

SCHEDULE 1

Land:

In the list of allotments, insert the following additional allotments: "Lot 2 DP 1159231 (closed road); Lot 1 DP1178256 (closed road) and Lots 1, 2, & 3 DP1157616 (closed roads)".

SCHEDULE 2

ADMINISTRATIVE CONDITIONS

- 1) In condition A9, at the end of the condition, insert the following sentence:

"Note: This condition does not override the provisions of section 75U of the EP&A Act".

- 2) In condition A10, at the end of the condition, insert the following sentence:

"Note: Contribution credits will apply for any works undertaken on the Tweed Coast Road which are included in the TRCP, Section 94 Plan No.4".

PART ONE – SUBDIVISION OF ENTIRE SITE

- 3) In condition 3, at the beginning of the first sentence, delete the words "Within 3 months" and insert instead the words "Within 24 months".
- 4) In condition 25(3), at the end of the first sentence, after the word "residential", insert the word "lot".
- 5) In condition 27(1) after the words "approval within" delete the words "12 months" and insert instead the words "24 months".
- 6) In condition 31(1) delete the words "all lots" and insert instead words "all residential lots and all lots for private occupation, community facilities lots, sport fields, parks, play areas, other utility facilities (pump stations, etc.) but not including proposed environmental open space lots".
- 7) In condition 40(2) after the words "approval within" delete the words "12 months of this approval" and insert instead the words "6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth *Environment Protection and Biodiversity Conservation Act*".
- 8) In condition 41(3) after the words "approval within" delete the words "12 months of this approval" and insert instead the words "6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth *Environment Protection and Biodiversity Conservation Act*".
- 9) Delete condition 42.

10) Insert new condition 42 as follows:

42.

The Weed Management Plans shall be amended to ensure that:

- 1) Control of all weeds will occur:
 - a. in Environmental Protection Zones located on the Kings Forest site; and
 - b. for a distance of 20 metres into the adjacent Cudgen Nature Reserve.
- 2) Control of Slash Pine only will occur for a further distance of 80 metres into Cudgen Nature Reserve.
- 3) Weed management activities should be undertaken utilising bush regeneration techniques including stem injection.

11) In condition 42(2) after the words approval within" delete the words "12 months of this approval" and insert instead the words "6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth *Environment Protection and Biodiversity Conservation Act*".

12) In condition 43(5) after the words approval within" delete the words "12 months of this approval" and insert instead the words "6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth *Environment Protection and Biodiversity Conservation Act*".

13) In condition 44(3) after the words approval within" delete the words "12 months of this approval" and insert instead the words "6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth *Environment Protection and Biodiversity Conservation Act*".

14) In condition 45(2), after the words "approval within" delete the words "6 months of this approval" and insert instead the words "6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth *Environment Protection and Biodiversity Conservation Act*".

15) In condition 47(6) after the words approval within" delete the words "12 months of this approval" and insert instead the words "6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth *Environment Protection and Biodiversity Conservation Act*".

16) In condition 48 after the words approval within" delete the words "12 months of this approval" and insert instead the words "6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth *Environment Protection and Biodiversity Conservation Act*".

17) In condition 63:

- a) In the first sentence, delete the words "the SEPP 14 wetland" and insert instead the words "the environmental protection zones and buffers"; and
- b) After the first sentence, insert the following sentence "Staging Plans shall be submitted to the satisfaction of the Director-General, prior to the issue of a Construction Certificate for bulk earthworks within each relevant Precinct, showing the area of works to be undertaken and with the boundaries of adjoining

environmental protection zones and buffers being clearly delineated within each Precinct”.

18) In condition 99(2), after the words “approval within” delete the words “6 months” and insert instead the words “24 months”.

19) Delete condition 135(1)b

20) In condition 138(1), after the word “damage to” insert the word “public”.

21) Delete condition 142(1)(h).

APPENDIX C RECOMMENDED AMENDMENTS TO TERMS AND CONDITIONS OF APPROVAL

MP06_0318 MOD 3	Supported / Not supported	Recommendations
<i>Land subject of the approval</i> (Schedule 1)	Supported	Recommend that the closed roads be added to land description in Schedule 1.
<i>Lapsing of the Approval</i> (Term A5)	Supported	Recommend that the lapsing period be extended up to 31 December 2016.
<i>Time frames</i> (Term B4 & B6)	Not supported	Recommend the timing specified in Term B4 for submission of details for regeneration/revegetation and long term protection of the east/west wildlife corridor, and in B6 for the submission of a revised <i>Kings Forest Development Code</i> , be extended from 12 months of the modified approval, to 6 months from the date of determination of the application (No. 2012/2328) in relation to carrying out controlled activities on the site, made under sections 130(1) and 133 of the Commonwealth <i>Environment Protection and Biodiversity Conservation Act</i> .
<i>Timeframes</i> (Term B5)	Supported	Recommend extending the time for submission of council land dedication plan to 24 months.
<i>Preparation of Precinct specific Management Plans</i> (Term C2)	Supported in part	<p>The department does not support removing requirements for reference to an 'establishment period' in the management plans and inclusion of reference to 'agreed completion criteria'.</p> <p>The department, however, supports other proposed amendments and recommends the inclusion of an additional sentence in this condition, in accordance with the wording suggested by council (and as agreed by the proponent), with the amended condition reading as follows:</p> <p><i>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.</i></p> <p><i>It is not necessary for new plans to be prepared if an application relies on and does not affect a plan that was included with an earlier application relating to the same period.</i></p> <p><i>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.</i></p>
<i>Open Space - establishment and dedication</i>	Supported in part	<p>The department recommends the inclusion of the following sentences at the end of the condition:</p> <p><i>Unless otherwise approved by the Director-General, the</i></p>

(Term C15)		<p>first 4ha of active open space (sports fields) are to be embellished and dedicated to council with the release of the 750th lot or the release of a subdivision certificate for Precinct 4, whichever occurs first. The provision of sports fields and sport field embellishment must be to the satisfaction of council. Subsequent sports field embellishment and dedication is to occur at the rate of 4ha per 750 lots constructed (that is, prior to the construction of the 1750th lot, 2750th lot, and 3,750th lot). No further subdivision certificates will be released beyond these thresholds until each required sports field area is embellished and dedicated in accordance with this staging schedule.</p> <p>In this clause of term C15 a 'lot' means a residential lot identified in a registered plan of subdivision, and, for the avoidance of doubt, does not include a lot that is created for one or more of the following purposes:</p> <p>(a) to be dedicated or otherwise transferred to a public authority;</p> <p>(b) for any public utility undertaking (within the meaning of the Standard Instrument (Local Environmental Plans) Order 2006 as at the date of this approval);</p> <p>(c) to be association property within the meaning of the Community Land Development Act 1989; or</p> <p>(d) for open space, recreation, environmental conservation, drainage or riparian land management; or</p> <p>(e) a residue or master lot, which is intended to be further subdivided, by or on behalf of the proponent.</p>
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MP08_0194 MOD 1	Supported / Not Supported	
Land subject of the approval (Schedule 1)	Supported	Recommend that the closed roads be added to land description
New Definition of 'Residential Lot' (Schedule 1)	Not supported	The new definition is considered unnecessary and unwarranted based upon the revised amendments condition 31.
Statutory requirements (condition A9)	Not supported	<p>Recommend the addition of a note at the end of the condition, for clarification of the matters raised by the proponent, with the amended condition reading as follows:</p> <p><i>The Proponent shall ensure that all licences, permits and approvals are obtained and maintained as required throughout the life of the project. No condition of this approval removes the obligation of the Proponent to obtain, renew or comply with such licences, permits or approvals. The Proponent shall ensure that a copy of this approval and all relevant environmental approvals are available on the site at all times during the Project.</i></p> <p>Note: This condition does not override the provisions</p>

		of section 75U of the EP&A Act.
Road works and Section 94 contributions (condition A10)	Not supported	<p>The department does not support the proposed amendment to the condition but instead, recommends the addition of a note at the end of the condition, for clarification of the matters raised by the proponent, with the amended condition reading as follows:</p> <p><i>All road works associated with the proposal will be at no cost to council.</i></p> <p>Note: Contribution credits will apply for any works undertaken on the Tweed Coast Road which are included in the TRCP, Section 94 Plan No.4.</p>
Timeframes (conditions 3, 27 and 99)	Supported	Recommend amendments to conditions 3, 27 and 99, to extend timeframes up to 24 months
Timeframes (conditions 40, 41, 42, 43, 44, 45, 47, 48)	Not supported	Recommend extended timeframes, for meeting the requirements listed in the remaining conditions, up to 6 months of the date of determination of the application (No. 2012/2328) made under the provisions of the Commonwealth <i>Environment Protection and Biodiversity Conservation Act</i> .
Water and sewer (condition 31)	Supported.	<p>Recommend amendments to the condition based on the proponent's changes to the proposed wording of the condition, (following the proponent's consideration of council's submission). Recommend inclusion of clarification regarding lots which will require water and sewer services, so that the condition will read as follows:</p> <p><i>Reticulated water supply and outfall sewerage reticulation shall be provided to all lots all residential lots and all lots for private occupation, community facilities lots, sports fields, parks, play areas, other utility facilities (pump stations, etc.) but not including proposed environmental open space lots, within the project in accordance with council's Development Control Plan Part A5 - Subdivisions Manual, Councils Development Design and Construction Specifications (as in force at the date of this approval).</i></p>
Weed management (condition 42)	Not supported.	<p>Recommend that the condition be amended to delete the words "including Cudgen Nature Reserve" and insert instead the words "and ecological buffers, including a buffer area of 100m within Cudgen Nature Reserve", and recommend that the condition be amended to read as follows:</p> <p><i>The Weed Management Plans shall be amended to ensure that the control of weeds (including Slash Pine) within environmental protection zones, including the Cudgen Nature Reserve, and within ecological buffers including a buffer area within Cudgen Nature Reserve, which is to be determined to the satisfaction of the Director-General, upon advice from the Office of Environment & Heritage, should be undertaken utilising bush regeneration techniques including stem injection.</i></p>
SEPP 14 wetlands	Supported in part	Recommend amendments to the condition deleting reference to SEPP 14 wetlands and replacing this with

(condition 63)		<p>environmental protection zones and buffers.</p> <p>Recommend restricting the condition requirements to areas adjacent to or adjoining the relevant stage of the project, on the basis of further revisions to the condition to provide for staging plans, generally in accordance with the revisions provided by the proponent following a meeting on 27 March 2014 to discuss the modification requests.</p> <p>Recommend that the condition be amended to read as follows:</p> <p><i>Prior to the commencement of works for any stage of the project, the SEPP 14 wetland environmental protection zones and buffers and Cudgen Nature Reserve boundaries adjacent to or adjoining that stage must be clearly delineated on-site to prevent unauthorised access to these areas. Staging Plans shall be submitted to the satisfaction of the Director-General, prior to the issue of a Construction Certificate for bulk earthworks within each relevant Precinct, showing the area of works to be undertaken and with the boundaries of adjoining environmental protection zones and buffers being clearly delineated within each Precinct. Temporary signage should be erected to ensure that construction workers are aware of the need to avoid and protect these sensitive areas. Design of the temporary fence should allow movement of native fauna present in the area. Temporary fencing and signage should incorporate all Environment Protection Zones including any of the ecological buffers proposed for dedication as part of Cudgen Nature Reserve.</i></p>
Geotechnical certification (condition 135(1)b))	Supported	Recommend the deletion of condition 135(1)b.
Damage to property (condition 138(1))	Supported	<p>Recommend the condition be amended to read as follows:</p> <p><i>Any damage to public property (including pavement damage) is to be rectified to the satisfaction of the PCA prior to the issue of a Subdivision Certificate.</i></p>
Registration of easements/ Restrictions to Use/ Rights of Carriageway (condition 142(1)(h))	Supported	Recommend the deletion of condition 142(1)(h).
Typographical error (condition 25 – cycleways / footpaths)	Supported	Recommend amendment to correct an error in the condition.