

+ RESPONSE TO SUBMISSIONS REPORT

**KINGS FOREST – MODIFICATION OF CONCEPT PLAN APPROVAL NO. 06_0318 (MOD 4)
& PROJECT APPROVAL NO. 08_0194 (MOD 2)**

At Kings Forest

TABLE OF CONTENTS

1.0	INTRODUCTION	3
2.0	BACKGROUND	3
3.0	RESPONSE TO KEY ISSUES RAISED IN SUBMISSIONS	4
3.1	State Agencies and Tweed Shire Council	4
3.2	Public Submissions	23

ANNEXURES

ANNEXURE A	Draft Meeting Notes Dated 3 April 2014
ANNEXURE B	Extract from Legal Advice Provided by Gadens Lawyers Dated 14 October 2013 in Relation to Condition 50
ANNEXURE C	Proposed Koala Compensatory Habitat Area Staging Plan, Condition 45, Figure 1 – JWA Pty Ltd, 29 April 2014

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165
Town Planning & Development Consultants

RESPONSE TO SUBMISSIONS REPORT

KINGS FOREST MODIFICATION OF CONCEPT PLAN APPROVAL NO. 06_0318 (MOD 4) & MAJOR PROJECT APPROVAL NO. 08_0194 (MOD 2)

1.0 INTRODUCTION

Project 28 Pty Ltd has instructed Darryl Anderson Consulting Pty Ltd to prepare this Response to Submissions Report in relation to modification of the Kings Forest Stage 1 Project Approval and the Kings Forest Concept Plan. The Report identifies the key issues raised by State Agencies, Tweed Shire Council and members of the public and analyses the key issues and provides an appropriate response, including changes to the requested amended conditions, where appropriate and as agreed between the proponent and the Department of Planning and Infrastructure.

2.0 BACKGROUND

In January 2014, separate applications were lodged with the Department of Planning and Infrastructure pursuant to Section 75W of the Environmental Planning and Assessment Act, 1979 (as amended) to modify the Kings Forest Concept Plan Approval No. 06_0318 (MOD 4) and the Kings Forest Stage 1 Project Approval No. MP08_0194 (MOD 2).

Separate Modification Applications for minor “housekeeping” amendments to both approvals (MODs 3 and 1 respectively) were also lodged. As those applications were not advertised, no submissions were received requiring a Response to Submissions Report. However, Tweed Shire Council has raised some issues in relation to MODs 3 and 1 and accordingly those issues are addressed in this Report.

During the exhibition period in respect of MODs 2 and 4, a number of submissions were received by the Department of Planning and Infrastructure, including submissions from:

- Mr Ray Lawlor DOPI, advised by email dated 14 March 2014 that 47 public submissions were received including submissions from the following groups, copies of which were provided as they are representative of all submissions:
 - Northern Rivers Guardians;
 - Friends of the Koala;
 - Tweed Heads Environment Centre;
 - Caldera Environment Centre;
 - Fingal Head Community Association;
 - Final Head Coast Care;
 - Byrill Creek Landcare Group; and
 - Kingscliff Ratepayers and Progress Association
- Mr Ray Lawlor DOPI, further advised by email dated 14 March 2014 that submissions from the Office of Environment and Heritage, Roads and Maritime Services and Mineral Resources had been received. Copies were provided for review.
- Tweed Shire Council submission – received by email dated 24 March 2014.

Following a review by the proponent of the key issues raised in the submissions, a meeting was held between Officers of the Department of Planning and Infrastructure and representatives of the proponent on 27 March 2014. During the meeting, proposed amendments to various conditions were discussed and agreement to the majority of the changes to the conditions was reached. Further consideration of the remaining conditions by the proponent and the Department was also agreed to.

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

Subsequently, on 3 April 2014, Draft Meeting Notes were emailed to the Department incorporating the agreed changes to the conditions and the proponent's comments on the other conditions. A copy of the Draft Meeting Notes dated 3 April 2014 is attached at **Annexure A**.

The following sections of this Report comprise a summary of the key issues raised in the submissions and the agreed conditions and the proponent's comments on other conditions which were not agreed.

3.0 RESPONSE TO KEY ISSUES RAISED IN SUBMISSIONS

3.1 State Agencies and Tweed Shire Council

Roads and Maritime Services – 21 February 2014

Key Issues

No concerns – comments made regarding Concept Plan Condition C6 concerning future traffic assessment.

Comments:

No response required.

Department of Primary Industries Mineral Resources – 28 February 2014

Key Issues

No concerns.

Comments:

No response required.

Office of Environment and Heritage – 11 March 2014

Key Issues – MP08_0194 (MOD 2)

Issue

5.1 Definitions – Land to be Dedicated to Council.

The naming of the land to be dedicated to Council does not appear to be a significant matter. OEH recommends that the lands to be dedicated to Council be referred to as environmental conservation lands which is their intended purpose. Alternatively if the term environmental conservation land is not to be used, the land to be dedicated to Council could be referred to as future Council land.

Comments:

The OEH comments and recommendations are not agreed to. Adding further terms to the definitions is unnecessary and will simply add to the confusion.

For the reasons discussed in the report on Modification 2 (Section 5.1) "future Council land" is not appropriate as the land might not, in fact, be dedicated to Council. Also "environmental conservation lands" does not distinguish between the OEH land and potential Council land.

Agreed Outcome

Requested modified definition to be included in modified approval.

Issue

5.3 Definitions - Maintenance Period

OEH recommends the definition and wording is amended to take into account the intent of the conditions and definitions rather than deleting the definition altogether.

Comments:

The OEH recommendation is not agreed to. If the definition is to be retained it should quantify the maintenance period and should also be included in the relevant condition of the approval. Currently, the term does not appear to be used in Schedules 1 or 2 of the Instrument of Approval. Tweed Shire Council proposes to make minor amendments to and retain the definition. Council amendments are accepted. Consequential amendments to Conditions 39 and 49 are agreed to as proposed by TSC. Amendments to Condition A13 proposed by TSC are only agreed to in respect of "maintenance period".

Agreed Outcome

Revised definition of Maintenance Period proposed by TSC to be included in the modified approval. The revised definition is 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.

Issue

5.4 Definitions - Land to be Dedicated to OEH

This is not a significant concern to OEH in relation to the term used to identify the agreed dedication areas. The term environmental conservation lands may be better suited. OEH does not object to the change of term used but OEH disagrees with the suggestion that these lands have not been part of an offset. The OEH contends that the dedicated lands have been referred to as offset areas since negotiations and discussions started and their dedicated lands have specifically been used as an offset for freshwater wetland endangered ecological community, the Wallum Froglet and Sedge Frog, the Bush Stone Curlew and Scribbly Gum Forest offset for the Cobaki development. OEH recommends that a note is retained within the approval document that indicates that the dedicated lands are part of an offset for biodiversity impacts.

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

Comments:

The OEH comments and recommendation are not agreed to. See letter dated 17 March 2014 from Project 28 Pty Ltd to Monica Collins, OEH, Director Conservation and Regulation in relation to the issue of offsets. It remains Project 28 Pty Ltd's position that Leda's commitment to dedicate 150 hectares for addition to Cudgen Nature Reserve was not in any way an offset for prospective environmental impacts arising from the development.

Agreed Outcome

It was agreed that the land was not offered as an offset, but in the Department's original Assessment Report it was implicitly assessed as containing offsets.

It was agreed that a note would be included acknowledging the above but otherwise our requested amended condition is agreed to by the Department.

Issue

5.6 Condition A13 – Management and Maintenance of Environmental Land

The OEH contend that the trigger for maintenance and management of environmental land should be prior to the Construction Certificate for bulk earthworks and the proposed change to only undertake management of environmental lands adjacent to a Precinct that has commenced earthworks will have a negative environmental outcome and will delay appropriate management and has the potential to compound environmental problems. OEH recommends that as a minimum, some key management actions such as weed and pest control and revegetation should be undertaken in relation to all environmental lands as a priority.

Comments:

The OEH comments and recommendation are not agreed to for the reasons identified in Section 5.6 of the Report by Darryl Anderson Consulting Pty Ltd in relation to Modification 2. Obligations to comply with conditions are only triggered if and when the Project Approval is implemented and the project is commenced. Note that Conditions 37, 48 and 50 are proposed to be modified but are not directly comparable to Condition A13.

Agreed Outcome

Agreed that TSC's second amended condition is acceptable subject to it being change to read "prior to bulk earthworks". DOPI will further consider this amendment. The revised modified Condition A13 is in the following terms:

*"The Proponent is responsible for the management of all **Potential Council Land and Future OEH Land Offset Areas** for conservation purposes and the implementation of **all establishment period and maintenance period works** specified in all Environmental Management Plans from the **date on which bulk earthworks are commenced**, until such time that an agreement is reached with OEH and/or Tweed Shire Council regarding the dedication of that land."*

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

Issue

5.11 Condition 37 – Baseline Monitoring

The OEH recommends that the current condition is not changed and the trigger should be prior to the issue of a Construction Certificate on the basis that baseline monitoring needs to be commenced prior to the issue of a Construction Certificate for bulk earthworks.

Comments:

The OEH comments and recommendation are not agreed to for the reasons identified in the Report by Darryl Anderson Consulting Pty Ltd in relation to Modification 2.

Agreed Outcome

The Department were generally in agreement with the requested amended condition with the exception of the flora and fauna component. It was agreed that MG would seek further advice from JWA in relation to this element of the condition and a further amended condition would be forwarded to the Department.

JWA have advised that the fauna monitoring program included in the Management Plan requires monitoring to commence prior to clearing and construction for baseline data. JWA are therefore comfortable with the 3 months prior to commencement of bulk earthworks proposed in the requested amended condition.

Issue

5.12 Condition 45 – Koala Plan of Management

The OEH submit that the current condition only requires plantings in suitable locations and the change will result in biodiversity loss and delays in planting trees. The OEH recommend retain the condition.

Comments:

The OEH comments are not agreed to for the reasons identified in the Darryl Anderson Consulting Pty Ltd Report re MOD 2.

Agreed Outcome

Agreed – Applicant to prepare a Staging Plan and further amend condition to show plantings on a staged basis. The attached plan at **Annexure C** titled “Proposed Koala Compensatory Habitat Area Staging Plan, Condition 45, Figure 1, JWA Pty Ltd, 29 April 2014” shows the proposed staged planting arrangements. Based on this plan the Department is therefore requested to amend Condition 45(1) as follows:

45. The Koala Plan of Management shall be revised as follows:

- 1) A revised offset strategy for the loss of Koala food trees incorporating the following:
 - a. the restoration and planting of Koala food trees offsite (a 27ha area of land has been nominated by OEH and identified in Map 1. (attached)).
 - b. planting of Koala food trees in the new east-west corridor as required by Term B4 of the concept plan approval

-
- c. planting of Koala food trees in other suitable locations across the site **within each relevant precinct of the development in general accordance with the plan titled "Proposed Koala Compensatory Habitat Area Staging Plan, Condition 45, Figure 1, JWA Pty Ltd, 29 April 2014".**
 - d. Koala food tree plantings are to be minimised in areas that are identified as naturally regenerating."

Issue

5.15 Condition 50 – Bond for Environmental Restoration Works

The OEH submit that there is no compelling reason for the deletion of this condition and OEH recommends that the condition be retained on the basis that the bond is an effective method to ensure works are undertaken as conditioned.

Comments

OEH comments and recommendation are not agreed to. As indicated in Section 5.1 of the Report by Darryl Anderson Consulting Pty Ltd in relation to Modification 2, the condition is considered to be unreasonable and unlawful.

An extract from the legal advice provided by Gadens on 14 October 2013 in relation to Condition 50 is attached at **Annexure B**.

Issue

It is noted that the Darryl Anderson Consulting Report indicates that the condition does not provide for a refund of the bond.

Comments

In fact, Condition 50(b) provides that:

"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."

The comments in the Darryl Anderson Consulting Pty Ltd report were provided in the context of the legal advice from Gadens dated 14 October 2013 (Page 18) which is in the following terms:

"In this particular case, the condition does not envisage the automatic return of the bond merely because works have been completed. It is also necessary that acceptable arrangements be made for the long term ownership and management of the relevant lands. In our view, the required bond is actually a monetary contribution, if only because there is no clear basis on which you can be assured of its return."

In light of the above, the comments by the OEH are not agreed to.

Agreed Outcome

Agreed the Department would further consider the modification request. The proponent maintains that Condition 50 should be deleted.

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165
Town Planning & Development Consultants

Key Issues CP06_0318

Issue

Condition B5 – Dedication of Land to Tweed Shire Council

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 87 will continue to apply.

Comments

Amended B5 as proposed by Darryl Anderson Consulting not now relevant as the Council Dedication Land Plan was not amended and submitted with the Concept Plan MOD 4. Therefore agree with TSC subject to deletion of "consistent with Attachment B".

Agreed Outcome

Agreed – Delete requested modified condition. Retain existing condition subject to amendments proposed by TSC **but** excluding "consistent with Attachment B". The requested amended Condition B5 is as follows:

- 1) The Potential Council Land Plan With Work Areas 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.

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

-
- 2) The amended **Council Land Plan** shall be reviewed by Council and submitted to the Director-General for approval within **24** 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.

Issue

Condition C29 – Dedication of Land to Tweed Shire Council

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.*

Comments

Not agreed – the recommended condition includes reference to “land to be dedicated to Tweed Shire Council”.

Agreed Outcome

Requested modification agreed to.

Issue

Condition B8 – Director General as Moderator

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.

Comments

The intent of the condition is to allow the DG to resolve disputes between public authorities.

Agreed Outcome

The Department of Planning and Infrastructure does not support our requested amended condition.

Following further consideration of Gaden’s advice, the proponents retain the requested modified Condition B8.

Key Issues MP08_0194

Issue

Definitions

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.~~

Comments

Not agreed. The plan required by Condition B5 will be prepared and submitted at a later date.

Agreed Outcome

The proponent requests that the definition be amended as proposed in the Concept Plan MOD 4 Application.

Issue

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.

Agreed Outcome

Agreed subject to deletion of Director General and retain "approval authority".

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

Issue

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.

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.~~

Agreed Outcome

Agreed subject to deletion of Director General and retain "approval authority".

Issue

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.

Comments

Not agreed.

Agreed Outcome

Agreed that TSC's second amended condition is acceptable subject to it being change to read "prior to bulk earthworks". DOPI will further consider this amendment. The revised modified Condition A13 is in the following terms:

"The Proponent is responsible for the management of all Potential Council Land and Future OEH Land Offset Areas for conservation purposes and the implementation of all establishment period and maintenance period works specified in all Environmental Management Plans from the date on which bulk earthworks are commenced, until such time that an agreement is reached with OEH and/or Tweed Shire Council regarding the dedication of that land."

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

Issue

Condition 49 – Environmental Audit Reports

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.

Comments

Not agreed for the reasons identified in the Modification Report.

Agreed Outcome

It was agreed that the amended Tweed Shire Council Condition 48 was acceptable subject to deletion of Council's Condition 49(5).

Therefore the agreed amended Condition 49 is 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 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.

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

-
- 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.

Issue

Condition A15 – Director General as Moderator

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.

Comments

Not agreed.

Agreed Outcome

The Department of Planning and Infrastructure does not support our requested amended condition.

Following further consideration of Gaden's advice, the proponents retain the requested modified Condition.

Issue

Condition A13 – Management and Maintenance of Environmental Lands

The Proponent is responsible for the management of all ~~Potential Council Land and Future OEHLand 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 certificate for the project date of the Stage 1 project approval (08_0194)~~, until such time that an agreement is reached with OEHL and/or Tweed Shire Council regarding the dedication of that land.

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

Comments

Not agreed. See comments on Tweed Shire Council submission.

Agreed Outcome

Agreed that TSC's second amended condition is acceptable subject to it being change to read "prior to bulk earthworks". DOPI will further consider this amendment. The revised modified Condition A13 is in the following terms:

*"The Proponent is responsible for the management of all **Potential Council Land and Future OEH Land Offset Areas** for conservation purposes and the implementation of **all establishment period and maintenance period works** specified in all Environmental Management Plans from the **date on which bulk earthworks are commenced**, until such time that an agreement is reached with OEH and/or Tweed Shire Council regarding the dedication of that land."*

Issue

Condition 3 – Environmental Offset Areas

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 of 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:
 - 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

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

-
- 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.

Comments

Not agreed – as has been agreed by Heather Warton in relation to the Cobaki project, only boundaries adjacent to work areas have to be pegged.

Agreed Outcome

DOPI are generally in agreement with the requested amended condition but the Department prefers compliance prior to issue of a Construction Certificate rather than bulk earthworks. DAC to further consider in light of EPBC definition of commencement and also to include notification of the Department/TSC 2 days before commencement.

Following further consideration the following revised amended Condition 3 is proposed.

3. Prior to commencing any Bulk Earthworks in a Precinct, or as otherwise agreed between the Proponent and with the Director-General, the Proponent shall:
- a) engage a registered surveyor to prepare survey plan(s) and permanently mark the boundaries of the:
 - i) the contiguous area of Potential Council Land; and
 - ii) the contiguous area of Future OEH Land;immediately adjacent to the Precinct (unless the relevant contiguous area has already been so marked prior to the earlier commencement of Bulk Earthworks in another Precinct);
 - b) where relevant, submit amended plans of proposed subdivision to the Director-General for approval that show the relevant contiguous area of Potential Council Land and the relevant contiguous area of Future OEH Land;
 - c) ensure that the boundaries so marked remain marked at all times in a permanent manner that allows operating staff, the landowner and inspecting officers to clearly identify those boundaries;
 - d) submit for the Director-General's approval, a form of dealing(s) to be registered on the title to the relevant contiguous area of Potential Council Land and the relevant contiguous area of Future OEH Land that must:

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

-
- i. bind all future landowners;
 - ii. provide for the management of the **contiguous Potential Council Land and the contiguous Future OEH Land** for conservation purposes including the implementation of relevant Environmental Management Plans, in perpetuity;
 - iii. permit access to the **contiguous Potential Council Land and the contiguous Future OEH Land** by the Department, the OEH and Council at all times for the purpose of monitoring compliance with relevant covenants and the relevant Environmental Management Plans;
 - iv. provide for a release of any registered dealings in circumstances where all or part of the **contiguous Potential Council Land and the contiguous Future OEH Land** is transferred to a public authority; and
 - v. **provide that the registered dealings cease to have effect if all of the following occur:**
 - A) a consent authority or the Minister for Planning and Infrastructure makes a written determination to that effect; and
 - B) that determination is made in connection with the determination of an application or request to carry out development (or modify a consent or approval to carry out development) under the *Environmental Planning and Assessment Act 1979*; and
 - C) the particular circumstances nominated in that determination (such as the carrying out of development under the authority of a development consent or project application granted on determination of an application) arise.
 - e) **Where the relevant area of contiguous Potential Council Land and the relevant area of contiguous Future OEH Land referred to in condition 3(a) above are not subject to any amended plans of subdivision, the Proponent must within 1 month of the Director-General's approval of the dealing(s) referred to in condition 3(d), lodge for registration the dealing(s) on the relevant titles of the contiguous Potential Council Land and the contiguous Future OEH Land and provide to the Director-General evidence of such registration within 10 days of the dealing(s) being registered. The Proponent is not in breach of this condition if there is a failure by the Council or the OEH to execute the dealings.**
 - f) **Where Potential Council Land or the Future OEH Land is subject to any amended plans of subdivision, the Proponent must within 3 months of the latter 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 the future OEH Land to the Director-General evidence of such registration within 10 days of the dealing(s) being registered.**

For the purpose of this condition, commencement is taken to mean "any preparatory works required to be undertaken including clearing vegetation, the use of heavy duty equipment for the purpose of breaking ground for bulk earthworks, or infrastructure for the proposed project".

Issue

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

Recommendation

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

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

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.

Comments

Not agreed.

Agreed Outcome

Requested condition agreed to.

Issue

Condition 37 – Baseline Monitoring

Recommendation. Retain Condition 37 as is.

Comments

Not agreed.

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

Agreed Outcome

The Department were generally in agreement with the requested amended condition with the exception of the flora and fauna component. It was agreed that MG would seek further advice from JWA in relation to this element of the condition and a further amended condition would be forwarded to the Department.

JWA have advised that the fauna monitoring program included in the Management Plan requires monitoring to commence prior to clearing and construction for baseline data. JWA are therefore comfortable with the 3 months prior to commencement of bulk earthworks proposed in our requested amended condition.

Issue

Condition 45 – Koala Plan of Management

Recommendation. *Retain Condition 45 as is.*

Comments

Not agreed.

Agreed Outcome

See comments at Section 3.1 in response to OEH submission.

Issue

Condition 48 – Summary of Management Plans

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

Comments

Not agreed.

Agreed Outcome

Requested modification agreed to. Note: the Department has moved this condition to MOD 1.

Issue

Condition 49 – Environmental Audit Reports

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 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.

Comments

Conditions 49 (1) to (4) agreed. Condition 49(5) not agreed for the reasons identified in the Modification Report.

Agreed Outcome

It was agreed that the amended Tweed Shire Council Condition 48 was acceptable subject to deletion of Council's Condition 49(5).

Therefore the agreed amended Condition 49 is as follows:

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

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 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 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.

Issue

Condition 50 – Bond for Environmental Restoration Works

Recommendation. Retain Conditions 50 as is.

Comments

Not agreed.

Agreed Outcome

Agreed the Department would further consider the modification request. The proponent maintains that Condition 50 should be deleted.

Issue

Condition 82 – Dust Mitigation

Recommendation

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

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

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.

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.

Comments

Not agreed.

Agreed Outcome

Agreed the Department will email to DAC suggested changes to our condition.

Issue

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

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.

Comments

Not agreed.

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

In accordance with contemporary practice, rather than requiring the infrastructure to be operational prior to the issue of Subdivision Certificate, the amended condition simply requires satisfactory arrangements to be made with the relevant Authority prior to the issue of a Subdivision Certificate for each stage of the project. This is required because there are likely to be delays with the rollout of the NBN which could substantially delay the issuing of Subdivision Certificates and have significant cost implications for developers. The amended condition is consistent with Condition E26 of the Director General's Environmental Assessment Report and recommended conditions in respect of MP09_0166 being the Altitude Aspire subdivision at Terranora. Condition E26 is in the following terms:

"The production of written evidence from the local telecommunications supply authority certifying that satisfactory arrangements have been made for the provision of underground telephone supply at the front boundary of all allotments being created, must be submitted prior to issue of a Subdivision Certificate for each stage of the project. In accordance with the Federal Government's National Broadband Network (NBN) initiatives, the subdivision is required to provide a pit and conduit network to allow for the installation of fibre to the home (FTTH) broadband services."

Agreed Outcome

Requested modification agreed to.

3.2 Public Submissions

The public submissions received raise essentially the same issues, many of which have also been raised by Tweed Shire Council and State Agencies. Therefore, rather than assessing each public submission, the key common issues raised in the submissions are addressed in this Section of this Report.

Issue

5.1 Definitions – Land to be Dedicated to Tweed Shire Council

The submission raises similar issues to OEH and contends that the existing definition should be retained.

Comments:

Not agreed, there are no conditions in the Concept Plan or Major Project Approval requiring land to be dedicated to Tweed Shire Council. In fact, the note to Concept Plan Approval Condition B5 states that:

"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."

Term B7 requires the proponent to be responsible for the management of all lands 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 until such time that agreement is reached with OEH and/or Tweed Shire Council regarding the dedication of the land.

Also, see comments above in relation to OEH issues.

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

Agreed Outcome

Requested modified definition to be included in modified approval.

Issue

5.2 & 5.3 Establishment Period and Maintenance Period

In summary, the submitter contends that deletion of the reference to the maintenance period would be negating the responsibility of the developer.

Comments:

See comments re OEH submission.

Agreed Outcome

Agreed subject to deletion of Director General and retain "approval authority".

Issue

5.4 Dedication of land to OEH

This submission raises similar issues as OEH.

Comments:

See comments re OEH submission.

Agreed Outcome

It was agreed that the land was not offered as an offset, but in the Department's original Assessment Report it was implicitly assessed as containing offsets.

It was agreed that a note would be included acknowledging the above but otherwise our requested amended condition is agreed to by the Department.

Issue

5.6 Condition A13 – Management and Maintenance of Environmental Lands

In summary this submission questions why the environmental management cannot begin as soon as relevant plans are prepared.

Comments:

See comments re OEH submission.

Agreed Outcome

Agreed that TSC's second amended condition is acceptable subject to it being change to read "prior to bulk earthworks". DOPI will further consider this amendment. The revised modified Condition A13 is in the following terms:

"The Proponent is responsible for the management of all *Potential Council Land and Future OEH Land Offset Areas* for conservation purposes and the implementation of *all establishment period and maintenance period works* specified in all Environmental Management Plans from the *date on which bulk earthworks are commenced*, until such time that an agreement is reached with OEH and/or Tweed Shire Council regarding the dedication of that land."

Issue

5.11 Condition 37 – Baseline Monitoring

Delay in commencing monitoring presupposes a Construction Certificate will be issued.

Comments:

The current condition simply uses the issue of a Construction Certificate as a hold point, but it assumes that bulk earthworks will in fact commence immediately following the issue of a Construction Certificate. This is not the case, as commencing bulk earthworks may be delayed for months or years, in which case the baseline monitoring will be dated and of little relevance. In addition, the issue of a Construction Certificate is not a matter of a merit assessment and dependant on the outcomes of the baseline monitoring. See also comments re OEH submission. The OEH have not objected to the proposed modification of this condition.

Agreed Outcome

The Department were generally in agreement with the requested amended condition with the exception of the flora and fauna component. It was agreed that MG would seek further advice from JWA in relation to this element of the condition and a further amended condition would be forwarded to the Department.

JWA have advised that the fauna monitoring program included in the Management Plan requires monitoring to commence prior to clearing and construction for baseline data. JWA are therefore comfortable with the 3 months prior to commencement of bulk earthworks proposed in the requested amended condition.

Issue

5.12 Condition 45 – Koala Plan of Management

Postponing tree planting to coincide with earthworks is irresponsible.

Comments:

See comments re OEH submission.

Agreed Outcome

See comments at Section 3.1 in response to OEH submission.

Issue

5.14 Condition 49 – Environmental Audit Reports

Proposed amendment lessens the incentive to comply with the Environmental Management Plans.

Comments:

This submission is not agreed with. The amended condition, which has been proposed by the Department of Planning and Infrastructure, is not objected to by the OEH.

Agreed Outcome

It was agreed that the amended Tweed Shire Council Condition 48 was acceptable subject to deletion of Council's Condition 49(5).

Therefore the agreed amended Condition 49 is 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 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 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.

Issue

5.15 Condition 50 – Bond for Environmental Restoration Works

This condition does include a refund mechanism and the condition should be retained.

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

Comments:

See comments re OEH submission.

Agreed Outcome

Agreed the Department would further consider the modification request. The proponent maintains that Condition 50 should be deleted.

Key Issues – MP08_0194 (MOD 2)

Issue

5.1 Definitions – Land to be Dedicated to Council.

Raised similar issues to other submissions, in particular Friends of the Koala submission.

Comments:

See comments in relation to Friends of the Koala Inc. and OEH.

Agreed Outcome

Requested modification agreed to.

Issue

5.12 Condition 45 – Koala Plan of Management

This submission raises similar issues as the Friends of the Koala Inc. submission.

Comments:

See comments in relation to Friends of the Koala.

Agreed Outcome

See comments at Section 3.1 in response to OEH submission.

Key Issues – CP06_0318 (MOD 4)

Issue

Definitions

Similar issues raised to other submissions, in particular Friends of the Koala submission.

Comments:

See comments in relation to Friends of the Koala.

Agreed Outcome

See comments re OEH and TSC.

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165
Town Planning & Development Consultants

Issue

Section 5.3 Condition A1(2) – Project in Accordance with Plans

Similar issues raised to other submissions, in particular Friends of the Koala submission.

Comments:

See comments in relation to Friends of the Koala.

Agreed Outcome

Requested modification agreed to.

Issue

Condition B5 – Dedication of Land to Tweed Shire Council

Condition B7 – Implementation of Environmental Management Plans

Condition B8 – Director General as Moderator

Condition C3 – Dedication of Land to OEH

Condition C39 – Dedication of Land to Tweed Shire Council

The applicants submit that the proposed modifications will delay environmental protection designed by highly trained experts in various fields.

Further, the submitters contends that the proponent proposes to take away the certainty that land must be dedicated to Council and make the dedication subject to reaching appropriate agreement. The proposed changes to the definition of future OEH land seem to indicate that the land is not an essential condition for development approval but something that was offered voluntarily. Further, the submitter contends that the current Concept Plan Condition B8 is supported and there is community concern that if there is no VPA the transferral of land will not be dedicated to council or OEH in a timely manner.

Comments:

It is noted that the Office of Environment and Heritage has raised no issues in relation to these conditions. In summary, the issues raised by the submitter are not considered to be well founded for the reasons identified in the Modification Report in respect of CP06_0318 MOD 4.

Agreed Outcome

Condition B5

Agreed – Delete requested modified condition. Retain existing condition subject to amendments proposed by TSC **but** excluding “consistent with Attachment B”. The requested amended Condition B5 is as follows:

- 1) The **Potential Council Land Plan With Work Areas** 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.

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

-
- 2) The amended *Council Land Plan* shall be reviewed by Council and submitted to the Director-General for approval within 24 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.

Condition B7

Requested modification agreed to.

Condition B8

The Department of Planning and Infrastructure does not support our requested amended condition.

Following further consideration of Gaden's advice, the proponents retain the requested modified Condition B8.

Condition C3

It was agreed that the land was not offered as an offset, but in the Department's original Assessment Report it was implicitly assessed as containing offsets.

It was agreed that a note would be included acknowledging the above but otherwise our requested amended condition is agreed to by the Department.

Condition C29

Not agreed – the recommended condition includes reference to "land to be dedicated to Tweed Shire Council".

Issue

Affordable housing appears to be too far away from the shopping centre and school (700m). Precinct 4 would be more suitable.

Comments:

Project 28 Pty Ltd does not agree with this submission.

Precinct 7 was approved as the potential affordable housing location by way of CP06_0318 MOD 2 on 11 August 2013. The current CP06_0318 MOD 4 does **not** propose any change in location. Minor amendments to Condition C30 are proposed to include reference to NRAS funding.

Agreed Outcome

Requested modification agreed to subject to addition of the words after "funding" "or equivalent".

Issue

The revised Concept Plan includes a new northwest exit to Melaleuca Road, McCollums Road, Duranbah Road. is Project 28 Pty Ltd funding the upgrade of this link?

Comments:

This link was included in the revised Concept Plan at the request of the RMS (see Section 3.4.7 of Preferred Project Report, Darryl Anderson Consulting Pty Ltd, October 2012). It is conceptual only and is subject to any future development approval in respect of Precincts 8/9 at which time upgrading of the existing road network will be appropriately addressed.

Agreed Outcome

No action required.

Key Issues

Siting of the electricity substation in the revised Concept Plan on the corner of Depot Road and Secret Lane will result in radiation and visual issues and devaluation of the submitter's property.

Comments:

The revised Concept Plan at Annexure C of CP MOD 4 shows a proposed zone substation consistent with the current approved CP (MOD 2, 11 August 2013) copy **attached**. MOD 4 does not propose to change the location or build the substation. Construction of the substation will be the subject of any necessary application and approval required under relevant legislation at which time buffering, screening and perceived radiation issues will be addressed.

Agreed Outcome

No action required.

Issue

Section 5.8 Condition 1 – Subdivision of Kings Forest

The developer states that they do not want to subdivide land prior to earthworks. How can they provide infrastructure to each lot when there has been no subdivision delineating the lots?

Comments:

The submitter misunderstands the effect of the current condition and the purpose of the modification.

This is explained in detail in Section 5.8 of the Darryl Anderson Consulting Report in relation to MOD 2. In summary, the condition cannot be complied with because bulk earthworks are required and infrastructure must be provided before a formal Plan of Subdivision can be released by Council and registered in the Land Titles Office.

Agreed Outcome

Requested modification agreed to.

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

Issue

Section 5.9 Condition 3 – Environmental Offset Areas

Comments:

See comments regarding OEH submission.

Agreed Outcome

DOPI are generally in agreement with the requested amended condition but the Department prefers compliance prior to issue of a Construction Certificate rather than bulk earthworks. DAC to further consider in light of EPBC definition of commencement and also to include notification of the Department/TSC 2 days before commencement – Note: DA to get copy of definition of commencement from MG.

Following further consideration the following revised amended Condition 3 is proposed.

3. Prior to commencing any Bulk Earthworks in a Precinct, or as otherwise agreed between the Proponent and with the Director-General, the Proponent shall:
 - a) engage a registered surveyor to prepare survey plan(s) and permanently mark the boundaries of the:
 - i) the contiguous area of Potential Council Land; and
 - ii) the contiguous area of Future OEH Land;immediately adjacent to the Precinct (unless the relevant contiguous area has already been so marked prior to the earlier commencement of Bulk Earthworks in another Precinct);
 - b) where relevant, submit amended plans of proposed subdivision to the Director-General for approval that show the relevant contiguous area of Potential Council Land and the relevant contiguous area of Future OEH Land;
 - c) ensure that the boundaries so marked remain marked at all times in a permanent manner that allows operating staff, the landowner and inspecting officers to clearly identify those boundaries;
 - d) submit for the Director-General's approval, a form of dealing(s) to be registered on the title to the relevant contiguous area of Potential Council Land and the relevant contiguous area of Future OEH Land that must:
 - i. bind all future landowners;
 - ii. provide for the management of the contiguous Potential Council Land and the contiguous Future OEH Land for conservation purposes including the implementation of relevant Environmental Management Plans, in perpetuity;
 - iii. permit access to the contiguous Potential Council Land and the contiguous Future OEH Land by the Department, the OEH and Council at all times for the purpose of monitoring compliance with relevant covenants and the relevant Environmental Management Plans;
 - iv. provide for a release of any registered dealings in circumstances where all or part of the contiguous Potential Council Land and the contiguous Future OEH Land is transferred to a public authority; and
 - v. provide that the registered dealings cease to have effect if all of the following occur:
 - A) a consent authority or the Minister for Planning and Infrastructure makes a written determination to that effect; and

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

-
- B) that determination is made in connection with the determination of an application or request to carry out development (or modify a consent or approval to carry out development) under the *Environmental Planning and Assessment Act 1979*; and
- C) the particular circumstances nominated in that determination (such as the carrying out of development under the authority of a development consent or project application granted on determination of an application) arise.
- e) Where the relevant area of contiguous Potential Council Land and the relevant area of contiguous Future OEH Land referred to in condition 3(a) above are not subject to any amended plans of subdivision, the Proponent must within 1 month of the Director-General's approval of the dealing(s) referred to in condition 3(d), lodge for registration the dealing(s) on the relevant titles of the **contiguous Potential Council Land and the contiguous Future OEH Land** and provide to the Director-General evidence of such registration within 10 days of the dealing(s) being registered. **The Proponent is not in breach of this condition if there is a failure by the Council or the OEH to execute the dealings.**
- f) Where **Potential Council Land** or the **Future OEH Land** is subject to any amended plans of subdivision, the Proponent must within 3 months of the latter 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 the future OEH Land** to the Director-General evidence of such registration within 10 days of the dealing(s) being registered.

For the purpose of this condition, commencement is taken to mean "any preparatory works required to be undertaken including clearing vegetation, the use of heavy duty equipment for the purpose of breaking ground for bulk earthworks, or infrastructure for the proposed project".

Issue

Section 5.13 Condition 48 – Summary of Management Plans

The submitter contends that while the application requests the Summary of Management Plans should be revised prior to the issue of Construction Certificate, they fail to give a timeframe.

Comments:

The submitter misunderstands the existing condition and the proposed condition. The proposed condition does, in fact, include a timeframe (ie. prior to the issue of any Construction Certificate). This is consistent with the timeframes proposed in respect of other conditions and, for the reasons discussed in the Darryl Anderson Consulting Report in respect of MOD 2, it is considered to be appropriate.

Agreed Outcome

Requested modification agreed to. Note: the Department have moved this condition to MOD 1.

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

Issue**Section 5.16 Condition 82 – Dust Mitigation**

Rather than follow the PAC requirements the developer wishes to monitor themselves using their own dust mitigation measures. It is laughable that they would actually stop work if there was too much visible dust in lieu of taking measures outlined by the Department. Considering they are moving 1million m³ of earth, if they were to stop work every time there was visible dust it would take approximately 100 years to complete earthworks.

Comments:

The submitter misunderstands the effect of the current condition and the intent of the proposed condition. The proposed condition does not require works to stop if there is too much visible dust. Rather, it provides for a practicable standard which requires, as an objective, preventing visible emissions of dust from the site and, if they do occur, appropriate measures are to be taken to mitigate them.

This is considered to be a far more practical and reasonable condition than the onerous requirements contained in current Condition 82. It is noted that neither to OEH or the EPA have objected to the proposed amendment to Condition 82.

Agreed Outcome

Agreed the Department will email to DAC suggested changes to our condition.

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

The submitter states that "The developer once again finds the telecommunications infrastructure requirement onerous and unreasonable." The submission goes on to present lengthy but irrelevant arguments in support of the submitter's contention that the condition should be retained without modification.

Comments:

The submitter misunderstands the intent of the modification. The modification does not change the developer's obligations to provide telecommunications infrastructure to the satisfaction of the relevant Federal Authority. In accordance with contemporary practice, rather than requiring the infrastructure to be operational prior to the issue of Subdivision Certificate, it simply requires satisfactory arrangements to be made with the relevant Authority prior to the issue of a Subdivision Certificate for each stage of the project. This is required because there could be delays with the rollout of the NBN which could substantially delay the issuing of Subdivision Certificates and have significant cost implications for developers. See further comments in relation to Tweed Shire Council submission.

Agreed Outcome

Requested modification agreed to.

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

Issue

Conditions B5 and Condition C29 – Dedication of Land to Tweed Shire Council

It is the submitter's understanding that the developer identified these areas to be dedicated as a measure of good will. This was accepted as a definite by myself and no doubt many others with concern for the environmental sensitivities of the land. The submitter considers that this would be a major watering down that would mean the land will never be dedicated and future pressure to develop these areas could eventuate.

Comments:

As noted above, there is nothing in the current Concept Plan Approval that unconditionally requires the land to be dedicated.

Agreed Outcome

Agreed – Delete requested modified condition. Retain existing condition subject to amendments proposed by TSC **but** excluding "consistent with Attachment B". The requested amended Condition B5 is as follows:

- 1) The **Potential Council Land Plan With Work Areas** 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 Land Plan** shall be reviewed by Council and submitted to the Director-General for approval within **24** 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.

Condition C29

Requested modification agreed to.

Issue

Condition A1(2) – Project in accordance with Plans

The submitter objects to Condition A1(2) on the grounds that the amendment is part of a bundle that is an attempt to give the proponent the power to withdraw the part of the offer of mitigation in the application that was the proposed dedication of land to Council and perhaps the OEH.

Comments:

As indicated in the Modification Application, plans called up by Condition A1(2) inadvertently contain reference to environmental protection area to be dedicated to Council or NPWS. The amended plan references clarify the anomaly and achieve consistency with Conditions B5, C3 and C29, as proposed to be amended.

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

Agreed Outcome

Requested modification agreed to.

Issue

Conditions B7 and C3

Key Issue

The submitter objects to the amendment of the terms in those conditions for the reasons identified above in relation to the amendment definitions.

Comments:

See response to issues raised above in relation to amended definitions.

Agreed Outcome

Requested modifications agreed to.

Issue

Condition A15 – Director General as Moderator

Key Issue

The submitter objects to the proposed amendments for the same reasons that apply to the identical amendments to the Concept Approval.

Comments:

See response in relation to the Concept Plan amendments.

Agreed Outcome

The Department of Planning and Infrastructure does not support our requested amended condition.

Following further consideration of Gaden's advice, the proponents retain the requested modified Condition.

Issue

Condition 3 – Environmental Offset Areas

Key Issue

The submitter objects to the proposed amendments on the grounds that the alternative scheme proposed will create a number of unacceptable uncertainties, particularly in regard to the provisions for the land to be dedicated to Council.

The objector further submits that the material on display does not include amendments to Paragraph 3(f) of the Condition in a manner consistent with the proposed changes to the definitions of land to be dedicated to Council in the future and offset area.

Comments:

The Office of Environment and Heritage has not raised any issues with this condition. For the reasons discussed in the Modification Report (MOD 2), it is submitted that the existing condition is unreasonable and onerous and the proposed condition achieves the objectives of the original condition, but is also more flexible and performance based.

It is acknowledged that Condition 3(f) inadvertently does not include the amended terms referring to Council land and the offset areas. The Department is therefore requested to amend Condition 3(f) as follows:

- f) Where **potential Council land or future OEH land** 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.

Agreed Outcome

DOPI are generally in agreement with the requested amended condition but the Department prefers compliance prior to issue of a Construction Certificate rather than bulk earthworks. DAC to further consider in light of EPBC definition of commencement and also to include notification of the Department/TSC 2 days before commencement.

Following further consideration the following revised amended Condition 3 is proposed.

3. **Prior to commencing any Bulk Earthworks in a Precinct, or as otherwise agreed between the Proponent and with the Director-General**, the Proponent shall:
- a) engage a registered surveyor to prepare survey plan(s) and permanently mark the boundaries of the:
 - i) **the contiguous area of Potential Council Land; and**
 - ii) **the contiguous area of Future OEH Land;**immediately adjacent to the Precinct (unless the relevant contiguous area has already been so marked prior to the earlier commencement of Bulk Earthworks in another Precinct);
 - b) where relevant, submit amended plans of proposed subdivision to the Director-General for approval that show the **relevant contiguous area of Potential Council Land and the relevant contiguous area of Future OEH Land;**
 - c) **ensure that the boundaries so marked remain marked at all times in a permanent manner that allows operating staff, the landowner and inspecting officers to clearly identify those boundaries;**
 - d) submit for the Director-General's approval, a form of dealing(s) to be registered on the title to the relevant contiguous area of Potential Council Land and the relevant contiguous area of Future OEH Land that must:
 - i. bind all future landowners;
 - ii. provide for the management of the **contiguous Potential Council Land and the contiguous Future OEH Land** for conservation purposes including the implementation of relevant Environmental Management Plans, in perpetuity;

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

-
- iii. permit access to the **contiguous Potential Council Land and the contiguous Future OEH Land** by the Department, the OEH and Council at all times for the purpose of monitoring compliance with relevant covenants and the relevant Environmental Management Plans;
 - iv. provide for a release of any registered dealings in circumstances where all or part of the **contiguous Potential Council Land and the contiguous Future OEH Land** is transferred to a public authority; and
 - v. **provide that the registered dealings cease to have effect if all of the following occur:**
 - A) a consent authority or the Minister for Planning and Infrastructure makes a written determination to that effect; and
 - B) that determination is made in connection with the determination of an application or request to carry out development (or modify a consent or approval to carry out development) under the *Environmental Planning and Assessment Act 1979*; and
 - C) the particular circumstances nominated in that determination (such as the carrying out of development under the authority of a development consent or project application granted on determination of an application) arise.
 - e) Where the relevant area of contiguous Potential Council Land and the relevant area of contiguous Future OEH Land referred to in condition 3(a) above are not subject to any amended plans of subdivision, the Proponent must within 1 month of the Director-General's approval of the dealing(s) referred to in condition 3(d), lodge for registration the dealing(s) on the relevant titles of the **contiguous Potential Council Land and the contiguous Future OEH Land** and provide to the Director-General evidence of such registration within 10 days of the dealing(s) being registered. **The Proponent is not in breach of this condition if there is a failure by the Council or the OEH to execute the dealings.**
 - f) Where **Potential Council Land** or the **Future OEH Land** is subject to any amended plans of subdivision, the Proponent must within 3 months of the latter 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 the future OEH Land** to the Director-General evidence of such registration within 10 days of the dealing(s) being registered.
For the purpose of this condition, commencement is taken to mean "any preparatory works required to be undertaken including clearing vegetation, the use of heavy duty equipment for the purpose of breaking ground for bulk earthworks, or infrastructure for the proposed project".

Condition 149 – Dedication of Land to OEH

Key Issue

The submitter objects to the proposed amendment to the description of land for the reasons set out previously.

Comments:

See response to proposed changes in relation to the Concept Plan.

Agreed Outcome

Requested modifications agreed to.

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants



ANNEXURE A Draft Meeting Notes Dated 3 April 2014

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

Response to Submissions Report
Project No: KFOR 11/108 Pt 8 – April 2014

CP 06_0318 (MOD 4) &
MP 08_0194 (MOD 2)

DRAFT MEETING NOTES

KINGS FOREST CONCEPT PLAN MODIFICATION APPLICATIONS 3 & 4 AND STAGE 1 PROJECT APPLICATION MODIFICATION APPLICATIONS 1 & 2

DATE: 27 March 2014

VENUE: DOPI Offices Sydney

PRESENT: Sally Munk, Ray Lawlor, Chris Ritchie, Robert Ell, Michael Geale, Reg Van Rij, Darryl Anderson

MODIFICATION OF CONCEPT PLAN APPROVAL NO. 06_0318 MOD 3

Section/Condition	Comment
Schedule 1, Part A Table Addition of lands to property description	Requested modification agreed to.
A5 – Lapsing of Approval	Requested modification agreed to.
B4 – East/West Wildlife Corridor	Agreed to change the reference to 24 months to 6 months after the date on which the EPBC Act Approval is issued or as otherwise agreed by the Director General.
B5 – Dedication of Land to Tweed Shire Council	Requested modification agreed to.
B6 – Kings Forest Development Code	Agreed to change the reference to 24 months to 6 months after the date on which the EPBC Act Approval is issued or as otherwise agreed by the Director General.
C2 – Management Plans	<p>Requested modification agreed to subject to the inclusion of the words, after on “and does not affect”.</p> <p>Therefore the amended condition C2 would be 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 maintenance periods and measurable performance and agreed completion 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 a new plan 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 precinct.</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>

Section/Condition	Comment
	<p><i>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."</i></p> <p>This amendment to the condition would be consistent with the submission made by Tweed Shire Council and agreed to by the applicant (email to Ray Lawlor 18 February 2014).</p>
C15 – Open Space	Requested modification agreed to.

MODIFICATION OF CONCEPT PLAN APPROVAL NO. 06_0318 MOD 4

Section/Condition	Comment
Definitions	
5.1 – Land proposed to be dedicated to the Office of Environment and Heritage	<p>It was agreed that the land was not offered as an offset, but in the Department's original Assessment Report it was implicitly assessed as containing offsets.</p> <p>It was agreed that a note would be included acknowledging the above but otherwise our requested amended condition is agreed to by the Department.</p> <p>DAC to check the final wording of the proposed note.</p>
5.2 – Land proposed to be dedicated to Tweed Shire Council	Requested modification agreed to.
5.3 – Condition A2	Requested modification agreed to.
B5 – Dedication of Land to Tweed Shire Council	<p>Agreed – Delete requested modified condition. Retain existing condition subject to amendments proposed by TSC but excluding "consistent with Attachment B". The requested amended Condition B5 is as follows:</p> <ol style="list-style-type: none"> 1) The <i>Potential Council Land Plan With Work Areas</i> 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 <i>Council Land Plan</i> shall be reviewed by Council and submitted to the Director-General for approval within 24 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.
B7 – Implementation of Environmental Management Plans	Requested modification agreed to.
5.4 – Condition B8	<p>The Department of Planning and Infrastructure does not support our requested amended condition.</p> <p>Following further consideration of Gaden's advice, the proponents retain the requested modified Condition B8.</p>
C3 – Dedication of Land to OEH	Requested modification agreed to.
C29 – Dedication of Land to TSC	Requested modification agreed to.

Section/Condition	Comment
C30 – Affordable Housing	Requested modification agreed to subject to addition of the words after “funding” “or equivalent”.

MODIFICATION OF MAJOR PROJECT APPROVAL NO. 08_0194 MOD 1

Section/Condition	Comment
Schedule 1 – Property Description	Requested modification agreed to.
Definitions	It was agreed to delete the definition of “residential lot” as it is no longer relevant.
A9 – Statutory Requirements	It was agreed that our requested amendment will be included as a note to the condition.
A10 – Road Works	It was agreed that our addition relating to contribution credits will be included as a note to the condition.
3 – Environmental Offset Areas	Agreed to change the reference to 3 months to 6 months after the date on which the EPBC Act Approval is issued or as otherwise agreed by the Director General.
25 – Cycleways/Footpaths	Requested modification agreed to.
27 – Old Bogangar Road Access	Requested modification agreed to.
31 – Water and Sewer	<p>It was agreed that the requested modified condition was acceptable subject to addition of the words after “lots” <i>“and all lots for private occupation or for open space purposes, sewer pump stations where water supply and sewerage will be required.”</i></p> <p>The amended requested modified Condition 31 is therefore as follows:</p> <p><i>“1) Reticulated water supply and outfall sewerage reticulation shall be provided to all residential lots, all lots for private occupation, all lots for casual and active open space purposes and sewer pump station lots where water supply and sewerage will be required 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>
40 – Vegetation Management Plans	Agreed to change the reference to 24 months to 6 months after the date on which the EPBC Act Approval is issued or as otherwise agreed by the Director General.
41 – Buffer Management Plans	Agreed to change the reference to 24 months to 6 months after the date on which the EPBC Act Approval is issued or as otherwise agreed by the Director General.
42(1) – Weed Management Plans	Agreed that Reg Van Rij would investigate and further advise re the extent of weed management required into ecological buffers – DOPI suggested 100m whereas RVR had previously agreed with OEH that it would only be 20m.
42(2) – Weed Management Plans	Agreed to change the reference to 24 months to 6 months after the date on which the EPBC Act Approval is issued or as otherwise agreed by the Director General.

Section/Condition	Comment
43 – Threatened Species Management Plans	Agreed to change the reference to 24 months to 6 months after the date on which the EPBC Act Approval is issued or as otherwise agreed by the Director General.
44 – Feral Animal Management Plan	Agreed to change the reference to 24 months to 6 months after the date on which the EPBC Act Approval is issued or as otherwise agreed by the Director General.
45 – Koala Plan of Management	Agreed to change the reference to 24 months to 6 months after the date on which the EPBC Act Approval is issued or as otherwise agreed by the Director General.
47 – Flora and Fauna Monitoring Report	Agreed to change the reference to 24 months to 6 months after the date on which the EPBC Act Approval is issued or as otherwise agreed by the Director General.
63 – SEPP14 Wetlands	<p>Agreed that Project 28 Pty Ltd would respond to the Department with adjustments to the requested amended condition to require a Staging Plan to be submitted prior to the issue of a Construction Certificate.</p> <p>The requested amended condition is as follows: <i>“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. Temporary signage should be erected to ensure that construction workers are aware of the need to avoid and protect these sensitive areas and Staging Plan showing the area of works to be undertaken and the adjoining SEPP14 wetland boundaries to be clearly delineated within each Precinct shall be submitted to the Department of Planning and Infrastructure prior to the issue of a Construction Certificate for bulk earthworks within each relevant Precinct. 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>
99 – Amendments to Design of Rural Supplies Building	Requested modification agreed to.
135(1)(b) – Geotechnical Certification	Requested modification agreed to.
138 – Property Damage	Requested modification agreed to.
142(1)(h) – Registration of Easements, Restrictions of Use, Rights of Carriageway	Requested modification agreed to.

MODIFICATION OF MAJOR PROJECT APPROVAL NO. 08_0194 MOD 2

Section/Condition	Comment
5.1 – Definitions of Land to be Dedicated to Council and Council Dedicated Land Plan	Requested modification agreed to.
5.2 – Establishment Period	Requested modification agreed to.
5.3 – Maintenance Period	Requested modification agreed to (see TSC comments).
5.4 – Land to be Dedicated to OEH	Requested modification agreed to.
5.5 – Condition A1 (2) – Bulk Earthworks and Civil Works	Requested modification agreed to.
5.6 – A13 – Management and Maintenance of Environmental Lands	<p>Agreed that TSC's second amended condition is acceptable subject to it being change to read "prior to bulk earthworks". DOPI will further consider this amendment. The revised modified Condition A13 is in the following terms:</p> <p><i>"The Proponent is responsible for the management of all Potential Council Land and Future OEH Land Offset Areas for conservation purposes and the implementation of all establishment period and maintenance period works specified in all Environmental Management Plans from the date on which bulk earthworks are commenced, until such time that an agreement is reached with OEH and/or Tweed Shire Council regarding the dedication of that land."</i></p>
5.7 – Condition A15 – Director General as Moderator	<p>The Department of Planning and Infrastructure does not support our requested amended condition.</p> <p>Following further consideration of Gaden's advice, the proponents retain the requested modified Condition A15.</p>
5.8 – Condition 1(1) – Subdivision of Kings Forest Estate	Requested modification agreed to.
5.9 – Condition 3 – Environmental Offset Areas	<p>DOPI are generally in agreement with the requested amended condition but the Department prefers compliance prior to issue of a Construction Certificate rather than bulk earthworks. DAC to further consider in light of EPBC definition of commencement and also to include notification of the Department/TSC 2 days before commencement – Note: DA to get copy of definition of commencement from MG.</p> <p>Following further consideration the following revised amended Condition 3 is proposed.</p> <p>3. Prior to commencing any Bulk Earthworks in a Precinct, or as otherwise agreed between the Proponent and with the Director-General, the Proponent shall:</p> <p>a) engage a registered surveyor to prepare survey plan(s) and permanently mark the boundaries of the:</p> <p>i) the contiguous area of Potential Council Land; and</p> <p>ii) the contiguous area of Future OEH Land;</p>

Section/Condition	Comment
	<p>immediately adjacent to the Precinct (unless the relevant contiguous area has already been so marked prior to the earlier commencement of Bulk Earthworks in another Precinct);</p> <p>b) where relevant, submit amended plans of proposed subdivision to the Director-General for approval that show the relevant contiguous area of Potential Council Land and the relevant contiguous area of Future OEH Land;</p> <p>c) ensure that the boundaries so marked remain marked at all times in a permanent manner that allows operating staff, the landowner and inspecting officers to clearly identify those boundaries;</p> <p>d) submit for the Director-General's approval, a form of dealing(s) to be registered on the title to the relevant contiguous area of Potential Council Land and the relevant contiguous area of Future OEH Land that must:</p> <ol style="list-style-type: none"> i. bind all future landowners; ii. provide for the management of the contiguous Potential Council Land and the contiguous Future OEH Land for conservation purposes including the implementation of relevant Environmental Management Plans, in perpetuity; iii. permit access to the contiguous Potential Council Land and the contiguous Future OEH Land by the Department, the OEH and Council at all times for the purpose of monitoring compliance with relevant covenants and the relevant Environmental Management Plans; iv. provide for a release of any registered dealings in circumstances where all or part of the contiguous Potential Council Land and the contiguous Future OEH Land is transferred to a public authority; and v. provide that the registered dealings cease to have effect if all of the following occur: <ol style="list-style-type: none"> A) a consent authority or the Minister for Planning and Infrastructure makes a written determination to that effect; and B) that determination is made in connection with the determination of an application or request to carry out development (or modify a consent or approval to carry out development) under the <i>Environmental Planning and Assessment Act 1979</i>; and C) the particular circumstances nominated in that determination (such as the carrying out of development under the authority of a development consent or project application granted on determination of an application) arise.

Section/Condition	Comment
	<p>e) Where the relevant area of contiguous Potential Council Land and the relevant area of contiguous Future OEH Land referred to in condition 3(a) above are not subject to any amended plans of subdivision, the Proponent must within 1 month of the Director-General's approval of the dealing(s) referred to in condition 3(d), lodge for registration the dealing(s) on the relevant titles of the contiguous Potential Council Land and the contiguous Future OEH Land and provide to the Director-General evidence of such registration within 10 days of the dealing(s) being registered. The Proponent is not in breach of this condition if there is a failure by the Council or the OEH to execute the dealings.</p> <p>f) Where Potential Council Land or the Future OEH Land is subject to any amended plans of subdivision, the Proponent must within 3 months of the latter 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 the future OEH Land to the Director-General evidence of such registration within 10 days of the dealing(s) being registered.</p> <p>For the purpose of this condition, commencement is taken to mean "any preparatory works required to be undertaken including clearing vegetation, the use of heavy duty equipment for the purpose of breaking ground for bulk earthworks, or infrastructure for the proposed project".</p>
5.10 – Condition 13 – Compressible Clay Materials in Precincts 11, 12 to 14	Requested modification agreed to.
5.11 – Condition 37 – Baseline Monitoring	<p>The Department were generally in agreement with the requested amended condition with the exception of the flora and fauna component. It was agreed that MG would seek further advice from JWA in relation to this element of the condition and a further amended condition would be forwarded to the Department.</p> <p>JWA have advised that the fauna monitoring program included in the Management Plan requires monitoring to commence prior to clearing and construction for baseline data. JWA are therefore comfortable with the 3 months prior to commencement of bulk earthworks proposed in our requested amended condition.</p>
5.12 – Condition 45 – Koala Plan of Management	Agreed – MG to get a Staging Plan from JWA and further amend condition to show plantings on a staged basis.
5.13 – Condition 48 – Summary of Management Plans	Requested modification agreed to. Note: the Department have moved this condition to MOD 1.

Section/Condition	Comment
5.14 – Condition 49 – Environmental Audit Reports	<p>It was agreed that the amended Tweed Shire Council Condition 48 was acceptable subject to deletion of Council's Condition 49(5). Therefore the agreed amended Condition 49 is as follows:</p> <p><u>49. Environmental Audit Reports</u></p> <p>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 <u>Potential Council Land Council Dedicated Land</u>, the environmental audit ("Initial Audit") for each part of the <u>Potential Council Land Council Dedicated Land</u> 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.</p> <p>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 <u>Potential Council Land Council Dedicated Land</u>, 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 <u>Potential Council Land Council Dedicated Land</u> 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.</p> <p><u>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.</u></p> <p><u>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.</u></p>

Section/Condition	Comment
5.15 – Condition 50 - Bond for Environmental Restoration Works	Agreed the Department would further consider and DAC to email extract from Gadens advice to the Department for their consideration in relation to this condition (extract forwarded by email on 28 March 2014).
5.16 – Condition 82 – Dust Mitigation	Agreed the Department would email to DAC suggested changes to our condition.
5.17 – Condition 148 – Dedication of Public Open Space	Requested modification agreed to.
5.18 – Condition 148 – Dedication of Land to OEH	Requested modification agreed to.
5.18 – Condition 156 – Telephone and Electricity Services and Federal Government's National Broadband Network (NBN)	Requested modification agreed to.



ANNEXURE B

Extract from Legal Advice Provided by Gadens Lawyers Dated 14 October 2013 in
Relation to Condition 50

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

Part 2, condition 50 'Bond for Environmental Restoration Works'

2.10 Existing provision:

Bond for Environmental Restoration Works

50.

- 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.

Leda has described the condition as 'unacceptable'.

Gadens' advice:

- (a) The condition does not clearly define the lands that it is referring too ('the relevant lands'). That is, is it a reference to the Potential Council Land, the Future OEH Land, both areas of land, or other land? Ideally, this would be clarified if the condition is to remain. We have, below, approached this issue on the assumption that 'the relevant lands' are the Potential Council Land.
- (b) The power to impose conditions on a **project approval** under Part 3A of the Act is broader than the equivalent power for **development consents**. The power to grant a project approval (under section 75J of the Part 3A provisions) is expressly stated to be able to be exercised, first, 'with such modifications of the project' and, secondly, 'on such conditions', as the Minister may determine. In short, the power to impose conditions on an approval under Part 3A is **wide**: *Ulan Coal Mines Ltd v Minister for Planning* [2008] NSWLEC 185.

While there is a large body of court decisions establishing the limits of matters that can be dealt with by **development consent** conditions, there are only a few cases dealing with the limits of **project approval** conditions. It is unclear whether some of the constraints that the courts apply to the determination of a development application would necessarily apply to a Part 3A approval. This creates some uncertainty in relation to any attempt to argue that a project approval condition is unlawful.

- (c) **Bearing in mind that there is some room for legal debate**, our view is as follows:
 - (i) The text of the condition suggests that the Planning Assessment Commission may consider that the bond is necessary because:
 - (A) you may not meet your obligations under the project approval in relation to the establishment period;

- (B) you may not meet your obligations under the project approval in relation to part of the maintenance period (if the establishment period is less than five years); and
- (C) unacceptable long term ownership and management arrangements of 'the relevant lands' will, if not acceptable, require a public authority to step in and manage 'the relevant lands'.

- (ii) The exclusive source of power of the Planning Assessment Commission to impose, as a project approval, a condition requiring a monetary contribution or the dedication of land free of cost, is section 94 of the Act (*Fairfield City Council v N & S Olivieri* [2003] NSWCA 41; section 75R(4) of the Act).

A requirement for a 'bank guarantee' may be characterised as a monetary contribution (*MLC Properties v Camden Council* (1997) 96 LGERA 52). So, in our view, in the right circumstances, a 'bond' can be characterised the same way.

In this particular case, the condition does not envisage the automatic return of the 'bond' merely because works have been completed. It is also necessary that 'acceptable arrangements ... [be] made for the long term ownership and management of the relevant lands'. In our view, **the required 'bond' is actually a monetary contribution** - if only because there is no clear basis on which you can be assured of its return.

This means that, in order to be lawful, **the bond must be justified** because the development will require the provision of, or increase the demand for, public amenities and public services within the area.

- (iii) The Potential Council Land is not owned by any public authority. **We are not aware of any legal obligation on the Council to assume ownership of the land or carry out the works if you default on your obligations under the project approval.** (Please note, however, that we have not examined the environmental management plans and it is possible that these plans could change our view.)

There is, therefore, no more a basis for requiring a bond to safeguard against non-compliance as there is for any other ongoing condition regulating the use of land.

The Land and Environment Court has said that in undertaking the merit determination of whether to grant or modify a **development consent**, it is irrelevant to enquire as to who is the proponent or whom might be the future proponent (*Jonah v Pittwater Council* [2006] NSWLEC 99). It is similarly irrelevant to consider whether the proponent is likely in the future to carry out any approved use unlawfully. In our view, these principles also apply to a project approval granted under Part 3A.

Assuming that a relevant increase in the demand for public services can only arise if there is an unlawful breach of the project approval or the restrictive covenants, in our opinion, **the condition requiring the payment of the bond is unlawful.** Our view is based on our belief that this condition has no proper purpose, once the irrelevant consideration (ie the possibility that you or a future owner of the land will act unlawfully) is put aside.

- (iv) The condition is unclear as to what might be 'acceptable arrangements' for the long term ownership and management of 'the relevant lands'. Given that

management of the land is the subject of a project approval condition and will be the subject of covenants, it is unclear what further 'management' arrangements might be acceptable or unacceptable.

The identity of the current and future private sector owner is (in our view) irrelevant. This means that (in our view) the only remaining issue that might be considered acceptable or unacceptable, is whether the land will be handed over to a public authority.

This would seem to set up a situation where you may be extorted to dedicate this land to a public authority free of cost (in order to secure the return of your 'bond'). This is, in our opinion, not authorised by the statutory scheme and a misuse of power for an improper purpose.

This is a further reason why the imposition of the condition represents an unlawful use of power.

- (d) The first sentence of condition 50(c) merely duplicates condition 49 and therefore should, ideally, be deleted for this reason alone. The second sentence requires you to promptly implement any supplementary or approved adaptive management works deemed necessary by the 'independent contractor' carrying out the environmental audit under condition 49. **This obligation applies even if those works are not originally required by the environmental management plans.**

Given that detailed environmental management plans have been prepared, it should be, in our view, sufficient that you be held to those plans, and not new requirements subsequently propounded by an 'independent contractor'. If the environmental audits reveal that you are not complying with your pre-existing obligations under the environmental management plans, it will be open for the Department or the Council to issue a section 121B order requiring works to be undertaken. This is a more appropriate way of dealing with any issues.

In our opinion, this requirement is unreasonable in the circumstances, and this provides a basis, **on merit grounds**, for the deletion of condition 50(3).

Schedule 2, Part 4, condition 148, 'Dedication of Public Open Space'

2.11 Existing provision:

Dedication of Public Open Space

148. 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.

Gadens' alternative (marked-up against Leda's proposed version):

Public reserves and drainage reserves

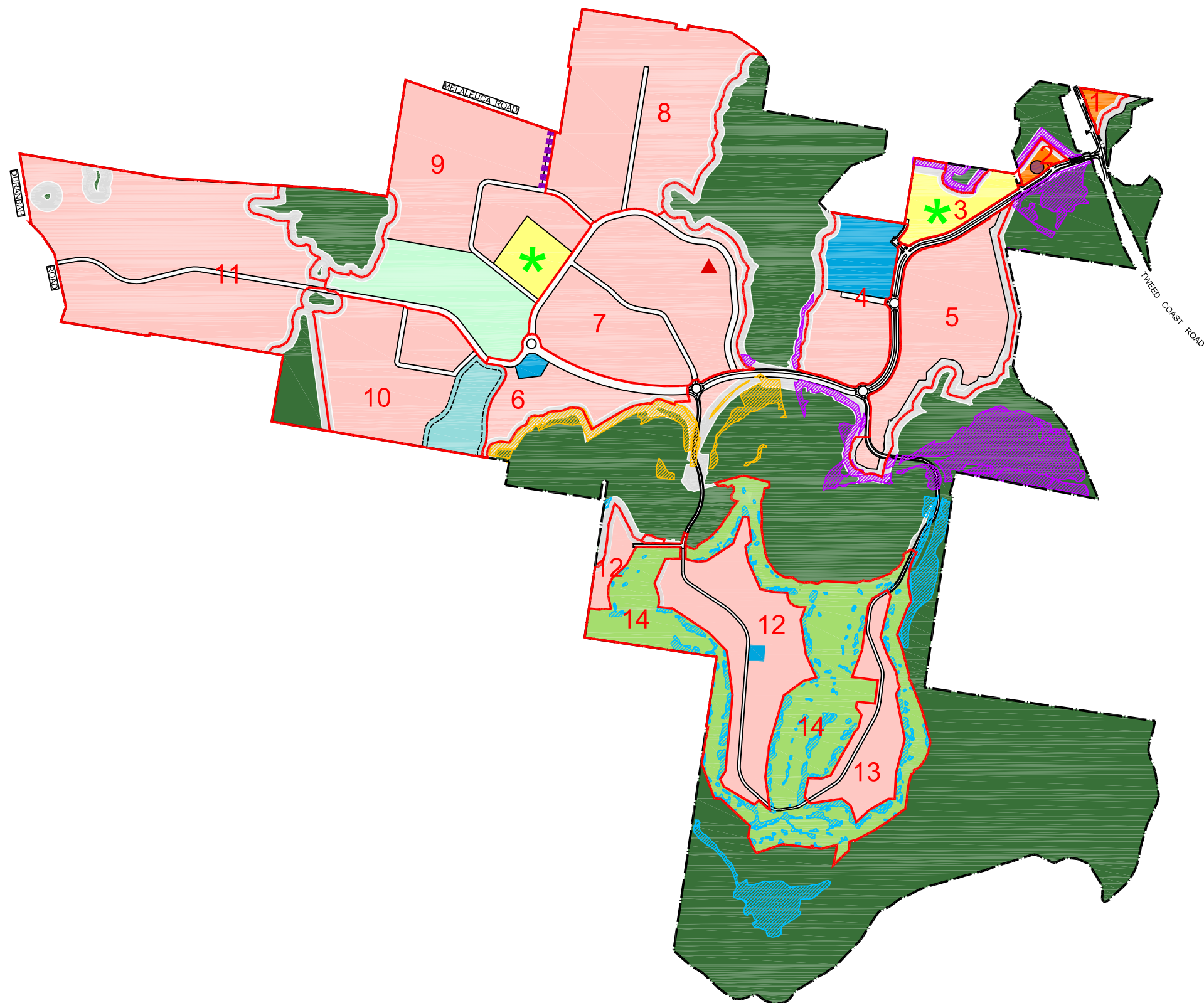
148. The Proponent must make necessary arrangements for the progressive dedication of the public reserves and drainage reserves ~~public open space areas to council~~ within Precinct 5 on the registration of the relevant plan of subdivision for each stage prior to the release of the subdivision certificate for that stage of the subdivision works in Precinct 5. Areas to be dedicated are to be consistent with 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.



**ANNEXURE C Proposed Koala Compensatory Habitat Area Staging Plan, Condition 45, Figure 1 –
JWA Pty Ltd, 29 April 2014**

Darryl Anderson Consulting Pty Ltd

A.C.N. 093 157 165
Town Planning & Development Consultants



LEGEND

- Koala Compensatory Habitat within STAGE 1 - Precincts 1-5
Total Area 25.85ha
- Koala Compensatory Habitat STAGE 2 - Precincts 12-14
Total Area 20.29ha
- Koala Compensatory Habitat STAGE 3 - Precinct 6 & Balance
Total Area 8.76ha
- Precinct Boundaries
- Kings Forest Boundary

Note:

Tree planting to be in accordance with Kings Forest Koala Plan of Management (2012)

0 500m
1 : 20 000

SOURCE: JWA Site Investigations; RPS
Project Application Precinct Plan (Ref: 113691-
PSP-4b(PRECINCT PLAN).dwg)

SCALE: 1 : 20 000 @ A3

JWA PTY LTD
Ecological Consultants

CLIENT
Project 28 Pty Ltd
PROJECT
Kings Forest
Melaleuca Drive, Duranbah, NSW
Shire of Tweed

FIGURE 1

PREPARED: BW
DATE: 29 April 2014
FILE: N97017_Compo Overlay.dwg

TITLE PROPOSED
KOALA COMPENSATORY
HABITAT AREA
STAGING PLAN
CONDITION 45