

MODIFICATION REQUEST:
Kings Forest Residential Subdivision
Kings Forest, Kingscliff
MP 06_0318 MOD 4 (Concept Plan)
MP 08_0194 MOD 2 (Project Approval)



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

August 2014

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1. BACKGROUND

This report is an assessment of an application made by Project 28 Pty Limited (the Proponent) to modify the Concept Plan (06_0318) and the project approval (08_0194) for the Kings Forest residential community subdivision within the Tweed local government area (LGA), pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The Proponent is seeking to make amendments to multiple terms and conditions of the Concept Plan and stage 1 project approval (see section 2.1). The Proponent contends that the modifications are reasonable on the basis that they involve minor changes to the terms and conditions, being primarily of an administrative or housekeeping nature, to enable the project to proceed in an efficient and viable manner.

1.2 Site Location and Surrounding Land Uses

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

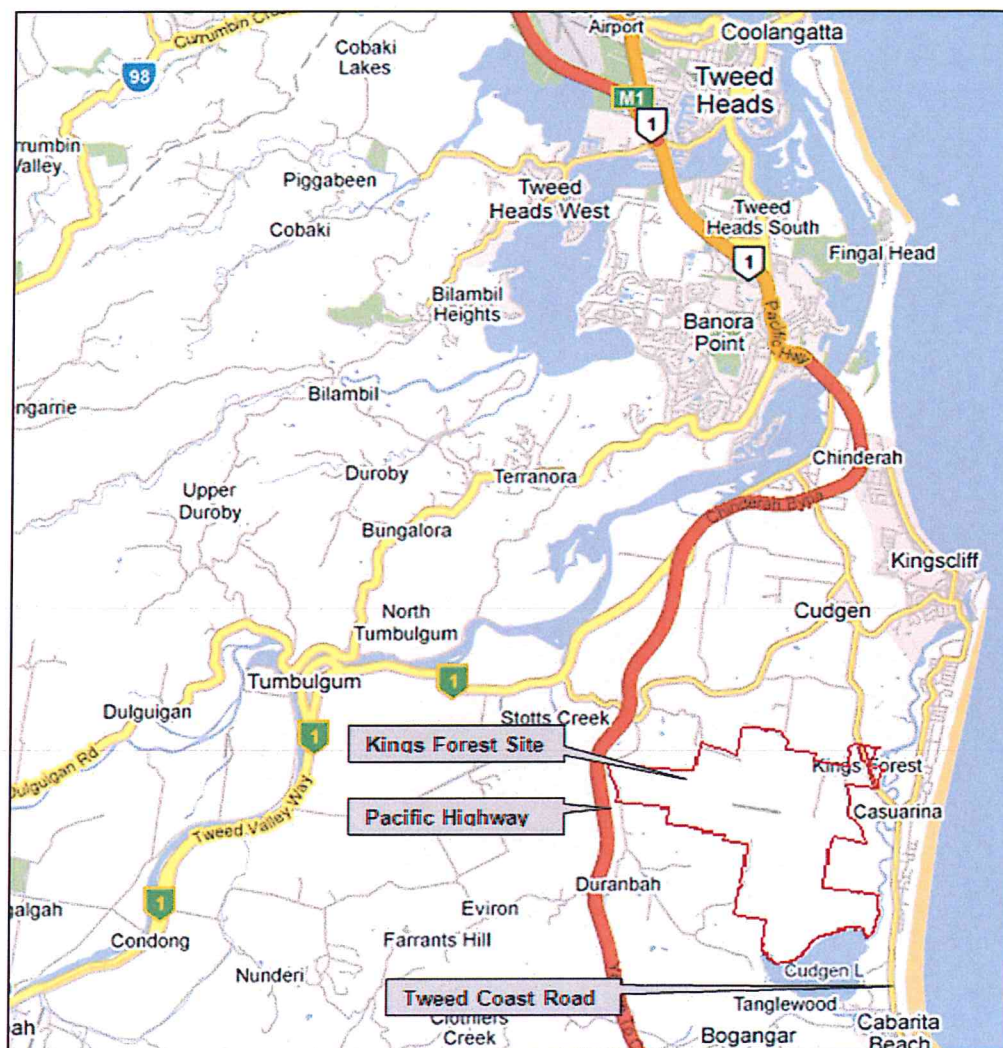


Figure 1: Location of the site

The site is surrounded by agricultural and pastoral lands to the north, south and west. Cudgen Lake, and the wetland habitat surrounding the lake, borders the south-eastern site boundary. The Cudgen lake covers an area of approximately 160 hectares and is located within the Cudgen Nature Reserve. The Cudgen Nature Reserve extends alongside much of the eastern site boundary. Further east on

the opposite side of Cudgen Nature Reserve is the coastal suburb of Casuarina. Surrounding features of the site are shown in **Figure 2**.

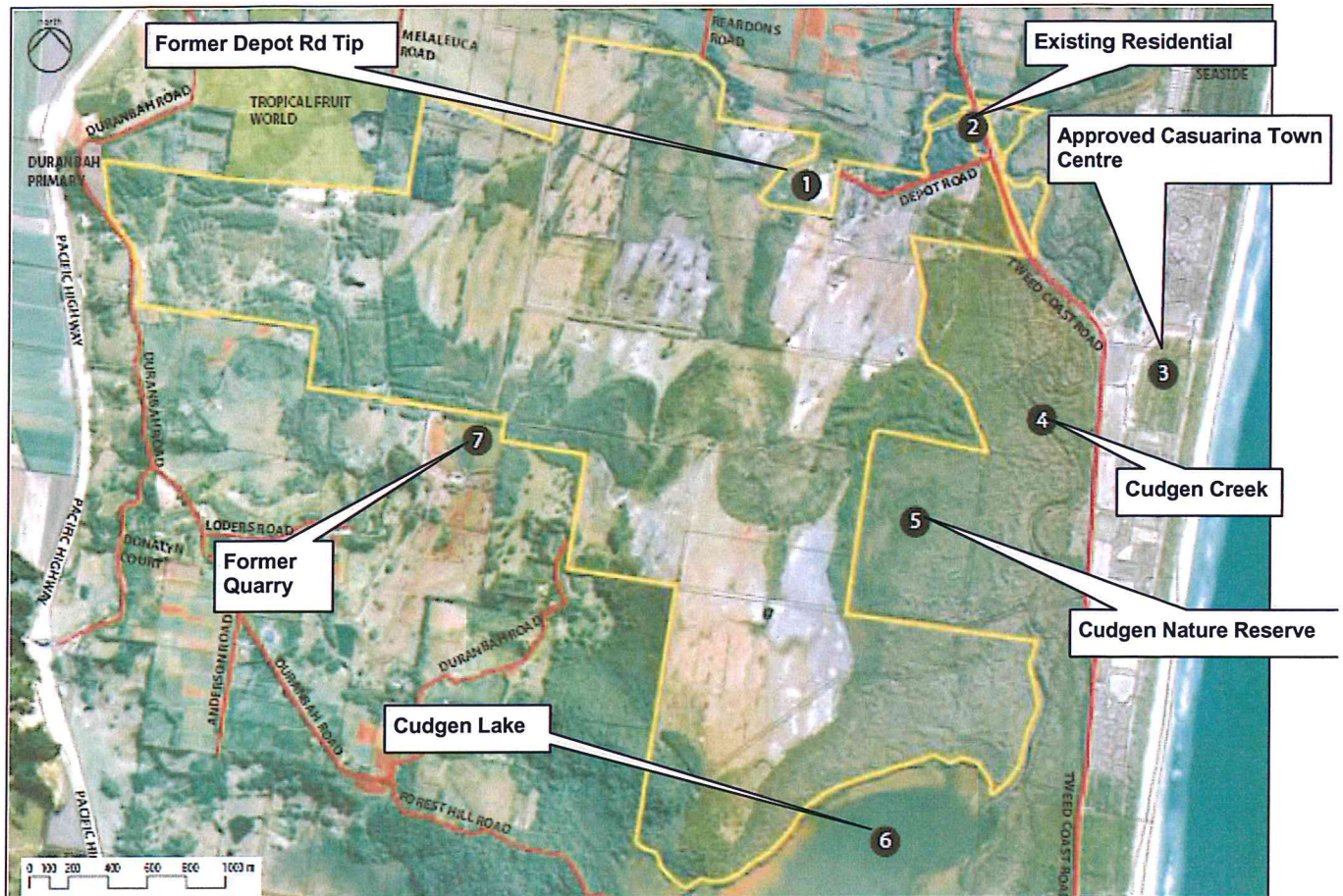


Figure 2: Surrounding Environment

1.3 Project Background and Previous Approvals

1.3.1 Planning Assessment Commission Non-Statutory Review

On 16 July 2010, the Planning Assessment Commission (PAC), in its capacity as an independent body, provided the then Minister for Planning with a review of the reasonableness of the Director-General's Environmental Assessment Report for the Concept Plan.

The PAC Review concluded that it was generally satisfied with the Department's assessment and found that the Department's recommendations were reasonable. The Department was generally supportive of the PAC's recommendations, with some minor exceptions. The PAC's recommendations were incorporated into the final instrument of approval.

1.3.2 Concept Plan (MP06_0318)

On 19 August 2010, the then Minister for Planning approved a Concept Plan for the site under section 750 of the EP&A Act, following the PAC's Review. The Concept Plan approved the following:

- residential development for approximately 4500 dwellings;
- town centre and neighbourhood centre for future retail and commercial uses;
- community and education facilities;
- employment land;
- a golf course;
- open space;

- wildlife corridors;
- protection and rehabilitation of environmentally sensitive land;
- utility services infrastructure;
- water management areas and lake; and
- roads, bicycle and pedestrian network.

Since approval was granted, the Concept Plan has been modified on three occasions:

1. On 22 December 2010 - the Acting Director – Regional Projects approved a modification (MOD 1) involving amendments to incorporate the Kings Forest Development Code into the approval, amendments to certain plans and to clarify other terms of approval.

2. On 11 August 2013 - the PAC, as delegate of the Minister, approved a modification (MOD 2). The key changes included: amendments to the Concept Plan drawings, reducing the number of precincts from 24 to 14; the requirement of a new east-west wildlife corridor; a new term of approval requiring the Proponent to implement all management plans in perpetuity; a new future environmental assessment requirement requiring all future development applications for subdivision to provide details of proposed land dedications to Tweed Shire Council; and various other future environmental assessment requirements.

3. On 16 May 2014 - the Acting Director – Industry, Key Sites and Social projects approved a modification (MOD 3) involving: amendments and additional definitions, extension to the lapsing date of the Concept Plan approval; and amended the terms relating to precinct specific management plans.

The current Concept Plan layout as modified is shown in **Figure 3** below.



Figure 3: Concept Plan layout

1.3.3 Project Approval (MP08_0194) Stage 1

On 11 August 2013, the PAC, as delegate of the Minister, issued project approval to MP08_0194 (in conjunction with modification 2 of the Concept Plan). The project approval included the following:

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

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

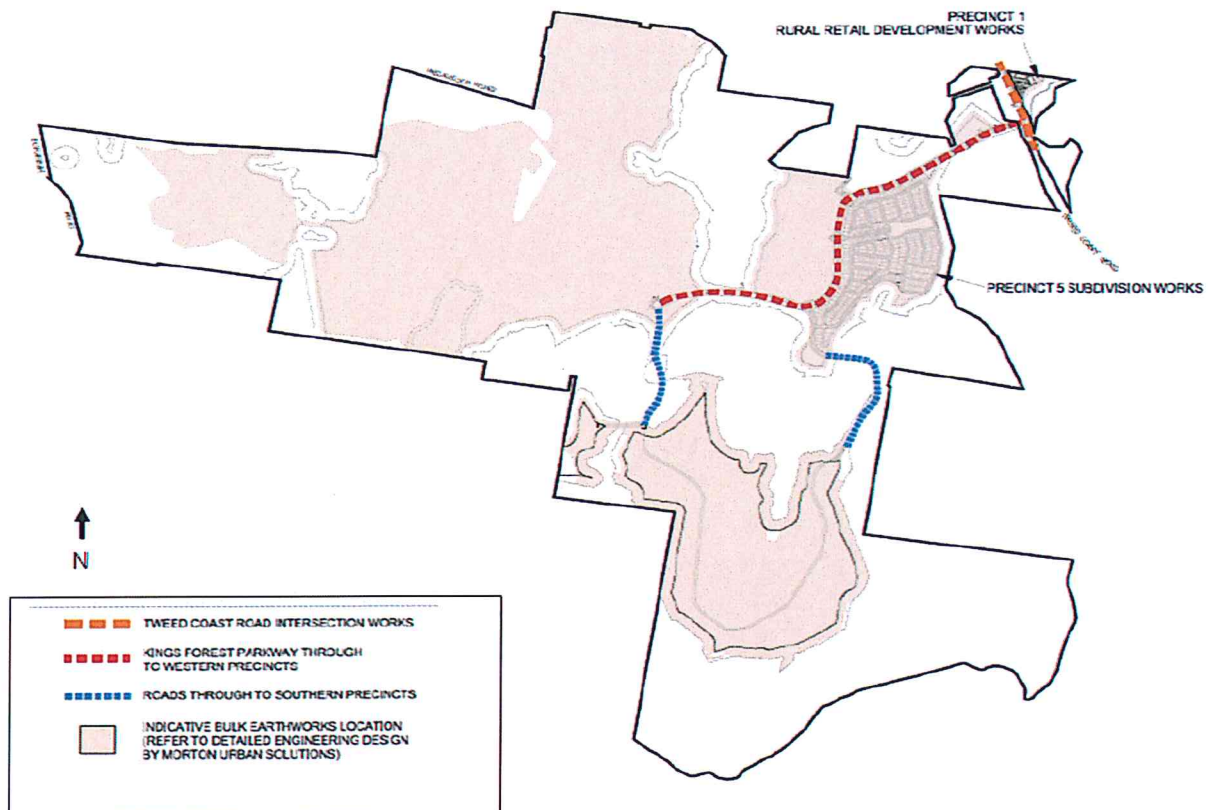


Figure 4: Outline of Stage 1 Project Approval

The Project Approval (MP08_0194) has been previously modified on one occasion:

1. On 16 May 2014 the Acting Director – Industry, Key Sites and Social Projects approved a modification (MOD 1) involving the addition of allotments, definition changes, amendments to statutory requirements, changes to timeframes for various conditions, changes to Section 94 contributions, amendments to the weed management plan, amendments to the water and sewer arrangements, geotechnical certification, registration of easements and typographical errors.

This approval was made concurrently with MOD 3 of the Concept Approval MP06_0318.

2. PROPOSED MODIFICATION

2.1 Modification Description

The Proponent is seeking to make general amendments to various terms and conditions of the Concept Plan and stage 1 project approval, including:

- amendments to the definitions used in the approvals for 'Council dedicated land', 'offset areas', 'maintenance phase' and 'establishment phase';
- the role of the Secretary as moderator, in resolving any disputes;
- amendments to the timing of:
 - the management of land to be dedicated to Council;
 - site subdivision;
 - survey plans and form dealings;
 - baseline monitoring;
 - planting of Koala food trees in other suitable locations;
- minor amendments to certification of compressible clay material in precincts;
- amendments to the process for environmental audits;
- deletion of the bond required for environmental restoration works;
- amendments to the provision of affordable housing;
- amendments to the dust mitigation measures during construction;
- amendments to public reserves and drainage reserves; and
- amendments to the telephone and electrical services requirement.

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

- **MP06_0318 MOD 3 (Concept Plan)**
Schedule: 1 definitions
Schedule 2: terms A2, B5, B7, B8, C3, C29 and C30.
- **MP08_0194 MOD 1 (Project Approval)**
Schedule 1: definitions
Schedule 2: conditions A1(2), A13, A15, 1(1), 3, 13, 37, 45, 48, 49, 50, 82, 148 and 149.

The Proponent's original modification request is detailed in **Appendix A**. The modification request was further revised following the Response to Submissions (RtS) (see **Appendix B**) and subsequent meetings held between the Proponent and the Department. The modification request currently before the Department along with the Proponent's justification for each modification is detailed in **Appendix C**.

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

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

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

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

Section 75W(3) of the EP&A Act provides that the Secretary may notify the Proponent of environmental assessment requirements with respect to the proposed modification. Given the nature of the modification requests, Secretary's Environmental Assessment Requirement's were not considered necessary, as sufficient information was submitted to assess the applications and the proposed modifications do not involve any changes to the approved Concept Plan layout (as modified) or the approved stage 1 project layout, nor any additional lots.

Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated Regulations, and the Minister (or her delegate) may approve or disapprove of the carrying out of the projects under sections 75J and 75O of the EP&A Act.

3.2 Delegated Authority

Under the Instrument of Delegation dated 14 September 2011, the Minister delegated the functions to determine Part 3A applications to the PAC where:

- council has made an objection in relation to the proposal; or
- more than 25 public submissions objecting to the proposal were received; or
- a political disclosure statement has been made in relation to the application.

The application is being referred to the PAC for determination as Council has lodged a submission objecting to aspects of the proposal and more than 25 public submissions in the nature of objections were received. No political disclosure statement has been made in relation to the application. Accordingly, section 75W modification to the Concept Plan and project approval can therefore be determined by the PAC under delegation.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under section 75X(2)(f) of the EP&A Act, the Secretary is required to make the modification requests publicly available. After accepting the modification applications, the Department:

- publicly exhibited the modification applications from Wednesday 12 February 2014 until Wednesday 12 March 2014 (30 days) on the Department's website, at the Department's Information Centre and at Tweed Shire Council offices;
- advertised the exhibition in the Tweed Link, Tweed Border Mail and Tweed Sun;
- notified those members of the public who made submissions in relation to the original Project (MP08_0194) and Concept Plan Applications (MP06_0318); and
- notified relevant State government agencies and Tweed Shire Council by letter.

During the exhibition period, the Department received a total of 52 submissions comprising:

- 5 submissions from public authorities; and
- 47 submissions from the general public, including eight submissions from special interest groups.

A summary of the issues raised in submissions is provided below and detailed in **Appendix B**.

4.2 Public Authority Submissions

Five submissions were received from public authorities, with Tweed Shire Council (Council) and the Office of Environment and Heritage (OEH) raising a number of concerns and objections with some aspects of the applications. These issues are summarised below.

Tweed Shire Council stated its objection to the proposed modifications to conditions A3, 37, 47 and 50 of the project approval for the following reasons:

- *Condition 3 Environmental Offset Areas:* As bulk earth works will occur over the entire site, Council considers that survey works for the proposed lands to be dedicated to Council and the OEH should be conducted prior to the lodgement of the first development application. The Council does not support the piecemeal approach in regards to survey works proposed in the modification.
- *Condition 37 Baseline Monitoring:* Council states that there has already been significant delays to the baseline monitoring and that the timing should not be further altered.
- *Condition 47 Koala Plan of Management (KPoM):* Council does not consider it acceptable to delay the planting of koala food trees which will take many years to establish.

- **Condition 50 Bond for Environmental Restoration Works:** Council maintains that there has already been significant delays to Environmental Management Plans (EMPs) and that a bond is required to ensure environmental restoration works are carried out on land that is proposed to be dedicated to Council in the future. Council also states that deleting the bond is inconsistent with the Voluntary Planning Agreement offer and that the condition is based on a standard condition used by Tweed Shire Council.

The **Office of Environment & Heritage** made the following key comments and objections in relation to the definitions and proposed changes to conditions A13, 37, 45 and 50:

- **Definitions (modifying "Offset Area" to "Future OEH Land"):** The OEH stated that the dedication of the lands was considered as part of the whole development package, with the overall impact being considered acceptable in light of the dedication proposed. For this reason, the OEH recommends that a note is retained within the definitions, indicating that the dedicated lands are part of an offset for biodiversity impacts.
- **Condition A13 Management and Maintenance of Environmental Lands:** The OEH contends that the trigger for the commencement of the management and maintenance of environmental lands should be 'prior to the issue of Construction Certificate for bulk earthworks' as "commencement of bulk earthworks" is difficult to define.
- **Condition 37 Baseline Monitoring:** The OEH does not support the commencement of baseline monitoring three months prior to the commencement of bulk earthworks and states that the current conditions should be retained.
- **Condition 45 KPOM:** The OEH objects to the proposed modification. The OEH states that there is a biodiversity loss associated with the proposed modification due to the delay in the planting and establishment of koala food trees.
- **Condition 50 Bond for Environmental Restoration Works:** The OEH objects to the deletion of condition 50 stating that a bond is an effective measure to ensure works are undertaken in accordance with the relevant EMP.

The **Roads & Maritime Services** advised it has no issues with the modification requests.

The **Rural Fire Service** advised it has no issues with the modification requests.

The **Mineral Resources Branch** (Department of Trade and Investment) advised it has no issues with the modification requests.

4.3 Public Submissions

Forty Seven (47) submissions were received from the public. This included eight submissions from the following special interest groups:

- Northern Rivers Guardians;
- Friends of the Koala;
- Tweed Heads Environment Group;
- Caldera Environment Centre;
- Fingal Head Community Association;
- Fingal Head Coast care;
- Byrrill Creek Landcare Group; and
- Kingscliff Ratepayers and Progress Association.

Of the 47 public submissions received, 46 objected to the proposed modification, and 1 raised concerns. No submissions supported the proposed modification. The key issues raised in public submissions are listed below.

Definition Changes

- Changes to the land dedication and offset area definitions are not supported as they create uncertainty regarding the land to be dedicated to Council and the OEH in the future; and

- Changes to the definition of 'establishment period' negate the responsibility of ongoing maintenance standards and criteria.

Ecology

- Concern raised over the impacts to the local wallum sedge frog, long nosed potoroo and koala populations; and
- Impacts to the Tweed natural environment including adjacent conservation areas and nature reserves.

Koala Plan of Management

- Koala food trees should be established as soon as possible, as there would be a lag time before the trees reach maturity. The koala food trees should be planted within East-West corridor and the offsite land parcel as soon as possible.

Environmental Conservation Areas

- Offset areas should be surveyed and pegged prior to bulk earthworks to avoid any accidental damage to conservation lands.

Environmental Audit Reports

- Condition 49(3) of the project approval should be retained. Should the environmental audit indicate a non-compliance then the Proponent should not be able to move to the next stage until the non-compliance has been rectified; and
- The proposed change to the environmental audit reporting reduces the incentive to comply with the EMP.

Environmental Management Plans

- Concern was raised regarding the preparation and implementation of the EMP required to manage the potential dedicated lands.

Baseline Monitoring

- Baseline monitoring should commence prior to the issue of a construction certificate. The modification to require baseline monitoring 3 months before bulk earthworks lacks certainty.

Environmental Bond

- Condition 50 as currently approved does provide a refund.

Dust Mitigation

- Concerns regarding dust impacts and the cessation of works; and
- The enforcement of the proposed condition 82 is a concern and the requirements for dust mitigation measures are unclear.

Telecommunications

- The Proponent has not committed to provide infrastructure to facilitate the National Broadband Network.

Other Issues

- The funding of maintenance of the potential Council land should be provided by the Proponent;
- The entire site should be subdivided prior to bulk earthworks; and
- The location of the affordable housing is not supported.

The Department has considered the issues raised in submissions in its assessment of the proposed modification.

4.4 Response to Submissions

The Proponent lodged its Response to Submissions (RtS) in April 2014 (**Appendix B**). The RtS addressed some of the concerns raised by government agencies and some of the issues raised in public submissions. However, there were a number of issues which required further clarification from the Proponent, which included issues relating to the definitions used in the instruments, timing for the planting of Koala food trees, the bond for restoration works, the timing of baseline monitoring and the timing of survey works. Consequently, further discussion between the Department and the Proponent took place to clarify these issues.

Table 2 in Appendix C details the current modification being pursued by the Proponent.

5. ASSESSMENT

The modification application seeks multiple amendments to the Concept Plan and Project Approval of a detailed and complex nature. The Department considers that the key issues relate to the modifications of the Project Approval as they have the potential to affect the physical works. The modifications to the Concept Plan are considered generally minor and for administrative purposes.

The key issues arising from the modification of the Project Approval include:

- survey works and registered title dealings relating to Environmental Offset Areas (Condition 3);
- timing of baseline monitoring (Condition 37);
- timing of Koala food tree plantings in other suitable locations (Condition 45); and
- the bond for Environmental Restoration Works (Condition 50).

The Department's consideration of the proposed modification to the Concept Plan and other issues relating to the Project Approval are detailed in **Table 1**.

5.1 Survey works and registered title dealings relating to Environmental Offset Areas (Condition 3)

Condition 3 of the current Project Approval requires the Proponent, within 3 months of the approval, to engage a registered surveyor to prepare survey plans and mark the boundaries of land to be dedicated to Council and the OEH. The condition also requires a form of dealing(s) to be registered on the title of the land to be dedicated to Council and the OEH, to ensure that future landowners provide for the management of dedicated lands in perpetuity. Furthermore, the condition requires access to the land to be maintained for Council, the Department and the OEH.

The Proponent has sought to amend condition 3 so that the survey works of the land proposed to be dedicated to Council and the OEH are conducted only when works are being carried out in the precinct immediately adjacent to that land.

The Proponent states that it is onerous and unreasonable to place approximately 3000 survey pegs in areas where bulk earthworks may not be undertaken for many years. The Proponent also stated that accessibility to the land proposed to be dedicated to Council and the OEH may be difficult as some areas of the site would not be accessed for development for some time. Council has objected to the modification stating that it would result in a piecemeal approach to the proposed dedication of lands.

Furthermore, the Proponent has also sought to delete subclauses d), e) and f) of condition 3 which require the land proposed to be dedicated to Council and the OEH to be registered on title to bind all future landowners to manage the dedicated lands in perpetuity. The Proponent contends that subclauses d), e) and f) are unnecessary and unreasonable, particularly as they contest that the approvals run with the land and consequently, registration on title is not required.

Department's Consideration

The Department considers the Proponent's request to not survey all the dedicated lands up front to be reasonable as the timing of land dedication is unknown and it may take some time before work commences in certain precincts due to the scale of the development. In order to ensure that it is clear which dedicated areas will be surveyed in conjunction with the commencement of work in a precinct, the Department has recommended that a staging plan for the survey works be submitted to the Department prior to the commencement of the project.

In regards to the deletion of subclauses d), e) and f) of condition 3, it is the Department's view that in this instance, once the obligations under the consent are fulfilled, there are no further obligations on future land owners to comply with the requirements of the consent. Therefore,

once the consent has been satisfied, land owners would not be required to manage the dedicated lands in perpetuity. Hence, there is a need to bind future land owners through a titling document not a consent document to ensure that the dedicated lands are managed as per the requirements of the Environmental Management Plans (EMPs), in perpetuity. Accordingly, the Department does not support the deletion of subclauses d), e) and f).

5.2 Timing of baseline monitoring (Condition 37)

Condition 37 currently states that prior to the issue of a construction certificate for bulk earthworks, the Proponent must demonstrate to the satisfaction of the Department that all baseline monitoring has commenced in accordance with the relevant EMP. The Proponent seeks to alter the timing for the demonstration that baseline monitoring has commenced to "three months prior to the commencement of bulk earthworks" stating that it is unreasonable and unnecessary to require baseline monitoring prior to the issue of a construction certificate as works may not commence for many years after the construction certificate is issued.

Both the Council, OEH and the community object to the proposed amendments and recommend the retention of the existing condition to ensure that adequate baseline data is obtained prior to the commencement of works.

Department's Consideration

The Department agrees it may be unreasonable to require baseline monitoring prior to issuing of the construction certificate if works may not commence for many years. The Department considers the relationship between the commencement of actual physical works and sufficient baseline monitoring is essential in order to monitor, mitigate and manage the residual impacts of the project.

The Department acknowledges that the Proponent has committed in its EMP to collecting monthly background data for groundwater and surface water, for a minimum of 12 months prior to the commencement of construction, in order to obtain sufficient baseline data for future monitoring and management.

Additionally, the Department notes that the Flora and Fauna Monitoring Report is required to be revised and submitted to the satisfaction of the OEH which would ensure sufficient data has been collected in relation to biodiversity issues.

The Department is therefore satisfied that sufficient baseline data will be collected prior to the commencement of bulk earthworks. Consequently, the Department has accepted the Proponent's modification and notes that the Proponent is still required to demonstrate to the satisfaction of the Department that all baseline monitoring has commenced in accordance with the relevant EMP. Any shortfalls in the baseline monitoring will need to be resolved before the Department's approval is given and bulk earthworks can commence.

5.3 Timing of Koala food tree plantings in other suitable locations (Condition 45 (c.))

The Koala Plan of Management (KPoM) was approved as part of the Concept Plan and subsequently revised in the Project Approval. The KPoM details the principles for the management of Koalas on the Kings Forest site. It also identifies the potential threats to the Koala population from the Kings Forest site and includes a number of mitigation and management measures to ensure the exposure of these threats are minimised. One of the management approaches includes a Koala food tree planting program which aims at establishing suitable Koala habitat corridors to allow for the movement of the Koala population from the Kings Forest site to other areas.

A condition of the Project Approval requires that the KPoM be further revised to include details of the schedule for the planting of Koala food trees. Planting of Koala food trees is to occur in three areas, the offsite area nominated by OEH, the new east-west habitat corridor and 'other suitable locations' which include ecological buffers and environmental protection zoned land. The

condition requires that the schedule for the planting in the offsite area and the new east-west habitat corridor be detailed in the revised KPoM and that the planting of Koala food trees in 'other suitable locations' is to commence within one month of the revised KPoM being approved.

The Proponent seeks to remove the requirement that the planting of Koala food trees in 'other suitable locations' is to commence within one month of the revised KPoM being approved and seeks to commence plantings at the time of commencement of bulk earthworks in each relevant stage. Both, the OEH, Council and the community objected to the proposed modification. The OEH considers that there would be a biodiversity loss associated with the proposed modification due to the delay in planting and establishment of Koala food trees.

Department's Consideration

The Department acknowledges that the local Koala population and timing required for Koala food trees to be established is a key concern to the community and government agencies. As identified in the Department's original assessment, the bulk earthworks will result in the loss of approximately 0.81 ha of primary Koala habitat and 6.68 ha of secondary habitat. The Department notes that the clearing/bulk earthworks will occur progressively over eight stages, and that the central east-west wildlife corridor would be maintained during this period to allow for Koala movement in the region. The Proponent has committed to planting several thousand koala food trees across various locations throughout the site.

The Department notes that the Koala habitat loss will occur gradually as the various stages of the bulk earthworks commence. The Department considers it appropriate that the timing of the planting of Koala food trees in 'other suitable locations' should be linked to the Koala food tree planting schedule as required by the revised KPoM. For this reason, the Department considers that the planting of Koala food trees in 'other suitable locations' within one month of the revised KPoM being approved is not required. The revised KPoM is to be prepared in consultation with Council and submitted to the Secretary for approval. This would provide a consistent approach to the timing of the planting of Koala food trees by linking all planting areas to the schedule in the KPoM. This will ensure a coordinated planting approach across the offsite area, the new east-west habitat corridor and 'other suitable locations'.

The Department is satisfied that given that the bulk earth works will occur gradually and core Koala habitat will be maintained throughout the construction period, that the potential impacts to Koala habitat can be appropriately managed and mitigated through the implementation of the recommended conditions, including the schedule of tree plantings in the revised KPoM to be approved by the Secretary.

5.4 Bond for Environmental Restoration Works (Condition 50)

Condition 50 requires a bond to be paid to Council to ensure the EMPs are implemented. The amount of the bond is based on 135% of the cost of the environmental repair, enhancement and maintenance works for the establishment period.

The Proponent has requested that condition 50 be deleted on the basis that the condition is unreasonable, unlawful and does not provide for a clear refund mechanism.

Department's Consideration

As the Project Application proposes bulk earthworks across the entire Kings Forest Estate, it is necessary for many of the management plans to be finalised and implemented upfront before construction commences. The OEH and Council consider that many of the submitted management plans lack sufficient detail with regards to the location of works, the timing and frequency of works, resources, the monitoring program and measurable performance criteria. The Department also stated in its assessment of the original application that the plans lack sufficient detail to enable the management actions to be accurately resourced, costed and implemented throughout the life of the project. It is important that the relevant areas of land are adequately managed so that the stated environmental outcomes for the land are achieved in a timely manner.

The Department does not consider that the information provided by the Proponent is sufficient to warrant the deletion of the condition. Therefore, the Department supports the retention of condition 50 as a measure to ensure the implementation of the EMPs for the land proposed to be dedicated to Council.

However, the Department notes the concerns raised by the Proponent in its modification request that condition 50 does not clearly define the land that it is referring to and that the condition does not provide for a refund. Additionally, the Proponent raised the issue of having to pay the bond of 135% of the management works as being financially onerous, due to the significant capital expenditure required by the condition.

The Department agrees it is reasonable to stage the bond for the establishment period and maintenance period and link the payment of the bond to the release of the associated precinct/Potential Council Land so that the bond can be paid progressively as the various stages of the project are completed. The Department has therefore recommended a modification to the condition which will require the maintenance bond to be paid until the land is transferred into public ownership. The Department has also recommended that the condition be modified to provide a clearer refund mechanism which links the refund of the bond to the Secretary's approval of the relevant environmental audit or until the land is transferred into public ownership.

The Department is satisfied that the proposed modified condition would ensure that the lands are adequately managed until such time as they are transferred into public ownership whilst providing an appropriate and progressive link between payment of the bond and relevant works.

Table 1 below presents the Department's consideration of all other issues relating to the modification applications. Further details regarding the modification and the Proponent's justification are included in **Appendix C**.

Table 1: Other Issues

Condition to be modified	Consideration	Recommendation
MP 06_0318 (Concept Plan)		
<p><i>Proposed Definitions:</i></p> <p><i>Potential Council Land Plan</i></p> <p><i>Potential Council Land</i></p> <p><i>Future OEH Land</i></p>	<p>The Proponent proposes to replace the following definitions with alternate definitions to be used in the approval (detailed in Appendix C):</p> <ul style="list-style-type: none"> • "Land to be dedicated to Council in the future"; • "Council Dedicated Land Plan"; and • "Offset Area". <p>The proposed definitions "Potential Council Land Plan" and "Potential Council Land" are considered minor administrative amendments.</p> <p>However, OEH raised concerns with the proposed removal of the "Offset Areas" definition and its replacement with the "Future OEH Land" definition.</p> <p>The OEH does not support the removal of the definition for "Offset Areas" as the term reflects the initial intent of the approval which was to allow for a balance between developing the site and establishing a suitable offset to mitigate the development.</p>	<p>That the amended definitions be adopted subject to the inclusion of the following note:</p> <p><i>"Note: the dedicated lands may be used as offset for biodiversity impacts in accordance with the policy applicable from time to time under which offsets for such impacts are assessed."</i></p>

Condition to be modified	Consideration	Recommendation
	<p>The dedication of lands has been referred to as offset areas since the commencement of discussions on the proposal, with the need to dedicate land considered as part of the whole development package. The OEH recommended that a note should be retained within the approval document, indicating that the dedicated lands are part of an offset for biodiversity impacts.</p> <p>The Department concurs with the OEH that the dedication of lands should remain to be identified as a potential offset area as it was considered as part of the whole development package.</p>	
<i>Dedication of Land to Tweed Shire Council (Term B5)</i>	<p>Term B5 requires the identification of land to be dedicated to Council in the form of a plan.</p> <p>The Proponent seeks to update the condition to reflect the above definition changes along with updating the revised precinct plan.</p> <p>The Proponent's original request was not supported by Council. Council suggested an alternative condition which the Proponent accepted.</p> <p>The Proponent is required to submit a revised dedication land plan to be reviewed by Council and submitted to the Secretary for approval within 24 months of the project approval.</p> <p>The Department considers the proposed changes of an administrative nature and to be reasonable.</p>	That Term B5 be amended to reflect the modification.
<i>Implementation of Environmental Management Plans (Term B7)</i>	<p>Term B7 requires that the land to be dedicated to Council and the OEH be managed as per the relevant Environmental Management Plans (EMPs) from the date of the Stage 1 project approval.</p> <p>The Proponent seeks to alter the trigger for the implementation of the EMPs from the date of the Stage 1 project approval to the physical commencement of the project. For clarity proposes, the Proponent has defined "commencement".</p> <p>The Proponent contends that the current condition is unreasonable as it requires the management of the dedicated lands, to be carried out prior to the consent being enacted. Furthermore, the Proponent states that compliance with the term cannot be achieved because condition 39 of the Project Approval requires that all the EMPs be revised following approval from the</p>	<p>Replace Term B71) in Schedule 2 with the following:</p> <p>B7 Implementation of Environmental Management Plans</p> <p>The proponent is responsible for the management of all Potential Council Land and the Future OEH Land for conservation purposes and the implementation of ongoing management and maintenance activities specified in all Environmental Management Plans from the date of the commencement of the project or at another time directed by the Secretary, until such time that an agreement is reached with OEH and /or Tweed Shire Council regarding the dedication of that land.</p>

Condition to be modified	Consideration	Recommendation
	<p>Commonwealth Department of Environment which has not yet been granted.</p> <p>The Department considers the Proponent's request reasonable. However, the Department acknowledges that the proposed modification will delay the management of lands proposed to be dedicated to Council and consequently a condition has been recommended which would allow the Secretary to direct the Proponent at another time to implement the EMPs and manage the lands if necessary. It is considered appropriate that the Secretary be given the authority to direct the Proponent to manage the lands as per the EMPs should the need arise.</p>	
<p><i>Secretary as Moderator</i> (Term B8)</p>	<p>Term B8 relates to disputes between the Proponent and public authorities and in the event that an agreement is unable to be reached between the parties, the matter may be referred to the Secretary for resolution.</p> <p>The Proponent sought to remove the ability of the Secretary to give approval or make an agreement in lieu of the Proponent.</p> <p>It is common practice that the Department has a role in any potential dispute resolution process between the Proponent and any other authorities. The Department therefore considers that the standard condition for dispute resolution should be adopted.</p>	<p>That Term B8 be replaced with the Department's standard dispute resolution clause, as shown below.</p> <p>B8 Dispute Resolution</p> <p>1) In the event that a dispute arises between the Applicant and Council or a public authority other than the Department, in relation to a specification or requirement applicable under this consent, the matter may be referred by either party to the Secretary, or if not resolved, to the Minister, whose determination of the dispute shall be final and binding to all parties. For the purpose of this condition, 'public authority' has the same meaning as provided under Section 4 of the EP&A Act.</p>
<p><i>Dedication of Land to OEH</i> (Term C3)</p>	<p>Term C3 requires that the Proponent provide evidence of an agreement for the dedication of approximately 150ha of offset land to the Cudgen Nature Reserve.</p> <p>The Proponent requested that the term be updated to reflect the proposed definition of 'Future OEH Land' and that the references to 'offset' be removed.</p> <p>The Department considers this a minor administrative change for consistency across the approval.</p>	<p>That Term C3 be amended to reflect the modification.</p>
<p><i>Dedication of Land to Tweed Shire Council</i> (Term C29)</p>	<p>Term C29 requires that all future development applications for subdivision shall provide details of the land to be dedicated to Council.</p> <p>The Proponent has requested that the definitions referred to in Term C29 be updated (as per above).</p> <p>The Department considers this a minor</p>	<p>That Term C29 be amended as per the modification request.</p>

Condition to be modified	Consideration	Recommendation
	administrative change for consistency across the approval.	
<i>Affordable Housing</i> (Term C30)	<p>Term 30 requires that the development application for the subdivision of Precinct 7 shall provide details of how affordable housing will be provided.</p> <p>The Proponent contends that the provision of affordable housing is conditional upon the successful application for funding and this should therefore be reflected in the condition.</p> <p>The Proponent requested that the reference to the National Rental Affordability Scheme (NRAS) currently contained in the note, be added to the condition.</p> <p>The Department considers this request reasonable and a minor administrative amendment.</p>	That Term C30 be amended to reflect the modification.
MP 08_0194 (Project Approval)		
<i>Amended Definitions:</i> <i>Potential Council Land Plan with Work Areas</i> <i>Potential Council Land</i> <i>Future OEH Land</i>	Refer to the discussion on Concept Plan definitions above.	Refer to Concept Plan definitions above.
<i>Definition of Establishment Period and Maintenance Period</i>	<p>The Proponent requests that the definition of "Establishment Period" and "Maintenance Period" be amended as the current definitions do not explicitly state who the approval authority is for the works. The Proponent has sought to replace 'approval authority' with 'Secretary'.</p> <p>The Department considers this a minor administrative matter which seeks to update the approval to refer to the Secretary as the appropriate person administering the Minister's approval, rather than using a generic reference to 'approval authority'.</p>	That the new definition of establishment and maintenance period be adopted.
<i>Bulk Earthworks & Civil works</i> (Condition A1(2))	<p>Condition A1(2) relates to the staging of bulk earthworks across the site in order to provide fill to create development pads for residential areas and the future golf course.</p> <p>The Proponent has sought to increase the number of precincts (from 9 to 12) that require fill for the creation of development pads. Additionally, the Proponent requested that the reference to the precincts used to source fill within the site be removed. The Proponent states the current condition is</p>	That the proposed condition A1(2) be amended to reflect the modification.

Condition to be modified	Consideration	Recommendation
	<p>unnecessarily prescriptive and should refer to the approved Bulk Earthworks Plans.</p> <p>The Department notes that Council raised no objection to this amendment and considers it to be minor housekeeping.</p> <p>The Department considers that the modification provides clarity to condition A1(2) and recommends that the proposed changes be adopted.</p>	
<p><i>Management & Maintenance of Environmental Lands</i> (Condition A13)</p>	<p>Condition A13 relates to the Proponent's responsibility to implement the EMPs for all land proposed to be dedicated to Council and the OEH from the date of the Stage 1 Project Approval.</p> <p>Refer to the discussion on Term B7 of the Concept Plan above.</p>	<p>Replace condition A13 in Schedule 2 with the following:</p> <p>Management and Maintenance of Environmental Lands</p> <p>A13. The proponent is responsible for the management of all Potential Council Land and Future OEH Land for conservation purposes and the implementation of all establishment period and maintenance period works specified in all Environmental Management Plans from the date of the commencement of the project, or at another time directed by the Secretary, until such time that an agreement is reached with OEH and /or Tweed Shire Council regarding the dedication of that land.</p>
<p><i>Secretary as Moderator</i> (Condition A15)</p>	<p>See Concept Plan Term B8 modification above.</p>	<p>That term A15 be replaced with the Department's standard dispute resolution clause.</p>
<p><i>Subdivision of Kings Forest</i> (Condition 1(1))</p>	<p>Condition 1(1) requires the subdivision of the entire Kings Forest site prior to the commencement of any bulk earthworks.</p> <p>The Proponent requested deletion of the requirement to subdivide the entire development site prior to the commencement of bulk earthworks. The Proponent contends that it is unreasonable and unnecessary to require the entire site to be subdivided prior to the commencement of bulk earthworks due to the size of the site and time involved in developing the various precincts. The Proponent also states that the site cannot be subdivided prior to bulk earthworks because bulk earthworks must be completed to provide the infrastructure as a prerequisite for the issuing of a subdivision certificate.</p> <p>The Department considers that given the size of the site and the time involved with developing the various precincts it is</p>	<p>That condition 1(1) is amended as per the modification request.</p>

Condition to be modified	Consideration	Recommendation
	unreasonable to require the entire site to be subdivided prior to bulk earthworks. The Department recommends that condition 1(1) be amended.	
<p><i>Compressible Clay Material in Precincts 11,12 to 14</i> (Condition 13(2))</p>	<p>Condition 13(2) states that no filling is to occur in areas that contain compressible clay material until certification is provided by a practicing geotechnical engineer. The certification is to state that no settlement will occur and the proposed areas are capable of being developed without the need for special construction techniques.</p> <p>The Proponent contends that it is unreasonable to guarantee, that there will be no settlement. Instead, the Proponent considers it reasonable that earthworks with compressible clay materials have been certified in accordance with the AS 3798-2007 (Guidelines on Earthworks for Commercial and Residential Development).</p> <p>Council does not support the proposed modification. Council states that the practice of certifying the settlement of compressible clay materials is standard geotechnical practice and that any settlement that occurs after dwelling construction causes damage liable for litigation action.</p> <p>The Department considers the proposed amendment is reasonable, given the difficulty for any development to guarantee that earthworks would achieve "no settlement occurring". Notwithstanding, the Department has maintained a role for a geotechnical engineer to validate the earthworks. The Department also notes that the reference to the AS 3798-2007 is also included in another Ministerial approval in the Tweed LGA (MP06_0258). Therefore, the Department is satisfied that the proposed modification request is reasonable.</p>	That condition 13(2) is amended as per the modification request.
<p><i>Environmental Audit Reports</i> (Condition 49)</p>	<p>Condition 49 relates to the provision of initial and subsequent environmental audits of the EMPs, during the establishment and maintenance periods on the land proposed to be dedicated to Council. Condition 49(3) states that should a non-compliance with any of the relevant EMPs occur, further stages of the development will not be granted.</p> <p>The Proponent contends that the condition is legally ambiguous and unclear and requires rationalisation.</p> <p>The proponent requested that condition</p>	That condition 49 is amended as per the modification request.

Condition to be modified	Consideration	Recommendation
	<p>49(3) be deleted along with minor amendments to the environmental audit reporting process in addition to making the condition consistent with the proposed amended definitions.</p> <p>Council does not support the removal of part 49(3) of the condition as the condition provides an incentive to carry out environmental works in accordance with the relevant EMP. Council states that the removal of part would undermine the approval process.</p> <p>The Department has the ability to legally deal with offences under the EP&A Act including the power to stop works should a breach occur. Given these powers, the Department considers that the proposed deletion of condition 49(3) is not needed. Additionally, the current condition 49(3) does not differentiate between minor and major non-compliances. The Department considers it unreasonable to limit further stages of the development for minor non-compliances or to refuse approval of future stages without the full details of the non-compliance being known. For this reason the Department considers the proposed modification request reasonable.</p>	
<p><i>Dust Mitigation</i> (Condition 82)</p>	<p>Condition 82 relates to a number of mitigation measures required to be implemented to manage dust impacts during construction.</p> <p>The Proponent states that the current condition 82 is onerous and unreasonable and that the existing suite of conditions and management plans adequately ensure that potential dust impacts can be appropriately managed and mitigated.</p> <p>The Department considers it reasonable to deal with the issue of dust impacts through performance based criteria rather than prescriptive measures to mitigate dust. Therefore, the Department recommends that the following be included at the end of the proposed condition to ensure that impacts to nearby neighbourhoods are appropriately managed:</p> <p>"Adequate mitigation measures shall be taken to prevent dust emissions affecting the amenity of the neighbourhood during construction related activities."</p>	<p>That condition 82 is amended as per the modification request and the following be included "Adequate mitigation measures shall be taken to prevent dust emissions affecting the amenity of the neighbourhood during construction related activities."</p>
<p><i>Dedication of Public Open Space</i> (Condition 148)</p>	<p>Condition 148 requires the Proponent to make necessary arrangements for the progressive dedication of public open space areas to Council within Precinct 5.</p>	<p>That condition 148 is amended as per the modification request.</p>

Condition to be modified	Consideration	Recommendation
	<p>The Proponent states that there is some ambiguity in terms of what is meant by public open space and that the condition is unclear. As such, the Proponent seeks to modify the condition to clarify its intent.</p> <p>The Department notes that Council supports the proposed modification.</p> <p>The Department is also satisfied that the proposed amendment is minor and raises no objection.</p>	
<i>Dedication of Land to the OEH (Condition 149)</i>	<p>Condition 149 requires the proponent to provide evidence of an agreement with the OEH for the dedication of land.</p> <p>The Proponent seeks to make minor administrative changes to the condition to clarify the application of the condition throughout the approval.</p> <p>The Department considers this a minor administrative change for clarity purposes.</p>	That condition 149 be amended as per the modification request.
<i>Telephone and electricity services and Federal Government's National Broadband Network (NBN) (Condition 156)</i>	<p>Condition 156 includes a number of requirements in relation to providing telecommunication, electrical and National Broadband Network (NBN) services. In particular, the condition requires that the Proponent provide written confirmation from the telecommunications authority certifying the provision and commissioning of telecommunication infrastructure.</p> <p>The Proponent states that the current condition is onerous and unreasonable, as the timing of this telecommunications infrastructure (particularly NBN) is beyond the control of the developer.</p> <p>Council does not support the proposed modification stating that it is standard practise that written evidence is provided in relation to the telecommunications supply for subdivisions.</p> <p>As the proposed modification still requires 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 an allotment, the Department considers the proposed modification satisfactory.</p>	That condition 156 is amended as per the modification request.

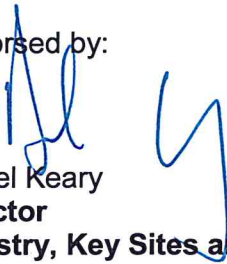
6. CONCLUSION AND RECOMMENDATIONS

The Department has considered the modification requests with regard to the Proponent's justification for the amendments. This includes the intent and objectives of the relevant terms of the Concept Plan approval and the conditions of the stage 1 project approval in addition to submissions from the community, Tweed Shire Council and the OEH. The Department supports in part the proposed amendments to the terms and conditions of approval.

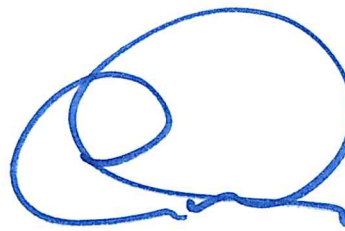
However, the Department does not support amendments to condition 3 and condition 50 of the stage 1 project approval, as it considers that the amendments to these conditions are either unnecessary, or inconsistent with the intent and objectives of the existing approved conditions.

It is recommended that the Planning Assessment Commission consider the report and its findings and approve the modification request under section 75W of the EP&A Act, by signing the attached modifying instruments.

Endorsed by:



Daniel Keary
Director
Industry, Key Sites and Social Projects



Chris Wilson
Executive Director
Development Assessment and
Systems Approval

27.5.14

APPENDIX A MODIFICATION REQUEST

The proponent's original modification requests are available on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6350

APPENDIX B SUBMISSIONS AND RESPONSE TO SUBMISSIONS

The submissions received in response to the Proponent's modification application and the Response to Submissions are available on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6350

APPENDIX C MODIFICATION REQUEST AND JUSTIFICATION

The proposed amendments currently before the Department are detailed in Tables 2 below:

Table 2: Proposed amendments to the Concept Plan – MP06_0318 MOD 4 and stage 1 project approval – MP08_0194 MOD 2

<i>Modification</i>	<i>Description</i>
Concept Plan MP06_0318 MOD 4	
1. <i>Amended definitions</i> (Part C)	<p>The Proponent seeks to include new definitions, to replace existing definitions in relation to lands proposed to be dedicated to Council and the OEH, for environmental conservation purposes for consistency and clarity.</p> <p>The Proponent proposes amendments to the following existing definitions:</p> <ul style="list-style-type: none"> • "Land to be dedicated to Council in future"; • "Council Dedicated Land Plan"; and • "Offset Area". <p>The proposed definitions as amended are as follows:</p> <ul style="list-style-type: none"> • Potential Council Land means the land identified as 'potential Council land' on the Potential Council Land Plan. • Potential Council Land Plan With Work Areas means the plan with that title prepared by Landsurv dated 06.12.13, Revision E. • Future OEH Land means the land identified in the "Plan of Proposed Areas to be Dedicated to NPWS Kings Forest Development" prepared by Landsurv Pty Ltd dated 23 August 2012, Revision C. Note: the dedicated lands may be used as offset for biodiversity impacts in accordance with the policy applicable from time to time under which offsets for such impacts are assessed.
2. <i>Approved Plans</i> (Term A2)	<p>The Proponent seeks to amend the table of approved plans in Term A2, to replace Plan No's 01, 04 and 05 with revised Plan No's 01, 04 and 05.</p> <p>The revised plans remove the reference "to be dedicated to Council or NPWS" as the amended definitions above shall be adopted.</p>
3. <i>Dedication of Land to Tweed Shire Council</i> (Term B5)	<p>The proposed modification seeks to update definitions and references to drawing No.4</p> <p>The requested modification to term B5 is as follows:</p> <p>B5 Dedication of Land to Tweed Shire Council</p> <ol style="list-style-type: none"> 1) The Council Dedicated Land Plan 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 as shown in term A2, Drawing No. 4 Revised Precinct Plan (Rev B)) and the associated 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 Potential Council Dedicated Land Plan shall be amended such that the extent of lands to be dedicated should include any environmental protection areas adjacent to the proposed stage extending to where such areas are intersected by any approved road alignment or adjoin environmental buffers to adjacent stages. 2) The amended Council Dedicated Land Plan Potential Council Land Plan shall be reviewed by Council and submitted to the Director-General Secretary for approval within 12-24 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

Modification	Description
	<p><i>prior to the issue of the first construction certificate for the project whichever occurs first.</i></p> <p>Note: If no agreement is reached the Potential Council Land will not be dedicated to Council and term B7 will continue to apply.</p>
<p>4. <i>Implementation of Environmental Management Plans</i> (Term B7)</p>	<p>The Proponent states that they may not act upon the consent for some years and the requirement to implement the Environmental Management Plans from the date of the Project Approval is onerous and non-compliant. Therefore, the Proponent seeks to alter the trigger for the implementation of the Environment Management Plans to occur from the commencement of the project instead of from the Stage 1 project approval. The Proponent also seeks to update the definitions.</p> <p>The proposed changes area as follows:</p> <p>B7 Implementation of Environmental Management Plans</p> <p>1) <i>The Proponent is responsible for the management of all land to be dedicated to Potential Council land and the Offset Areas Future OEH land for conservation purposes and the implementation of ongoing management and maintenance activities specified in all Environmental Management Plans from the date of the Stage 1 project approval (08_0194) commencement of the project until such time as an agreement is reached with OEH and/or Tweed Shire Council regarding the dedication of that land.</i></p> <p>Note: 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>
<p>5. <i>Secretary as Moderator</i> (Term B8)</p>	<p>The Proponent sought to include a requirement that does not allow the Secretary to give approval or make an agreement in lieu of the Proponent. The Proponent contents that the Secretary should not impose a resolution on the Project 28 Pty Ltd. Upon negotiations between the Proponent and the Department, the sought amendment has been revised as follows:</p> <p>B8 Dispute Resolution</p> <p>1) <i>In the event that a dispute arises between the Applicant and Council or a public authority other than the Department, in relation to a specification or requirement applicable under this consent, the matter must be referred by either party to the Secretary, or if not resolved, to the Minister, whose determination of the dispute shall be final and binding to all parties. For the purpose of this condition, 'public authority' has the same meaning as provided under Section 4 of the EP&A Act.</i></p>
<p>6. <i>Dedication of Land to OEH</i> (Term C3)</p>	<p>The Proponent seeks to amend Term C3 to reflect the proposed amended definition of "Offset Area" and to clarify the area of land to be potentially dedicated, such that the term is amended as follows:</p> <p>C3 Dedication of Land to OEH</p> <p><i>Prior to the release of the first subdivision certificate for the project, or as otherwise determined by the Secretary (at the request of the Proponent), the Proponent must provide evidence of an agreement for the dedication by Project 28 P/L to the OEH of the Future OEH Land being no less than approximately 150ha of offset land as addition to the Cudgen Nature Reserve.</i></p> <p><i>Such an agreement must outline the Proponent's commitment to establish boundary fences and trails satisfactory to the needs of OEH prior to the Offset Future OEH Land being added to Cudgen Nature Reserve. The</i></p>

Modification	Description
	<i>Proponent must ensure suitable funding for the amendment of existing reserve specific fire, pest, weed and management plans. The funding should be sufficient to ensure actions within the amended plans relevant to the new additions are able to be completed.</i>
7. <i>Dedication of Land to Tweed Shire Council</i> (Term C29)	<p>The Proponent seeks to amend Term C29 to reflect the proposed amended definition of "Potential Council Land", with the proposed condition as follows:</p> <p>C29 Dedication of Land to Tweed Shire Council <i>All future development applications for subdivision shall provide details of the land to be dedicated to Council in the future in accordance with the Council Dedicated Land Plan as required by Term B5 of this approval.</i> the Potential Council Land as is relevant to the application concerned in accordance with Term B5 of this approval.</p>
8. <i>Affordable Housing</i> (Term C30)	<p>The Proponent seeks to amend term C30 by including an additional sentence (currently encapsulated within a note at the end of this term of approval) regarding the provision of affordable housing subject to funding under the National Rental Affordable Housing Scheme or an equivalent funding arrangement as a minor housekeeping modification.</p> <p>The Proponent contends that the provision of affordable housing is conditional upon the successful application for funding and should thus be reflected in the condition.</p> <p>The proposed modification is as follows:</p> <p>C30 Affordable Housing <i>The development application for subdivision of Precinct 7 shall provide details of how affordable housing will be provided within this precinct, in accordance with the recommendations of the Kings Forest Affordable Housing Study, Prepared for Project 28 Pty Ltd, dated December 2010 and the Preferred Project Report dated October 2012. Note: The provision of affordable housing may be subject to the successful application for National Rental Affordable Housing Scheme (NRAS) funding. The provision of affordable housing is subject to the successful application for National Rental Affordable Housing Scheme (NRAS) funding or equivalent.</i></p>

Modification	Description
Stage 1 Project Approval – MP08_0194 MOD 2	
1. <i>Amended Definitions</i> (Schedule 1)	<p>The Proponent seeks new definitions, to replace existing definitions in relation to lands proposed to be dedicated to Council and to OEH, for environmental conservation purposes.</p> <p>The Proponent also seeks to amend the definitions of establishment period because it is ambiguous as it does not explicitly state who the sign off authority is for the works carried out in the Establishment Period. Maintenance Period is proposed to be amended for consistency across the approvals.</p> <p>a) The Proponent proposes that the following existing definitions be amended, and renamed and redefined, consistent with the proposed amended definitions in the Concept Plan:</p> <ul style="list-style-type: none"> • "Land to be dedicated to Council in future"; • "Council Dedicated Land Plan"; and • "Offset area". <p>The proposed definitions are the same as those proposed for the Concept Plan and are as follows:</p> <p>The proposed definitions as amended, and renamed and redefined as follows:</p>

Modification	Description
	<ul style="list-style-type: none"> • Potential Council Land means the land identified as 'potential Council land' on the Potential Council Land Plan. • Potential Council Land Plan With Work Areas means the plan with that title prepared by Landsurv dated 06.12.13, Revision E. • Future OEH Land means the land identified in the "Plan of Proposed Areas to be Dedicated to NPWS Kings Forest Development" prepared by Landsurv Pty Ltd dated 23 August 2012, Revision C. Note: the dedicated lands may be used as offset for biodiversity impacts in accordance with the policy applicable from time to time under which offsets for such impacts are assessed. <p>b) The Proponent proposes that the existing definition of "Establishment Period" is amended to refer to this period concluding with works to the satisfaction of the Secretary, instead of the currently referenced 'approval authority'. The proposed amended definition is as follows:</p> <ul style="list-style-type: none"> • Establishment Period means the period commencing with the implementation of the relevant approved environmental management plan(s) and ending when the works specified in that plan meet the establishment phase period performance criteria (as defined by the relevant approved environmental management plan) to the satisfaction of the approval authority Secretary. The establishment period represents time necessary to carry out initial environmental repair, restoration and monitoring prior to ongoing maintenance. <p>c) The Proponent requests that the definition of "Maintenance Period" is amended for consistency as a minor housekeeping amendment for consistency across the approvals.</p> <ul style="list-style-type: none"> • 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 phase period performance criteria (as defined by the relevant approved environmental management plan) to the satisfaction of the approval authority Secretary.
2. Bulk Earthworks & Civil works (Condition A1(2))	<p>The Proponent seeks to amend condition A1(2) so that the references to bulk earthworks requirements are less detailed or prescriptive. This is to allow greater flexibility and include reference to the Bulk Earthworks Plans in Term A3, but omit bulk earthworks to Precinct 3 for consistency with Condition A12(2) as follows.</p> <p>A1(2) Staged bulk earthworks across the site to lower site levels in Precincts 2, 4, 5, 12, 13 and 14 in order to provide fill to create development pads for the residential development areas in Precincts 1 and 6 to 11 2 and contour the future golf course in Precincts 12, 13 and 14 4 to 14 in accordance with the plans referred to in Condition A3.</p>
3. Management & Maintenance of Environmental Lands (Condition A13)	<p>The Proponent seeks to amend Condition A13 so that the obligation to commence management and maintenance of environmental lands (in accordance with environmental management plans) will only be triggered when the approval is implemented and the land use changes from non-urban/agricultural to urban. The Proponent also seeks to insert a note to define the term of commencement that excludes the carrying out of survey activities due to the size of the site/project as follows:</p> <p>Management and Maintenance of Environmental Lands</p>

Modification	Description
	<p>A13. The Proponent is responsible for the management of all land Potential Council Land to be dedicated to Council in the future and Future OEH Land the Offset Areas for conservation purposes and the implementation of ongoing management and maintenance activities specified in all Environmental Management Plans from the date of the Stage 1 project approval (08_0194), commencement of the project until such time that an agreement is reached with OEH and/or Tweed Shire Council regarding the dedication of that land."</p> <p>Note: 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>
<p>4. Secretary as Moderator (Condition A15)</p>	<p>The Proponent sought to include a requirement that does not allow the Secretary to give approval or make an agreement in lieu of the Proponent. The Proponent contends that the Secretary should not impose a resolution on the Project 28 Pty Ltd. Upon negotiations between the Proponent and the Department, the sought amendment has been revised as follows:</p> <p>Dispute Resolution</p> <p>A15. <i>In the event that a dispute arises between the Applicant and Council or a public authority other than the Department, in relation to a specification or requirement applicable under this consent, the matter must be referred by either party to the Secretary, or if not resolved, to the Minister, whose determination of the dispute shall be final and binding to all parties. For the purpose of this condition, 'public authority' has the same meaning as provided under Section 4 of the EP&A Act.</i></p>
<p>5. Subdivision of Kings Forest Estate (Condition 1.1)</p>	<p>Condition 1.1) requires the subdivision of the entire Kings Forest site, to create 10 lots including separate lots for precinct 1, precinct 5, precincts 2 to 4, and precincts 6 to 14, and separate lots for environmental protection areas. This subdivision is required to be undertaken prior to commencement any bulk earthworks across the site.</p> <p>The Proponent contends that it is unreasonable and unnecessary to require the entire site is subdivided prior to bulk earthworks due to the size of the site and time involved in developing the different precincts. The Proponent also states that the site cannot be subdivided prior to bulk earthworks because bulk earthworks must be completed to provide the infrastructure that is a prerequisite for the issuing of a subdivision certificate.</p> <p>The Proponent seeks to amend Condition 1.1) to remove the requirement from the condition that the entire site be subdivided prior to commencement of bulk earthworks.</p> <p>Modification of this condition is therefore proposed as follows:</p> <p>Subdivision of Kings Forest Estate</p> <p>1.1) The Proponent shall subdivide the entire site prior to commencing any bulk earthworks across the site. The subdivision at this stage shall be generally in accordance with the following plans: (no changes are proposed to plans listed in the table of plans).</p>
<p>6. Environmental Offset Areas (Condition 3)</p>	<p>Condition 3 requires that the Proponent, within 3 months of the approval, to engage a registered surveyor to prepare survey plans and mark the boundaries of land to be dedicated to Council and the OEH. The condition also requires that a form of dealings be registered on the title to this land, in relation matters including management and implementation of relevant environmental management plans and access to the land by Council, the Department and OEH.</p>

Modification	Description
	<p>The Proponent states that they are not bound by the Project Approval until they choose to implement the consent and commence project construction. The Proponent seeks to amend Condition 3 so that compliance is not required until prior to commencement of bulk earthworks in the relevant precinct.</p> <p>The Proponent has sought to amend condition 3 so that the survey works of the land proposed to be dedicated to Council and the OEH are conducted only when works are being carried out in the precinct immediately adjacent to that land. The Proponent states that it is onerous and unreasonable to place approximately 3000 survey pegs in areas where bulk earthworks may not be undertaken for many years.</p> <p>Following the initial modification request the Proponent altered their request to condition 3 and is seeking the deletion of conditions 3(d), (e) and (f) on the basis that the Consent runs with the land, not the current owner or Proponent and therefore considers that condition 3 (d), (e) and (f) is unlawful and unreasonable.</p> <p>The Proponent also seeks to insert a note to define the term of commencement that excludes the carrying out of survey activities due to the size of the site/project. The proposed modification is as follows:</p> <p>Environmental Offset Areas</p> <p>3. Within 3 months of the date of this approval Prior to commencing any Bulk Earthworks in a Precinct, or as otherwise agreed between the Proponent and with the Secretary, the Proponent shall:</p> <p>a) engage a registered surveyor to prepare a survey plan(s) and permanently mark the boundaries of the land to be dedicated to Council in the future and the Offset Area;</p> <p>i) the contiguous area of Potential Council Land; and</p> <p>ii) the contiguous area of Future OEH Lands;</p> <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 Secretary for approval that show the land to be dedicated to Council in the future and the Offset Area as separate lots relevant contiguous Potential Council Land and the relevant contiguous Future OEH Land;</p> <p>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</p> <p>d) submit for the Director General's approval, a form of dealing(s) to be registered on the title to the land to be dedicated to Council in the future and the Offset Area relevant contiguous area of Potential Council Land and the relevant contiguous area of Future OEH Land that must:</p> <p>i. bind all future landowners;</p> <p>ii. provide for the management of the land to be dedicated to Council in the future and the Offset Area contiguous Potential Council Land and the contiguous Future OEH Land for conservation purposes including the implementation</p>

Modification	Description
	<p>of relevant Environmental Management Plans, in perpetuity;</p> <p>iii. permit access to the land to be dedicated to Council in the future and the Offset Area 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 Environmental Management Plans; and</p> <p>iv. provide for a release of any registered dealings in circumstances where all or part of the land to be dedicated to Council in the future or the Offset Area contiguous Potential Council Land and the contiguous Future OEH Land are transferred to a public authority; and</p> <p>v. provide that the registered dealings cease to have effect if all of the following occur:</p> <p>A) a consent authority or the Minister for Planning makes a written determination to that effect; and</p> <p>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</p> <p>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.</p> <p>e) Where land to be dedicated to Council in the future or the Offset Area is not subject to any amended plans of subdivision Where 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(1)(d) 3(d), lodge for registration the dealing(s) on the relevant titles to land to be dedicated to Council in the future or the Offset Area 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 OEH to execute the dealings.</p> <p>f) Where land to be dedicated to Council in the future or the Offset Area is subject to any amended plans of subdivision, the Proponent must within 3 months of the later of the Secretary's approval of the amended plans of subdivision under condition 3(1)(b) or the Secretary'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 Secretary evidence of such registration within 10 days of the dealing(s) being registered.</p> <p>Note: 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</p>

Modification	Description for bulk earthworks, or infrastructure for the proposed project."
7. <i>Compressible Clay Material in Precincts 11,12 to 14</i> (Condition 13(2))	<p>Condition 13(2) requires that no filling occurs in areas of compressible clay material until certification is provided that no settlement will occur and development is capable without special construction techniques. The Proponent contends that it is unreasonable to certify that no settlement will occur and seeks to amend condition 13(2) to remove the requirement for this certification and instead require that earthworks be undertaken in accordance with AS 378-2007 (Guidelines on Earthworks for Commercial and Residential Development).</p> <p>The proposed modification request is as follows:</p> <p>Compressible Clay Materials in Precincts 11, 12 to 14</p> <p>13.</p> <p>2) <i>No filling is to occur in these areas until certification is provided by a practicing geotechnical engineer. The certification is to state that no settlement will occur and the proposed areas are capable of being developed without the need for special construction techniques the earthworks have been undertaken in accordance with AS 3798-2007 (Guideline on Earthworks for Commercial and Residential Development). Settlement plate information is to be provided with geotechnical certification from a qualified geotechnical engineer to validate that settlement has terminated."</i></p>
8. <i>Baseline Monitoring</i> (Condition 37)	<p>Condition 37 requires that baseline monitoring is to commence prior to the issue of construction certificates for bulk earthworks in accordance with the relevant management plans.</p> <p>The Proponent states that it is unreasonable that baseline monitoring should commence prior to the issue of the construction certificate as the works may not commence for some time after the construction certificate is issued.</p> <p>The Proponent seeks to amend the condition to alter the time frame when the baseline is required to be undertaken to not less than 3 months prior to the commencement of bulk earthworks, instead of prior to issue of a construction certificate.</p> <p>The Proponent also seeks to insert a note regarding the definition of commencement. The proposed modification request is as follows:</p> <p>Baseline Monitoring</p> <p>37.</p> <p>1) <i>No less than 3 months prior to the issue of a construction certificate for the commencement of bulk earthworks, the Proponent must demonstrate to the satisfaction of the Department that all baseline monitoring has commenced in accordance with the relevant Environmental Management Plans, including the following:</i></p> <ul style="list-style-type: none"> a. <i>Flora and Fauna Monitoring Report</i> b. <i>Groundwater Management Plan</i> c. <i>Overall Water Management Plan</i> d. <i>Stormwater Management Plan</i> <p>Note: 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>
9. <i>Revised Koala Plan of Management</i> (KPoM) Condition 45	<p>The Proponent seeks to remove the requirement that the planning of koala food trees in other suitable locations is to commence within one month of the revised Koala Plan of Management being approved and seeks to commence plantings in accordance with the Proposed Koala Compensatory Habitat Area Stating Plan.</p>

Modification	Description
	<p>The proposed modification request is as follows:</p> <p>Koala Plan of Management</p> <p>45. The Koala Plan of Management shall be revised amended as follows</p> <p>1) A revised offset strategy for the loss of Koala food trees incorporating the following</p> <p style="padding-left: 40px;">c. planting of Koala food trees in other suitable locations across the site should commence within one month of the revised KPOM being approved within each relevant 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. The timing of plantings shall be in accordance with the approved revised Koala Plan of Management required by Condition 45(2).</p>
10. Environmental Audit Reports (Condition 49)	<p>Condition 49 relates to provision of initial and subsequent environmental audits in relation to establishment and management phases for the environmental conservation areas proposed to be dedicated to Council, with non-compliance resulting in the approval for further stages not being granted.</p> <p>The Proponent contends that condition is unclear and requires rationalisation in addition to being legally ambiguous.</p> <p>The Proponent is seeks to amend condition 49 to use the proposed terms 'potential Council land' and 'establishment period'. The Proponent also seeks to amend the condition to provide alternative means to remedy any non-compliance, instead of restricting approvals to further stages.</p> <p>The proposed modification request is as follows:</p> <p>Environmental Audit Reports</p> <p>49.</p> <p>1) Within 3 months of the establishment phase period the performance criteria specified in all relevant Environmental Management Plans being met for each part of the land to be dedicated to Council in future Potential Council Land, the Proponent must submit to the Secretary for approval, an environmental audit ("Initial Audit") for each part of the Council Dedicated Land that land, to confirm that the establishment phase performance and any relevant maintenance phase criteria have been met. The Initial Audit(s) must be prepared by a suitably qualified independent environmental consultant, reviewed by Council and approved by the Director-General Secretary.</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 Secretary's approval of the Initial Audit(s) for each part of the Council Dedicated Land Potential Council Land, the Proponent shall submit to Council for review, and the Director-General Secretary for approval, environmental audits prepared by a suitably qualified independent environmental consultant. Those environmental audits must review the condition of the Council Dedicated Land Potential Council Land, against the agreed maintenance phase period performance criteria specified in each Environmental Management Plan until the affected lands have been transferred into public ownership. Environmental audit reports shall itemize all costs associated with the implementation, monitoring and reporting of all maintenance phase period works and include audited financial statements.</p>

Modification	Description
	<p>3) In the event that an environmental audit carried out in accordance with the is clause (48) indicates non-compliance with any of the relevant environmental management plans, approval for further stages of the development will not be granted Within 6 weeks of completing this audit, or as otherwise agreed by the Secretary, the Proponent shall submit a copy of the audit report to the Secretary with a response to any recommendations contained in the audit report.</p> <p>4) Within 3 months of submitting an audit report to the Secretary, 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 Secretary.</p>
<p>11. Bond for Environmental Restoration Works (Condition 50)</p>	<p>Condition 50 requires a cash bond or bank guarantee to ensure that all the environmental management plans are implemented.</p> <p>The Proponent states that the condition is unreasonable and unlawful and does not provide a mechanism for a refund of the bond and presents a financial burden on the project.</p> <p>The Proponent seeks to delete Condition 50.</p>
<p>12. Dust Mitigation Condition 82</p>	<p>The Proponent considers the existing condition 82 to be onerous and unreasonable, stating that other conditions in the project approval are in place with the intent to mitigate potential impacts. They further state that the Construction Management Plan and the Bulk Earthwards Sequencing Plan provide further mitigation measures. The Proponent is seeking to substantially amend condition 82 by replacing the detailed dust mitigation requirements with more general wording as follows:</p> <p>82. Adequate measures shall be taken to prevent dust from affecting the amenity of the neighbourhood during construction for each stage of the project. In particular, the following measures must be adopted:</p> <ul style="list-style-type: none"> a) Physical barriers shall be erected at right angles to the prevailing wind direction or shall be placed around or over dust sources to prevent wind or activity from generating dust emissions. b) Earthworks and scheduling activities shall be managed to coincide with the next stage of project to minimise the amount of time the site is left cut or exposed. c) All materials shall be stored or stockpiled at the best locations. d) The surface should be dampened slightly to prevent dust from becoming airborne but should not be wet to the extent that run off occurs. e) All vehicles carrying soil or rubble to or from the site shall at all times be covered to prevent the escape of dust or other material. f) All equipment wheels shall be washed before exiting the site using manual or automated sprayers and drive through washing bays. g) Gates shall be closed between vehicle movements and shall be fitted with shade cloth, and h) Cleaning of footpaths and roadways shall be carried out regularly. i) All topsoil stockpiles are to be sprayed with dust suppression material such as "hydro mulch", "dustex" or equivalent. All haul roads shall be regularly watered or treated with dust suppression material or as directed on site. j) All construction activities that generate dust shall cease when average wind speeds exceed 15m/s(54 km/h). The applicant

Modification	Description
	shall be responsible for providing a calibrated wind meter on site to monitor wind speeds. The wind meter must be located so that it is easily accessed by relevant supervisors and Council Officers. This data must be able to be produced to Council on request."
	Dust Mitigation
	82. The Proponent shall construct and operate the project in a manner that minimises dust emissions from the site, including wind-blown and traffic-generated dust. All activities on the site shall be undertaken with the objective of preventing visible emissions of dust from the site. Should such visible dust emissions occur at any time, the Proponent shall identify and implement all feasible dust mitigation measures, including cessation of relevant works, as appropriate, such that emissions of visible dust cease. Adequate mitigation measures shall be taken to prevent dust emissions affecting the amenity of the neighbourhood during construction related activities.
13. Dedication of Public Open Space	Condition 148 refers to the arrangements for the progressive dedication of public open space to Council within Precinct 5, prior to release of a subdivision certificate for that stage.
Condition 148	<p>The Proponent states that there is some ambiguity in the term of what is meant by public open space and that the condition is unclear as dedication occurs upon registration of the Plan of Subdivision.</p> <p>The Proponent is seeking to rename the condition and insert reference to revised plans for the Project Approval as follows:</p> <p>Dedication of Public Open Space</p> <p>148</p> <p>Public Reserves and Drainage Reserves</p> <p>148. The Proponent must make necessary arrangements for the progressive dedication of the public open space areas to council the public reserves and drainage reserves within Precinct 5 prior to the release of the subdivision certificate for that stage of the subdivision works in Precinct 5 on the registration of the relevant plan of subdivision for each stage. 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." 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.</p>
14. Dedication of Land to OEH	Condition 149 details the timings of the dedication of land to the OEH.
Condition 149	<p>The Proponent requests minor changes to make it clear that at least 150ha of land will be added to the Cudgen Nature Reserve and wants to remove reference to "offset areas" and add reference to the subdivision certificate under Part 4 of the Act for Precinct 5 as follows:</p> <p>Dedication of Land to OEH</p> <p>149 In accordance with the terms of the Concept Plan approval (06_0318), the Proponent must provide evidence of an agreement for the dedication to OEH of at least approximately 150ha of Offset of land as addition to the Cudgen Nature Reserve prior to the release of a subdivision certificate under Part 4 of this approval for Precinct 5. The land to be dedicated is that land shown on the "Plan of Proposed Areas to be Dedicated to NPWS Kings Forest Development Revision C, dated 23 August 2012 (listed in condition A3). Such an agreement must outline the Proponent's</p>

Modification	Description
	<p>commitment to establish boundary fences, access trails and fire trails satisfactory to the needs of OEH prior to the Offset Land land being added to the Cudgen Nature Reserve.</p> <p><i>The Proponent must ensure suitable funding for the amendment of existing reserve specific fire, pest and weed management plans. The funding should be sufficient to ensure actions within the Environmental Management Plans, as amended under this approval, relevant to the new additions are able to be completed."</i></p>
<p>15. Telephone and Electricity Services and NBN</p> <p>Condition 156(2)</p>	<p>Condition 156 requires that the Proponent provide written confirmation from the telecommunications authority certifying the provision and commissioning of telecommunications infrastructure is submitted prior to the subdivision certificate for each stage.</p> <p>The Proponent states that the requirement for telecommunications infrastructure to be completed and commissioned is onerous and unreasonable. They state that this is especially the case as the timing of this infrastructure is beyond their control.</p> <p>The Proponent seeks to amend the condition by altering the wording of the written certification from "provisioning and commissioning" of underground telephone supply to instead state that "satisfactory arrangements" for their provision have been made, as follows:</p> <p>Services – Telephone and Electricity Services and Federal Government's National Broadband Network (NBN)</p> <p>156.</p> <p>2) <i>The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning satisfactory arrangements have been made for the provision of underground telephone supply at the front boundary of the allotment has been completed must be submitted prior to the issue of a Subdivision Certificate for each stage of the project.</i></p>