

Modification of Minister's Approval

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

As delegate of the Minister for Planning under delegation executed on 14 September 2011, the Planning Assessment Commission of New South Wales (the Commission) approve the modification of the project application referred to in Schedule 1, subject to the conditions in Schedule 2.

Member of the Commission

Sydney

Member of the Commission

2014

SCHEDULE 1

Project Approval:

08_0194 granted by the Minister for Planning and Infrastructure on 11 August 2013, as modified on 16 May 2014 MOD 1.

Proponent:

Project 28 Pty Ltd

For the following:

Kings Forest Residential Subdivision, Stage 1 Bulk Earthworks, Roadworks and Subdivision of Precinct 5 into 376 residential lots. Construction of subdivision and infrastructure works along Kings Forest Parkway and within Precincts 1 and 5.

Approval Authority:

Minister for Planning

Land:

Kings Forest Estate
Lot 76, 272, 323 and 326 of DP 755701;
Lot 6 DP 875446;
Lot 2 DP 819015;
Lot 1 DP 706497;
Lot 40 DP 7482;
Lot 38A DP 13727;
Lot 38B DP 13727;
Lot 1 DP 129737;
Lot 1 DP 781633;
Lot 7 DP 875447;
Lot 37A DP 13727,
Lot 1 DP 1178256 (closed road); and
Lot 1, 2 & 3 DP 11757616 (closed roads).

Modification:

08_0194 Modification 2 involving:

- Minor amendments to the definitions and associated administrative modifications;
- Amendments to the management of dedicated lands (condition A13);

- Amendments to the timing of site subdivision (condition 1(1));
- Amendments to the timing of survey plans and form dealings (condition 3);
- Minor amendments to certification of compressible clay material in precincts;
- Amendments to the timing of the baseline monitoring requirements;
- Amendments to the timing of Koala food tree plantings in suitable locations;
- Amendments to the timing and process of environmental audits;
- Amendments to the bond for environmental restoration works;
- Amendments to the dust mitigation measures during construction;
- Amendments to public reserves and drainage reserves;
- Amendments to the telephone and electrical services requirement.

SCHEDULE 2

The above approval is modified as follows:

DEFINITIONS

1. Delete the following definitions in Schedule 1:

Land to be dedicated to Council in the Future;
Council Dedicated Land Plan;
Director-General;
Establishment Period;
Maintenance Period; and
Offset Area.

And insert the following definitions in Schedule 1 in alphabetical order:

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

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 an offset for biodiversity impacts in accordance with the policy applicable from time to time under which offsets for such impacts are assessed.

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

Potential Council Land Plan means the plan 'Potential Council Land Plan with Work Areas', prepared by Landsurv dated 6 December 2013, Revision E.

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

Secretary means the Secretary of the Department of Planning and Environment or his/her nominee.

2. Replace ALL references to 'Director-General' in Schedule 2 with 'Secretary'.
3. Replace condition A1.2) in Schedule 2 with the following:

Project Description

A1. Project approval is granted only to:

PART TWO – BULK EARTHWORKS AND CIVIL WORKS

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

4. Replace condition A13 in Schedule 2 with the following:

Management and Maintenance of Environmental Lands

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.

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.

5. Replace condition A15 in Schedule 2 with the following:

Dispute Resolution

A15. In the event that a dispute arises between the proponent 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.

6. Replace condition 1.1) in Schedule 2 with the following:

Subdivision of Kings Forest Estate

1. 1) The proponent shall subdivide the site. The subdivision at this stage shall be generally in accordance with the following plans:

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

Sheet 3 of 5	E	Plan of Proposed Staged Subdivision Kings Forest Development For Stage 1 Project Application	05.02.13
Sheet 4 of 5	E	Plan of Proposed Staged Subdivision Kings Forest Development For Stage 1 Project Application	05.02.13
Sheet 5 of 5	E	Plan of Proposed Staged Subdivision Kings Forest Development For Stage 1 Project Application	05.02.13

7. Replace condition 3 in Schedule 2 with the following:

Environmental Offset Areas

3. Prior to commencing any Bulk Earthworks in a Precinct, or as otherwise agreed between the Proponent and the Secretary, the Proponent shall:

- a) engage a registered surveyor to prepare survey plan(s) and permanently mark the boundaries of the:
 - i) the contiguous area of Potential Council Land; and
 - ii) the contiguous area of Future OEH Land

immediately adjacent to the Precinct (unless the relevant contiguous area has already been marked due to the earlier commencement of Bulk Earthworks in another Precinct). A staging plan for the survey works is to be submitted to the Department prior to the commencement of the project.

- b) where relevant, submit amended plans of proposed subdivision to the Secretary for approval that show the relevant contiguous Potential Council Land and the relevant contiguous Future OEH Land as separate lots;
- c) ensure that the boundaries marked by the surveyor remain marked at all times in a permanent manner that allows operating staff, the landowner and inspecting officers to clearly identify those boundaries; and
- d) submit for the Secretary's approval, a form of dealing(s) to be registered on the title to the Potential Council Land and the Future OEH Land that must:
 - i. bind all future landowners;
 - ii. provide for the management of the Potential Council Land and the Future OEH Land for conservation purposes including the implementation of relevant Environmental Management Plans, in perpetuity;
 - iii. permit access to the Potential Council Land and the 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
 - iv. provide for a release of any registered dealings in circumstances where all or part of the Potential Council Land or the Future OEH Land are transferred to a public authority.
- e) Where the Potential Council Land or the Future OEH Land is not subject to any amended plans of subdivision, the Proponent must within 1 month of the Secretary's approval of the dealing(s) referred to in condition 3(1)(d), lodge for registration the dealing(s) on the relevant titles to the Potential Council Land or the Future OEH Land and provide to the Secretary evidence of such registration within 10 days of the dealing(s) being registered.
- f) Where Potential Council Land or the Future OEH land is subject to any amended plans of subdivision, the Proponent must within 3 months of the

later of the Secretary's approval of the amended plans of subdivision under condition 3(b) or the Secretary's approval of dealing(s) referred to in condition 3(d), lodge for registration the dealing(s) on the relevant titles to the Potential Council Land or the Future OEH Land to the Director-General evidence of such registration within 10 days of the dealing(s) being registered.

8. Replace condition 13(2) in Schedule 2 with the following:

Compressible Clay Material in Precincts 11, 12 to 14.

13.

- 2) No filling is to occur in these areas until certification is provided by a practicing geotechnical engineer. The certification is to state that the earthworks have been undertaken in accordance with AS 3798-2007 (Guidelines on Earthworks for Commercial and Residential Development). Settlement plate information is to be provided with geotechnical certification from a qualified geotechnical engineer to validate that settlement has terminated.

9. Replace condition 37.1) in Schedule 2 with the following:

Baseline Monitoring

37.

- 1) No less than 3 months prior to the commencement of the project, the proponent must demonstrate to the satisfaction of the Department that sufficient baseline monitoring has commenced in accordance with the relevant Environmental Management Plans, including the following:
 - a. Flora and Fauna Monitoring Report;
 - b. Groundwater Management Plan;
 - c. Overall Water Management Plan; and
 - d. Stormwater Management Plan.

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".

10. Replace condition 45.1)c. in Schedule 2 with the following:

Koala Plan of Management

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

- 1) A revised offset strategy for the loss of Koala food trees incorporating the following:

- c. planting of Koala food trees in other suitable locations across the site within each relevant precinct of the development in general accordance with the plan titled "Proposed Koala Compensatory Habitat Area Staging Plan, Condition 45, Figure 1, JWA Pty Ltd, 29 April 2014", and as modified by any approval of the revised Koala Plan of Management under this condition. The timing of plantings shall be in accordance with the approved revised Koala Plan of Management required by Condition 45(2).

11. Replace condition 49 in Schedule 2 with the following:

Environmental Audit Reports

49.

- 1) Within 3 months of the establishment period, the proponent must conduct an environmental audit ("Initial Audit") for each part of the Potential Council Land to confirm that the establishment period and any relevant maintenance period 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 Secretary.
- 2) Within 3 months after each of the first and third anniversaries, and then subsequently every 2 years, of the Secretary's approval of the Initial Audit(s) for each part of the Potential Council Land, the Proponent shall submit to Council for review, and the Secretary for approval, environmental audits prepared by a suitably qualified independent environmental consultant. Those environmental audits must review the condition of the Potential Council Land against the agreed maintenance 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 period works and include audited financial statements.
- 3) 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.
- 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.

12. Replace condition 50 in Schedule 2 with the following:

Bond for Environmental Restoration and Maintenance Works

50.

- a) Prior to commencement of bulk earth works for each precinct a cash bond or bank guarantee shall be lodged with Council to ensure that the relevant environmental management plans for the associated Potential Council Land (as outlined by the Council Land Plan detailed in condition B5 of the concept plan) is implemented. The amount of such bond will be based on 135% of the cost of the environmental works (repair and/or enhancement) for the associated precinct/Potential Council Land for the establishment period specified in the approved environmental management plans. Two written quotes from suitably experienced and qualified contractors must be submitted to the Council which detail the cost of all works required.

The cash bond or bank guarantee will be refunded, following the written approval from the Secretary of the environmental audit for the associated Potential Council Land as per condition 49(1).

- b) Once the establishment period has been completed, the Proponent shall lodge a cash bond or bank guarantee with Council to ensure that the

relevant environmental management plans for the Potential Council Land are implemented for the maintenance period. The amount of such bond will be based on 135% of the cost of the environmental maintenance works for the associated precinct/Potential Council Land (as outlined by the Council Land Plan detailed in condition B5 of the concept plan) for the maintenance period specified in the approved environmental management plans or until the land is transferred to public ownership. Two written quotes from suitably experienced and qualified contractors must be submitted to the Council which detail the cost of all works required.

The cash bond or bank guarantee will be refunded, following the written approval from the Secretary of the environmental audit for the associated Potential Council Land as per condition 49(2) and written evidence is provided to the Secretary that the lands have been transferred into public ownership.

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

13. Replace condition 82 in Schedule 2 with the following:

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 dust emissions from the site. Should 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.

14. Replace condition 148 in Schedule 2 with the following:

Public Reserves and Drainage Reserves

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

15. Replace condition 149 in Schedule 2 with the following:

Dedication of Land to OEH

- 149. In accordance with the terms of the Concept Plan approval (06_0318), the Proponent must provide evidence of an agreement for the dedication to the OEH of at least approximately 150ha 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 commitment to establish

boundary fences, access trails and fire trails to the satisfaction of the OEH prior to the land being added to the Cudgen Nature Reserve.

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

16. Replace condition 156.2) in Schedule 2 with the following:

Services – Telephone and Electricity Services and Federal Government's National Broadband Network (NBN)

156.

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

END OF SECTION