

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.



Garry West
Member of the Commission

Sydney



Jan Murrell
Member of the Commission

20 November 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);
- 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.

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, as amended in accordance with Condition B5.

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 physical works 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.

Note: For the purpose of this condition, commencement is taken to mean any physical works including clearing vegetation, the use of heavy duty equipment for the purpose of breaking ground for bulk earthworks, or infrastructure for the proposed project.

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

Compressible Clay Material in Precincts 11, 12 to 14.

13.

- 1) Areas of compressible clay material in Precincts 11, 12-14 (Bulk Earthworks Sequences/Stages 3 & 4) are to be to the satisfaction of a practicing geotechnical engineer.
- 2) Prior to the issue of a Construction Certificate for the filling of any area within Precincts 11, 12 - 14 a detailed geotechnical investigation is to be carried out by an appropriately qualified practising geotechnical engineer to the satisfaction of the Secretary. The investigation is to identify any areas of compressible clay materials which may require preloading or other forms of treatment necessary to deliver the appropriate consolidation to suit future development.
- 3) All earthworks are to be carried out in accordance with AS3798-2007 (Guidelines on earthworks for commercial and residential Developments) under Level 1 supervision and in accordance with the requirements of the findings of the detailed geotechnical investigation as per condition in 2) above. Any preloading or other forms of work carried out to ensure the appropriate consolidation of any compressible clay materials are to be monitored and assessed against the relevant performance criteria.
- 4) At the completion of the works and prior to the issue of a subdivision certificate for any proposed allotments within Precincts 11, 12-14 an appropriately qualified practising geotechnical engineer is to provide certification that all filling works have been carried out under Level 1 Supervision in accordance with AS3798-2007 and, where applicable, compressible clay materials have achieved the required levels of consolidation.

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

Baseline Monitoring

37.

- 1) Prior to the issue of the first Construction Certificate, 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.

10. Replace condition 45 in Schedule 2 with the following:

Koala Plan of Management

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

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

- a. the restoration and planting of Koala food trees offsite (a 27ha area of land has been nominated by OEH and identified in Map 1.(attached));
- b. Planting of Koala food trees in the new east-west corridor as required by Term B4 of the Concept Plan approval;
- c. planting of Koala food trees in other suitable locations across the site within each relevant precinct of the development in general accordance with the plan titled "Proposed Koala Compensatory Habitat Area Staging Plan, Condition 45, Figure 1, JWA Pty Ltd, 29 April 2014", 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);
- d. Koala food tree plantings are to be minimised in areas that are identified as naturally regenerating.

2) The amended KPoM approval shall include details of the Koala food tree planting schedule with numbers and staging and be prepared in consultation with council and submitted to the Director-General for approval within 6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the *Commonwealth Environmental Protection and Biodiversity Conservation Act* or prior to issue of any construction certificate, whichever occurs first.

3) The amended KPoM shall have regard to any determination of the NSW Scientific Committee established by the *Threatened Species conservation Act 1995*.

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 Potential 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, every 2 years 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 that 2 year 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 Potential Council Land Plan detailed in condition B5 of the concept plan) for that 2 year period, or until the completion criteria specified in the environmental management plans are met as required by Condition 39, and 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 in the relevant 2 year maintenance period.
- c) The cash bond or bank guarantee will be refunded at the end of each two year maintenance period subject to the Audit Report confirming that the requirements of the approved environmental management plans have been implemented by the Proponent.
- d) 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.

- e) Bi-annual bonding will no longer be required following the Proponent providing evidence to the Secretary that the final audit has been conducted in accordance with Condition 49 which demonstrates that the relevant works have been completed and written evidence is provided to the Secretary that the lands have been transferred into public ownership.

13. Replace condition 52 in Schedule 2 with the following:

Construction Environmental Management Plan

- 1) Prior to the commencement of construction works for each stage of the project a Construction Environmental Management Plan (CEMP) shall be prepared that covers the area of works. The CEMP shall be consistent with the *Guideline for the Preparation of Environmental Management Plans* (DIPNR, 2004). The CEMP shall include details sufficient to understand and avoid, mitigate and remedy all potential environmental impacts of the project during construction. The CEMP shall include, but not be limited to:
 - a) a description of all relevant activities to be undertaken on the site during construction (including an indicative timeline);
 - b) a description of relevant environmental management objectives for the site;
 - c) a detailed construction management strategy for each sequence / stage of the bulk earthworks;
 - d) details of measures to be installed to separate construction areas from publicly accessible areas;
 - e) statutory and other obligations that the Proponent is required to fulfil during construction including all relevant approvals, licences and consultations;
 - f) a description of the roles and responsibilities for all relevant employees involved in construction
 - g) hours of work (including standard hours of work for the Environmental Officer);
 - h) a 24-hour contact telephone number shall be provided to all adjoining owners and occupants. Note: the nominated telephone number may contain provision for a voice message service outside of normal working hours.
 - i) Measures to be implemented during bulk earthworks operations to ensure the existing 600mm trunk water main is protected
 - j) Details of the Aboriginal Cultural Heritage Program for personnel and contractors (the program should be developed and implemented in collaboration with the local Aboriginal community)
 - k) A subset of the following management plans:
 - i. traffic and pedestrian management (see condition 55);
 - ii. noise and vibration management (see condition 56);
 - iii. construction waste management (including the proposed method and location of excess spoil from bulk earthworks) (see condition 57);
 - iv. erosion and sediment control for the entire Kings Forest Estate (see condition 54);
 - v. dust management to include:
 - identification of all dust emission/sources for each stage of the project;
 - identification of appropriate air quality goals/management criteria; and
 - details of all dust management and/or dust mitigation measures required to achieve the air quality goals/criteria for the construction works.
 - l) Note: other conditions in this approval may specify relevant objectives or requirements for or in addition to any of the matters listed directly above.
- 2) Bulk earthworks are limited to one sequence area at a time, with the maximum exposed disturbed area (that has not been permanently vegetated) not exceeding a

maximum of 5 hectares unless otherwise approved as part of this approval in Condition 9, at any time to reduce exposed areas.

- 3) The CEMP shall be prepared in consultation with the Council and submitted for the approval by the Secretary no later than one month prior to the commencement of construction works. Notwithstanding, where construction work is to be undertaken in stages, the Proponent may, subject to the agreement of the Secretary, stage the submission of the CEMP consistent with the staging of activities relating to that work. The Proponent shall also forward copy of the CEMP to the Secretary and Council for information. Construction shall not commence until written approval has been received from the certifying authority.

14. Delete condition 82 in Schedule 2

15. 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.

16. 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.

17. 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.