



Office of
Environment
& Heritage

Our Ref: DOC18/249517

Your Ref: Letter received 17 April 2018

Mr Anthony Witherdin
Director Modification Assessments
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Attention: Ms Jane Flanagan - Planning Officer

Dear Mr Witherdin

**Re: Modification for Project Approval – Kings Forest Residential Subdivision, Tweed Shire
MP 06_0318 MOD 8 and MP08_0194 MOD 7**

Thank you for your letter dated 13 April 2018 about the modification request to modify the Kings Forest Concept Plan Approval and Project Approval in the Tweed Shire local government area seeking comments from the Office of Environment and Heritage (OEH). I appreciate the opportunity to provide input and apologise for the delay in responding.

The proposed modifications relate to:

- Extending the lapse dates of the Project and Concept approvals to 31/12/2019; and
- Including a new condition in the Project Approval to enable a Construction Certificate to be issued for the carrying out of investigation and monitoring work.

The OEH has reviewed the information supplied and does not raise any issues on the extension of the lapse dates for the Project and Concept approvals to the date proposed. We do however raise a potential issue with the proposed new condition to enable work to commence for the purposes of investigation and monitoring work.

The wording for the new condition is proposed to be as follows:

"Investigatory and monitoring work". Despite any other condition of the project approval, a construction certificate may be issued under a project approval for any investigatory or monitoring work relating to the works authorised by this approval, such as geotechnical work (including the drilling of bore holes), surveying activities (including the pegging out of land), monitoring environmental conditions, the taking of samples and the measurement of physical features. For avoidance of doubt, any other conditions precedent imposed by this project approval for the issue of a construction certificate do not apply to a construction certificate issued for investigatory or monitoring work under this condition".

The proponent argues that there is a need to obtain a construction certificate to authorise certain physical activities such as soil testing and baseline environmental monitoring that must be carried out to meet "preconditions". It is suggested that the legal position is confusing and that the request to modify the consent will simplify the legal position and promote clarity.

The OEH notes that there are several consent conditions set by the Land and Environment Court Judgement/Order dated 20 February 2017 that have not been met to date. These include the preparation of environmental management plans (Flora and Fauna Monitoring Report, Buffer Management Plan, Vegetation Management Plan, Koala Plan of Management, Feral Animal Management Plan, Weed Management Plan and Threatened Species Management Plan) to be finalised and submitted to the Secretary for approval within six months of the approval or prior to issue of any construction certificate, whichever occurs first.

The court's order also required the delineation of environment protection zones and buffers and the Cudgen Nature Reserve boundaries prior to the commencement of works for any stage of the project to prevent unauthorised access to these protected areas.

The OEH raises a potential issue that the proposed modification for a construction certification for investigatory or monitoring works does not appear to be necessary to meet the above conditions of consent and may authorise works that could impact on environmental values that are yet to be delineated. For example, the final koala habitat conservation and rehabilitation areas have not yet been agreed.

We consider that monitoring and surveying works can be undertaken without the need for this modification. The OEH therefore recommends the Department of Planning and Environment considers whether the proposed modification is necessary and whether it could impact on the timing and fulfillment of the required environmental management measures.

If you have any further questions about this issue, Ms Rachel Lonie, Senior Conservation Planning Officer, Regional Operations, OEH, can be contacted on 6650 7130 or at Rachel.Lonie@environment.nsw.gov.au.

Yours sincerely

 7 May 2018

DIMITRI YOUNG
Senior Team Leader Planning, North East Branch
Regional Operations

Contact officer: RACHEL LONIE
6650 7130