

11 August 2013

**Determination of Kings Forest Estate Concept Plan Modification 2 (06_0318 Mod 2)
and Project Application for Bulk Earthworks and Stage 1 Subdivision (08_0194)**

1. DELEGATION TO THE COMMISSION

The above concept plan modification and project application lodged by Project 28 Pty Ltd (the proponent) has been referred to the Planning Assessment Commission (the Commission) for determination under Ministerial delegation dated 14 September 2011, as more than 25 submissions in the nature of objections were received.

The Commission constituted to determine the applications consists of Mr Garry West (chair) and Ms Jan Murrell.

2. BACKGROUND

The Planning Assessment Commission (PAC) provided the then Minister for Planning with a review of the reasonableness of the Director-General's Environmental Assessment Report for the concept plan on the 16 July 2010. The PAC review concluded that it was generally satisfied with the Department's assessment, conclusion and recommendations.

Subsequently, the concept plan was approved on the 19 August 2010 by the then Minister for Planning under Section 75O of the *Environmental Planning and Assessment Act 1979*.

The Environmental Assessment for the modification of the concept plan and project application for Stage 1 of the Estate was publically exhibited from 22 November 2011 until 23 December 2011.

3. MODIFICATION TO THE CONCEPT PLAN

The proponent has sought modification to the concept plan in response to the Stage 1 project application and more detailed design of the site. The key modifications are as follows:

- The number of precincts has been reduced from 24 to 14;
- The lake in precinct 10 has been resized and reshaped to respond to flood management concerns;
- Minor amendments to the Development Code;
- To provide only an extension of the existing east-west wildlife corridor across the centre of the site;
- An updated Koala Plan of Management (KPoM); and
- Timing of management plan approvals.

As well as a number of minor amendments which are detailed in section 1.4 of the Director-General's Assessment Report.

Following exhibition of the modification the proponent provided a Response to Submissions (RtS) and a Preferred Project Report (PPR) in response to the issues raised in submissions. The PPR amended the application as follows:

- Minor amendments to the Development Code;

- An East-West wildlife corridor assessment; and
- 2 and 3 storey townhouses to replace apartments in the Development Matrix.

Along with a number of other amendments which are detailed in section 3.4 of the Director-General's Assessment Report.

4. PROJECT APPLICATION

The proponent is seeking project approval for Stage 1 of the Estate which would include the following key components (further detail is included in section 1.4 of the Director-General's Assessment Report):

- Subdivision of the site into 10 lots;
- The Plan of Development for and further subdivision of Precinct 5 into 383 residential lots;
- Dedication of approximately 150ha of land to the OEH as an addition to the Cudgen Nature Reserve;
- Development of 2,036m² of floor space for a 'rural supplies' building, car parking, landscaping and access arrangements;
- Construction of subdivision and infrastructure works along Kings Forest Parkway and within Precincts 1 and 5;
- Bulk earthworks across the site;
- Road works; and
- The preparation and implementation of the biodiversity compensation strategy.

Following exhibition of the project application the proponent provided a Response to Submissions (RtS) and a Preferred Project Report (PPR) in response to the issues raised in submissions. The PPR amended the application as follows:

- A revised layout for Precinct 1 to locate Asset Protection Zone (APZ) outside 50m ecological buffer;
- Revised subdivision layout in Precinct 5, including a reduction in the number of lots from 410 to 376 lots and the inclusion of a townhouse lot;
- Removal of all development from the 50m ecological buffer with the exception of Koala fencing, a stormwater swale and Road No.9 in Precinct 5 within the outer 20m of the ecological buffer;
- Relocation of proposed zone sub-station to Precinct 2;
- Amended Environmental Management Plans (EMPs);
- Revised statement of commitments; and
- Amended the Kings Forest Design Guidelines.

5. THE ASSESSMENT REPORT

The Department's Assessment Report identified the following key issues for the concept plan modification to be:

- Ongoing management and maintenance of environmental lands;
- East-west wildlife corridor; and
- Kings Forest Development Code.

The Assessment Report identified the following key issues for the project application to be:

- Implementation and content of EMPs;
- Koala management and protection;
- Biodiversity compensation strategy;
- Protection of heathland and earthworks in the ecological buffers;
- Precinct 1 rural supplies development, including use, location and access;

- Bushfire management;
- Sequencing of bulk earthworks; and
- Affordable housing.

Following careful consideration of issues raised in submissions from the public, councils and agencies, the amendments of the proposal made in the PPR and its assessment of the key issues, the Department was satisfied that the application could be approved subject to its recommended modifications and conditions of approval with the exception of the following in regards to the concept plan modifications:

- The proposed changes to assist with the interpretation of the development code and correct inconsistencies (**recommended for approval in part**);
- Only to provide an extension of the existing east-west corridor across the centre of the site to the Environ Road underpass to the south-west of the site (**not recommended for approval**);
- Submission of stage-specific management plans prior to issue of a construction certificate rather than as part of future development applications across the site (**not recommended for approval**); and
- An updated KPOM (**recommended for approval, in part**).

6. MEETING WITH STAKEHOLDERS

On 18 June 2013, the Commission visited the site and held a meeting with the proponent, followed by a meeting with Tweed Shire Council (council), further followed by the scheduled public meeting which was held in the late afternoon. The issues raised at these meetings are further discussed below.

6.1 Proponent

The proponent provided some comments on the recommended conditions prior to the meeting held on 18 June 2013.

On Wednesday 18 June 2013 the Commission visited the proposed Precincts 1 and 5 along with Cudgen Paddock. At the site visit the following issues were discussed:

- Design options for the Tweed Coast Road/Old Bogangar Road intersection;
- Cut and fill sequencing plans, it was noted that Precinct 5 will be divided into approximately four sections for earthworks;
- Filling requirements for stormwater management;
- Erosion not considered a significant issue by the proponent due to underlying sands;
- SEPP 14 areas to be avoided;
- 10,000 koala food trees proposed to be planted;
- Frog habitat; and
- Infrastructure – the need to install sewer pipelines quite deep due to the flat topography of the site.

Following the site visit, the Commission met with the proponent at the South Tweed Sports Club, and discussed the following:

- Management of offsets in perpetuity;
- Responsibility of land owners and conditions of approval;
- Maintenance of ecological buffers;
- State funding should be provided for conservation areas that are a benefit to the State;

- Director-General as a moderator should there be a dispute between the proponent and council;
- Community levy for maintenance of offsets;
- Affordable housing to be considered as part of the Development Application for Precinct 7;
- Request for compensation from council regarding the easement over the existing pipeline, the proponent raised concerned it would constrain lot layouts;
- Extension to the concept plan lapse date;
- Changes to condition 97 consisting of a reduction of the vegetation buffer;
- Consider that condition 128 which requires compliance certificate to be obtained from council is inappropriate. Council should be removed and certification be obtained from a Private Certification Authority (PCA);
- The proponent indicated that earthworks would be carried out in 5ha sections; and
- The proponent did not support subdividing the entire site prior to bulk earth works.

6.2 Tweed Shire Council (Council)

At the meeting with the Commission, council confirmed its general support for the recommendations made by the Department and also provided comments on the following matters:

- Financial figures in Condition 147 (Section 94 Development Contributions) will need to be updated if the project is determined after 1 July 2013;
- Council does not support the condition which requires council to provide compensation for the establishment of an easement for existing infrastructure and requested that the note in condition 32 of the project application be deleted;
- 'sewer' should be added to the services listed in condition 138 of the project application;
- A condition which covers an establishment period for parks to ensure plants are established for at least 12 months (1 floral cycle);
- Condition C15(2) of the Concept Plan be updated to 1,000 lots;
- The proponent submits clear and concise plans including – dedication plans, parks, drainage reserves prior to the issue of the subdivision certificate;
- The modifications to the concept plan will weaken the concept plan in terms of environmental protection;
- Fencing on either side of the road be established prior to the commencement of earthworks to protect Koala habitat;
- The loss of habitat connectivity is a concern to council;
- The long term management of dedicated lands in particular the cost of management is another concern. Council supported that offset lands shall be managed in perpetuity;
- Council indicated an environmental levy was suggested to the proponent in order to maintain available funds for dedicated lands;
- The original Concept Plan promoted an integrated environmental protection/urban development project and that rehabilitation works should occur in proportion to the release of precincts;
- Requested that independent environmental audit reports are conducted every 2 years instead of 3 years;
- The southern habitat corridor would take up to 20 years until functional, trees need to be planted and established as soon as possible;
- EMPs be developed in consultation with council; and

- Currently there is no plan of management for pest insects such as mosquitoes and sand flies, this should be addressed.

6.3 Public Meeting

On Tuesday 18 June 2013 the Commission held a meeting at the South Tweed Sports Club to hear from the community comments on the assessment and recommended conditions. Fifteen people spoke at the meeting, including representatives of a number of special interest groups.

The key issues raised at the public meeting included:

Flora and Fauna

Protection of Koala's and their habitat:

- Koala food trees should be established as soon as possible, as there would be a lag time before trees would reach maturity;
- Cattle grids are not considered effective in keeping dogs out of Koala habitat areas. Therefore dogs should be banned. It was unrealistic to expect dog owners to be responsible and not allow dogs to enter Koala habitat;
- Fencing Koala habitat areas was supported, concerns raised regarding management and maintenance of fences, requested that gating of Koala habitat areas be kept to a minimum to minimise Koala habitat access points;
- Concerned Koala's will get hit by cars. Requested 40km/hour speed limits within the development to reduce the likelihood of Koala and car collisions;
- Cudgen Paddock traversed by Koalas, request that it be protected;
- The KPoM be approved prior to determination;
- Long term management of Koala habitat; and
- Koala Beach development management measures should be adopted as a minimum.

Frogs:

- Concern with impacts to the Wallum Sedge Frog and its habitat in particular from the bulk earthworks.

Habitat Corridor:

- Disagree with the deletion of the north-west habitat corridor;
- Supported the Department's recommendation for a East-West habitat corridor; and
- Concerned the impact further fragmentation will have on the flora and fauna.

Offsets

- Agree that offsets should be provided in perpetuity;
- The proposed compensatory habitat does not compromise an adequate offset for loss of habitat;
- Payment to council for environmental management of lands is essential, council do not have the available funds to manage the land; and
- Land dedication issues should be resolved prior to determination.

Other Flora and Fauna concerns:

- Impacts to the heathland and potoroo;
- Impacts on birds and biodiversity; and
- Impacts to Cudgen estuary and marine life habitat not assessed adequately, Cudgen Lake marine assessment should have been undertaken.

Bulk Earthworks

- EMPs need to be approved and implemented prior to the commencement bulk earthworks;
- Staged earthworks should occur for Cudgen Paddock;
- Support that only 5ha of soil is to be exposed during earthworks;
- Earthworks should be minimised as far as possible;
- Earthworks over the entire site has the potential to pre-empt development;
- Earthworks should not be allowed within the ecological buffers; and
- Concerned with construction impacts such as run off.

Ecological Sustainable Development

- Ecological sustainable development should be adopted such as solar and water saving techniques.

Environmental Management Plans (EMPs)

- EMPs lack detail and measurable performance criteria;
- Requested a full time environmental officer be appointed to ensure environmental issues are appropriately managed;
- Concerned that there has been three revisions of the EMPs and the Department considers that the document is still not adequate; and
- Plans are illegible.

Other Issues

- Not acknowledged that Kings Forest is listed as a State Significant Site;
- The proponent has ignored issues raised by council and the of Environment and Heritage (OEH);
- Black Creek needs to be restored and a rehabilitation plan approved prior to commencement of Stage 1 approval;
- Concerned with the impact on aboriginal heritage;
- Request that Kings Forest be open to the rural fire service,
- The proposed roads are too narrow for emergency vehicles, there is a fire safety hazard with the road design (one road in and one road out);
- Mental health services should be provided as a priority over residential development;
- Believe the golf course will be re-zoned for residential purposes;
- The local community does not benefit from the development;
- Concerned with impacts on the already congested Tweed Coast Road; and
- Concerned that the proponent will seek a modification and remove covenants.

6.4 Department

The Commission received advice from the Department regarding the comments received from the proponent and council on the recommended conditions of approval.

Additionally, the Commission requested specific advice on the following:

- Issues in relation to the protection of Koalas;
- EMPs requirements; and
- Possibility of translocation of the Wallum Sedge Frog and the Wallum Froglet.

The Commission met with the Department on 31 July 2013. The following matters were discussed:

- Management of bulk earthworks;
- Management of dust;

- Road design;
- The need for geotechnical compliance during bulk earthworks; and
- Restoration and stabilisation of cleared lands.

7. COMMISSION'S CONSIDERATION

The Commission has carefully considered the Department's Assessment Report, documents provided, written submissions and views expressed at the public meeting and in meetings with the proponent, council and the Department as well as knowledge gained from the site visit. There were a number of issues that emerged which are discussed in further detail below.

7.1 Flora and Fauna

East-West Wildlife Corridor (Concept Plan)

The Commission notes the proponent's request to extend the central east-west wildlife corridor and delete the requirement for a northern or southern east-west wildlife corridor. The Commission concurs with the Department that if neither the northern or the southern east-west corridor are not provided then there would likely be potential impacts to fauna movements and habitat connectivity and therefore these corridors are needed to allow for the movement of fauna on a regional scale.

Koala Habitat

A number of community members raised concern at the public meeting about the loss of Koala food and habitat trees. Whilst it was noted the proponent proposes to plant Koala food trees, concern was raised regarding the time it would take for these trees to become established. The Commission shares the same concern and has therefore required that the KoPM be revised within 6 months of this approval. The Commission has also required that details of the timing and staging of the plantings be provided and that planting of the Koala food trees should commence within 1 month of the revised KPOM being approved.

The community also raised concern about the effectiveness of using cattle grids to stop dogs from entering protected Koala habitat areas. Cattle grids are primarily to act as a deterrent to koalas entering the residential areas. The Commission considers that round pipe cattle grids could be used as a further deterrent.

Frog Management

The potential impact on the Wallum Froglet and the Wallum Sedge Frog was raised in the public meeting. The Commission further investigated the possibility of translocation of frogs prior to the construction phase commencing. The Commission notes that there is not sufficient information to substantiate a successful frog translocation program and therefore the Commission accepts that frog translocation is not a viable option.

7.2 Management of Environmental Conservation Lands (Concept Plan)

The proponent and council have been unable to agree on the estimated cost of managing and maintaining the proposed environmental lands which are to be dedicated to council in the future. Unless suitable arrangement is made regarding the funding of maintenance and management of environmental lands council may refuse to accept the dedication of any lands. The Department has recommended that the lands be managed and maintained in perpetuity by the proponent and that a covenant be applied to allow the opportunity for council and the proponent to enter into a Voluntary Planning Agreement. The Commission concurs with the Department.

7.3 Old Bogangar Road intersection

Council indicated that they do not agree with the proposed Old Bogangar Road and Tweed Coast Road intersection layout. During the site visit the proponent indicated a number of road layout options were available for the intersection. The Commission requested that further intersection layout options be provided. The proponent then stated that they believed the option put forward in the Preferred Project Report was most appropriate and until further detailed investigations were conducted further options could not be considered. To ensure that the intersection is designed in a way that does not lead to other road conflicts and a serious reduction in level of service the Commission has amended the condition, which will ensure council involvement in the final design solution as a road authority.

7.4 EMPs

The Commission notes the communities concern and agrees that as the project application includes bulk earthworks across the entire site it is essential that the relevant management plans be finalised and implemented to a satisfactory standard prior to the commencement of construction. The Department recommends the EMPs are to be submitted to the Director-General for approval. The Commission requires that the EMPs be prepared in consultation with council.

7.5 Subdivision

The proponent indicated that they did not intend to subdivide the entire site prior to the commencement of bulk earthworks. This approach is not supported by the Commission or the Department. The need to subdivide the site prior to bulk earthworks relates to ensuring that the environmental offset areas (including land to be dedicated to OEH and council) are subdivided and protected prior to the commencement of bulk earthworks. The Commission believes that the subdivision is necessary as it identifies land that has to have a separate covenant on it to identify conservation offsets. The Commission agrees with the recommended condition.

7.6 Easement Compensation

The Commission notes that an easement will be required for an existing watermain on the development site. The proponent requested that compensation be paid by council for the establishment of the easement. The Commission believes that compensation in relation the existing watermain easement is matter between the council and the proponent therefore the Commission has removed the recommended condition.

7.7 Rural Supplies Building

The proponent has requested that the recommended 10m wide vegetation buffer in the north of Precinct 1 between the adjacent land and rural supplies building be modified to a 3m high solid screen. The Department and the NSW Department of Primary Industries have recommended a conservative approach as the final use of the building is unknown and to reduce potential conflicts between the building and adjacent agricultural land. The Commission agrees that a 10m wide vegetation buffer would have a greater capacity to minimise conflicting land use and potential visual impacts and therefore the condition remains as recommended.

7.8 Other Issues

The Commission has updated the contributions in the conditions of approval to reflect council's latest contributions for this financial year.

The Commission has added a condition which requires a bond for environmental restoration works to ensure that the establishment phase of works required to be implemented is secured.

8. Commission's Determination

The Commission generally agrees with the Department's conclusions and recommendation. In the Commission's view, the proposed modified concept plan and project application will allow for the provision of housing and housing choice in the region along with rehabilitation and habitat conservation benefits. Additionally employment opportunities would be created through the construction phases.

Accordingly the Commission has determined that approval be granted to the modified concept plan and the project application as contained in the attached '*Instrument of Approval*'.



Garry West
Member of the Commission



Jan Murrell
Member of the Commission