



Kings Forest Stage 1 Modification 10

Modify the timing for submission of landscape plan and
Environmental Management Plans.

State Significant Development Modification Assessment (MP
08_0194 MOD 10)

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Glossary

Abbreviation	Definition
AHD	Australian Height Datum
Council	Tweed Shire Council
BCD	Biodiversity Conservation Division
Department	Department of Planning, Industry and Environment
EESG	Environment, Energy and Science Group, DPIE
EIS	Environmental Impact Statement
EP&A Act	Environmental Planning and Assessment Act 1979
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPBC Act	Environment Protection and Biodiversity Conservation Act 1999
EPI	Environmental Planning Instrument
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development

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Introduction

1.1 Background

This report provides an assessment of an application to modify the project approval for the Kings Forest residential subdivision (MP 08_0194).

The application seeks to amend the timing for submission of the civil works drawings under Condition 5, the landscape plan required under Condition 35 and the environmental management plans required under Conditions 40, 41, 42, 43, 44, 47 and 48.

The application was lodged by Project 28 Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).

1.2 Subject site

The Kings Forest site is approximately 880 hectares in area and located approximately 15 kilometres (km) south of Tweed Heads, close to the townships of Bogangar, Cabarita Beach and Casuarina, in the Tweed Shire Council Local Government Area.

The site is surrounded by agricultural and pastoral lands to the north, south and west. Cudgen Lake, wetlands and the Cudgen Nature Reserve also border the southern and eastern site boundaries. Further east on the opposite side of Cudgen Nature Reserve is the coastal suburb of Casuarina. (**Figure 1**).

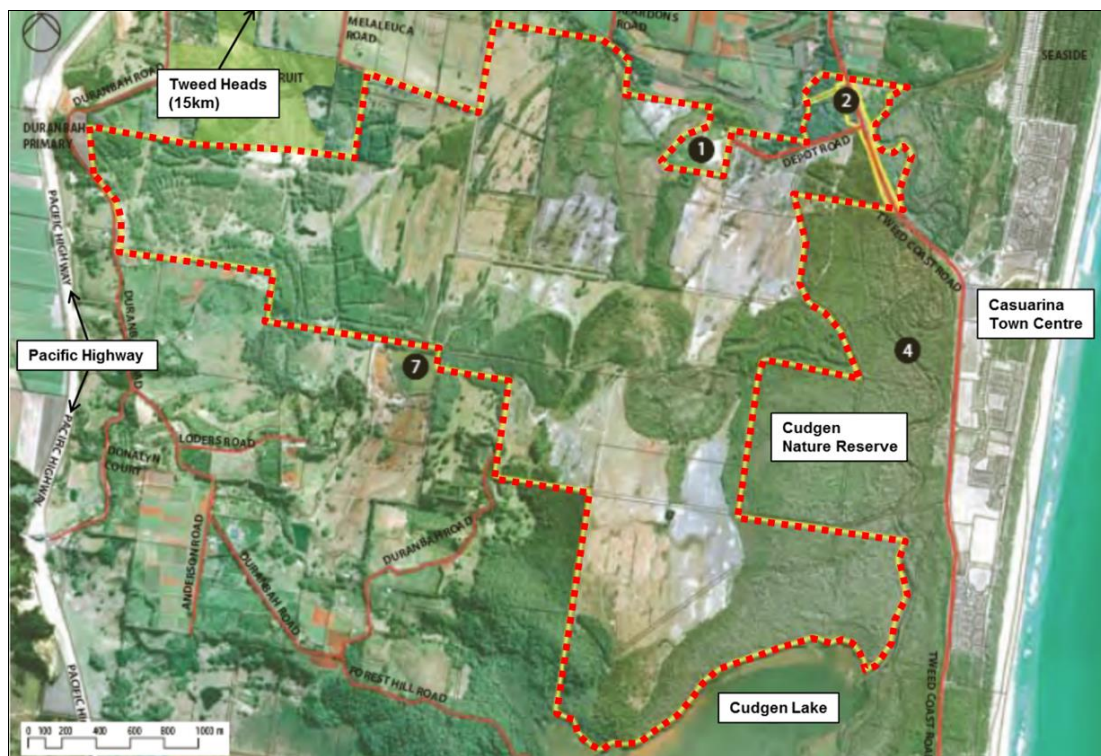


Figure 1 | Site location (outlined in red and yellow) and Regional context

1.3 Approval history

Concept Approval

On 19 August 2010, the then Minister for Planning approved the concept plan (MP 06_0318) for:

- residential development for approximately 4500 dwellings
- town centre and neighbourhood centre for future retail and commercial uses
- employment land and community and education facilities
- a golf course, open space, wildlife corridors, protection and rehabilitation of environmentally sensitive land
- water management areas and lake
- roads, bicycle and pedestrian network and utility services infrastructure.

The proposal has been modified on eight occasions as outlined in **Table 1** below.

Table 1 | Summary of Modifications to the Concept Approval

Mod No.	Summary of Modifications	Approval Authority	Type	Status
MOD 1	Incorporation of the Kings Forest Development Code into the concept approval, amendments to the schedule of approved plans and administrative changes to the terms of approval.	Director	75W	Approved on 22 Dec 2010
MOD 2	Amendments to the concept plan drawings, reduction in the number of precincts from 24 to 14, provision of an east-west wildlife corridor, and modifications to the terms of approval to require the implementation of management plans in perpetuity and clarify the plans that need to be prepared prior to the dedication of land to Tweed Shire Council.	IPC	75W	Approved on 11 Aug 2010
MOD 3	Amendments to the conditions of approval and definitions, extension of the approval lapse date (from 19 August 2015 to 31 December 2016) and amendments to the precinct specific management plans.	IPC		Approved on 16 May 2010
MOD 4	Amendments to the schedule of definitions and terms B5, B7, C3, C29 (to reflect the amended definitions) and C30 (relating to provision of affordable housing) and insertion of the Department's standard dispute resolution clause.	IPC	75W	Approved on 20 Nov 2014
MOD 5	Amendments to the Kings Forest Development Code to include food and drink premises as permissible uses on employment lands.	Director	75W	Approved on 10 Nov 2015
MOD 6	Modifications to Koala Management arrangements.			Withdrawn
MOD 7	Amendments to facilitate a private wastewater treatment plant.			Withdrawn
MOD 8	Extend lapse date to 31 December 2019 and vary the description of the required physical works to prevent the approval lapsing.	Director	75W	Approved on 24 May 2018

Project Approval

On 11 August 2013, the then Planning Assessment Commission granted project approval (MP 08_0194) for:

- the staged creation of 10 development lots
- bulk earthworks across the site
- subdivision of Precinct 5 into 376 residential lots
- infrastructure and roadworks along the Kings Forest Parkway and within Precincts 1 and 5
- construction of 2,036 m² of floor space within Precinct 1 for future use as a rural supplies building with associated car parking and landscaping.

The proposal has been modified on nine occasions as outlined in **Table 2** below.

Table 2 | Summary of Modifications to the Stage 1 Project Approval

Mod No.	Summary of Modifications	Approval Authority	Type	Status
MOD 1	Amendments to the weed management plan, changes to the staging plans for works adjacent to the environmental protection zones, inclusion of the former Crown reserves into the project area description, and amendments to the conditions of approval to extend the timeframes for submitting the environmental management plans.	Director	75W	Approved on 16 May 2014
MOD 2	Amendments to the list of definitions in Schedule 1, introduction of a modified process for bond payments, changes to dust mitigation measures, inclusion of a new dispute resolution condition, and amendments to the timing of various environmental requirements.	IPC-N	75W	Approved on 20 Nov 2014
MOD 3	Amendments to replace the previously approved rural supplies building in Precinct 1 with a service station/food and drink premises, including six food tenancies, an outdoor dining area, eight car bowsters, car and dog wash, and two pylon signs of between 7.5-9.5 metres high.	LEC	75W	Approved on 20 Feb 2017
MOD 4	Implement a Revised Koala Plan of Management and undertake related changes to the conditions of approval.	IPC-N	75W	Approved on 8 May 2019
MOD 5	Amendments to water servicing arrangements.			Withdrawn
MOD 6	Amendments to conditions to defer the timing for the construction of the roundabout, correct an error in the description of the inner protection area (IPA) for bushfire management at the service station site, and apply a discount to road infrastructure contributions applicable to development within Precinct 1.	Director	75W	Approved on 21 Dec 2017
MOD 7	To extend the time for physical commencement of works and clarify that a construction certificate may be issued under the project approval for the carrying out of investigative and monitoring work.	Director	75W	Approved on 17 Jun 2018

MOD 8	Amendments to reduce pavement widths in certain sections of the Kings Forest Parkway, delete a requirement for developer contributions for heavy haulage and correct a typographical error.	Director	4.55 (1A)	Approved on 26 Nov 2019
MOD 9	Amend Conditions 45A(8) and 50, clarify bond calculations of Condition 45A(8) and delete Condition 45A(7)(a)(v)			Withdrawn

Proposed modification

The application seeks to modify the project approval to:

- Amend the timing for the submission of amended civil works drawing under Condition 5.
- Amend the timing for the submission of the landscape plan, under Condition 35.
- Amend the timing for submission of the environmental management plans under Conditions 40, 41, 42, 43, 44, 47 and 48.

Details of the proposed modifications are as follows:

Condition 5

Condition 5 currently states that civil works drawings are to be submitted “*prior to the issue of the first construction certificate for bulk earthworks*”. The application seeks to amend Condition 5 to submit civil works drawings “*prior to the issue of the construction certificate for Stage 1 civil works*”.

The Applicant has stated that the reason for this is that preparation and approval of the civil works plans, prior to the issue of a Construction Certificate for bulk earthworks, will significantly delay commencement of the project.

Condition 5 is proposed to be amended as shown in **bold and underline** and deletion of ~~struck out~~ words as follows:

Earthworks Prohibited in Ecological Buffers

5. Prior to the issue of the first construction certificate for bulk earthworks, ~~all civil works drawings~~ **all bulk earthworks drawings** shall be amended and submitted to the department for approval. The amended plans must clearly demonstrate that there will be no earthworks activities in the full 50 metre width of the ecological buffers anywhere across the site, with the exception of Precinct 5, as outlined in Condition A12 above and Roads 9, 10 and 23 that traverse the ecological buffers to access the southern and western precincts.

Prior to the issue of the first construction certificate for Stage 1 civil works, all civil works drawings shall be amended and submitted to the Department for approval. The amended plans must clearly demonstrate that there will be no civil work activities in the full 50 metre width of the ecological buffers anywhere across the site, with the exception of Precinct 5, as outlined in Condition A12 above and Roads 9, 10 and 23 that traverse the ecological buffers to access the southern and western precincts.

Condition 35 is proposed to be amended as shown in **bold and underline** and deletion of ~~struck out~~ words as follows:

Landscape Plan

35. A revised Landscape Plan by a qualified landscape architect must be submitted for all areas of casual open space, structured open space, cycleways, pedestrian walkways, fauna crossings, vegetated stormwater treatment facilities, and streetscapes to be dedicated to

council. Such a plan must be approved by council prior to the issue of a Construction Certificate for ~~Stage 1 bulk earthworks~~ **civil works**. The Plan shall:

- 1) Include a planting schedule. Species selection shall be limited to locally occurring native species.
- 2) Include embellishments that do not exceed the requirements of council's Subdivision Manual (Section A5 of the Tweed Development Control Plan) (as in force at the date of this approval) and Development Design Specification (D14) (as in force at the date of this approval) and related Standard Drawings (as in force at the date of this approval) and include grassing, landscaping, seating, playground equipment and shade cover.
- 3) Address the standard and extent of streetscaping such that it will not place undue maintenance requirements on Council following the establishment period. This includes elimination or redesign of any streetscaping features such as median and roundabout plantings, which require the closure of traffic lanes in order for workers to carry out routine maintenance in a safe manner; the size and location of large trees in relation to stormwater facilities and underground services; and the number and location of garden beds in road reserves.
- 4) Include details showing the final drainage, edging, paving, surface finishes, retaining wall and any other landscape elements in sufficient detail to fully describe the proposed landscape works.
- 5) Comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.
- 6) Include details showing how all landscaping elements under the plan shall be maintained in accordance with the Plan into perpetuity.
- 7) Be consistent with the Landscape Plan for Precinct 1 and the Stage 1 Statement of Landscape Intent.
- 8) Be compatible with the Kings Forest Stage 1 Management Plan."

The applicant has stated that the requirement to have the revised Landscape Plan approved by Council prior to the issue of a Construction Certificate for bulk earthworks will delay commencement of the project by approximately 6 months. Furthermore, the applicant has stated that it is appropriate to submit the final landscape plan prior to the Construction Certificate for civil works (as opposed to bulk earth works) final landforms, as the design details will be known and ensure that the landscaping integrates with the Construction Certificate Drawings for the civil works.

Condition 42 is proposed to be modified to correct an editing error and reference the final weed management plans, as shown in **bold and underline** below:

Weed Management Plans

42. *The Weed Management Plans shall be amended to ensure that:*

- 1) *Control of all weeds will occur:*
 - a. *in Environmental Protection Zones located on the Kings Forest site;*
 - and*
 - b. *for a distance of 20 metres into the adjacent Cudgen Nature Reserve.*

- 2) *Control of Slash Pine only will occur for a further distance of 80 metres into Cudgen Nature Reserve.*
- 3) *Weed management activities should be undertaken utilizing bush regeneration techniques including stem injection.*
- 4) **The final Weed Management Plans shall be prepared in consultation with Council and submitted to the Secretary for approval prior to issue of a construction certificate for Stage 1 bulk earthworks.**

Conditions 40, 41, 42, 43, 44, 47 and 48 – Environmental Management Plans

The applicant seeks to modify Conditions 40, 41, 42, 43, 44, 47 and 48 to change the timing for the submission and approval of the referenced Environmental Management Plans (EMPs). In each of these conditions, references to the timing of delivery of the respective EMPs is proposed to be amended so that the EMPs are delivered **prior to the issue of a construction certificate for Stage 1 bulk earthwork** as opposed to having to be delivered within 6 months of the date of determination of the application (No. 2012/2328).

It is noted that the 6-month period specified in the conditions has passed and as such, the conditions cannot technically be complied with, without being modified.

Statutory context

3.1 Part 3A transition to State significant development

The project approval (MP 08_0194) was originally granted under Part 3A of the EP&A Act. This means the project satisfied the definition of a 'transitional Part 3A project' under Clause 2(1) of Schedule 2 to the Environmental Planning & Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (ST&OP Regulation), which came into effect on 1 March 2018.

Under the ST&OP Regulation, projects the subject of existing Part 3A approvals remain transitional Part 3A projects until they are transitioned to State significant development (SSD) (clause 3(1)-(2), Schedule 2). As of 1 March 2018, new proposals to modify existing Part 3A project approvals can only be determined once the project has been declared to be SSD by the Minister for Planning, and the relevant provisions to modify an SSD consent under Part 4 of the EP&A Act apply.

On 6 July 2018, an Order was published in the New South Wales Government Gazette transitioning the Part 3A project approval (MP 08_0194) to SSD.

The effect of this order is that the project approval is taken to be a development consent under Part 4 of the EP&A Act for the carrying out of the development and may be modified under section 4.55 of the EP&A Act. The application has been lodged under section 4.55(1A) of the EP&A Act.

1.4 Scope of modifications

Section 4.55(1A) of the EP&A Act outlines the matters that a consent authority must take into consideration when determining an application that seeks to modify an SSD application and results in minor environmental impacts.

The matters for consideration under section 4.55(1A) of the EP&A Act that apply to the modification of the project approval have been considered in **Table 2**.

Table 2 | Section 4.55(1A) Modification involving minimal environmental impact

Section 4.55(1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	Section 5 of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the proposed modifications will have minimal environmental impacts.
b) that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted was modified (if at all), and	The Department is satisfied the modification is substantially the same development as originally granted as the proposed modification seeks approval to amend the timing for submission of the landscape plan required under Condition 35 and the environmental management plans.

c) the application has been notified in accordance with the regulations, and	The modification application has been notified in accordance with the Regulations. Details of the notification are provided in Section 4 .
d) any submission made concerning the proposed modification has been considered.	The Department received one public authority submission on the proposal, as considered in Sections 4 and 5 .

Accordingly, the Department considers that the application may be assessed and determined under section 4.55(1A) of the EP&A Act.

1.5 Approval authority

The Minister for Planning and Public Spaces is the approval authority for the modification request. However, the Director, Regional Assessments may determine the request under delegation as:

- a political disclosure statement has not been made
- there are no public submissions in the nature of objections.

1.6 Mandatory matters for consideration

The original project approval (MP 08_0194) was assessed against the provisions of the following Environmental Planning Instruments (EPIs):

- State Environmental Planning Policy No. 55 - Remediation of Land
- State Environmental Planning Policy (State Significant Precincts) 2005
- Tweed Local Environmental Plan 2000.

The Department considers the proposed modification does not result in any significant changes that would alter the conclusions made as part of the original assessment.

Engagement

4.1 Department's engagement

The modification request was made publicly available on the Department's website and notified to Tweed Shire Council (Council)

The Department received a submission from Council, which is summarised below (**Table 3**) and links to the submissions provided in **Appendix A**.

1.7 Summary of submissions

Table 3 | Summary of Agency Submissions

Tweed Shire Council (Council)

Council has no objections to the proposed modification and provided the following advice:

- Council recommended that there should be no earthworks activities in the full 50 metre width of the ecological buffers anywhere across the site, except for Precinct 5. Alternative wording for Condition 5 was recommended to ensure this occurs.
- Modifications to Condition 35, to change the timing for the submission and approval of the revised landscape plan from 'prior to the issue of a Construction Certificate for Stage 1 bulk earthworks' to 'prior to the issue of a Construction Certificate for civil works', raised no concerns, nor did the proposed changes to Conditions 40, 41, 42, 43, 44, 47 and 48 concerning matters of timing.

Assessment

In assessing the merits of the proposed modification, the Department has considered:

- the Modification Report and associated documents (**Appendix A**)
- the Environmental Assessment and conditions of approval for the original project and subsequent modifications
- submissions received on the proposal
- relevant EPIs, policies and guidelines
- the requirements of the EP&A Act.

The Department considers the key issue associated with the proposal is the timing of the submission of the landscape plan, EMPs, as well as the submission of plans demonstrating no work will be undertaken within the ecological buffers. These issues are discussed below.

5.1 Earthworks in Prohibited Ecological Buffers - Condition 5

The proposal seeks to amend Condition 5 to submit civil works drawings “*prior to the issue of the construction certificate for Stage 1 civil works*”, noting that Condition 5 currently states that civil works drawings are to be submitted “*prior to the issue of the first construction certificate for bulk earthworks*”.

Council advised that it should be demonstrated that there will be no earthworks activities in the full 50 metre width of the ecological buffers anywhere across the site, with the exception of Precinct 5. Alternate wording was also suggested which would allow the condition to be satisfied in two parts, by requiring all *bulk earthworks drawings* prior to the first construction certificate for bulk earthworks and all *civil works drawings* prior to stage 1 civil works.

The Department is of the view that the alternate wording of Condition 5 results in an acceptable outcome as the applicant will need to demonstrate that there will be no encroachment within the ecological buffers before any work commences (i.e. prior to the first construction certificate for bulk earthworks and Stage 1 civil works), which satisfies the original intent of Condition 5. This will require the submission of bulk earthworks drawings and civil works drawings prior to each respective construction certificate, to ensure that there will be no works within the ecological buffers throughout the site during all stages of construction.

1.8 Landscape Plan - Condition 35

The proposal seeks to modify Condition 35 to change the timing for the submission and approval of the revised landscape plan from “prior to the issue of a Construction Certificate for Stage 1 bulk earthworks” to “prior to the issue of a Construction Certificate for civil works”.

The Department supports the proposed change to Condition 35 to amend the timing of the submission of the landscape plan for approval. Once the bulk earthworks are complete and final site levels are

known, landscape design details can then be integrated with the Construction Certificate Drawings for the civil works, which is a logical sequence of events.

1.9 Environmental Management Plans - Conditions 40, 41, 42, 43, 44, 47 and 48

The proposal seeks to modify Conditions 40, 41, 42, 43, 44, 47 and 48 to change the timing for the submission and approval of the referenced environmental management plans from *'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'* to **'prior to issue of a construction certificate for Stage 1 bulk earthworks'**.

It is noted that the 6-month specified period in the conditions has now passed and, as such the conditions cannot technically be complied with. On this basis, the Department supports the proposed modification to the conditions (40, 41, 42, 43, 44, 47 and 48) relating to the approval of environmental management plans.

The original intent behind this condition is to ensure the EMPs are approved prior to the first construction certificate. The modified conditions will still be in keeping with the intent of the condition as the bulk earthworks will be the first Construction Certificate that will be issued.

As the bulk earthworks will be the first Construction Certificate that will be issued, there will be no adverse impact on the implementation of the environmental management plans prior to physical works being undertaken.

The applicant has advised that the management plans required by Conditions 41, 42, 43, 44, 47 and 48 were referred to Council, between April and June 2020, for comment. At the time of writing this report, the applicant advised that Council had not yet provided a response regarding the adequacy of EMPs.

Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department considers the proposal is acceptable on the basis that:

- The proposed modification to change the timing of Conditions 5, 35, 40, 41, 42, 43, 44, 47 and 48 will be in keeping with the intent of the original conditions.
- There will be no adverse impact on the implementation of the EMPs prior to physical works being undertaken, as bulk earthworks will be the first Construction Certificate that will be issued.
- Amendments to Condition 5 will ensure that no earthworks activities will occur within the ecological buffers across the site, which is in keeping with the intent of the original condition.

The Department is satisfied that the modification is approvable, subject to the recommended conditions (**Appendix C**).

Recommendation

It is recommended that the Director, Regional Assessments as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **determines** that the application MP 08_0194 MOD 10 falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modifies** the consent MP 08_0194
- **signs** the attached Modification of Development Consent (**Appendix C**).

Recommended by:



Lauren Saunders
Senior Planning Officer
Regional Assessments

Recommended by:



Silvio Falato
Team Leader
Regional Assessments

Determination

The recommendation is **Adopted** by:

A handwritten signature in blue ink, consisting of the letters 'K' and 'T' followed by a long horizontal stroke.

7 October 2020

Keiran Thomas

Director

Regional Assessments

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – Modification report

<https://www.planningportal.nsw.gov.au/major-projects/project/38151>

Appendix B – Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/38151>

Appendix C – Notice of modification

<https://www.planningportal.nsw.gov.au/major-projects/project/38151>