



## **Section 4.55(1A) Modification Report**

### **Kings Forest Estate**

Modification of Major Project Approval No. 08\_0194 as Modified (MOD13)

Kings Forest Stage 1 – Bulk Earthworks Conditions A3, A6, 9 (a) 9 (d), 9 (f), 9 (g), 10, 11, 52 & 81

Tweed Coast Rd, Cudgen

March 2024

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## 1.0 Modification Overview

### 1.1 Introduction

Kings Forest Estates Pty Ltd has commissioned Sargeant Planning to prepare an application under Section 4.55(1A) of the Environmental Planning and Assessment Act for modification of Major Project Approval No. 08\_0194 regarding the approved earthworks of the Kings Forest development site.

This application seeks to modify conditions A3, A6, 9 (a) 9 (d), 9 (f), 9 (g), 10, 11, 52 & 81 of the Project Approval.

The purpose of modification of this condition is due to the realisation that during the precinct 5 Stage 1 northern extent works nearing the completion of Civil works it has been identified on a number of occasions, the current restrictions on the construction area / 'disturbed area' has resulted in increased costs and extends timeframes in the delivery of land for housing. To addressing issue and accelerate delivery of more affordable land the proponent after discussions with construction and consulting team now seek to increase the maximum exposed area in a newly developed bulk earthworks strategy. This strategy includes;

- Rolling earthworks (bulk and civil) phases
- Increasing the permitted size of a 'disturbed areas' and
- use of on site fill material to minimise and reduce potential external traffic /dust and noise issues.

The modification will enable 'earthworks' i.e bulk earthworks, civil works, stockpiling and blending of soil and fill material to occur concurrently. These actions will be undertaken in accordance with a range of new plans for each phase of the 'earthworks'.

The modification to the earthworks is proposed for a subset area of the currently approved extent of earthwork. This being earthworks associated with Precinct 3,4, part 5, 7 and part 9. Within this smaller or subset area new phases and sequencing is proposed. The maximum permitted area for concurrent earthworks under the proposed modification is upto 30ha. The phasing of these works is outlined in the modifying plan which is discussed in more detail below.

A number of additional conditions relating to earthworks are also sought to be modified to provide greater clarity to the intent and scope of the original earthworks conditions, delete redundant conditions and introduce new conditions relevant to the proposed modification.

This report is to provide the DPE, relevant government agencies and local government with the relevant information necessary to assess the proposed modification application pursuant to Part 4 of the EP&A Act and the Environmental Planning and Assessment Regulation 2021 (the Regulation) and for the DPE to determine the application in accordance with section 4.55(1A) of the EP&A Act.

## **1.2 Material Relied Upon**

This report has been prepared by Sargeant Planning based upon the following information

- Consulting team liaison on site works and earthworks
- Report from Morton Urban Solutions on earthworks and the modification including amended the earthworks plan - Bulk Earthworks Strategy Indicative Disturbed Area Phasing Plan Precinct 3,4,part 5,7 and part 9 12301-Sk 025 A dated March 2024 and other documents.
- Liaison with DPE
- Liaison with Tweed Shire Council

## **1.3 Subject Site**

The Kings Forest site is approximately 880 hectares in area and located approximately 15 kilometres (km) south of Tweed Heads.

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

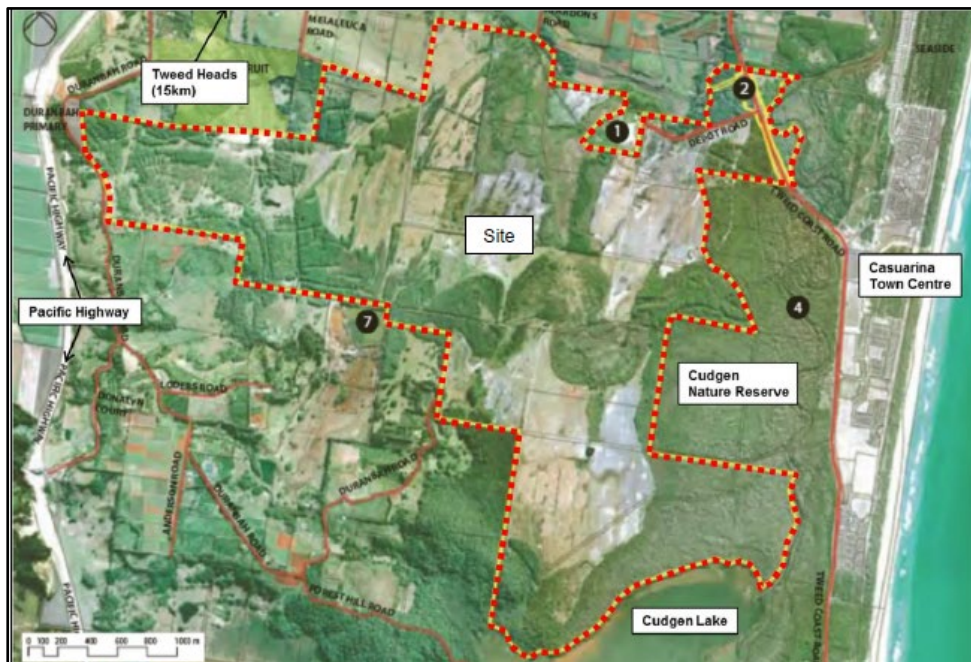


Image 1 Aerial View of the site and locality

The site has been varied through the approval process to include closed roads and amalgamation of allotments and is currently described as Lots 1 – 10 DP 127090 and part Lot 11 DP 1270901. The survey plan detailing the allotments is provided below and is contained in Attachment 1.

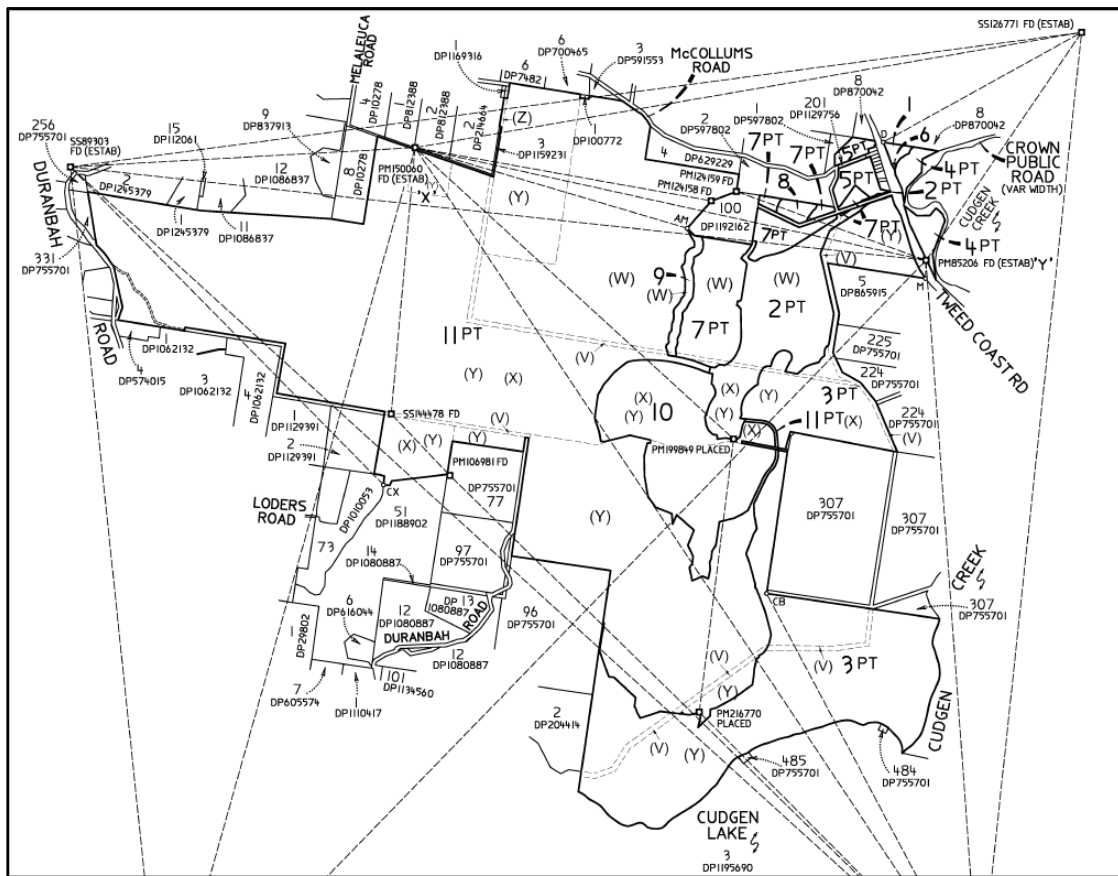


Image 2 Site Survey Plan

## 2.0 Background to Modification

Kings Forest Estate is the result of significant strategic and statutory planning, site investigations over multiple decades. This has enabled various approvals to be issued by federal, state and local government for the development and works to commence in accordance with these approvals.

### 2.1 Concept Plan Approval

A Concept Plan Approval (No. MP06\_0318) was issued for the site on 19th of August 2010, by the then Minister for Planning. This had followed a review by the independent Planning Assessment Commission (PAC) of the Assessment report.

The allotments subject to this approval were; Lots 76, 272, 323 and 326 in DP 755701, Lot 6 DP 875446, Lot 2 DP 819015, Lot 1 DP 705497, Lot 40 DP 7482, Lot 37A DP 13727, Lot 38A DP 13727, Lot 38B DP 13727, Lot 1 DP 129737, Lot 1 DP 781633 and Lot 7 DP 875447.

The Concept Plan Approval enables the carrying out of;

- Residential development for approximately 4500 Dwellings
- Town centre and neighbourhood centres for future retail and commercial uses
- Community and education facilities
- Employment land
- A golf course
- Open space
- Wildlife corridors
- Protection and rehabilitation of environmentally sensitive land
- Utility services infrastructure
- Water management areas and lake
- Roads and pedestrian and bicycle paths

The concept plan layout is illustrated below in Figure 1. The concept plan approval has been modified a number of times. This application does not seek a modification to the concept approval.



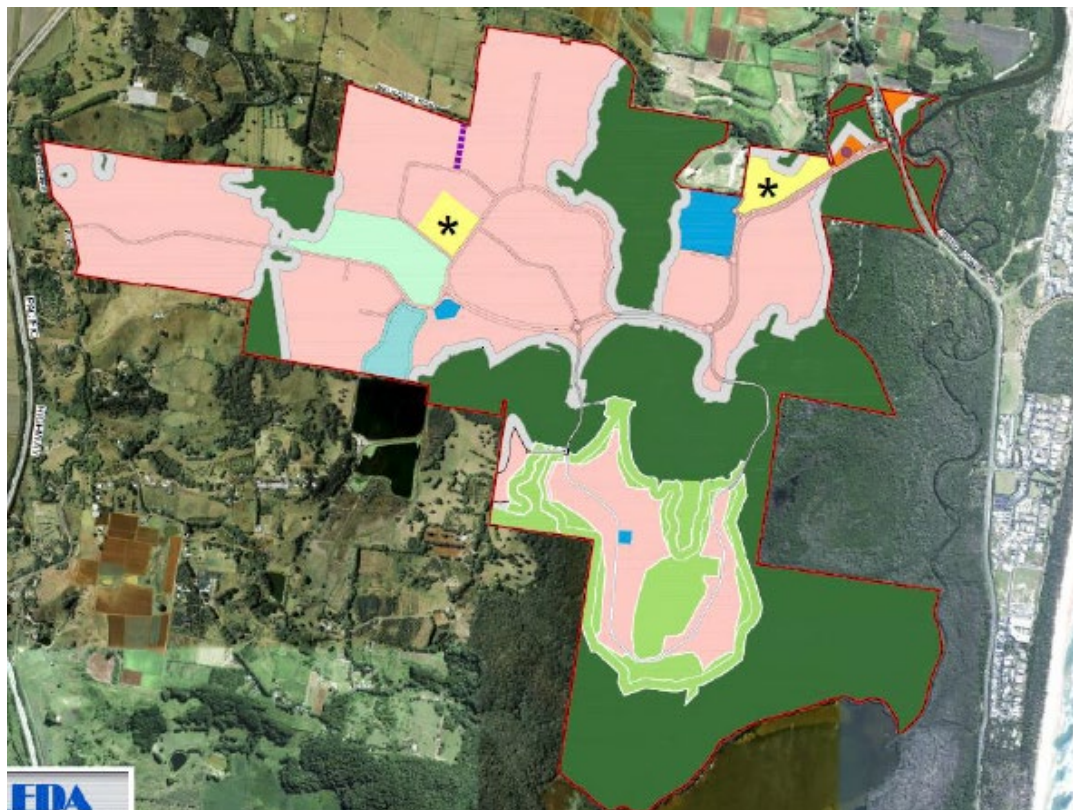


Figure 2 Kings Forest Concept Plan Layout (MP06\_0318)

A copy of the current Consolidated Concept Plan Approval is provided at Attachment 2.

## 1.2 Major Project Approval (MP08\_0194)

The Major Project Approval (No. 08\_0194) was issued on the 11<sup>th</sup> of August 2023 by the Planning and Assessment Commission.

The current modified Project Description is as follows:

Kings Forest Residential Subdivision Stage 1 Bulk Earthworks, Roadworks and Subdivision of Precinct 5, including:

- subdivision of the site into ten development lots in 4 stages;
- bulk earthworks across the site;
- roadworks comprising:
  - construction of the entrance road and associated intersection works with Tweed Coast Road;

- construction of the Kings Forest Parkway from Tweed Coast Road via Precincts 4 and 5 through to the western site precincts; and
- construction of two roads providing access to the southern site precincts;
- Plan of Development for Precinct 5;
- development of 998 sqm of floorspace for a service station and food and drink premises and access arrangements to Precinct 1;
- construction of subdivision and infrastructure works along Kings Forest Parkway and within Precincts 1 and 5;
- subdivision of Precinct 5 into 376 residential lots comprising:
  - one townhouse lot (7,860sqm)
  - 37 terrace house lots (minimum lot size 150sqm)
  - 25 duplexes (minimum lot size 450sqm)
  - 192 zero lot dwellings (minimum lot size 240sqm)
  - 121 traditional detached dwellings (minimum lot size 400sqm)

### 1.2.1 Major Project Approval History

The project approval has been modified on a number of occasions. This is briefly outlined below;

On 16 May 2014, the Project Approval was modified (MOD 1).

On 20 November 2014, the Project Approval was further modified (MOD 2).

On 20 February 2017, the Project Approval was further modified (MOD 3, Precinct 1 – Land and Environment Court).

On 8 May 2019, the Project Approval was further modified (MOD 4).

On 21 December 2017, the project was further modified (MOD 6).

On 24 May 2018, the approval was further modified to extend the lapse date (modified by the Department of Planning & Environment) and Condition A18 was inserted on 17 July 2018 (Land & Environment Court) (MOD 7).

On 26 November 2019, the Approval was further modified by deleting Condition 8, amending Condition 14 and amending Condition 23 (MOD8).

On 19 March 2020 the MOD9 Application was withdrawn.

On 8 October 2020, the Approval was further modified by amending the timing for submission of the Landscape Plan required under Condition 35 and the Environmental Management Plans required under Conditions 40, 41, 42, 43, 44, 47 and 48 (MOD10).

On 2 November 2020 the MOD11 application was withdrawn.

A copy of the Consolidated Project Approval incorporating Modifications 1, 2, 3, 4, 6, 7, 8 and 10 is attached at Attachment 3.

On 31 May 2019, an Order was published in the Government Gazette No. 55 declaring the Kings Forest project to be State Significant Development. Therefore, this Modification Application is submitted under Section 4.55 (1A) of the Environmental Planning and Assessment Act, 1979 (as amended) (The Act) and Clauses 99 and 100 of the Environmental Planning and Assessment Regulation 2021.

However, in accordance with Clause 3BA (6) of Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, the threshold test of substantially the same development is between the most recently modified Approval and the proposed modified Approval.

On the 1 March 2024, MOD 12 was approved which sought to amend the project description and Condition A8 and amend Conditions 154 and 155.

A copy of the consolidated Major Project Approval is provided in Attachment 3.

### **1.3 Biodiversity Certification**

The Kings Forest Estate has the benefit of a biodiversity certification order made on 15 September 2022 under clause 34A(3) of the BC Transitional Regulation. The certification order excludes the application of the development assessment requirements at Part 7 of the BC Act to 'proposed development' the subject of the certification order. This includes the requirement to obtain a Biodiversity Development Assessment Report.

### **1.3 Consultation**

The Department of Planning and Environment and Tweed Shire Council have both been informed of the intention of a modification to address the extent of permissible earthworks and associated conditions.

On the 11th of July 2023 the Department of Planning and Environment , in response to correspondence outlining the then proposed modification and conditions to be modified, outlining the response to the proposed amendments. This response is provided below;

*The Department can consider increasing the maximum disturbed area to 20ha and how the site is to be stabilised under conditions 9(b) and No.52(2) to Project Approval 08\_0194 under the 'as otherwise agreed by the Planning Secretary' arrangements provided for under these conditions. To do this we need:*

1. *Details, including plans, explaining the staging of earthworks. An updated drawing 12301-ALL-041 Revision B prepared by Mortons Urban Solutions dated 16 October 2012, is likely to be required.*
2. *An updated Sediment & Erosion Control Plan with details of how areas subject to earthworks will be stabilised and managed (eg application of top soil, mulch, seeded or other product or material, and how it will be secured, eg battering or other strategy & technique/s, and details of how long earth will be stabilised before undertaking further earthworks)*
3. *Certification from a suitably qualified person(s) on the efficacy, including with respect to erosion from wind and water, of the proposed management & mitigation measures for stabilising & managing areas subject to earthworks contained in the Sediment & Erosion Control Plan.*
4. *A Remediation Plan that addresses lack of grass cover as well as the soil deficiencies identified in the Soil Properties Assessment, Project dated 3 February 2023.*

*A minor modification under section 4.55(1A) of the EP&A Act will be required for the other proposed changes including changing the requirement for geotechnical endorsement, the use of crushing plant machinery and increasing the size of the stockpiled area. There's no proviso for 'as otherwise agreed by the Secretary' in these conditions. The Department won't need to publicly exhibit or consult agencies about this amendment.*

*Accompanying this mod, we need:*

1. *A Geotechnical Assessment, or an amended Geotechnical Report prepared by Cardno Bowler titled Geotechnical Investigation proposed subdivision Depot Road, Kings Forest dated 7 April 2011, describing why it is appropriate for a civil engineer to certify compliance with detailed earthworks design plans.*
2. *Justification why condition No.91(6) dealing with stockpiling should be increased to 20ha, including with respect to potentially increasing the disturbed area up to 40ha of the site at any one time.*

3. *A report by an appropriately qualified person(s) why the use of crushing plant machinery, mechanical screening or mechanical blending of materials is appropriate, and can be effectively used in the rehabilitation of poor-quality top spoil or unsuitable material sourced on-site and replaced on-site, and with consideration of any potential impacts.*
4. *An Acoustic & Vibration Report prepared by a suitably qualified person(s) that determines potential impacts of proposed crushing plant machinery, mechanical screening or mechanical blending of materials.*
5. *A soil/dust suppression plan for the operation of the proposed crushing plant machinery, mechanical screening or mechanical blending of materials.*

*You're also welcome to seek all the changes via one mod if you wish.*

Through the more detailed evaluation of the earthworks and phasing or sequencing of works it was further considered that the maximum area of disturbance from earthworks(bulk earthworks/stockpiling/civils) should be increased to 30ha. This increase was in part arrived at to enable fill material to be sourced on site and the further reduce impacts to future residents, particularly residents in Precinct 5 stages 1-3.

As noted the civil earthworks for this stage is nearing completion. It was considered that establishing the necessary bulk earthworks earthwork platforms adjacent to this area and the balance area/stages of Precinct 5 would significantly reduce the potential for nuisance and amenity impacts, particularly from construction works and dust. The expanded 30 ha maximum limit would also enable fill to be sourced on site, from within the development footprint, and further reduce impacts from external haulage to these residents and the wider locality.

We note the proposed earthworks phasing does involve works in stages which are all generally below the original 20ha proposed. We note we have also scaled the proposed area subject to the modification to a small number of Precincts 3,4 part 5, 7 and part 9

Through this more detailed review a number of conditions were also identified to be modified. The modifications retain the intent of the original conditions but simplify and or clarify the wording as well as delete redundant conditions or propose additional new relevant conditions.

We do note the department did identify that increasing the maximum disturbed area to 20ha could be addressed in an 'as otherwise agreed by the Planning Secretary' arrangement and provided alternative approaches to submitting the response.

We have elected to provide the modified earthworks and clarifying conditions aspects as a single MOD application for clarity.

Through the preparation of the modification submission we have advised Tweed Shire Council(TSC) of the modification and a pre submission briefing was also held, 7 March 2024. From this, minor amendments have occurred to the wording of the proposed conditions to be modified, a new condition relating to bonding of sediment and erosion control has been included as has a typical plan for the proposed buffer treatment and separation distances associated with the Borrow Area’.

As was outlined to Council at the briefing we through the modification are seeking to under take earthworks in an efficient manner for a targeted area. This enables accelerated works and minimise potential amenity and nuisance impacts.

The modification does not remove the requirements under the conditions, current or modified, for a suite of detailed earthwork and accompanying management plans to be produced and for these to be approved prior to any works occurring.

Through this, the modification does not alter the nature of the current approval and places greater controls on our client to have the works carried out in a manner that avoids environmental harm.

### **1.3.1 Matters Raised and Discussion**

An assessment of each of the requested items is provided below detailing that each of the items to accommodate the application has been addressed and included within this report;

1. *Details, including plans, explaining the staging of earthworks. An updated drawing 12301-ALL-041 Revision B prepared by Mortons Urban Solutions dated 16 October 2012, is likely to be required.*

Comment – As per the request an updated drawing prepared Mortons Urban Solutions has been provided and is attached to this application, refer to Bulk Earthworks Strategy Indicative Disturbed Area Phasing Plan Precinct 3,4,part 5,7 and part 9(Borrow Area) 12301-SK 025 B dated 13-03-24 (refer Attachment 4). The accompanying Mortons Urban Solutions report is provided in Attachment 5. The approved plan is provided in Attachment 6.

2. *An updated Sediment & Erosion Control Plan with details of how areas subject to earthworks will be stabilised and managed (eg. application of top soil, mulch, seeded or other product or material, and how it will be secured, eg battering or other strategy & technique/s, and details of how long earth will be stabilised before undertaking further earthworks)*



Comment – An updated Sediment & Erosion Control Plan with details of how areas subject to earthworks will be stabilised and managed will be provided for each stage prior to construction as per the conditions of approval of the Major Project Approval 08\_0194. (conditions 9, 10 and 52). As outlined in discussions with the TSC detailed earthworks and sequencing of works within each of the phases needs to be developed with the project team to ensure the extent and nature of works is understood. The responsive management actions and plans for the works both bulk earthworks and civils can then be developed.

It is premature to produce the sediment and erosion control plan with this MOD as the detailed earthworks are yet to be designed and submitted for approval. The sediment and erosion control plan and other relevant management plans would be submitted prior to each nominated phase.

This is no different to the current requirements.

3. *Certification from a suitably qualified person(s) on the efficacy, including with respect to erosion from wind and water, of the proposed management & mitigation measures for stabilising & managing areas subject to earthworks contained in the Sediment & Erosion Control Plan.*

Comment – As per the above, certification from a suitably qualified person(s) on the efficacy, including with respect to erosion from wind and water, of the proposed management & mitigation measures for stabilising & managing areas subject to earthworks contained in the Sediment & Erosion Control Plan, will be provided prior to the construction of each stage. From discussion with TSC we have reiterated that this MOD is a performance based and limited in area and for the developer and their contractors to ensure all works do not result in harm and works are effectively managed.

We recognise greater effort is required with a potentially greater area of works / disturbed area and have included a new condition specific to bonding for sediment and erosion control. This has arisen from the request from TSC to detail costs and appropriate costs for the effective management of sediment and erosion control and specifically dust management. This figure will be estimated with the development of the earthworks so the 'cost' or investment in effective sediment and erosion control is clear and bonding provided as mechanism for surety on the implementation of the plan.

4. *A Remediation Plan that addresses lack of grass cover as well as the soil deficiencies identified in the Soil Properties Assessment, Project dated 3 February 2023.*

Comment – Section 2.1.3 of this report details the remediation efforts currently being undertaken on the site. The remediation section addresses the lack of grass cover as well as the soil deficiencies outlined in the previous reporting and details the measures utilised to address this. It is acknowledged grass strike had failed in areas

and a combination of chemical and physical responses occurred i.e. polymer application /irrigation were undertaken as corrective action. A corrective actions section would be included within the future sediment and erosion control plan/report to address this item.

1. *A Geotechnical Assessment, or an amended Geotechnical Report prepared by Cardno Bowler titled Geotechnical Investigation proposed subdivision Depot Road, Kings Forest dated 7 April 2011, describing why it is appropriate for a civil engineer to certify compliance with detailed earthworks design plans.*

Comment – As per this modification, condition 11 is sought to be amended to enable the endorsement of detailed earthworks plans by a suitably qualified person to certify compliance of the plans and implementation strategy with the conclusions and recommendations of the Geotechnical Report prepared by Cardno Bowler titled Geotechnical Investigation proposed subdivision Depot Road, Kings Forest dated 7 April 2011.

The change broadens the scope of appropriately qualified persons whom may certify compliance. The conclusions and recommendations of the Cardno Bowler are not all geotechnically focused and require a specialist geotechnically qualified persons to be certifying works. A geotechnical engineer is not specifically noted as requiring certification of this point nor is required to certify that works adhere to these requirements. This condition of the conclusions and recommendation section of the Cardno Bowler report is able to be addressed by either a civil or structural engineer.

2. *Justification why condition No.91(6) dealing with stockpiling should be increased to 20ha, including with respect to potentially increasing the disturbed area up to 40ha of the site at any one time.*

Comment - Review of the conditions have resulted in condition No.91 no longer being sought to be amended as part of this modification. This is due to the increase in disturbed area being sought for 30ha at any one time being suitable for the scope of works on the site. As outlined in the report and discussions with TSC the original 20ha proposed increase area was further increased to 30ha to accommodate a borrow area and enable accelerated earthworks for a specific subset area within the overall approved earthworks.

The 30ha sought enables rolling bulk earthworks, preparation of phases/stockpiling and subsequent civil works areas to be concurrently occurring, but with the disturbed area is not to exceed the 30ha cap or limit to works.

We as outlined seek to have this extent of works to accelerate works in and around Precinct 5 where civil works are being completed for the first residential stage of the development. Through this MOD and accelerated /expanded works we are also seeking to minimise the potential for amenity conflicts.



3. *A report by an appropriately qualified person(s) why the use of crushing plant machinery, mechanical screening or mechanical blending of materials is appropriate, and can be effectively used in the rehabilitation of poor-quality top spoil or unsuitable material sourced on-site and replaced on-site, and with consideration of any potential impacts.*

Comment – condition 81 is sought to be amended as part of this modification. The condition is sought to be amended to retain the intent of the condition which seeks avoid an extractive use establishing and also ensure that amenity impacts are considered where specific crushing and screening is proposed.

The condition is varied to acknowledge that imported material which is 'ready for use' and is able to be used in blending of materials i.e. rock/aggregate/sand. The condition is also varied to acknowledge that on site blending of soils will occur in the delivery of controlled filling.

All blending on site would be via machinery and thus is mechanical by nature, requiring of a further approval under the current condition as worded. This routine process on development sites is not sought to be captured by the condition as amended.

Any proposed crushing or screening on site is still captured by the condition as amended.

4. *An Acoustic & Vibration Report prepared by a suitably qualified person(s) that determines potential impacts of proposed crushing plant machinery, mechanical screening or mechanical blending of materials.*

Comment – Similarly to the sediment and erosion control plan, an acoustic and vibration report prepared by a suitably qualified person(s) determining potential impacts of proposed crushing plant machinery, mechanical screening or mechanical blending of materials will be provided on a by stage basis prior to the construction of each stage in accordance with condition 52 (Construction Environmental Management Plan) of the Major Project Approval

5. *A soil/dust suppression plan for the operation of the proposed crushing plant machinery, mechanical screening or mechanical blending of materials.*

Comment – As per the above a soil/dust suppression plan for the operation of the proposed crushing plant machinery, mechanical screening or mechanical blending of materials will be provided on a per stage basis prior to the construction works of each stage in accordance with condition 52 (Construction Environmental Management Plan) of the Major Project Approval. This would be provided as required.

Additionally, the acceleration of the bulk earthworks as sought within this modification, would result in the bulk earthworks for each precinct being completed prior to the habitation of the dwellings of any said precinct. We do

acknowledge that through subsequent civil works sediment and erosion control is also a relevant matter but having the site bulk earth worked and stabilised does in part reduce the potential for amenity impacts.

As outlined to TSC adaptive management is required and this has occurred through the first stage of earthworks where sediment and erosion control /soil and dust suppression methods were required to be enhanced and greater effort required to effectively manage the site and site conditions. This has resulted in a range of new and additional measures being employed and would be employed in future plans of management of the site including polymer spraying, irrigation, gravelling of roads, dust fencing and physical coverage of stockpiles.

We recognise greater effort is required with a potentially greater area of works / disturbed area and have included a new condition specific to bonding of sediment and erosion control.

This has arisen as identified above from the request from TSC to detail costs and appropriate costs for the effective management of sediment and erosion control and specifically dust management. This figure will be estimated with the development of the earthworks so the 'cost' or investment in effective sediment and erosion control is clear and bonding provided as mechanism for surety on the implementation of the plan.

As outlined above the points raised during the consultation with the Department of Planning and Environment have been considered and addressed as have issues raised by TSC.

There has been an increase to the earthworks sought by this modification however is not materially different that originally outlined.

## 2.0 Modification

### 2.1 Outline

#### 2.1.1 Current Earthworks

Bulk earthwork and civil construction for Stage 1 of the development, which includes Precinct 5 stage 1-9 bulk earthworks, Precinct 5 Stages 1-3 civil construction, Kings Forest Parkway and external works has been ongoing since August 2021. The Principal's contractor for the site has adhered to the conditions of the Project Approval, minimising disturbed areas as approved. As noted the management on site has been adaptive and responded to site conditions.

We note these site works have been managed through the approved management plans, the onsite environmental officer, the full-time civil superintendent and regular on-site meetings between the proponent, The Department, and all of the relevant parties.

The above management tools to ensure compliance includes adherence to the approved documents below and examples of reporting instruments, copies of these are attached to the Mortons Urban Solutions correspondence for this modification refer to Attachment 5 for the correspondence and documents:

- Overall Construction Environmental Management Plan (CEMP)
- Stormwater Management Plan
- Sediment erosion Control Plan
- Project Approval Conditions
- Approved Bulk Earthwork Drawings
- Monthly review of exposed areas and reporting to The Department and Tweed Shire Council
- On site bi-weekly meeting with all interested parties.
- Monthly environmental reporting to The Department
- Water Quality monitoring

It is acknowledged the works have also been undertaken consistent with various approved earthworks plans which detail bulk earthworks sediment and erosion control plans and staging of works as outlined in Condition A3 of the Project Approval.

We note that to date, the site has been managed professionally with no infringement notices required through The Department or the Supervising Engineer. As is identified in the accompanying letter from the project engineer (Mortons Urban Solutions) 'adaptive management has occurred and corrective actions undertaken to ensure more effective management of the site'.

The monthly monitoring of exposed areas has proven that the maximum area of exposed areas has been kept to within the approved limits and sediment/erosion control on site has been conducted in accordance with the approved management plans. We acknowledge that lessons have been learnt on site and all management plans will be continually adapted for improved site management.

The consulting and construction team have applied the learnt site knowledge, with site conditions and have a competent understanding on the limitations for site works and measures to avoid/minimise and manage impacts associated with earthworks.

### **2.1.2 A Change to Earthworks**

With the Precinct 5 Stage 1 northern extent of works is nearing the completion of Civil works it has been identified on a number of occasions, the current restrictions on the construction area / 'disturbed area' has resulted in increased costs and extends timeframes in the delivery of land for housing.

It has been identified that the current approach, on limitation on works areas, does not cumulatively;

- provide the practical space for stockpiles/screening/treatment of soil; and
- provide the ability to source, or open up new disturbed areas, in the pursuit of fill material on site; and
- also enabling the ability of works progressing from bulk earth worked areas to civils.

It has been also identified the arbitrary 5ha area creates further limitations on staged rollouts of earthworks and civils across a stage/phase of earthworks and approved earthwork /civil areas.

These contribute to costs which are ultimately passed through to future purchasers.

To addressing issue and accelerate delivery of more affordable land the proponent after discussions with construction and consulting team now seek to increase the maximum exposed area in a newly developed bulk earthworks strategy. This strategy includes;

- Rolling earthworks phases
- Increasing the permitted size of a 'disturbed areas' and
- use of on site fill material to minimise and reduce potential external traffic /dust and noise issues.

This proposed change in earthworks has also been informed by the current development program and applications in progress or planned.

The proposed change is limited in its application area, to provide a level of surety and risk minimisation. The proposed change is to be applied to Precincts 3, 4, part 5, 7 and part 9. The latter being a borrow area for fill.

This proposed change is thus to be viewed as a performance-based change and reliant on the continued adherence to effective on-site management of earthworks and sediment and erosion control across both bulk earthworks and civil construction.

As has been noted the proponent and construction team have demonstrated the capacity and ability to adapt and effectively implement the adopted suit of plans without external impacts or concerns. We also note that these earthworks have occurred over highly varied weather conditions, including extreme and extended wet weather periods. We acknowledge works were adapted on site and increased measures/effort have been utilised to manage sediment and erosion control matters.

Should the modified strategy and plans be demonstrated to be effective, a subsequent change to expanded 'disturbed area' would be made for the balance area of the estate. This would also involve further detailed review of the sequencing of works.

We note there is a current approved Bulk Earthworks Plan over the subject modification area Bulk Earthworks Sequencing Diagram Plan 120301-ALL-041 B refer Attachment 6. The proposed change is not inconsistent with the approved Morton Urban Solutions Drawing - Bulk Earthworks Sequencing Diagram Plan 120301-ALL-041 B rather provides amended staging/sequencing for a specific area of this plan and seeks to amend the conditions for the specific changed staging area and works. We also note there are a number of additional changes to conditions to provide greater clarity to these.

The proposed change to the earthworks sequences or phases is presented in Morton Urban Solutions Drawing Bulk Earthworks Strategy Indicative Disturbed Area Phasing Plan Precinct 3,4,part 5,7 and part 9(Borrow Area) 12301-Sk 025 B dated 13-03-24. This is attached refer Attachment 4.

This proposed change provides bulk earthworks sequencing specific to the referenced Precincts and identifies the control on the maximum area to be exposed at any one time through bulk earthworks and civil works. This modification would enable the accelerated earthworks across the subset area of the site.

The current and proposed earthworks plans are presented below;

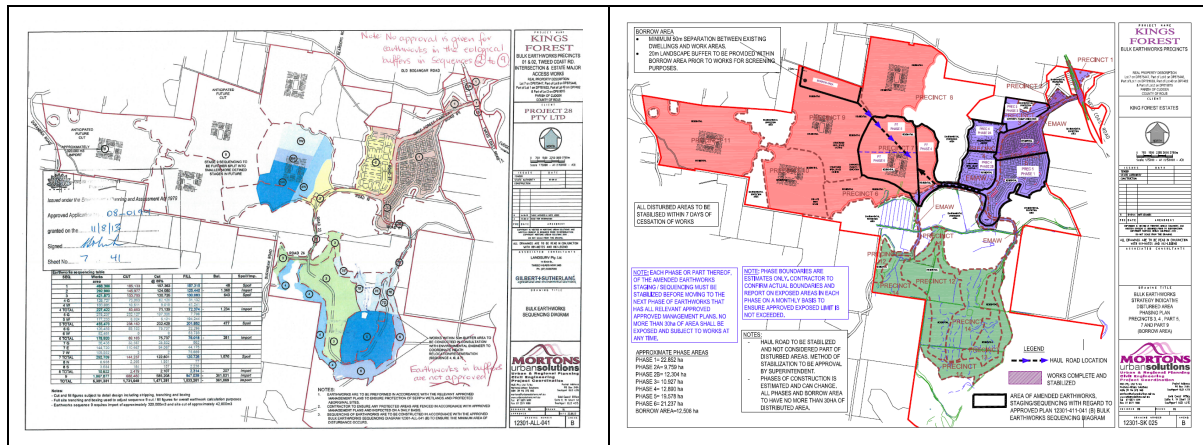


Figure 3 Approved and Proposed earthworks.

### 2.1.3 Rolling earthworks Phases and Increased 'disturbed area'

As noted the new strategy is based around a new phased rolling approach to the earthworks which exceeds the 5ha limit and is more based around the delivery of the Concept Approval precincts.

This provides greater flexibility in delivering these future urban areas and enables land to be more readily made available for future dwellings and demand. The modification enables the earthworks to be accelerated and thus reduce potential amenity and nuisance impacts from these works.

The current conditioned 5ha limit disturbance does not enable this to be effectively or efficiently undertaken.

The attached Bulk Earthworks Strategy Indicative Disturbed Area Phasing Plan Precinct 3,4,part 5,7 and part 9(Borrow Area) 12301-Sk 025 B dated 13-03-24details the proposed staging, for this sub set area in the overall site and approved earthworks, refer Attachment 4.

The strategy as noted remains Precinct based /focused but introduces a total cap of 30ha potentially under a form of disturbance/construction, compared with the conditioned 5ha cap, which is specified in Condition 9 d) of the project approval.

This increased cap as noted is confined to a small number of Precincts being 3, 4, part 5, 7 and part 9.

This upper cap limit, as outlined, is to accommodate for example winning of fill material, screening /mixing and testing as required, as well as facilitating bulk earthworks areas and civil areas from simultaneously occurring. The plan notes this cap and specific phases with the ability for minor onsite adaptive changes to the phase boundaries, but not the total cap. This strategy would enable works to be occurring across differing phases where all approved management plans were in place and Construction Certificates for the Bulk Earthworks issued.

In respect to general sequence and the approach, the proposed strategy seeks to finalise works within the balance of Precinct 5 as a priority given the approvals in place. This is followed by Precinct 3 and 4 which are subject to a current application for the Kings Forest Town Centre. Works are finally proposed in Precinct 7 which it is proposed would be the next large precinct sought for approvals.

As outlined to Tweed Shire Council in our briefing on the Modification we identified the desire to have all bulk earthworks surrounding Precinct 5 accelerated and completed prior to habitation/dwellings within Precinct 5.

The Borrow Area in part of Precinct 9 is to be used periodically as each phase rolls out and any cut/fill negative balance is identified in the precincts earthworks plan. The borrow pit would be stabilised between the intervening periods of use and a vegetated buffer provided to the extent of the works area for screening. This buffer is 20m in width and provide to the extent necessary for screening as determined with each application. The landscape buffer is to be installed prior to works and utilise appropriate native species and may include temporary fencing for screening. A specific condition for this has been proposed with the MOD.

The current topography would limit views of the proposed Borrow Area from the 2 dwellings located east of the site and on Melaleuca Rd with the road located on the ridge line and the dwellings set down the hill away for the Borrow Area. The separation of these dwellings from the borrow area and landscaping further reduce any line of sight. The retention of the 2 on site dwellings retains the current character of the sites frontage to this road.

A separation zone is also proposed between the existing on site dwellings and the works areas in the Borrow Area. This is 50m and includes the required 20m landscape screening. We note these dwellings are unoccupied at present and intended to be utilised throughout the development by contractors/consultants as temporary compounds/site offices. This separation zone and landscape area within the Borrow area is illustrated in Attachment 7. The typical sections plan is provided below;



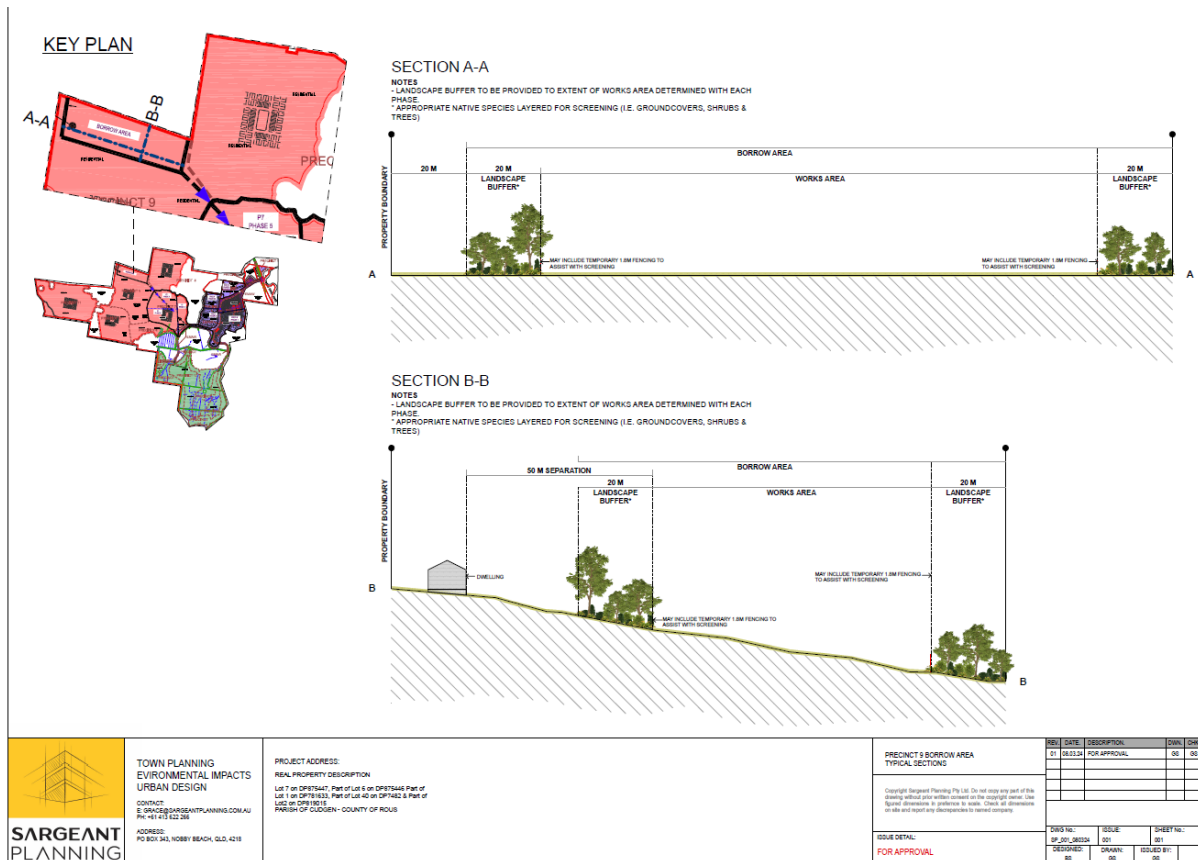


Figure 4 Typical Sections Plan Borrow Area

Through this approach amenity impacts from construction are sought to be minimised on residents of the first stage of Precinct 5 and neighbouring properties.

As per Stage 1 of works, all earthworks and civil works proposed under this new proposed approach will be managed in accordance with the current approved management plans, monitoring of earthworks, sediment erosion control. All measuring and monthly reporting requirements of exposed areas is to remain.

These management plans, daily inspections by the Civil Superintendent, review by the Private Certifier, Council and on-site environmental officer along with monthly reporting requirements demonstrate that any increase in exposed areas could be conducted in a manner to negate environmental harm.

The project team and approved management practices have demonstrated, through the Stage 1 works of the development, the ability to manage the site and capacity to implement these practices and processes to the new proposed larger area(s).



As noted we have drawn of the consulting team and investigations which have been conducted across the site to support this proposed change.

The team have reviewed the geotechnical reporting over the site and liaised with the authors of the report. We note our geotechnical consultants provide ongoing advice in relation to the project. We note the area covered by the proposed change has been subject to and consists of similar geotechnical properties as the Stage 1 works, with the sub soil described as loose to very dense sand and indurated sand from surface to depth.

As noted the site sediment and erosion control measures within the approved CEMP and other relevant plans would be adapted/implemented on a stage by stage basis and across all disturbed areas.

These as noted have been demonstrated to effectively manage potential erosion and sedimentation. A plan for each phase of bulk earthworks would be prepared and approved prior to works commencing. This plan would be prepared with input from various consulting and construction team members for approval by the consulting team to ensure the appropriate suite of measures are employed.

The phase specific earthworks plans would be prepared by and certified by registered professional engineer. A certified registered engineer or other suitably qualified person i.e. Certified Professional in Erosion and Sediment Control (CPESC) would be used for the certification of the sediment and erosion control plan.

We refer to below to illustrates some of the sediment and erosion control measures utilised for Stage 1. Note this includes for example irrigation for establishment of perennial grasses and grass growth which has proven to be effective for larger master lots in stabilising the site and reducing dust erosion.

The irrigation has been implemented to assist in establishment. As illustrated in the attachment where strike fails or for smaller works areas a polymer is applied. This demonstrates the adaptive site management processes occurring and effective monitoring/reporting and remedial actions by the various on site staff/contractors in identifying issues and responding.



Results of polymer application and grass strike to aide in dust suppression



Kings Forest Parkway with polymer spray



Bed of the eastern Swale polymer application



Grass growth – we have researched the use of various seeds to improve strike rates and growth success



Gravel on haul roads



Covering of long term stockpiles

Figure 5 Sediment and Erosion Control Measures employed.

As noted there are various management plans enacted and in force which would continue with the amended bulk earthworks strategy for the sub set area inclusive of the a noise monitoring, with monthly reporting for the sensitive receptors to continue.

We note the bulk earthworks have not resulted in noise complaints. Through use of onsite fill and its very nature, the potential for noise and vibration related impacts will be reduced. Sensitive noise receptors would be identified and included in any updated monitoring regime before works commence under the proposed change.

As noted the suite of approved management plans and CEMP would continue to be utilised for the subject earthworks area and adapted to each new bulk earthworks phase. These plans would be prepared and certified prior to works commencing.

We are also aware that a number of additional conditions under the project approval which are related to the expanded earthwork approach are proposed to be consequentially amended and these are briefly identified and discussed to the extent relevant below with our comments;

### 3.0 Conditions and Modification

As detailed above the modification seeks to have accelerated earthworks generally within a subset area of the approved earthworks. As noted the proposed change relates to the expansion of disturbed areas through either the bulk earthworks and or civil works for upto 30ha.

The change does not significantly alter the general earthworks proposed and approved. The subject sub set area, Precinct 3,4, part 5, 7 and part 9, works area is still generally consistent with the 8 (eight) sequences or stages for the earthworks as detailed in the bulk earthworks drawings numbers 12301-ALL-041 Revision B prepared by Mortons Urban Solutions dated 16 October 2012.

The change relates specifically to a subset of the overall approved bulk earthworks referred above with more specific sequencing and sub staging for the subject sub set area, Precinct 3,4, part 5, 7 and part 9.

The current and proposed modified conditions are presented below;

#### 3.1 Conditions of the Major Project Approval (No. 08\_0194)

The following outlines the various conditions of the Project Approval sought to be modified;

##### 3.1.1 Terms of Approval

A3

Calls up the broad set of plans /reports/letters the project is to be generally carried out in accordance with.

As noted the modification seeks to have a subset area of the earthworks have an increased works/disturbance areas. The subset area also modifies the broader sequencing specific to Precinct 3, 4, part 5,7 and part 9

The works within the sub set area are able to be undertaken consistent with the original conditions and new plans of management for the new phases of earthworks would be prepared as is required.

Condition A3 is to be amended to reference

Drawing Bulk Earthworks Strategy Indicative Disturbed Area Phasing Plan Precinct 3,4, part 5,7 and part 9 part 9(Borrow Area) 12301-Sk 025 B dated 13-03-24.

And

Sargeant Planning Precinct 9 Borrow Area Typical Sections March 2024

These are new plans relevant to the proposed change

It is noted within Condition A4 that

In the event of any inconsistency between the documentation referred to in condition A3, the most recent document shall prevail to the extent of the inconsistency.

### Construction Staging (Bulk Earthworks)

#### Condition A6

##### Currently reads;

A6.

- Bulk earthworks are to be undertaken in stages as generally described below, as per Morton's plan 12301-SK-050 Revision A, dated 29/01/13 and the Bulk Earthworks Sequencing Diagram 12301-ALL-041 Revision B, dated 16 October 2012:
  - (a) Stage 1(a) Precinct 5 (Phase 1)
  - (b) Stage 1(b) Precinct 5 (Phase 2)
  - (c) Stage 1(c) Precinct 1, Precinct 2, Kings Forest Parkway and part Precinct 4 (Phase 3)
  - (d) Stage 1(d) Precinct 5 (Phase 4)
  - (e) Stage 1(e) Precinct 4 (Phase 5)
  - (f) Stage 1(f) Precinct 4 (Phase 6)
  - (g) Stage 1(g) Precincts 6-11
  - (h) Stage 1(h) Precincts 12 – 14

Comment – the condition is proposed to be modified

- Bulk earthworks are to be undertaken in stages as generally described below, as per Morton's plan 12301-SK-050 Revision A, dated 29/01/13 and the Bulk Earthworks Sequencing Diagram 12301-ALL-041 Revision B, dated 16 October 2012:
  - (a) Stage 1(a) Precinct 5 (Phase 1)
  - (b) Stage 1(b) Precinct 5 (Phase 2)
  - (c) Stage 1(c) Precinct 1, Precinct 2, Kings Forest Parkway and part Precinct 4 (Phase 3)
  - (d) Stage 1(d) Precinct 5 (Phase 4)
  - (e) Stage 1(e) Precinct 4 (Phase 5)
  - (f) Stage 1(f) Precinct 4 (Phase 6)



(g) Stage 1(g) Precincts 6-11

(h) Stage 1(h) Precincts 12 – 14

Except where modified by Bulk Earthworks Strategy Indicative Disturbed Area Phasing Plan Precinct 3,4,part 5,7 and part 9(Borrow Area) 12301-Sk 025 B dated 13-03-24.

This change acknowledges the subset plan area within the overall staged earthworks.

**Condition 9      Staging of the bulk earthworks shall be in accordance with the following**

**Condition 9 a)**

Currently reads

9      a)      A Construction Certificate application for Bulk Earthworks shall be lodged for each of the proposed 8 (eight) sequences or stages for the earthworks as detailed in the bulk earthworks drawings numbers 12301-ALL-041 Revision B prepared by Mortons Urban Solutions dated 16 October 2012.

Comment Condition 9 a) to be modified as below

9      a)      A Construction Certificate application for Bulk Earthworks shall be lodged for each of the proposed 8 (eight) sequences or stages for the earthworks as detailed in the bulk earthworks drawings numbers 12301-ALL-041 Revision B prepared by Mortons Urban Solutions dated 16 October 2012, **except as modified within the subset area illustrated in Drawing Bulk Earthworks Strategy Indicative Disturbed Area Phasing Plan Precinct 3,4,part 5,7 and part 9(Borrow Area) 12301-Sk 025 B dated 13-03-24; and**

**A construction certificate application for the bulk earthworks shall be lodged for 6 (six) phases and Borrow area as detailed in Bulk Earthworks Strategy Indicative Disturbed Area Phasing Plan Precinct 3,4,part 5,7 and part 9(Borrow Area) 12301-Sk 025 B dated 13-03-24.**

This change identifies the sub set staging area distinct from the original sequencing and retains the requirement for a Construction Certificate application for bulk earthworks to be lodged for each stage /phase of earthworks whether existing or as modified.

**Condition 9 d)**

Currently reads

9 d) Bulk earthworks for the site are to be limited to a maximum exposed disturbed area (that has not been permanently vegetated) not exceeding a maximum of 5ha at any time to reduce exposed areas, unless otherwise approved by the Director-General Secretary at the request of the Proponent.

Comment Condition 9 d) to be modified as below

9 d) Bulk earthworks for the site are to be limited to a maximum exposed disturbed area (that has not been ~~permanently vegetated~~ stabilised ie. Grassed, chemically treated or physically covered) not exceeding a maximum of 5ha at any time to reduce exposed areas, unless otherwise approved by the Director-General Secretary at the request of the Proponent.

This 5ha maximum area does not apply to those areas nominated on Bulk Earthworks Strategy Indicative Disturbed Area Phasing Plan Precinct 3,4,part 5,7 and part 9(Borrow Area) 12301-Sk 025 B dated 13-03-24, where the maximum bulk earthworks area does not exceed a maximum of 30ha.

The change clarifies stabilisation of disturbed areas from the specific permanently vegetated wording to acknowledge the basic requirement that disturbed areas are to be stabilised and this may be undertaken through various measures. These measures not require a specific requirement for a permanently vegetated state. Stabilised as identified within the proposed wording includes; grassed, chemically treated or physically covered as would be detailed in the future sediment and erosion control plans.

This change also recognises the differentiation in disturbance areas across the site as introduced by the MOD.

We note this change/modification could be considered under the 'as otherwise agreed by the Planning Secretary' arrangements provided for under the condition.

### Condition 9 f)

Currently reads;

9 f) Notwithstanding d) above, the Kings Forest Precinct 1-5 Earthworks Phasing Diagram dated 29 January 2013 Revision A is approved subject to the following modifications:

- i. Phase 1 shall be further broken down into two phases with a maximum exposed area no greater than 5.5ha.
- ii. Phase 2 shall be broken down into two phases with a maximum exposed area no greater than 9ha.

iii.	Phase 3 shall be broken down into two phases with a maximum exposed area no greater than 7ha.
iv.	Phase 6 shall be broken down into two phases with a maximum exposed area no greater than 9ha.
Comment - Condition 9 f) is to be deleted	

This is superseded by Bulk Earthworks Strategy Indicative Disturbed Area Phasing Plan Precinct 3,4,part 5,7 and part 9(Borrow Area) 12301-Sk 025 B dated 13-03-24and is thus redundant.

### Condition 9 g)

Currently reads

9g)	Works are to be topsoiled, mulched and seeded within 7 days after completion to protect the exposed areas from water and wind erosion.
Comment – The condition is proposed to be modified as below	
g)	Works are to be topsoiled/ <del>seeded</del> , mulched, <del>and seeded</del> , or utilise other appropriate physical measures i.e. erosion matting, or chemical products i.e. polymers within 7 days after completion to protect the exposed areas from water and wind erosion.

This modification broadens the scope of management measures which can be utilised in stabilising the site and managing the potential for erosion. We note a range of measures have been implemented on site through the approved management plans. As also noted above where weather has impacted on grass coverage remedial actions including reseeding and irrigation and application of polymers have been undertaken.

### New Condition 9 h)

A new condition is sought to be included within Condition 9 to address issues raised by TSC concerning surety over sediment and erosion control effort is reflective of the expanded proposed works areas and commitments for appropriate costs being committed to implementation of the works outlined within the future management plans for sediment and erosion control including dust.

A condition relating to bonding is considered the most common and transparent approach to capturing the anticipated costs for the increased sediment and erosion control 'effort'. This also places an additional requirement on the developer to ensure the plans are implemented. The bonding is structured to cover physical structures and also maintenance requirements of these for upto 3 months post stabilisation.



The condition is as below;

- 9 h) Prior to the commencement of bulk earthworks for a phase as detailed in Drawing Bulk Earthworks Strategy Indicative Disturbed Area Phasing Plan Precinct 3,4,part 5,7 and part 9(Borrow Area) 12301-Sk 025 B dated 13-03-24 a bond for sediment and erosion control implementation is to be submitted to council. The bond shall;
- be based on 5% of the value of the works (physical structures/measures); and
  - be based on 10% of the value of the maintenance of sedimentation and erosion measures for upto 3 month post final stabilisation of a phase or part there of, as detailed within each approved sediment and erosion control for a phase;
  - The bond may be progressively reduced on a quarterly basis and it is the responsibility of the proponent to apply for a refund.
  - Council or its agents may utilise the bond within 14 days of a compliance notice being issued for rectification works.

## Plans of Bulk Earthworks

### Condition 10

#### Currently reads

10. The Proponent shall submit the following plans and specifications with an application for construction certificate for the Bulk Earthworks:
- a) Natural and finished development levels (spot levels and contours) clearly detailed with a legible scale.
  - b) Sediment and erosion control plans
  - c) Geotechnical compliance
  - d) Planting/ hydromulching for short term and long term batter slopes
  - e) An earthworks phasing diagram that defines maximum exposed areas
  - f) Maximum batter slopes shall be consistent with the recommended maximum batter slopes for stability in the geotechnical report titled "Geotechnical Investigation proposed residential subdivision Depot Road Kings Forest" prepared by Cardno Bowler dated 7 April 2011.
  - g) Areas in which the natural slope exceeds 25%, a qualified geotechnical engineer is to provide further advice in relation to cut / fill construction for the bulk earthworks.

<p>h)</p> <p>i)</p> <p>j)</p>	<p>A shake down area along the haul road immediately before the intersection with the road reserve.</p> <p>Compliance with the provisions of Council's Design Specification D6 – Site regarding.</p> <p>Measures to be implemented during bulk earthworks operations to ensure the existing 600mm trunk water main is protected.</p>
<p>Comment – The condition is proposed to be modified as below</p>	
<p>10.</p>	<p>The Proponent shall submit the following plans and specifications with an application for construction certificate for the Bulk Earthworks:</p> <p>a) Natural and finished development levels (spot levels and contours) clearly detailed with a legible scale.</p> <p>b) Sediment and erosion control plans</p> <p>c) Geotechnical compliance</p> <p>d) Planting/hydromulching for short term and long-term batter slopes</p> <p>e) An earthworks phasing diagram that defines maximum exposed areas</p> <p>f) Maximum batter slopes shall be consistent with the recommended maximum batter slopes for stability in the geotechnical report titled "Geotechnical Investigation proposed residential subdivision Depot Road Kings Forest" prepared by Cardno Bowler dated 7 April 2011.</p> <p>g) Areas in which the natural slope exceeds 25%, a qualified geotechnical engineer is to provide further advice in relation to cut / fill construction for the bulk earthworks.</p> <p>h) A shake down area along the haul road immediately before the intersection with the road reserve.</p> <p>i) Compliance with the provisions of Council's Design Specification D6 – Site regarding.</p> <p>j) Measures to be implemented during bulk earthworks operations to ensure the existing 600mm trunk water main is protected.</p> <p>k) A Borrow Area landscape buffer and building separation plan is to be produced for any phase which utilises part Precinct 9. This shall provide a 20m densely plated buffer, which utilises appropriate native species to suit the aspect/micro climate, to the perimeter of the works area within the proposed borrow area in Precinct 9. This shall be detailed in a landscape plan prepared by a suitably qualified person and submitted to council prior to the issue of a</p>

Construction Certificate for any works within proposed Borrow Area. The plan shall also identify a 50m separation area between the existing dwellings and any works areas. Temporary screen fencing may be used in conjunction with the vegetation buffer to provide immediate 1.8m high screening. The plan shall generally reflect the Sargeant Planning Precinct 9 Borrow Area Typical Sections March 2024

The item k) is added for screening of the proposed Borrow Area works from neighbouring properties and on site buildings to the west and north. The plan is to be prepared by a landscape architect to ensure that appropriate species are selected so that screening is provided. Temporary screen fencing may be used in conjunction with the vegetation buffer to provide immediate 1.8m high screening.

The plan would also detail the 50m separation distance between any works area and existing dwellings. The Precinct 9 Borrow Area Typical Sections March 2024 illustrates the separation and landscape areas to be provided refer Attachment 7.

The Borrow Area has also been configured to be further separated from adjoining properties, specifically to the west which is a vacant lot. The proposed works due to topography, retention of existing buildings/structure and the landscaping would minimise any visual impact from dwellings opposite the site on Melaleuca Rd. Additionally no haulage is proposed external to the site.

### Bulk Earthworks Geotechnical Compliance

#### Condition 11

Currently reads

11. Each stage shall be preceded by an endorsement of detailed earthworks design plans by a practising geotechnical engineer to certify compliance of the plans and implementation strategy with the conclusions and recommendations of the Geotechnical Report prepared by Cardno Bowler titled Geotechnical Investigation proposed subdivision Depot Road, Kings Forest dated 7 April 2011.

Comment – The condition is proposed to be modified as below

11. Each stage shall be preceded by an endorsement of detailed earthworks design plans by a ~~practising geotechnical engineer~~ suitably qualified person to certify compliance of the plans and implementation strategy with the conclusions and recommendations of the Geotechnical

Report prepared by Cardno Bowler titled Geotechnical Investigation proposed subdivision Depot Road, Kings Forest dated 7 April 2011.

The change broadens the scope of appropriately qualified persons whom may certify compliance. The conclusions and recommendations of the Cardno Bowler are not all geotechnically focused and require a specialist geotechnically qualified persons to be certifying works.

This is illustrated by conclusion and recommendation 7 reproduced below;

7. Refer to Section 5.6 for issues relating to existing drainage channel stability.

This section merely requires batters to be no greater than 1V:3H or they are to be retained. Section 5.6 also notes erosion protection may also need to be considered on the channel drainage batters.

A geotechnical engineer is not specifically noted as requiring certification of this point nor is required to certify that works adhere to these requirements. This condition of the conclusions and recommendation section of the Cardno Bowler report is able to be addressed by either a civil or structural engineer.

The proposed modification is making the condition fit for purpose.

### **PRIOR TO COMMENCEMENT OF CONSTRUCTION WORKS**

#### **Construction Environmental Management Plan**

#### **Currently reads**

**52.**

- 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.

Comment - The condition, specifically part 2) is modified as below

- 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-stabilised~~) 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.

The proposed change alters the wording for consistency.

The change clarifies stabilisation of disturbed areas from the specific permanently stabilised wording to acknowledge disturbance occurring over a site periodically i.e. borrow area or stockpiles. These would be stabilised but do not require a specific requirement for permanently vegetated state.

Bulk earthworks areas we note are also governed by other planning outcomes i.e. open space /roads etc and again would be post bulk earthworks subject to subsequent/periodic disturbance prior to delivery of the land to its ultimate approved outcome. The wording enables the outcome of the condition to be achieved without it being necessarily permanently vegetated.

As required by the condition a 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.

### Use of Crushing Plant Machinery

Currently reads

81. The use of crushing plant machinery, mechanical screening or mechanical blending of materials is not approved. Separate approval must be obtained for any such use on the site.

Comment the condition is proposed to be modified as below

81. The use of crushing plant machinery **and** mechanical screening ~~or mechanical blending~~ of materials is not approved. Separate approval must be obtained for any such use on the site. **The mechanical blending of rock/ stone/ gravel/sand/soil which requires no further crushing or screening is however permitted.**

The current wording is restrictive and precludes common construction activities/methods.

The condition intent is reflected in the amended wording.

It is common for mechanical blending to occur on sites where soils are mixed and or treated through tilling. This common activity which occurs on all construction sites is not carried out by any large scale plant or imported machinery rather the excavators on site. Blending is carried out by machinery and thus is mechanical blending and it is considered unintentionally captured by the condition.



The insertion rock/stone/gravel/ sand/soil which has requires no further crushing or screening makes clear that use of this material in blending is also acceptable.

The intent of the condition is retained and crushing /screening require a separate approval. The condition is broadened to recognise mechanical blending may occur from material on site where the material to be blended no longer requires crushing or screening.

We note the requirement for the CEMP and additional noise management requirements which govern the construction activities and are designed to manage potential noise impacts that arise from works. This provides sufficient control over site earthworks.

Should a crushing plant be required the requirement for a separate approval is retained.

These changes are provided in the attached Modifying Instrument document, refer Attachment 8.

## **3.2 Statutory Considerations**

### **3.2.1 Part 3A and 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.

Section 4.55 of the EP&A Act contains the provisions that must be considered by a consent authority in determining an application to modify a Notice of Determination. In this regard, the relevant provision is section 4.55(1A) of the EP&A Act.

This application is lodged under section 4.55(1A) as the amendments proposed are considered to be minor in nature and have only minimal environmental impact. In addition to the EP&A Act, clause 115 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) contains the information that must be submitted with an application to modify a consent. The requirements under the EP&A Act and EP&A Regulation in the following subsections.

### **3.2.2 Section 4.55(1a) Environmental Planning and Assessment Act 1979**

Section 4.55(1A) of the Act applies to modifications where a minimal environmental impact may occur. Specifically, section 4.55(1A) provides that:

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—*

#### **3.2.2.1 Minimal Environmental Impact (section 4.55(1A)(a))**

*(a) it is satisfied that the proposed modification is of minimal environmental impact, and*

Comment – The proposed modification is considered to result in minimal environmental impact, as the proposed 'earthworks' are located within the area subject to clearing and earthworks through the Concept Approval and approved or identified for earthworks in the Project Approval. The proposed earthworks are also within the approved urban areas of the concept approval.

The proposed earthworks are not located in environmentally significant areas or areas for which have been approved for development through the Concept Approval and the Project Approval.

The earthworks have been approved subject to a suite of management plans which are designed to avoid minimise and mitigate environmental impacts and harm from occurring. These plans are to be provided with each phase of the modified earthworks and approved prior to works commencing.

A number of current conditions also exist to ensure the earthworks occur in a manner which does not result in environmental impact.

This same suite of plans and conditions will be used/apply to ensure minimal environmental impact occurs or arises from the modification.

As can be seen in the modifying plan the total area which may be disturbed is capped and the phases of the earthworks are generally all below the originally proposed 20ha. Works will occur over a larger area than currently approved, however as noted is the same area which has been previously considered and approved for earthworks. This extent of earthworks will vary depending on the phases outlined however the requirement for any disturbed area irrespective of area to be stabilised within 7 days is as per the original conditions.

The sequencing and earthworks areas will be subject to the same controls which have been employed through the current set of conditions and practises which have demonstrated minimal environmental impact.

The use of on site material for filling with this modification further reduces potential external disturbances or environmental impacts which may arise from traffic /haulage, although it is noted the Concept and Project Approval both contemplate cut/fill across the site and import of fill material.

The associated changes to conditions also are considered to have minimal environmental impact.

In this regard, it is considered that the comparative assessment of the environmental impacts of the project as approved by the concept plan approval and the project as proposed to be modified will have a minimal environmental impact.

In arriving at this position we have had regard to *Bechara v Plan Urban Services* [2006] NSWLEC 594 and *Dravin Pty Ltd v Blacktown City Council* [2017] NSWLEC 38.

### **3.2.2.2 Substantially the Same Development (section 4.55(1A)(b))**

*(b) it is satisfied 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 and before that consent as originally granted was modified (if at all), and*

Comment – As per the above, the proposed modification does not seek to introduce any new allotments or land uses and purely seeks to have an alternative earthworks staging within a subset area of the approved and contemplated earthworks area. The change does increase the extent of the area of earthworks and there are other associated conditions changes with this.

The Concept and Project Approval both contemplate cut/fill across the site and also the import of fill material. This proposal seeks to use on site fill material from an area noted for within the approved areas.

The use of onsite material for filling with this modification further reduces potential external disturbances or environmental impacts which may arise from traffic /haulage.

The modifications to a number of conditions seek merely to clarify requirements and/ or timing of requirements and does not change the intent of the original condition, this ensures all earthworks are undertaken in accordance with raft of engineering and environmental plans, management plans that are required to be approved prior to any works occurring.

The leading cases in respect of whether a proposed development will result in substantially the same development as that originally approved, are *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8 & *Moto Projects (No 2) Pty Ltd v North Sydney Council* (1999) 106 LGERA 298

In *Moto* and *Vacik*, the Court held that the result of the comparison of the originally approved development and the development as proposed to be modified “must be a finding that the modified development is ‘essentially or materially’ the same as the (currently) approved development” and that the word “substantially” means “essentially or materially or having the same essence”.

In respect to the above the proposed earthworks are occurring within those areas approved and contemplated for earthworks in the original approvals. The earthworks phasing is not significantly different from that approved in the Project Approval. We acknowledge the changes to phasing and area within the subset of the overall approvals. As noted the earthworks are able to be accelerated through the proposed modification this does not however materially change the proposed works or development. The proposed modified earthworks do not alter any statutory or policy compliance.

It is considered the proposed modification will not substantially represent a change to the Project Approval and as modified.

### **3.2.2.3 Notification (section 4.55(1A)(c))**

*(c) it has notified the application in accordance with—*

*(i) the regulations, if the regulations so require, or*

*(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

Comment – Modification applications to State Significant Development that involve minimal environmental impact (Section 4.55(1A)) are placed on public notification for 14 days (if exhibited).

Pursuant to Section 4.55(1A)(c), public notification of the proposed modification to the Approval is to be in accordance with the Regulation. Clause 117(2) of the Regulation states that the notification of Section 4.55(1A) Applications are to be in accordance with a Development Control Plan.

Clause 4.0 of the relevant Tweed Development Control Plan 2008, Section A11 – Public Notification Policy, states that the Plan only applies to modifications of Approvals under Section 4.55(2) of the EP&A Act 1979. Accordingly there is no requirement to advertise the subject application.

TDCP2008, Section A11 was repealed on 3 December 2019 and has been replaced by the Tweed Community Engagement and Participation Plan 2019-2024. Appendix 2: Land Use Notification Tables sets out Council's requirements for community consultation in relation to Development Applications.

Clause 5.13 of the Community Engagement and Participation Plan is as follows:

*"5.13 How will consent modifications or reviews be notified?"*

Requests for a modification or review of determination will be notified in the same manner as the original application. If in the opinion of the relevant Council officer a modification application under Section 4.55 of the EP&A Act will have no additional impact on any adjoining or nearby properties, no notification will be required."

As outlined the proposed modification relates to earthworks within those areas approved for earthworks under the Project Approval and will have no additional impacts on any adjoining or nearby properties, given the previous approval of the earthworks over the site.

The modification relates to a smaller subset area of the earthworks and development footprint, the proposal also reduces external impacts through the use of on site fill material reducing haulage on external roads. These works are located centrally with existing vegetation largely screening the works areas on Precinct 3,4 and part 5. We note long views of the earthworks, from a small number of surrounding properties, would see Precinct 7 and part Precinct 9. These would see the earthworks irrespective of proposed modification and we note the requirement for the earthworks to be stabilised. It is unlikely to have any additional impact on those properties with long views of the works area.

The proposal also provides a substantive separation distance between the 2 existing dwellings on Melaleuca Rd, north of the site, and the proposed borrow area. We note firstly the borrow area is within an area identified on the approved plans as a future anticipated cut area. Secondly these dwellings are orientated to the north and on the northern slope of the low spur which Melaleuca Rd is located on. The borrow area is on the south facing slope below the road and existing onsite building line.

The borrow area is also setback from the existing on site dwellings to retain these and the existing streetscape. The borrow area also has incorporated within it and a condition of the modification for a landscaped buffer to further visually screen works within the borrow area. As also noted Melaleuca Rd is not used for haulage or in association with the proposed earthworks.

The proposal is considered to have no additional impacts on any adjoining or nearby properties from those which may have arisen from the current approval. The proposal therefore does not require notification.

#### **3.2.2.4 Consideration of Submissions (section 4.55(1A)(d))**

*(d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comment - Should DPE notify the subject application in accordance with section 4.55(1A)(c), it must consider any submissions made during a notification period.

Subsections (1) and (2) of section 4.55 do not apply to the proposed modification. Subsection (3) is addressed in Section 4 of this submission.

## 4.0 Environmental Planning Assessment

The following subsections provide an environmental assessment of the proposed modifications in respect of the relevant matters for consideration under section 4.15(1).

### 4.1 Planning Controls

The following subsections assess the proposal against the relevant provisions of applicable Environmental Planning Instruments (EPIs), Draft EPIs, Development Control Plans (DCPs), Planning Agreements and matters prescribed by the Regulation in accordance with section 4.15(1)(a) of the EP&A Act.

#### 4.1.1 Environmental Planning Instruments (EPIs)(section 4.15(1)(a)(i))

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.

It is considered the proposed modification does not result in any significant changes that would make the proposal inconsistent with the above policy and documents.

#### 4.1.1.1 Environmental Planning Instruments other provisions (section 4.15(1)(a) (ii-iv))

##### ii DCP - Kings Forest Concept Plan No.08\_0318 and Development Code

The Concept Plan was approved on 19 August 2010 and subsequently modified on six occasions, most recently by Modification No. 9 Issued on 25 January 2023. The Concept Plan is the principal Planning Instrument regulating development on the Kings Forest site.

The Kings Forest Development Code, which forms part of the Concept Plan was originally approved on 12 October 2010 and subsequently modified on four occasions, most recently by Concept Plan MOD9. The approved version of the Code is dated 18 April 2023. Clause 1.7 of the Kings Forest Development Code requires the Code to be read in conjunction with Tweed Development Control Plan 2008 Section A5 - Subdivision Manual and Section A11 - Public Notification of Development Proposals are thus relevant.

As noted, the modification does not seek to modify the Consent Approval.



In respect to Section A5 the proposal does not seek to change to the manual nor requirements for development. is not inconsistent with the Manual. Section A11 has been addressed in the previous section and has been repealed. The proposal does not change notification requirements.

### iii Planning Agreements

Not Applicable

### iv Provisions of the regulations

This application details and addresses the relevant provisions of the Regulations. Section 100 of the EP&A Regulation is applicable to this application. This application has addressed the requirements of Section 100(1) of the EP&A Act throughout this report. Owners' consent has been obtained. The development is not subject to section 100 (3) as the development does not relate to a BASIX development.

#### **4.1.2 Likely Impacts of the development (section 4.15(1)(b))**

As outlined the proposed modification will have minimal environmental impact when considered against the current approval. The modification would see earthworks within areas previously approved and contemplated for earthworks. No works are within areas to be protected for environmental purposes.

These earthworks works are subject to a suite of management plans as outlined in the conditions of approval and are to be provided for each phase of the modified earthworks prior to works commencing.

It is considered there are no substantial changes to the social and economic impacts from what was approved under the Project Approval due to the nature of the works and being situated within those areas contemplated for and approved earthworks.

#### **4.1.3 Suitability of the Site (section 4.15(1)(c))**

The site under the North Coast Regional Plan 2036 (NCRP), provides strategically identified land for urban expansion and is appropriately zoned. The site has existing Concept Plan Approval and a Project Approval which has been activated. The modification of the earthworks is within the approved and contemplated urban area and earthworks areas.

The proposed development is supported by monitoring reports that have been undertaken over the site over the course of the last two years and are attached At Appendix 10. These are provided to demonstrate an

understanding of the site and site geophysical properties and ability to develop appropriate earthworks and associated construction management plans.

Additionally an Acid Sulfate Soils Investigation was prepared by Douglas Partners Pty Ltd for stage 1 – precinct 5 and a Soil Properties Assessment prepared by Environmental Soils Solutions Australia Pty Ltd are attached at Appendix 11.

#### **4.1.4 Any Submissions Made in accordance with the Act or Regulations**

This is a matter for the Department.

#### **4.1.5 The Public Interest**

As noted the site is recognised strategically as an urban growth area and zoned appropriately. This modification seeks to accelerate earthworks within a subset area of the approved earthworks under the Project Approval. This modification through the concurrent bulk earthworks and civil works, designed to accelerate housing delivery on site. This would assist in alleviating the recognised housing shortage within the Tweed Shire Council area and Northern Rivers Region.

Through the accelerated earthworks outlined in the modification, additional cost savings are also achieved which contribute to reducing construction costs and delivery of more affordable land for housing. The availability of affordable housing is also recognised as a critical public interest matter.

The accelerated earthworks also minimise and reduce any potential amenity and nuisance impacts, which may arise from the earthworks and development works particularly to Precinct 5, where civil works for the first stages are nearing completion and dwelling construction will start shortly. The accelerated earthworks would likely result in bulk earthworks completed in the adjoining precincts 3 and 4 and civil construction also well advance in Precinct 4, balance areas of 5.

The accelerated delivery of earthworks works over Precinct 7 further provides land to meet demand and address the acute shortage and affordability issues in the Tweed Shire Council area and wider Northern Rivers Region.

The accelerated earthworks and delivery housing and affordable housing is consistent with the objectives of the Far North Coast Regional Strategy (FNCRS) 2006-2031.

Kings Forest continues to be a strategic urban expansion area under the relevant planning regime and this modification does not alter the ultimate urban outcomes contemplated in the Concept Plan Approval and Project Plan Approval. The proposal through the expanded earthworks and new phasing of works does not, it is considered, have any significant environmental impacts and results in substantially the same development. It is considered is considered the modification is in the public interest.



Section 4.55(1A) Modification Report - Earthworks

Kings Forest Estate

Tweed Coast Rd, Cudgen

## 5.0 Conclusion

This report and accompanying application is made under section 4.55 (1A) of the Environmental Planning and Assessment Act, to modify conditions A3, A6, 9 (a) 9 (d), 9 (f), 9 (g), 10, 11, 52 & 81 of the Kings Forest Project Approval (No. 08\_0194).

The modifications are based around an increase to the currently limited maximum exposed disturbed to enable accelerated earthworks. The accelerated earthworks would enable concurrent bulk earthworks/civil earthworks/stock piling and site preparation to occur. Through this approach, works are able to be undertaken in a more efficient and economical way. This would contribute to the faster delivery of housing and more affordable land. There is also a number of associated minor modifications to associated conditions which either reword for clarity, remove or introduce new conditions and plans.

All works would be subject to a suite of engineering and management plans outlined and established through the Project Approval. Importantly the modification has sought to limit the area for this accelerated approach to evaluate the adapted management of the works, which should also reduce amenity and nuisance impacts to future residents of the development particularly those in Precinct 5.

The modifications have been assessed against the relevant planning controls and environmental planning instruments and will result in a development that is substantially the same as approved. The proposed modifications will have minimal environmental impact and accordingly, the proposal is considered to satisfy the requirements of s4.55(1A) of the EP&A Act.