

Michael Doyle

From:
Sent: Thursday, 18 April 2024 11:57 AM
To: Michael Doyle
Cc:
Subject: RE: Referral to Compliance - Mod app MP 10_0194 MOD 14 for Stage 1 Bulk Earthworks at Kings Forest

Importance: High

Hi Michael,

Thanks for the opportunity for Compliance to provide comment on the proposed modification (MOD14) for Stage 1 Bulk Earthworks at Kings Forest.

Please see below our initial thoughts and comments which we would be happy to discuss further in a meeting:

Referral to Far North Region Compliance team

	Assessment Question	Compliance Comments
1	<p>The proposed changes to condition 9(a) which requires a Construction Certificate application for bulk earthworks:</p> <p>Given the proposed 30ha size of disturbed earthworks at any one time, whether further requirements are recommended to be incorporated into the conditions of consent for future CC applications.</p>	<p>a) Compliance requests that it be conditioned that DPHI be formally notified through the Major Projects Portal of the commencement of each Stage/Phase of bulk earthworks. The notification to include a copy of the Construction Certificate for that Stage/Phase.</p>
2	<p>The proposed 30ha size of disturbed earthworks at any one time, including any foreseen risks involved with such a large area, and whether any such risks are sufficiently ameliorated by existing consent conditions and proposed modified conditions, and whether the proposed size of area is considered to be appropriate for the size & nature of development across the relevant precincts.</p>	<p>a) Compliance has no objection to capping exposed disturbed areas to 30ha; however, request that to avoid confusion as to what area of the site the limit applies any reference to 5ha be removed from the Approval. i.e. one 30ha limit across the site for all exposed disturbed areas.</p> <p>b) Compliance requests that it be conditioned that the Proponent submit via the Major Project Portal periodic (timing TBC) updates of calculated exposed disturbed areas. The report to include drone imagery of the site that differentiates from exposed disturbed areas and areas that have been stabilised.</p>
3	<p>The adequacy of the proposed methods of treating disturbed areas under proposed conditions 9(d), 9(g) and 52(2), including where the application describes that previous grass strike across the site has failed.</p>	<p>a. Compliance concurs that spraying with a polymer or hydromulching is an effective option for vegetating or stabilising large expanses of land quickly for erosion control and stabilisation of exposed disturbed areas; however, Compliance is concerned that simply spraying a chemical or polymer does not guarantee the exposed area remains stabilised. We have witnessed sprayed areas not to take at the site. On a recent inspection (17-Apr-24) a Compliance Officer noted that a sandy area that had been sprayed with hydromulch was not holding as it had been broken down by recent wind and rain. The Project's Environmental Officer was/is looking into the matter to determine if it is the polymer mix or the spraying technique, or both. The danger is that the Project sprays</p>

		<p>an exposed area, signs it off as being stabilised and then moves on and opens up more exposed areas increasing exposed disturbed areas greater than the proposed 30ha limit if some areas do not remain 'stabilised'.</p> <p>b. To mitigate this risk Compliance requests that it be conditioned that a Certified Professional in Erosion and Sediment Control (CPESC) specialist provide a periodic report (timing TBC) submitted via the Major Project Portal as to the condition of each stabilised area and provide recommendations where appropriate based on their observations. The Proponent to be conditioned to provide a response as to how they intend to address any recommendations provided by the CPESC. This report could be combined with comment 2b.</p> <p>c. Compliance refers to previous advice provided to the Proponent concerning exposed disturbed areas:</p> <p><i>"These excerpts from the Approval demonstrate that Condition 9(d) and Condition 52(2) apply to bulk earthworks and not roadworks / road forming works. That is, roadworks that will become the permanent road network for the residential development are not within the ambit of Condition 9(d) and Condition 52(2). On the other hand, the bulk earthworks may require a temporary internal road network. Therefore, any unsealed roads that are solely for the purpose of facilitating bulk earthworks would fall under the ambit of Condition 9(d) and Condition 52(2). Similarly, any existing dirt roads that are being used as haul roads for the bulk earthworks must comply with Condition 9(d) and Condition 52(2)".</i></p>
4	Whether proposed condition 9(h) satisfactorily provides surety that sediment & erosion control will be implemented adequately.	<p>a) Compliance requires further information/context concerning this proposed condition as it has not come across such a proposal for sediment and erosion management.</p> <p>b) In theory placing a bond on a management plan requirement could provide a level of surety that the plan will be implemented; however, the effectiveness of the bond in ensuring implementation will depend the amount of the bond, the clarity and enforceability of the Erosion and Sediment Control Plan requirements, and the oversight mechanisms in place to monitor compliance.</p> <p>c) Compliance is not clear the role Tweed Shire Council will have with regards to sediment and erosion control if a bond were to be provided and how this may impact enforcement outcomes from DPHI.</p>
5	Whether mechanical blending of rock on site is considered to be appropriate (condition 81).	<p>a) Compliance requires further information on how this activity will occur.</p> <p>b) If the activity is to be conducted using excavators then as long as noise and dust requirements are achieved Compliance sees no significant issues.</p> <p>c) Compliance suggests re-wording of the proposed condition: <i>"The mechanical blending of rock/ stone/ gravel/sand/soil <u>which requires no primary crushing or screening</u>"</i></p> <p>d) Compliance agrees that limiting heavy movements on public roads is a positive and reduces the risk of community complaints and property damage typically seen from these type of movements.</p>
6	Whether 1.8m high is adequate for temporary screening (condition 10(k)).	<p>a) The timing of growth of the screening will need to be considered as well as the maturity of planted species. Compliance sees little value in planting a screen if it won't mature in time to shield the</p>

		<p>activity and therefore provide the intended benefit to nearby residences.</p> <p>b) Line-of -sight from elevated positions would need to be considered and 1.8m may not be appropriate for certain angles of the site if comment 6a is not considered.</p> <p>c) The Proposal is not clear on what happens to the borrow pit at end of life. Will it get filled in, will it remain as an open excavation?</p> <p>d) Compliance cannot determine what is a suitable height for a fence but would suggest any fencing around the perimeter of a deep excavation would need to meet Work Health and Safety requirements.</p>
7	Geotechnical and constructability considerations that make the proposal appropriate or inappropriate.	<p>a) Compliance has no concerns with this proposal but suggests wording along the lines of a "suitably qualified geotechnical expert".</p>
8	Any other matter based on details of the proposal, the history of the site or other relevant information.	<p>a. Leda and Shadforths were issued with Warning Letters (ENF 53846721 and 53846724) on 25 January 2023 for failing to comply with Part One, Condition 9(d) and Condition 52(2) of MP08_0194, essentially exceeding exposed disturbed areas. The Proposal does not mention this, only that no "infringement notices" have been issued.</p> <p>b. Compliance had to push Leda and Shadforths to manage exposed disturbed areas following commencement of construction. Initially there was limited proactive work to stabilise exposed disturbed areas or to investigate different methods to successfully move towards permanently vegetated. Rather Shadforths and Leda were encouraged to work on stabilisation by Compliance. Refer to MP08_0194-PA-51 and the Compliance's letter to Shadforths dated 22 February 2023. The letter was issued in response to Shadforths letter to Compliance dated 8 February 2022. It was the Warning Letter that required Shadforth to <i>"submit via the Major Projects Portal a detailed document, or set of documents, that explains the process of how the Project will comply with the maximum exposed disturbed area limits allowed by Part One, Condition 9 and Condition 52(2) of the Approval at any time in undertaking approved bulk earthworks"</i>. In response Shadforth submitted a 109 page document outlining their methods for managing exposed disturbed areas. It is considered unlikely that this would have been prepared if not for the Warning Letter.</p> <p>c. <i>Environmental Officer</i> - Compliance has an ongoing concern that the Environmental Officer provisioned under Condition 71 has had limited input into compliance as required by the condition. The role of the Environmental Officer appears to be that of conducting environmental monitoring required by the Approval and management plans and reporting of that monitoring rather than an oversight of all compliance matters associated with the Approval, specifically construction related activities - <i>"Their role shall be to oversee environmental compliance of the project until completion conditions have been satisfied"</i>.</p> <p>i. Compliance requests that either the Environmental Officer role be replaced with the more commonly used Environmental Representative requirement or the requirement of the Environmental Officer be reviewed and clarified.</p> <p>d. <i>Definitions</i> - Compliance request that key terms in this Modification be defined to provide clarity, including, but not limited to:</p>

- | | |
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| | <ul style="list-style-type: none">• Crushing• Blending• Stabilised |
|--|--|

Happy to discuss further.

Compliance | Development Assessment & Infrastructure
Department of Planning, Housing and Infrastructure

dphi.nsw.gov.au



If you are submitting a compliance document or request as required under the conditions of consent or approval, please note that the Department is no longer accepting lodgement via compliance@planning.nsw.gov.au. Please submit all post approval documents online, via the Major Projects website. To do this, please refer to the instructions available [here](#).

I acknowledge the traditional custodians of the land and pay respects to Elders past and present. I also acknowledge all the Aboriginal and Torres Strait Islander staff working with NSW Government at this time.

Please consider the environment before printing this email.

From: Michael Doyle <michael.doyle@dpie.nsw.gov.au>

Sent: Tuesday, 16 April 2024 09:46

To:

Cc:

Subject: Referral to Compliance - Mod app MP 10_0194 MOD 14 for Stage 1 Bulk Earthworks at Kings Forest

Hi

Recently, my team leader Trent and I have been in touch with Nick and Laura about a future modification application for Stage 1 Bulk Earthworks at Kings Forest. This modification application Project Approval MP 10_0194 MOD 14 has now been lodged on Mon 15 April. The application proposes to modify conditions as well as introduce a bulk earthworks strategy for Precinct 3,4, part 5, 7 and part 9 and that includes rolling earthworks (bulk and civil) phases, increasing the permitted size of the 'disturbed areas' and use of onsite fill material.

Subject modification application MP 10_0194 MOD 14

The subject modification application proposes to modify existing consent conditions A3, A6, 9(a), 9(d), 9(f), 9(g), 10, 11, 52 & 81 of the Project Approval, including to develop a bulk earthworks strategy that includes

- Increasing the permitted size of a 'disturbed areas' from the current limit of 5ha (see condition 9(d)) to being 30ha
- Undertaking bulk earthworks, civil works, stockpiling and blending of soil & fill material concurrently
- Use of on site fill material to minimise and reduce potential external haulage/traffic /dust and noise issues
- Delete redundant conditions and introduce new conditions, including introducing 9(h) for bonding of sediment and 10(k) for a borrow pit and 20m wide landscaped buffer.

The bulk earthworks strategy is proposed to apply to Precincts 3, 4, part 5, 7 and part 9 and, within these precincts, phases and sequencing will be later developed. Refer to section 3 in the applicant's modification report for detail on the proposed modifications.

Referral to Far North Region Compliance team

We have referred the application to Tweed Shire Council for comment as well as to our Chief Engineer. We would also like to ask you to consider the proposal (available under [EF24/4055](#) in CM10, or at <https://www.planningportal.nsw.gov.au/major-projects/projects/modification-14-kings-forest-stage-1-bulk-earthworks>) and make comment such as on:

- The proposed changes to condition 9(a) which requires a Construction Certificate application for bulk earthworks: Given the proposed 30ha size of disturbed earthworks at any one time, whether further requirements are recommended to be incorporated into the conditions of consent for future CC applications.
- The proposed 30ha size of disturbed earthworks at any one time, including any foreseen risks involved with such a large area, and whether any such risks are sufficiently ameliorated by existing consent conditions and proposed modified conditions, and whether the proposed size of area is considered to be appropriate for the size & nature of development across the relevant precincts.
- The adequacy of the proposed methods of treating disturbed areas under proposed conditions 9(d), 9(g) and 52(2), including where the application describes that previous grass strike across the site has failed.
- Whether proposed condition 9(h) satisfactorily provides surety that sediment & erosion control will be implemented adequately.
- Whether mechanical blending of rock on site is considered to be appropriate (condition 81).
- Whether 1.8m high is adequate for temporary screening (condition 10(k)).
- Geotechnical and constructability considerations that make the proposal appropriate or inappropriate.
- Any other matter based on details of the proposal, the history of the site or other relevant information.

Background

Concept Plan MP 06_0318 was approved on 19 Aug 2010 for:

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

This Concept Approval has been subject to a number of modifications including that relate to the number of proposed precincts within the estate, uses, and exempt & complying development provisions in the future for the site. The last modification, MOD 9, was approved on 25 Jan 2023.

Project Approval MP 10_0194 was approved on 11 Aug 2013 for:

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

This Project Approval has been subject to a number of modifications including that relate to weed management plans, dust mitigation measures, and timing of submission of civil works drawings. The last modifications, MOD 12 and MOD 13, were approved on 1 March 2024 and 23 June 2023 respectively.

Please provide any such comment by Tues 30 April. Feel free to make comment through reply email, or to give me a call on my below number if you would like to discuss the proposal at all

Many thanks for your assistance

Regards

Michael Doyle *(he/him)*

Senior Planning Officer, Regional Assessments
Development Assessment and Systems

Department of Planning, Housing and Infrastructure

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