

From:
Sent: Thursday, 27 March 2025 3:19 PM
To: Michael Doyle
Cc:
Subject: RE: Kererrai to Compliance - Mod app MP 10_0194 MOD 14 for Stage 1 Bulk Earthworks at Kings Forest

Hi Michael,

Thanks for the opportunity for Compliance to provide comment on the proposed condition to MP10_0194 (MOD14) for Stage 1 Bulk Earthworks at Kings Forest.

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

Referral to Far North Region Compliance team

	Condition No.	Compliance Comments
A6	Construction Staging (Bulk Earthworks)	No comment
A12	Limits of Approval	No comment.
9(b)	Staging of Bulk Earthworks An earthworks phasing diagram shall be submitted with each application for a construction certificate for bulk earthworks; <ul style="list-style-type: none">• limiting the extent of exposed area of any application to a maximum of 15ha. (that has not been permanently vegetated), unless otherwise agreed to by the Director- General Secretary at the request of the proponent.• A detailed construction management strategy is to be provided for each sequence/stage of the bulk earthworks, identifying how the site and earthworks are to be programmed and managed.• Roadworks that will become the permanent road network are not to be included in this calculation.	<u>Point 1:</u> <ul style="list-style-type: none">a) Compliance would like the MOD to clarify/define what is meant by 'permanently vegetated'.b) 'Director General' to be changed to 'Planning Secretary'. <u>Point 2:</u> Agree but clarification is needed in the Approval as to what is included and excluded from bulk earthworks. The Proponent has previously been instructed by Compliance to refer to the Cobaki judgment as way of definition in the absence of a clear definition in the Approval; however, now seems a reasonable time and opportunity to make it clear within the Approval. Compliance refers to previous advice provided to the Proponent concerning exposed disturbed areas: <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</i>

		<p>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)".</p> <p><u>Point 3:</u></p> <p>Refer to Point 2. Compliance's concern is what they consider roadworks to be, refer to the last two sentences of the quoted paragraph above.</p>
9(c)	<p>Bulk Earthworks Sequence 9 is to be further managed by being broken down into smaller maximum exposed areas, no greater than 15ha.</p>	<p>Current wording for Condition 9(e) is "Bulk Earthworks Sequence 9 is to be further managed by being broken down into smaller maximum exposed areas, no greater than 5ha".</p> <p>Clarification/confirmation needed on whether bulk earthworks Sequence 9 of no greater than 15ha would be as well as the 15ha proposed in 9(b) i.e. 30ha for a CC and then Sequence 9.</p>
9(e)	<p>Works are to be topsoiled /seeded, mulched and seeded, 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.</p>	<ul style="list-style-type: none"> • It's not clear if works are to be 'topsoiled' and then seeded or mulched or treated with 'other appropriate physical measures' or chemical products....within 7 days after completion. • 'Works' are also not defined in the Approval therefore what works are to be topsoiled and what is completion of the 'works'? • Refer to comment in 52-2(2), Point 2 concerning the term stabilised.
9(f)	<p>The Department is to be notified prior to the commencement of each phase of bulk earthworks through the Major Projects portal.</p>	<p>Agree, noting Compliance's previous request that the notification to include a copy of the Construction Certificate for that Phase.</p>
10(b)	<p>Plans for Bulk Earthworks</p> <p>Sediment and erosion control plans prepared by a Certified Professional in Erosion and Sediment Control (CPESC) specialist.</p>	<p>Agree</p>
10(d)	<p>Planting/hydromulching/chemical application for short term and long term batter slopes</p>	<p>Clarification/confirmation needed as to what is meant by 'chemical application'. Are they referring to polymer sprays?</p>
10(k)	<p>Detail landscape plan for any borrow area for buffering and amenity purposes where within 30m of an external property boundary. The plan shall be prepared by a suitably qualified person and include the following:</p> <p>i. Species and maturity</p>	<p>Clarification/confirmation needed as what constitutes a 'suitably qualified person' in the context of a landscape plan.</p>

	<p>ii. Density</p> <p>iii. Timing of works</p> <p>iv. Fencing</p>	
10(l)	Measures for dust control for any haul routes internal to the site	Standard dust control mitigation measures are assumed to be implemented.
10(m)	Noise and vibration assessment for works within 30m of an external property boundary	<ul style="list-style-type: none"> Note that the item of plant and local geotechnical conditions will contribute to the potential impact at an external property, how is this being addressed? Note that the minimum working distance for a vibratory roller (>18 tonnes) is typically 25 metres for cosmetic damage and 100 metres to prevent human comfort. Is the noise and vibration assessment proposed pre-work activity or during? It should be determined prior to works what receivers are within the cosmetic damage minimum work distance. What criteria are they going to assess to? What happens to the assessment? Who reviews the assessment and determines that the distances are appropriate? Is there any requirement for dilapidation reports? Need to make it clear what happens in the event identifies noise and vibration exceedances of the criteria?
11	<p>Bulk Earthworks Geotechnical Compliance</p> <p>Each stage shall be preceded by an endorsement of detailed earthworks design plans by a practising geotechnical engineer suitably qualified person with NER (National Engineering Registration) 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.</p>	Acknowledging that the national Engineer Register appears to be a national recognised register does it need to made clear that the qualified person be competent in the area of bulk earthworks? It is noted that Compliance's previous request dated 18 April 2024 that wording along the lines of a "suitably qualified geotechnical expert" were suggested. Conditioning a suitably qualified person with NER does not mean that person may be familiar with geotechnical matters which is the intent of the condition.
52-1 (g)	<p>Construction Environmental Management Plan</p> <p>Hours of work (including standard hours of work for the Environmental Officer Representative);</p>	<p>Why are they proposing to change the title of the Environmental Officer in this condition and not at Condition 71 (Environmental and Community Liaison Officer(s).</p> <p>Changing the title to Environmental Representative may also confuse the role of the Environmental Officer with that of the role found in contemporary approvals – Environmental Representative Protocol</p>

<p>52-2(2)</p>	<p>Bulk earthworks are limited to one sequence area at a time, with so that the maximum exposed disturbed area (that has not been permanently vegetated stabilised) not exceeding a maximum of 15 hectares for each construction certificate application unless otherwise approved as part of this approval in Condition 9 or by the Secretary at the request of the proponent, at any time to reduce exposed areas. Roadworks that will become the permanent road network are not to be included in this calculation.</p>	<ul style="list-style-type: none"> • Clarification/conformation needed as to whether the 15ha maximum exposed disturbed area is an all-encompassing limit across the site or whether numerous construction certificates can be approved and therefore the maximum exposed disturbed area is 15ha multiplied by the number of approved construction certificates e.g. 5 CC's x 15ha = 75 ha. • Clarification/conformation needed as to what is meant by 'stabilised'. The danger being that an area is sprayed with a polymer and is then called as being stabilised and they move on and open up another 15ha during which time the stabilised area fails and there is an area of exposed disturbed area that is not stabilised that exceeds 15ha. It is noted that Compliance's previous request dated 18 April 2024 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 has not been included in any of the proposed amendments. This is considered a reasonable requirement within the scope of the modification given the subjective nature of determining 'stabilised' if this is not clearly defined in the Approval. • Clarification/confirmation needed as to what is the 'road network'. This comes back to the previous comment about the definition of bulk earthworks and reference to the Cobaki judgment. • It is noted that Compliance's previous request from 18 April 2024 that it be conditioned that the Proponent submit via the Major Project Portal periodic (timing TBC) updates of calculated exposed disturbed areas and that the report include drone imagery of the site that differentiates from exposed disturbed areas and areas that have been stabilised has not been included in any of the proposed amendments. The onus of demonstrating compliance with this requirement should be on the Proponent and not the Department. This is considered a reasonable requirement within the scope of the modification given the Proponent's compliance history with similar conditions. The contractor has previously provided such reports to the PCA and Compliance.
<p>81</p>	<p>Use of Crushing Plant Machinery</p> <p>The use of crushing plant machinery and mechanical screening or mechanical blending of materials is not approved. Separate approval must be obtained for any</p>	<p>Compliance is comfortable with the proposed mechanical blending of material but would prefer a tightening of where this activity can and cannot be conducted on-site due to potential impacts to receivers concerning dust and</p>

	<p>such use on the site. The mechanical blending of rock/ stone/ gravel/sand/soil which requires no further crushing or screening is however permitted.</p>	<p>noise, e.g. residents or environmentally sensitives area, waterways.</p>
	<p>Any other matter based on details of the proposal, the history of the site or other relevant information.</p>	<p>Compliance request that the following terms be considered as definitions in MOD 14:</p> <ul style="list-style-type: none"> a) Crushing b) Blending c) Stabilised d) Bulk Earthworks e) Permanently Vegetated f) Suitably Qualified g) Chemical Application h) Chemical Product <p>These are considered to be reasonable requests as they are associated with the scope of MOD 14. If these cannot be included as definitions then Compliance requests that the condition(s) to which they relate include additional details to reduce the risk of miss interpretation during potential enforcement.</p>

Working days Monday to Friday - Please note that I work flexibly. I'm sending this message now because it's a good time for me, but I don't expect that you will read, respond to or action it outside of your own regular hours.



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.