

Council Reference: DA11/0565 MOD 11  
Your Reference: MP08\_0194 MOD 14



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Micheal Doyle  
Senior Planning Officer, Regional Assessments  
Development Assessment and Systems  
Department of Planning, Housing and Infrastructure

[michael.doyle@dpie.nsw.gov.au](mailto:michael.doyle@dpie.nsw.gov.au)



Dear Michael

### **MP08\_0194 Mod 14 -Major Projects – New Request for Advice - Modification 14 Kings Forest Stage 1 – Bulk Earthworks**

Thank you for the opportunity to provide comment on MP08\_0194 Modification 14 which seeks to have accelerated earthworks generally for a subset area of the approved earthworks within Precincts 3, 4, part 5, 7 and 9. The proposed changes relate to the expansion of disturbed areas through either the bulk earthworks and or civil works for up to 30ha.

This application as submitted seeks to modify **Conditions A3, A6, 9(a), 9(d), 9(f), 9(g), 10, 11, 52 and 81** of the Project Approval, with the intent to increase the maximum exposed area from **5ha to 30ha**, including providing greater clarity to the intent and scope of the original earthworks conditions, delete redundant conditions and introduce new conditions relevant to the proposed modification.

As set out in **Attachment 6** of the application, Mortons - Urban Solutions (Mortons) submits that the current limitations of the consent “*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.”*

The proposed Bulk Earthworks modified 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 intent of the modification is to enable 'earthworks' (i.e bulk earthworks, civil works, stockpiling and blending of soil and fill material) to occur concurrently.

The applicant advises that the proposed expanded 30ha maximum limit would enable fill to be sourced on site, from within the development footprint, and further reduce impacts from external haulage.

A separation zone between the existing on-site dwellings (on Melaleuca Road) and the Borrow Area is proposed at 50m and includes 20m of landscape screening. The application states that these dwellings are currently unoccupied.

As per **Attachment 6**, Mortons describe the proposed sequencing as follows:

*“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. 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 application proposes a new condition relating to bonding of sediment and erosion control. There is also submitted a typical plan for the proposed landscape buffer treatment and separation distances associated with the Borrow Area and adjacent dwellings.

This modification application does not seek a modification to the Concept Approval (MP06\_0318).

### **Modification application documentation**

#### **Response to Department of Planning & Environment Request for Further Information dated 11 July 2023**

The Modification Report prepared by Sargeant Planning and dated March 2024 sets out the initial response from the Department of Planning and Environment dated 11 July 2023, on the then proposed modification and conditions to be modified, to increase the maximum disturbed area to **20ha** (Reference A/B below added for ease of reference later in report);

*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:*

- A1. *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.*
- A2. *An updated Sediment & Erosion Control Plan with details of how areas subject to earthworks will be stabilised and managed (eg application of topsoil, 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)*
- A3. *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.*
- A4. *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:*

- B1. *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.*
- B2. *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.*
- B3. *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.*
- B4. *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.*
- B5. *A soil/dust suppression plan for the operation of the proposed crushing plant machinery, mechanical screening or mechanical blending of materials.*

The Modification Report advises that through the more detailed evaluation of the earthworks and phasing 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.

Section 1.3.1 of the submitted Modification Report provides the Applicant's response to the above requests.

## Item A1

In response to the request for details of the staging of earthworks (Item A1 above), the applicant has submitted the following documents:

- **Attachment 4** - Amended Plan 123-01-SK-025B - Mar 2024;
- **Attachment 5** - Mortons' justification letter, explaining the staging of earthworks, including supporting documents; historic Stormwater Management Plan Stage 1, Kings Forest New South Wales dated October 2020; historic Construction Environmental Management Plan (CEMP) dated December 2021; and historic Sediment & Erosion Control Plan - dated May 2021.
- **Attachment 6** - Existing Approved Earthworks Plan 12301-ALL-041B - 86 & 102 Melaleuca Road Kings Forest

In relation to **Attachment 4**, Council officers recommend that amendments are made to this plan.

Of key concern is that bulk earthworks are identified in Precinct 3, despite **Condition A12** of MP08\_0194 (as modified) explicitly stating that the consent does not give approval to any bulk earthworks in Precinct 3, and that separate approval(s) for these works must be obtained from Council if required by the EP&A Act 1979.

Further it is noted that Precinct 4 Phase 2A appears to include an area within Precinct 3, for which, as above, the bulk earthworks are excluded from this consent.

The remainder of the issues raised relate to definitions to ensure that there is no ambiguity. Refer to attached mark-up plan (**Appendix A**).

In relation to **Attachment 5**, the letter of justification from Mortons is acknowledged, but it appears that the supporting documents (P1, P2 and P3) have not been updated, which contradicts the Department's requirements.

In relation to **Attachment 6**, subject to **Attachment 4** being updated as above, and subsequently being endorsed by the Department, it could be considered an updated (or complimentary) drawing to 12301-ALL -041 Revision B prepared by Mortons Urban Solutions dated 16 October 2012.

It is not considered that Item A1 has been satisfactorily addressed.

## Item A2

In response to the request for updated Sediment & Erosion Control Plan (Item A2 above), it is noted that the applicant considers it is premature to produce an updated Sediment and Erosion Control Plan with this modification application, as the detailed earthworks are yet to be designed and they recommend that details of how areas subject to earthworks will be stabilised and managed be provided for each stage prior to construction.

It is acknowledged that producing an updated Sediment and Erosion Control Plan in the absence of detailed earthworks would present some challenges, however a significant amendment to the consent is being sought (increasing the exposed area from 5ha to 30ha),

and as such the submission of the required material cannot be deferred to a post-consent matter.

It is considered that this information should be submitted at this time, though the form could be more of a “fluid document” that “adapts” as the earthworks are designed and undertaken.

The updated Sediment & Erosion Control Plan should include:

1. Details of measures to be used to cover soils and reduce associated dust impacts including but not limited to polymer applications, irrigation, dust fences, materials on temporary roads, physical covers, erosion matting, and grass seeding.
2. Details of measures to be used to manage dust generation associated with any blending of material.
3. Details of quantitative dust monitoring in accordance with AS3580.10.1 Determination of particles/deposited matter gravimetric method and Approved methods for the sampling and analysis of air pollutants in New South Wales is required during all construction and filling operations. Details are to specify quantitative dust monitoring at the site, considering and identifying all sensitive receiver locations.

It is not considered that Item A2 has been satisfactorily addressed.

### **Item A3**

In response to the request for certification on the efficacy of the proposed management & mitigation measures for stabilising & managing areas subject to earthworks (Item A3 above), the application advised that the requested information is to be provided prior to the construction of each stage. They reiterated that this modification is ‘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.

Further the application advises that a new condition (**condition 9(h)**) specific to bonding for sediment and erosion control is proposed (which they state has arisen from the request from Council to detail costs and appropriate costs for the effective management of sediment and erosion control and specifically dust management).

Similar to Item A2 above, the requested information is required to demonstrate why the proposed amendments are necessary and to demonstrate to Council and the Department that the site can be appropriately managed should the proposed amendments be supported.

In relation to the bond, it is unclear how this bond would be managed by Council. It is noted that contrary to the Modification Report, Council do not recall suggest a bond being paid to Council.

Is the Applicant suggesting that should there be a breach (eg that there is a justified complaint from an under-constructed dwelling that unmanaged dust has penetrated into their wet paint) then it will be Council’s responsibility to call up the bond and find applicable contractors to rectify the issue? It is not Council’s responsibility to provide such a rectification service, nor would Council be in the position not do so.

Furthermore, Council's policy relating to the taking of bonds specifically relates to non-essential uncompleted works or defects during the liability period. Bonds are not a solution for managing dust, sedimentation or erosion during construction.

It is not considered that Item A3 has been satisfactorily addressed.

#### **Item A4**

In response to the request for a Remediation Plan that addresses lack of grass cover/soil deficiencies (Item A4 above), the Modification Report refers to 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. The applicant acknowledges grass strike has failed in areas and a combination of chemical and physical responses occurred i.e. polymer application /irrigation were undertaken as corrective action.

They further advise that a 'corrective actions' section would be included within the future sediment and erosion control plan/report to address this item.

It is considered that this information should be provided as part of this application as requested to demonstrate that the site can be appropriately managed with the increased areas of exposure.

It is not considered that Item A4 has been satisfactorily addressed.

#### **Item B1**

In response to the request for a Geotechnical Assessment (Item B1 above), the application advises that 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 Cardno Bowler Geotechnical Report (dated 7 April 2011).

The submission has not addressed the request. In the absence of correspondence from a Geotech Consultant "describing why it is appropriate for a civil engineer to certify compliance with detailed earthworks design plans" this amendment cannot not be supported.

Should this advice be provided, Council officers could only support the proposed amendment to Condition 11, if it specifies that the "suitably qualified person" has NER (National Engineering Registration). Refer to Table 1 over for additional commentary on Condition 11.

It is not considered that Item B1 has been satisfactorily addressed.

#### **Item B2**

**Condition 91(5) and (6)** currently reads:

*(5) In the event that poor soils are encountered during bulk earthworks activities, bulk earthworks may be undertaken in any sequence or phase (other than that as generally described in **Condition A6** of this approval) only for the purpose of the following:*

- a. Temporary placing of material to enable the material to be mixed, dried or the like
- b. Temporary stockpiling of material to enable the area from which the material is obtained to be mixed, dried or the like, providing that:

(6) The areas used for temporary placing and stockpiling referred to in (5) above must not exceed 5ha at any one time. The areas are to be vegetated immediately after the material is removed.

In response to the request for justification why condition No.91(6) dealing with stockpiling should be increased to **20ha** (Item B2 above), the application advises that a review of the conditions have resulted in condition No.91 no longer being sought to be amended, due to the increase in disturbed area now being sought for **30ha**.

The applicant submits that 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.

It is noted that there is no proposed change to this condition, however as reiterated throughout this submission, Council are not satisfied based on the information submitted that an exposed area of 30ha can be appropriately managed.

### **Item B3**

In response to the request a report on the appropriateness of using crushing plant machinery, mechanical screening or mechanical blending of materials (Item B3 above), the application advised that **Condition 81** is sought to be amended as part of this modification:

*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 applicant advises that amended condition retains the intent of the original condition which seeks to avoid an extractive use establishing and also ensure that amenity impacts are considered where specific crushing and screening is proposed. They submit that 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. The amended condition would ensure that this 'routine process' on development sites would not need a further approval.

There is some ambiguity in the application as to whether crushing and screening is proposed, given that **Attachment 5**, the Mortons letter refers to the current approvals not providing *the practical space for stockpiles/screening/treatment of soil*; and not providing *the ability to source, or open up new disturbed areas, in the pursuit of fill material on site*. The letter also refers to the proposed new upper cap limit, being able to accommodate for example **winning of fill material, screening /mixing and testing** as required.

It is also unclear if/how the material won from the borrow area is to be excavated and blended without any crushing or screening.

The proposed borrow area in Precinct 9 adjacent to Melaleuca Road is located approximately 50m from two dwellings onsite and less 90m from dwellings on adjacent properties.

There has been no consideration of any potential impacts associated with mechanical blending. Should crushing or screening precede the mechanical blending process, this should also be addressed.

It is not considered that Item B3 has been satisfactorily addressed. In the absence of the requested material, and in particular an assessment of potential impacts (noise, vibration, dust generation), this amendment cannot be supported.

#### **Item B4**

In response to the request for an Acoustic and Vibration Report (Item B4 above), the application advises, that similar to the sediment and erosion control plan, that an acoustic and vibration report can be prepared by a suitably qualified person determining potential impacts of proposed crushing plant machinery, mechanical screening or mechanical blending of materials, and this report be provided prior to the construction of each stage in accordance with **Condition 52** (Construction Environmental Management Plan).

Based on the proposed amendments to **Condition 81** above, it is understood that only mechanical blending of materials could proceed without the need for further approvals – Though it needs to be clarified if the mechanical blending will be dependent on earlier processes such as crushing or screening.

Nevertheless, it is considered inappropriate to defer the submission of the requested noise and vibration assessment to post-determination. An upfront understanding of the potential acoustic and vibration impacts associated with the mechanical blending, and mitigation measures is required to demonstrate that acceptable noise and vibration levels are achievable.

The Acoustic and Vibration Report should include:

1. Details of measures to be applied at the source of noise generation, and at receiver locations, to reduce impact and ensure compliance with applicable NSW guidelines and standards.
2. Details of all works at the subject site, including to the boundaries of sensitive receivers, and subsequent impacts on those sensitive receivers. Modelled plans/figures are to be included. Modelled plans/figures are to consider all heavy plant and machinery expected to be used at the subject site, including simultaneous use of heavy plant and machinery.
3. Details of the expected height of the noise source on all heavy plant and machinery. An acoustic barrier that does not interrupt line of sight between the noise source (eg bulldozer exhaust) and the noise receiver (eg bedroom of dwelling) offers little to no noise attenuation. This is to be accounted for in modelling.
4. All haul vehicles and construction activity plant at the subject site are to be fitted with broadband reversing alarms.
5. Details of contingency measures in the event that predicted noise levels are not achieved. Examples of contingency measures include more effective noise barriers.

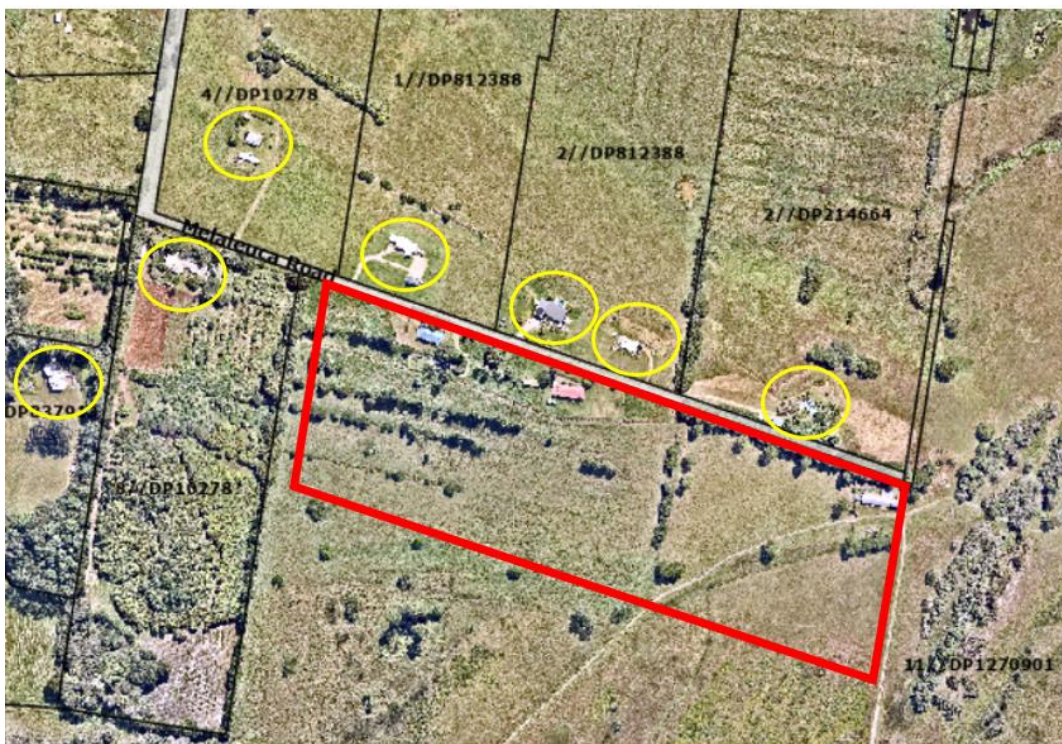
It is not considered that Item B4 has been satisfactorily addressed. In the absence of the requested material, this amendment cannot be supported.

### **Item B5**

In response to the request for a Soil/Dust Suppression Plan for the operation of the proposed crushing plant machinery, mechanical screening or mechanical blending of materials. (Item B5 above), the application advises that such a plan will be prepared on a per stage basis and submitted prior to the construction of each stage in accordance with **Condition 52**.

Additionally, the applicant submits that the acceleration of the bulk earthworks would result in the bulk earthworks for each precinct being completed prior to the habitation of the dwellings of any said precinct.

The current application seeks to allow the 30ha exposed area across precincts 3, 4, part 5, 7 and 9, with a borrow area in Precinct 9. It is not considered that each precinct can be treated in isolation - Consideration needs to be given to the impact of the increased exposed areas and activities in the borrow area on existing dwellings in neighbouring properties, and on dwellings under construction within Kings Forest.



As with the Acoustic & Vibration Plan, and the Sediment & Erosion Control Plan, it is considered that it would be inappropriate to defer the submission of the Soil/Dust Suppression Plan to post-determination. The approval of the modification in advance of receiving and approving a Soil/Dust Suppression Plan, will create a dangerous precedent if satisfactory outcomes cannot be achieved.

It is not considered that Item B5 has been satisfactorily addressed. In the absence of the requested material, this amendment cannot be supported.

## Council Officers comments on the proposed modification

### Key concerns

The environmental health matters considered to be of greatest concern are considered to be dust generation, noise generation, and waste/fill impacts. Specific comments regarding these matters are outlined below.

- As set out above in response to **Item A1** of the Department's initial Request for Further Information, the updated **Sediment & Erosion Control Plan** should include measures to be used to cover soils and reduce associated dust impacts; measures to be used to manage dust generation associated with any blending of material; and details of quantitative dust monitoring.
- As set out above in response to **Item B4**, the **Acoustic and Vibration Report** should include:
  - Measures to reduce impact and ensure compliance with applicable NSW guidelines and standards.
  - Details of all works at the subject site, including to the boundaries of sensitive receivers, and subsequent impacts on those sensitive receivers.
  - Details of the expected height of the noise source on all heavy plant and machinery.
  - All haul vehicles and construction activity plant at the subject site are to be fitted with broadband reversing alarms.
  - Details of contingency measures in the event that predicted noise levels are not achieved.
- In the event of use of any waste/fill from the subject site, the applicant shall demonstrate through existing or additional technical reports prepared by suitably qualified environmental consultants, that use of such waste/fill does not result in acid sulfate soil or contaminated land risks.
- An Unexpected Finds Protocol shall be prepared by a suitably qualified person to the satisfaction of Council's General Manager or delegate that addresses how any unexpected or suspicious materials with the potential to be wastes or relate to contamination will be managed. Should these materials be discovered, all sitework must cease immediately. No works shall be undertaken until the required investigations have been completed and any permits or approvals obtained where required to the satisfaction of Council's General Manager or delegate.
- All waste material removed from or imported to the site is managed in accordance with the following requirements:
  - All excavated material removed from the site has been classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility.
  - All fill material imported to the site must be:
    - Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the *Protection of the Environment Operations Act 1997*, and/or
    - A material identified as being subject to a resource recovery exemption by the NSW EPA.

- All VENM or waste-derived fill material subject to a resource recovery exemption must be accompanied by documentation as to the material's compliance and must be provided to the Principal Certifier or Council on request.
- The importation of any of the following material from invasive ant biosecurity zones must be in accordance with the *Biosecurity (Invasive Ant Carriers) Control Order 2023* (including any revised orders made under the *Biosecurity Act 2015*) and meet the requirements of NSW Department of Primary Industries:
  - organic mulch (which includes manure, bark, wood chips, hay, straw, silage, and sugar cane bagasse);
  - baled materials;
  - potted plants;
  - agricultural or earth-moving machinery;
  - fill or soil (which includes anything with soil on it such as turf); and
  - mining or quarrying materials.

Prior to the importation of each material type, the supplier must provide the receiver and the Principal Certifier or Council with the relevant Certificate as identified within the *Biosecurity (Invasive Ant Carriers) Control Order 2023* or revised biosecurity control orders. All material shall meet the requirements of the relevant Certificate.

It is an offence under the *Biosecurity Act 2015* if this material comes from within 5 kilometres of a known invasive ant infested area, or any other place at which the person knows, or ought reasonably to know, that an invasive ant has been detected, unless the carrier material has been managed and treated to reduce the risk and meets the certification requirements listed in the Control Order.

## **Sediment & Erosion Control Management to date**

**Attachment 6**, the letter from Morton notes that the amendment should:

*“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 above the applicant proposes that they will rely on ‘continued adherence to effective on-site management’ and seek to defer the submission of the necessary supporting documentation that would give the Department (and Council) confidence that acceptable performance can be achieved.

The submission states that no infringement notices have been issued to date and no noise complaints made. This is in part due to the fact that there are no residents yet within the footprint of the development and only a handful around the perimeter.

Though it is relevant that some of these neighbouring residents have previously made complaints and required the Contractor to undertake some “*clean-up works*” on their property (like cleaning out sediment from their rain water tank) – was a result of dust/sand being blown off the construction site, settling on their roofs and then being washed into their rain tanks).

While it is correct that there has not been any formal action taken, there has been issues with dust management on site.

On 3 October 2023, Council's site engineer confirmed in writing (email) to Mortons concerns regarding the lack of Dust Control on-site, and the lack of follow-up at that time to verbal communication of these concerns. This was a follow-up to an email of 29 September 2023 in which a Scheduled Inspection Certificate where Dust Control within the Development was raised as an issue.

In the email of 3 October, Mortons was advised that Council would review this matter later that week, with the understanding that appropriate action would have been undertaken by Mortons and if progress has not been undertaken to Council's satisfaction, Council would request the Department of Planning and Environment to attend the site to address Council's concerns with Dust Control.

On the same date Mortons formally instructed Shadforth's (Contractors) to immediately employ additional stabilisation and dust control measures in accordance with the Project Approval and Management Plans contained within their contract, and that these measures should include (but not be limited to) employing additional water carts on site and maintaining existing vegetated areas and stabilizing exposed soils in non-works areas (outside of the allowable 7.18Ha).

The contractor was instructed that 'these stabilisation works are to commence immediately to negate significant dust issues that are currently being experienced on site.'

Photographs from the site taken in this period are shown below-





While it is understood that this might be the period referred to in the modification report when *'adaptive management has occurred and corrective actions undertaken to ensure more effective management of the site'*, and *'lessons have been learnt on-site'*, there is no surety provided by the current modification application that the consulting and construction team can manage an exposed areas six times the size.

Concern is raised that when there are new residents in Precinct 5 (and later precincts), either in the process of building (painting) and / or under occupancy and that dust is not managed.

Casuarina Town Centre is an example where Council was inundated by complaints when the Developer opened up too much land (all sand – similar to Kings Forest) and could not manage the dust. While we acknowledge that the Department is the consent authority, as with Casuarina Town Centre, if there are issues with dust management, there will be an expectation that the Department or Council will assist with a resolution.

### **Proposed amendments to Conditions**

Refer to **Table 1** over for an assessment of the proposed modification to the various conditions of consent MP08\_0194 (as modified).

**Table 1 – Proposed amendments with applicant’s justification and Council officer comments**

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
<p><b>Condition A3</b></p>	<p><b>Proposed Condition A3</b>            It is proposed to amend Condition A3 include a subset area of earthworks, with an increased works/disturbance area. In this regard, it is proposed to reference the following additional documents:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• Sargeant Planning Precinct 9 Borrow Area Typical Sections March 2024</li> </ul>	<p>These are new plans relevant to the proposed change.</p>	<p>Drawing <i>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</i> refers to <b>Attachment 4</b> of the application.</p> <p>This plan is not supported in it’s current format. Refer to <b>Appendix A</b> attached for a markup of the plan identifying issues which need to be addressed.</p> <p>It appears that “<i>Sargeant Planning Precinct 9 Borrow Area Typical Sections March 2024</i>” refers to <b>Attachment 7</b>. The correct title should be referenced in any update to Condition A3.</p> <p>However it is noted that this plan (<b>Attachment 7</b>) also requires several amendments before it could be further considered.</p>

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
			<p>Refer to <b>Appendix B</b> attached for a markup of the plan identifying issues which need to be addressed.</p> <p>Amended Plans should be submitted before Council is in a position to consider the proposed amendment to Condition A3.</p>
<p><b>Condition A6</b>            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:</p> <ul style="list-style-type: none"> <li>(a) Stage 1(a) Precinct 5 (Phase 1)</li> <li>(b) Stage 1(b) Precinct 5 (Phase 2)</li> <li>(c) Stage 1(c) Precinct 1, Precinct 2, Kings Forest Parkway and part Precinct 4 (Phase 3)</li> <li>(d) Stage 1(d) Precinct 5 (Phase 4)</li> <li>(e) Stage 1(e) Precinct 4 (Phase 5)</li> <li>(f) Stage 1(f) Precinct 4 (Phase 6)</li> <li>(g) Stage 1(g) Precincts 6-11</li> <li>(h) Stage 1(h) Precincts 12 -14</li> </ul>	<p><b>Proposed Condition A6</b>            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:</p> <ul style="list-style-type: none"> <li>(a) Stage 1(a) Precinct 5 (Phase 1)</li> <li>(b) Stage 1(b) Precinct 5 (Phase 2)</li> <li>(c) Stage 1(c) Precinct 1, Precinct 2, Kings Forest Parkway and part Precinct 4 (Phase 3)</li> <li>(d) Stage 1(d) Precinct 5 (Phase 4)</li> <li>(e) Stage 1(e) Precinct 4 (Phase 5)</li> <li>(f) Stage 1(f) Precinct 4 (Phase 6)</li> <li>(g) Stage 1(g) Precincts 6-11</li> <li>(h) Stage 1(h) Precincts 12 -14</li> </ul> <p><b>Except where modified by Bulk Earthworks Strategy Indicative</b></p>	<p>The applicant advises that this “<i>change acknowledges the subset plan area within the overall staged earthworks.</i>”</p>	<p><b>Attachment 6</b> – Mortons letter makes reference to an earlier version of the plan – <b>Amendment A</b> dated March 2024.</p> <p>It is therefore unclear if Mortons’ comments are consistent with the plan proposed to be endorsed, being <b>Amendment B</b> dated 13 March 2024.</p> <p>Irrespective, Council officers are not in a position to support the proposed amendment to Condition A6 until the submitted “<i>Bulk Earthworks Strategy Indicative Disturbed Area Phasing Plan Precinct 3, 4, part 5, 7 and part 9 (Borrow Area)</i>”</p>

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
	<p>Disturbed Area Phasing Plan Precinct 3, 4, part 5, 7 and part 9 (Borrow Area) 12301-Sk 025 B dated 13-03-24.</p>		<p>12301-Sk 025 B dated 13-03-24" plan has been amended as set out in Appendix A (and commentary for Condition A3 above) and assessed by Council to be acceptable.</p>
<p><b>Condition A12 - Limits of Approval</b></p> <p>1) This approval does not give approval to the first use of the rural supplies building in Precinct 1, including hours of operation, car parking, access to Tweed Coast Road, retail fit out, first use or signage of the building in Precinct 1. Separate development approval/s consent for these matters must be obtained.</p> <p>2) The use of the building as a service station/food and drink premises shall not commence until an occupation certificate is issued for the internal fit out.</p> <p>3) Pub/s, small bar/s or outdoor dining areas are not permitted within Precinct 1 (service station/food and drink premises).</p> <p>4) This approval does not approve the removal of any heathland within the full extent of the 50 metre ecological buffers in the locations depicted as 'Heath to be Naturally Regenerated' in Figure 12 of the Buffer Management</p>			<p>The applicant has not proposed any changes to this condition.</p> <p>Subsection (6) states '<i>This approval does not give approval to any bulk earthworks in Precinct 3. Separate approval(s) for these works must be obtained from council if required by the EP&amp;A Act 1979.</i>'</p> <p>However the current application relates to earthworks in Precinct 3.</p> <p>Further it is noted that Precinct 4 Phase 2A appears to include an area within Precinct 3, which as above is excluded from this consent.</p>

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
<p>Plan for Precinct 1 &amp; 5 titled 'Revised Heath Regeneration and Revegetation Areas' drawn by James Warren and Associates and dated 20 August 2012 and Figure 9 of the Buffer Management Plan for Precincts 2-4 &amp; 6-14 titled 'Revised Heath Regeneration and Revegetation Areas' drawn by James Warren and Associates and dated 20 August 2012. The heathland in these locations is to be protected and regenerated for the full 50m width of the ecological buffer.</p> <p>5) This approval does not approve any bulk earthworks within ecological buffers across all precincts as depicted on Drawing No. 12301-ALL-041 Revision B, with the exception of minor encroachments into the Precinct 5 ecological buffer for the construction of stormwater management areas (bioinfiltration and vegetated swales), placement of Koala fencing, and construction of Road No. 9 in the south western corner of Precinct 5 for an area of 686m<sup>2</sup> as contained within the Proponent's Preferred Project Report 2012 and shown on the Precinct 5 Swale Sections Plan (Drawing No.12301-SK-044 Amendment C dated 15 August 2012) and Road Reserve / Buffer Interface Plan</p>			

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
<p>(Drawing No.12301-SK-046 Amendment A dated 17 August 2012).</p> <p>6) <b>This approval does not give approval to any bulk earthworks in Precinct 3. Separate approval(s) for these works must be obtained from council if required by the EP&amp;A Act 1979.</b></p> <p>7) This approval does not give approval for any transport of fill sourced within the land that is the subject of the approval to other land.</p> <p>8) This approval does not give approval for the Essential Energy zone substation in Precinct 2.</p>			
<p><b>Condition 9(a)</b>            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.</p>	<p><b>Proposed Condition 9(a)</b>            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, <b>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</b></p>	<p>The applicant advises that this <i>“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.”</i></p>	<p>The intent of the condition is considered appropriate, however similar to proposed modification to Condition A6, the proposed amendment to Condition 9(a) cannot be further considered until the submitted <i>“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”</i> plan has been amended as set out in Appendix A and the commentary for Condition A3 (above), and assessed by Council to be acceptable.</p>

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
	<p>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.</p>		<p>The photographs below were taken on 1 May 2024 in Precinct 5 – an area where there is little construction activity and it was understood that exposed areas had been stabilised – yet airborne dust is visible.</p>



<p><b>Condition 9(d)</b> 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</p>	<p><b>Proposed Condition 9(d)</b> Bulk earthworks for the site are to be limited to a maximum exposed disturbed area (that has not been <u>permanently vegetated stabilised ie.</u></p>	<p>The applicant advises that: - this <i>“change clarifies stabilisation of disturbed areas from</i></p>	<p>The intent of the condition is considered appropriate, however Council officers are not satisfied with the definition of “Stabilised”.</p>
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Current Condition	Proposed Condition	Applicant Comments	Officer Comments
<p>5ha at any time to reduce exposed areas, unless otherwise approved by the Director-General Secretary at the request of the Proponent.</p>	<p><b>Grassed, chemically treated or physically covered</b>) 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.</p> <p><b>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.</b></p>	<p><i>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 don't require a specific requirement for a permanently vegetated state."</i></p> <p>- <i>"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."</i></p>	<p>There needs to be a performance/ achievement criteria for monitoring. Council currently operates at 80% grass strike.</p> <p>The Applicant needs to table performance criteria for further consideration by Council, before this amendment could be supported.</p>
<p><b>Condition 9(e)</b> Bulk Earthworks Sequence 9 is to be further managed by being broken down into smaller maximum exposed areas, no greater than 5ha.</p>			<p>Though not identified by the applicant it would be anticipated that this condition may need to be modified if the exposed area is increased beyond 5ha, given</p>

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
			that Sequence 9 on 12301-ALL - 041 Revision B includes the Borrow Area in Precinct 9.
<p><b>Condition 9(f)</b>          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:</p> <ul style="list-style-type: none"> <li>i. Phase 1 shall be further broken down into two phases with a maximum exposed area no greater than 5.5ha.</li> <li>ii. Phase 2 shall be broken down into two phases with a maximum exposed area no greater than 9ha.</li> <li>iii. Phase 3 shall be broken down into two phases with a maximum exposed area no greater than 7ha.</li> <li>iv. Phase 6 shall be broken down into two phases with a maximum exposed area no greater than 9ha.</li> </ul>	<p><b>Condition 9(f)</b>          PROPOSED TO BE DELETED</p>	<p>It is advised that this “<i>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 13-03-24 and is thus redundant.</i>”</p>	<p>There is no objection to the deletion of this condition. Though this may be subject to change dependent on the applicant’s response to the outstanding matters.</p>
<p><b>Condition 9(g)</b>          Works are to be topsoiled, mulched and seeded within 7 days after completion to protect the exposed areas from water and wind erosion.</p>	<p><b>Proposed Condition 9(g)</b>          Works are to be topsoiled / <b>seeded</b>, mulched, <del>and seeded</del>, or utilise other <b>appropriate physical measures i.e. erosion matting, or chemical products i.e. polymers</b> within 7 days after completion to protect the exposed areas from water and wind erosion.</p>	<p>It is advised that this “<i>modification broadens the scope of management measures which can be utilised in stabilising the site and managing the potential for erosion.</i>”</p>	<p>There is no objection to the modification of this condition. Though this may be subject to change dependent on the applicant’s response to the outstanding matters.</p>

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
	<p><b>Proposed NEW Condition 9(h)</b>            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-Sk025 B dated 13-03-24, a bond for sediment and erosion control implementation is to be submitted to council. The bond shall;</p> <ul style="list-style-type: none"> <li>• be based on 5% of the value of the works (physical structures / measures); and</li> <li>• be based on 10% of the value of the maintenance of sedimentation and erosion measures for up to 3 month post final stabilisation of a phase or part there of, as detailed within each approved sediment and erosion control for a phase;</li> <li>• The bond may be progressively reduced on a quarterly basis and it is the responsibility of the proponent to apply for a refund.</li> <li>• Council or its agents may utilise the bond within 14 days of a compliance notice being issued for rectification works.</li> </ul>	<p>It is advised that;</p> <ul style="list-style-type: none"> <li>- this “<i>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.</i>”</li> <li>- a “<i>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</i></li> </ul>	<p>As raised earlier in this submission, the token offer to provide a bond does not take into consideration the logistics of implementing such monies.</p> <p>It may have been suggested in good faith but it should not be considered as a failsafe should the Developer (and his engaged consultants and contractors) fail to appropriately manage the site.</p> <p>The Department should not pursue this option unless it is confident that the proposed works / modifications can be appropriately managed without the need to require such a bond.</p> <p>As noted in this report, Council officers are not at that comfort level at this stage.</p>

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
		<p><i>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 up to 3 months post stabilisation.”</i></p>	
<p><b>Condition 10</b>          The Proponent shall submit the following plans and specifications with any application for construction certificate for the Bulk Earthworks:</p> <ul style="list-style-type: none"> <li>a) Natural and finished development levels (spot levels and contours) clearly detailed with a legible scale.</li> <li>b) Sediment and erosion control plans</li> <li>c) Geotechnical compliance</li> <li>d) Planting / hydromulching for short term and long term batter slopes</li> <li>e) An earthworks phasing diagram that defines maximum exposed areas</li> <li>f) Maximum batter slopes shall be consistent with the recommended maximum batter slopes for stability in</li> </ul>	<p><b>Proposed Condition 10</b>          The Proponent shall submit the following plans and specifications with any application for construction certificate for the Bulk Earthworks:</p> <ul style="list-style-type: none"> <li>a) Natural and finished development levels (spot levels and contours) clearly detailed with a legible scale.</li> <li>b) Sediment and erosion control plans</li> <li>c) Geotechnical compliance</li> <li>d) Planting / hydromulching for short term and long term batter slopes</li> <li>e) An earthworks phasing diagram that defines maximum exposed areas</li> <li>f) Maximum batter slopes shall be consistent with the recommended maximum batter slopes for stability</li> </ul>	<p>It is advised that proposed new “<i>item k</i>” is added for screening of the proposed Borrow Area works from neighbouring properties and onsite buildings to the west and north.</p>	<p>Information required at this stage to determine the efficacy of the landscape buffer would include species types, buffer width and length, planting density, performance criteria (porosity of the buffer, minimum height for effectiveness, replacement rate), maintenance program (replanting, watering, thinning/pruning, management for bushfire protection, control of noxious weeds, litter build-up, etc), establishment period, etc.</p> <p>The revised condition refers to a 20m wide buffer – however evidence would need to be</p>

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
<p>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 06 - 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>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 06 - 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 planted 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</p>		<p>provided that a minimum width of 20m would be sufficient. While relating to agricultural activities, it is noted that <i>Queenlands Planning Guidelines: Separating Agricultural and Residential Land Uses – August 1997</i> specifies a minimum 40m width landscape buffer to address impacts from dust, smoke and ash.</p> <p>The buffer should also be designed by a suitably qualified professional that can certify that it is fit for purpose.</p> <p>Consideration also needs to be given to the effectiveness in terms of managing impacts on dwellings within 150m of the borrow area. As above, this is a criterion in <i>Queenlands Planning Guidelines: Separating Agricultural and Residential Land Uses – August 1997</i>.</p> <p>It appears that the applicant is seeking to commence works upon the installation/planting of the landscape buffer. However</p>

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
	<p>prepared by a suitably qualified person and submitted to Council prior to the issue of a 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.</p> <p>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.</p>		<p>unless mature trees and shrubs with sufficient porosity and density are planted from the start, it would be anticipated that there would be an establishment period. Any agreed buffer should be in place prior to any earthworks at this location.</p> <p>Consideration also needs to be given to acoustic impacts association with activities in the borrow area which is within 90m of dwellings on adjoining properties. While the application refers to the two (2) dwellings on-site, little consideration appears to have been given to the neighbouring off-site dwellings.</p> <p>The Acoustic and Vibration report requested by the Department should consider this area.</p> <p>It is noted that the last paragraph (<i>Temporary screen fencing ..... March 2024</i>) was not included in– Attachment 6 of the application (Mortons letter),</p>

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
			<p>though they do refer to a fence possibly being erected.</p> <p>In accordance with the recommended content set out earlier (Response to Item B4) the report should guide the required height and construction of the acoustic wall – though it is unclear from the application if the purpose of this screen is for noise attenuation, visual screening or dust management.</p> <p>The phrasing ‘<i>temporary screen fencing may be used...</i>’ which is similar to the annotation on Drg Precinct 9 Borrow Area Typical Sections is vague and offers to security that a fence will be provided.</p>
<p><b>Condition 11</b>            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</p>	<p><b>Proposed Condition 11</b>            Each stage shall be preceded by an endorsement of detailed earthworks design plans by a <b>practising geotechnical engineer suitably qualified person</b> to certify compliance of the plans and implementation strategy with the conclusions and recommendations of the Geotechnical Report prepared by Cardno Bowler</p>	<p>It is advised that this change is proposed to broaden “<i>the scope of appropriately qualified persons whom may certify compliance.</i>”</p>	<p>As set out earlier in this submission, the Department previously requested an assessment / supporting documentation from a Geotechnical Consultant confirming that such matters could be signed off on other “<i>suitably qualified person</i>”. The modification application did not</p>

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
<p>Investigation proposed subdivision Depot Road, Kings Forest dated 7 April 2011.</p>	<p>titled Geotechnical Investigation proposed subdivision Depot Road, Kings Forest dated 7 April 2011.</p>		<p>include this supporting documentation.</p> <p>Should it be provided, Council could only support the amendment, if it specifies that the “<i>suitably qualified person</i>” has NER (National Engineering Register) being a high level accreditation that Council require for all Certifying Engineers associated with Subdivision.</p> <p>As such, Council cannot support amended Condition 11 in its current form.</p>
<p><b>Condition 52</b></p> <p>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</p>	<p><b>Proposed Condition 52</b></p> <p>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</p>	<p>The Applicant’s submission states that “<i>stabilised</i>” does “<i>not require a specific requirement for permanently vegetated state</i>”.</p>	<p>As noted earlier in this submission, Council require further clarification as to what needs to be achieved for land to be considered “<i>stabilised</i>”.</p> <p>Until such time as this is provided and accepted, Council cannot support the proposed amendment to Condition 52 as proposed in this application.</p> <p>If the Department is of a mind to approve this application, they</p>

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
<p>environmental impacts of the project during construction. The CEMP shall include, but not be limited to:</p> <ul style="list-style-type: none"> <li>a) a description of all relevant activities to be undertaken on the site during construction (including an indicative timeline);</li> <li>b) a description of relevant environmental management objectives for the site;</li> <li>c) a detailed construction management strategy for each sequence I stage of the bulk earthworks;</li> <li>d) details of measures to be installed to separate construction areas from publicly accessible areas;</li> <li>e) statutory and other obligations that the Proponent is required to fulfil during construction including all relevant approvals, licences and consultations;</li> <li>f) a description of the roles and responsibilities for all relevant employees involved in construction</li> <li>g) hours of work (including standard hours of work for the Environmental Officer);</li> </ul>	<p>impacts of the project during construction. The CEMP shall include, but not be limited to:</p> <ul style="list-style-type: none"> <li>a) a description of all relevant activities to be undertaken on the site during construction (including an indicative timeline);</li> <li>b) a description of relevant environmental management objectives for the site;</li> <li>c) a detailed construction management strategy for each sequence I stage of the bulk earthworks;</li> <li>d) details of measures to be installed to separate construction areas from publicly accessible areas;</li> <li>e) statutory and other obligations that the Proponent is required to fulfil during construction including all relevant approvals, licences and consultations;</li> <li>f) a description of the roles and responsibilities for all relevant employees involved in construction</li> <li>g) hours of work (including standard hours of work for the Environmental Officer);</li> </ul>		<p>may need to consider whether an additional amendment needs to be made to part (2) of this condition as it limits bulk earthworks to one sequence area at a time – which would impact on the borrow area (and potential other areas if the proponent proposes to work in more than one sequence area at a time):</p> <p><i>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.</i></p> <p>It would appear that the proposed change to Condition 9 would increase the exposed area, but not override the single sequence requirement.</p> <p>However as above Council does not support increasing the exposed area on the basis of</p>

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
<p>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.</p> <p>i) Measures to be implemented during bulk earthworks operations to ensure the existing 600mm trunk water main is protected</p> <p>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)</p> <p>k) A subset of the following management plans:</p> <ul style="list-style-type: none"> <li>i. traffic and pedestrian management (see condition 55);</li> <li>ii. noise and vibration management (see condition 56);</li> <li>iii. construction waste management (including the proposed method and location of excess spoil from bulk earthworks) (see condition 57);</li> </ul>	<p>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.</p> <p>i) Measures to be implemented during bulk earthworks operations to ensure the existing 600mm trunk water main is protected</p> <p>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)</p> <p>k) A subset of the following management plans:</p> <ul style="list-style-type: none"> <li>i. traffic and pedestrian management (see condition 55);</li> <li>ii. noise and vibration management (see condition 56);</li> <li>iii. construction waste management (including the proposed method and</li> </ul>		<p>the information submitted with this application.</p>

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
<p>iv. erosion and sediment control for the entire Kings Forest Estate (see condition 54);</p> <p>v. dust management to include:</p> <ul style="list-style-type: none"> <li>• identification of all dust emission/sources for each stage of the project;</li> <li>• identification of appropriate air quality goals/management criteria; and</li> <li>• details of all dust management and/or dust mitigation measures required to achieve the air quality goals/criteria for the construction works.</li> </ul> <p>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.</p> <p>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</p>	<p>location of excess spoil from bulk earthworks) (see condition 57);</p> <p>iv. erosion and sediment control for the entire Kings Forest Estate (see condition 54);</p> <p>v. dust management to include:</p> <ul style="list-style-type: none"> <li>• identification of all dust emission/ sources for each stage of the project;</li> <li>• identification of appropriate air quality goals/ management criteria; and</li> <li>• details of all dust management and/or dust mitigation measures required to achieve the air quality goals/criteria for the construction works.</li> </ul> <p>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.</p>		

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
<p>Condition 9, at any time to reduce exposed areas.</p> <p>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.</p>	<p>2) <b>Bulk earthworks are limited to one sequence area at a time</b>, with the maximum exposed disturbed area (that has not been <b>permanently vegetated stabilised</b>) 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.</p> <p>2) 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.</p>		

Current Condition	Proposed Condition	Applicant Comments	Officer Comments
<p><b>Condition 81</b>            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.</p>	<p><b>Proposed Condition 81</b>            The use of crushing plant machinery <del>and</del> mechanical screening <del>or</del> <b>mechanical blending</b> of materials is not approved. Separate approval must be obtained for any such use on the site. <b>The mechanical blending of rock / stone / gravel / sand / soil which requires no further crushing or screening is however permitted.</b></p>	<p>The Applicant's submission states that:</p> <ul style="list-style-type: none"> <li>- <i>the current wording is restrictive and precludes common construction activities/methods.</i></li> <li>- <i>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.</i></li> <li>- <i>Should a crushing plant be required the requirement for a separate approval is retained.</i></li> </ul>	<p>Council is supportive of the development utilising materials won on site, but only when applicable documentation has been submitted and endorsed to support such use and to ensure that it will not result in an adverse impact to the environment and amenity and nuisance impacts to residents. We are unconvinced by this submission.</p> <p>The matters raised in the Department's response of 11 July 2023 should be addressed.</p> <p>It should also be clarified if the mechanical blending is independent of the crushing and screening, or whether the crushing and screening of materials won on-site (albeit with separate approvals) would precede the mechanical blending.</p> <p>As set out earlier, it is noted that the Mortons Letter in <b>Attachment 5</b> refers to '<i>winning of fill material, screening /mixing and testing as required</i>' [p3]</p>

## Comments on supporting documents

Refer to **Appendices A** and **B** for comments on **Attachments 4** and **7** respectively. Of key concern is the inclusion of Precinct 3 which **Condition A12** of the consent clearly excludes for bulk earthworks approval.

**Attachment 5** relates to the letter of support from Mortons. The letter incorrectly states on P7 that:

*As noted the proposed change relates to the expansion of disturbed areas through either the bulk earthworks and or civil works.*

*The change does not 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.*

**Condition A12** specifically excludes bulk earthworks in Precinct 3.

The Mortons letter also refers to the two dwellings on-site being used for the purposes of temporary compounds/site offices. The applicant should clarify under what planning pathway/exempt provisions this change of use is proposed.

**Attachment 11** (Acid Sulfate and Soil Reports dated February 2023) identifies major soil deficiencies and negative undesirable properties that include Soil pH extremely acid which would severely affect plant growth of even hardy trees, plants and grasses. The soil chemical parameters are such that they will need to be considered /addressed via major soil amelioration - compost, ameliorants and (fertilizer) otherwise the risk of failure of any site revegetation works is high.

It is unclear if this relates to the site as a whole, however it raises serious concerns with the viability of the landscape buffer to the borrow area, in addition to the use of grass cover for stabilisation.

## Required Notification

Section 3.2.2.3 of the Modification Report makes reference to DCP Section A11 – Public Notification Policy. This plan was repealed on 3 December 2019 and Council’s notification and consultation procedures are now contained within the [Tweed Community Engagement and Participation Plan](#).

Table 3 of the Plan (extract over) summarises Development Assessment Exhibition timeframes.

Planning Function	Mandatory exhibition period	How the public will be notified of public exhibition
Modifications involving minimal environmental impact (Section 4.55(1A))	Nil if proposed modification is consistent with criteria in Table 4; or As per requirements for the Development Application	
State Significant Development (SSD)	28 days	State government is responsible for the exhibition and notification of SSDs.

Table 4 of the plan identifies development which does not need to be notified:

- *Development permitted without consent under the Local Environment Plan.*
- *Development permitted under the State Environmental Planning Policies which does not allow for community engagement.*
- *Alteration, additions and internal modifications to an existing building where the works will not result in any change to the height, external configuration or external facade of the existing building.*
- *Ancillary structures with minimal impact on adjoining land.*
- ***Modification of development consent under Section 4.55 of the EP&A Act where:***
  - ***Modifications involving minor error, misdescription or miscalculation.***
  - ***There are no changes to the height, external configuration, or facade of the proposal as shown on the original application.***
  - ***There are no changes to key operational aspects including the hours of operation.***
  - ***The modification is considered by Council to be a minor change to the proposed development and of low impact.***
  - ***The modification is for internal alterations to a building.***
- *Certain change of use applications where there are no external building works and no offsite impacts.*
- *Subdivision where no new lots are created, strata subdivision, community title subdivision.*
- *Minor Council infrastructure Application (Refer to Council's Environmental Assessment Procedures for Council Infrastructure).*
- *Any other development which in the opinion of the General Manager or delegated staff does not require notification.*

The Department should satisfy themselves that they have met any notification requirements of the Plan.

## Conclusion

The application appears to be deficiency in terms of the documentation and information provided, in particular the documents which were identified by the Department as being required to assess the proposal.

The proposed amendments to **Conditions A3, A6, and 11** are not supported as currently proposed.

The intent of **Condition 9(a)** is considered appropriate, however it is not supported as currently proposed.

The intent of **Condition 9(d)** is considered appropriate however further information is required to clarify and set performance measures for stabilising the exposed areas.

No objection to the deletion of **Condition 9(f)** or proposed amendments to **Condition 9(g)** based on the current submission. However, this may be subject to change dependent on the applicant's response to the outstanding matters.

New **Condition 9(h)** is not supported at this time. The practicality and logistics of having a bond needs to be considered. The Department should not consider relying on a bond as a suitable "safety net" should the Applicant fail to manage the site.

Further information would be required before the amendments to **Conditions 10, 52 and 81** could be supported.

The modification application falls short in many areas and that this needs to be satisfactorily addressed before any changes to consent conditions can be further considered.

Page 19 of the Modification Report states:

*"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."*

It is unclear if this relates to extent the area to which the proposed 30ha limit would apply, or if the intent would be to seek more than 30ha of disturbed area in the future. Based on the current submission Council are not satisfied that this can be appropriately managed.

The submission makes numerous comments that the arbitrary 5ha area creates limitations on staged rollouts of earthworks and civils across a development which contribute to costs which are ultimately passed through to future purchasers. Should the proposed amendments of this modification be endorsed, how can it be guaranteed that any associated savings will be passed on to purchaser?

Though this is a moot point, as reducing construction/development costs is not a justification.

The increase in exposed areas can only be supported where it can be shown that it will not result in an adverse impact to the environment and amenity and nuisance impacts to residents (existing and under construction). At this point, the submission fails to do this.

Should the Department determine to approve the application in its current form, we would strongly recommend that the Department puts in place safeguards for its Compliance Unit to monitor the site and to ensure that impacts of noise, vibration and dust are minimised.

We would also suggest that a condition be imposed for an independent Certified Professional in Erosion and Sediment Control (CPESC) to be engaged. The independent person would review and endorse the Erosion & Sediment Control Plan (ESCP) and undertake a minimum number of audits on the site (perhaps every 3-6 months).

In the event of approving the application in its current form, we would suggest that the Department considering time limits on the increased exposed areas which relate to occupation of dwellings on-site.

If you require further information, on this matter please contact Pooja Chugh at 02 6670 2169 or [pchugh@tweed.nsw.gov.au](mailto:pchugh@tweed.nsw.gov.au)

Regards



Valerie Conway  
**Team Leader Development Assessment**

**APPENDIX A – Mark-ups to 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**

**BORROW AREA**

- MINIMUM 50m SEPARATION BETWEEN EXISTING DWELLINGS AND WORK AREAS.
- 20m LANDSCAPE BUFFER TO BE PROVIDED WITHIN BORROW AREA PRIOR TO WORKS FOR SCREENING PURPOSES.

What's the "make up" of this Landscape buffer? i.e. Vegetation types?, Vegetation density? Vegetation maturity? Vegetation porosity?

Bulk earthworks proposed in Precinct 3 contrary to Condition A12. An area of Precinct 3 has been incorporated into the Precinct 4 Phase 2A area.

ALL DISTURBED AREAS TO BE STABILISED WITHIN 7 DAYS OF CESSATION OF WORKS

The term "STABILISED" needs to be defined

The term "EXPOSED AREAS" needs to be defined.

NOTE: EACH PHASE OR PART THEREOF, OF THE AMENDED EARTHWORKS STAGING / SEQUENCING MUST BE STABILIZED BEFORE MOVING TO THE NEXT PHASE OF EARTHWORKS THAT HAS ALL RELEVANT APPROVED APPROVED MANAGEMENT PLANS. NO MORE THAN 30ha OF AREA SHALL BE EXPOSED AND SUBJECT TO WORKS AT ANY TIME.

NOTE: PHASE BOUNDARIES ARE ESTIMATES ONLY. CONTRACTOR TO CONFIRM ACTUAL BOUNDARIES AND REPORT ON EXPOSED AREAS IN EACH PHASE ON A MONTHLY BASIS TO ENSURE APPROVED EXPOSED LIMIT IS NOT EXCEEDED.

- NOTES:
- HAUL ROAD TO BE STABILIZED AND NOT CONSIDERED PART OF DISTURBED AREAS. METHOD OF STABILIZATION TO BE APPROVAL BY SUPERINTENDENT.
  - PHASES OF CONSTRUCTION IS ESTIMATED AND CAN CHANGE. ALL PHASES AND BORROW AREA TO HAVE NO MORE THAN 30HA OF DISTRIBUTED AREA.

Replace "SUPERINTENDANT" with "CERTIFIER".

K7 in Precinct 4 - The Aboriginal Heritage Zone in which no construction access is permitted - should be identified on the plan (Refer to Drg 12301-BE1-024 Rev F)

The haulage route to the Borrow area traverses the approved Spoil Area in Precinct 7 Phase 4 which is to be secured with Temporary No-go fencing - Refer to Drg 13201-BE1-054 Rev B.

Need to remove the "Black-out" below.

- APPROXIMATE PHASE AREAS
- PHASE 1= 22.852 ha
  - PHASE 2A= 9.759 ha
  - PHASE 2B= 12.304 ha
  - PHASE 3= 10.927 ha
  - PHASE 4= 12.890 ha
  - PHASE 5= 19.578 ha
  - PHASE 6= 21.237 ha
  - BORROW AREA=12.506 ha

**LEGEND**

- HAUL ROAD LOCATION
- WORKS COMPLETE AND STABILIZED

AREA OF AMENDED EARTHWORKS, STAGING/SEQUENCING WITH REGARD TO APPROVED PLAN 12301-411-041 (B) BULK EARTHWORKS SEQUENCING DIAGRAM

PROJECT NAME  
**KINGS FOREST**  
BULK EARTHWORKS PRECINCTS

REAL PROPERTY DESCRIPTION  
Lot 7 on DP875447, Part of Lot 6 on DP875446,  
Part of Lot 1 on DP781633, Part of Lot 40 on DP7482  
& Part of Lot 2 on DP819015  
PARISH OF CUDGEN  
COUNTY OF ROUS

CLIENT  
**KING FOREST ESTATES**



Scale 1:75000 - A1 (1:150000 - A3)

ISSUES	DATE
TENDER	
STATE AUTHORITY	
CONSTRUCTION	

PRE DATE	AMENDMENT
13-03-24	NOTE CHANGES

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ALL DRAWINGS ARE TO BE READ IN CONJUNCTION WITH 001-NOTES AND 002-LEGEND

ASSOCIATED CONSULTANTS

DRAWING TITLE  
**BULK EARTHWORKS STRATEGY INDICATIVE DISTURBED AREA PHASING PLAN PRECINCTS 3, 4, PART 5, 7 AND PART 9 (BORROW AREA)**



MUS Pty Ltd T/As  
Mortons-Urban Solutions  
ABN 39 116 375 065  
mortons@urbansolutions.net.au  
www.urbansolutions.net.au  
Tel 07 5571 1099  
Fax 07 5571 1088

Postal Address  
PO Box 2484  
Southport QLD 4215

Gold Coast Office  
Suite 9, 19 Short St  
Southport QLD 4215

DESIGNED RB DRAWN BL

DRAWING NUMBER  
**12301-SK 025**

AMEND.  
**B**

12301-SK-025-01 - Kings Forest Overview Sketch 12301-SK-025-01 - Kings Forest Overview Sketch 12301-SK-025-01 - Kings Forest Overview Sketch 12301-SK-025-01

**APPENDIX B – Mark-ups to Sargeant Planning Precinct 9 Borrow Area Typical  
Sections dated March 2024**

