

5 March 2014

The Director
Industry, Key Sites & Social Projects
Department of Planning & Infrastructure
GPO Box 39
Sydney NSW 2001
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Dear Sir

Re – Residential Development Kings Forest, Kingscliff - Proponent Project 28 Pty Ltd;
Modification requests (general amendments) – Concept Plan (MP_0318 MOD 4) and Stage 1 Project Approval (MP08_0194 MOD 2)

Tweed Heads Environment Group Inc. makes the following submission in response to the above modification requests and wishes to object and raise concerns about the following issues:

Proponent's Requests

The advertised modification requests consideration for Stage 1 Project Approval (MP08_0194 MOD 2) of the Kings Forest residential development includes the following items:

1. Land Proposed to be dedicated to Tweed Shire Council. The definition currently refers to the land as "*land to be dedicated to Council in the future*" and now wishes to be defined as "*Potential Council Land Plan with Work Areas*"
2. Plan Nos 01, 04 and 05 have been amended by deleting the reference "*to be dedicated to Council or NPWS*" These changes reflect the amended definitions and amended Conditions B5, B7, C3 and C29. The requested modified condition calls up the amended plans at **Annexure C**.
3. The last sentence has been inserted into Condition B8 to make it clear that the Director General does not have the power to impose a "resolution" on Project 28 and the Council under Term B8. This is on the basis that any agreement should be at the sole discretion of Council and Project 28 Pty Ltd.

Our Submission Items 1 & 2 above - (7 issues as follows)

Schedule 1 – Part C – Definitions of Items 1 and 2

Tweed Heads Environment Group Inc. wishes to make comment on the following several requests:

PAC Condition

Land to be dedicated to Council in the future means the land to be dedicated to Council as identified on the Council Dedicated Land Plan.

Council Dedicated Land Plan means the 'Plan of Proposed Areas to be Dedicated to Council with Work Areas' prepared by Landsurv Pty Ltd dated 2 October 2012, Revision D.

Requested Modification condition

Potential Council Land Plan 'With Work Areas' means the plan with that title prepared by Landsurv dated 06.12.13, Revision E.

Potential Council Land means the land identified as 'potential Council land' on the Potential Council Land Plan.

Reason for modification

Potential Council Land is simply an expression that makes the provisions that use the definition more readable. This will involve the adoption of a new plan with a different title than the current plan. The plan will be titled Potential Council Land (see **Annexure B**).

It also clarifies that dedication of the potential Council land has is subject to reaching an appropriate agreement with Council and this is not reflected in the current definition.

PAC Condition

Offset Area means the land proposed to be dedicated to the Office of Environment and Heritage as identified on the 'Plan of Proposed Areas to be Dedicated to NPWS Kings Forest Development' prepared by Landsurv Pty Ltd dated 23 August 2012, Revision C.

Requested Modification condition

Future OEH Land means the land identified in the "Plan of Proposed Areas to be dedicated to NPWS Kings Forest Development" prepared by Landsurv Pty Ltd dated 23 August 2012, Revision C.

Reason for modification

Reference to an "offset area" is a misnomer as at no stage has Project 28 indicated that the Future OEH Land was to be dedicated as some form of offset or compensation for areas to be developed. The future OEH land was always offered by Project 28 on a voluntary basis. The changes to the definition reflect this position.

PAC Condition

Schedule 2

A2 Project in Accordance with Plans

The project will be undertaken generally in accordance with the following drawings:

Design, Landscape and Survey Drawings

Plan No.	Revision	Name of Plan	Date
1056-RD19	A	Kings Forest Cadastre Plan	4 March 2008
01	A	Revised Concept Plan	21 August 2012
02	A	Scope of Works	21 August 2012
03	A	Site Analysis	23 August 2012
04	A	Precinct Plan	21 August 2012
05	A	Open Space Network	21 August 2012

Requested Modification condition

Delete from the table Plan Nos 01, 04 and 05 and insert the following amended Plan References:

Plan No.	Revision	Name of Plan	Date
01	B	Revised Concept Plan	05.12.13
04	B	Revised Precinct Plan	05.12.13
05	B	Revised Open Space Network	05.12.13

Reason for modification

The reference to the "*Environmental Protection Area to be dedicated to Council or NPWS*" has been inadvertently included on the three plans 01, 04 and 05. Potential dedication of land to Council and to OEH, are appropriately addressed in the amended definitions and amended Conditions B5 and C3.

Plan Nos 01, 04 and 05 have been amended by deleting the reference "*to be dedicated to Council or NPWS*" (see Annexure C).

Requested Modification condition

PAC Condition

B5 Dedication of Land to Tweed Shire Council

c) The Council Dedicated Land Plan shall be amended to identify each precinct (as shown in the Precinct Plan in the Preferred Project Report 2012) and the land to be dedicated to the Council for each precinct. The amended plan is to include a reconciliation table showing each precinct and the corresponding land to be dedicated to the Council. The Council Dedicated Land Plan shall be amended such that the extent of lands to be dedicated should include any environmental protection areas adjacent to the proposed stage extending to where such areas are intersected by any approved road alignment or adjoin environmental buffers to adjacent stages.

2) The amended Council Dedicated Land Plan shall be reviewed by Council and submitted to the Director-General for approval within 12 months of the date of the first project approval (MP08_0194) or prior to the lodgement of the first development application for the project or prior to the issue of the first construction certificate for the project whichever occurs first.

Requested Modification condition

B5 Dedication of Land to Tweed Shire Council

The Proponent and the Council may (but are not obliged to) enter into a Dedication Agreement in relation to the Potential Council Land on such terms as may be agreed between Council and the Proponent. \

If there is no Agreement the Land will not be dedicated to Council and Term B7 will continue to apply.

For avoidance of doubt, term B8 (or any dispute resolution process under a development consent or project approval) does not apply in this situation.

Reason for modification

The main purpose of this amended condition is to clarify that Project 28 Pty Ltd is under no obligation to dedicate the Potential Council Land to Council and that it is a matter for the company and Council to negotiate and decide whether the land will actually be dedicated and if so what terms will apply to that dedication. This is consistent with Project 28's position from the commencement of the planning process that it is not committing to dedication of the land to Council.

PAC Condition

B7 – Implementation of Environmental Management Plans

1) The Proponent is responsible for the management of all land to be dedicated to Council in the future and the Offset Areas for conservation purposes and the implementation of ongoing management and maintenance activities specified in all Environmental Management Plans from the date of the Stage 1 project approval (08_0194), until such time that an agreement is reached with OEH and/or Tweed Shire Council regarding the dedication of that land.

Requested Modification condition

B7 – Implementation of Environmental Management Plans

1) The Proponent is responsible for the management of all **potential Council land** and the **future OEH land** for conservation purposes and the implementation of ongoing management and maintenance activities specified in all Environmental Management Plans from the date of the Stage 1 project approval (08_0194), until such time that an agreement is reached with OEH and/or Tweed Shire Council regarding the dedication of that land.

Reason for modification

Amendment of Condition B7 is required to achieve consistency with the new definitions.

PAC Condition

C3 Dedication of Land to OEH

Prior to the release of the first subdivision certificate for the project, or as otherwise determined by the Director-General (at the request of the Proponent), the Proponent must provide evidence of an agreement for the dedication by Project 28 P/L to OEH of approximately 150ha of Offset Land as addition to the Cudgen Nature Reserve. Such an agreement must outline the proponent's commitment to establish boundary fences and trails satisfactory to the needs of OEH prior to the Offset Land being added to Cudgen Nature Reserve. The Proponent must ensure suitable funding for the amendment of existing reserve specific fire, pest, weed and management plans. The funding should be sufficient to ensure actions within the amended plans relevant to the new additions are able to be completed.

Reason for modification

C3 Dedication of Land to OEH

Prior to the release of the first subdivision certificate for the project, or as otherwise determined by the Director-General (at the request of the Proponent), the Proponent must provide evidence of an agreement for the dedication by Project 28 P/L to the OEH of **the Future OEH Land being no less than approximately 150ha**, as an addition to the Cudgen Nature Reserve.

Such an agreement must outline the proponent's commitment to establish boundary fences and trails satisfactory to the needs of the OEH prior to the Future OEH Land being added to Cudgen Nature Reserve. The Proponent must ensure suitable funding for the amendment of existing reserve specific fire, pest and weed management plans. The funding should be sufficient to ensure actions within the amended plans relevant to the new additions are able to be completed.

Requested Modification condition

This condition is proposed to be amended to reflect the amended definition of "offset area" and to clarify the area of land potentially to be dedicated.

PAC Condition

C29 Dedication of Land to Tweed Shire Council

All future development applications for subdivision shall provide details of the land to be dedicated to Council in the future in accordance with the Council Dedicated Land Plan as required by Term B5 of this approval.

Reason for modification

C29 Dedication of Land to Tweed Shire Council

All future development applications for subdivision shall provide details of the **Potential Council Land as is relevant to the application concerned.**

Requested Modification condition

This provision, arguably, could be deleted altogether because a new plan will be submitted that complies with Term B5(c). The only benefit in retaining the term is that it alerts future consent authorities to the issue. The amended textual changes merely relate to the changes in the defined terms and promote greater clarity.

Our Concerns in this submission - Items 1 and 2 (7 issues as above)

Tweed Heads Environment Group Inc. environmental concerns include the following matters and as expressed in the Team Koala submission:

- The proposed modifications are considered to be a delay of environmental protections designed by highly trained experts in various fields from both local and state governments after hundreds of hours of study and deliberation.
- The proponent proposes to take away the certainty that such land "must be" dedicated to council and to make this dedication instead subject to "reaching an appropriate agreement with Council".
This suggested modification creates considerable uncertainty and vagueness around the proponent's intention to fulfil this requirement of making a timely Agreement with either Tweed Shire council or NPWS.
- The proponent wishes to amend the definition of land to be dedicated to NPWS. Currently entitled "*Offset area*" they would prefer to refer to it as "Future OEH land". Their reasoning seems to indicate that such land was not an *essential* condition for development approval but something that was offered "voluntarily".
The proponent's redefining of this dedication of land as "voluntary" introduces an element of uncertainty regarding the fulfilment of this condition. The subject land, adjacent to the Cudgen Nature Reserve, is of great concern, as it is *critical* that the environmental values of such a significant area remain protected once *any earthworks commence*.

Recommendation

Tweed Heads Environment Group Inc. submits that the proponent wants to avoid making a Voluntary Planning Agreement (VPA) before this project commences. The VPAs would create certainty for future maintenance and funding responsibilities once land had been dedicated either to Tweed Shire Council and OEH (NPWS).

It is recommended that the proponent's Voluntary Planning Agreements should meet the requirements of Condition C3 of the Concept Plan approval (as modified 22 December 2010), and that the proponent should provide the Director-General with evidence of the agreement prior to the construction of Stage 1, or as otherwise agreed by the Director-General.

Tweed Heads Environment Group Inc. also endorses the Team Koala submission which submits:

'The proponent claims that compliance cannot be achieved because the EMPs are still being revised and because they are also still waiting EPBC approval and because of commercial considerations. The proponent is requesting instead that the trigger for implementation be "***From the commencement of any bulk earthworks in a precinct***" and that only the area of land "***immediately adjacent to that precinct***" is to be environmentally managed. It must be questioned why environmental management cannot begin as soon as the relevant plans are ready. Any EPBC decisions are likely to require *more* not *less* work. Giving "commercial considerations" as the other reason to delay is also questionable. The proponent has accepted responsibility to manage these lands using particular criteria to a certain standard - surely the sooner they start the easier this is to achieve (and at less expense). Requesting such significant delays on implementing these EMPs does not show a sense of *commitment* to the spirit and intent of environmental management. This is especially unacceptable given the high value of the (development) site and the very great responsibility that sits with *anyone* who is planning to develop it.'

Tweed Heads Environment Group Inc. considers that it is unfortunate that the parent company of this project continues to be at loggerheads with Tweed Shire Council regarding the Kings Forest and Cobaki Lakes residential projects. A highly skilled Independent Chair is yet to be established by the parties involved to resolve matters of disagreement and also about funding of environmental dedicated land at the Cobaki Lakes residential project.

Submission Item 3 - Director-General as Moderator

PAC Condition

B8 Director-General as Moderator

Where this approval requires further approval from public authorities, the parties shall not act unreasonably in preventing an agreement from being reached. In the event that an agreement is unable to be reached within 2 months or a timeframe otherwise agreed to by the Director- General, the matter is to be referred to the Director-General for resolution. All areas of disagreement and the position of each party are to be clearly stated to facilitate a resolution.

Reason for modification

B8 Director-General as Moderator

1) Where this approval requires further approval from public authorities, the parties shall not act unreasonably in preventing an agreement from being reached. In the event that an agreement is unable to be reached within 2 months or a timeframe otherwise agreed to by the Director-General, the matter is to be referred to the Director-General for resolution.

All areas of disagreement and the position of each party are to be clearly stated to facilitate a resolution. **This condition does not allow the Director-General to give approval or make agreement in lieu of the Proponent.**

Requested Modification condition

The last sentence has been inserted into Condition B8 to make it clear that the Director General does not have the power to impose a “resolution” on Project 28 and the Council under Term B8. This is on the basis that any agreement should be at the sole discretion of Council and Project 28 Pty Ltd.

Our Submission Item 3 - Director- General as Moderator

Tweed Heads Environment Group Inc. supports the current Concept condition B8 which provides that the Director-General act as Moderator. There is community concern that if there is no Voluntary Planning Agreement, the transfer of land will not be dedicated to Council or to OEH (NPWS) in a timely manner.

The following news report highlights the level of disagreement between Council and Project 28 Pty Ltd and the likelihood that any Voluntary Planning Agreement for land transfer, funding/ maintenance will be drawn out or even not made for the Kings Forest Project.

Leda’s complaints of corruption dismissed – Echonetdaily - 18.10.2013

<http://www.echo.net.au/2013/10/ledas-complaints-of-corruption-dismissed/>

“An independent investigator who dismissed allegations by the area’s biggest developer of corrupt conduct against Tweed Shire Council told councillors last night that some of the claims were of a purely personal nature and others were not backed up by documented evidence.

The independent review of complaints raised by Leda Developments over how council has dealt with its township developments at Kings Forest and Cobaki were tabled last night with 19 recommendations. The review dealt with complaints made by Leda in two reports it compiled in 2011 that critics had termed ‘dirt files’, which were leaked selectively to compliant local media and dismissed by a previous council general manager, Mike Rayner.

The review also looked at a further one in January this year which the developer sent to the state government. Consultant Kath Roach, the managing director of SINC Solutions, said she used all her skills of her previous careers, including 14 years as an investigator with the Australian Federal Police, to come to her conclusions. Council staff recommended that \$30,000 be spent to implement the review’s recommendations which include appointing an external party to look into complaints over conduct of senior staff and improving the way council handles complaints in relation to major developments.

Ms Roach said she had thoroughly investigated all reports provided by Leda and spoke to all those concerned to ‘ensure no issue was unresolved’ in the longstanding saga between the property developer and council.

She said ‘we went to everyone we had to go to’ and had full access to all documentation over the complaints but found no corrupt conduct issues or no code of conduct breaches requiring further investigation.”

These vexed matters continue in Tweed Shire Council business papers dated 23 January 2014. (Pages, (32-41).

5.12 Koala Plan of Management

Tweed Heads Environment Group Inc. endorses the concerns of the Team Koala submission which states:

‘The proponent’s request to delay koala tree planting is the most concerning out of all the proposed modifications. It should not need repeating that the Tweed Coast koala population is at dire levels and the Kings Forest colony is a vital part of their survival. It should also not need reiterating how harmful the building an urban township in the midst of their range will be.

Planting koala food trees is the minimum of mitigation measures in offsetting the many destructive impacts of urban incursion including traffic strikes and dog attacks. It will be many years before the trees mature and meanwhile the local koalas must suffer the loss of some of their trees which is a particularly distressing and deleterious thing for them.

If the proponent was truly serious about koala survival, the proponent would be planting the trees as soon as possible. Postponing this to coincide with certain earthworks (potentially years ahead) is simply *irresponsible* and the proponent has offered no valid justification for it.’

6.0 Environmental Assessment

The proponent of the Kings Forest project submits:

“Modification of the consent as proposed involves general changes to conditions to enable the project to proceed in an efficient, viable and timely manner. The proposed modifications do not change the details of the proposal in terms of scale, layout and yields.

In the circumstances, it is therefore submitted that the Environmental Assessment accompanying the original Concept Plan Approval provides an adequate Environmental Assessment of the modified project.”

Our Comment

It has been advised that the proponent claims that compliance cannot be achieved because the Environmental Management Plans (EMPs) are still being revised and because they are also still waiting EPBC approval and because of commercial considerations.

The proponent is requesting instead that the trigger for implementation be *"From the commencement of any bulk earthworks in a precinct"* and that only the area of land *"immediately adjacent to that precinct"* is to be environmentally managed.

Conclusion

Tweed Heads Environment Group Inc. considers that it is likely that there will be considerable EPBC environmental conditions added to this development when decided.

As the proponent’s EMPs are being revised and times are yet to be set for environmental actions, it is submitted that the Environmental Assessment accompanying the original Concept Plan Approval will need to be updated to provide an adequate Environmental Assessment for the modified project.

The proposed modifications, if approved, raise considerable uncertainty about: the signing of Voluntary Planning Agreements with Tweed Shire Council and OEH; the timely funding and maintenance of dedicated environmental lands and council open space.

These adverse impacts to the environment are considered so significant that earthworks for the project should not start until these matters are satisfactorily resolved.

The proposed modifications of the Concept Plan is considered to be unsustainable and not in the public interest.

Tweed Heads Environment Group Inc. requests that the Department considers matters raised in this submission.

Yours sincerely



Richard W Murray
Secretary
Tweed Heads Environment Group Inc.