

**TWEED SHIRE COUNCIL
MEETING TASK SHEET****User Instructions**

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Action Item - PLANNING COMMITTEE MEETING Thursday, 3 April 2014

Action is required for Item 6 as per the Planning Committee Recommendation outlined below.

ATTENTION:

PLEASE NOTE THE ADOPTION OF THE COMMITTEE RECOMMENDATIONS BY COUNCIL AT ITS MEETING HELD Thursday, 3 April 2014 (Minute No 187 Refers)

TITLE: [PR-PC] Submission to Planning and Infrastructure for the Kings Forest Concept plan and Project approval Modification applications

DECLARATION OF INTEREST

Cr Milne declared a Non-Pecuniary, less than significant conflict of interest in this item.

The nature of this interest is that a defamation claim by Mr Ell of LEDA Holdings, the owner of the Kings Forest and Cobaki developments, has been awarded against me for \$15,000.

Cr Milne advised she will remain in the Chambers during discussion and voting on the merits of each application.

Cr G Bagnall
Cr M Armstrong

RECOMMENDED that Council endorses that this report be referred to NSW Planning and Infrastructure as Council's submission to the proposed modification requests for the Kings Forest Concept Plan (MP06_0318 MOD 4) and Stage 1 Project Approval (MP08_0194 MOD 2).

The Motion was **Carried**

FOR VOTE - Cr P Youngblutt, Cr M Armstrong, Cr K Milne, Cr G Bagnall, Cr B Longland

AGAINST VOTE - Cr W Polglase, Cr C Byrne

TITLE: [PR-PC] Submission to Planning and Infrastructure for the Kings Forest Concept Plan and Project Approval Modification Applications

SUBMITTED BY: Development Assessment

FILE REFERENCE: GT1/51 Pt13 and DA11/0565 Pt8



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

| | |
|-------|---|
| 1 | Civic Leadership |
| 1.1 | Ensure actions taken and decisions reached are based on the principles of sustainability |
| 1.1.1 | Establish sustainability as a basis of shire planning and Council's own business operations |

SUMMARY OF REPORT:

NSW Planning and Infrastructure (P&I) have invited Council to make submissions on separate modification requests for the Kings Forest Concept Plan approval and the Project Approval. P&I advise that the modifications seek general amendments to various terms and conditions of the Concept Plan and Stage 1 Project Approvals including amendments to:

- Definitions;
- Dedication of land;
- Establishment and management of environmental areas;
- Public reserves and drainage reserves;
- The role of the Director-General as moderator;
- Provisions of affordable housing; and
- Dust mitigation.

The proposed amendments were assessed, and recommendations are provided in this report either in support, supported with some changes or not supported.

P&I have indicated the Planning Assessment Commission will determine the applications as delegate of the Minister.

The Concept Plan was approved by the Minister for Planning on 19 August 2010 with two modifications approved and two pending modifications including this request. The Project Approval for Stage 1 was approved on 11 August 2013 by the Planning Assessment Commission as delegate for the Minister for Planning with two pending modifications including this request.

RECOMMENDATION:

That Council endorses that this report be referred to NSW Planning and Infrastructure as Council's submission to the proposed modification requests for the Kings Forest Concept Plan (MP06_0318 MOD 4) and Stage 1 Project Approval (MP08_0194 MOD 2).

REPORT:

Only the proposed modifications that Council is affected by are being commented on in this report. Modifications that the Office of Environment and Heritage (OEH) and other agencies have an interest in will be assessed by those agencies.

Tables prepared by the applicant for each of the modifications showing the current condition and proposed condition and reasons for the requests are provided in the attachments.

CONCEPT PLAN COMMENTS

Part C Definitions

The proponent is seeking to redefine the following terms to reflect the voluntary nature of the proposed dedication to Council:

- **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.

The proponent is seeking to change this to:

- **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.

Condition B5 currently reads:

B5 Dedication of Land to Tweed Shire Council

- 1) *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.*

Note: If no agreement is reached the land to be dedicated to Council in the future will not be dedicated to Council and term B7 will continue to apply.

The plan referred to in the proposed new definition of *Potential Council Land Plan With Work Areas* above is attached to the proposed modification application as Annexure B.

With respect to these changes no objection is raised to the change of title for the Plan, however the plan itself is essentially the same as that previously exhibited in the PPR (November 2012) and remains inconsistent with the Condition B5 which requires the plan to be amended:

The Department agrees with Council and proposes to modify the concept plan approval 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.

*Consistent with this approach a recommended land dedication plan is presented in **Attachment 5**.*

The plan referred to in Attachment 5 above which is consistent with Condition B5 is reproduced below.

Recommendation. Retain Condition B5 as is, but for clarity include the plan below as Attachment B and permit a change of title as indicated in red below:

B5 Dedication of Land to Tweed Shire Council

- 1) *The Council Dedicated Land Plan shall be renamed as Potential Council Land Plan with Work Areas and 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 consistent with Attachment B 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 renamed and amended Council Dedicated Land Plan referred to in (1) above 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.*

Note: If no agreement is reached the land to be dedicated to Council in the future will not be dedicated to Council and term B7 will continue to apply.

Condition B7 Implementation of Environmental Management Plans

The proponent is seeking to rationalise the wording of B7 to reflect their concerns about the voluntary nature of any land dedication to Council and OEH.

As noted previously, there does not appear to be any issue with this.

Recommendation Accept the proposed modification of Condition B7.

Condition C29 Dedication of Land to Tweed Shire Council

The proponent is seeking to rationalise the wording of C29 to reflect their concerns about the voluntary nature of any land dedication to Council.

As noted previously, there does not appear to be any major issue with this, however the proponent's suggested modification does not explicitly reflect Condition B5.

Recommendation Revise Condition C29 as follows:

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

Condition A2

Condition A2 lists the approved plans. The proposed modification seeks to delete the reference to "to be dedicated to Council or NPWS" from three of the approved plans. No objection to the change is raised given the comments above and the proposed modifications referring to potential dedication.

Condition B8

B8 currently reads:

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.

The requested modification is to add the last sentence shown in red as follows:

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.

The reason given for the modification is as follows:

"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 Project28 Pty. Ltd."

Comment

On the basis of the reason above the last sentence should read:

This condition does not allow the Director-General to give approval or make agreement in lieu of the Proponent or public authorities.

Establishment Period means the period commencing with the implementation of the relevant approved environmental management plan(s) and ending when the works specified in that plan meet the establishment period ~~phase~~ performance criteria (as defined by the relevant approved environmental management plan) to the satisfaction of the ~~approval authority~~ Director-General. The establishment period represents time necessary to carry out initial environmental repair, restoration and monitoring prior to ongoing maintenance.

Comment: No objection is raised to this proposed change (3a) above.

4. Existing definition:

Maintenance Period means the period commencing immediately after the end of the establishment period during which environmental and monitoring works specified in the relevant approved environmental management plan(s) are to be carried out in accordance with the maintenance phase performance criteria (as defined by the relevant approved environmental management plan) to the satisfaction of the approval authority.

The proponent seeks to delete the term *Maintenance Period* as it is not used elsewhere in the approval.

Comment: The definition of an *establishment period* and an ongoing *maintenance period* are fundamental to each of the environmental management plans on which the approval relies. These terms are used to distinguish between those works necessary for initial environmental repair, restoration and monitoring (establishment period) and ongoing maintenance and monitoring works (maintenance period) and are particularly important in this case where the proponent seeks to transfer its maintenance period responsibilities under the approval, to Council. Clearly, for Council to contemplate such an arrangement all parties need to understand the scope (and cost) of the maintenance works required.

Although the term “maintenance period” is not used in the Stage 1 approval (08_0194) it is used in the Concept Plan approval (06_0318) Condition C2 (underlined):

All future applications are to include precinct-specific management plans providing details on timelines for implementation of recommended works including both establishment and maintenance periods and measurable performance criteria. Each plan is to include an annual maintenance schedule of works following the initial establishment period and ongoing monitoring requirements.

Each plan must consider all other existing plans for the site to ensure management strategies do not conflict and that each plan can be implemented without negatively impacting on the objectives of another.

Final plans are to be prepared in consultation with Council and endorsed by the Director-General prior to the lodgement of the relevant development application for each stage.

It is also referred to albeit less precisely as “maintenance activities” and “maintenance phase” under Conditions A13, 39 and 49. Rather than remove this important definition it is suggested that amendments are made to these conditions to clarify the situation.

Recommendations Revise the following terms as follows:

Maintenance Period means the period commencing immediately after the end of the establishment period during which environmental management and monitoring works specified in the relevant approved environmental management plan(s) are to be carried out in accordance with the maintenance period ~~phase~~ performance criteria (as defined by the

~~Council Land Council Dedicated Land~~, the Proponent must submit to the Director-General for approval, an environmental audit ("Initial Audit") for each part of the ~~Potential Council Land Council Dedicated Land~~ to confirm that the all establishment ~~period phase~~ performance and any relevant maintenance ~~period phase~~ criteria have been met. The Initial Audit(s) must be prepared by a suitably qualified independent environmental consultant, reviewed by Council and approved by the Director-General.

- 2) Within 3 months after each of the first and third anniversaries, and then subsequently every 2 years, of the Director-General's approval of the Initial Audit(s) for each part of the ~~Potential Council Land Council Dedicated Land~~, the Proponent shall submit to Council for review, and the Director-General for approval, environmental audits prepared by a suitably qualified independent environmental consultant. Those environmental audits must review the condition of the ~~Potential Council Land Council Dedicated Land~~ against the agreed maintenance ~~period phase~~ performance criteria specified in each Environmental Management Plan until the affected lands have been transferred into public ownership. Environmental audit reports shall itemise all costs associated with the implementation, monitoring and reporting of all maintenance ~~period phase~~ works and include audited financial statements.
- 3) In the event that an environmental audit carried out in accordance with this clause (489) indicates non-compliance with any of the relevant environmental management plans, approval for further stages of the development will not be granted.

Note: Further amendments to Condition 49 are considered later in this report.

Condition A1 (2) Bulk Earthworks and Civil Works currently states:

Staged bulk earthworks across the site to lower site levels in Precincts 2, 4, 5, 12, 13 and 14 in order to provide fill to create development pads for the residential areas in Precincts 1 and 6 to 11 and contour the future golf course in Precinct 12, 13 and 14.

The proponent states the following in relation to amending Condition A1(2):

"Modification is requested to rationalise the condition and make it more flexible. During consultations DOPI advised that the proposed amended condition appears satisfactory.

The condition is unnecessarily prescriptive and should refer to the approved Bulk Earthworks Plans rather than describe the proposed bulk earthworks in detail.

Proposed amended Condition A1(2) achieves this objective, however the originally proposed condition has been adjusted to exclude bulk earthworks in Precinct 3 consistent with Condition A12(4)"

The application proposes the following amendment to condition A1(2) (amendments shown in red).

Proposed modification of Condition A1(2)

A1 (2) Staged bulk earthworks across the site in order to create development pads for development areas in Precincts 1 and 2 and 4 to 14 in accordance with the plans referred to Condition A3.

Recommendation

The amendment is considered minor housekeeping detail. No objection to the proposed modification of condition A1(2).

Condition 1(1) Subdivision of Kings Forest Estate currently states:

1(1). The Proponent shall subdivide the entire site prior to commencing any bulk earthworks across the site. The subdivision at this stage shall be generally in accordance with the following plans:

| Plan of Subdivision prepared by Landsurv Pty Ltd | | | |
|--|----------|--|----------|
| Drawing No. | Revision | Name of Plan | Date |
| Sheet 1 of 5 | E | Plan of Proposed Staged Subdivision Kings Forest Development For Stage 1 Project Application | 05.02.13 |
| Sheet 2 of 5 | E | Plan of Proposed Staged Subdivision Kings Forest Development For Stage 1 Project Application | 05.02.13 |
| Sheet 3 of 5 | E | Plan of Proposed Staged Subdivision Kings Forest Development For Stage 1 Project Application | 05.02.13 |
| Sheet 4 of 5 | E | Plan of Proposed Staged Subdivision Kings Forest Development For Stage 1 Project Application | 05.02.13 |
| Sheet 5 of 5 | E | Plan of Proposed Staged Subdivision Kings Forest Development For Stage 1 Project Application | 05.02.13 |

Recommendation

Amendment of condition 1(1) is supported. As referenced above in the applicant's submission to the Department of Planning; Council's DCPA5 – Subdivision Manual (A5.4.13 Infrastructure) requires access and services to be provided for all newly created allotments.

Condition A15- Director General as Moderator

The current condition reads:

A15. 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.

The requested modification is to add the last sentence shown in red as follows:

A15. 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.

The reason given for the modification is as follows:

"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 A15. This is on the basis that any agreement should be at the sole discretion of Council and Project28 Pty. Ltd."

Comment

On the basis of the reason above the last sentence should read:

This condition does not allow the Director-General to give approval or make agreement in lieu of the Proponent or public authorities.

Condition A13 – Management and Maintenance of Environmental Lands

The existing condition is as follows:

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

Condition A13 – Management and Maintenance of Environmental Lands

The Proponent is responsible for the management of all Potential Council Land and Future OEH Land ~~land to be dedicated to Council in the future and the Offset Areas for~~ conservation purposes and the implementation of all establishment period and maintenance period works ~~ongoing management and maintenance activities~~ specified in all Environmental Management Plans from the issue of the first construction certificate for the project 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.

Condition 3 Environmental Offset Areas

This condition currently reads:

Within 3 months of the date of this approval, or as otherwise agreed with the Director-General, the Proponent shall:

- a) *engage a registered surveyor to prepare a survey plan(s) and permanently mark the boundaries of the land to be dedicated to Council in the future and the Offset Area;*
- b) *where relevant, submit amended plans of proposed subdivision to the Director-General for approval that show the land to be dedicated to Council in the future and the Offset Area as separate lots;*
- c) *ensure that the boundaries marked by the surveyor remain marked at all times in a permanent manner that allows operating staff, the landowner and inspecting officers to clearly identify those boundaries; and*
- d) *submit for the Director-General's approval, a form of dealing(s) to be registered on the title to the land to be dedicated to Council in the future and the Offset Area that must:*
 - i. *bind all future landowners;*
 - ii. *provide for the management of the land to be dedicated to Council in the future and the Offset Area for conservation purposes including the implementation of relevant Environmental Management Plans, in perpetuity;*
 - iii. *permit access to the land to be dedicated to Council in the future and the Offset Area by the Department, the OEH and Council at all times for the purpose of monitoring compliance with relevant covenants and the Environmental Management Plans; and*
 - iv. *provide for a release of any registered dealings in circumstances where all or part of the land to be dedicated to Council in the future or the Offset Area are transferred to a public authority.*
- e) *Where land to be dedicated to Council in the future or the Offset Area is not subject to any amended plans of subdivision, the Proponent must within 1 month of the Director-General's approval of the dealing(s) referred to in condition 3(1)(d), lodge for registration the dealing(s) on the relevant titles to the land to be dedicated to Council in the future or the Offset Area and provide to the Director-General evidence of such registration within 10 days of the dealing(s) being registered.*
- f) *Where land to be dedicated to Council in the future or the Offset Area is subject to any amended plans of subdivision, the Proponent must within 3 months of the later of the Director-General's approval of the amended plans of subdivision under condition 3(1)(b) or the Director-General's approval of dealing(s) referred to in condition 3(1)(d), lodge for registration the dealing(s) on the relevant titles to*

- ii. *provide for the management of the Potential Council Land and Future OEH Land ~~land to be dedicated to Council in the future and the Offset Area~~ for conservation purposes including the implementation of relevant Environmental Management Plans, in perpetuity;*
- iii. *permit access to the Potential Council Land and Future OEH Land ~~land to be dedicated to Council in the future and the Offset Area~~ by the Department, the OEH and Council at all times for the purpose of monitoring compliance with relevant covenants and the Environmental Management Plans; and*
- iv. *provide for a release of any registered dealings in circumstances where all or part of the Potential Council Land and Future OEH Land ~~land to be dedicated to Council in the future and the Offset Area~~ are transferred to a public authority.*
- e) *Where Potential Council Land and Future OEH Land ~~land to be dedicated to Council in the future and the Offset Area~~ is not subject to any amended plans of subdivision, the Proponent must within 1 month of the Director-General's approval of the dealing(s) referred to in condition 3(1)(d), lodge for registration the dealing(s) on the relevant titles to the Potential Council Land and Future OEH Land ~~land to be dedicated to Council in the future and the Offset Area~~ and provide to the Director-General evidence of such registration within 10 days of the dealing(s) being registered.*
- f) *Where Potential Council Land and Future OEH Land ~~land to be dedicated to Council in the future and the Offset Area~~ is subject to any amended plans of subdivision, the Proponent must within 3 months of the later of the Director-General's approval of the amended plans of subdivision under condition 3(1)(b) or the Director-General's approval of dealing(s) referred to in condition 3(1)(d), lodge for registration the dealing(s) on the relevant titles to the Potential Council Land and Future OEH Land ~~land to be dedicated to Council in the future and the Offset Area~~ to the Director-General evidence of such registration within 10 days of the dealing(s) being registered.*

Condition 13 – Compressible Clay Material in Precincts 11, 12 to 14 currently states:

- 1) Areas of compressible clay material in Precincts 11, 12 – 14 (Bulk Earthworks Sequences/Stages 3 & 4) are to be to the satisfaction of a practising geotechnical engineer.
- 2) No filling is to occur in these areas until certification is provided by a practicing geotechnical engineer. The certification is to state that no settlement will occur and the proposed areas are capable of being developed without the need for special construction techniques. Settlement plate information is to be provided with geotechnical certification from a qualified engineer to validate that settlement has terminated.

The proponent states the following in relation to amending Condition 13:

"It is unreasonable and inappropriate to require certification that no settlement will occur. The proposed modification condition represents standard practice and in any case compressible clays were only encountered at three locations which constitute a small area of the site."

Proposed modification to Condition 13

- 1) Areas of compressible clay material in Precincts 11, 12 – 14 (Bulk Earthworks Sequences/Stages 3 & 4) are to be to the satisfaction of a practicing geotechnical engineer.

2).....

The proponent is seeking to alter the timing for the commencement of baseline monitoring for a number of management plans including the Flora and Fauna Monitoring Report from prior to the issue of a construction certificate to 3 months prior to bulk earthworks. The proponent highlights the possibility that works may not commence for *many months or years after the construction certificate is issued*.

This change is opposed as there have already been significant delays to the baseline monitoring under the Concept Plan Modification 1 of 22 December 2010. As a consequence of this modification the Flora and Fauna Monitoring Report was delayed until prior to the Stage 1 Project Application, however the draft outline provided at this stage was not considered adequate. A detailed assessment of the issues with baseline monitoring is provided in the Council Report on PPR of 13 December 2012 which contained the following summary:

"It was a condition of the Concept Plan that a draft outline of an annual Flora and Fauna Monitoring Report (FFMR) which collated and synthesised all monitoring and reporting requirements contained in the various management plans within 12 months of the Concept Plan approval. A report has been included in the current Preferred Project Report but it fails to adequately address all requirements of Concept Plan Condition B2. Most notably the Flora and Fauna Monitoring Report lacks any baseline data, adequate direction or summary of survey and monitoring effort and any detail on proposed monitoring of potential impacts of development on the Cudgen Nature Reserve. It is also noted that the performance criteria in the Flora and Fauna Monitoring Report do not relate to those that are outlined in the management plans and are not clearly linked to stated management objectives. It is considered in the interests of both the proponent and the consent authority that there is consistency and care in preparation of meaningful performance criteria."

Recommendation. Retain Condition 37 as is.

Condition 45 Koala Plan of Management

This condition contains the following:

The Koala Plan of Management shall be revised as follows:

- 1) *A revised offset strategy for the loss of Koala food trees incorporating the following:*
 - a. *the restoration and planting of Koala food trees offsite (a 27ha area of land has been nominated by OEH and identified in Map 1. (attached)).*
 - b. *planting of Koala food trees in the new east-west corridor as required by Term B4 of the concept plan approval.*
 - c. *planting of Koala food trees in other suitable locations across the site should commence within one month of the revised KPoM being approved.*
 - d. *Koala food tree plantings are to be minimised in areas that are identified as naturally regenerating.*

2).....

The proponent is seeking to amend subclause 1c as follows:

- c. *planting of Koala food trees in other suitable locations across the site ~~should commence within one month of the revised KPoM being approved.~~ within each*

2. Provide formal opportunity for the proponent to comment on and respond to the independent audit viz:
 3. *Within 6 weeks of completing this audit, or as otherwise agreed by the Director-General, the Proponent shall submit a copy of the audit report to the Director-General with a response to any recommendations contained in the audit report.*
 4. *Within 3 months of submitting an audit report to the Director-General, the Proponent shall review and if necessary revise the relevant management plans and undertake additional mitigation measures as required under this approval to the satisfaction of the Director-General.*

Comment: These additional subclauses are considered reasonable and are not opposed.

3. Delete part 3 of the condition which prevents the granting of approval for further stages of the development if an environmental audit indicates non compliance with the relevant approved management plans.

Comment: The deletion of part 3 of the existing subclause is opposed as it provides a strong incentive to ensure that the necessary environmental works are carried out in accordance with the Concept Plan and the Project Approval which as noted previously applies to the entire site. Allowing further stages to progress while the existing stages of the development are not compliant would clearly undermine the Concept plan, the approval process and the public interest.

Recommendation: Allow amendment of Condition 49 as follows:

49. Environmental Audit Reports

- 1) *Within 3 months of the establishment period phase performance criteria specified in all relevant Environmental Management Plans being met for each part of the Potential Council Land Council-Dedicated Land, the Proponent must submit to the Director-General for approval, an environmental audit ("Initial Audit") for each part of the Potential Council Land Council-Dedicated Land to confirm that the all establishment period phase performance and any relevant maintenance period phase criteria have been met. The Initial Audit(s) must be prepared by a suitably qualified independent environmental consultant, reviewed by Council and approved by the Director-General.*
- 2) *Within 3 months after each of the first and third anniversaries, and then subsequently every 2 years, of the Director-General's approval of the Initial Audit(s) for each part of the Potential Council Land Council-Dedicated Land, the Proponent shall submit to Council for review, and the Director-General for approval, environmental audits prepared by a suitably qualified independent environmental consultant. Those environmental audits must review the condition of the Potential Council Land Council-Dedicated Land against the agreed maintenance period phase performance criteria specified in each Environmental Management Plan until the affected lands have been transferred into public ownership. Environmental audit reports shall itemize all costs associated with the implementation, monitoring and reporting of all maintenance period phase works and include audited financial statements.*
- 3) *Within 6 weeks of completing this audit, or as otherwise agreed by the Director-General, the Proponent shall submit a copy of the audit report to the Director-General with a response to any recommendations contained in the audit report.*
- 4) *Within 3 months of submitting an audit report to the Director-General, the Proponent shall review and if necessary revise the relevant management plans*

Project 28 Pty Ltd, the amount of such security (or securities) to be determined with respect to Project 28 Pty Ltd's remediation and maintenance obligations in relation to each separate parcel of land to be dedicated.

Recommendation: Retain Condition 50 as is.

Condition 82 – Dust Mitigation currently states:

Adequate measures shall be taken to prevent dust from affecting the amenity of the neighbourhood during construction for each stage of the project. In particular, the following measures must be adopted:

- a) Physical barriers shall be erected at right angles to the prevailing wind direction or shall be placed around or over dust sources to prevent wind or activity from generating dust emissions.*
- b) Earthworks and scheduling activities shall be managed to coincide with the next stage of project to minimise the amount of time the site is left cut or exposed.*
- c) All materials shall be stored or stockpiled at the best locations.*
- d) The surface should be dampened slightly to prevent dust from becoming airborne but should not be wet to the extent that run off occurs.*
- e) All vehicles carrying soil or rubble to or from the site shall at all times be covered to prevent the escape of dust or other material.*
- f) All equipment wheels shall be washed before exiting the site using manual or automated sprayers and drive through washing bays.*
- g) Gates shall be closed between vehicle movements and shall be fitted with shade cloth, and*
- h) Cleaning of footpaths and roadways shall be carried out regularly.*
- i) All topsoil stockpiles are to be sprayed with dust suppression material such as "hydro mulch", "dustex" or equivalent. All haul roads shall be regularly watered or treated with dust suppression material or as directed on site.*
- j) All construction activities that generate dust shall cease when average wind speeds exceed 15m/s (54km/h). The applicant shall be responsible for providing a calibrated wind meter on site to monitor wind speeds. The wind meter must be located so that it is easily accessed by relevant supervisors and Council Officers. This data must be able to be produced to Council on request.*

The proponent states the following in relation to amending Condition 82:

"Condition 82 is onerous and unreasonable. Adequate dust mitigation can be achieved by the proposed condition and the suite of other conditions intended to mitigate potential impacts (eg. 52, 53, 54 and 78). In addition, Condition 9 contains detailed and prescriptive requirements to manage and mitigate potential impacts during the bulk earthworks phase, including generally limiting the maximum exposed disturbed area to 5 hectares at any time and requiring exposed areas to be topsoiled, mulched and seeded within 7 days.

Moreover, the Construction Management Plan (which forms part of the Environmental Assessment Report, Darryl Anderson Consulting Pty Ltd, October 2012) and the appended Bulk Earthworks Management Plan and Bulk Earthworks Sequencing Drawing No. 12301-ALL-041, Amendment B, dated 16.10.12 provide detailed mitigation measures.

The Proponent must make necessary arrangements for the progressive dedication of the public reserves and drainage reserves within Precinct 5 on the registration of the relevant plan of subdivision for each stage. Areas to be dedicated are to be consistent with sheets 1 to 11 "Plan of Proposed subdivision of Lot 2 (Precinct 5) Kings forest For Stage 1 Project application" dated 5 September 2012, revision D, prepared by Landsurv Pty Ltd.

The proposed modified condition is supported.

2.1 Condition 156 – Telephone and electricity services and Federal Government's National Broadband Network (NBN)

Condition 156 – Telephone and electricity services and Federal Government's National Broadband Network (NBN) currently states:

- 1) *In accordance with the Federal Government's National Broadband Network (NBN) initiatives (as may be in force at the time), the Proponent is required (at the Proponent's expense) to install a fibre ready, pit and pipe network (including trenching, design and third party certification) to NBN CO's Specifications, to allow for the installation of Fibre To The Home (FTTH) broadband services, or a complying alternative to the satisfaction of the relevant Federal Government Agency.*
- 2) *The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of the allotment has been completed must be submitted prior to the issue of a Subdivision Certificate for each stage of the project.*
- 3) *The production of written evidence from the local electricity supply authority certifying that reticulation and energising of underground electricity has been completed prior to the issue of a Subdivision Certificate for each stage of the project.*
- 4) *The reticulation is to include the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.*
- 5) *The submission to the Certifying Authority and subsequent registration of the required right of carriageway/easement for services/restrictions as to users is required."*

The requirement for telecommunications infrastructure to be completed and commissioned is onerous and unreasonable, particularly given that the timing of the provision of this infrastructure (particularly NBN) is beyond the control of the developer. The appropriate arrangements are reflected in the amended condition which is consistent with Council's normal practice up until recently.

The proponent states the following in relation to amending Condition 156:

"The requirement for telecommunications infrastructure to be completed and commissioned is onerous and unreasonable, particularly given that the timing of the provision of this infrastructure (particularly NBN) is beyond the control of the developer. The appropriate arrangements are reflected in the amended condition which is consistent with Council's normal practice up until recently."

Proposed Modification to Condition 156

- 1) *In accordance with the Federal Government's National Broadband Network (NBN) initiatives (as may be in force at the time), the Proponent is required (at the Proponent's expense) to install a fibre ready, pit and pipe network (including*

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not applicable

c. Legal:

Not applicable

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Proponent's table summarising the proposed amendments for the Concept Plan (ECM 3313479)

Attachment 2. Proponent's proposed modifications for the Project Approval (ECM 3313480)
