

Modification of Project Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning, the Independent Planning Commission modifies the Project Approval referred to in Schedule 1, subject to the conditions in Schedule 2.

Commission Member

Commission Member

Commission Member

Sydney

2018

SCHEDULE 1

Project Approval:

MP 08_0194 granted by the Planning and Assessment Commission on 11 August 2013

For the following:

Kings Forest Residential Subdivision Stage 1 Bulk Earthworks, Roadworks and Subdivision of Precinct 5, including:

- subdivision of the site into ten development lots in 4 stages;
- bulk earthworks across the site;
- roadworks comprising:
 - construction of the entrance road and associated intersection works with Tweed Coast Road
 - construction of the Kings Forest Parkway from Tweed Coast Road via Precincts 4 and 5 through the western site precincts; and
 - construction of two roads providing access to the southern site precincts;
- Plan of Development for Precinct 5;
- development of 998 sqm of floorspace for a service station and food and drink premises and access arrangements to Precinct 1;
- construction of subdivision and infrastructure works along Kings Forest Parkway and within Precincts 1 and 5;
- subdivision of Precinct 5 into 376 residential lots comprising:
 - one townhouse lot (7,860sqm)
 - 37 terrace house lots (minimum lot size 150sqm)
 - 25 duplexes (minimum lot size 450sqm)
 - 192 zero lot dwellings (minimum lot size 240sqm)
 - 121 traditional detached dwellings (minimum lot size 400sqm)

Proponent:

Project 28 Pty Ltd.

Approval Authority:

Minister for Planning

The Land:

Kings Forest Estate
Lot 76, 272, 323 and 326 of DP 755701;

Lot 6 DP 875446;
Lot 2 DP 819015;
Lot 1 DP 706497;
Lot 40 DP 7482;
Lot 38A DP 13727;
Lot 38B DP 13727;
Lot 1 DP 129737;
Lot 1 DP 781633;
Lot 7 DP 875447;
Lot 37A DP 13727,
Lot 2 DP 1159231 (closed road)
Lot 1 DP 1178256 (closed road); and,
Lot 1, 2 & 3 DP 11757616 (closed roads).

Modification:

MP 08_0194 MOD 4: the modification includes:

- amendment to Condition 45 to specify the koala offset requirements
- inclusion of new conditions 45A and 45B requiring updates to the Koala Plan of Management and the delivery of the on-site compensatory koala habitat
- amendments to Condition 46 and 64 to clarify the requirements for koala infrastructure and the timing for its delivery
- amendments to Condition 148 to include references to the final Koala Plan of Management approved by the Secretary under Condition 45A
- renumbering conditions 148 and 149 to correct an administrative error.

SCHEDULE 2

The above approval is modified as follows:

(a) Schedule 2 Administrative Conditions, Condition A18 is amended by the insertion of the **bold and underlined** words and deletion of the ~~struckout~~ words/numbers as follows:

A18.

1. Despite any other condition of the Project Approval, but subject to sub-conditions (2)-(5) below, a construction certificate may be issued under the Project Approval for Investigatory and Monitoring Work relating to the works authorised by this Project Approval. Any other conditions precedent imposed by this Project Approval for the issue of a construction certificate do not apply to a construction certificate issued pursuant to this condition.
2. A construction certificate issued pursuant to this condition must not authorise work that is the use of heavy duty equipment for the purpose of breaking ground for bulk earthworks or infrastructure.
3. Prior to the issue of a construction certificate pursuant to this condition for any works, the Environmental Management Plans referred to in conditions 40, 41, 42, 43, 44, **45A**, 47 and the Summary of Management Plans referred to in condition 48 of this Project Approval must be submitted to the Secretary in accordance with those conditions.
4. A construction certificate pursuant to this condition for any clearing of vegetation must not be granted prior to the approval of the Environmental Management Plans referred to in conditions 40, 41, 42, 43, 44, **45A**, 47 and the Summary of

Management Plans referred to in condition 48 of this Project Approval by the Secretary.

5. Any work authorised by a construction certificate issued pursuant to this condition must be consistent with the Environmental Management Plans submitted to the Secretary in accordance with sub-condition (3) above and any approved Environmental Management Plans.
- (b) Schedule 2 Part Two – Bulk Earthworks and Civil Works (All Precincts), Condition 45 – Koala Plan of Management is amended by the insertion of the **bold and underlined** words and deletion of the ~~struckout~~ words/numbers as follows:

Koala Plan of Management

~~45. The Koala Plan of Management shall be amended 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~~
 - ~~b) nominated by OEH and identified in Map 1. (attached)).~~
 - ~~c) planting of Koala food trees in the new east-west corridor as required by Term B4 of the Concept Plan approval.~~
 - ~~d) planting of Koala food trees in other suitable locations across the site within each relevant precinct of the development in general accordance with the plan titled "Proposed Koala Compensatory Habitat Area Staging Plan, Condition 45, Figure 1, JWA Pty Ltd, 29 April 2014", and as modified by any approval of the revised Koala Plan of Management under this condition. The timing of plantings shall be in accordance with the approved revised Koala Plan of Management required by Condition 45(2).~~
 - ~~e) Koala food tree plantings are to be minimised in areas that are identified as naturally regenerating~~~~
- ~~2) The amended KPoM approval shall include details of the Koala food tree planting schedule with numbers and staging and be prepared in consultation with Council and submitted to the Secretary for approval within 6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth Environmental Protection and Biodiversity Conservation Act or prior to issue of any construction certificate, whichever occurs first.~~
- ~~3) The amended KPoM shall have regard to any determination of the NSW Scientific Committee established by the Threatened Species conservation Act 1995~~

Koala Offsets

6. **The following offsets must be provided to compensate for the loss of 1.59 ha of primary and 6.42 ha of secondary (Class A) koala habitat on-site:**
 - a) **the restoration and planting of koala food trees on 27 ha of land within Cudgen Nature Reserve; or where the full 27 ha cannot be planted within Cudgen Nature Reserve, the balance of the koala food tree planting will be undertaken on other lands in a Koala Activity Precinct or Koala Linkage Precinct in the Tweed Shire Council local government area, as approved by the Secretary**
 - b) **the creation of 6.26 ha of compensatory koala habitat within the east-west corridor**
 - c) **the creation of 62.51 ha of compensatory koala habitat on residual lands on-site**
 - d) **the on-site compensatory koala habitat, inclusive of the east-west corridor must comprise:**

- i. 65.44 ha of primary koala habitat;
 - ii. 3.33 ha of secondary koala habitat; and
 - iii. the planting of primary and secondary koala food trees,
7. All compensatory koala habitat must be located in the areas identified in the updated Koala Plan of Management approved by the Secretary under Condition 45A of this approval.

- (c) Schedule 2 Part Two – Bulk Earthworks and Civil Works (All Precincts), insert new Condition 45A - Koala Plan of Management Update(s) after Condition 45 as follows:

45A Koala Plan of Management Update(s)

Prior to the issue of any Construction Certificate, the Proponent must submit an updated Koala Plan of Management to the Secretary for approval. The updated Koala Plan of Management must address the following:

1. Verification of Habitat and Vegetation Mapping

- a) the boundaries of the retained koala habitat and the compensatory koala habitat identified in Figures 19 to 21 of the Koala Plan of Management dated 4 October 2018, must be verified by a suitably qualified independent ecologist, within skills in GIS mapping; and
- b) provide offset areas with a minimum of 1,000 m² in area; and
- c) the updated KPOM must include GIS shapefiles, including metadata describing each shapefile and what it represents, and how each polygon is coded for the following GIS layers:
 - i. retained koala habitat;
 - ii. compensatory koala habitat;
 - iii. retained Wallum Sedge Frog habitat;
 - iv. compensatory Wallum Sedge Frog habitat;
 - v. retained heathland;
 - vi. heathland regeneration areas; and
 - vii. any other conservation outcomes affecting the implementation of the Koala Plan of Management.

Note: For clarity, the management outcomes identified within the GIS layers required under b) iii) to vi) above will not form part of the final Koala Plan of Management approved by the Secretary.

These layers will be used to confirm:

- there are no overlaps between the retained and compensatory koala habitat, or the compensatory Wallum Sedge Frog habitat as outlined in Section 10.5.3 of the Koala Plan of Management dated 4 October 2018, and
- overlaps between the compensatory koala habitat and heathland regeneration areas do not exceed 10% of the total on-site offset area, as identified in the Koala Plan of Management dated 4 October 2018.

2. Offsite Offset

Update Section 10 of the Koala Plan of Management dated 4 October 2018, to include a framework for securing and implementing the 27 ha off-site offset required under Condition 45 above. This framework must specify:

- a) that 27 ha of koala food tree planting will be undertaken in Cudgen Nature Reserve, and where the full 27 ha cannot be planted in Cudgen Nature Reserve, the balance of the koala food tree planting will be undertaken on other lands within a Koala Activity Precinct or Koala Linkage Precinct in the Tweed Shire Council local government area;

- b) if 27 ha of suitable land is not identified within Cudgen Nature Reserve prior to the issue of the first Construction Certificate for either vegetation clearing or bulk earthworks, the Proponent will request the Secretary's approval to undertake any residual koala food tree planting on an alternate site within a Koala Activity Precinct or Koala Linkage Precinct within the Tweed Shire Council local government area. Any request to undertake koala food tree planting outside Cudgen Nature Reserve must be lodged within six months of the issue of the first Construction Certificate permitting vegetation clearing or bulk earthworks;
- c) all koala food tree planting that will occur:
 - i. in Cudgen Nature Reserve must commence within 24 months of the OEH identifying the lands available for koala food tree planting;
 - ii. in an alternate offset location as approved by the Secretary pursuant to Condition 45 of this approval, planting must commence within 24 months of the Secretary approving an alternate offset location; and
- d) all off-site koala food tree planting will be finalised within 3 years of planting commencing in accordance with c) above; and
- e) the mechanisms required to secure the in-perpetuity conservation of any koala food tree planting(s) located outside Cudgen Nature Reserve.

3. Staging of Retained and Compensatory Koala Habitat

- a) Update the Staging Plan in Table 10 of the Koala Plan of Management dated 4 October 2018, to:
 - i. ensure compensatory koala habitat is provided at a ratio of at least 1:8.6 for each stage of the project where koala habitat clearing is proposed;
 - ii. require koala food tree planting within the east-west corridor prior to the commencement of works within Stage 2; and
 - i. clarify all retained koala habitat will be managed in accordance with the approved Vegetation Management Plan following the commencement of the project, as per the requirements of Condition A13.

Note: 3. a) ii. above will require the Management Plan for the east-west corridor to be lodged and approved by the Secretary prior to the commencement of works within Stage 2.

4. Vegetation Management

- a) update Appendix 6 of the Koala Plan of Management dated 4 October 2018, to specify:
 - i. the performance indicators, performance criteria and corrective actions only apply to the compensatory koala habitat (i.e. the koala offset plantings)
 - ii. the following Biodiversity Assessment Method (BAM) vegetation integrity scores for each vegetation zone must be achieved for the relevant plant community types: composition 100, structure 50, and function 25;
 - iii. where natural regeneration of native shrub and groundcover species has not occurred within the first 7 years of management, planting of suitable native shrub and groundcovers will be undertaken to achieve compliance with the vegetation integrity scores for each plant community type (PCT);
 - iv. the management measures required to ensure the removal of slash pine will not result in the clearing of retained koala habitat;
 - v. the tree species selection and planting densities for all planting proposed within the off-site offset area; and
 - vi. the details of any on-going monitoring and management measures, and the standards for achievement for all off-site koala food tree planting.

5. Bushfire Management

- a) specify site specific bushfire management measures, including the location of fire breaks and details of fuel reduction burns (i.e. frequency) required to facilitate the persistence of Koalas on-site.

6. Consistency with other Environmental Management Plans (EMP)

- a) specify the koala management measures that must be incorporated into the residual EMPs for the project; and
- b) specify the management of roaming domestic dogs must be included in the Feral Animal Management Plan.

7. Fencing and Koala Crossings

- a) the Fencing Plan(s) must be revised to demonstrate temporary or permanent fencing will not result in:
 - i. the clearing of any retained koala or Wallum Sedge Frog Habitat
 - ii. clearing within any heathland regeneration areas; or
 - iii. the creation of isolated patches of compensatory koala or Wallum Sedge Frog habitat, or heathland revegetation areas within the environmental protection zone or the ecological buffers; and
- b) amend the bridge abutments for the Blacks Creek underpass to provide a setback of 2 m either side of the creek bed to provide underpass opportunities for koalas.

Note: The Fencing Plan(s) may need to be amended if the boundaries of the compensatory or retained koala habitat require revision due to the requirements of 45A 1.a) above.

8. Contingency and Offset Strategy

- a) Revise section 13.1 of the Koala Plan of Management dated 4 October 2018, to specify:

Contingency Measures for the Establishment of the Compensatory Koala Habitat

- i. offsets will be provided on a pro-rata basis, for any compensatory koala habitat that does not meet the maintenance period performance targets within 10 years; and
- ii. identify the timing for providing any offsets required to achieve consistency with (i) above.

Contingency Measures to Address a Decline in Koala Numbers On-Site

- iii. a bond or bank guarantee must be provided for the implementation of suitable conservation measures in the event there is a statistically significant decline in koala numbers on-site until five years after the project is complete;
- iv. the sum of the bond must be agreed by the Secretary prior to the issue of the first Construction Certificate permitting the clearing of vegetation on-site; and
- v. the bond must be paid to and held by the Secretary from the issue of the first Construction Certificate permitting the clearing of vegetation, until five years after the project is complete and the Proponent has demonstrated that there has been no statistically significant reduction in koala number on-site to the satisfaction of the Secretary.

9. Administrative Changes

- a) remove all references to a “horticultural or environmental specialist” confirming “substantial establishment” of compensatory koala habitat has occurred, and replace them with references to a “an independent restoration ecologist approved by the Secretary”;
- b) remove all references to the Proponent forfeiting the environmental bond where substantial establishment of the compensatory koala habitat is not achieved;
- c) ensure establishment and maintenance phase performance criteria are identified for all mitigation actions included in the updated Koala Plan of Management;
- d) remove all references to the Proponent nominating a representative to sit on the Tweed Coast Management Committee;
- e) confirm the Friends of the Koala are the relevant licenced koala care group in the Tweed local government area;
- f) specify corrective actions for implementation if the forest red gum plantings do not initially survive on-site; and
- g) address the relevant administrative changes recommended in Tweed Shire Council’s submission dated 15 November 2018, to the satisfaction of the Secretary.

10. Any approval to the updated Koala Plan of Management does not authorise vegetation clearing works, and the Environmental Management Plans and the Summary of Management Plans required under conditions 40, 41, 42, 43, 44 and 47 must be approved in accordance with Condition A18, prior to any vegetation clearing occurring on-site.

- (d) Schedule 2 Part Two – Bulk Earthworks and Civil Works (All Precincts), insert new Condition 45B – Delivery of On-Site Compensatory Koala Habitat after new Condition 45A as follows:

45B Delivery of On-Site Compensatory Koala Habitat

- (a) All on-site compensatory koala habitat must be provided at a ratio of 1:8.6 (i.e. for every hectare (ha) of koala habitat removed, 8.6 ha must be provided) over the life of the project; and
- (b) Prior to the issue of each Construction Certificate authorising the clearing of koala habitat, the Proponent shall provide evidence to the Certifying Authority that the compensatory koala habitat in the preceding stage is substantially established.

Note: Condition 45B only applies to each Construction Certificate issued after the first Construction Certificate authorising the clearing of koala habitat.

- (e) Schedule 2 Part Two – Bulk Earthworks and Civil Works (All Precincts), insert new Condition 45C – Environmental Management Plan Updates after new Condition 45B as follows:

45C Environmental Management Plan (EMP) Updates

1. The Proponent must update the residual EMPs to incorporate the relevant koala management measures identified in the Koala Plan of Management approved by the Secretary under Condition 45A, prior to the issue of any Construction Certificate issued under Condition A18.

- (f) Schedule 2 Part Two – Bulk Earthworks and Civil Works (All Precincts), Condition 46 – Koala Infrastructure is amended by of the insertion of **bold and underlined** words and deletion of the ~~struckout~~ words/numbers as follows:

46. Koala Infrastructure

1. **Koala infrastructure must comply with the following requirements** ~~Any roads through the environmental areas of the site must include:~~
 - a) ~~fencing on both sides of the road of a design that will prevent the crossing by dogs and koalas;~~ **prior to the commencement of construction works in each precinct, the Proponent must install the fencing identified for that precinct in the updated Koala Plan of Management approved by the Secretary;**
 - b) **prior to the issue a Subdivision Certificate for each precinct, the Proponent must install all permanent koala fencing identified for that precinct in the updated Koala Plan of Management approved by the Secretary;**
 - c) ~~fauna underpasses installed at intervals sufficient to allow unimpeded movement by wildlife including koalas across roads. Such fencing and underpasses within Environmental Protection Areas are to be constructed prior to the commencement of bulk earthworks in the southern and/or western development precincts.~~ **fauna underpasses must be constructed in the locations identified in the updated Koala Plan of Management approved by the Secretary. All fauna underpasses must be constructed concurrent to the road works approved under the Construction Certificates for precincts 2 – 5, 6, 11 and 12 - 14 of the project.**
2. ~~Precinct 1 and 5 Fauna exclusion fencing must be integrated with fencing at Tweed Coast Road. Such fencing is to be constructed at the completion of bulk earthworks.~~
3. The design and precise location of fauna exclusion fencing must ensure that the buffer area available to fauna is maximised and makes provision for a functional maintenance zone each side of the fencing in order to allow sufficient room for replacement and maintenance of the infrastructure.
4. Precinct 1 fauna exclusion fencing should be sited at the outer edge of the 50m ecological buffer.
5. Signage shall be erected in strategic locations within Precincts 1, 2, 3, 4 and 5, such as in the public open space areas within Precinct 5 and at fauna underpasses, advising residents that Koalas are active in the area and dogs should be kept on a leash at all times and encourage residents to keep dogs in enclosed yards between the hours of 6pm and 6am.
6. Erection of permanent vandal proof signs shall be erected at regular intervals to inform people about the purpose of the Koala exclusion fencing and the importance of maintaining the fence.

- (g) Schedule 2 Part Two – Prior to Commencement of Construction Works, Condition 64 – Koala Infrastructure is amended by of the insertion of **bold and underlined** words and deletion of the ~~struckout~~ words/numbers as follows:

Exclusion Fencing and Underpasses

64. ~~Fauna exclusion fencing and underpasses (including any temporary fencing and underpasses) for roads traversing Environmental Protection Areas are to be constructed prior to the commencement of bulk earthworks in any of the southern and/or western development precincts.~~

Prior to the commencement of construction works in each precinct where roads traverse the Environmental Protection Areas, the Proponent must install all temporary and permanent fauna exclusion fencing identified for

that precinct in the updated Koala Plan of Management approved by the Secretary.

All fauna underpasses on roads traversing the Environmental Protection Areas must be constructed concurrent to the road works approved under the Construction Certificates for precincts 2 – 5, 6, 11 and 12 - 14 of the project.

- (h) Schedule 2 Part Two – Bulk Earthworks and Civil Works (All Precincts), Condition 148 – Koala Plan of Management is amended by of the insertion of **bold and underlined** words and deletion of the ~~struckout~~ words/numbers as follows:

Koala Plan of Management

148. All necessary management measures relevant to Precinct 5 (exclusion fencing, road grids, traffic calming devices, underpasses etc) required by the ~~approved Koala Plan of Management prepared by James Warren and Associates dated August 2012~~ **updated Koala Plan of Management approved by the Secretary under Condition 45A**, must be constructed and functional prior to the release of a Subdivision Certificate for the first stage of the subdivision in Precinct 5. Evidence is to be obtained from a suitably qualified ecological professional that certifies management measures have been constructed in accordance with the **updated** ~~approved~~ Koala Plan of Management **approved by the** ~~Secretary and submitted to the Secretary for approval.~~

- (i) Schedule 2 Part Two – Bulk Earthworks and Civil Works (All Precincts), Condition 148 - Public Reserves & Drainage Reserves is amended by of the insertion of **bold and underlined** words and deletion of the ~~struckout~~ words/numbers as follows:

149 ~~148~~. 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.

End of Modification