



**Attachment 7 – Environmental Planning & Assessment Regulation 2021
Assessment**

April 2025

The Environmental Planning and Assessment Regulation 2021: Assessment

Pursuant to Section 100 of the Environmental Planning and Assessment Regulation 2021 (**the Regulation**), an application for modification of a development consent is required to contain information as set out in **Table 1**.

Table 1: Environmental Planning and Assessment Regulation 2021- Section 100

Section	Comment
100 Content of modification application (1) A modification application must contain the following information—	
a) The Name and Address of the Applicant	The applicant is Kings Forest Estates Pty Ltd, P O Box 1914 Surfers Paradise QLD 4217. Additional details are provided on the Application Form.
(b) a description of the development that will be carried out under the development consent,	The development to be carried out under the Concept Plan is described in Section 1.3.1 of the Modification Report.
(c) the address and folio identifier of the land on which the development will be carried out	The address is contained in Section 1.2 of the Modification Report.
(d) a description of the modification to the development consent, including the name, number and date of plans that have changed, to enable the consent authority to compare the development with the development originally approved,	The proposed amended modification (MOD10) is detailed in Section 2.0 of the Modification Report.
(e) whether the modification is intended to— (i) merely correct a minor error, misdescription or miscalculation, or (ii) have another effect specified in the modification application,	The Application is intended to have another effect (subclause (ii)) to modify Condition no. 3. The inclusion of the appendix 26 is restrictive and prohibitive to the efficient delivery of housing. The proposed modification will ensure that future changes to the Design Review Panel (DRP) will not require a modification application. Refer to Section 3.1 of the of the Modification Report given the application is lodged pursuant to section 75W of the <i>Environmental Planning and Assessment Act 1979</i> (the EPA Act), as called up by Schedule 2 to the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (the ST&OP Regulation).

Section	Comment
<i>(f) a description of the expected impacts of the modification,</i>	<p>It is not expected that the modified project will have any significant adverse impacts because the proposed modifications do not affect the ability of the approved development to remain consistent with the requirements of the Concept Plan approval and applicable EPIs and policies. In granting approval for the original Concept Plan Approval, the Planning and Assessment Commission has accepted that the potential impacts associated with the proposal were not unreasonable, specifically in relation to the DRP being a self-managed body.</p> <p>If the status quo remains, future changes to the panel would require a modification application. This will require preparation and lodgement of an application by the proponent as well as the assessment of same by the DPHI. Removing this requirement is beneficial and facultative to the delivery of housing at KF, in case panel members decide to resign or retire. In summary, granting of a modified consent will result in a positive social outcome.</p>
<i>g) An undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved</i>	Refer below for assessment against Section 4.55(1A) of the EPA Act.
<i>(h) for a modification application that is accompanied by a biodiversity development assessment report—the biodiversity credits information,</i>	No biodiversity development assessment report is required as outlined in Section 1.3.4 of the Modification Report.
<i>(i) if the applicant is not the owner of the land—a statement that the owner consents to the making of the modification application,</i>	Owner's Consent is attached.
<i>(j) whether the modification application is being made to—</i> <i>(i) the Court under the Act, section 4.55, or</i>	The application is made to the Minister for Planning as the Consent Authority.

Section	Comment
(ii) the consent authority under the Act, section 4.56.	

Section 4.55 EPA Act Assessment

Section 4.55(1A) of the EPA Act is set out below, with an assessment of each subclause provided underneath.

(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

Assessment:

The proposed modified development remains located within the subject area of the Concept Plan Approval, specifically within areas approved for urban development. Removing the requirement for future modifications is beneficial and facultative to the delivery of housing at KF. Additionally, the controls of the KFDC require that the Chairperson of the DRP be an Architect:

(2) Membership:

(a) a minimum of 1 and a maximum of 4 members, including a chairperson; and

(b) the Chairperson must be an Architect; and

(c) any person appointed to the DRP shall retain their position until that person resigns from the DRP or has their appointment revoked in accordance with (4)(b) below; and'

In summary, the proposal provides positive social outcomes and has a neutral impact on other environmental considerations. Refer to Section 5.0 of the Modification Report for further discussion.

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

Assessment:

Recent cases in the Land and Environment Court [Realize Architecture Pty Ltd v Canterbury-Bankstown Council \[2023\] NSWLEC 1437](#) and [Canterbury-Bankstown Council v Realize Architecture Pty Ltd \[2024\] NSWLEC 31](#) have provided an expanded framework for the assessment of the substantially the same threshold test. An assessment using this framework is provided below.

1. Find the Primary Facts

- Identify all the differences between the two developments, and attribute significance to those differences.

Table 1: Factual differences and Significance Assessment.

<u>Modification</u>	<u>Significance Assessment</u>
Amended Condition A3 to remove an appendix (letter) identifying panel members	Low

2. Interpret the Law

- Compare the “quantitative” and “qualitative” differences between a proposed modified development against the most recently modified development as per ([Moto Projects \(No 2\) Pty Ltd v North Sydney Council \[1999\] NSWLEC 280](#)

Table 2: Qualitative and Quantitative differences.

<u>Modification</u>	<u>Qualitative</u>	<u>Quantitative</u>
Amended Condition A3	Given the DRP members relate to a functional condition which provides further approval and oversight requirements for future DA's, the proposed modifications do not have a direct qualitative impact on the Concept Plan approval itself, rather the ability of the panel to ensure quality design consistent with that set out in the KFDC and Design guidelines.	N/A

- Compare the “material and essential features” ([Moto Projects](#) and [Arrage v Inner West Council \[2019\] NSWLEC 85](#)) or “critical elements” ([The Satellite Group \(Ultimo\) Pty Ltd v Sydney City Council \[1998\] NSWLEC 244](#)) of the proposed modified development against the most recently modified development.

Table 3: Material and Essential Features of the Concept Plan Approval.

<ul style="list-style-type: none"> - Residential development for approximately 4500 dwellings; - Town Centre and neighbourhood centre for future retail and commercial uses; - community and education facilities; - employment land; - a golf course; - open space; - wildlife corridors; - protection and rehabilitation of environmentally sensitive land; - utility services infrastructure; - water management areas and lake; and - roads and pedestrian and bicycle paths. 	<p>There are no proposed changes to a critical element in terms of the key elements.</p> <p>The design of future dwellings could be considered a critical element, however the constitution of the DRP requires an architect, and is a preliminary process requirement before future DAs and CDCs. Thus there are multiple safeguards to ensure quality design outcomes.</p>
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- **Compare the consequences, such as the environmental impacts of carrying out the proposed modified development against the most recently modified development**

Environmental impacts are summarised as follows:

- Amenity
- Built Environment
- Economic
- Social

The proposed amended modification does not affect the role of the DRP to ensure dwelling designs are consistent with the KFDC, and suite of overarching approvals. In this way the effect of the proposed medication on amenity and the built environment are neutral. The economic and social impacts of the requirements to modify to the Concept Plan Approval each time a new DRP panel is required, are onerous and justify the support of a modified consent.

3. Summary and Conclusion

- **Determine whether the facts found (Step 1) fall within or without the words and phrases of the STS test in s.4.55 of the EPA Act (Step 2).**
- **Evaluate by assigning relative significance or weight to the different facts and a balancing of the facts, as weighted.**
- **This categorisation can be an instinctive synthesis and not be articulated expressly.**

The ability to manage the membership of the DRP without the need for a modification is a positive impact in terms of the economic and social implications of preparing and assessing a modification application. On balance, the proposed amended modification application satisfies the test of being substantially the same in the traditional ways.

Intuitively, the proposed modification does not render the development not 'substantially the same', as any impacts can be in relation to built-form will be managed by the KFDC and the pre-approval certificates, and in the case of DAs by the assessment of an application.

(c) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

Assessment:

The notification of the proposed modification will be managed by DPHI.

(d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Assessment:

This requirement is the responsibility of DPHI.