

ADDENDUM REPORT

Kings Forest Project Approval Modification Request MP 08_0194 MOD 3 Precinct 1, Tweed Coast Road, Kings Forest

1. BACKGROUND

Project 28 Pty Ltd (the Proponent) has lodged a request to modify the Kings Forest Project Approval (MP 08_0194 MOD 3) to change the use of the rural supplies building within Precinct 1 to a service station with associated shop, food and drink premises with drive through facilities and an outdoor dining area, and car and dog wash facilities. The modification request also seeks approval to remove the 10 metre (m) wide vegetation buffer on the northern boundary of the site.

The modification request has been assessed by the Department of Planning and Environment (Department) and the Assessment Report and recommended Instrument of Refusal were placed on the Department's website for at least seven days prior to determination, in accordance with the Department's Development Assessment Protocol.

On 7 April 2016, DAC Planning Pty Ltd (DAC), on behalf of the Proponent, lodged a submission in response to the Assessment Report and the recommended reasons for refusal (see **Appendix A**).

This addendum report provides consideration of the issues raised in DAC's submission.

2. CONSIDERATION

In the submission, DAC has taken extracts from previous reports (such as the Environmental Assessment or Response to Submissions) and re-presented the information.

The Department has already considered this information in preparing its Assessment Report and recommendation. There are however, some residual matters raised by DAC requiring further discussion. These matters are discussed in **Section 2.1** of this report.

2.1 Residual Matters

2.1.1 Land Use Conflict

DAC states the Department of Primary Industries (DPI) did not object to the modification request. Whilst the Department agrees, it notes the DPI raised a number of significant concerns. These issues were considered and discussed in the Department's Assessment Report and provided the basis for the Department's recommendation for refusal.

Some key issues raised by DPI are highlighted again here for context:

- the change of use would have potential adverse impacts on the adjoining agricultural land;
- the removal of the 10 m wide vegetation buffer compromises the intent of the Project Approval, which seeks to minimise land use conflicts; and
- reliance on existing vegetation on the adjoining property should not be seen as a commitment by the Proponent as there is no guarantee this would continue into the future.

As DAC has not provided further justification or information to resolve the land use conflicts between the proposed development and the adjoining agricultural land, the Department is satisfied the assessment and conclusions contained in its Assessment Report remain valid.

2.1.2 Contamination Risk

DAC states the existing approval for a rural supplies building allows for fertilisers, pesticides and herbicides to be stored on the site.

Whilst the Department acknowledges the Project Approval permits the construction of a rural supplies building within Precinct 1, no approval was given for its use as details of the future tenancies were not provided with the original Project Application. As noted in the Department's Assessment Report, future tenant(s) are required to seek separate approval for the fit-out and use of each tenancy and each application would be considered on its merits, including whether or not to permit the storage of fertilisers, pesticides and herbicides.

The Department maintains the modification request would introduce a new land use which would change the risk profile of the approved development and result in the potential for increased contamination on adjoining sensitive land. Accordingly, the Department is satisfied the assessment and conclusions contained in its Assessment Report remain valid.

2.1.3 Tweed Coast DCP

DAC contends the strategic objectives of the Tweed DCP are not relevant and are inconsistent with the site's zoning as 2(c) Urban Expansion under *State Environmental Planning Policy (State Significant Precincts) 2005* (State Significant Precincts SEPP) and the employment lands uses allowed under the Concept Plan.

The Department does not agree the strategic objectives of the Tweed DCP are inconsistent with the site's zoning. Further, the creation of a green belt is not inconsistent with the development objectives or controls of the Kings Forest Development Code (Development Code) which supports the Concept Plan.

In approving the Concept Plan for the Kings Forest site, the Department noted in its assessment report that future development on employment lands needs to be "*supported by an adequate justification in terms of its suitability in relation to the surrounding development. Inclusion within the Development Matrix approved with the Concept Plan does not provide a basis for justifying the proposed land use. Approval on any land use in this area shall be subject to a detailed merit assessment by the relevant consent/approval authority*". As such, the modification request is to be assessed on its merits and includes consideration of the responsiveness of the design of the development to the site's context.

Accordingly, the Department is satisfied the assessment and conclusions contained in its Assessment Report remain valid.

2.1.4 Perceived Environmental Impacts

DAC contends the environmental impacts of the modification request are perceived and overstated, and can be mitigated by conditions of approval. Given the above, DAC advised it would be in the public interest to approve the modification request.

The Department disagrees with this position. In undertaking its assessment the Department concluded the proposed modification would result in new adverse visual, traffic and amenity impacts within Precinct 1 which are inconsistent with the rural character of development along Tweed Coast Road. It would increase the potential risk of environmental harm by introducing hazardous land uses that may reduce the ongoing viability of adjoining State significant farmland and increase the risk of adverse impacts to the SEPP 14 wetlands and significant vegetation adjacent to the site. The cumulative impact of these matters is significant and cannot be satisfactorily mitigated or managed by way of conditions.

Accordingly, the proposed modification is not in the public interest and the Department is satisfied the assessment and conclusions contained in its Assessment Report remain valid.

2.2 Other Issues

2.2.1 Reference to Major Development SEPP

Following a recent change, *State Environmental Planning Policy (Major Developments) 2005* is now known as *State Environmental Planning Policy (State Significant Precincts) 2005*. Accordingly, a minor modification is recommended to refusal reasons 1 and 2 to make reference to the relevant planning policy.

3. CONCLUSION AND RECOMMENDATION

3.1 Conclusion

The Department has considered the additional submission from DAC in relation to a request to modify the Kings Forest Project Approval. Given the DAC submission has not provided further justification or assessment to demonstrate the proposed land use would not impact the adjoining agricultural land, minimise land use conflict or introduce unacceptable environmental risks, the Department has concluded the findings and recommendations of its Assessment Report and recommended Instrument of Refusal remain valid.

The modification request would have more than limited environmental consequences in comparison to the approved project. The proposed new land use would change the risk profile when compared with the approved development and would increase the land use conflicts with the neighbouring State significant farmland. Furthermore, the bulk and scale of the proposal would be incompatible with the rural character of Tweed Coast Road.

Accordingly, it is recommended the Executive Director, Key Sites and Industry Assessments refuse the modification request.

3.2 Recommendation

It is recommended the Executive Director, Key Sites and Industry Assessments:

- **consider** the findings and recommendations of the Assessment Report (see **Tag A**);
- **consider** the findings and recommendations of this addendum report; and
- **refuse** the modification request MP 08_0194 MOD 3 in accordance with the recommended Instrument of Refusal (see **Tag B**).



18/04/16

Kate MacDonald
Team Leader
Industry Assessments



18/4/16

Joanna Bakopanos
A/Director
Industry Assessments



18/4/16

Anthea Sargeant
Executive Director
Key Sites and Industry Assessments

APPENDIX A: COPY OF DAC'S SUBMISSION

7 April 2016

Our Ref: KFOR 15/138

Secretary
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Attention: Kate MacDonald

Dear Madam

Submission in Relation to Kings Forest Major Project Approval No. MP08-0194
Modification No. 3 Assessment Report

On behalf of Project 28 Pty Ltd, we make the following submission in relation to the reasons for refusal identified in the Department's Assessment Report. We request the Department to take this submission into account before determining the Application.

Reason 1 – Conflict with State Significant Farmland

"The modification request would introduce new and more sensitive land uses (takeaway food and drink premises with associated outdoor dining facilities) within Precinct 1 which will increase land use conflict with the adjoining State significant farmland. The introduction of such land uses, coupled with the proposed removal of the 10 m wide agricultural buffer, are inconsistent with the requirements of Part 6, clause 8 of Schedule 3 of State Environmental Planning Policy (Major Developments) 2005."

By way of background information, Major Project Approval No. MP08_0194 currently approves a rural supplies building with Precinct 1. The building is setback 8m from the northern site boundary and a service/delivery aisle is located within the setback (see Drawing SK001 **attached**).

Condition 99 of MP08_0194 increases the proposed setback and is in the following terms:

"Amendments to Design of Rural Supplies Building

99.

- 1) *The design of the rural supplies building and landscaping in the north of Precinct 1 shall be modified to provide a 10m wide vegetated buffer generally in accordance with Appendix 2 of the Planning Guidelines: Separating Agricultural and Residential Land Uses (Qld Government August 1997) and Section A5 of Tweed Shire Council's DCP 2008, or any other such arrangement to the satisfaction of the Department of Primary Industries, to minimise any future potential land use conflict with agricultural land to the north of the site. Screening by physical means other than vegetation is not acceptable.*
- 2) *The amended design shall be submitted to the Secretary for approval within 24 months of the date of this approval."*

The proposed Site Plan (Drawing No. 1000, Issue H **attached**) forming part of MOD 3 for the service station/food and drink premises shows the station shop building 17m from the northern boundary and the truck fuel bowser 10m from the northern boundary.

The Modification Application is accompanied by a Land Use Conflict Risk Assessment Report (LUCRA) (Allen & Associates, 29 September 2013) which concludes that:

"5 STEP 4 – SUMMARISED RESULTS OF THE LUCRA

34. A LUCRA has been undertaken in relation to a proposed service station to be situated on Part Lot 7 DP 875447 situated on the Tweed Coast Road opposite Old Bogangar Road at Kings Forest NSW.
35. The greatest potential for the occurrence of land use conflict with the proposed service station has been identified as the neighbouring forestry lands directly to the north.
36. As per the nature of forestry operations, any conflict arising and potentially impacting on the proposed service station development is dust, noise and chemical spray drift. An initial ranking system of evaluation has been undertaken (as per published guidelines) and determined that the greatest risk ranking was as a result of both dust and noise generation.
37. Forestry operations have a low level of operational intensity in comparison to more intensive horticultural or agricultural pursuits. Dust and noise generation is more commonly associated with harvesting or logging operations. The forestry paddock that is directly adjacent to the site has only recently been harvested and so future harvesting will not occur for at least ten years or greater.
38. Recommended risk mitigation strategies have been identified as buffer zones in the form of vegetative zones, physical fencing and spatial zones of separation.
 - The owner of the forestry operation has already planted a zone of vegetation adjacent to the farm access road that runs along the southern boundary of the site. This 10 metre zone while planted for the purposes of providing a fauna corridor will also add a natural vegetative buffer zone between the two operations.
 - It is the intent of the developer to construct a 2.5 metre high colourbond fence along the boundary of the development and the forestry land (Lot 8). This will provide a further barrier to the movement of dust and spray drift from the forestry operation. It will also lessen the noise impact from forestry operations, although it is acknowledged that such operations (logging) are irregular.
 - The design concept of the service station provides for adequate spatial zones of separation from sensitive receptor points (e.g. parking) which will add to the degree of risk reduction achieved.
39. The proposed mitigation strategies as discussed are very specific and easy to implement. Furthermore as the proposed strategies have achieved the stated objective of achieving a revised risk ranking of 10 or less it is therefore believed that when implemented that the potential for land use conflict occurring between the land uses will be minimal."

On 11 January 2015, DAC Planning Pty Ltd provided a response to submissions, which includes a response to the submission from the Department of Primary Industries (DPI). The response is reproduced as follows:

"Response:

The comments of DPI are noted. The author of the LUCRA accompanying the Modification Application has provided comments on the issues raised by DPI. A copy of the response dated 24 December 2015 is attached at **Annexure B**. Having regard to those comments, the proponent will accept conditions of approval to the following effect:

"The proposed buffer to the northern site boundary shall be maintained by the owner of the Precinct 1 site, being Lot 7 DP 875447."

"Prospective purchasers or lessees of Precinct 1 (being Lot 7 DP 875447) shall be advised that the building is located within close proximity to agricultural industries and as such incidences of noise, odour and dust may occur that some people may find offensive."

In addition to the original LUCRA Report, the response from Allen & Associates dated 24 December 2015, previously forwarded to the Department, responds to the issue of land use conflicts and appropriate treatment of the interface between the development site and the existing small scale forestry land to the north. The response specifically addresses the issues raised by the DPI and is therefore reproduced as follows:

"Thankyou for your email relating to the NSW DPI letter dated 17th November 2015 requesting more information or clarification in regard to the LUCRA for the Kings Forest Project. The concerns appear to specifically be in relation to the adequacy of the proposed buffer in the context of land use conflict avoidance. The proposed buffer is a combination of:

- 2.5 metre colourbond fence – to be erected by the owner/operator of the service station along the Site's northern boundary.
- Planting of a combination of tall evergreen trees (average of 15 metres height) and dense hedge along the southern side of the 2.5 metre colourbond fence.
- Spatial separation including vegetation zones and open spaces (farm access road, intervening area between the fence and bowser parking) and;
- 10 metre zone of pre planted vegetation (Wallum) as a fauna corridor within the forestry land and directly adjacent to an existing farm access road that runs along the Site's northern boundary.

The land currently being utilised for a small forestry enterprise directly to the north has the greatest potential for conflict development with the proposed service station in the future.

The NSW DPI notes the project in close proximity to State Significant Farmland and also the potential for land use change over time; that is the possibility that forestry use on the neighbouring land may change to alternative agriculture in the future.

I refer to my original report dated 29th September 2013. The soil type within the site is identified as a Podzol soil type.

- Podzols are typically coarse sandy textured soils which have extremely low fertility levels and poor water retention¹ characteristics. They are soils that generally only support plants that are suited to grazing purposes². The soils have a single grained structure which means that they are extremely vulnerable to the processes of soil erosion (wind and water) when not stabilised by a suitable ground cover. Any tillage of these soils therefore for agricultural purposes would disturb any groundcover that is present resulting in a high soil erosion hazard.

This soil type inherent to the site also extends into the neighbouring forestry land to the north. On the basis of historical air photos it is also believed that the Podzol soil type extends to the north-east into part of that land that is mapped as State Significant Farmland. That is it is the belief of the writer that lower lying lands and some lower slope areas directly to the north and north-east (within the neighbouring property) that are directly adjacent to the site have been incorrectly mapped as State Significant Farmland.

It is acknowledged that land use may change over time. In the case of the land directly to the north and north east it is not believed that any land use in the future will be anything more intensive than the current Forestry operation or alternatively low intensity grazing operations on unimproved pastures. The land principally because of the poor associated soil is quite simply not capable of supporting a State Significant Farmland land use such as intensive horticulture. The soil is naturally infertile and is highly erodible.

It is acknowledged that the 10 metre wide wallum scrub buffer being on the neighbouring property is not a guaranteed component of the long term buffer design. If present it will certainly add to the site's intended buffer zone effect. However and at the same time it is believed that the colourbond fence, tall evergreen trees and dense hedge and zone of spatial separation are in combination sufficient for the purposes of conflict avoidance between the proposed development and existing or future land use/s on the land directly to the north.

The land directly to the north and north east is not capable of supporting a more intensive land use than that which is currently in place. The risk of conflict between this type of land use and those that are non-agricultural in nature is minimal and can be easily avoided with a buffer zone design as per the proposed.

If you have any further enquires in relation to this please don't hesitate to contact me."

The merit/validity of this reason for refusal should be viewed in the context of the DPI submission, which states that:

"It is therefore necessary to consider whether the proposed fencing and landscaping on the subject site is adequate to address potential conflict risk between the service station and current/future agricultural use of the neighbouring land. DPI has no further comments in this regard. If the buffer provisions provided on the subject site are considered adequate, then there should be a condition that requires continued maintenance of the buffer within the conditions of consent.

To assist further with potential land use conflict risks, it is suggested that a rural area notice be provided to any purchaser/lessee of the service station that advises that the building is located within close proximity to agricultural industries and as such incidences of noise, odour and dust may occur that some people may find offensive."

DPI is the peak State Agency responsible for protecting agricultural land from incompatible land uses. In this case, the DPI has not objected to the proposed development and buffer treatment.

The Department also contends that the proposal is inconsistent with Clause 8 of the Major Development SEPP relating to Kings Forest.

Clause 8 is in the following terms:

"8 Agricultural buffers

Consent must not be granted to development on land within an agricultural buffer unless the consent authority:

- (a) has considered the potential impact of the proposed development on agricultural activities on land adjoining the buffer and of those agricultural activities on future occupiers of land within the buffer, and*
- (b) has consulted the Department of Primary Industries."*

In relation to Clause 8(a), it is submitted that the information referred to above demonstrates that potential land use conflicts are manageable, subject to the conditions proposed by the DPI and agreed to by the proponent.

In accordance with Clause 8(b), the DPI was consulted and did not object to the proposal.

In the circumstances, it is therefore submitted that the Department's first reason for refusal is not reasonable or substantiated.

Reason 2 – Potential Increased Land Contamination

"The modification request would introduce a new land use (proposed service station) within Precinct 1 which would change the risk profile of the approved development and would result in the potential for increased contamination on land adjacent to State significant farmland, SEPP 14 wetlands and a number of endangered ecological communities. As such, the introduction of a service station would be inconsistent with the requirements of Part 6, clause 8 of Schedule 3 of State Environmental Planning Policy (Major Developments) 2005 and the aims and objectives of State Environmental Planning Policy No. 14 – Coastal Wetlands."

Appendix R of the Modification Application Report comprises a Multi Level Risk Assessment (MLRA) under the provisions of State Environmental Planning Policy No. 33. The Assessment includes the following conclusion:

"CONCLUSION:

Plotting the frequency against consequence, it can be clearly seen that the societal risk is negligible. Therefore, only a level one qualitative Risk Analysis is required.

This analysis is referred to in Applying SEPP 33 as a Preliminary Hazard Analysis (PHA), which has been included as Appendix C.

All equipment must be installed to manufacturer's recommendations and must comply with all the relevant standards listed within.

Specific safety features of the site have been included in the PHA, including all monitoring procedures."

The proposed underground fuel tanks will be located on the northern part of the site adjacent to the proposed bowzers. The land to the north of the site generally rises to approximately RL 10m AHD and therefore the potential for any groundwater contamination to migrate to the north or surface runoff to flow to the north is minimal.

Cudgen Creek and the mapped State Environmental Planning Policy No. 14 Wetland are located approximately 150m and 70m respectively from the fuelling areas and therefore appropriate buffers are provided.

In considering the potential contamination impacts of underground fuel tanks and fuel spills, it should be noted that a rural supplies business will also involve the storage and handling of potentially contaminating products including fertilizer, pesticides and herbicides. Contemporary fuel tanks, monitoring of fuel leaks and emergency measures to deal with fuel spills significantly reduce potential impacts on adjoining land and groundwater.

Rather than refuse the application on the ground that the service station has the potential to increase contamination in adjoining land, the Department is invited to impose a condition requiring the submission of an Environmental Management Plan (to be approved by the Department prior to the issue of a Construction Certificate) incorporating appropriate arrangements for monitoring groundwater, surface water and soils on the subject land and adjoining land, together with appropriate management measures to deal with any contamination issues.

In relation to the Department's position that the introduction of a service station would be inconsistent with Clause 8 of the Major Development SEPP, see comments above in relation to Reason 1. We reiterate that potential impacts are mitigated by the design and siting of the fuel tanks and fuelling areas and can be further addressed by appropriate monitoring. In addition, the DPI has not objected to the proposal.

In summary, we submit that the second reason for refusal is unreasonable and unsubstantiated.

Reason 3 – Bulk, Scale and Rural Character Impacts

"The modification request would increase the bulk and scale of the approved project in a manner that is incompatible with the rural character of Tweed Coast Road and is inconsistent with the strategic objectives of the Tweed Development Control Plan 2008 which applies to the land along Tweed Coast Road immediately north, south and west of Precinct 1."

We note that this issue was dealt with in detail in our letter to the Department dated 3 December 2015 in response to Tweed Shire Council's submission of 20 November 2015.

For completeness, relevant extracts from our response are reproduced as follows:

"• Tweed DCP Section B9

Historically, Council has attempted to retain the existing vegetated setting along Tweed Coast Road, with the Casuarina and Salt developments originally being shielded from Tweed Coast Road with significant vegetation where possible.

This position strategically emanated from Tweed Shire 2000+ Strategic Plan which stated that Greenbelts will be provided by conserving open space between South Kingscliff and Bogangar and maintaining agricultural zones over land between Cudgen and Kingscliff and between Kingscliff and Kings Forest/Kings Beach (Policy and Action 117)

Tweed DCP Section B9 endorsed this Policy and Action by encouraging the establishment and management of green belts to identify and contain urban areas.

The DCP states:

B9.7.9 Protected Green Belt

The character of the Tweed Coast includes urban areas surrounded by open countryside. There are no continuous stretches of significant urban areas. This character will be continued with future urban release areas with each one being separated from other urban areas. It is essential that this character be retained.

To achieve this the Strategy addresses two inter-related issues

- o the identification of the land to be set aside as green belt, and*
- o the uses such land may be put to.*

B9 - Map 2 indicates that the land currently separating urban areas includes a wide range of landscapes, environments and zones, but all of which collectively add up to a significant asset which separates each of the District settlements and contributes to their individual character. Much of this land is already set aside for special attention - flood liable land, prime agricultural land, habitat etc. What is required is a framework to ensure that it collectively fulfils the function as a green belt.

The protected green belt incorporates land zoned 'Open Space', 'Environmental Protection' and 'National Parks and Nature Reserves' under Tweed LEP 2000. This includes the entire coastal foreshore of the district, the majority of the Cudgen Creek riparian zone and extensive wetlands and areas of native forest.

The green belt maintains the natural character of the coastline and provides physical and visual separation between towns. It provides for significant recreational opportunities for residents and tourists alike and ensures public access to the entire coastal foreshore. The green belt also has an important biological function by protecting significant coastal wetlands and forests and significant parts of the catchment area of Cudgen Creek and Cudgen Lake.

The integrity of the Protected Green Belt will be maintained by such measures as:

- o Ensuring infrastructure for adjoining urban areas is only located there if there are no other suitable locations;*
- o Protecting its visual characteristics which help to define the character of urban areas;*
- o Encouraging appropriate land uses.*

The recommended Basis for Draft Tweed Coast Structure Plan includes Clause B9.7.9 Protected Green Belt. It emphasises that the Green Belt has essentially been defined by the environmental values and resources of the area: significant vegetation, wetlands and prime farmland. The significance of the use of the green belt is that it is not an independent policy layer as such but a concept which brings the protection of the environmental resources together under the one collective banner to ensure the containment and separation of coastal communities, thereby assisting in the definition of their individual character. Its integrity is to be maintained by a number of measures set out in Section 9.3 of the Discussion Paper.

It is recommended that these elements of Section B9 be addressed in more detail in the assessment of the current application.

An extract from Map 2 is as follows which shows the intended green belt along Tweed Coast Road:" (Map not reproduced)

Response:

The Project Approval and any modification of it continues to be governed by the terms of Part 3A of the Environmental Planning and Assessment Act 1979 (the Act), as preserved by Clause 3(1) of Schedule 6A of the Act.

As a result, the Minister's delegate is not bound by any Development Control Plan: *Moorebank Recyclers Pty Ltd v Liverpool City Council (No 2) [2013] NSWLEC 93 [114]*.

The paramount land use planning document for the site is the Concept Plan Approval. The designation of the site as 'employment land' is clearly the key consideration and any contrary provisions in the Development Control Plan should not be given any weight.

As the Land and Environment Court said in a Part 3A case where a similar issues was argued: 'Put bluntly, the horse has bolted. ... [T]he proper time for [such] broad consideration ... was when the (then) Minister approved the broad concept plan for development ...': *Lend Lease Communities (Australia) Limited v Minister for Planning and Infrastructure, Shellharbour City Council and Wollongong City Council [2013] NSWLEC 1153 [66]-[67]*

However, even if there were no Concept Plan Approval in place, the provisions of the 'green belt' provisions of the DCP would have no effect in any event.

This is because the land is zoned (2)(c) Urban Expansion under the SEPP (Major Development) 2005. Any 'green belt' designation is inconsistent with this zoning. Section 74C(5)(b) of the Act says that any provision of a Development Control Plan that is inconsistent or incompatible with a provision of an Environmental Planning Instrument has no effect.

In addition to the above, we note that the report to Council's Planning Committee Meeting on 5 November 2015, at Item a10, in relation to the Kings Forest Concept Plan 06_0318 MOD 5 to facilitate approval of food and drink premises in Precinct 1, contains a detailed assessment of B9.7.9 Protected Green Belt and concludes that:

"An extract from Map 2 is as follows which shows the intended green belt along Tweed Coast Road:



The green corridor along Tweed Coast Road has been interrupted with the State Government Approval for the Casuarina Town Centre which incorporated a new Coles Development on the corner of Tweed Coast Road and the newly erected traffic lights at Grand Parade as established vegetated that had shielded the development from Tweed Coast Road has now been removed.

Furthermore, the rezoning of Kings Forest under the Major Project SEPP 2005 authorised that part of Kings Forest on the eastern side of Tweed Coast Road to be used for development purposes when the earlier Tweed DCP Section B9 indicated a preference for this part of Kings Forest to be environmentally protected.

Given this re-zoning and the Department of Planning's ultimate approval of the Kings Forest Concept Plan, The Kings Forest Development Code and the Kings Forest Project Application which have all allowed development (specifically a rural supplies building) on the eastern side of Tweed Coast Road, no objection is raised to the definition of food and drink premises being incorporated into the land use matrix table for the employment land areas.

Any possible merit issues associated with changing the approved rural supplies building into another land use (possibly service station with food outlets) would be assessed on its merits as another matter, as the Modification currently before the Council is a strategic exercise to change the adopted Kings Forest Development Code to allow a new use to be permissible."

We further note that Council Officers recommended that:

"Council raises no objections to MOD 5 to the Kings Forest Concept Plan (Council Reference GT1/51 Department's Reference MP06/0318 MOD 5) to enable food and drink premises to be considered on merit as permissible land uses within the "employment land" areas of Kings Forest."

The recommendation was adopted by Council (Minute No. 589).

In light of the Assessment, Recommendation and Council Decision in relation to the Concept Plan MOD 5, it is inappropriate for Council Officers to be again raising the "Protected Green Belt" issue in respect of Major Project Application No. 08_0194 (MOD 3) for the very same reasons that they were dismissed in respect of the Concept Plan MOD 5. That is to say, the 2006 rezoning of the Kings Forest site rezoned that part of Precinct 1 on which the service station and food and drink premises are proposed to 2(c) Urban Expansion.

A Concept Plan has been approved over the site which designates the site as "employment land". A Development Code has been prepared and approved pursuant to the Concept Plan which envisages a range of employment generating uses for Precinct 1.

Major Project Approval No. 08_0194 has been issued by the Department of Planning and Environment for a "rural supplies" development on the subject land with essentially the same site footprint as is now proposed for the service station and food and drink premises. Clearly, previous zoning decisions and Project Approvals have given no weight to the green belt concept and clearly it cannot now be implemented."

In summary, we submit that the strategic objectives of TDCP2008, Section B9 are irrelevant because they are inconsistent with the 2(c) Urban Expansion zoning applicable to Precinct 1 and the Concept Plan, which designates Precinct 1 as employment land.

Clearly, the strategic decision to change the rural character of the area to an urban character was taken in 2006 when the 2(c) Urban Expansion zone was introduced and reinforced in 2010 when the Concept Plan was approved, which designated Precinct 1 as employment land.

If the Department has valid concerns in relation to the bulk and scale of the proposed development, these concerns can be addressed by appropriate conditions or minor amendments to the proposal plans.

In the circumstances, we submit that Reason 3 is neither reasonable nor substantiated.

Reason 4 – The Public Interest

"The combined water, air quality, contamination, hazards, traffic and amenity impacts of the proposed modification would generate more than limited environmental impacts in comparison to the approved project that are not in the public interest."

In effect, the fourth ground for refusal assumes that the perceived cumulative environmental impacts are more than limited and those impacts are not in the public interest. As indicated above in relation to Reasons 1 to 3, the perceived environmental impacts are overstated and can be mitigated by appropriate approval conditions or minor amendments to the development proposal.

We submit that the public interest would be better served by approving the Modification Application subject to minor amendments to the development proposal and appropriate conditions, as this would be consistent with the key public policy documents, being the 2(c) Urban Expansion zoning and the approved Concept Plan, which expressly authorises a service station and food and drink premises on the employment land within Precinct 1.

CONCLUSION

Having regard to the history of this matter and the above responses to the proposed reasons for refusal, we request the Department to approve the Modification Application subject to appropriate conditions to address the relevant issues identified by the Department.

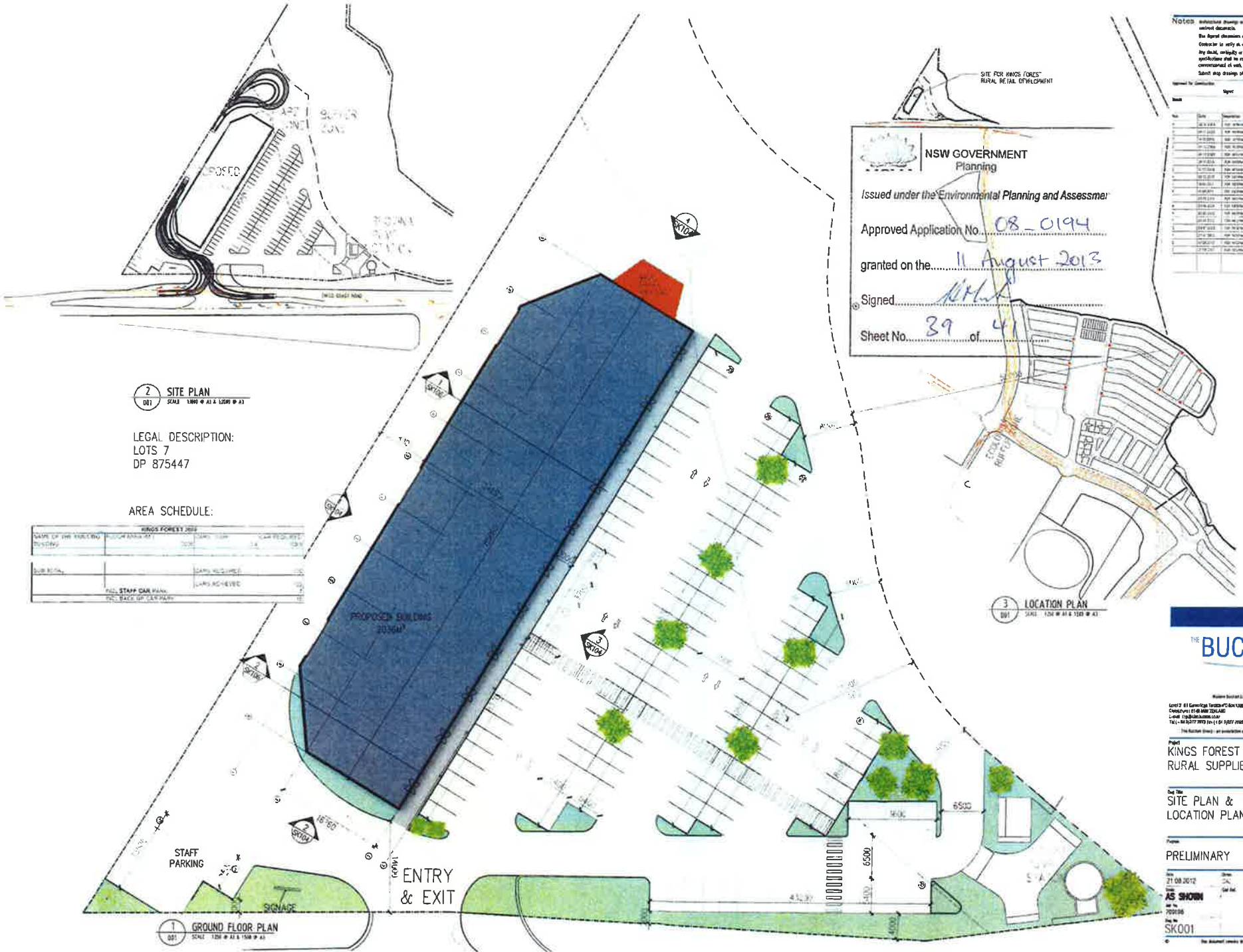
Please do not hesitate to contact Darryl Anderson should you require any further information in relation to this matter.

Yours faithfully
DAC Planning Pty Ltd



Darryl Anderson
Director

Encl.



Notes

- 1. Refer to site plan for site location and site boundary.
- 2. Refer to site plan for site location and site boundary.
- 3. Refer to site plan for site location and site boundary.
- 4. Refer to site plan for site location and site boundary.

2 SITE PLAN
SCALE: 1:500 @ A1 & 1:500 @ A1

LEGAL DESCRIPTION:
LOTS 7
DP 875447

AREA SCHEDULE:

DESCRIPTION	AREA (SQ M)	REMARKS
PROPOSED BUILDING	3036	
STAFF PARKING		
STAFF CAR PARK		

1 GROUND FLOOR PLAN
SCALE: 1:200 @ A1 & 1:500 @ A1

3 LOCATION PLAN
SCALE: 1:200 @ A1 & 1:500 @ A1

NSW GOVERNMENT Planning

Issued under the Environmental Planning and Assessment Act 1979

Approved Application No. 08-0194

granted on the 11 August 2013

Signed: [Signature]

Sheet No. 39 of 41

No.	Date	Description	Rev.
1	11/08/2013	Issue for public comment	1
2	15/08/2013	Final approval	1

THE BUCHAN GROUP

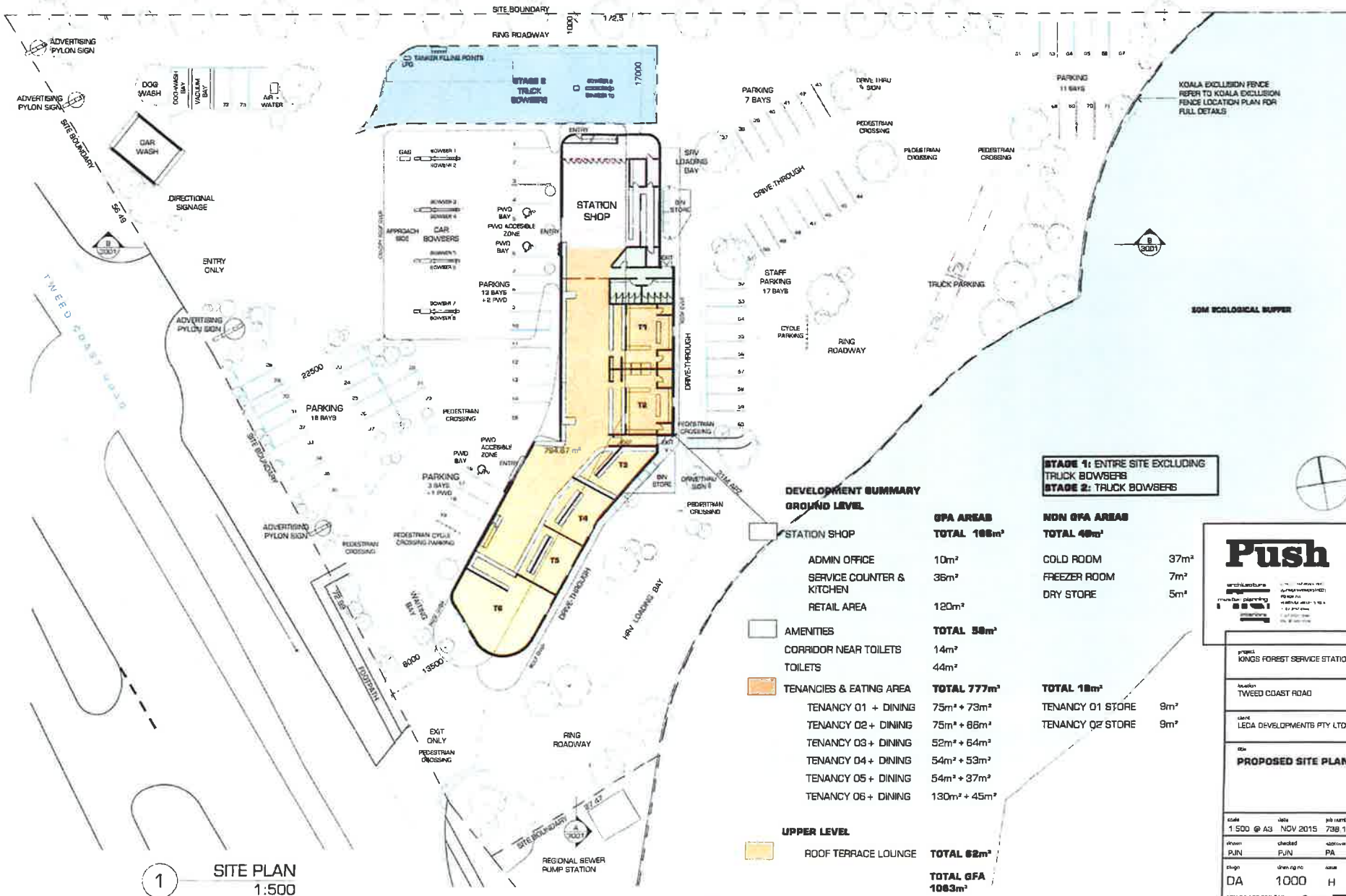
Walter Buchan Ltd & Associates (Pty) Ltd
 1/100 Myrtle Street, Rydalmere NSW 2114
 Phone: 02 9817 7777 Fax: 02 9817 7788 Email: info@wbgroup.com.au

Project: KINGS FOREST RURAL SUPPLIES DEVELOPMENT

Site: SITE PLAN & LOCATION PLAN

PRELIMINARY

Drawn by: AS SHOWN
 Checked by: [Signature]
 Date: 21/08/2012
 Scale: AS SHOWN
 Project No: SK001



**DEVELOPMENT SUMMARY
GROUND LEVEL**

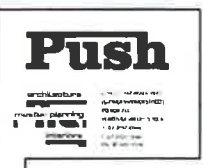
STATION SHOP	10m ²
ADMIN OFFICE	36m ²
SERVICE COUNTER & KITCHEN	120m ²
AMENITIES	TOTAL 58m²
CORRIDOR NEAR TOILETS	14m ²
TOILETS	44m ²
TENANCIES & EATING AREA	TOTAL 777m²
TENANCY 01 + DINING	75m ² + 73m ²
TENANCY 02 + DINING	75m ² + 68m ²
TENANCY 03 + DINING	52m ² + 64m ²
TENANCY 04 + DINING	54m ² + 53m ²
TENANCY 05 + DINING	54m ² + 37m ²
TENANCY 06 + DINING	130m ² + 45m ²

UPPER LEVEL

ROOF TERRACE LOUNGE	TOTAL 62m²
TOTAL GFA	1063m²

**STAGE 1: ENTIRE SITE EXCLUDING
TRUCK BOWBERS
STAGE 2: TRUCK BOWBERS**

NON GFA AREAS TOTAL 400m²	
COLD ROOM	37m ²
FREEZER ROOM	7m ²
DRY STORE	5m ²
TOTAL 18m²	
TENANCY 01 STORE	9m ²
TENANCY 02 STORE	9m ²



project KINGS FOREST SERVICE STATION		
location TWEED COAST ROAD		
client LEDA DEVELOPMENTS PTY LTD		
title PROPOSED SITE PLAN		
scale 1:500 @ A3	date NOV 2015	job number 789 12
drawn PJN	checked PJN	approved PA
stage DA	drawn by no 1000	issue H
ABN 69 109 754 210		

1 SITE PLAN
1:500