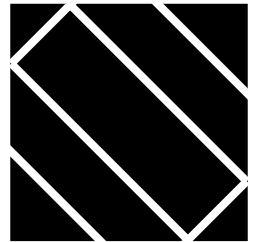


DAC PLANNING PTY LTD  
Suite 7, Corporate House  
8 Corporation Circuit  
Tweed Heads South NSW 2486  
P: 07 5523 3611  
F: 07 5523 3612  
E: [admin@dacplanning.com.au](mailto:admin@dacplanning.com.au)  
W: [www.dacplanning.com.au](http://www.dacplanning.com.au)



## + S75W MODIFICATION OF MAJOR PROJECT APPROVAL NO. 08\_0194 (MOD 4)

KINGS FOREST STAGE 1 – PROPOSED RESIDENTIAL SUBDIVISION

At Kings Forest, Kingscliff

• Prepared For: Project 28 Pty Ltd | • Prepared by: DAC Planning Pty Ltd | • March 2017 (Revised 21 June 2017) |

## TABLE OF CONTENTS

---

1.0	INTRODUCTION AND BACKGROUND	3
1.1	Summary of Modification Application	3
2.0	MAJOR PROJECT APPROVAL NO. 08_0194	5
3.0	CONSULTATIONS	6
4.0	ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AND REGULATIONS	6
5.0	PROPOSED MODIFICATIONS	6
5.1	Major Project Approval No. 08_0194 Proposed Modifications	7
6.0	ENVIRONMENTAL ASSESSMENT	23
7.0	CONCLUSION	24

### ANNEXURES

ANNEXURE A	Consolidated Major Project Approval No. 08_0194, Incorporating Modifications 1, 2 & 3
ANNEXURE B	Consolidated Concept Plan Approval No. 06_0318 Incorporating Modifications 1 to 5
ANNEXURE C	Commonwealth EPBC Act Approval No. 2012/6328 Issued on 21 May 2015
ANNEXURE D	Revised Final Response Report Relating to Matters of NES (Wallum Sedge Frog and Koala) – JWA Pty Ltd, March 2015
ANNEXURE E	Kings Forest Stage 1 MP08_0194 (MOD 4) Compliance Table, Version 15, 29 May 2017
ANNEXURE F	Revised Statement of Commitments MP08_0194, March 2017
ANNEXURE G	Revised Koala Plan of Management, Issue 9 – JWA Pty Ltd, 19 May 2017
ANNEXURE H	Figures 1, 1A, 1B, 1C, 1D, 1E, 1F & 3, 13 March 2017 and Figures 2,& 4, 3 March 2017 – JWA Pty Ltd

---

### DAC Planning Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

---

## MODIFICATION OF MAJOR PROJECT APPROVAL NO. 08\_0194 (MOD 4)

### PROPOSED RESIDENTIAL SUBDIVISION STAGE 1 AND BULK EARTHWORKS AT KINGS FOREST, TWEED COAST ROAD, KINGSCLIFF

---

#### 1.0 INTRODUCTION AND BACKGROUND

Project 28 Pty Ltd (the owner of the land) has commissioned DAC Planning Pty Ltd to prepare an application under Section 75W of the Environmental Planning and Assessment Act for modification of Major Project Approval No. 08\_0194 (MOD 4) which relates to a residential subdivision at Kings Forest.

#### 1.1 Summary of Modification Application

This Modification Application seeks to make amendments to the Approval to achieve consistency with the conditions and definitions attached to the EPBC Act Approval issued on 21 May 2015 (see **Annexure C**).

Following meetings with the Federal Department of Environment, DoPE and Tweed Shire Council, it was agreed that a revised Koala Plan of Management (KPOM) could be prepared addressing the EPBC Act and EP&A Act approval conditions, with a view to minimising the number of Concept Plan and Project Approval conditions requiring modification.

In summary, the modification request seeks approval to implement a revised Koala Plan of Management (KPOM). The revised KPOM seeks to amend the location and quantity of Koala offset habitat within development Precincts 1 to 14 by decreasing the total area of the Koala offset habitat from 71.12 ha of land (planted with 10,294 Koala food trees and 10,294 non-Koala food trees) to 56.71 ha of land (to be planted with 21,864 Koala food trees only). This includes planting of Koala food trees within a 50 metre wide portion of the east-west wildlife corridor required under Term B4 of the Kings Forest Concept Plan Approval.

The modification request also seeks approval to amend Conditions A13, 3, 45, 46 and 147 and Statement of Commitment 18 to:

- ♦ revise the 'commencement of works' definition to provide consistency with the approval issued under Sections 130 and 133 of the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Approval 2012/6328);
- ♦ remove the requirement to plant Koala food trees on a 27 ha parcel of land within the Cudgen Nature Reserve;
- ♦ revise the locations of the Koala fencing and fauna underpasses, and amend the timing for the construction of this infrastructure;
- ♦ remove the requirement to provide traffic calming devices to manage potential Koala movements across the site; and
- ♦ remove references to the KPOM dated August 2012 and insert references to the revised KPOM prepared by JWA Pty Ltd, Version 9, dated 19 May 2017.

On 17 March 2017, the original MP08\_0194 MOD4 was lodged with the Department. Following negotiations with the Commonwealth Department of Environment, minor amendments have been made to the revised KPOM by amending various sections relating to created Koala habitat. A copy of the further revised KPOM (JWA Pty Ltd, Issue 9, 19 May 2017) is attached at **Annexure G**.

---

**DAC Planning Pty Ltd**

A.C.N. 093 157 165

Town Planning & Development Consultants

---

In summary, the key changes occur in the following sections of the revised KPOM:

- Section 8.5.2 – Proposed Offset Strategy
- Section 8.9.5 – Correction of a typographical error
- Section 9.2 – Table 7
- Appendix 2 – Amendments to the Approvals Process

On 19 August 2010, the Minister for Planning issued Concept Plan Approval No. 06\_0318 in respect of Lots 76, 272, 323 and 326 in DP 755701, Lot 6 DP 875446, Lot 2 DP 819015, Lot 1 DP 705497, Lot 40 DP 7482, Lot 37A DP 13727, Lot 38A DP 13727, Lot 38B DP 13727, Lot 1 DP 129737, Lot 1 DP 781633 and Lot 7 DP 875447 for the carrying out of:

- ♦ 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.

On 22 December 2010 the Concept Plan Approval was modified (MOD 1).

On 11 August 2013, the Concept Plan Approval was further modified (MOD 2) in conjunction with approval of the Kings Forest Stage 1 Project Application No. 08\_0194.

On 16 May 2014, the Concept Plan Approval was further modified (MOD 3).

On 20 November 2014, the Concept Plan Approval was further modified (MOD 4).

On 10 November 2015, the Concept Plan was further modified (MOD 5).

A copy of the Consolidated Concept Plan Approval incorporating Modifications 1 to 5 is attached at **Annexure B**.

Section 75W Modification Applications were lodged with Department of Planning and Environment (DoPE) on 5 August 2015, following which the Department requested further information to justify the proposed modifications. Following meetings with the Federal Department of Environment, DoPE and Tweed Shire Council, it was agreed that a revised Koala Plan of Management (KPOM) could be prepared addressing the EPBC Act and EP&A Act approval conditions, with a view to minimising the number of Concept Plan and Project Approval conditions requiring modification.

The previous Section 75W Modification Applications (MP08\_0194 MOD 4 and CP 06\_0138 MOD 6) have been withdrawn.

The revised KPOM at **Annexure G** is not inconsistent with the terms of Concept Plan Approval 06\_0138 as modified.

---

## DAC Planning Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

---

The revised KPOM (JWA Pty Ltd, 19 May 2017, Issue 9) is inconsistent with Project Approval Conditions A13 (Management of Potential Council Land and Future OEH Land), 3 (Environmental Offset Areas), 45 (KPOM), 46 (Koala Infrastructure) and 147 (KPOM). This Modification Application seeks to modify those conditions.

### **Commonwealth EPBC Act Approval**

On 21 May 2015, the Federal Department of the Environment issued Approval No. 2012/6328 under the EPBC Act for the Kings Forest residential development. A copy of the Approval is attached at **Annexure C**.

## **2.0 MAJOR PROJECT APPROVAL NO. 08\_0194**

On 11 August 2013 the Planning and Assessment Commission, as delegate for the Minister for Planning, issued Project Approval No. 08\_0194 in respect of Lots 76, 272, 323 and 326 DP 755701; Lot 6 DP 875446; Lot 2 DP 819015; Lot 1 DP706497; Lot 40 DP 7482; Lot 38A DP 13727; Lot 38B DP 13727; Lot 1 DP 129737; Lot 1 DP 781633; Lot 7 DP 875447 and Lot 37A DP 13727 for Kings Forest Stage 1 comprising the following key project elements:

*"Kings Forest residential subdivision Stage 1 bulk earthworks, road works and subdivision of Precinct 4, including:*

- ♦ *Subdivision of the site into 10 development lots in four stages;*
- ♦ *Bulk earthworks across the site;*
- ♦ *Road works 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 to the western site precinct; and*
  - *Construction of 2 roads providing access to the southern site precincts*
- ♦ *Plan of Development for Precinct 5;*
- ♦ *Development of 2036m<sup>2</sup> of floor space for a rural supplies building 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:*
  - *1 townhouse lot (7860m<sup>2</sup>);*
  - *37 terrace house lots (minimum lot size 150m<sup>2</sup>)*
  - *25 duplexes (minimum lot size 450m<sup>2</sup>)*
  - *192 zero lot dwellings (minimum lot size 240m<sup>2</sup>)*
  - *121 traditional detached dwellings (minimum lot size 400m<sup>2</sup>)"*

On 16 May 2014, the Project Approval was modified (MOD 1).

On 20 November 2014, the Project Approval was further modified (MOD 2).

On 20 February 2017, the Project Approval was further modified (MOD 3, Precinct 1 – Land and Environment Court).

A copy of the Consolidated Project Approval incorporating Modifications 1, 2 and 3 is attached at **Annexure A**.

---

### **DAC Planning Pty Ltd**

A.C.N. 093 157 165

Town Planning & Development Consultants

---

### 3.0 CONSULTATIONS

See Section 1.0 regarding consultations.

### 4.0 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AND REGULATIONS

Section 75W of the Act facilitates the lodgement and determination of an application to modify a Part 3A approval. Section 75W is in the following terms:

**"Modification of Minister's approval**

**75W**

(1) In this section:

**Minister's approval** means an approval to carry out a project under this Part, and includes an approval of a concept plan.

**Modification of approval** means changing the terms of a Minister's approval, including:

- (a) revoking or varying a condition of the approval or imposing an additional condition of the approval, and
  - (b) changing the terms of any determination made by the Minister under Division 3 in connection with the approval.
- (2) The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.
- (3) The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.
- (4) The Minister may modify the approval (with or without conditions) or disapprove of the modification.
- (5) The proponent of a project to which Section 75K applies who is dissatisfied with the determination of a request under this section with respect to the project (or with the failure of the Minister to determine the request with 40 days after it is made) may, within the time prescribed by the regulations, appeal to the Court. The Court may determine any such appeal.
- (6) Subsection (5) does not apply to a request to modify:  
(a) an approval granted by or as directed by the Court on appeal, or  
(b) a determination made by the Minister under Division 3 in connection with the approval of a concept plan.
- (7) This section does not limit the circumstances in which the Minister may modify a determination made by the Minister under Division 3 in connection with the approval of a concept plan."

Currently there are no regulations of relevance to a Modification Application.

### 5.0 PROPOSED MODIFICATIONS

On 21 May 2015, the Federal Department of Environment issued Approval No. 2012/6328 under the Commonwealth Environmental Protection and Biodiversity Conservation Act (EPBC Act) for the Kings Forest residential development at Kingscliff NSW. The approval applies to the whole of Kings Forest. A copy of the approval is attached at **Annexure C**.

---

#### DAC Planning Pty Ltd

A.C.N. 093 157 165

Town Planning & Development Consultants

---

The approval was informed by the revised Final Response Report Relating to Matters of NES (Wallum Sedge Frog and Koala) prepared by JWA Pty Ltd, Ecological Consultants dated March 2015. A copy of that report is attached at **Annexure D**.

The Compliance Table attached at **Annexure E** identifies relevant Major Project Approval conditions which are inconsistent with the revised KPOM and which will therefore require modification.

This application seeks to modify Conditions A13, 3, 45, 46 and 147.

Consequential amendments to the Statements of Commitments (October 2012) are required as indicated in the Revised Statements of Commitments at **Annexure F**.

The proposed modifications are addressed in the following sections.

## **5.1 Major Project Approval No. 08\_0194 Proposed Modifications**

### **Condition A13 – Management and Maintenance of Environmental Lands**

#### **Existing condition:**

*“A13. The proponent is responsible for the management of all Potential Council Land and Future OEH Land for conservation purposes and the implementation of all establishment period and maintenance period works specified in all Environmental Management Plans from the date of the commencement of the project, or at another time directed by the Secretary, until such time that an agreement is reached with OEH and /or Tweed Shire Council regarding the dedication of that land.*

*Note: For the purpose of this condition, commencement is taken to mean any physical works including clearing vegetation, the use of heavy duty equipment for the purpose of breaking ground for bulk earthworks, or infrastructure for the proposed project.”*

#### **Reason for modification:**

The definition of commencement in the note to condition A13 is inconsistent with the definition of commencement of construction in the EPBC Act Approval which is as follows:

*“**Commencement of construction** means any preparatory works, excluding **preliminary works**, required to be undertaken including clearing vegetation, the erection of any onsite temporary structures and the use of heavy duty equipment for the purpose of breaking the ground for **bulk earthworks**, buildings or infrastructure for the proposed action.”*

The definition of preliminary works in the EPBC Approval is in the following terms:

#### *“**Preliminary Works include:***

- a) Minor physical disturbance necessary to undertake pre-clearance surveys, to establish monitoring programs, for geotechnical investigations or associated with mobilisation of plant, equipment, materials, machinery or personnel;*
- b) Surveying or the construction of boreholes;*
- c) Works associated with maintenance of the subject site including chopper rolling and weed management;*
- d) Works necessary for rehabilitation including construction of frog ponds, installation of monitoring devices and necessary access tracks; and*

---

## **DAC Planning Pty Ltd**

A.C.N. 093 157 165

Town Planning & Development Consultants

- 
- e) *Other activities that are necessary for commencement that are associated with mobilisation of plant and equipment materials machinery and personnel prior to start of development only if such activities will have no adverse impact on Matters of National Environmental Significance only if the proponent has notified the Department in writing before an activity is undertaken."*

It is proposed to address this inconsistency by deleting the current Note and inserting the EPBC Act definition because this will enable preliminary works such as habitat creation, offset areas, monitoring programs, surveys, etc. to be undertaken without triggering the obligation to commence management of all potential Council land and future OEH land. Management of this land cannot be undertaken until the suite of management plans are amended, and those amendments are not required until prior to the issue of a construction certificate. A construction certificate is not required for the preliminary works.

**We have reviewed previous Director General's/Secretary's Environmental Assessment Reports (DGEAR/SEAR) in relation to Condition A13 and relevant extracts are reproduced as follows:**

DGEAR CP06\_0318, May 2010

There is nothing specific in this Report relating to this issue.

DGEAR MP08\_0194 & CP06\_0318 MOD 2, May 2013

There is nothing specific in this Report relating to this issue.

PAC Report MP08\_0194 & CP06\_0318 MOD 2, 11 August 2013

There is nothing specific in this Report relating to this issue.

SEAR MP08\_0194 MOD 2 & CP06\_0318 MOD 4, August 2014

The note to Condition A13 was requested by the proponent as part of MOD 2. It was supported by the Department and the PAC (report 20 November 2014), with minor amendments.

The proposed amended definitions intended to achieve consistency with the EPBC Act Approval definition by inserting that definition instead of the current note.

PAC Report MP08\_0194 MOD 2 & CP06\_0318 MOD 4, 20 November 2014

See comments above.

For the reasons described above the Department is requested to amend the note to Condition A13 as follows:

**Note: For the purposes of this Condition, "commencement of construction" means:**

**Commencement of construction means any preparatory works, excluding preliminary works, required to be undertaken including clearing vegetation, the erection of any onsite temporary structures and the use of heavy duty equipment for the purpose of breaking the ground for bulk earthworks, buildings or infrastructure for the proposed action.**

**The definition of preliminary works in the EPBC Approval is in the following terms:**

---

**DAC Planning Pty Ltd**

A.C.N. 093 157 165

Town Planning & Development Consultants

**Preliminary Works include:**

- a) Minor physical disturbance necessary to undertake pre-clearance surveys, to establish monitoring programs, for geotechnical investigations or associated with mobilisation of plant, equipment, materials, machinery or personnel;
- b) Surveying or the construction of boreholes;
- c) Works associated with maintenance of the subject site including chopper rolling and weed management;
- d) Works necessary for rehabilitation including construction of frog ponds, installation of monitoring devices and necessary access tracks; and
- e) Other activities that are necessary for commencement that are associated with mobilisation of plant and equipment materials machinery and personnel prior to start of development only if such activities will have no adverse impact on Matters of National Environmental Significance only if the proponent has notified the Department in writing before an activity is undertaken.

**Condition 3 –Environmental Offset Areas**

**Existing Condition:**

***“Environmental Offset Areas***

3. *Prior to commencing any Bulk Earthworks in a Precinct, or as otherwise agreed between the Proponent and the Secretary, the Proponent shall:*
  - a) *engage a registered surveyor to prepare survey plan(s) and permanently mark the boundaries of the:*
    - i) *the contiguous area of Potential Council Land; and*
    - ii) *the contiguous area of Future OEH Land immediately adjacent to the Precinct (unless the relevant contiguous area has already been marked due to the earlier commencement of Bulk Earthworks in another Precinct). A staging plan for the survey works is to be submitted to the Department prior to the commencement of the project.*
  - b) *where relevant, submit amended plans of proposed subdivision to the Secretary for approval that show the relevant contiguous Potential Council Land and the relevant contiguous Future OEH Land 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;*
  - d) *submit for the Secretary’s approval, a form of dealing(s) to be registered on the title to the Potential Council Land and the Future OEH Land that must:*
    - i. *bind all future landowners;*
    - ii. *provide for the management of the Potential Council Land and the Future OEH Land for conservation purposes including the implementation of relevant Environmental Management Plans, in perpetuity;*
    - iii. *permit access to Potential Council Land and the Future OEH Land 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 or the Future OEH Land are transferred to a public authority.*

---

**DAC Planning Pty Ltd**

A.C.N. 093 157 165

Town Planning & Development Consultants

- 
- e) Where the Potential Council Land or the Future OEH Land is not subject to any amended plans of subdivision, the Proponent must within 1 month of Secretary'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 or the Future OEH Land and provide to the Secretary evidence of such registration within 10 days of the dealing(s) being registered.
- f) Where Potential Council Land or the Future OEH land is subject to any amended plans of subdivision, the Proponent must within 3 months of the later of the Secretary's approval of the amended plans of subdivision under condition 3(b) or the Secretary's approval of dealing(s) referred to in condition 3(d), lodge for registration the dealing(s) on the relevant titles to the Potential Council Land or the Future OEH Land to the Director-General evidence of such registration within 10 days of the dealing(s) being registered.

Note: For the purpose of this condition, commencement is taken to mean any physical works including clearing vegetation, the use of heavy duty equipment for the purpose of breaking ground for bulk earthworks, or infrastructure for the proposed project."

**It is proposed to modify Condition 3 for the following reasons:**

The definition of commencement in the note to Condition 3 is inconsistent with the definition of commencement of construction in the EPBC Act Approval which is as follows:

*"Commencement of construction means any preparatory works, excluding preliminary works, required to be undertaken including clearing vegetation, the erection of any onsite temporary structures and the use of heavy duty equipment for the purpose of breaking the ground for bulk earthworks, buildings or infrastructure for the proposed action."*

The definition of preliminary works in the EPBC Approval is in the following terms:

*"Preliminary Works include:*

- a) Minor physical disturbance necessary to undertake pre-clearance surveys, to establish monitoring programs, for geotechnical investigations or associated with mobilisation of plant, equipment, materials, machinery or personnel;
- b) Surveying or the construction of boreholes;
- c) Works associated with maintenance of the subject site including chopper rolling and weed management;
- d) Works necessary for rehabilitation including construction of frog ponds, installation of monitoring devices and necessary access tracks; and
- e) Other activities that are necessary for commencement that are associated with mobilisation of plant and equipment materials machinery and personnel prior to start of development only if such activities will have no adverse impact on Matters of National Environmental Significance only if the proponent has notified the Department in writing before an activity is undertaken."

It is proposed to address this inconsistency by deleting the current Note and inserting the EPBC Act definition, because this will enable preliminary works such as habitat creation, offset areas, monitoring programs, surveys, etc. to be undertaken without triggering the obligation to prepare the necessary survey plans and comply with Conditions 3(a) to 3(f).

Compliance with these requirements is onerous and is not necessary until bulk earthworks are commenced.

**We have reviewed previous Director General's/Secretary's Environmental Assessment Reports (DGEAR/SEAR) in relation to Condition 3 and relevant extracts are reproduced as follows:**

DGEAR CP06 0318, May 2010

There is nothing specific in this Report relating to this issue.

---

**DAC Planning Pty Ltd**

A.C.N. 093 157 165

Town Planning & Development Consultants

---

DGEAR MP08\_0194 & CP06\_0318 MOD 2, May 2013

There is nothing specific in this Report relating to this issue.

PAC Report MP08\_0194 & CP06\_0318 MOD 2, 11 August 2013

There is nothing specific in this Report relating to this issue.

SEAR MP08\_0194 MOD 2 & CP06\_0318 MOD 4, August 2014

See comments in relation to Condition A13.

PAC Report MP08\_0194 MOD 2 & CP06\_0318 MOD 4, 20 November 2014

See comments in relation to Condition A13.

For the reasons described above, the Department is requested to amend the Note to Condition 3 as follows:

**Note: For the purposes of this Condition, "commencement of construction" means:**

**Commencement of construction means any preparatory works, excluding preliminary works, required to be undertaken including clearing vegetation, the erection of any onsite temporary structures and the use of heavy duty equipment for the purpose of breaking the ground for bulk earthworks, buildings or infrastructure for the proposed action."**

**The definition of preliminary works in the EPBC Approval is in the following terms:**

**Preliminary Works include:**

- a) Minor physical disturbance necessary to undertake pre-clearance surveys, to establish monitoring programs, for geotechnical investigations or associated with mobilisation of plant, equipment, materials, machinery or personnel;
- b) Surveying or the construction of boreholes;
- c) Works associated with maintenance of the subject site including chopper rolling and weed management;
- d) Works necessary for rehabilitation including construction of frog ponds, installation of monitoring devices and necessary access tracks; and
  
- e) Other activities that are necessary for commencement that are associated with mobilisation of plant and equipment materials machinery and personnel prior to start of development only if such activities will have no adverse impact on Matters of National Environmental Significance only if the proponent has notified the Department in writing before an activity is undertaken.

#### **Condition 45 – Koala Plan of Management**

##### **Existing Condition:**

##### ***"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 nominated by OEH and identified in Map 1.(attached));*

---

### **DAC Planning Pty Ltd**

A.C.N. 093 157 165

Town Planning & Development Consultants

- 
- 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 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);
  - d. **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 Director-General 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."

**Reason for Modification:**

Condition 45. 1) a. is inconsistent with the revised KPOM. All offset plantings will occur on the Kings Forest site as shown in Figure 17 of the revised KPOM.

On 22 February 2017 the DoPE wrote to the proponent in relation to the Draft KPOM. A response was forwarded to the Department on 17 March 2017. For completeness, relevant extracts from the response letter are reproduced as follows. The Figures referred to are provided at **Annexure H**.

**"Potential additional Koala habitat**

JWA have now completed a complete review of the proposed Koala compensatory habitat areas on the Kings Forest site. These plans are **attached** as **FIGURE 1** and **FIGURES 1A to 1F**. These plans show that there is a total of 56.71 hectares available for Koala habitat planting and 18.67 hectares available for heath regeneration or planting. We have reviewed the plan **FIGURE 2** (Attachment 1 to the Departments letter)) from the Department's letter and agree with most of the areas identified in this plan. The six (6) areas with which we do not agree are shown in **FIGURE 3**. **FIGURE 3** also provides reasons as to why these areas can't be utilised for Koala habitat plantings.

**Offsets within existing habitat**

The Department has claimed that JWA mapping shows approximately 19.9 hectares of proposed Koala habitat and 7.2 hectares of proposed heathland within existing habitat. They note that they do not support offsets occurring within areas that are naturally regenerating. **FIGURES 1A to 1F** show the proposed Koala compensatory habitat areas. JWA consider that these areas are suitable for offset purposes.

**East-West Corridor**

The Department does not support the removal of a requirement for the "East-West" corridor (**FIGURE 4**). Project 28 intend to comply with the requirements of Concept Plan Condition B4. This condition requires that a fully revegetated corridor (minimum 50 metres wide) shall be provided between the existing central east-west wildlife corridor and the existing native vegetation separating Precinct 9 and 10 from Precinct 11 (**FIGURE 1F**)."

---

**DAC Planning Pty Ltd**

A.C.N. 093 157 165

Town Planning & Development Consultants

---

## OFFSETS

### *"27 hectare offset in Cudgen Nature Reserve*

*The Department notes that the Project Approval requires a 27 hectare off-site offset within the Cudgen Nature Reserve. This requirement would provide a total of nearly 100 hectares of Koala compensatory habitat. It should be noted that the proposed Kings Forest development will result in the loss of only 14.92 hectares of Koala habitat (1.24 hectares of which is Primary habitat). The Commonwealth Approval has required that Project 28 provide 43.45 hectares of compensatory habitat. The Department is requiring a compensatory habitat multiplier of nearly 7 times the loss whereas the Commonwealth required only a 3 times multiplier. It is considered that the provision of 43.45 hectares of compensatory habitat as per the Commonwealth Approval, plus an additional 13.26 hectares of compensatory habitat, more than adequately offsets the removal of the 14.92 ha of habitat."*

The requirement for 27 hectares of offset planting in the Cudgen Nature Reserve was requested by the Office of Environmental and Heritage (OEH) as a strategic approach.

The basis for this approach is documented in the Director General's Environmental Assessment Report, May 2013 at Pages 38 and 39 in the following terms:

*"OEH recommended a strategic approach be taken to the proposed planting of koala food trees on Kings Forest and upon lands proposed to be dedicated to OEH. Such strategic prioritisation includes looking to areas outside of the Kings Forest site that will not naturally regenerate and which will require resources not otherwise available to land managers. In particular, OEH recommends taking a tiered approach to koala habitat offsetting arrangements as follows:*

- planting of koala food trees in a 27ha area (ex-banana plantation land) within the Cudgen Nature Reserve to the south of Kings Forest which has been identified as being important to the Tweed koala population;*
- experimental planting of koala food trees in Site 4; and*
- managed koala food tree plantings in Sites 1 to 3."*

The fact that the 27 hectares "will not naturally regenerate and which will require resources not otherwise available to land managers" does not justify a condition requiring the proponent to plant Koala food trees on 27 hectares of Cudgen Nature Reserve as there is insufficient nexus between the requirement and the impact to be mitigated.

Having regard to the above and the information provided by JWA Ecological Consultants, it is considered that the requirements of Condition 45(1)(a) that an additional 27 hectares of land be restored, as nominated by OEH, in the Cudgen Nature Reserve is unreasonable and onerous, particularly in the context of the fact that the Federal Approval only requires 43.45 hectares and the amended Koala Management Plan will incorporate a total of 56.71 hectares of Koala habitat planting.

**We have reviewed previous Director General's/Secretary's Environmental Assessment Reports (DGEAR/SEAR) in relation to Condition 45 and relevant extracts are reproduced as follows:**

[DGEAR CP06\\_0318, May 2010](#)

There is nothing specific in this Report relating to this issue.

---

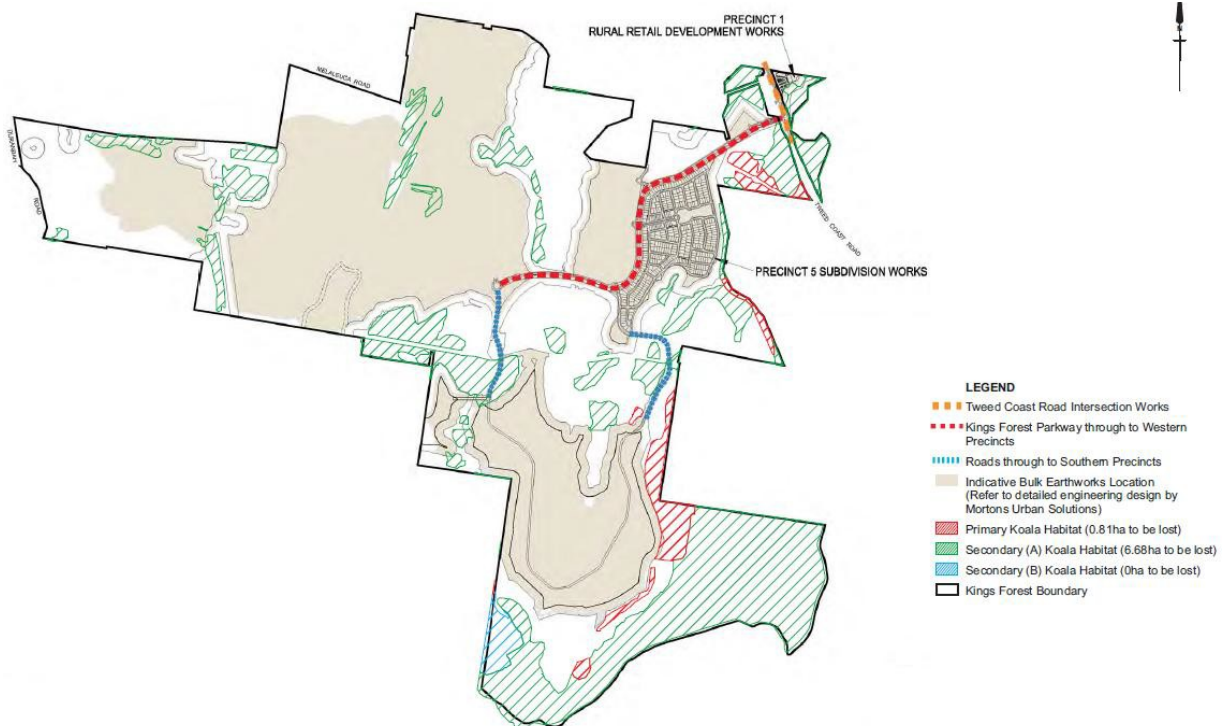
**DAC Planning Pty Ltd**

A.C.N. 093 157 165

Town Planning & Development Consultants

This Report contains the following comments:

“With respect to koalas, which are also listed as threatened on both NSW and Commonwealth legislation, the KPoM prepared for the site states that there will be minimal losses to koala habitat as only isolated occurrences of koala food trees will be removed. **Figure 21** illustrates the proposed extent of works with an overlay of existing “core koala habitat”. Specifically, the proposed development will result in the loss of 0.81ha of primary koala habitat and 6.68 ha of secondary (A) habitat (742 individual trees, including eighteen food trees). To mitigate against the loss of koala habitat, the proponent proposes to plant several thousand koala food trees. However, it is not clear how many trees will be planted or at what density. The KPoM states a figure of 7,875 trees while the Buffer Management Plans state a total of 10,294 trees. The proponent proposes the planting of koala food trees in various locations across the site. In total, 71.12ha at the Kings Forest site has been identified as suitable for planting koala food trees. The proponent contends that existing koala habitat and koala dispersal will be improved and new potential core habitat areas will be created.



**Figure 21: Loss of Koala habitat at Kings Forest (Source: KPoM, 2012)**

Approximately 45.83ha (64%) of the identified koala tree planting area will be protected within environmental protection zones with 17.43ha (25%) to be located within ecological buffers. The remaining 7.86ha (11%) will be located within the proposed golf course. The proponent plans to plant significant numbers of koala food trees in areas of heathland and areas proposed for the creation of habitat for acid frogs.

Of the 71.12ha of koala food tree planting offsets, approximately 65.27ha (92%) would be overlapping with other compensatory habitat (refer **Table 8**).

The entire proposed acid frog compensatory habitat is proposed to be created in the same areas as areas identified for heath revegetation and Koala food tree planting (Acid Frog Compensation Areas Nos. 5, 6, 7 and 8).

**DAC Planning Pty Ltd**

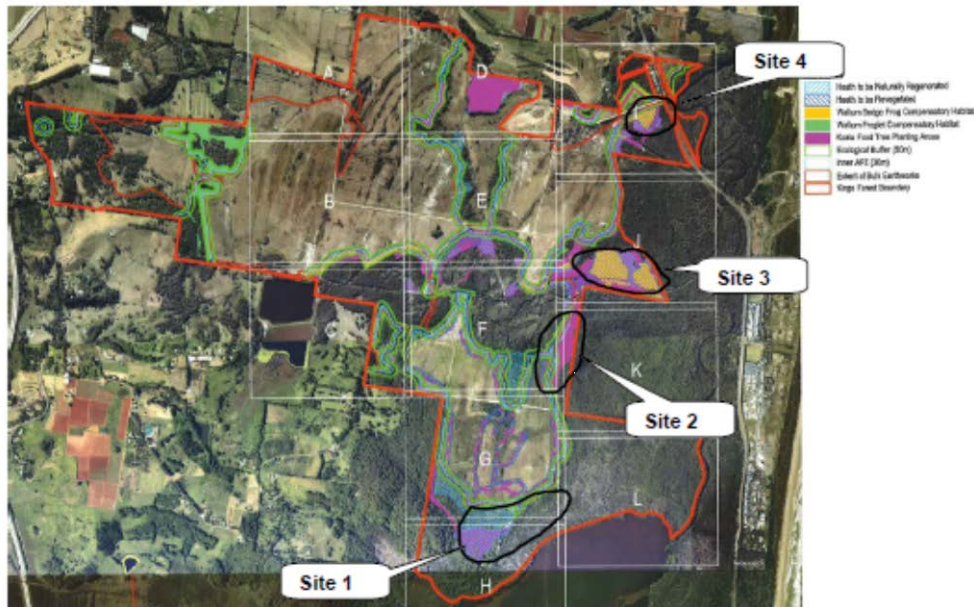
A.C.N. 093 157 165

Town Planning & Development Consultants

A summary of the proposed compensatory habitat areas is outlined below and represented visually in **Figure 22** below.

**Table 8: Summary of Proposed Compensatory Habitat Areas for Koala habitat**

Overlapping Areas	Area (ha)
Overlapping areas of Wallum Sedge Frog, Koala and Heath compensatory habitat	40.24
Areas designated for Koala compensatory habitat & Heath revegetation only	10.21
Areas designated for Koala compensatory habitat & Heath regeneration only	14.82
Areas designated for Koala Compensatory habitat only (no overlap)	6.19
Areas designated for Heath revegetation only (no overlap)	24.74
Areas designated for Heath regeneration only (no overlap)	21.69
<b>TOTAL</b>	<b>71.12</b>



**Figure 22: Proposed Compensatory Habitat Areas (Source: Precinct 1 & 5 Buffer Management Plan, 2012)**

In August 2012 OEH staff and the proponent inspected a reference site containing heath, koala food trees and naturally formed acid frog habitat and four other key sites proposed for overlapping compensatory habitat areas at Kings Forest. These compensation sites are shown in **Figure 22** above.

OEH considered that Sites 1-3 demonstrated strong natural regeneration (to varying degrees) sufficient to warrant no further active intervention other than invasive weed removal and ongoing management. Site 4, on the other hand, showed significantly less natural regeneration occurring and was more strongly affected by weed incursion than the other sites. Under these circumstances, OEH would be willing to allow the proponent to undertake its proposed acid frog habitat creation and koala food tree enhancement measures in this area.

---

OEH recommended a strategic approach be taken to the proposed planting of koala food trees on Kings Forest and upon lands proposed to be dedicated to OEH. Such strategic prioritisation includes looking to areas outside of the Kings Forest site that will not naturally regenerate and which will require resources not otherwise available to land managers. In particular, OEH recommends taking a tiered approach to koala habitat offsetting arrangements as follows:

- planting of koala food trees in a 27ha area (ex-banana plantation land) within the Cudgen Nature Reserve to the south of Kings Forest which has been identified as being important to the Tweed koala population;
- experimental planting of koala food trees in Site 4; and
- managed koala food tree plantings in Sites 1 to 3.

OEH has also recommended that wherever significant natural regeneration is occurring within the EPZ and/ or ecological buffer areas, this regeneration should be supported in preference to active revegetation or rehabilitation programs and this be incorporated as a guiding principle in the statement of commitments and relevant management plans.

### **Department's Consideration**

It is accepted that such overlapping habitat types comprising heath, koala food trees and naturally formed acid frog habitat occur on the site. This has been demonstrated. However, it is not the compatibility of such habitats that is of concern here. It is the significant areas of spatial overlap proposed to meet offsetting requirements and the required disturbance to areas that would naturally regenerate (with only basic weed control activities) that is the concern. The offsetting approach is not supported for the following reasons:

- management strategies for individual species or communities should avoid conflicts;
- planting thousands of koala food trees or digging holes and ground disturbance with machinery in good condition bushland or naturally regenerating bushland that only requires some weeding and not any planting may result in other unintended side effects, such as overshadowing, increased disease and pests and the like;
- heathland is not regarded as primary or secondary koala habitat, therefore it is not considered appropriate for plantings to occur in areas of naturally regenerating heath or areas proposed for heath revegetation;
- planting of koala food trees in acid frog habitat will create overshadowing, which is incompatible with acid frog optimal habitat, which is away from the tree canopy. Such plantings would only be appropriate around the margins of acid frog habitat and not to the extent proposed by the proponent;
- site inspections by OEH staff have reported strong evidence of vigorous regeneration of heath and koala food tree species in areas proposed for acid frog compensation;
- there are already numerous existing natural depressions in the ground in these areas that would provide a regime of ephemeral breeding and forage habitat for acid frogs; and
- OEH will ultimately be responsible for these lands in the future and does not wish to inherit responsibility for ensuring ongoing functioning of created 'melon holes' and newly established koala food trees.

The department supports OEH's suggestion for significant natural regeneration to be a guiding principle for the approach to habitat compensation within the KPoM and the Threatened Species Management Plans and also supports the tiered offsetting approach. However, in addition to offsite offsets, the department supports the planting of koala food trees on site in the new southern east-west corridor (see discussion in **Section 4.4**). Conditions of approval require the revision of all management plans to reflect this guiding principle and specifically require the KPoM to be revised to provide a revised offsetting strategy that takes the following tiered approach to offsets:

---

## **DAC Planning Pty Ltd**

A.C.N. 093 157 165

Town Planning & Development Consultants

- 
- offsite offsets in ex-banana plantation land within Cudgen Nature Reserve;
  - plantings within the new southern east-west wildlife corridor; and
  - managed plantings in other suitable areas within ecological buffers and environmental protection zoned land."

PAC Report MP08\_0194 & CP06\_0318 MOD 2, 11 August 2013

This Report contains the following comments:

**"Koala Habitat**

A number of community members raised concern at the public meeting about the loss of Koala food and habitat trees. Whilst it was noted the proponent proposes to plant Koala food trees, concern was raised regarding the time it would take for these trees to become established. The Commission shares the same concern and has therefore required that the KPom be revised within 6 months of this approval. The Commission has also required that details of the timing and staging of the plantings be provided and that planting of the Koala food trees should commence within 1 month of the revised KPom being approved.

The community also raised concern about the effectiveness of using cattle grids to stop dogs from entering protected Koala habitat areas. Cattle grids are primarily to act as a deterrent to Koalas entering the residential areas. The Commission considers that round pipe cattle grids could be used as a further deterrent."

SEAR MP08\_0194 MOD 2 & CP06\_0318 MOD 4, August 2014

This Report contains the following comments:

"The Proponent seeks to remove the requirement that the planning of Koala food trees in other suitable locations is to commence within one month of the revised Koala Plan of Management being approved and seeks to commence plantings in accordance with the Proposed Koala Compensatory Habitat Area Staging Plan.

The proposed modification request is as follows:

**Koala Plan of Management**

45. The Koala Plan of Management shall be ~~revised~~ **amended** as follows

- 1) A revised offset strategy for the loss of Koala food trees incorporating the following:
  - 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 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. The timing of plantings shall be in accordance with the approved revised Koala Plan of Management required by Condition 45(2).**

"The **Office of Environment & Heritage** made the following key comments and objections in relation to the definitions and proposed changes to condition 45:

- Condition 45 KPom: The OEH objects to the proposed modification. The OEH states that there is a biodiversity loss associated with the proposed modification due to the delay in the planting and establishment of koala food trees."

The Department's assessment and consideration of this issue is reproduced as follows:

**"5.3 Timing of Koala food tree plantings in other suitable locations (Condition 45 (c.))**

The Koala Plan of Management (KPom) was approved as part of the Concept Plan and subsequently revised in the Project Approval.

---

**DAC Planning Pty Ltd**

A.C.N. 093 157 165

Town Planning & Development Consultants

---

The KPoM details the principles for the management of Koalas on the Kings Forest site. It also identifies the potential threats to the Koala population from the Kings Forest site and includes a number of mitigation and management measures to ensure the exposure of these threats are minimised. One of the management approaches includes a Koala food tree planting program which aims at establishing suitable Koala habitat corridors to allow for the movement of the Koala population from the Kings Forest site to other areas.

A condition of the Project Approval requires that the KPoM be further revised to include details of the schedule for the planting of Koala food trees. Planting of Koala food trees is to occur in three areas, the offsite area nominated by OEH, the new east-west habitat corridor and 'other suitable locations' which include ecological buffers and environmental protection zoned land. The condition requires that the schedule for the planting in the offsite area and the new east-west habitat corridor be detailed in the revised KPoM and that the planting of Koala food trees in 'other suitable locations' is to commence within one month of the revised KPoM being approved.

The Proponent seeks to remove the requirement that the planting of Koala food trees in 'other suitable locations' is to commence within one month of the revised KPoM being approved and seeks to commence plantings at the time of commencement of bulk earthworks in each relevant stage. Both, the OEH, Council and the community objected to the proposed modification. The OEH considers that there would be a biodiversity loss associated with the proposed modification due to the delay in planting and establishment of Koala food trees.

#### **Department's Consideration**

The Department acknowledges that the local Koala population and timing required for Koala food trees to be established is a key concern to the community and government agencies. As identified in the Department's original assessment, the bulk earthworks will result in the loss of approximately 0.81 ha of primary Koala habitat and 6.68 ha of secondary habitat. The Department notes that the clearing/bulk earthworks will occur progressively over eight stages, and that the central east-west wildlife corridor would be maintained during this period to allow for Koala movement in the region. The Proponent has committed to planting several thousand Koala food trees across various locations throughout the site.

The Department notes that the Koala habitat loss will occur gradually as the various stages of the bulk earthworks commence. The Department considers it appropriate that the timing of the planting of Koala food trees in 'other suitable locations' should be linked to the Koala food tree planting schedule as required by the revised KPoM. For this reason, the Department considers that the planting of Koala food trees in 'other suitable locations' within one month of the revised KPoM being approved is not required. The revised KPoM is to be prepared in consultation with Council and submitted to the Secretary for approval. This would provide a consistent approach to the timing of the planting of Koala food trees by linking all planting areas to the schedule in the KPoM. This will ensure a coordinated planting approach across the offsite area, the new east-west habitat corridor and 'other suitable locations'.

The Department is satisfied that given that the bulk earth works will occur gradually and core Koala habitat will be maintained throughout the construction period, that the potential impacts to Koala habitat can be appropriately managed and mitigated through the implementation of the recommended conditions, including the schedule of tree plantings in the revised KPoM to be approved by the Secretary."

PAC Report MP08\_0194 MOD 2 & CP06\_0318 MOD 4, 20 November 2014

This Report contains the following comments:

---

### **DAC Planning Pty Ltd**

A.C.N. 093 157 165

Town Planning & Development Consultants

*"7.4 Koala Plan of Management (condition 45 of the Stage 1)*

*The Proponent seeks to change the timing of planting Koala food trees from one month of the revised KPoM being approved to the time of commencement of bulk earthworks in each relevant stage. Both Council and the community objected to the proposed modification. DP&E has recommended that the potential impacts to Koala habitat can be appropriately managed and mitigated through the implementation of the recommended conditions, including the schedule of tree planting in the revised KPoM to be approved by the Secretary and in general accordance with the plan titled 'Proposed Koala Compensatory Habitat Area Staging Plan, condition 45, Figure 1, JWA Pty Ltd, 29 April 2014'.*

*The Commission notes that the plan was revised following the public exhibition in Feb/March 2014 and has incorporated issues raised by the community and other stakeholders. The Commission concurs with the Department. The Commission has also made an amendment that requires amended KPoM to have regard to any future determination of the NSW Scientific Committee. On 17 October 2014, The Committee made a Preliminary Determination to support a proposal to list a population of the Koala in Tweed LGA as endangered population in Part 2 of the Threatened species Conservation Act 1995."*

In summary, the proposed modification is required to reflect the revised KPOM which has been prepared following lengthy consultations with Commonwealth, State and Local Agencies.

Having regard to the above the Department is requested to delete Condition 45 and insert a new Condition 45 as follows:

**Koala Plan of Management**

**45.**

- 1)a. All compensatory Koala habitat plantings shall be carried out in accordance with the Revised Koala Plan of Management dated 19 May 2017 (Issue 9).**
- 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 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);
- d. 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.

**Condition 46 – Koala Plan of Management**

**Existing Condition:**

***"Koala Infrastructure***

**46.**

- 1) *Any roads through the environmental areas of the site must include:*

**DAC Planning Pty Ltd**

A.C.N. 093 157 165

Town Planning & Development Consultants

- 
- a. *fencing on both sides of the road of a design that will prevent the crossing by dogs and koalas;*
  - b. *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.*
- 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."*

**Reason for Modification:**

This Condition is inconsistent with the revised KPOM in relation to the wording of 1a and 1b and timing of works in 1b and 2. The Condition is also inconsistent in relation to the use of the words "across road" in 1b. The reason for amending Condition 46(1)a. and b. is that the revised KPOM is based on the agreed approach which is to exclude Koalas from the urban areas and therefore fencing on both sides of the road is not required nor are fauna underpasses.

In relation to the timing changes proposed to Condition 46(1)(b), fauna underpasses cannot be constructed prior to commencement of bulk earthworks as they are an integral part of the road formation and must be constructed as part of the road construction.

In relation to the timing changes in Condition 46(2), it is proposed to bring forward the timing of completion of the fencing from the bulk earthworks stage to prior to any construction in each relevant Precinct. This will ensure that appropriate protection is provided to Koalas from the work site at the outset of construction.

**We have reviewed previous Director General's/Secretary's Environmental Assessment Reports (DGEAR/SEAR) in relation to Condition 46 and relevant extracts are reproduced as follows:**

DGEAR CP06\_0318, May 2010

There is nothing specific in this Report relating to this issue.

DGEAR MP08\_0194 & CP06\_0318 MOD 2, May 2013

This Report contains the following comments:

---

**DAC Planning Pty Ltd**

A.C.N. 093 157 165

Town Planning & Development Consultants

---

*"The department agrees with council that the reliance on monitoring and operating procedures to limit speed and possible interaction with fauna during bulk earthworks in the southern and western precincts is insufficient to ensure the protection of wildlife and allow safe fauna crossing. The department agrees with council that fencing should be constructed on both sides of the roads that traverse environmental areas and fauna underpasses installed at intervals sufficient to allow unimpeded movement by wildlife, including koalas, across roads. A condition of approval requires this fencing to be constructed prior to the commencement of bulk earthworks in the southern and/or western precincts. Details of the fencing and underpasses are to be submitted to the department for approval prior to the issue of a construction certificate for the relevant stages of bulk earthworks.*

*The department is therefore satisfied that the proposed cattle grids coupled with the existing legislated controls for the keeping of dogs, community education and the use of koala exclusion fencing surrounding the residential areas should be effective in separating dogs from koalas. The department also recommends that signage be placed strategically around the site, 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. This has been incorporated into the recommended conditions of approval.*

*Ultimately the key to success of the exclusion fencing is ensuring that the fence is maintained in perpetuity, including the removal of any vegetation overhanging the fence. While this has been included as an ongoing management strategy in the KPoM, the KPoM is lacking sufficient detail with regards to the ongoing management actions required. A condition of approval therefore requires the KPoM to be updated to include the details of management actions required for the longer term management of the fence, including timing and frequency of maintenance inspections."*

PAC Report MP08\_0194 & CP06\_0318 MOD 2, 11 August 2013

This Report contains the following comments:

***"Koala Habitat***

*A number of community members raised concern at the public meeting about the loss of Koala food and habitat trees. Whilst it was noted the proponent proposes to plant Koala food trees, concern was raised regarding the time it would take for these trees to become established. The Commission shares the same concern and has therefore required that the KPoM be revised within 6 months of this approval. The Commission has also required that details of the timing and staging of the plantings be provided and that planting of the Koala food trees should commence within 1 month of the revised KPoM being approved.*

*The community also raised concern about the effectiveness of using cattle grids to stop dogs from entering protected Koala habitat areas. Cattle grids are primarily to act as a deterrent to Koalas entering the residential areas. The Commission considers that round pipe cattle grids could be used as a further deterrent."*

SEAR MP08\_0194 MOD 2 & CP06\_0318 MOD 4, August 2014

There is nothing specific in this Report relating to this issue.

PAC Report MP08\_0194 MOD 2 & CP06\_0318 MOD 4, 20 November 2014

There is nothing specific in this Report relating to this issue.

---

**DAC Planning Pty Ltd**

A.C.N. 093 157 165

Town Planning & Development Consultants

---

In summary, the proposed modification is required to reflect the revised KPOM which has been prepared following lengthy consultations with Commonwealth, State and Local Agencies.

Having regard to the above the Department is requested to modify Condition 46 as follows:

**Koala Infrastructure**

46.

- 1) Any roads through the environmental areas of the site must include:
  - a. **Fencing to be erected so as to prevent Koalas from entering residential areas and roadways. These fences will also prevent dogs from entering Koala habitat. Such fencing within Environmental Protection Areas is to be constructed prior to the Commencement of construction in each relevant precinct.**
  - b. **fauna underpasses installed at intervals sufficient to allow unimpeded movement by wildlife including Koalas under roads. Underpasses within Environmental Protection Areas are to be constructed during road construction.**
- 2) **Precinct 1 and 5 fauna exclusion fencing must be integrated with fencing at Tweed Coast Road. Such fencing is to be completed prior to the commencement of construction in each relevant precinct.**
- 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.

**Condition 147 – Koala Plan of Management**

**Existing Condition:**

***“Koala Plan of Management***

*147. 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, 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 approved Koala Plan of Management, and submitted to the Secretary for approval.”*

**Reason for Modification:**

The Condition is generally consistent with the revised KPOM.

All infrastructure designed to mitigate impacts on Koalas (exclusion fencing, underpasses, grids and signage) will be in place prior to the commencement of construction in each relevant Precinct.

---

**DAC Planning Pty Ltd**

A.C.N. 093 157 165

Town Planning & Development Consultants

---

All underpasses will be installed during road construction in each relevant Precinct.

It is considered that the implementation of these measures precludes the need for any traffic calming devices, as Koalas will be excluded from development areas.

**We have reviewed previous Director General's/Secretary's Environmental Assessment Reports (DGEAR/SEAR) in relation to Condition 147 and relevant extracts are reproduced as follows:**

DGEAR CP06\_0318, May 2010

There is nothing specific in this Report relating to this issue.

DGEAR MP08\_0194 & CP06\_0318 MOD 2, May 2013

See comments for Conditions 45 and 46.

PAC Report MP08\_0194 & CP06\_0318 MOD 2, 11 August 2013

See comments for Conditions 45 and 46.

SEAR MP08\_0194 MOD 2 & CP06\_0318 MOD 4, August 2014

See comments for Condition 45.

PAC Report MP08\_0194 MOD 2 & CP06\_0318 MOD 4, 20 November 2014

See comments for Condition 45.

Amendments to the Condition are required to call up the revised KPOM.

In summary, modification of Condition 147 is required to call up the revised KPOM.

Having regard to the above the Department is requested to modify Condition 147 as follows:

**Koala Plan of Management**

147. All necessary management measures relevant to Precinct 5 (exclusion fencing, road grids, underpasses etc.) required by the approved Koala Plan of Management prepared by James Warren and Associates dated **19 May 2017 (Issue 9)**, 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 approved Koala Plan of Management, and submitted to the Secretary for approval.

**6.0 ENVIRONMENTAL ASSESSMENT**

Modification of the Project Approval as proposed involves changes to various conditions to achieve consistency with the revised KPOM to allow the project to proceed in an efficient, viable and timely manner.

The proposed modifications do not change the scale, layout and yields of the project. The EPBC Act Approval was informed by the revised Final Response Report Relating to Matters of NES (Wallum Sedge Frog and Koala) prepared by JWA Pty Ltd, Ecological Consultants dated March 2015 (**Appendix D**).

---

**DAC Planning Pty Ltd**

A.C.N. 093 157 165

Town Planning & Development Consultants

---

The revised KPOM has been prepared having regard to the revised Final Response Report with the objective of minimising the number of conditions of approval which will need to be modified to achieve consistency with the revised KPOM.

In summary, the revised KPOM is consistent with the terms of Concept Plan Approval 06\_0318 and only requires relatively minor modifications to five conditions of approval relating to MP08\_0194 and three conditions of the EPBC Act approval.

The revised KPOM incorporates the key elements of the three approvals. The modifications proposed are required because the conditions cannot be complied with in the revised KPOM.

In the circumstances, it is therefore submitted that the Environmental Assessments accompanying the original Project Approval and Concept Plan Approval and this Report provide an adequate Environmental Assessment of the modified project.

## **7.0 CONCLUSION**

Modification of the conditions and terms of the approval as proposed is authorised by Section 75W(1)(a) and (b) of the Environmental Planning and Assessment Act, 1979 (as amended).

The proposed modifications do not give rise to any physical changes to the scale, nature or footprint of the approved Project and therefore no impacts other than those addressed in the original Environmental Assessments and this Report are likely to arise.

The proposed modification of the Project Approval is considered to be sustainable and in the public interest and therefore approval of the application is respectfully requested.