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+ MODIFICATION OF MAJOR PROJECT APPROVAL NO. 08_0194 (MOD 8)

KINGS FOREST STAGE 1 – CONDITIONS 8, 14 AND 23(6)

At Kings Forest, Tweed Coast Road, Kingscliff

• Prepared For: Project 28 Pty Ltd | • Prepared by: DAC Planning Pty Ltd | • November 2018 |

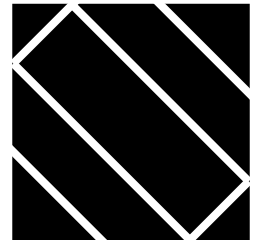


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MODIFICATION OF MAJOR PROJECT APPROVAL NO. 08_0194 (MOD 8)

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 4.55(1(A) of the Environmental Planning and Assessment Act for modification of Major Project Approval No. 08_0194 (MOD8) which relates to a residential subdivision at Kings Forest.

The Application seeks to delete Condition 8, as it is no longer applicable, amend Condition 14 to correct a typographical error and amend Condition 23(6) to reduce the minimum pavement width from 9m to a minimum of 7m to reflect the environmental constraints adjacent to that part of Kings Forest Parkway from Tweed Coast Road for a distance of approximately 100m and to achieve compliance with Austroads Standards at intersections.

1.1 Background

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).

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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 (as modified) 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:

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

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).

On 25 May 2017, Section 75W Modification Application MOD 4 was lodged with the Department. The modification relates to reconciliation of EPBC Act conditions and a revised Koala Plan of Management. At the date of preparing this Report, the Modification Application had not been determined.

On 21 December 2017, the project was further modified (MOD 6).

On the 24 May 2018, the approval was further modified to extend the lapse date (modified by the Department of Planning & Environment) and Condition A18 was inserted on 17 July 2018 (Land & Environment Court) (MOD 7).

A copy of the Consolidated Project Approval incorporating Modifications 1, 2, 3, 6 and 7 is attached at **Annexure A**.

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3.0 CONSULTATIONS

Tweed Shire Council was consulted in relation to amendment of Condition 23(6). Council's response is contained at **Annexure C**. In summary, Council concurs with the proponent's proposed amendment of this condition.

4.0 THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

Pursuant to Clause 115 of the Regulation, an application for modification of a development consent is required to contain information as discussed below.

a) The Name and Address of the Applicant

The applicant for this Section 4.55(1A) Application is Project 28 Pty Ltd. Additional details are provided on the Application Form.

b) The Development to be Carried Out Under Major Project Approval No. MP08_0194

The development to be carried out under MP08_0194 is described in Section 2.0 of this Report.

c) Address and Formal Particulars of Title of the Land

Formal particulars of the title of the land are contained in Section 2.0 of this Report.

d) Description of the Proposed Modification to Major Project Approval No. MP08_0194

(i) **Condition 8** of the Project Approval (as modified) is in the following terms:

“Heavy Haulage Component

8. Payment of a contribution pursuant to Section 94 of the EP&A Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 6.01.1 (as in force at the date of this approval) is required prior to the issue of the first subdivision certificate.”

The Department is requested to delete Condition 8 as Tweed Shire Council no longer requires heavy haulage contributions.

(ii) **Condition 14** of the Project Approval (as modified) is in the following terms:

“Cut and Fill Levels

14 Cut and fill levels for each stage within the project are to be generally in accordance with the Bulk Earthwork Cut and Fill Level Diagram 12301-ALL-040 Revision F prepared by Mortons Urban Solutions dated 16 October 2012. Cut and fill is not approved in the full 50m width of all ecological buffers, as specified in Condition A12(3).

The reference to Condition A12(3) is incorrect. Condition A12 is in the following terms:

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Limits of Approval

A12.

- 1) ~~This approval does not give approval to the first use of the rural supplies building in Precinct 1, including hours of operation, car parking, access to Tweed Coast Road, retail fit out, first use or signage of the building in Precinct 1. Separate development approval/s consent for these matters must be obtained.~~
- 2) The use of the building as a service station/food and drink premises shall not commence until an occupation certificate is issued for the internal fit out.
- 3) Pub/s, small bar/s or outdoor dining areas are not permitted within Precinct 1 (service station/food and drink premises).
- 4) This approval does not approve the removal of any heathland within the full extent of the 50 metre ecological buffers in the locations depicted as 'Heath to be Naturally Regenerated' in Figure 12 of the Buffer Management Plan for Precinct 1 & 5 titled 'Revised Heath Regeneration and Revegetation Areas' drawn by James Warren and Associates and dated 20 August 2012 and Figure 9 of the Buffer Management Plan for Precincts 2-4 & 6-14 titled 'Revised Heath Regeneration and Revegetation Areas' drawn by James Warren and Associates and dated 20 August 2012. The heathland in these locations is to be protected and regenerated for the full 50m width of the ecological buffer.
- 5) This approval does not approve any bulk earthworks within ecological buffers across all precincts as depicted on Drawing No. 12301-ALL-041 Revision B, with the exception of minor encroachments into the Precinct 5 ecological buffer for the construction of stormwater management areas (bioinfiltration and vegetated swales), placement of Koala fencing, and construction of Road No. 9 in the south western corner of Precinct 5 for an area of 686m² as contained within the Proponent's Preferred Project Report 2012 and shown on the Precinct 5 Swale Sections Plan (Drawing No.12301-SK-044 Amendment C dated 15 August 2012) and Road Reserve / Buffer Interface Plan (Drawing No.12301-SK-046 Amendment A dated 17 August 2012).
- 6) This approval does not give approval to any bulk earthworks in Precinct 3. Separate approval(s) for these works must be obtained from council if required by the EP&A Act 1979.
- 7) This approval does not give approval for any transport of fill sourced within the land that is the subject of the approval to other land.

Condition A12(3) (as modified – MOD 3) relates to the Precinct 1 Service Station/Food & Drink Premises. Condition A12 (5) relates to bulk earthworks in the ecological buffers and it is this condition which should be referred to in Condition 14.

The Department is therefore requested to amend Condition 14 as follows:

Proposed amended Condition 14 – Cut and Fill Levels

14 Cut and fill levels for each stage within the project are to be generally in accordance with the Bulk Earthwork Cut and Fill Level Diagram 12301-ALL-040 Revision F prepared by Mortons Urban Solutions dated 16 October 2012. Cut and fill is not approved in the full 50m width of all ecological buffers, as specified in Condition A12(5).

(iii) **Condition 23(6)** is in the following terms:

"Road Design

23 (6) Kings Forest Parkway road carriageway is to be constructed to a minimum pavement width of 9m from the entry with Tweed Coast Road through to proposed Road 9. These details are to be provided on an application for a Construction Certificate."

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In preparing the Detailed Engineering Plans to accompany the Construction Certificate Application for Kings Forest Parkway, it has become apparent that the 9m minimum pavement width cannot be achieved. This is because of environmental constraints imposed by the environmental zone, ecological issues (narrowing to not less than 7m for the provision of Koala underpass structures), the property boundary of No. 254 Old Bogangar Road, on the north side of Kings Forest Parkway and Cultural Heritage Area 3 on the southern side of Kings Forest Parkway. In addition, narrowing of the carriageway is required at intersections to conform with Austroad Standards.

The constraints and proposed cross section are shown on the plans at **Annexure B**.

The proposed minimum carriageway width of 7m can be given effect by amending Condition 23(6) as follows:

“Road Design

23 (6) Kings Forest Parkway road carriageway is to be constructed to a minimum pavement width of 9m from the entry with Tweed Coast Road through to proposed Road 9, with the exception of those sections of Kings Forest Parkway, including intersections that conform with Austroads Standards, shown on Drawing No. 12301-SK-122, Amendment A, Morton Urban Solutions, 29 June 2018, and Road Hierarchy and Staging Plan, Drawing No. 12301-EMAW-005 and 006, Rev A – Mortons Urban Solutions which shall have a minimum pavement width of 7m. These details are to be provided on an application for a Construction Certificate.”

e) Effect of Proposed Modification

The modification is intended to delete a redundant condition (Condition 8), correct an error in Condition 14 and enable the pavement width of Kings Forest Parkway to be reduced because of site constraints by amending Condition 26(6).

In this regard, the proposed modification is to be made pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979.

f) Description of Expected Impacts of the Modification

Having regard to the scale and nature of the proposed modifications, it is not expected that the modified project will have any significant adverse impacts.

Tweed Shire Council, as the local road authority under the Roads Act 1993, has agreed to the proposed reduced pavement width (See **Annexure C**). In summary, reducing the pavement width as proposed will avoid impacts on the adjoining Cultural Heritage Area 3 and environmental land and achieve compliance with Austroad Standards, while maintaining a safe and efficient transport network.

In granting approval for the original Project Application, the Planning and Assessment Commission has accepted that the potential impacts associated with the proposal were not unreasonable.

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- g) **An undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved**

As indicated in Section 5.0, the modification as proposed will not result in any significant physical changes to the project as approved. Therefore, as modified, the project will remain substantially the same as that originally approved.

- h) **If the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner)**

Owner's Consent is **attached**.

- i) **A statement as to whether the application is being made to the Court (under section 4.55) or to the consent authority (under section 4.56), and, if the consent authority so requires, must be in the form approved by that authority.**

The application is made to the Minister for Planning as the Consent Authority. The relevant form is attached to the application.

5.0 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (AS AMENDED) & ENVIRONMENTAL PLANNING AND ASSESSMENT (SAVINGS, TRANSITIONAL AND OTHER PROVISIONS) REGULATION, 2017

Clause 3BA of Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation, 2017 (the Regulation) provides that a Project Approval cannot be modified under Section 75W of Part 3A (as saved for transitional projects) after 1 March 2018. Therefore, this Modification Application is lodged under Section 4.55(1A) of the Environmental Planning and Assessment Act (EPAA), on the basis that it will involve minimal environmental impact.

Section 4.55(1A) of the Act relates to modifications involving minimal environmental impact and is in the following terms:

"(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification."

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With regard to Section 4.55(1A)(a), the proposed modification to the project is unlikely to create more than minimal environmental impact given that it only involves deletion of a redundant Condition (8), correction of an error in Condition 14 and amendment to Condition 23(6) to avoid environmental and ecological impacts. No changes to the overall design of the project or other conditions of approval are proposed.

Pursuant to Section 4.55(1A)(b), before the consent authority can modify the consent, it must be satisfied in relation to the threshold requirement that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.

The Land and Environment Court has made a number of decisions in relation to this threshold question, as discussed in the following sections.

In *Moto Projects (No. 2) Pty Ltd v North Sydney Council* (1999) Bignold J described the following test in determining the threshold question:

"The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."

Further, in *Wolgan Action Group Incorporated v Lithgow City Council* (2001) Talbot J addressed the question of "substantially the same development" in the context of Section 4.55.

In forming his view, Talbot refers to case law as follows (note relevant definitions underlined):

*"In Vacik Pty Limited v Penrith City Council (Stein J, NSWLEC, 18 February 1992, unreported), Stein J adopted a meaning for "substantially" where used in the earlier s 102(1)(a) of the EP&A Act as "essentially or materially or having the same essence". In *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 97 LGERA 433 at 440, Mason P expressly agreed with the view taken by Stein JA. Mason P also said, at p 439, that in the context of s 102 the verb modify meant "to alter without radical transformation" (see *Sydney City Council v Ilenace Pty Ltd* (1984) 3 NSWLR 414 at 421)". In *Standley* Stein JA also reiterated the view he expressed in *Vacik*.*

In *Standley* Stein JA also reiterated the view he expressed in *Vacik*.

Following on from the tests established in these cases and based on numerous Land and Environment Court decisions, it is apparent that the following key principles apply:

- The comparison is undertaken at a general level rather than between detail;
- The question is whether the development as a whole is essentially or materially similar to the originally approved development;

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- If the impacts of the modifications are minor, the modified development is more likely to be essentially or materially the same development;
 - It is relevant to consider the magnitude of any physical changes to the development and any changes to the use of the land.

Having regard to the fact that the operational details of the development will not change and the key principles discussed above, it is submitted that the threshold question is satisfied on the basis that:

- The project, as a whole, will remain unchanged.
- The proposed modification will not alter the statutory or policy compliance of the proposal, create any other material difference and does not give rise to any significant environmental impacts.
- The likely impact of the modification is minor.
- No changes to the nature, scale, intensity and lot layout of the development will occur.

Accordingly it is submitted that the proposed modification will not represent a substantial change to the originally approved development and that the proposed modification to the Approval will represent substantially the same development as the development for which the Approval was originally granted.

Pursuant to Section 4.55(1A)(c), public notification of the proposed modification to the Approval is to be in accordance with the Regulation. Clause 117(2) of the Regulation states that the notification of Section 4.55(1A) Applications are to be in accordance with a Development Control Plan.

Clause 4.0 of the relevant Tweed Development Control Plan 2008, Section A11 – Public Notification Policy, states that the Plan only applies to modifications of Approvals under Section 4.55(2) of the EP&A Act 1979. Accordingly there is no requirement to advertise the subject application.

In considering an application to modify an Approval under Section 4.55(1A) of the Act, Section 4.55(3) requires the consent authority to take into account relevant Section 4.15(1) matters.

Relevant Section 4.15(1) matters are addressed as follows:

a) the provisions of:

- i) Any Environmental Planning Instrument

5.1 State Environmental Planning Policy (State Significant Precincts) 2005

Kings Forest was rezoned under State Environmental Planning Policy (State Significant Precincts) 2005 (SSD) on 10 November 2006 and subsequently amended on 10 September 2010.

Under the provisions of this Policy, the Kings Forest Parkway road alignment is within land zoned part 7(l) Environmental Protection (Habitat) and Part 2(c) Urban Expansion as shown on the Land Zoning Map at **Annexure D**.

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Schedule 3, Part 6, Clause 4 of the Policy is in the following terms:

"4 Land use zones and objectives

- (1) For the purposes of this Policy, land within the Kings Forest site is in a zone specified below if the land is shown on the Land Zoning Map as being within that zone:
- (a) Zone 2 (c) Urban Expansion,
 - (b) (Repealed)
 - (c) Zone 7 (a) Environmental Protection (Wetlands and Littoral Rainforests),
 - (d) Zone 7 (l) Environmental Protection (Habitat).
- (2) Subject to the other provisions of this Part, the provisions of Tweed Local Environmental Plan 2000, as in force at the commencement of this clause, apply to land within a zone in the same way as they apply to land within a zone of the same name under that Plan and so apply as if those provisions were provisions of this Policy.
- (3) The consent authority must have regard to the objectives for development in a zone within the Kings Forest site when determining a development application in respect of land within that zone."

The Tweed LEP 2000 2(c) Zone Objectives and Land Use Table are reproduced as follows:

"Zone 2 (c) Urban Expansion

Zone objectives

Primary objectives

- to identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake.

Secondary objectives

- to allow associated non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents.
- to ensure that sensitive environmental areas within and outside the zone are protected from any adverse impacts of development.
- to enable planning flexibility to achieve the other objectives of the zone by means of detailed guidelines in a development control plan.

Development within the zone

In Zone 2 (c) development for the purpose of the following is:

Item 1 allowed without consent:

- environmental facilities

Item 2 allowed only with consent:

- bed and breakfast
- dwelling houses if each is on an allotment of at least 450m²
- any other buildings, works, places or land uses not included in Item 1, 3 or 4

Item 3 allowed only with consent and must satisfy the provisions of clause 8 (2):

- agriculture
- helipads
- recreation establishments
- roadside stalls
- extractive industries
- liquid fuel depots
- recreation vehicle areas
- road transport terminals

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- rural workers' dwellings

- utility installations being gas holders or generating works

Item 4 prohibited:

- abattoirs
- animal establishments
- display homes if adjoining an RTA classified road
- heliports
- institutions
- mines
- restricted premises
- rural tourist facilities
- stock and sale yards
- airline terminals
- brothels
- forestry
- industries (other than home industries or light industries)
- junkyards
- offensive or hazardous industries
- rural industries
- sawmills
- transport terminals (other than bus depots, bus stations or road transport terminals)"

The term "road" is defined in Schedule 1 of the LEP as follows:

"Road – a road within the meaning of the Roads Act 1993."

Development for the purpose of a road is permissible, with consent, in the 2(c) zone.

The proposed amendment to the pavement width of the road would be consistent with the objectives of the zone in that it will facilitate residential and non-residential development.

The 7(l) zone Land Use Table is reproduced as follows:

"Development within the zone

In Zone 7 (l) development for the purpose of the following is:

Item 1 allowed without consent:

- nil

Item 2 allowed only with consent:

- bed and breakfast
- bushfire hazard reduction that is not exempt development
- business identification signs
- dwelling houses if on an allotment of at least 40 hectares or an allotment referred to in clause 57 and if the number of dwellings does not exceed one for each 40 hectares of land contained within the allotment
- earthworks
- environmental facilities
- home businesses
- noxious weed control that is not exempt development

Item 3 allowed only with consent and must satisfy the provisions of clause 8 (2):

- agriculture
- camping grounds
- emergency service facilities
- forestry
- public utility undertakings
- roads

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-
- urban stormwater water quality management facilities
 - works for drainage and landfill
 - utility installations (other than gas holders or generating works)

Item 4 prohibited:

- any buildings, works, places or land uses not included in Item 1, 2 or 3"

Development for the purpose of a road is permissible, with consent as an Item 3 use in the 7(l) zone, subject to satisfying the provisions of Clause 8(2) of the Plan.

In approving the original Project Application, the PAC was satisfied that the matters in Clause 8(2) were complied with. As this Modification Application only seeks to reduce the pavement width for a relatively short length, it is not inconsistent with Clause 8(2).

5.2 Kings Forest Concept Plan No. 06_0318 and Development Code

The Concept Plan was approved on 19 August 2010 and subsequently modified on six occasions, most recently by Modification No. 8 Issued on 24 May 2018.

The Kings Forest Development Code, which forms part of the Concept Plan was originally approved on 12 October 2010 and subsequently modified on three occasions, most recently by Mod 8 on 24 May 2018.

The Concept Plan Map indicates that the relevant section of Kings Forest Parkway is within a residential Precinct (See **Annexure E**):

Land uses within these Precincts are controlled by the Kings Forest Development Code. Figure 1.2.2 of the Code comprises the Precinct Development Matrix which provides that roads are a permitted use in the Residential Land Precinct.

In summary, reducing the pavement width for a short length of Kings Forest Parkway is not inconsistent with the Kings Forest Concept Plan and Kings Forest Development Code.

iii) Development Control Plans

Tweed Development Control Plan 2008 contains various controls. Given that there will be no change to the layout and operational details of the Approval, it is considered that modification of the Approval, as proposed, will not be inconsistent with any relevant provisions of Tweed Development Control Plan 2008.

iii) Planning Agreements

Not applicable.

iv) Provisions of the Regulations.

Not applicable.

v) Any coastal zone management plan.

Not applicable.

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b) Likely Impacts of the Development

Given the scale and nature of the proposed modification, no significant adverse impacts are likely to occur.

c) The Suitability of the Site for the Development

As acknowledged when the project was originally approved, the site was and remains suitable for, the proposed development.

d) Any Submissions Made In Accordance With the Act or Regulations

It is a matter for the Department to consider any submissions made in respect of the Modification Application.

e) The Public Interest

Under the provisions of the Far North Coast Regional Strategy (FNCRS) 2006-2031, the Kings Forest site is within the existing urban footprint.

Under the North Coast Regional Plan 2036 (NCRP), which replaces the FNCRS and came into force in March 2017, the Kings Forest site remains in the urban growth area footprint (Figure 18).

In the foreword, the Strategy states that new housing will be accelerated in other centres to maximise existing services, meet the community's diverse housing needs and to improve housing affordability.

New release areas, including Cumbalum, **Kings Forest**, Cobaki and Thrumster will be new communities providing the North Coast with greater housing choice (bold added).

The Regional Plan anticipates population growth of 76,200 in the period 2016-2036, meaning that 46,000 extra homes are required. The Regional Plan says that the 'minimum additional dwellings required' for the Tweed between 2016 and 2036 is 11,600. This is an increase from 44,450 dwellings in the Tweed in 2016 to 56,050 in 2036.

The Regional Plan's Direction 22 is to deliver greater housing supply. Under this Direction the Regional Plan states that, having a ready supply of well-located land for residential development will create downward pressure on house prices, maximise the use of existing infrastructure and ensure that environmentally sensitive areas are avoided.

Under the heading 'housing' the Regional Plan identifies the following priorities: Deliver housing in Kingscliff, Cobaki, Bilambil, Terranora, and **Kings Forest** ... Enhance housing diversity by increasing the number of homes in Tweed Heads, Kingscliff, Cobaki, **Kings Forest** and Dunloe Park (bold added) ...

In summary, the Regional Plan demonstrates the continuing relevance of the Concept Plan Approval and the Project Approval. Nonetheless, for completeness, it should be noted that:

- (a) The development incorporates significant measures to protect Koala Habitat and local ecological features.
- (b) The development addresses multiple community needs, ie the need for:

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- (i) housing;
 - (ii) employment of a kind suitable for integration into a master planned urban setting;
 - (iii) conservation and environmental protection; and
 - (iv) passive and active recreation.
- (c) It does this in a balanced way as a result of a careful and extensive assessment process. By addressing multiple needs within the overall site, a better outcome is achieved than if the site's use was devoted to a single purpose.
- (d) Agricultural and industrial use of the site would not deliver the environmental, social and economic benefits that flow from the development envisaged by the Concept Plan Approval and the Project Approval.
- (e) The environmental, social and economic objectives of the community are best served by the proposed use of the site, relative to the other possible uses of the site.

In summary, the project is consistent with the NCRP and the FNCRS.

As there has been no change in the statutory or strategic planning regime for the site since the original project was approved and as there are no significant physical changes to the scale, layout or intensity of the development, it is submitted that modification of Condition 23(6) would not be inconsistent with the public interest and would not give rise to any significant adverse environmental impacts.

6.0 CONCLUSION

Modification of the conditions and terms of the Approval as proposed is authorised by Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979 (as amended).

The proposed modification does not give rise to any significant 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, subsequent Modification 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.

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