



***Subdivision Works
Kings Forest,
Stage 1
Project Approval***

Section 4.55 (1A)
Modification Assessment
(MP 08_0194 MOD 8)

November 2019

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Glossary

Abbreviation	Definition
Applicant	Project 28 Pty Ltd
Council	Tweed Shire Council
Department	Department of Planning, Industry and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy



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1. Background

1.1 Background

This report is an assessment of a request to modify the project approval (MP 08_0194) for a residential subdivision at Kings Forest, south of Tweed Heads.

The application seeks to amend the project approval to reduce pavement widths in certain sections of the Kings Forest Parkway, delete a requirement for developer contributions for heavy haulage and correct a typographical error.

The request has been lodged by Project 28 Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 Subject site

The Kings Forest site is approximately 880 hectares in area and located approximately 15 kilometres (km) south of Tweed Heads, close to the townships of Bogangar, Cabarita Beach and Casuarina, in the Tweed Shire Council Local Government Area.

The site is surrounded by agricultural and pastoral lands to the north, south and west. Cudgen Lake, wetlands and the Cudgen Nature Reserve border the southern and eastern site boundaries. Further east on the opposite side of Cudgen Nature Reserve is the coastal suburb of Casuarina. (**Figure 1**).

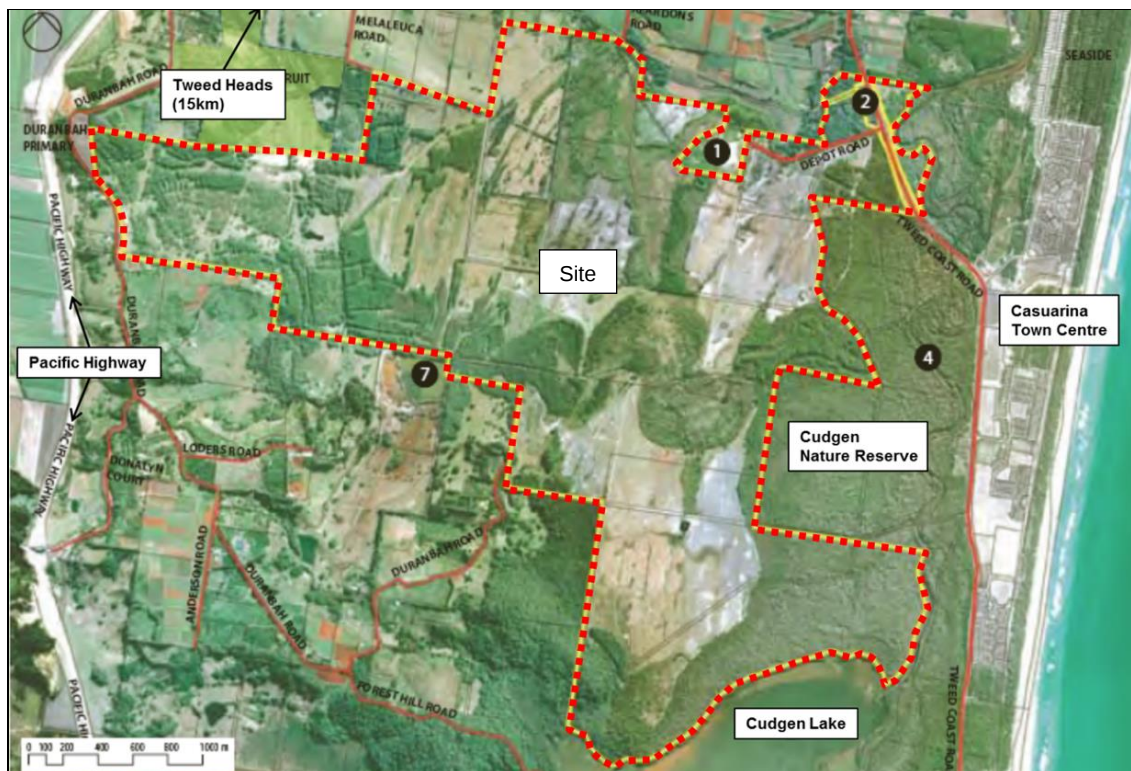


Figure 1 | Aerial view of the site and locality (Base source: Google Maps)

1.3 Approval history

Concept Approval

On 19 August 2010, the then Minister for Planning approved the concept plan (MP 06_0318) for:

- residential development for approximately 4500 dwellings
- town centre and neighbourhood centre for future retail and commercial uses
- employment land and community and education facilities
- a golf course, open space, wildlife corridors, protection and rehabilitation of environmentally sensitive land
- water management areas and lake
- roads, bicycle and pedestrian network and utility services infrastructure.

The concept approval has been subject to the following modification applications:

Table 1 – Modifications to the Concept Plan Approval

Reference	Description of Modification	Status
MOD 1	Incorporation of the Kings Forest Development Code into the concept approval, amendments to the schedule of approved plans and administrative changes to the terms of approval.	Approved 22 Dec 2010
MOD 2	Amendments to the concept plan drawings, reduction in the number of precincts from 24 to 14, provision of an east-west wildlife corridor, and modifications to the terms of approval to require the implementation of management plans in perpetuity and clarify the plans that need to be prepared prior to the dedication of land to Tweed Shire Council.	Approved 11 Aug 2010
MOD 3	Amendments to the conditions of approval and definitions, extension of the approval lapse date (from 19 August 2015 to 31 December 2016) and amendments to the precinct specific management plans.	Approved 16 May 2014
MOD 4	Amendments to the schedule of definitions and terms B5, B7, C3, C29 (to reflect the amended definitions) and C30 (relating to provision of affordable housing) and insertion of the Department's standard dispute resolution clause.	Approved 20 Nov 2014
MOD 5	Amendments to the Kings Forest Development Code to include food and drink premises as permissible uses on employment lands.	Approved 10 Nov 2015
MOD 6	Modifications to Koala Management arrangements.	Withdrawn
MOD 7	Amendments to facilitate a private wastewater treatment plant.	Withdrawn
MOD 8	Extend lapse date to 31 December 2019 and vary the description of the required physical works to prevent the approval lapsing.	Approved 24 May 2018

Project Approval

On 11 August 2013, the then Planning Assessment Commission granted project approval (MP 08_0194) for:

- the staged creation of 10 development lots
- bulk earthworks across the site

- subdivision of Precinct 5 into 376 residential lots
- infrastructure and roadworks along the Kings Forest Parkway and within Precincts 1 and 5
- construction of 2,036 m² of floor space within Precinct 1 for future use as a rural supplies building with associated car parking and landscaping.

The project approval has been subject to the following modification applications:

Table 2 – Modifications to the Stage 1 Project Approval

Reference	Description of Modification	Status
MOD 1	Amendments to the weed management plan, changes to the staging plans for works adjacent to the environmental protection zones, inclusion of the former Crown reserves into the project area description, and amendments to the conditions of approval to extend the timeframes for submitting the environmental management plans.	Approved 11 Aug 2013
MOD 2	Amendments to the list of definitions in Schedule 1, introduction of a modified process for bond payments, changes to dust mitigation measures, inclusion of a new dispute resolution condition, and amendments to the timing of various environmental requirements.	Approved 20 Nov 2014
MOD 3	Amendments to replace the previously approved rural supplies building in Precinct 1 with a service station/food and drink premises, including six food tenancies, an outdoor dining area, eight car bays, car and dog wash, and two pylon signs of between 7.5-9.5 metres high.	Approved 20 Feb 2017
MOD 4	Implement a Revised Koala Plan of Management and undertake related changes to the conditions of approval.	Approved 8 May 2019
MOD 5	Amendments to water servicing arrangements.	Withdrawn
MOD 6	Amendments to conditions to defer the timing for the construction of the roundabout, correct an error in the description of the inner protection area (IPA) for bushfire management at the service station site, and apply a discount to road infrastructure contributions applicable to development within Precinct 1.	Approved 21 Dec 2017
MOD 7	To extend the time for physical commencement of works and clarify that a construction certificate may be issued under the project approval for the carrying out of investigative and monitoring work.	Approved 17 June 2018

The approved layout of the site, including the location of Kings Forest Parkway is shown in **Figure 2**.

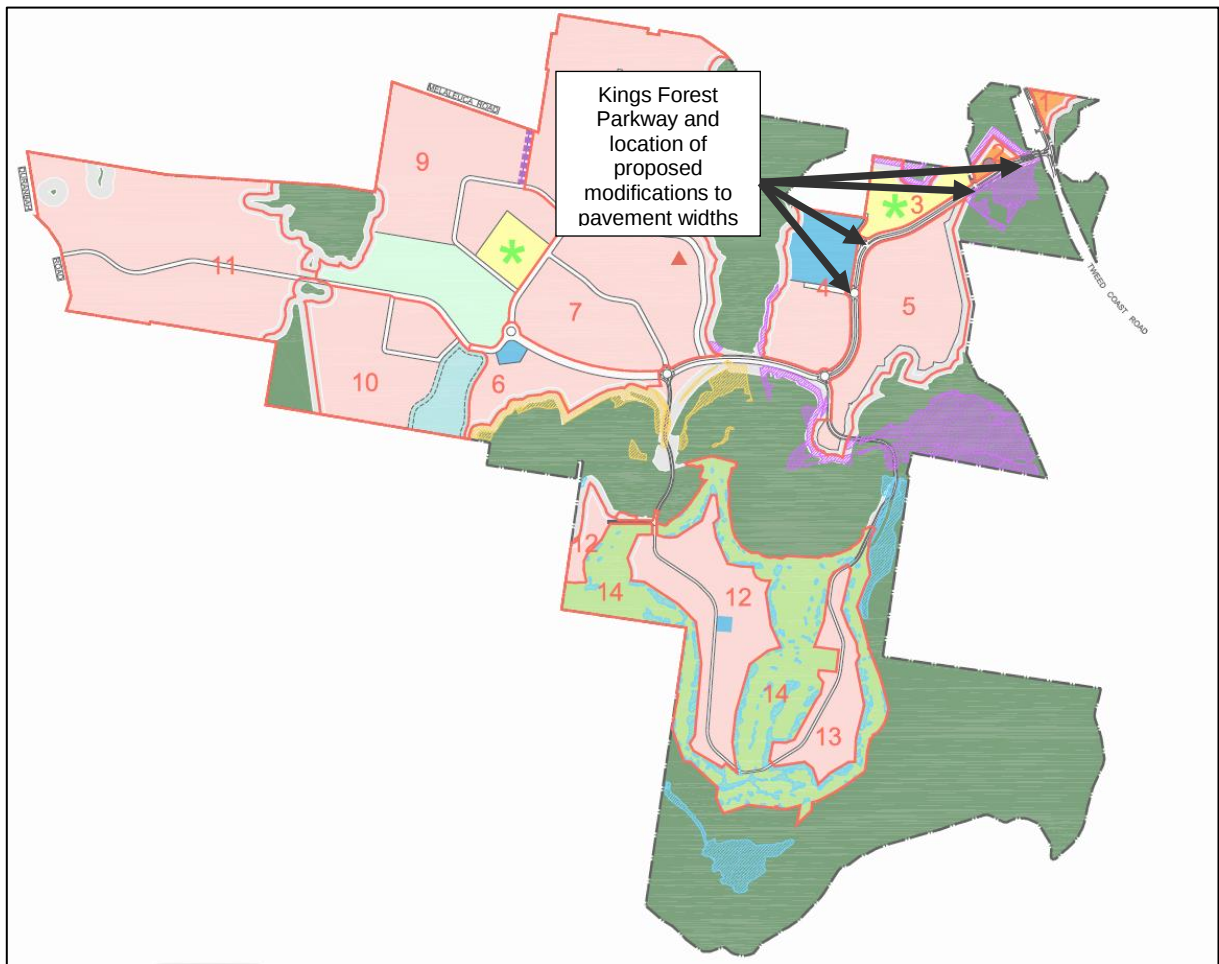


Figure 2| Site layout including location of Kings Forest Parkway (Base source: Mod 2 RtS)



2. Proposed Modification

On 16 November 2018, the Applicant lodged a section 4.55(1A) modification request (MP 08_0194 MOD 8) seeking approval to:

- Delete Condition 8
- Amend Condition 14 to correct a typographical error
- Amend Condition 23(6) to reduce pavement widths in certain sections of the Kings Forest Parkway.

Details of the proposed modifications are as follows.

Condition 8

The application seeks to delete Condition 8, as follows, as Council's contributions plan has been amended, removing the requirement for heavy haulage contributions.

~~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 the Tweed Road Contribution Plan NO 4 – Version 6.01.1 (as in force at the date of this approval) is required prior to issue of the first subdivision certificate.~~

Condition 14

The application seeks to correct an error in Condition 14, as follows, which referenced Condition A12(3) rather than Condition A12(5). Mod 3 amended Condition A12 by inserting two new clauses after clause (1) and renumbering existing clauses. Existing Condition A12(3) was renumbered to Condition A12(5), but the reference in Condition 14 was not updated.

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)~~ **A12(5)**.

Condition 23 (6)

The application seeks to amend Condition 23(6) to allow a reduction in the minimum pavement width in certain sections along the Kings Forest Parkway, from a minimum width of 9m to a minimum width of 7m. The affected sections of carriageway pavement are shown in **Figures 3 and 4**.

The modification is sought as detailed engineering work has identified that 9m wide pavements cannot be achieved in certain areas, due to requirements to conform with Austroads Standards and environmental constraints, ecological issues, location of property boundaries and cultural heritage areas.

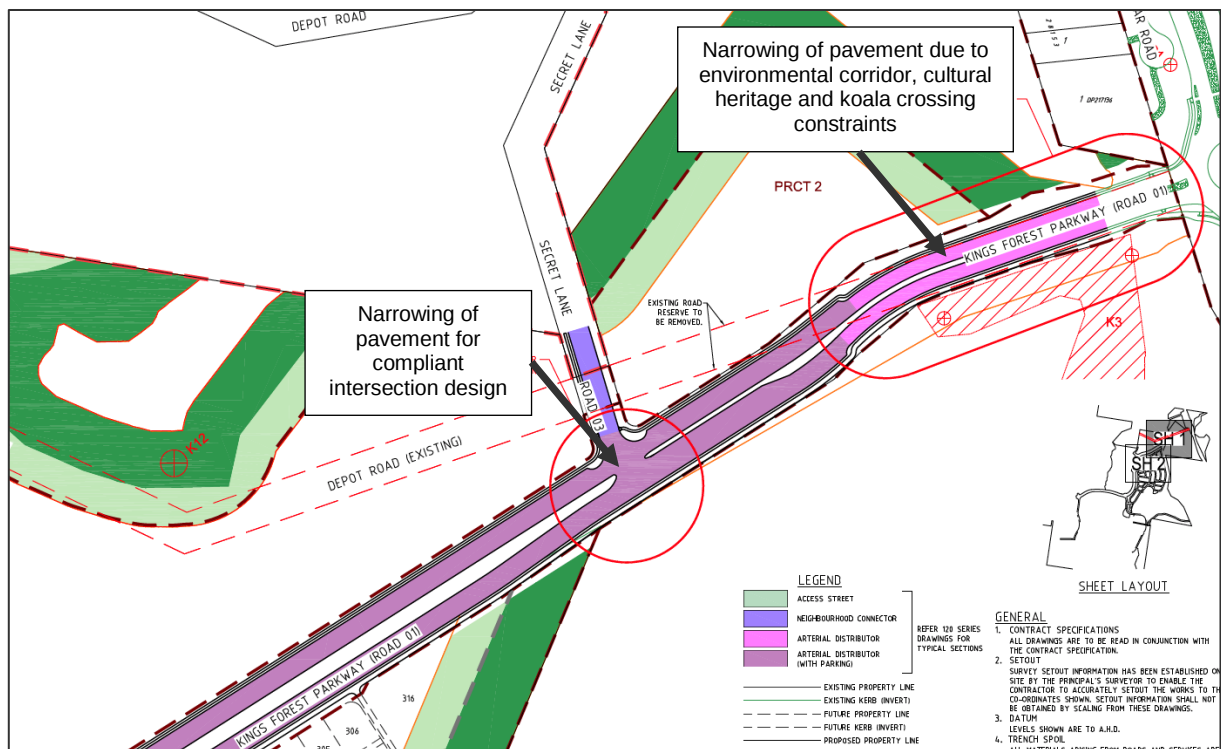


Figure 3 | Extract from proposed plans indicating location of reduced pavement widths
(Base source: Modification Application)

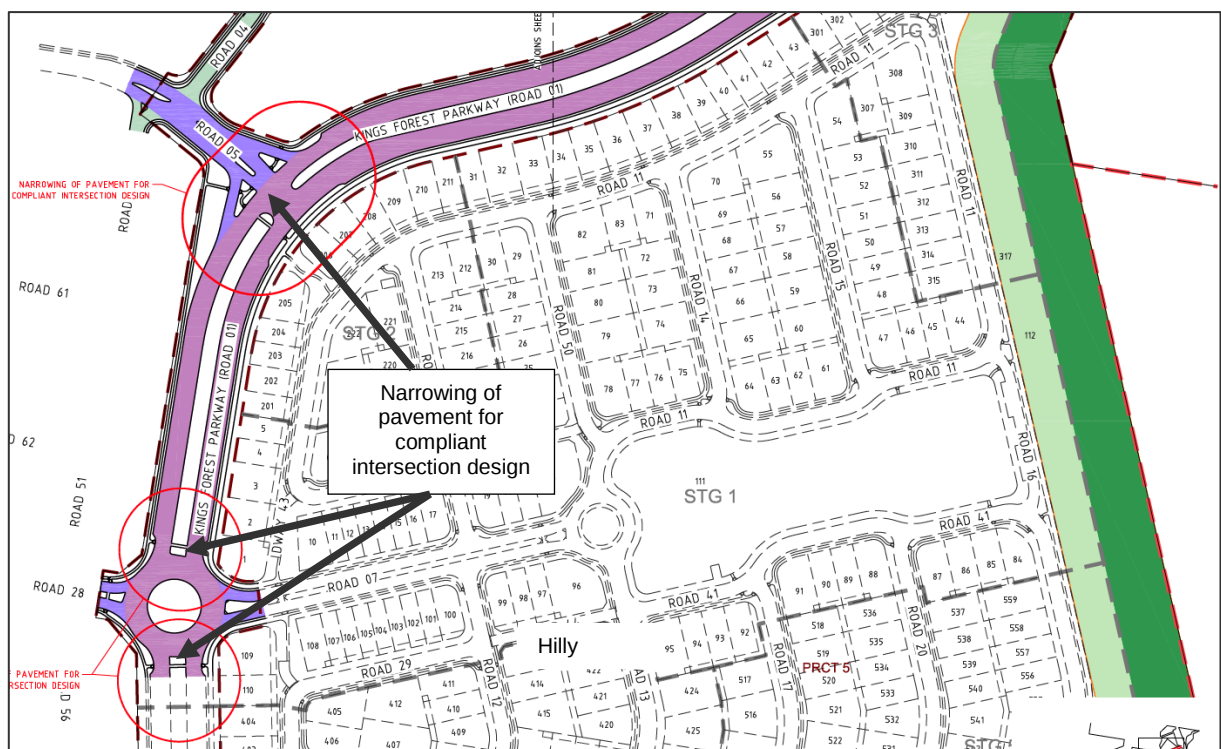


Figure 4 | Extract from proposed plans indicating location of reduced pavement widths
(Base source: Modification Application)



3. Statutory Context

3.1 Part 3A transition to state significant development

The project approval (MP 08_0194) was originally granted under Part 3A of the EP&A Act. This means the project satisfied the definition of a 'transitional Part 3A project' under clause 2(1) Schedule 2 to the *Environmental Planning & Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (ST&OP Regulation), which came into effect on 1 March 2018.

Under the ST&OP Regulation, projects the subject of existing Part 3A approvals remain transitional Part 3A projects until they are transitioned to State significant development (SSD) (clause 3(1)-(2), Schedule 2). As of 1 March 2018, new proposals to modify existing Part 3A project approvals can only be determined once the project has been declared to be SSD by the Minister for Planning, and the relevant provisions to modify an SSD consent under Part 4 of the EP&A Act apply.

On 6 July 2018, an Order was published in the New South Wales Government Gazette transitioning the Part 3A project approval (MP 08_0194) to SSD.

Section 4.55 of the EP&A Act outlines the matters that a consent authority must take into consideration when determining an application that seeks to modify an SSD application. The application has been lodged under section 4.55(1A) of the EP&A Act for a modification involving minimal environmental impact.

3.2 Scope of modifications

Section 4.55(1A) of the EP&A Act outlines the matters that a consent authority must take into consideration when determining an application that seeks to modify an SSD application and results in minor environmental impacts. The matters for consideration under section 4.55(1A) of the EPA&A Act that apply to the modification of the project approval have been considered in **Table 3**.

Table 3 – Section 4.55 (1A) Modification involving minimal environmental impact

Section 4.55 (1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	Section 5 of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the modification is of minimal environmental impact.
b) 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	The proposed modification seeks approval for minor changes and does not result in any additional impacts on the surrounding area. The modification will not involve any additional disturbance outside the approved development footprint and proposed minor changes to pavement widths would not materially affect traffic, public transport or pedestrian movements. On this basis, the

originally granted was modified (if at all), and	proposal would result in development that is substantially the same as the originally approved development.
c) the application has been notified in accordance with the regulations, and	The modification has been notified in accordance with the regulations. Details of the notification are provided in Section 4 of this report.
d) any submissions made concerning the proposed modification have been considered	The Department received one submission on the proposal. The issues raised in the submission have been considered in Section 5 of this report.

3.3 Environmental Planning Instruments

The following EPIs are relevant to the application:

- State Environmental Planning Policy No. 55- Remediation of Land
- State Environmental Planning Policy (State Significant Precincts) 2005
- Tweed Local Environmental Plan 2000.

The Department considered the proposal against these EPIs in its original assessment. The Department considers the modification does not result in any significant changes that would alter the conclusions made as part of the original assessment.

3.4 Approval authority

The Minister for Planning and Public Spaces is the consent authority for the application. However, the Director, Regional Assessment, may determine the application under delegation as:

- Council did not object to the application
- A political donations disclosure statement has not been made in respect of this or any previous related application and
- No public submissions were received objecting to the modification.



4. Engagement

4.1 Department's engagement

The application was notified to Tweed Shire Council (Council) from 16 May 2019 to 30 May 2019 (14 days) and made publicly available on the Department's website during this time. Council made a submission. No public submissions were received.

4.2 Council's submission

Council did not object to the proposed modification request, and made the following comments:

- Heavy Haulage requirements have been deleted from the relevant contribution plan
- Council suggests additional conditions to be included in condition 23(6) to ensure water and sewerage infrastructure will be adequate in the areas of reduced pavement widths
- Council is also working with the Applicant on an amended Koala Plan of Management, which may result in a revised location for the Koala underpass across Tweed Coast Road. This should not affect the underpass under the Kings Forest Parkway. However, a diagram in the Koala Plan of Management (October 2018) will need to be updated to reflect the changes with the revised road widths and any changes to the koala underpasses.



5. Assessment

In assessing the merits of the proposal, the Department has considered:

- the modification and associated documents (**Appendix A**)
- the Environmental Assessment and conditions of approval for the original project (as modified)
- the submission received on the proposal
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act.

The Department considers the key assessment issue associated with the proposal is the impact of the proposed narrowing of the carriageway pavement widths. This is considered below (**Section 5.1**) and other assessment issues are considered in **Section 5.2**.

5.1 Reduced Carriageway Pavement Widths

The application seeks to reduce the minimum width of the carriageway pavements in certain sections of the Kings Forest Parkway (**Figure 3 and 4**) from the required 9m to a minimum of 7m.

The Applicant contends that the reduced pavement widths are required at intersections to meet Austroads Standards or due to constraints at the entrance of the site (including environmental zoning constraints, ecological issues, location of property boundaries and cultural heritage areas). The Applicant consulted Council's Roads and Engineering Department prior to lodging the modification and provided correspondence with Council in the application.

Council noted that the intent of the 9m wide pavement requirement was to ensure adequate carriageway width for the future provision of public transport services, in accordance with Council's Road Design Specifications. However, Council advised the sections of road where the Applicant intends to reduce the pavement width (at intersections and the entrance to the subdivision) are not required for bus service set down and pick up. As the remainder of the road carriageway meets Council's required 9m specification (to accommodate public transport services), Council did not object to the proposed narrowing to not less than 7m in the identified locations.

Council also recommended additional conditions to ensure the provision of water and sewer infrastructure can be adequately accommodated in the areas of reduced pavement width. Recommended conditions required the developer to demonstrate services meet Council requirements for clearances, cover over pipelines, easements and fencing. The Applicant recommended some minor changes to the proposed wording of the conditions, which Council supports.

The Department is satisfied the proposed reduction in pavement widths is appropriate in this case, as it would enable intersections to be designed in accordance with applicable standards and would ensure the roadway design addresses environmental and heritage constraints at the site entrance,

while at the same time resulting in no adverse impacts for traffic or provision of public transport services. The conditions recommended by Council (as modified by the Applicant) in relation to sewer and water infrastructure have also been included in the recommended instrument. On this basis, the Department is satisfied the reduced pavement widths would not adversely impact on the provision of water and sewer infrastructure.

5.2 Other Assessment Issues

Table 4 | Summary of other issues

Issue	Findings	Recommendation
Impact to Koala Plan of Management	- Council noted that the Koala Plan of Management is currently being reviewed, and may result in a revised location for the koala underpass across Tweed Coast Road. Council noted this does not affect the underpass under the Kings Forest Parkway. However, it also noted that Figure 30(b) in the Koala Plan of Management (October 2018) may need to be updated to reflect the changes with the revised road widths and any changes to the koala underpasses. - The Department notes the current modification does not seek to make any changes to the koala underpasses or to the Koala Plan of Management. The proposed reduction in pavement widths at the Kings Forest Parkway underpass does not necessitate a change to the location or the design of the underpass and therefore does not affect the intention of Figure 30(B) which is to provide an indicative design of the underpass.	No additional conditions or changes to existing conditions are necessary.
Development Contributions	- Condition 8 requires the payment of developer contributions for heavy haulage (extractive materials) in accordance with Council's Section 94 Plan No.4 - Tweed Road Contribution Plan. This plan was amended on 1 December 2016, removing the requirement for contributions for heavy haulage. The modification therefore seeks to delete the condition. - Council advised it does not object to the deletion of this condition. - The Department agrees to delete the condition to align the approval and requirements for developer contributions with Council's current policy. - The Department also notes Condition 154 of the project approval requires the payment of developer contributions in accordance with applicable Section 94 plans, current at the time of payment, including the Tweed Road Contribution Plan. The Department is therefore satisfied that despite deletion of Condition 8, the project approval would continue to ensure appropriate contributions are made towards the provision of road infrastructure, consistent with current policy and requirements of the Tweed Road Contribution Plan.	Condition 8 is recommended to be deleted.
Correction of condition reference	- The proposal seeks to correct an error in Condition 14, which references Condition A12(3) instead of A12(5) which was renumbered as part of Modification 3. - The purpose of the reference to Condition 12 is to define an ecological buffer where earthworks are not approved. The incorrect reference does not refer to the buffer area, but instead refers to the permissibility of pubs in Precinct 1. - The modification is supported as it corrects this error in Condition 14, providing its proper and intended meaning.	Condition 14 is recommended to be amended to correct the minor typographical / reference error.



6. Evaluation

The Department has assessed the proposed modification and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposal is appropriate as:

- it would enable intersections on the Kings Forest Parkway to be designed in accordance with Austroads standards
- it would address environmental and heritage constraints at the site entrance without impacting on the design or location of koala underpasses
- it would result in no adverse impacts for traffic or provision of public transport services
- subject to conditions, it would result in no adverse impacts for the provision of infrastructure within the road reserve
- it would correct an error to provide Condition 14 with its proper and intended meaning
- it would ensure required developer contributions are consistent with Council's current policy.

The Department is therefore satisfied the modification should be approved, subject to conditions.



7. Recommendation

It is recommended that the Director, Regional Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report;
- **determines** that the application (MP08_0194 MOD 8) falls within the scope of section 4.55(1A) of the EP& A Act;
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the application;
- **modify** the consent MP08_0194; and
- **signs** the attached approval of the modification (**Appendix B**).

Recommended by:

Silvio Falato
Team Leader
Regional Assessments



8. Determination

The recommendation is: **Adopted** by:

26/11/2019

Brendon Roberts
Director
Regional Assessments
as delegate of the Minister for Planning.



Appendices

Appendix A – Relevant Supporting Information

The supporting documents and supporting information to this assessment report including:

- The Modification Request
- Submissions

can be found on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/project/25426>

Appendix B– Notice of Modification

The recommended modification of project approval can be found on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/project/25426>