

Council reference: DA11/0565.12  
Your reference: MP08\_0194 MOD 15



10 December 2024

Kiersten Fishburn  
Secretary of Department of Planning and Environment

Attn - [michael.doyle@dpie.nsw.gov.au](mailto:michael.doyle@dpie.nsw.gov.au)



Dear Michael

**Major Projects – New Request for Advice - MOD 15 - Split building, allow 24hrs, and other changes to Precinct 1 (MP08\_0194-Mod-15) (Tweed Shire)**

Thank you for the opportunity to provide comment on the proposed changes to Kings Forest Project Approval MP08\_0194 as it relates to Precinct 1 – Service station and Food & drinks premises – MOD 15.

As set out hereafter, it is considered that the proposed increase in hours for the operation of the service station to 24 hours and the removal on the lighting curfew would result in a development which is not 'substantially the same'. As such we request that the Minister reject the application with regard to the proposed increase in hours of the service station and the deletion of the restriction on lighting.

Should the Minister be of the opinion that the increase in operating hours and the removal of the lighting curfew is 'substantially the same' – which we submit it is not, we nevertheless object to the proposal on the basis that the application does not demonstrate that the related environmental impacts – specifically those associated with acoustic and lighting impacts - would be acceptable, and the concerns raised with regard to the adverse impact that this would have on the adjoining residences and the amenity of the area.

In relation to the other changes to the plans, we note that additional information is needed in a number of areas to enable a thorough assessment of the proposal.

**1.0 Proposal**

The application has been prepared by Sargeant Planning on behalf of Straight Hander Kings Forest SS Pty Ltd (applicant). The Modification report prepared by Sargeant Planning and dated 22 November 2024 (**mod report**) describes the proposed amendments as follows:

*'This application seeks to modify a number of the conditions of approval related to the proposed Kings Forest service station element of the development within Precinct 1. These changes are largely related to changing the approved plans for the service station and the consequential changes this will have on the other conditions.*

*There are also proposed changes relating to the hours of operation of the service station and the internal traffic flow through the site. A number of specialist reports have been prepared detailing that*

*the proposed changes are consistent with the original approval and outlining the function of stormwater/lighting etc.*

*The purpose of modification of this condition is seeking to amend the approved plan set for the Kings Forest Service Station. The proposed modification seeks to:*

- amend the existing service station building on site by splitting the building into two separate components reducing the scale and bulk of the built form,*
- amend the traffic circulation of the site largely in relation to the two the drive thru sections,*
- amend the proposed car wash to include additional bays and an attached store room and pump room,*
- adjust the landscaping on site to reflect the changes to the internal layout and*
- increase the number of carparking spaces on site.*

*Minor increase in landscape areas has also been achieved with additional consolidated landscaping to the frontage of the site at Tweed Coast Road.*

*The proposed modification also updates the concept to reflect the creation of an allotment for the regional pump station and new boundary configuration associated with MOD 12. The outcomes from MOD 12 have been reflected in the supporting plans and reports to this application.*

*The modification is considered to be substantially the same development as the original approved layout and does not introduce any new land uses or allotments outside of the pumpstation.'*

In Section 3.1 of the Mod report, the application sets out the proposed changes to the conditions of MP08\_0194 (as amended), and the purpose of same, and which includes the following:

- to update the description of works to reflect the proposed gross floor area,
- to update **Condition A3** which calls up the plans and reports with which the development is to be carried out,
- allow the external lighting to operate without a curfew (deletion of **Condition 123(3)**),
- to increase the trading hours for the service station to 24 hours (Modification of **Condition 130(1)**),
- to increase the trading hours for the food & drinks premises in Building 1 to commence operations one (1) hour earlier at 5am (amendment of **Condition 130(1)**),
- to remove the Noise limits specified for Precinct 1 in **Condition 131(1)**,
- to remove the requirement for the carwash to have automatic doors and to reduce the noise by at least 15bB(A) as set out in **Condition 131(4)**, and
- to allow illuminated signage and lights to operate without a curfew (deletion of **Condition 131J(5)**).

## **2.0 Prelodgement Advice/Consultation**

Council officers met with the Sargeant Planning on 18 April 2024 following an invitation to provide comment on proposed changes to the approved plans for Precinct 1.

At the meeting, the applicant advises that they would also be seeking to amend the hours of operation of the service station to extend trading hours to 24 hours. At the meeting, and in the follow up comments, the applicant was advised that Council did not consider an extension of the hours of operation to 24 hours to satisfy the substantially the same test. Refer to **Attachment A** for record of comments provided to Sargeant Planning dated 24 April 2024.

While the Mod report notes in Section 1.3 (Consultation) that Council was informed of the intention of the modification and provided with a draft iteration of the conditions which are sought to be modified, no acknowledgement is made of our submission, nor does there appear to be any consideration of same.

### 3.0 Background

The approval for Precinct 1 issued under MP08\_0194 (as modified by MOD 3) relates to the construction of 988sqm of floorspace for a service station/food and drink premises, including carparking and landscaping.

Modification 3 (which approved the service station) was originally refused by the Minister for Planning on 18 April 2016 for the following reasons:

*The modification request represents an intensification of the uses approved within Precinct 1 that do not result in limited environmental consequences in comparison to the approved project. Accordingly, these modifications are beyond the scope of modifications contemplated under section 75W of the Environmental Planning and Assessment Act 1979 for the following reasons:*

- 1. The modification request would introduce new and more sensitive land uses (takeaway food and drink premises with associated outdoor dining facilities) within Precinct 1 which will increase land use conflict with the adjoining State significant farmland. The introduction of such land uses, coupled with the proposed removal of the 10 metre wide agricultural buffer, are inconsistent with the requirements of Part 6, clause 8 of Schedule 3 of State Environmental Planning Policy (State Significant Precincts) 2005.*
- 2. The modification request would introduce a new land use (proposed service station) within Precinct 1 which would change the risk profile of the approved development and would result in the potential for increased contamination on land adjacent to State significant farmland, SEPP 14 wetlands and a number of endangered ecological communities. As such, the introduction of a service station would be inconsistent with the requirements of Part 6, clause 8 of Schedule 3 of State Environmental Planning Policy (State Significant Precincts) 2005 and the aims and objectives of State Environmental Planning Policy No. 14 – Coastal Wetlands.*
- 3. The modification request would increase the bulk and scale of the approved project in a manner that is incompatible with the rural character of Tweed Coast Road and is inconsistent with the strategic objectives of the Tweed Development Control Plan 2008 which applies to the land along Tweed Coast Road immediately north, south and west of Precinct 1.*
- 4. The combined water, air quality, contamination, hazards, traffic and amenity impacts of the proposed modification would generate more than limited environmental impacts in comparison to the approved project that are not in the public interest.*

The decision was appealed to the [NSW Land & Environment Court \(2016/00178476\)](#). On 31 January 2017, the Court made an order approving the modification request (MOD 3), incorporating the draft conditions as amended during the appeal via a S34 conciliation process.

The Department prepared [a Fact Sheet on the outcome](#) which is available on the Major Project Planning Portal website, which provides a helpful overview on the conciliation process. Some key matters extracted from this factsheet are set out over.

#### **What were the key outcomes from the conciliation process?**

- After the conciliation process, the Applicant amended the proposed development by reducing the hours of operation, retaining the building footprint, retaining the 10 metre vegetation buffer to the north of the site and reconfiguring the site to minimise environmental impacts.
- The amended proposal reduced the intensity of the development, addressed the key issues and included controls to manage the residual impacts.
- The Department prepared detailed conditions of approval that considered the amended proposal, and concerns and comments raised by objectors and government agencies.
- On 31 January 2017, the Court made an order approving the modification request (MOD 3) request, incorporating the draft conditions as amended during the appeal.

#### **What consultation was conducted?**

- Throughout the section 34 conciliation process, the Department consulted with objectors, Council, the Environment Protection Authority, Department of Primary Industries, Roads and Maritime Services, Rural Fire Service, and Office of Environment Heritage in relation to the Applicant's additional information provided, the amended proposal and the conditions of consent.

#### **What are the key changes to the development?**

- During the conciliation, the Applicant reduced the intensity of the development and made the following key changes to the proposed development:
  - reduction in the operating hours of the service station/food and drink premises, from 24 hours, 7 days a week, as originally proposed, to 6am to 10pm
  - reduction in the building footprint by 28sqm and removal of the roof top terrace to reduce bulk and scale of the development and to reduce noise and light impacts
  - retention of the 10 metre vegetation buffer to the north of the site to ensure land use conflicts are minimised
  - reconfiguration of the site to minimise impacts on the environment, such as removal of the two truck bowsters, relocation of the dog/car wash, relocation of car bowsters to ensure bushfire risks are minimised and deletion of two pylon signs - increased landscaping and reduction of hardstand to improve amenity and environmental impacts.

#### **What are the conditions of approval?**

- The Court order includes the following conditions of approval to ensure the development is adequately managed and the impacts are minimised:
  - lights and signage to be switched off between 10.30 pm and 6 am to reduce amenity impacts
  - stringent noise limits, reduced operating hours for goods delivery, provision of waste collection and car vacuums, the car wash be designed with automatic doors to ensure noise is reduced and a noise audit be conducted
  - a road safety audit be conducted
  - a Stormwater Management System be designed and operated in accordance with Council's requirements and an additional groundwater well be installed and monitored to monitor any impacts on the adjacent wetlands
  - the design of the development must meet the Planning for Bushfire Protection 2006 guidelines and the vegetation buffer include native rainforest species
  - spill kits be kept on the site at all times
  - waste management plan which includes a program for litter management be prepared.

The current proposal now seeks to delete or modify a number of the conditions referred to above which restricted operating hours, imposed a lighting curfew to reduce amenity impacts, and which imposed noise limits.

## **4.0 Context of the Application**

The mod report submits that the contextual setting of the service station has materially changed with Tweed Coast Road directly adjacent to the site being upgraded with the

commencement of intersection works, the provision of street lighting, and the installation of an acoustic barrier.

The applicant's justification for the increased hours of operation for the service station is that this –

*'is to reflect general growth in the locality, the commencement of the Kings Forest Development and to acknowledge the growth in traffic along Tweed Coast Road. Additionally, the expanded hours are to cater for diverse working hours exhibited by the community, including essential workers (ie. Hospital), construction and interstate workers.'*

Similarly, the applicant's submits that Condition 123(3) (relating to a curfew on external lighting) can be deleted as -

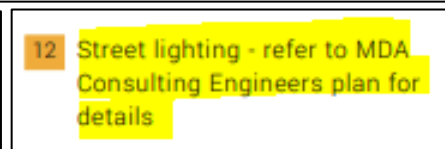
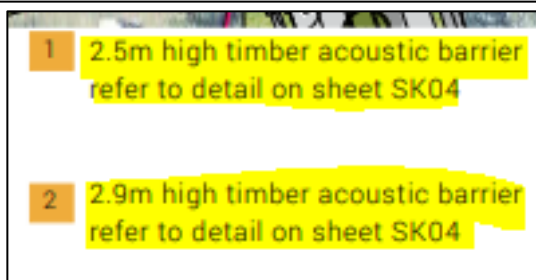
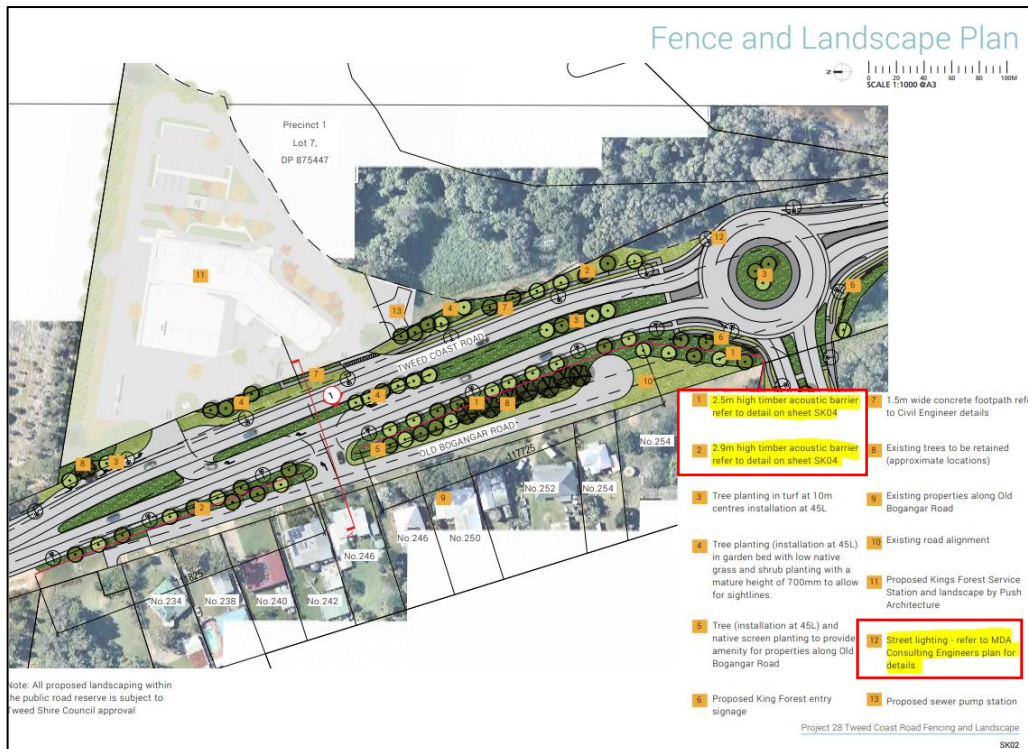
*'This condition is redundant through changes to Tweed Coast Road and the two proposed pylon signs and any illuminated signs on the building are within the illuminated road environment of Tweed Coast Road.'*

The current approval under MOD 3 and the curfew on hours of operation and lighting was in the context of the approved Tweed Coast Road upgrades and anticipated lighting associated with same. The only difference is that these works are currently underway and nearing completion – It was understood in 2017 (when MOD 3 was approved) that such works would take place.

The Department is referred to the following documents which substantiate this:

- [Condition 28 of MP08\\_0194 \(as amended under Mod 3\)](#) mandates a detailed design for the intersections of Tweed Coast Road and service station/food and drink premises (Precinct 1); Tweed Coast Road and Old Bogangar Road; and Tweed Coast Road and Kings Forest Parkway be approved under S138 of the *Roads Act 1993*.
- [Condition 125 of the consent \(as amended under Mod 3\)](#) states that
  - '2) The service station/food and drink premises must not be operational until the following road infrastructure works are completed and open to traffic as described in Bitzios Consulting 'Kings Forest Service Station Traffic Impact Assessment' (Appendix E, Project No. P1745, Version 006, 4 October 2016, Sheets 1 and 2):
    - widening and construction of a dividing median and turning lanes on Tweed Coast Road in the vicinity of Precinct 1; and
    - construction of a two lane roundabout at the intersection of Tweed Coast Road and Kings Forest Parkway.'
- In a [letter dated 28 November 2016](#) (which forms part of the determination documents for MOD 3), Bitzios Consulting confirmed that the applicant was committed to constructing Tweed Coast Road to the required 2026 configuration which, as set out in Attachment 1 of the same document, included the acoustic barrier (min 2.5 - 2.9m high) and identified street lighting to be provided.
- [The Place Design Group, Landscape Statement of Intent](#) prepared for the purposes of the S34 conference and dated October 2016, which is included in the approval documents for MOD 3, clearly shows that an acoustic barrier and street lighting as part of the Tweed Coast Road upgrade would provide the contextual setting to the service station – Refer to extract from the fencing and landscaping plan under/





- [The position paper prepared by CRG Acoustics dated 5 October 2016](#) which was prepared as part of the S34 conciliation conference took into account the approved 2.5m high acoustic fence, demonstrating that the barrier currently in place was considered as part of the original MOD 3.
 

*“As there is an opening between the two barrier legs to accommodate Old Bogangar Road, this opening was taken into account in the noise prediction modelling. As a “rule of thumb”, if the noise source is visible to the receiver, then the barrier has no effect; the more the line of sight is cut by the barrier, the higher the level of noise reduction.”*
- [The position paper for the Conciliation Conference for External Lighting Impact Assessment](#) prepared by MDA Consulting Engineers and dated 13 October 2016 forms part of the MOD 3 approval documents, and considered at the time, the provision of category P4 road lighting on Tweed Coast Road.
- [Cover letter from DAC Planning dated 27 January 2017](#) (Ref KFOR 16/76 Pt 2) notes that the 2.5m high acoustic barrier on the western side of Tweed Coast Road was approved as part of the Stage 1 Kings Forest Project Application MP08\_0194, while agreeing to the reduced hours of trading - with the provision of the fence clearly considered as part of the appropriateness of the reduced trading hours.

The MOD 3 approval always anticipated that there would be growth in the area with increased traffic on Tweed Coast Road.

The Bitzios Consulting 'Kings Forest Service Station Traffic Impact Assessment' referenced in the MOD 3 approval (and which was included in the current application as Appendix J) provided traffic modelling to 2026 (10 Year Design Horizon) which included the service station and which assumed that 2,500 in Kings Forest's would have been constructed, and which forecast a 2% growth in traffic volumes compounding per annum –

"The 2026 model volumes are based on the following:

- the proposed Service Station development on the eastern side of Tweed Coast Road;
- through traffic volumes based on 2012 surveys at the Tweed Coast Road / Dianella Drive Intersection with 2% growth compounding per annum from 2012 to 2026; and
- 2,500 residential dwellings on the western side of Tweed Coast Road accessed via Kings Forest Parkway."

Notwithstanding the applicant's current submission of 2.87% growth compounding per annum, none of the 2500 dwellings in Kings Forest have been constructed yet - with the project approval for Precinct 5 (376 lots) being the only subdivision approved at this time.

## 5.0 Substantially the same test

As set out in [S4.55\(2\) of the Environmental Planning & Assessment Act 1979](#), a consent authority may modify a consent if—

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

In accordance with Clause 3BA (6) of [Schedule 2 of the Environmental Planning and Assessment \(Savings, Transitional and Other Provisions\) Regulation 2017](#), the consent authority need only be satisfied that the development to which the consent as modified relates is substantially the same development as the development authorised by the consent (as last modified under section 75W).

Interesting the 'substantially the same' submission from the applicant is predominantly based on the layout changes, and not the hours of operation, which is presented by applicant as almost an aside. The applicant's response to the 'substantially the same' test in the mod report is extracted below:

*Comment – The proposed modification does not seek to introduce any new allotments or land uses and purely seeks to modify the existing approved plan set and associated conditions associated with the operational use of the proposed service station development.*

*The proposal involves minor variations to the built form of the development, these do not increase scale and/or intensity or height. There is no decrease in any setbacks proposed. The change results in improved pedestrian connectivity.*

*The proposal involves minor rearrangement to the internal traffic and pedestrian movements. There is no change to the entry/ exit points of the proposed development to Tweed Coast Road. The proposed changes to the traffic circulation within the site accommodate regulatory requirements associated with the refuelling point and improved efficiencies associated with the drive throughs and carwash facilities (sic).*

*The altered lighting and hours of operation are demonstrated to be compliant with current standards and community expectations.*

*The proposal reflects and has been updated to address consequential changes from MOD 12. There is a number of consequential changes and 'tidying up' of conditions to reflect current standards.*

*The leading cases in respect of whether a proposed development will result in substantially the same development as that originally approved, are *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8 & *Moto Projects (No 2) Pty Ltd v North Sydney Council* (1999) 106 LGERA 298.*

*In *Moto* and *Vacik*, the Court held that the result of the comparison of the originally approved development and the development as proposed to be modified "must be a finding that the modified development is 'essentially or materially' the same as the (currently) approved development" and that the word "substantially" means "essentially or materially or having the same essence".*

*The proposed development as modified is considered to essentially or materially have the same essence as the originally approved development. The original consent in respect to this aspect a service station of approximately 1000m<sup>2</sup> GFA on the site and related ancillary structures etc. The proposed modification seeks to reduce and alter this service station with minor amendments proposed to the internal access arrangements on site and the internal network for vehicles on the site (drive thru and car wash). It is also considered that the consequences or environmental impacts of the proposed development as modified, and the originally approved development both minimised by an existing suite of conditions that work to provide safeguarding of the environmental values. The proposed development as modified is substantially the same development as the development for which consent was originally granted (No. 08\_0194).*

*Amended specialist reports have detailed that the proposed development is consistent with the original approval and conditions with the minor amendments being justified.*

While *Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8 & *Moto Projects (No 2) Pty Ltd v North Sydney Council* (1999) 106 LGERA 29 are the oft quoted caselaw in relation to the 'substantially the same' test, it is recognised that newer case law is setting precedents for this test – One of the more recent cases being *Canterbury-Bankstown Council v Realize Architecture Pty Ltd*. As summarised by Sparke Helmore Lawyers in their [In the Zone July 2024 legal updates](#):

***"Chief Judge provides further guidance on the "substantially the same" test***

*Canterbury-Bankstown Council v Realize Architecture Pty Ltd* [2024] NSWLEC 31 (4 April 2024) by Preston CJ. Access the case [here](#).

*On 4 April 2024, Preston CJ handed down his decision in *Canterbury-Bankstown Council v Realize Architecture Pty Ltd* [2024] NSWLEC 31 (**Realize Architecture**), in which, the "substantially the same" test under s 4.55(2)(a) of the Environmental Planning & Assessment Act 1979 (**EPA Act**) has been simplified.*

*This case involved an appeal against a Commissioner's decision to approve the proposed modification of a development consent for a high-density residential development in Canterbury: *Realize Architecture Pty Ltd v Canterbury-Bankstown Council* [2023] NSWLEC 1437 (**Original Decision**).*

*In the Original Decision, the Commissioner found that she was satisfied that the development as modified was substantially the same as the originally approved development. The Commissioner considered evidence about quantitative and qualitative differences "to assist in ultimately undertaking a comparison of the two developments" required by s 4.55(2) of the EPA Act. In her assessment of qualitative differences, the Commissioner found that the proposed modification did not seek to delete or modify any critical element of the development.*

.....

*His Honour summarised the required approach to the 'substantially the same development test' as follows at [26] (our emphasis added):*



***The test in s 4.55(2)(a) requires a simple comparison of the two developments, the development as modified and the development as originally approved: Arrage v Inner West Council [2019] NSWLEC 85 at [24]; Feldkirchen Pty Ltd v Development Implementation Pty Ltd (2022) 254 LGERA 114; [2022] NSWCA 227 at [112]. This comparison can involve “an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper context”: Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 298; [1999] NSWLEC 280 at [56]. But the comparison required by s 4.55(2)(a) remains a holistic one of the two developments being compared – the modified development and the originally approved development. The opinion of satisfaction that s 4.55(2)(a) requires is that the two developments being compared are substantially the same development, not that either the quantitative features or the qualitative features of the two developments are substantially the same.***

*Following the above, Preston CJ found that while an assessment of the differences between the quantitative and qualitative features of the two elements can be undertaken, that assessment cannot displace the test in s 4.55(2)(a): at [27].*

*In practical terms, the decision in Realize Architecture confirms that the precondition in s 4.55(2)(a) requires the consent authority to:*

- a. identify all differences between the two developments, and*
- b. attribute significance to those differences, and*
- c. balance the differences having regard to their significance, in order to holistically determine whether the two developments are substantially the same.”*

The above three part process has been applied to the current modification application:

**a. Identify all the differences between the two developments**

The differences between the two developments can be summaries as follows:

1	Split the service station/food & drinks premises building into two buildings
2	Decrease in overall gross floor area of the development (998sqm to 886sqm)
3	Increase in gross floor area of the service station retail area (190sqm to 382sqm)
4	Amend the traffic circulation on the site - largely in relation to the two drive-thru sections and access to the car wash facilities
5	Adjust the landscaping on site to reflect the changes to the building footprint, to provide additional landscaping to the north-west of the site
6	Amend the proposed car wash facility by providing three (3) additional car wash bays including 2 auto carwash bays and one (1) long vehicle bay, with additional plant and storeroom for the purposes of the car and dog wash
7	Increase the number of car parking spaces from 52 to 56
8	Increase bicycle parking from 20 to 21 spaces
9	Provide three (3) EV charging stations/bays
10	Reconfigure the shape of the biobasin
11	Relocate the petrol tanker fuelling area

12	Relocate the HRV loading space
13	Amendments to the signage (though there is limited information on the changes)
14	Update Condition 100 to refer to the RFS document Planning for Bushfire Protection 2019, rather than the 2006 superseded version
15	Update Condition 103 to refer to updated AS documents
16	Update condition 106 to refer to updated AS documents
17	Increase the hours of operation of the service station from 6am to 10pm to 24 hour operation (Condition 130(1))
18	Increase the hours of operation of the food & drink premises in Building 1 from 6am to 10pm commence operations one (1) hour earlier at 5am (Condition 130(1))
29	Remove the curfew on night lighting of the site and signage illumination (10.30pm to 6am) (Conditions 123(3) and 131J(5))
20	Remove the noise limits specified in dB(A) for day, evening and night imposed on Precinct 1 through Condition 131(1)
21	Remove the requirement for the carwash to be provided with automatic doors, and for these doors to be subjected to a noise limit (through amendment of condition 131(4))

#### **b. Attribute significance to those differences**

The level of significance as attached to each item is as below:

- **Items 1-16** above are considered to have **low significance** in terms of difference between what is approved and what is proposed.

In relation to Item 13, it is noted that Condition A12 of the consent specifies that MP08\_0194 does not give approval to retail fit out, or signage of the building in Precinct 1. Separate development approval/s consent for these matters must be obtained – Therefore while the current plans show signage on Buildings 1 and 2, these building signs cannot be considered under this application without modifying condition A12 – which it is not proposed to do).

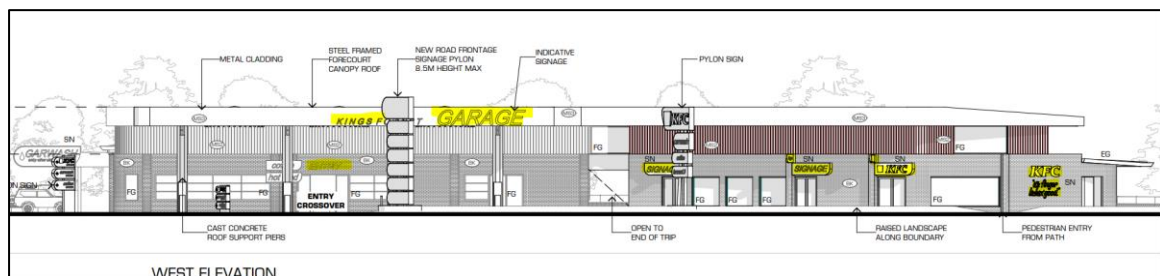


Figure 1- Extract from Drg DA-2001- P5 Western Elevation – Push Architecture

- **Item 18** is considered to have **low significance**

18. Increase the hours of operation of the food & drink premises in Building 1 from 6am to 10pm commence operations one (1) hour earlier at 5am (Condition 130(1))

- **Items 20 and 21** are considered to have **medium significance** as there is a risk associated with removal the noise limits that there will be no safeguards in place to protect the amenity of adjacent residents on Old Bogangar Road.

20. Remove the noise limits specified in dB(A) for day, evening and night imposed on Precinct 1 through Condition 131(1)

21. Remove the requirement for the carwash to be provided with automatic doors, and for these doors to be subjected to a noise limit (through amendment of condition 131(4))

These conditions were highlighted in the Factsheet from the Minister as set out earlier in this submission (ie - *stringent noise limits, reduced operating hours for goods delivery, provision of waste collection and car vacuums, the car wash be designed with automatic doors to ensure noise is reduced and a noise audit be conducted*)

- **Items 17 and 19** are considered to be of **very high significance** with these restrictions on operation identified as key considerations in the approval of the service station as evidenced by the Fact Sheet released by the Minister extracted earlier in this submission.

17. Increase the hours of operation of the service station from 6am to 10pm to 24 hour operation (Condition 130(1))

19. Remove the curfew on night lighting of the site and signage illumination (10.30pm to 6am) (Conditions 123(3) and 131J(5)).

**c. Balance the differences having regard to their significance, in order to holistically determine whether the two developments are substantially the same.**

Considering solely the physical changes to the proposal (Items 1-13), as it appears that the applicant has done in the Mod report, the two developments would reasonably be considered to be substantially the same. Items 14-16 relate to updating conditions to reflect current standards and do not change the development.

However, the proposed operational changes to allow the service station to operate for 24 hours, and to remove the requirement for lights and signage to be switched off between 10.30pm and 6am would result in a development could not be considered holistically to be substantially the same.

[Mills Oakley lawyers in their reporting on the case](#), and having represent the applicant in that matter, notes that the Chief Judge has reminded the industry that the task of determining whether a development is ‘substantially the same’ as the original approval does not need to follow any complicated formulas (such as comparing ‘qualitative’ and ‘quantitative’ differences or identifying “essential elements” or “critical elements” or “material and essential features”) - Instead, the approach can even be an ‘instinctive’ decision based upon a “balancing of” or “weighting of” the relevant facts.

Taking this simple approach, the weight of the restrictions in relation to the hours of operation and the lighting curfew cannot be ignored.

As set out earlier in this submission, the contextual setting of the site has not changed from what was envisaged when the service station was first approved:

- Tweed Coast Road was planned for upgrading with the provision of an acoustic barrier and street lighting, with these works simply now in place.
- Traffic on Tweed Coast Road was projected to increase with an annual compound growth of 2%, plus the traffic associated with the 2500 dwelling approved under the Kings Forest

Concept Approval (though the latter has not yet been realised) – so the increase in traffic is not unexpected.

The expert reports prepared by the applicant in MOD 3 were all based on 24 hours operation of the service station, and yet the outcome of the conciliation conference was that the operations of the development needed to be restricted to garner the support of the Minister.

It is submitted that increase in hours of the service station, and the removal of the lighting curfew will increase the intensity of the use, change the relationship to the surrounding developments as the modified development would not maintain the character of the service station as approved, and that these are critical elements that are so significant that they would render the two developments not substantially the same.

Should the Minister be of the opinion that the increase of hours (of operation and lighting) is 'substantially the same' – which we submit it is not - we nevertheless object to the proposal on the basis of the environmental impacts – specifically those associated with acoustic and lighting impacts, and the impact that this would have on the adjoining residences and the amenity of the area.

The intensification of the use which would result from the increase in hours will impact on the character and the amenity of the area - noise associated with vehicles idling in the drive-through, using the carwashes or entering/exiting vehicles at the petrol bowers, odour (associated with the preparation of food on-site and fuel vapours) and lighting impacts (with signage and building illumination and on-site lighting).

## **5.1 Compliance with community expectations**

It is noted that the applicant in the Mod report submits the *'altered lighting and hours of operation are demonstrated to be compliant with current standards and community expectations.'*

It is noted in the DPE Fact sheet on MP08\_0194 MOD 3, that:

Throughout the section 34 conciliation process, the Department consulted with objectors, Council, the Environment Protection Authority, Department of Primary Industries, Roads and Maritime Services, Rural Fire Service, and Office of Environment Heritage in relation to the Applicant's additional information provided, the amended proposal and the conditions of consent.

Given that the applicant has not acknowledged the submission from Council (**Attachment A**) advising that we did not support the extended hours of operation, and they consulted with a single neighbour prior to lodgement on landscaping (as required by Condition 114(2)), it is difficult to understand how a position might be reached that the altered lighting and increased hours of operation are demonstrated to be compliant with community expectations.

To the contrary, following the determination of Mod 3, and reviewing the documentation on the Major Project Planning Portal website, the community expectation would be that the hours of operation would be restricted to 6am to 10pm and that there would be a lighting curfew.

## 6.0 Assessment against S4.15.(1)

To enable a proper assessment of the application, it is considered that additional information in relation to the following matters is needed.

### 6.1 Tweed Local Environmental Plan 2000

#### 6.1.1 Clause 11 – The zones

The Mod report states that *‘the proposed development is entirely consistent with the objectives of the zone. Service Stations and Refreshment Rooms are a necessary related facility to both residential and tourist developments. Further, the proposal includes detailed measures to ensure no amenity impact upon the locality.*

The subject site is zoned 2(c) Urban Expansion under [SEPP \(Precincts – Regional\) 2021](#). The objectives of Zone 2(c) as set out in Tweed Local Environmental Plan (TLEP) 2000 are as follows:

##### *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 land take.*

##### *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.*

A mapped coastal wetlands is located to the south of the site – Despite the submission of an Ecological report (Appendix E) with the current application, the impact of noise/lighting from increased hours is not addressed in the application, and as such, it is not demonstrated that the objectives of the zone are met.

#### 6.1.2 Clause 47 – Advertising Signs

The Mod report states that *‘This modification proposed a total of 2 pylon signs, 1 wall sign, 2 canopy fascia signs (for the service station and carwash), and several directional and business identification signs.*

*The proposed signage is consistent with that commonly applied to Service Stations and takeaway food and drink premises and is integrated into the overall Architectural style of the building. The location of the signage is provided within the provided architectural plans.’*

As set out earlier Condition A12 of MP08\_0194 (which the application is not seeking to amend) exclude building signage. Further limited information on the proposed signage is provided.

## 6.2 SEPP Resilience & Hazards 2021 – Chapter 2 Coastal Management

Precinct 1 is mapped as being fully within the Coastal Environment area, substantially within the Coastal Environment area, and partially mapped as being in Proximity to Coastal Wetlands and Littoral Rainforest area.



Condition 131C of MP08\_0194 specifies that operation of the service station/food and drink premises must not damage or interfere in any way with the SEPP 14 wetlands, this includes any stormwater or groundwater discharge from the site. While the potential interferences specifically includes stormwater or groundwater discharge from the site, this does not exclude other interferences or damage such as impacts associated with lighting, acoustic impacts etc which may arise from 24 hour operation of the service station.

As such the application should address Clauses 2.8, 2.20 and 2.11 of the SEPP, yet the mod report simply advises that it is noted that since the modification 3, several of the applicable SEPP's have changed but that the items raised within the previous plans remain consistent with the new policies, and with what has been proposed, and that no further consideration is considered necessary.

While Council is of the opinion that the increase in hours of operation of the service station and the removal of the lighting curfew results in a development which is not substantially the same, and which cannot be considered under a modification application, if the Minister is of a different mind, and these changes are to be considered, the applicant should be requested to demonstrate how the increased noise and lighting will not significantly impact on ecological integrity of the adjacent coastal wetland, its fauna and their habitats.

While a brief ecological assessment report prepared by JWA consultants accompanies the modification application, it is silent on the impacts associated with the increased lighting and hours of operation.

The applicant should be requested to properly address the relevant provisions of the SEPP.

### **6.3 SEPP Industry & Employment 2021 – Chapter 3 Advertising and signage**

No assessment has been undertaken against SEPP Industry & Employment 2021 – Chapter 3 Advertising and signage.

### **6.4 Tweed Development Control Plan A4 – Signage**

No assessment has been against DCP Section A4.

### **6.5 Tweed Development Control Plan A15 – Waste Minimisation and Management**

Condition 108 of the consent specifies that:

*'An appropriate area must be provided for the storage of garbage bins and recycling containers and all waste and recyclable material generated by this premises, outside of the ecological buffer zone and asset protection zone. The location and design of such an area must be in accordance with the requirements of Tweed Shire Council Development Control Plan 2008 (as in force at the date of this approval).'*

No details have been provided as to whether the proposed waste storage area complies with the provisions for DCP Section A15.

## **7.0 Proposed amendment to conditions**

Set out over in **Table 1** is a summary of proposed changes to the conditions, the applicant's justification and the response from Council.

**Table 1 – Conditions proposed to be modified**

No	Current Condition	Proposed condition	Applicant justification	Council response																																																																																																																																																																																																																																																												
A1	<b>Project Description</b> A1 - Construction of 2,036 988 sqm of floorspace for a rural supplies building service station/food and drink premises, including carparking and landscaping.	<b>Project Description</b> A1 - Construction of 2,036 988 958 sqm of floorspace for a rural supplies building service station/food and drink premises, including carparking and landscaping.	This change is proposed to reflect the modification of the architectural plans that are associated with the service station building on site. the proposed changes see a minor reduction in the GFA for the proposed building, this requires the condition outlining the project description (A1) to be amended.	The mod report on p12 identifies the total Gross Floor Area as 886sqm but on p21 identifies the GFA as 958sqm.																																																																																																																																																																																																																																																												
A3	<b>Terms of Approval</b> <table><tr><th colspan="4">Architectural Plans Prepared by Push – Precinct 1</th></tr><tr><th>Drawing No.</th><th>Revision</th><th>Name of Plan</th><th>Date</th></tr><tr><td>DA0000</td><td>G</td><td>Locality Map</td><td>Dec 2016</td></tr><tr><td>DA1000</td><td>P3</td><td>Proposed Site Plan</td><td>Dec 2016</td></tr><tr><td>DA1001</td><td>F</td><td>Proposed Ground Floor Plan</td><td>Sep 2016</td></tr><tr><td>DA1003</td><td>C</td><td>Proposed Roof Plan</td><td>Sep 2016</td></tr><tr><td>DA2001</td><td>E</td><td>Elevations</td><td>Sep 2016</td></tr><tr><td>DA2002</td><td>E</td><td>Elevations</td><td>Sep 2015</td></tr><tr><td>DA3001</td><td>C</td><td>Sections</td><td>Sep 2016</td></tr><tr><td>DA5000</td><td>F</td><td>Proposed Landscape Plan</td><td>Dec 2016</td></tr><tr><td>DA5001</td><td>C</td><td>Proposed Landscape Sections</td><td>Dec 2016</td></tr><tr><td>DA1005</td><td>P6</td><td>Approved Plan with Lot &amp; Easements</td><td>7/11/2023</td></tr></table> <table><tr><th colspan="4">Engineering Plans Prepared by Morrison Urban Solutions</th></tr><tr><th>Drawing No.</th><th>Revision</th><th>Name of Plan</th><th>Date</th></tr><tr><td>12301-SK-00A</td><td>C</td><td>Kings Forest Precinct 1 Grading Plan</td><td>25.11.2016</td></tr><tr><td>12301-SK-001</td><td>A</td><td>Kings Forest Sections and Indicative Drainage Profile</td><td>16.12.2014</td></tr><tr><td>12301-SK-111</td><td>B</td><td>Indicative Plan and Section Tweed Coast Road and Kings Forest Parkway Ultimate Intersection</td><td>26.11.2016</td></tr></table> <table><tr><th colspan="4">Gilbert &amp; 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These include an amended traffic report, ecological report, stormwater report, lighting report etc. therefore this condition is to be amended to reflect the changes to the plans and the associated reporting.</p>	<p>As set out later in this submission, there are a number of matters relating to the plans which need to be addressed in more detail – conflict in the location of car-parking spaces in carwash area, disconnection of the HRV loading bay from the units it is to serve, queries in relation to the operation of the bio basin, etc.</p> <p>It is also noted that the proposed new wording of the condition does not refer to supporting documents submitted with the modification application, as suggested by the applicant.</p> <p>As set out in this submission, Council objects to the increased trading hours for the service station and to the removal of the curfew on lighting under Conditions 103 and 123(3) – so it is considered that any reference to documents relating to same (acoustic report and lighting report) would be redundant, though the reports which relate to any approved amendments should be called up here.</p>
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	<p>d) roofing must be gutterless or guttering and valleys must be screened to prevent the buildup of flammable material. Any materials used must be non-combustible; and</p> <p>e) above-ground infrastructure associated with the service station (including the above-ground ventilation infrastructure, tank filling points and fill points), must be located a minimum of 7 metres from the vegetation buffer and be designed to withstand the calculated radiant heat exposure.</p>	<p>d) roofing must be gutterless or guttering and valleys must be screened to prevent the buildup of flammable material. Any materials used must be non-combustible; and</p> <p>e) above-ground infrastructure associated with the service station (including the above-ground ventilation infrastructure, tank filling points and fill points), must be located a minimum of 7 metres from the vegetation buffer and be designed to withstand the calculated radiant heat exposure.</p>		
103	All outdoor lighting must comply with AS/NZ1158.3: 1999 Pedestrian Area Category P) Lighting and AS4282: 1997 Control of the Obtrusive Effects of Outdoor Lighting. Details demonstrating compliance with these requirements must be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for the construction of any building in Precinct 1.	All outdoor lighting must comply with AS/NZ1158.3: <del>1999</del> 2020 Pedestrian Area Category P) Lighting and AS4282: <del>1997</del> 2019 Control of the Obtrusive Effects of Outdoor Lighting. Details demonstrating compliance with these requirements must be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for the construction of any building in Precinct 1	As above	AS/NZS 4282 has been superseded and should be reflected in any modification to the condition.
106	<p>1) All vehicles must enter and leave the service station/food and drink premises in a forward direction.</p> <p>2) Car parking associated with the proposal (including queuing areas, grades, turn paths, sight distance requirements, aisle widths, and parking bays) must be in accordance with AS 2890.1-2004 and AS 2890.2-2002 for heavy vehicle usage.</p> <p>3) Appropriate pedestrian advisory signs must be provided at the egress from the car park.</p> <p>4) All works/regulatory signposting associated with the service station/food and drink premises must be at no cost to the relevant roads authority.</p>	<p>1) All vehicles must enter and leave the service station/food and drink premises in a forward direction.</p> <p>2) Car parking associated with the proposal (including queuing areas, grades, turn paths, sight distance requirements, aisle widths, and parking bays) must be in accordance with AS 2890.1-2004 and AS 2890.2-<del>2002</del> 2018 for heavy vehicle usage.</p> <p>3) Appropriate pedestrian advisory signs must be provided at the egress from the car park.</p> <p>4) All works/regulatory signposting associated with the service station/food and drink premises must be at no cost to the relevant roads authority.</p>	As above	Noted. No objection to updating references.

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	<p>5) The swept path of the longest vehicle (including garbage trucks and fuel delivery trucks) entering and exiting the site, as well as manoeuvrability through the site, must be in accordance with AUSTROADS.</p> <p>6) A revised pedestrian movement and access plan which details the interaction between vehicles and pedestrians must be prepared in accordance with the relevant Australian Standards.</p> <p>7) Details demonstrating compliance with the requirements specified above and the revised pedestrian movement and access plan must be submitted to the satisfaction of the Secretary prior to the issue of a Construction Certificate for the construction of any building in Precinct 1.</p>	<p>5) The swept path of the longest vehicle (including garbage trucks and fuel delivery <del>trucks trucks</del>) entering and exiting the site, as well as manoeuvrability through the site, must be in accordance with AUSTROADS.</p> <p>6) A revised pedestrian movement and access plan which details the interaction between vehicles and pedestrians must be prepared in accordance with the relevant Australian Standards.</p> <p>7) Details demonstrating compliance with the requirements specified above and the revised pedestrian movement and access plan must be submitted to the satisfaction of the Secretary prior to the issue of a Construction Certificate for the construction of any building in Precinct 1</p>		
123(3)	<p>1) The Proponent must submit to the Certifying Authority evidence from an independent qualified practitioner demonstrating compliance with Condition 123.</p> <p>2) All externally mounted artificial lighting, including security lighting, must be shielded where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.</p> <p>3) Illuminated signage and lights must be switched off between the hours of 10:30 pm to 6 am each evening.</p>	<p>1) The Proponent must submit to the Certifying Authority evidence from an independent qualified practitioner demonstrating compliance with Condition 123.</p> <p>2) All externally mounted artificial lighting, including security lighting, must be shielded where necessary or required so as to prevent the spill of light or glare creating a nuisance to neighbouring or adjacent premises.</p> <p><del>3) Illuminated signage and lights must be switched off between the hours of 10:30 pm to 6 am each evening.</del></p>	<p>Delete Condition 123(3). This condition is redundant through changes to Tweed Coast Road and the two proposed pylon signs and any illuminated signs on the building are within the illuminated road environment of Tweed Coast Road.</p>	<p><b>OBJECTION</b> - The deletion of this condition will significantly alter the nature of the development, and result in a development that is not substantially the same.</p> <p>Further, the applicant has not suitably demonstrated the potential impact of this lighting on the sensitive receivers – adjacent residents on Old Bogangar Road, and fauna in the adjacent wetlands.</p> <p>While the application has been accompanied by an Ecological assessment, it relates to physical changes only, and does not address the impact of increased trading hours or the removal of the lighting curfew on wildlife, particularly in the adjacent wetlands.</p>



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				Refer to comments from Environmental Health Services later in this submission for further details on the concerns raised in relation to amenity impacts on adjacent residents.																																																																																													
130(1)	<p>1) The Proponent must comply with the construction and operating hours in the below table unless otherwise agreed to in writing by the Secretary.</p> <p>TABLE - Service Station and Food and Drink Premises Hours of Construction and Operation</p> <table><tr><th>Activity</th><th>Day</th><th>Hours</th></tr><tr><td rowspan="3">Construction</td><td>Monday to Friday</td><td>7 am to 6 pm</td></tr><tr><td>Saturday</td><td>8 am to 1 pm</td></tr><tr><td>Sunday &amp; Public Holidays</td><td>Nil</td></tr><tr><td rowspan="12">Operation</td><td colspan="2">Trading hours:</td></tr><tr><td>Monday to Sunday</td><td>6 am to 10 pm</td></tr><tr><td>Public Holidays</td><td>6 am to 10 pm</td></tr><tr><td colspan="2">Goods Delivering (including fuel delivery):</td></tr><tr><td>Monday to Sunday</td><td>7 am to 10 pm</td></tr><tr><td>Public Holidays</td><td>7 am to 10 pm</td></tr><tr><td colspan="2">Waste Collection:</td></tr><tr><td>Monday to Saturday</td><td>7 am to 10 pm</td></tr><tr><td>Public Holidays</td><td>Nil</td></tr><tr><td colspan="2">Car Vacuums:</td></tr><tr><td>Monday to Sunday</td><td>7 am to 10 pm</td></tr><tr><td>Public Holidays</td><td>7 am to 10 pm</td></tr></table> <p>Clause 1) above does not apply to any activity that is required to be performed by police or other authorities for safety reasons; and/or if there is an on-site emergency that poses an immediate danger to personnel or equipment; and/or the operation or personnel or equipment is endangered. In such circumstances, prior notification must be provided to the EPA and any affected residents as soon as possible, or within a reasonable period in the case of emergency.</p>	Activity	Day	Hours	Construction	Monday to Friday	7 am to 6 pm	Saturday	8 am to 1 pm	Sunday & Public Holidays	Nil	Operation	Trading hours:		Monday to Sunday	6 am to 10 pm	Public Holidays	6 am to 10 pm	Goods Delivering (including fuel delivery):		Monday to Sunday	7 am to 10 pm	Public Holidays	7 am to 10 pm	Waste Collection:		Monday to Saturday	7 am to 10 pm	Public Holidays	Nil	Car Vacuums:		Monday to Sunday	7 am to 10 pm	Public Holidays	7 am to 10 pm	<p>1) The Proponent must comply with the construction and operating hours in the below table unless otherwise agreed to in writing by the Secretary.</p> <p>TABLE - Service Station and Food and Drink Premises Hours of Construction and Operation</p> <table><tr><th>Activity</th><th>Day</th><th>Hours</th></tr><tr><td rowspan="3">Construction</td><td>Monday to Friday</td><td>7 am to 6 pm</td></tr><tr><td>Saturday</td><td>8 am to 1 pm</td></tr><tr><td>Sunday &amp; Public Holidays</td><td>Nil</td></tr><tr><td>Operation</td><td colspan="2">Trading Hours</td></tr><tr><td rowspan="2">Service Station</td><td>Monday to Sunday</td><td>6 am to 10 pm 24hrs</td></tr><tr><td>Public Holidays</td><td>6 am to 10 pm 24hrs</td></tr><tr><td rowspan="2">Food and Drink Premises Building 1</td><td>Monday to Sunday</td><td>5a am to 10 pm</td></tr><tr><td>Public Holidays</td><td>5a am to 10 pm</td></tr><tr><td rowspan="2">Food and Drink Premises Building 2</td><td>Monday to Sunday</td><td>6 am to 10 pm</td></tr><tr><td>Public Holidays</td><td>6 am to 10 pm</td></tr><tr><td rowspan="2"></td><td colspan="2">Goods Delivering (including fuel delivery):</td></tr><tr><td>Monday to Sunday</td><td>7 am to 10 pm</td></tr><tr><td rowspan="2"></td><td colspan="2">Public Holidays</td></tr><tr><td colspan="2">7 am to 10 pm</td></tr><tr><td rowspan="2"></td><td colspan="2">Waste Collection:</td></tr><tr><td>Monday to Saturday</td><td>7 am to 10 pm</td></tr><tr><td rowspan="2"></td><td colspan="2">Public Holidays</td></tr><tr><td colspan="2">Nil</td></tr><tr><td rowspan="2"></td><td colspan="2">Car Vacuums:</td></tr><tr><td>Monday to Sunday</td><td>7 am to 10 pm</td></tr><tr><td rowspan="2"></td><td colspan="2">Public Holidays</td></tr><tr><td colspan="2">7 am to 10 pm</td></tr></table> <p>Clause 1) above does not apply to any activity that is required to be performed by police or other authorities for safety reasons;</p>	Activity	Day	Hours	Construction	Monday to Friday	7 am to 6 pm	Saturday	8 am to 1 pm	Sunday & Public Holidays	Nil	Operation	Trading Hours		Service Station	Monday to Sunday	6 am to 10 pm 24hrs	Public Holidays	6 am to 10 pm 24hrs	Food and Drink Premises Building 1	Monday to Sunday	5a am to 10 pm	Public Holidays	5a am to 10 pm	Food and Drink Premises Building 2	Monday to Sunday	6 am to 10 pm	Public Holidays	6 am to 10 pm		Goods Delivering (including fuel delivery):		Monday to Sunday	7 am to 10 pm		Public Holidays		7 am to 10 pm			Waste Collection:		Monday to Saturday	7 am to 10 pm		Public Holidays		Nil			Car Vacuums:		Monday to Sunday	7 am to 10 pm		Public Holidays		7 am to 10 pm		<p>The amendments to the Table seek to:</p> <ul style="list-style-type: none"><li>increase the trading hours for the Service Station from 6am to 10pm (Monday – Sunday and Public Holidays) to 24 hours; and</li><li>to provide different hours of operation for Food &amp; Drinks Premises Building 1 and Building 2, with the trading hours for Building 1 increasing from 6am to 10pm (Sunday – Monday and Public Holidays) to 5am to 10pm.</li></ul> <p>The applicant’s justification is: <i>The proposed increase in operating hours is to reflect general growth in the locality, the commencement of the Kings Forest Development and to acknowledge the growth in traffic along Tweed Coast Road. Additionally, the expanded hours are to cater for diverse working hours exhibited by the community, including essential workers (ie. Hospital), construction and interstate workers.</i></p>	<p><b>OBJECTION</b> – The 24 hour operation service station will significantly alter the nature of the development, and result in a development that is not substantially the same.</p> <p>The applicant has not suitably demonstrated the potential impact of noise and lighting on sensitive receivers, particularly during the extended hours of operation.</p> <p>No information has been provided regarding hours of operation of the car and dog wash.</p> <p>It is noted that the position paper prepared by CRG Acoustics dated 5 October 2016 which was prepared as part of the S34 conciliation conference in MOD 3, noted that:</p> <p><i>“As there is an opening between the two barrier legs to accommodate Old Bogangar Road, this opening was taken into account in the noise prediction modelling. As a “rule of thumb”, if the noise source is visible to the receiver, then the barrier has no effect; the more the line of sight is cut by the barrier, the higher the level of noise reduction.”</i></p>
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		and/or if there is an on-site emergency that poses an immediate danger to personnel or equipment; and/or the operation or personnel or equipment is endangered. In such circumstances, prior notification must be provided to the EPA and any affected residents as soon as possible, or within a reasonable period in the case of emergency.		<p>The acoustic report submitted with the current application (Appendix C), prepared by MAC Muller Acoustic Consulting does not explain how this gap in the barrier is accounted for, particularly in relation to R04, R05 and R06.</p> <p>Refer to comments from Environmental Health Services, and Community Development Officer Social Planning later in this submission.</p>																																						
131	<p>The Applicant must ensure noise from the operation does not exceed the noise limits identified in the below table.</p> <p><b>Noise Limits (dB(A)) for Precinct 1.</b></p> <table><tr><th rowspan="2">Location</th><th colspan="3">Noise Limits dB(A)</th></tr><tr><th>Day (7am - 6pm Monday to Saturday; 8am - 6pm Sunday)</th><th>Evening (6pm - 10pm)</th><th>Night (8am - 7am)</th></tr><tr><td>234-254 Old Bogangar Road, Kingscliff</td><td>49</td><td>47</td><td>41</td></tr><tr><td>219 Tweed Coast Road, Kingscliff</td><td>42</td><td>39</td><td>32</td></tr><tr><td>Any dwelling east of Precinct 1</td><td>37</td><td>34</td><td>28</td></tr></table> <p>2) All externally mounted air conditioning units and other mechanical plant or equipment must be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive.</p> <p>3) All plant and equipment (air conditioning, drainage systems, infrastructure, pollution control equipment and fuel burning equipment) installed or used in or on the premises must be:</p>	Location	Noise Limits dB(A)			Day (7am - 6pm Monday to Saturday; 8am - 6pm Sunday)	Evening (6pm - 10pm)	Night (8am - 7am)	234-254 Old Bogangar Road, Kingscliff	49	47	41	219 Tweed Coast Road, Kingscliff	42	39	32	Any dwelling east of Precinct 1	37	34	28	<p><del>The Applicant must ensure noise from the operation does not exceed the noise limits identified in the below table.</del></p> <p><del>Noise Limits (dB(A)) for Precinct 1.</del></p> <table><tr><th rowspan="2">Location</th><th colspan="3">Noise Limits dB(A)</th></tr><tr><th>Day (7am - 6pm Monday to Saturday; 8am - 6pm Sunday)</th><th>Evening (6pm - 10pm)</th><th>Night (8am - 7am)</th></tr><tr><td>234-254 Old Bogangar Road, Kingscliff</td><td>49</td><td>47</td><td>41</td></tr><tr><td>219 Tweed Coast Road, Kingscliff</td><td>42</td><td>39</td><td>32</td></tr><tr><td>Any dwelling east of Precinct 1</td><td>37</td><td>34</td><td>28</td></tr></table> <p>2) All externally mounted air conditioning units and other mechanical plant or equipment must be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised. Notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive or intrusive.</p> <p>3) All plant and equipment (air conditioning, drainage systems, infrastructure, pollution control equipment and fuel burning equipment) installed or used in or on the premises must be:</p>	Location	Noise Limits dB(A)			Day (7am - 6pm Monday to Saturday; 8am - 6pm Sunday)	Evening (6pm - 10pm)	Night (8am - 7am)	234-254 Old Bogangar Road, Kingscliff	49	47	41	219 Tweed Coast Road, Kingscliff	42	39	32	Any dwelling east of Precinct 1	37	34	28	<p>Deletion of Table in (1) - As per the acoustic assessment, the proposal demonstrates compliance with the relevant criteria and does not create adverse acoustic impacts. The deletion of this table is also a consequentially change arising from the adoption of current standards and requirements and changes which have occurred in the immediate locality to the acoustic environment. ie. Tweed Coast Road.</p> <p>Amendment of 131(4) - As per the acoustic assessment, the proposal demonstrates compliance with the relevant criteria and does not create adverse acoustic impacts. The deletion of this table is also a consequentially change arising from the adoption of current standards, the design and improvement to carwash facilities.</p>	<p>Condition 131(1) - <b>OBJECTION</b> - The applicant has not demonstrated the potential impact of noise on sensitive receivers, particularly during the extended hours of operation.</p> <p>While the amendment to Condition 131(1) is not supported, it is noted that the applicant has not acknowledged that Condition 131A would also have to be amended to remove the reference to Table in Condition 131 that they wish to delete.</p> <p>131(4) – The applicant intends to remove the requirement for the carwash to have automatic doors that provide more than 15 dB(A) noise reduction.</p> <p>It is unclear whether the use of the carwash is proposed over 24 hours.</p> <p>The applicant has not demonstrated the potential impact of noise on sensitive receivers, particularly</p>
Location	Noise Limits dB(A)																																									
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No	Current Condition	Proposed condition	Applicant justification	Council response
	a) maintained in a proper and efficient condition; and b) operated in a proper and efficient manner.  4) The car wash is to be constructed with solid walls and a solid roof. The carwash must have automatic doors. These doors must provide more than 15 dB(A) noise reduction.  5) Drainage grates over trafficable areas must be fixed to avoid rattling when vehicles pass over the grate.	a) maintained in a proper and efficient condition; and b) operated in a proper and efficient manner.  4) The car wash is to be constructed with solid walls and a solid roof. <del>The carwash must have automatic doors. These doors must provide more than 15 dB(A) noise reduction.</del>  5) Drainage grates over trafficable areas must be fixed to avoid rattling when vehicles pass over the grate.		during the extended hours of operation.
131J	<b>Signage and advertising</b> 1) Any prominent signage must be generally of a kind, and in the locations, shown in the approved drawings. 2) No flashing, or chasing lighting is to be installed or displayed on the exterior of the premises 3) Any flags, bunting or other promotional material of a like nature must be arranged and properly maintained in a manner which does not detract from the appearance of the premises or the streetscape and which does not represent a hazard to the public. 4) Goods or advertising signs must not be displayed or allowed to stand on the public footpath or street. 5) Illuminated signage and lights which may impact on the residents on Old Bogangar Road must be switched off between 10:30pm and 6am each evening.	1) Any prominent signage must be generally of a kind, and in the locations, shown in the approved drawings. 2) No flashing, or chasing lighting is to be installed or displayed on the exterior of the premises 3) Any flags, bunting or other promotional material of a like nature must be arranged and properly maintained in a manner which does not detract from the appearance of the premises or the streetscape and which does not represent a hazard to the public. 4) Goods or advertising signs must not be displayed or allowed to stand on the public footpath or street. 5) <del>Illuminated signage and lights which may impact on the residents on Old Bogangar Road must be switched off between 10:30pm and 6am each evening.</del>	As previously noted, the contextual changes to Tweed Coast Road have significantly changed the immediate road environment. The assessment has demonstrated that the illuminated signage will not have an adverse amenity impact from light and/or light spill. The lighting is required to accommodate the altered hours of operation.	<b>OBJECTION</b> – The deletion of this condition would result in a development which is not substantially the same.  Further, the applicant has not suitably demonstrated the potential impact of this lighting on the sensitive receivers.  Refer to comments from Environmental Health Services later in this submission.

## **8.0 Comments from Council officers**

### **8.1 Development Assessment Unit**

In addition to the matters raised above the following is noted:

#### **8.1.1 Increase in service station retail floor space**

The service station retail area has been significantly increased – from 180sqm to 382sqm – Any increase in retail floor area associated with the service station should address Council's Retail Policy <https://www.tweed.nsw.gov.au/development-business/land-use-planning-controls/strategic-land-use-planning>

#### **8.1.2 Lack of detail ion Community Consultation**

At the pre-lodgement meeting in April 2024, the applicant confirmed that no consultation had been undertaken with the neighbouring residents at that time, but that such consultation would take place prior to the lodgement of any modification application. The applicant is requested to provide documentation outlining the outcomes of such consultation.

### **8.2 Community Development Officer Social Planning**

#### **8.2.1 Condition 130 (1) hours of operation.**

The justification for an increase in trading hours is stated as being due to general growth, the commencement of the Kings Forest development, the growth in traffic along Tweed Coast Road, and to cater for diverse working hours including essential workers and construction and interstate workers.

There is nothing in the documentation providing data on this growth or any other detail to demonstrate there has been a substantial change in population growth projections, traffic movement or a shift in worker demographic to demonstrate that the extended hours are now required. The commencement of the Kings Forest development is also not a sufficient rationale as the development was always to commence and there was always to be construction workers.

There is no net change in the per hour traffic generation data for the service centre in the TIA, but no data has been provided in terms of expected traffic specifically in the evening and early hours for a 24/7 operation. It appears that the base modelled periods only covers 8am to 9am and 4.15 - 5.15pm.

There is already a 24/7 service centre 6km away on a main arterial (Pacific Motorway), the Tweed Coast road is a local arterial for residents and businesses who could still use the existing M1 24/7 service centre if fuel was essential after 10pm and before 6am.

#### **8.2.2 Impact category - Surroundings (amenity)**

Council's response to Boyd Sargeant in April 2024 captures key points around amenity including noise, light, and environment that would directly impact the local residents and potentially some of the future community. I have no additional comments on those aspects of social impact. Refer to **Attachment A**.

#### **8.2.3 Impact category - Surroundings (safety)**

From a crime prevention and safety perspective we note it is difficult to assess as:

- The intent for extended hours is unclear (see notes above under condition 130 above).
- Expected patronage and type of patrons across the evening and early hours would be needed to appropriately assess from a safety perspective. We note the fast food areas

will not be open so this may reduce some risk, particularly as those establishments often have young workers.

#### 8.2.4 Community consultation: Appendix K Consultation Record

This document only includes an email exchange on landscaping. There is no reference to previous TSC and community feedback objecting to a 24/7 operation. It is unclear if this is because they are relying on having responded to these objections in the Mod 3 response to submissions. At a minimum the applicant should be recognising previous community feedback on a 24/7 operation and if their responses from the 2017 submission response document still stand.

### 8.3 **Environmental Health Services**

#### 8.3.1 Summary of Issues

The following matters need to be considered in the assessment of the application - Acid sulfate soil and dewatering, contaminated land, dangerous goods (offensive/hazardous materials), food premises, lighting, noise, red imported fire ants, underground petroleum storage systems, waste.

The Factsheet produced by Department of Planning & Environment regarding the Kings Forest – Service Station Modification Request (MOD 3) dated February 2017 also has relevance.

#### 8.3.2 Acid Sulfate Soils and dewatering

Acid sulfate soil and dewatering have been previously assessed for the development. The modifications proposed under MOD 15 are minor and do not require additional assessment. No changes are proposed to the existing conditions of consent.

#### 8.3.3 Contaminated land

Contaminated land has been previously assessed for the development. The modifications proposed under MOD 15 are minor and do not require additional assessment. No changes are proposed to the existing conditions of consent.

#### 8.3.4 Dangerous Goods (Offensive/Hazardous Materials)

Limited information has been provided in the application regarding the modifications around the redesign of the tanker refuelling area and LPG tanks.

The applicant should identify the modifications required for the redesign of the tanker refuelling area and LPG tanks and provide supporting information from a suitably qualified person regarding compliance with *State Environmental Planning Policy (Resilience and Hazards) 2021* and relevant legislation and standards.

#### 8.3.5 Food Premises

The proposed food and drink premises are to be reconfigured with the modification. Condition A12 of MP08\_0194 states:

A12

- 1) *This approval does not give approval to retail fit out or signage of the building in Precinct 1. Separate development 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).*

This will allow for consideration of future food premises and mechanical ventilation. No changes to conditions of consent are proposed.

Typically, the following conditions would apply to ensure compliance with the relevant food legislation and are recommended in any proposed modification.

BLD153	<b>Approval of Fitout – Food and Drink Premises</b> Before the issue of the construction certificate plans drawn to a scale of 1:50 detailing all food and drink related areas shall be provided to Council for assessment and approval. The plans shall be accompanied by a completed Application for Approval of Food Premises Fitout Plan and the adopted fee in Council's Fees and Charges. Evidence of the plans being approved shall be provided prior to release of the construction certificate. Plans are to include: <ul style="list-style-type: none"> <li>• Floor plan and elevations;</li> <li>• Layout of kitchen, bar and all equipment;</li> <li>• All internal finish details including floors, wall, ceiling and lighting;</li> <li>• Hydraulic design and /or method of disposal of trade waste; and</li> <li>• Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 &amp; 2 where required.</li> </ul>
BLD399Z	<b>Food Premises Fitout Plan</b> The development shall be constructed in accordance with the approved food fitout plans or to the satisfaction of Council's General Manager or delegate. During construction and fitout of the kitchen/food premises, periodic inspections may be arranged with Council's Environmental Health Officer to ensure compliance with the approved food fitout plans, health related conditions of approval, and respective legislation.
BLD422	<b>Food Premises – Fit out Inspection</b> Prior to commencement of operations and on completion of fitout an inspection is to be arranged with Council's Environmental Health Officer for final approval.
BLD423	<b>Food Premises – Notification</b> The proprietor of the food premises shall provide appropriate notification to Council prior to the commencement of operations by submitting Council's Application for Food Premises Registration/Change of Details form available at <a href="http://www.tweed.nsw.gov.au">www.tweed.nsw.gov.au</a> or by calling 02 6670 2400.
BLD532	<b>Food Premises Standards</b> Any premises used for the storage, preparation or sale of food shall meet the requirements of the <i>Food Act 2003</i> , FSANZ Food Safety Standards, Australian Standard AS 4674:2004 <i>Design, construction and fit-out of food premises</i> , and the requirements of Council's General Manager or delegate.

### 8.3.6 Lighting

An Obtrusive Lighting Report for Kings Forest Service Station, Tweed Coast Road, Kings Forest prepared by PE Consulting Engineers dated 15 August 2024 (Project Number: 24-0262 Revision A) has been prepared with the following noted:

- The current Australian Standard AS/NZS 4282 – *Control of the obtrusive effects of outdoor lighting* is 2023, which supersedes the 2019 version referenced in the report. Consultant to confirm any changes to the assessment and recommendations based on the current standard.
- Where extended hours are proposed, site specific lighting assessments for impacts on sensitive receivers should be included in the assessment, particularly where the new acoustic barrier fences will offer limited attenuation.
- The assessment should consider the recommendations of the External Lighting Impact Assessment Position Paper for Conciliation Conference prepared by MDA Consulting Engineers Pty Ltd dated 13 October 2016 (Project Number: 160377, Issue E) (as per Condition A3 of MP08\_0194) in relation to assessment and recommendations. This includes adhering to specific design features, height of the acoustic barrier fences along Old Bogangar Road, and providing dense hedging at the subject site to a minimum height of 1.3 metres to mitigate the visual impact of the service station façade illuminated signage and car headlights spillage.
- The signage design has not been finalised to enable the lighting assessment to be completed. Consultant to confirm recommendations following receipt of signage designs.
- The assessment should consider the Council's DCP A4 – Advertising Signs Code and *State Environmental Planning Policy (Industry and Employment) 2021*.

The proposed lighting of Tweed Coast Road was considered in the Mod 3 determination for the development. It is critical that a thorough assessment is completed for the development considering the outcome of Mod 3 through the Land and Environment Court.

#### 8.3.7 Noise

A Noise Assessment for Proposed Service Station with Car Wash Facility and Food and Drinks Premises at Lot 7 DP 875447, Tweed Coast Road, Kings Forest prepared by Muller Acoustic Consulting Pty Ltd dated 12 April 2024 (Document ID: MAC232053-03RP1) has been prepared with the following noted:

- The property is now known as Lot 1 DP 1270901 (PN 112791).
- This report was prepared prior to Council's meeting with the applicant on 18 April 2024 and does not address Council's concerns regarding extended hours of operation.
- Gold Coast Seaway weather station has been used in the assessment. Acoustic consultant to clarify whether the conditions at the subject site are suitably represented given closer weather stations available such as Coolangatta.
- It is unclear whether all potential noise sources from the development have been considered including, but not limited to, tyre air compressors, tyre pressure beepers, car and dog wash and associated mechanical plant and equipment, and customer's heavy vehicles accessing the site, and whether these noise sources may create cause sleep disturbance where nighttime operation is proposed. Acoustic consultant to clarify.
- Noise monitoring locations appear to have been affected by significant roadworks (which may have included heavy vehicles, machinery, idling traffic, and unsealed surfaces) and

wildlife activity (birds and insects). Acoustic consultant to demonstrate that extraneous noise, including roadworks and wildlife activity, has been removed from short- and long-term background noise sampling and noise results are representative of the locality over the entire year in accordance with the NSW EPA Noise Policy for Industry (2017).

- Attended monitoring is limited to two samples on a single day (between 4pm and 5pm) and is impacted by extraneous noise. Acoustic consultant to clarify how these samples are representative of the locality and confirm that evening and night period attended monitoring has been completed in consideration of the proposal.
- Specific plant and equipment proposed at the site (including the car wash and proposed hours of operation) has not been identified and assessed in consideration of the modifications proposed. The acoustic consultant should be requested to outline details of the required acoustic treatments for all operations, plant and equipment, including plant proposed on the lower roof top of the buildings. Where plant and equipment have not been selected, indicative plant and equipment should be included in the assessment subject to further assessment once selections have been completed.
- The relationship between the development and the new acoustic barrier fences is unclear. Acoustic consultant to clarify with particular consideration to sensitive receivers in the vicinity of the road access into Old Bogangar Road where the acoustic barrier fences will offer limited noise attenuation.
- The acoustic consultant has confirmed compliance with the project noise trigger levels during operation, however compliance with the Noise Policy for Industry is not the only consideration required. The Policy was designed for large industrial and agricultural sources and in determining project noise trigger levels from rating background noise levels, the community's expectations also need to be considered. Sensitive receivers may experience impacts to amenity especially during nighttime periods where noise will likely be noticeable above the background in the locality. The acoustic consultant should be requested to demonstrate actual amenity impacts to sensitive receivers.

It is critical that a thorough assessment is completed for the development considering the outcome of Mod 3 through the Land and Environment Court.

### 8.3.8 Red Imported Fire Ants

The importation of equipment and material including fill or soil from invasive ant biosecurity zones must be in accordance with the current NSW Biosecurity orders available at [www.dpi.nsw.gov.au](http://www.dpi.nsw.gov.au) and meet the requirements of NSW Department of Primary Industries.

Recommended condition to apply.

BLD038	<p><b>Red Imported Fire Ants</b></p> <p>The importation of any of the following fire ant carrier material from invasive ant biosecurity zones must be in accordance with the current NSW Biosecurity orders available at <a href="http://www.dpi.nsw.gov.au">www.dpi.nsw.gov.au</a> and meet the requirements of NSW Department of Primary Industries:</p> <ul style="list-style-type: none"> <li>• organic mulch, compost, growing media, manure, soil and anything with soil on it, hay, chaff, or silage;</li> <li>• potted plants;</li> <li>• turf;</li> <li>• agricultural equipment or earth-moving equipment;</li> </ul>
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	<ul style="list-style-type: none"> <li>• mining and quarrying materials;</li> <li>• grass;</li> <li>• vegetation and clippings; or</li> <li>• other fire ant carrier material identified within the order.</li> </ul> <p>Prior to the importation of each material type, the supplier must provide the receiver and the Principal Certifier or Council with the relevant form and/or certificate as identified within the order. All material shall meet the requirements of the relevant form/certificate.</p> <p>It is an offence under the <i>Biosecurity Act 2015</i> if this material comes from within 5 kilometres of a known invasive ant infested area (e.g. identified Fire Ant Biosecurity Zones in Queensland), or any other place at which the person knows, or ought reasonably to know, that an invasive ant has been detected, unless the carrier material has been managed and treated to reduce the risk and meets the certification requirements listed in the order.</p>
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### 8.3.9 Underground Petroleum Storage Systems

The applicant has not confirmed any changes to the underground petroleum storage systems (UPSS).

- The applicant should be requested to confirm whether any modifications are proposed to the underground petroleum storage system including the design, location, number of tanks, and fuel types.
- Updated guidelines and regulations should be referenced in the consent including:
  - *Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019*;
  - AS4897 – 2008 – *The design, installation and operation of underground petroleum storage systems*; and
  - Additional guidance material available on EPA website - [Resources for implementing the UPSS Regulation](#) including Practice Note - Managing run-off from service station forecourts 2019.

### 8.3.10 Waste – including soil (VENM + ENM)

The exportation or importation of waste (including fill or soil) from or to the site must be in accordance with the provisions of the *Protection of the Environment Operations Act 1997* and the NSW Environment Protection Authority “Waste Classification Guidelines”. Recommended condition to apply.

BLD030	<p><b>Waste Management (fill and spoil)</b></p> <p>All waste material removed from or imported to the site is managed in accordance with the following requirements:</p> <ul style="list-style-type: none"> <li>• All excavated material removed from the site has been classified in accordance with the EPA’s Waste Classification Guidelines before it is disposed of at an approved waste management facility.</li> <li>• All fill material imported to the site must be:           <ul style="list-style-type: none"> <li>○ Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the <i>Protection of the Environment Operations Act 1997</i>, and/or</li> <li>○ A material identified as being subject to a resource recovery exemption by the NSW EPA.</li> </ul> </li> </ul>
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	All VENM or waste-derived fill material subject to a resource recovery exemption must be accompanied by documentation as to the material's compliance and must be provided to the Principal Certifier or Council on request.
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### 8.3.11 Recommendations from Environmental Health Services

If the Department is of a mind to approve the increased trading hours, the abovementioned information is required to consider the proposed modification.

It is requested that Council is provided a further opportunity to provide comment upon receipt of further information.

## 8.4 Sustainability & Environment

### 8.4.1 Potential noise and light impacts to environmentally sensitive areas

The submitted *Ecological Assessment Kings Forest Precinct 1 Service Station (MOD 15)* (Appendix E) states 'areas to the immediate south of the proposed works area, within the Precinct 1 EMA, contain areas of koala habitat to be retained, Swamp sclerophyll forest on coastal floodplains of the NSW North Coast Endangered Ecological Community (EEC) and habitat for a range of threatened species'. The proposal has not sufficiently assessed the potential impacts of noise and artificial light at night to sensitive environmental areas and the risk to threatened species.

### 8.4.2 Maintain the approved ecological buffer:

The proposed plans show a realignment of the fauna fence along the ecological buffer. It appears to show a slight reduction to the ecological buffer from the approved plans (see yellow highlights below) however the revised plans also appear to align with the current property boundary. This should be confirmed.

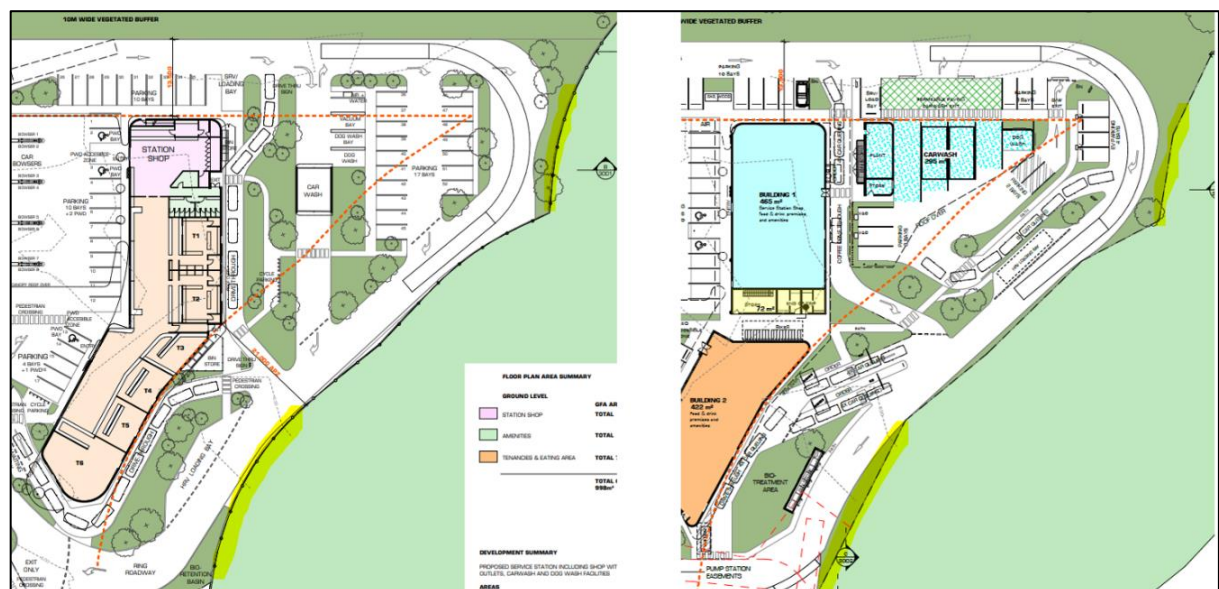


Figure 2 – Comparison of Approved and Proposed site plan – Push Architecture

### 8.4.3 Landscape buffers

A maintenance zone should be provided to the koala exclusion fence and plantings offset to minimise the risk of damage to the fence.



#### 8.4.4 Koala exclusion fence

It is advised that the applicant should consider updating the design of the koala exclusion fence from floppy top to the rigid top design (TSC S.D.019 or TMR SD1603). It is noted that the koala fence is located directly adjacent to the ring road, it is recommended the design consider protection via guardrail at this location to protect the fence from vehicle strike.

#### 8.4.5 Discharge location for biobasin and overflow

The applicant should be requested to confirm the discharge location for biobasin and overflow.

#### 8.4.6 Biobasin landscaping

It is recommended more diverse and suitable landscape species be provided for the biobasin. *Lomandra sp.* are suitable for the batters and surrounding landscaping but not recommended within the basin.

### 8.5 **Development Engineering**

#### 8.5.1 Provision of 3 staff car parking spaces

It is questioned how this will address Condition 105 which specified the number of car parking spaces.

**105. *Parking Spaces***

*The number of car spaces, bicycle spaces and loading bays to be provided for the service station/food and drink premises development in Precinct 1 must comply with the requirements of Section A2 – Site Access and Parking Code of the Tweed Shire Council Development Control Plan 2008 (as in force at the date of this approval).*

#### 8.5.2 Amended SRV/loading bay

- This loading bay remains significantly smaller than the previous SRV / Loading bay.
- The proposed bay is also in an isolated location and it is questioned as to what it is servicing? It appears that the loading bay will require use of the pedestrian footpaths which may cause conflict with others users

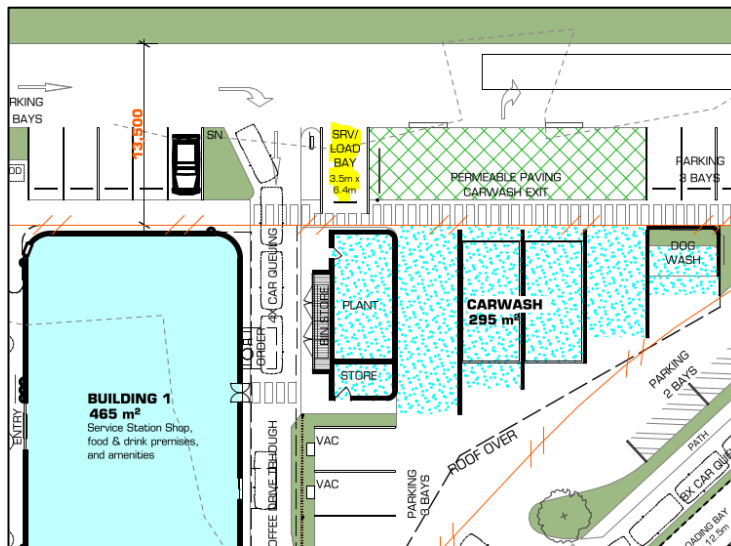


Figure 3 – Extract from Site plan Drg DA0002 – P11 – Push Architecture

### 8.5.3 Proposed Permeable Paving Car Wash Exit

- It appears that the intent is for users of the car wash is to drive over the pedestrian footpath and then over the permeable pavers to exit. This raises concerns with potential pedestrian safety and conflict of use.
- It appears that Sight Line triangles (no different to a driveway) are not provided for existing vehicles from the car wash bays, putting pedestrians safety at risk.
- It should be noted that permeable pavers effectiveness deteriorate unless maintenance is undertaken.

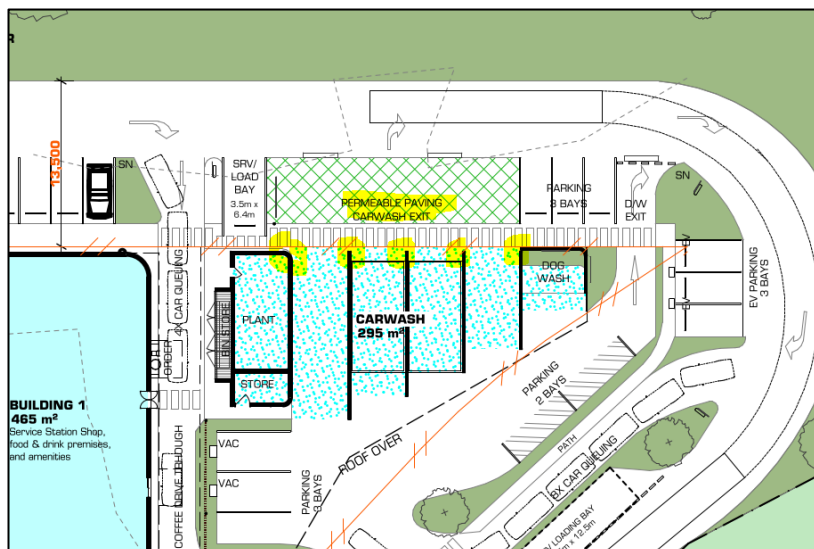


Figure 4 – Extract from Site plan Drg DA0002 – P11 – Push Architecture

### 8.5.4 Provision of 2 parking Bays in Car Wash area

- These 2 parking bays have potentially to impact on vehicles exiting the car wash area.
- They appear to be in an inappropriate location.

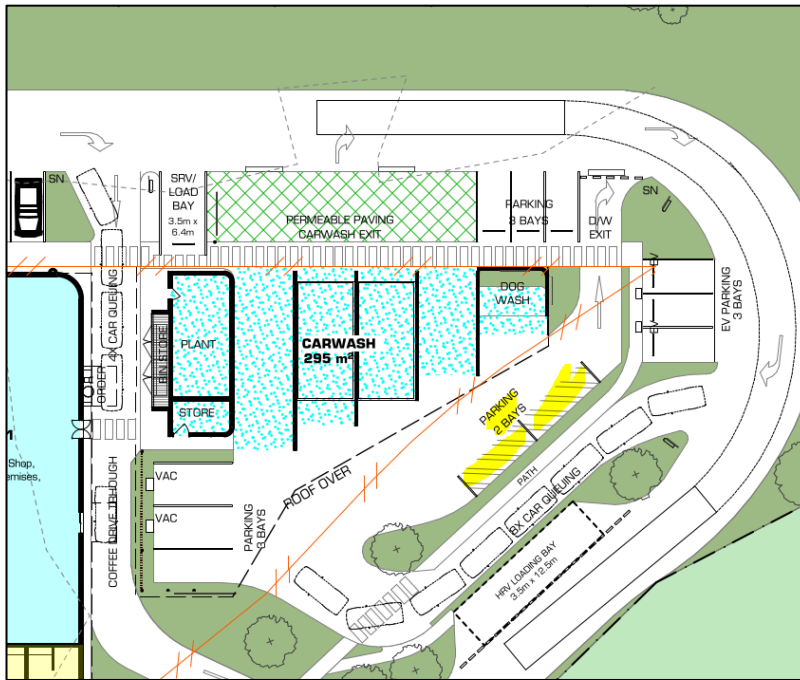


Figure 5– Extract from Site plan Drg DA0002 – P11 – Push Architecture

#### 8.5.5 Proposed/amended HRV Loading bay

- Similar to the SRV (above), the proposed HRV bay is in an isolated location and it is questionable as to what it is servicing?
- It is unclear how a HRV could be safely unloaded and not impact on exiting vehicles.

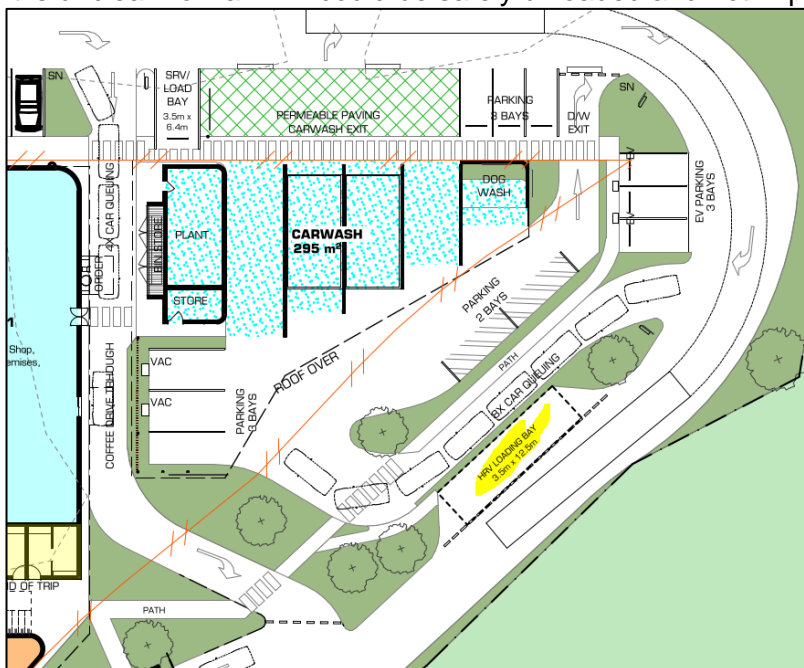


Figure 6 – Extract from Site plan Drg DA0002 – P11 – Push Architecture

#### 8.5.6 Proposed deletion of Conditions 123(3), 130(1) and 131J(5)

These amendments are not supported as it is considered that this will have an adverse impact on surrounding residents (notably the one's adjacent to the Old Bogangar Road entrance), as

well as potential environmental impacts should the service station be supported to operate 24 hours.

## 8.6 Roads and Stormwater

### 8.6.1 Stormwater

A 'Revised Conceptual Stormwater Assessment, proposed service station site Kings Forest' prepared by Gilbert & Sutherland dated June 2024 has been submitted with the modification. In addition Engineering Drawings prepared by Burchills Engineering dated 31 May 2024 Issue A provide detailed design of the bio-retention basin and piped stormwater network.

The bio-retention basin is proposed for stormwater quality treatment for Precinct 1 (service station) of the Kings Forest Development (MP 08\_0194). The basin is proposed to discharge into an existing manhole adjacent to Tweed Coast Road which drains into adjoining Cudgen Creek. A pit and pipe stormwater network discharging into the bio-retention basin is detailed on the engineering drawings.

### 8.6.2 Stormwater Quality

The 'Revised Conceptual Stormwater Assessment' prepared by Gilbert & Sutherland presents MUSIC modelling results which demonstrate the pollution load reduction targets nominated in Development Design Specification D7 – Stormwater Quality are achieved for a bio-retention filter area of 140m<sup>2</sup>.

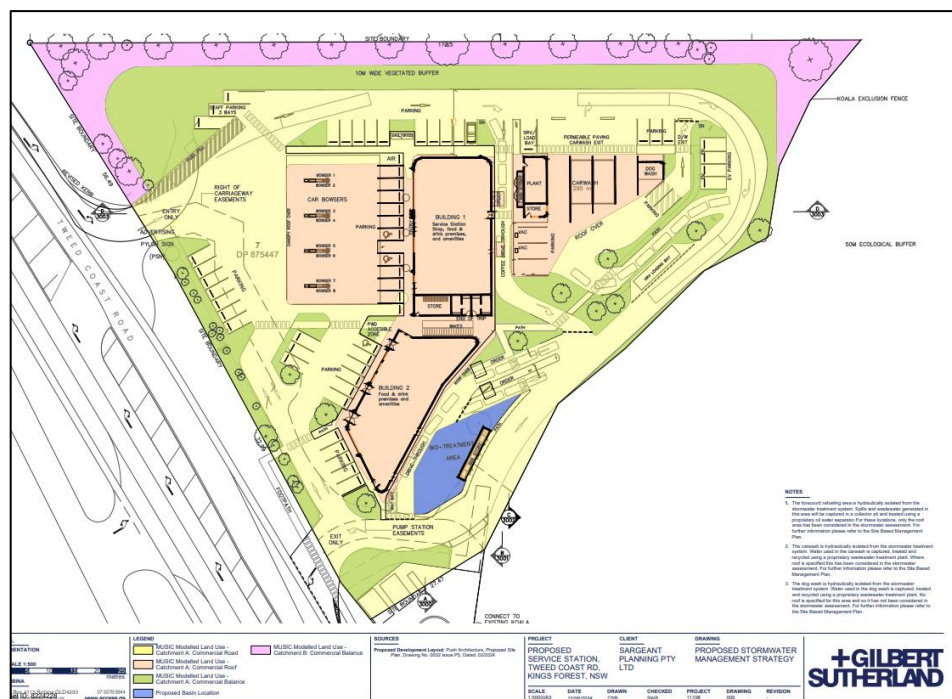


Figure 8 – Extract from Revised Conceptual Stormwater Report – Proposed Stormwater Management Strategy

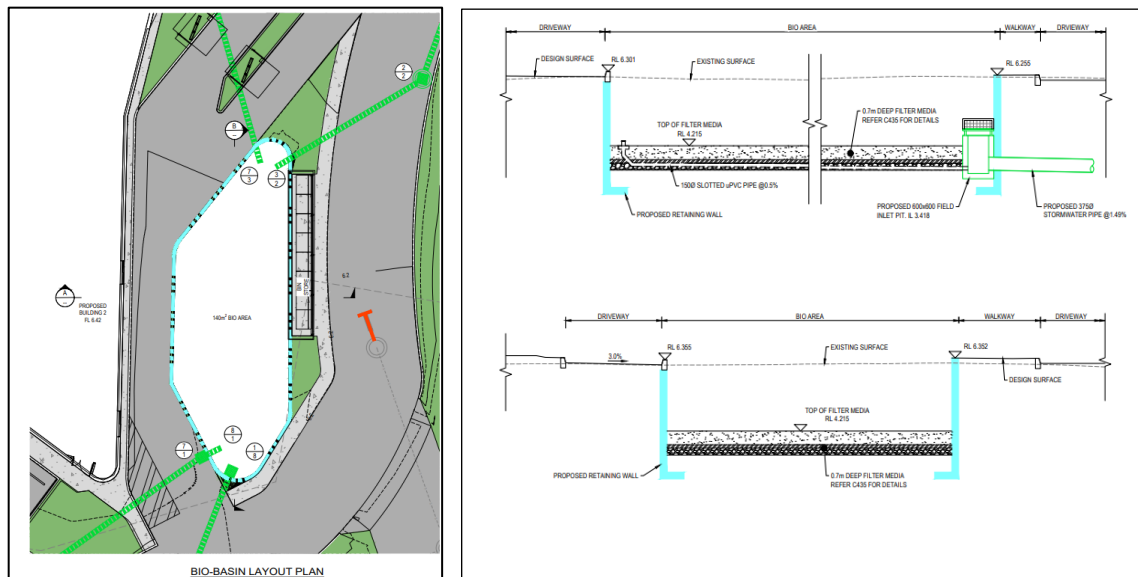


Figure 9 – Extracts from Revised Conceptual Stormwater Report

Safety fencing will be required around the future bio-retention basin. A 2.13m drop adjacent to walkways and driveways is detailed on the engineering drawings. – This can be managed by way of a condition.

In addition, a new condition (Creation of applicable 88B Instrument – maintenance of stormwater management system) is recommended to ensure the bio-retention basin is maintained into the future.



Figure 10 – Extracts from Revised Conceptual Stormwater Report

### 8.5.3 Recommendations from Roads and Stormwater Unit

The following condition are recommended on any modified consent issued:

#### # **Safety fencing around bio-retention basin – Precinct 1 – Service Station**

*Safety fencing is to be installed around the future bio-retention basin to ensure pedestrians and vehicles are adequately protected from falling and/or driving into the basin. Safety fencing is to comply with the relevant Australian Standard for open water bodies in a confined environment with pedestrians and vehicles.*

#### # **Creation of applicable 88B Instrument – maintenance of stormwater management system bio-retention basin – Precinct 1 – Service Station**



*The creation of a Positive Covenant and Restrictions As To User as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:*

- *The creation of a Positive Covenant and associated Restriction on Title relevant to the proposed stormwater bioretention system.*
- *Positive Covenant over the subject land for the perpetual maintenance requirements associated with the bioretention stormwater management system. A detailed site-specific Maintenance Schedule is to be produced by the designer and must form part of the Positive Covenant.*
- *A Restriction As To User to ensure the stormwater bioretention stormwater management system is not altered or prevented from operating in a safe and efficient manner.*

*The creation of a Positive Covenant relevant to all water quality control features on the site, to ensure a perpetual maintenance regime is implemented. All such features are to have a maintenance schedule prepared by the installer/manufacture and included in the Positive Covenant.*

## 9.0 Discrepancies in application

The following discrepancies are noted in the application:

- *NSW protection of the Environment Operations (Underground Petroleum storage systems) Regulation 2014 (UPSS Regulation) called up in Condition 113E and Condition 125A, and Condition 131D (Underground Petroleum Storage System) has been updated - Environment Operations (Underground Petroleum storage systems) Regulation 2017 – but the applicant is not seeking to update this reference – even though apparently this is a driver for the application-*

*‘As noted the landscaping of the proposed service station has been amended to increase the area of landscaping along Tweed Coast Road, specifically the North West corner of the site, this has been achieved through the redesign of the petrol tanker refuelling design, with the design for this now complaint (sic) with the relevant regulations.’*

- The application fails to acknowledge that Condition 121(1)(a) which references the current approved site plan would need to be updated if the proposed plans are approved:

### 121. Koala Plan of Management

#### 1) All Koala exclusion fencing must:

- a. *be installed along the eastern and northern boundary of the service station/food and drink premises as identified in ‘Proposed Site Plan’ prepared by Push (ref: Job No. 738.12, Drawing 1000, Issue P3, dated December 2016); and.....*

- The report advises on P23 that the Condition A3 calls up the broad set of plans reports/letters the project is to be generally carried out in accordance with, and states that Condition A3 is to be amended to reference the reports associated with this modification of the service station – though the proposed wording does not reflect this - referring only to updated architectural and civil plans.
- While the amendment to Condition 131(1) is not supported, it is noted that the applicant has not acknowledged that Condition 131A(1) would also have to be amended to remove the reference to Table in Condition 131 that they wish to delete.
- Appendices A and B appears to be the same document.

- Appendix D Ecological Assessment report prepared by JWA Ecological Consultants and dated 10 April 2024 makes no reference to any potential impacts associated with increased trading hours (24 hours) and a removal on the curfew on external lighting.
- The mod report on P18 refers to a lighting curfew of 10pm to 7am, despite the relevant conditions (123(3) and 131J(5)) referring to 10.30pm to 6am.

Should the Department determine to request further information, it is requested that Council is provided a further opportunity to provide comment on same.

If you require further information, on this matter please contact Valerie Conway at 02 6670 2605 or [vconway@tweed.nsw.gov.au](mailto:vconway@tweed.nsw.gov.au)

Regards



Valerie Conway  
**Team Leader Development Assessment**

**APPENDIX A – Council’s pre-lodgement advice to applicant – 24 April 2024**