

Council Reference: DA11/0565  
Your Reference: MP08\_0194 Mod 3



24 April 2024

Boyd Sargeant  
Sargeant Planning

[boyd@sargeantplanning.com.au](mailto:boyd@sargeantplanning.com.au)



Dear Boyd

**Proposed modification application to amend MP08\_0194 as it relates to Kings Forest Precinct 1 Service Station and Food & Drinks Premises**

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

The comments below relate to plans dated 19 March 2023 received in advance of our meeting on Thursday 18 April 2024. At the meeting, Council officers were also informed that the proponent will seek to increase the hours of operation from 6am - 10pm to 24 hours operation.

Set out below, are some comments on the amended plans, and matters which should be addressed in any such modification application.

**As stated in the meeting, Council officers have serious concerns with the proposal to increase the hours of operation to 24 hours, and would not be supportive of such an amendment.**

**Planning History**

The approval for Precinct 1 issued under MP08\_0194 (as modified) 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.*
2. *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 website, which provides a helpful overview on the conciliation process. Some key matters extracted from this factsheet are set out below:

#### **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 (further details are provided below).*
- *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 10metre 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.

#### **Conditions of the consent – MP08\_0194 (as amended)**

The limits of the Approval are set out in in Condition A12 of the consent:

- 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).

Of particular importance are the following conditions:

- **Condition 123** specifies that Illuminated signage and lights must be switched off between the hours of 10:30pm to 6am each evening.

- **Condition 130** requires the Proponent to comply with the construction and operating hours in the below table unless otherwise agreed to in writing by the Secretary.

*Service Station and Food and Drink Premises Hours of Construction and Operation*

Activity	Day	Hours
Construction	Monday to Friday	7 am to 6 pm
	Saturday	8 am to 1 pm
	Sunday & Public Holidays	Nil
Operation	<b>Trading hours:</b>	
	Monday to Sunday	6 am to 10 pm
	Public Holidays	6 am to 10 pm
	<b>Goods Delivering (including fuel delivery):</b>	
	Monday to Sunday	7 am to 10 pm
	Public Holidays	7 am to 10 pm
	<b>Waste Collection:</b>	
	Monday to Saturday	7 am to 10 pm
	Public Holidays	Nil
	<b>Car Vacuums:</b>	
	Monday to Sunday	7 am to 10 pm
	Public Holidays	7 am to 10 pm

- **Condition 131** specifies that the Applicant must ensure noise from the operation does not exceed the noise limits identified in the below table.

*Noise Limits (dB(A)) for Precinct 1.*

Location	Noise Limits dB(A)		
	Day (7am - 6pm Monday to Saturday; 8am - 6pm Sunday)	Evening (6pm - 10pm)	Night (6am - 7am)
	L <sub>Aeq</sub> (15min)	L <sub>Aeq</sub> (15min)	L <sub>Aeq</sub> (15min)
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

- **Condition 131J(5)** specifies that 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.

### **Proposed increase in hours of operation**

As above the reduction of the hours of operation from 24 hours, 7 days a week, as originally proposed, to 6am to 10pm was considered to be a key change to the development, and one which was likely instrumental in the s34 conciliation agreement.

Notably this reduction in the hours of operation was imposed despite a position paper relating to acoustic & light spill impacts for the Section 34 conference submitted by DAC Planning (dated October 2016) seeking to compare the proposed development with other 24 hour operations. In a letter from DAC Planning dated 27 January 2017, the proponent agreed to proposing to reduce the hours.

It is considered that the proposed increase in hours (back to 24 hours which was determined to be unacceptable) would result in a development which is not 'substantial the same' nor one which is of 'minimal environmental impact' - the requirements for a modification application under [Clause 3BA of Schedule 2](#) of the :

- (5) *A concept plan may continue to be modified under section 75W pursuant to a request lodged on or after the cut-off date (whether or not the project is or has ceased to be a transitional Part 3A project), but only if the Minister is satisfied that—*
- (a) the proposed modification is to correct a minor error, misdescription or miscalculation, or*
  - (b) the proposed modification is of minimal environmental impact, or*
  - (c) the project to which the concept plan as modified relates is substantially the same as the project to which the concept plan currently relates (including any modifications previously made under section 75W).*

Should the Minister be of the opinion that the increase of hours is 'substantially the same' – which we submit it is not, we also 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.

Though the Kings Forest Estate is being developed immediately to west on the other side of Tweed Coast Road, and there is an approval for a service station and food & drinks outlets on the subject site, 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).

It is important that the proponent review the documents associated with the modification to understand the concerns of Council and the Department to ensure that changes do not trigger impacts which were previously addressed in the amended appeal documents - concerns in relation to road safety and access, site suitability and environmental and amenity impacts such as noise, light spill, bushfire and impacts to the adjacent wetlands.

The original assessment report from DPE refusing the application may assist in this regard

[https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=MP08\\_0194-MOD-3%2120190625T032101.004%20GMT](https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=MP08_0194-MOD-3%2120190625T032101.004%20GMT)

### **Comments on plan amendments**

The following comments are provided in relation to the plans submitted to Council dated 19 March 2024.

#### *Development Assessment Unit*

- There appears to be a slight decrease in GFA (959sqm) with the amended proposal now for service station with retail area, coldroom and commercial kitchen, and four food & drink premises tenancies. The service station retail area and one tenancy (identified as KFC) will have a drive through facility.
- The service station retail area has been significantly increased – from 180sqm to 382sqm – appears to include a food preparation area and a service window to a drive-through facility. 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>
- As per condition A12, signage on the buildings is not approved under this consent – yet signage is shown on the plans.
- There is a significant increase in the area of the carwash facilities, any future modification application would need to demonstrate that there will be no risk to wetlands and that noise impacts are addressed. Note that Condition 131(4) specifies that *'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.'*
- Any increase in height would need to be justified given previous concerns in relation to bulk/scale.
- You advised in the meeting that there was no change to the approved signage. Please note that any change to signage should address provisions of SEPP Industry and Employment 2021 – Chapter 3 Advertising and Signage. Further please be advised that an increase in signage will not be supported by Council noting that DPE in the original Mod also expressed concerns with visual clutter and light spill associated with signage.
- The car wash entry appears to be from the south (rather than the northern perimeter road which would appear to be a more instinctive entry point for motorists) – How is traffic to be managed to reduce risk of traffic entering in wrong direction and creating a traffic hazard?
- Any modified application should be accompanied by an updated bushfire management plan given that the bushfire mapping was updated in May 2023.
- Condition 105 requires that *'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).'* As such any modification application should include an assessment against DCP A2.

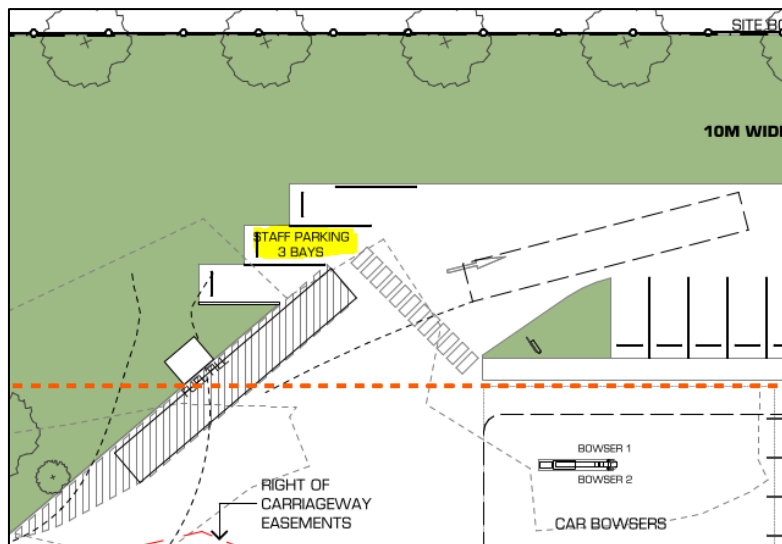
- The application should confirm that the amended layout can comply Condition 106 which requires
  - *Car parking associated with the proposal (including queuing areas, grades, turn paths, sight distance requirements, aisle widths, and parking bays) must be in accordance with AS 2890.1-2004 and AS 2890.2-2002 for heavy vehicle usage.*
  - *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 AUSTRROADS.*
  - *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.*

While a revised pedestrian movement and access plan is not required until Construction Certificate (CC) stage, you should ensure that your layout is such that you can provide a satisfactory plan at CC stage .

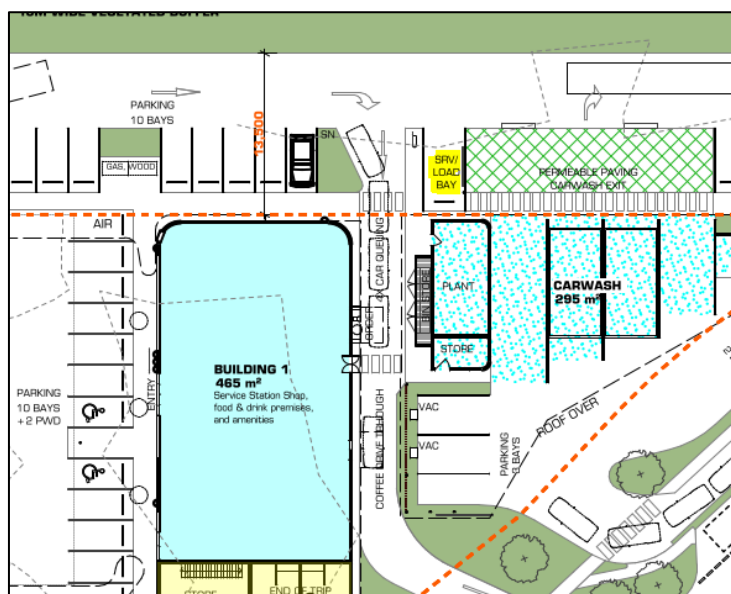
- Condition 114 requires that '*plantings along the vegetation buffer must be selected in consultation with the adjacent landowner to the north (195 Tweed Coast Road, Kingscliff) and must comprise native rainforest species to ensure land use conflicts and bushfire impacts are minimised*'. Any landscaping plan submitted as part of the modification application should comply with this, and demonstrate consultation with the adjoining landowner.
- Condition 127 specifies that '*all driveways and parking areas must be unobstructed at all times*'. The co-location of parking spaces on the driveway from the carwash (adjacent to the dogwash) appears to conflict with this.
- At the meeting you confirmed that no consultation had been undertaken with the neighbouring residents at the time of the meeting, but that such consultation would take place prior to the lodgement of any modification application.
- Council considers that the modification application should be notified (We note that the Minister entered into the S34 in the appeal on the condition that he could consult with submitters).

#### *Development Engineering Unit*

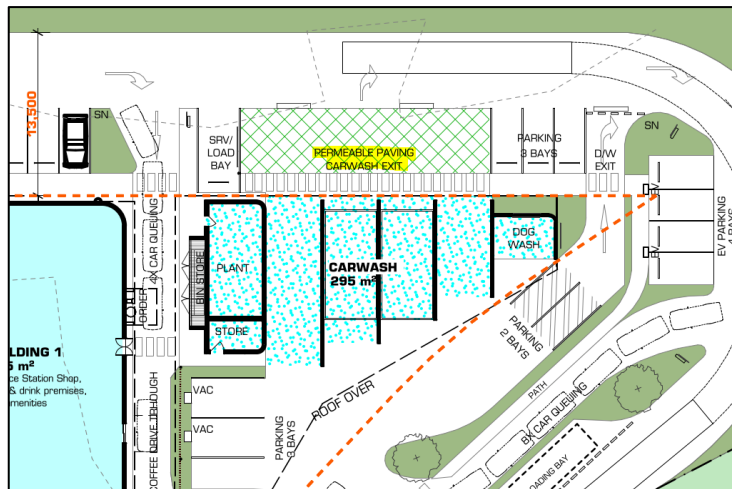
- **Staff carparking** - It appears that only 3 Staff car parks are proposed - Refer to Condition 105 for the required car parking numbers. Three spaces would appear to be an under-supply.



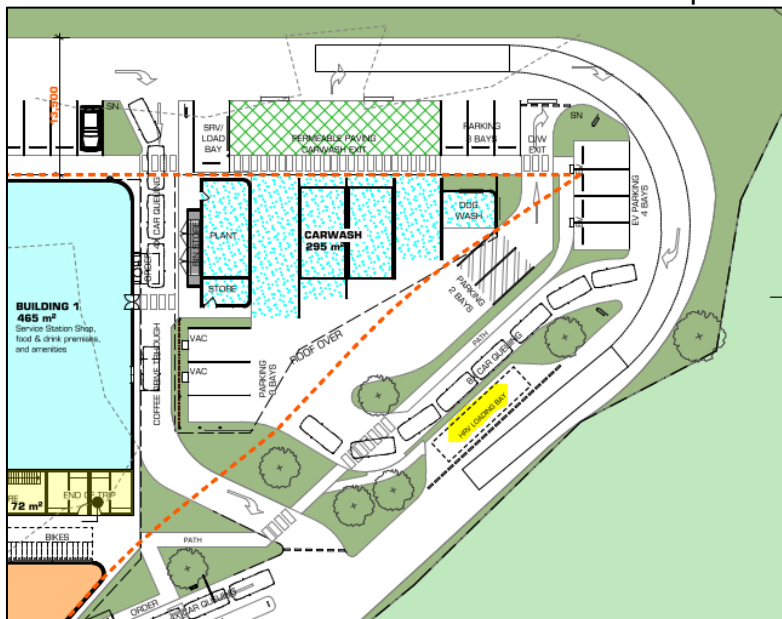
- **SRV loading bay** - The proposed amended SRV/loading bay is significantly smaller than the previously approved SRV/loading bay. It is also in an isolated location and the question is raised as to what it is servicing. It appears that it will then require servicing from the bay by use of the pedestrian footpaths - Potential conflict of use?



- **Proposed Permeable Paving Car Wash Exit** - It appears that the intent is for users of the car wash to drive over the pedestrian footpath and then over the permeable pavers to exit.
  - Potential pedestrian safety concerns / conflict of use.
    - Appears that sight line triangles (no different to a driveway) are not provided for existing vehicles from the car wash bays.
  - Permeable Pavers effectiveness deteriorate unless maintenance is maintained.

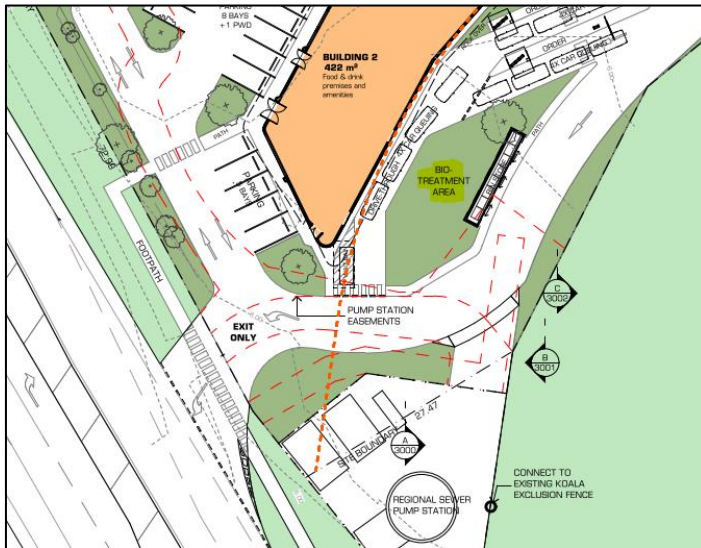


- **2 parking Bays in Car Wash area**
  - The use of these 2 car parks will impact of vehicles exiting the car wash areas, if they not using the car wash bays (i.e. users of the VAC areas).
  - They appear to be in an inappropriate location.
- **Proposed, amended HRV Loading bay**
  - Similar to the SRV (above), the proposed HRV bay is in an isolated location and the question is raised as to what it is servicing.
  - How would the HRV be unloaded and not impact on exiting vehicles?



- **Bio Treatment Area**
  - **Condition 111** specifies that the peak stormwater flow rate that may be discharged from the site to the public realm in events of intensity up to the ARI 100 year design storm must be no greater than predevelopment.
  - No details have been provided as to the proposed configuration of the internal pipe network and it's intended Legal Point/s of Discharge (piped and overland flow).
  - Where does the major overland flow discharge?

- The modification should include details of the proposed pipes and outlets, and how the bio-basin discharges,



### Roads and Stormwater Unit

- The site is not affected by the 1% AEP flood or PMF.
- The existing stormwater conditions on the consent will be required to be complied with. It is suggested an additional condition for the ongoing maintenance of the stormwater quality system (bioretention) in perpetuity is included for any modification. i.e.

### **Creation of applicable 88B Instrument**

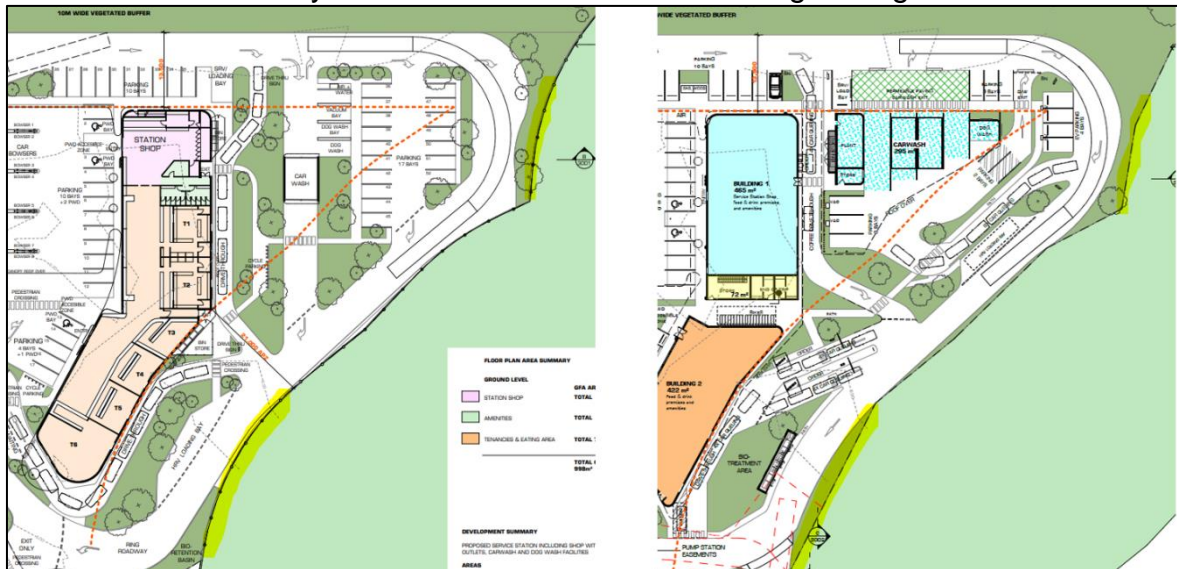
*The creation of Easements for services, Rights Of Carriageway and Restrictions as to user (including restrictions associated with planning for bushfire) as may be applicable under Section 88B of the Conveyancing Act including (but not limited to) the following:*

- *The creation of a Positive Covenant and associated Restriction on Title relevant to the proposed stormwater bioretention system.*
- *Positive Covent over the subject land for the perpetual maintenance requirements associated with the bioretention 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 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 regium is implemented. All such features are to have a maintenance schedule prepared by the installer/manufacturer and included in the Positive Covent.*

*Any Section 88B Instrument creating Restrictions as to user, Rights Of Carriageway or Easements which benefit Council shall contain a provision enabling such Restrictions, Easements or Rights Of Carriageway to be revoked, varied or modified only with the consent of Council.*

### Sustainability & Environment Unit

- Maintain the approved ecological buffer:** The updated 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. Given this is only a concept plan it is difficult to confirm any encroachment, however it is recommended any modification maintain the existing ecological buffer.



- Landscape buffers:** Ensure landscaping provides screening to neighbouring properties using min 80% local native species. Also note a maintenance zone should be provided to the koala exclusion fence and plantings offset to minimise the risk of damage to the fence.
- 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.
- Confirm discharge location for biobasin and overflow**
- Biobasin landscaping:** Is it 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.

### Environmental Health Section

- It is concerning that the main reason for the modification is to amend the hours of operation to 24 hours. It's likely this would not be supported by the Department given the Department's refusal of Mod 3 and one of the key changes during the conciliation was to reduce the intensity of the development by reducing operating hours from 24 hours to 6am to 10pm daily.
- Where the applicant relies on existing conditions of consent to defer providing consultant reports to address these concerns, it would be difficult to carry out a thorough assessment of the proposal.

- **Acid sulfate soil and dewatering** – Any future modification should:
  - a. Outline any modifications to the depth of excavation works.
  - b. Provide a revised acid sulfate soil and groundwater investigation and management plan prepared by a suitably qualified environmental consultant with respect to the modifications proposed and existing conditions of consent.
- **Contaminated Land and Offensive/Hazardous Materials**
  - a. All applications must address current and previous land uses in accordance with State Environmental Planning Policy (Resilience and Hazards) 2021. Note all contaminated land reports submitted for Council review must be accompanied by a Contaminated Land Summary Table to ensure that key mandatory information has been incorporated (available at <https://www.tweed.nsw.gov.au/ContaminatedLand>).
  - b. Any future modification should confirm whether the LPG tank has been removed from the proposal.
- **Underground Petroleum Storage Systems (UPSS)** - Any future modification should:
  - a. Outline any modifications to the approved UPSS;
  - b. Note there have been some changes to guidelines and regulations. These should be incorporated into any modification in consideration of consent conditions.
    - i. Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019;
    - ii. AS4897 – 2008 - The design, installation and operation of underground petroleum storage systems; and
    - iii. Additional guidance material available on EPA website - <https://www.epa.nsw.gov.au/your-environment/contaminated-land/upss/resources-for-implementing-upss> including Practice Note - Managing run-off from service station forecourts 2019.
- **Noise and vibration** - Any future modification should:
  - a. Provide a revised noise and vibration assessment prepared by a suitably qualified acoustic consultant with respect to the modifications proposed and existing conditions of consent.
  - b. Where modification to hours of operation are proposed, the acoustic consultant must also address specific site uses and outline measures to minimise and mitigate potential noise and vibration impacts on surrounding occupiers of land e.g. washing bays (including the use of doors where required), vacuums, air compressors, mechanical exhaust and equipment, deliveries, waste storage and collection, and outdoor areas. The report should include an attached plan of management showing a noise complaint management procedure.
- **Food Premises** -
  - a. Any area to be used for the preparation and handling of food or drink for sale will need to comply with Food Act 2003, Food Safety Standards, and relevant Australian Standards (AS 4674 and AS 1668.2) for construction and fit-out. Note

Council offers an Application for Food Premises Fit-Out Plan approval subject to fees and charges.

- **Lighting** – Any future modification should:
  - a. Provide a revised lighting impact assessment prepared by a suitably qualified lighting engineer with respect to the modifications proposed and existing conditions of consent. The applicant shall demonstrate the development will meet the requirements of AS4282 - Control of the Obtrusive Effects of Outdoor Lighting and include recommendations to prevent the spill of light or glare creating a nuisance to neighbouring premises and the environment.
  - b. Where modification to hours of operation are proposed, the engineer must also address specific site uses and outline measures to minimise and mitigate potential amenity impacts on surrounding occupiers of land.
- **Land Use Conflict** – Any future modification should:
  - a. Confirm that the modification will be in accordance with existing conditions of consent and maintains the required buffers.
- **Waste (fill and spoil)**
  - a. Applicant to note -- 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”.

The importation of waste to the site is restricted to the following:

- i. Virgin excavated natural material (as defined in Schedule 1 of the Protection of the Environment Operations Act);
- ii. Any other waste-derived material subject to a resource recovery exemption under Part 9 Clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014 that is permitted to be used as fill material.

The exportation of waste must be transported to a licensed waste facility or an approved site subject to a resource recovery order and exemption.

Any virgin excavated natural material 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 Certifying Authority or Council on request.

- **Red Imported Fire Ants**
  - a. Applicant to note – 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 [www.dpi.nsw.gov.au](http://www.dpi.nsw.gov.au) and meet the requirements of NSW Department of Primary Industries:
    - organic mulch, compost, growing media, manure, soil and anything with soil on it, hay, chaff, or silage;
    - potted plants;
    - turf;

- agricultural equipment or earth-moving equipment;
- mining and quarrying materials;
- grass;
- vegetation and clippings; or
- other fire ant carrier material identified within the order.

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.

It is an offence under the Biosecurity Act 2015 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.

Thank you again for the opportunity to comment on the proposal. Should you have any questions in relation to the above, please do not hesitate to contact me.

Regards



Valerie Conway  
**Team Leader Development Assessment**