



Caldera Environment Centre Inc.

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The Director  
Industry, Key Sites & Social Projects  
Department of Planning & Infrastructure  
GPO Box 39  
Sydney NSW 2001

**Re – Residential Development Kings Forest, Kingscliff - Proponent Project 28 Pty Ltd;**

**Modification requests (general amendments) – Concept Plan (MP\_0318 MOD 4) and Stage 1 Project Approval**

**(MP08\_0194 MOD 2)**

### **Introduction**

The Caldera Environment Centre would like to register the following submission opposing the amendments sought by LEDA development. CEC endorses the submission made by other local groups including Tweed Heads Environment Group and Team Koala, the salient points of which are reproduced below. In general, our group is disappointed with the behaviour of this corporation which have been antagonistic towards the local council and the community. The current proposal is another cynical attempt by the developer to avoid honouring social responsibilities. The proponent ought to respect environmental laws and get on with the job of protecting national icons like the Koala instead of spending money attempting to muddy the waters by modifications like this current one. As owners of the land, and proponents of a major development, LEDA has the obligation of protecting the natural environment. If the time, money and energy LEDA spent opposing the minor environmental obligations were instead directed towards simply implementing them, they would probably benefit financially in the long run; furthermore they would have avoided tarnishing their reputation.

### **From the Team Koala Submission**

The proposed modifications are in effect **a dilution** of environmental protections designed by highly trained experts in various fields from both local and state governments after hundreds of hours of study and deliberation.

Following are Team Koala's objections to the suggested modifications in the document entitled "Modification of Major Project Approval Number 08\_0194 MOD 2". Reference is made to section 5 entitled "PROPOSED MODIFICATIONS".

## 5.1 Definitions.

The proponent wishes to replace the definition "*Land to be dedicated to Council as identified on the Council Dedicated Land Plan*" with the wording "*Potential Council Land as identified on the Potential Council Land Plan*". The aim as described by the proponent is to take away the certainty that such land **"must be"** dedicated to council and to make this dedication instead subject to **"reaching an appropriate agreement with Council"**.

What this "agreement with Council" is to consist of? What aspect of the condition of approval that certain land be given to Council needs further "*agreement*"? This suggested modification creates considerable uncertainty and vagueness around the proponent's fulfilment of this requirement.

## 5.4 Land to be Dedicated to OEH

In a similar vein, the proponent wishes to amend the definition of land to be dedicated to NPWS. Currently entitled "*Offset area*" they would prefer to refer to it as **"Future OEH land"**. Their reasoning is to stress that such land was *not compensation* for development approval but something they offered "voluntarily". The proponent is in effect claiming that development approval would have been granted *without* the dedication of such land to NPWS. Such a claim is highly dubious given the very high environmental value of the adjacent Cudgen nature reserve for which this dedicated land will serve as a protective *buffer*. Furthermore, redefining this dedication as "voluntary" introduces an element of uncertainty regarding the fulfilment of this condition which is highly worrying as it is **critical** that the environmental values of such a significant area remain protected.

## 5.2 and 5.3 Establishment & Maintenance Periods

The proponent wishes to define the "establishment period" of works specified in environmental management plans as a period of time "*necessary to carry out initial environmental repair, restoration and monitoring prior to ongoing maintenance*". However, they wish to **delete altogether** any reference to an ongoing "Maintenance Period". In doing so, they are negating their responsibility for ongoing maintenance standards and criteria as set out in the approved environmental management plans. This is a serious omission and leaves us with the question of who is to be responsible for the maintenance of these plans??

## 5.6 - Management & Maintenance of Environmental Lands

This condition presently requires the proponent to implement management and maintenance in accordance with Environmental Management Plans (EMPs) on lands to be dedicated to both Council and NPWS and to do so as soon as those plans are available. The proponent claims that compliance cannot be achieved because the EMPs are still being revised and because they are also still waiting EPBC approval and because of commercial considerations. The proponent is requesting instead that the trigger for implementation be **"From the commencement of any bulk earthworks in a precinct"** and that only the area of land **"immediately adjacent to that precinct"** is to be environmentally managed.

It must be questioned why environmental management cannot begin as soon as the relevant plans are ready. Any EPBC decisions are likely to require *more* not *less* work. Giving "commercial

considerations" as the other reason to delay is also questionable. The proponent has accepted responsibility to manage these lands using particular criteria to a certain standard - surely the sooner they start the easier this is to achieve (and at less expense). Requesting such significant delays on implementing these EMPs does not show a sense of *commitment* to the spirit and intent of environmental management. This is especially unacceptable given the high value of the site and the very great responsibility that sits with *anyone* who is planning to develop it.

### 5.11 Baseline Monitoring

As with the delays to implementation, the proponent wishes also to delay the *baseline reporting* on the relevant EMPs until **"3 month prior to the commencement of bulk earthworks"**. At present, this condition aligns baseline monitoring with the prompt commencement of EMPs. Satisfaction of this condition is in fact **a prerequisite** for issuing the construction certificate for bulk earthworks. By deleting the reference to "issuing of a construction certificate," the proponent is presuming they will be issued a certificate *regardless* of the standard of their environmental reporting and that they only be asked to satisfy this condition **when they are ready to commence earth works**.

Such suggestions show considerable *reluctance* to taking up the role of environmental custodian. The proponent is saying that mitigation of their *very significant* impact on the Cudgen NR and surrounds should *only begin* when they actually start moving soil around. The impact of this residential development on the natural environment will be enduring and permanent. Rather than delay augmentation strategies, we would expect the proponent to willingly accept them as designed by experts in their respective fields.

### 5.12 Koala Plan Of Management

The proponent's request to delay koala tree planting is the most concerning out of all the proposed modifications. It should not need repeating that the Tweed Coast koala population is at dire levels and the Kings Forest colony is a vital part of their survival. It should also not need reiterating how harmful the building an urban township in the midst of their range will be.

Planting koala food trees is the minimum of mitigation measures in offsetting the many destructive impacts of urban incursion including traffic strikes and dog attacks. It will be many years before the trees mature and meanwhile the local koalas must suffer the loss of some of their trees which is a particularly distressing and deleterious thing for them. If the proponent was truly serious about koala survival, the proponent would be planting the trees as soon as possible. Postponing this to coincide with certain earthworks (potentially years ahead) is simply **irresponsible** and the proponent has offered no valid justification for it.

### 5.14 Environmental Audit Reports

Condition 49.3 at present states that if an environmental audit: *"indicates non-compliance with any of the relevant environmental management plans, approval for further stages of the development will not be granted."*

The proponent requests that approval for further stages *no longer be contingent* on compliance of environmental audits. Instead, they propose to: *"review and if necessary revise the relevant management plans and undertake additional mitigation measures as required under this approval."*

Such a measure only lessens the incentive to comply with environmental plans. It calls into question once again the proponent's commitment to environmental measures.

### **5.15 Bond for Environmental Restoration Works**

Condition 50 presently calls for a financial bond to be lodged with Council to ensure that all environmental management plans are implemented.

The proponent wants this entire condition **deleted** on the grounds that it does not provide for a refund. Section (b) of the condition clearly outlines the provision of a "refund". This refutes the proponents consequent argument that this bond would somehow be illegal and once again calls into question their genuine commitment to environmental outcomes.

### **CONCLUSION**

In concluding the proponent justifies the modifications with a general reference to the projects proceeding "in an efficient, viable and timely manner". The proponent suggests that the Environmental Assessment accompanying their original concept plan approval is adequate.

These proffered modifications do in fact largely negate the list of environmental measures called for in the document "Modification of Ministers Approval" (2013). The conditions in the 2013 document are fair, expertly researched and justified considering the highly sensitive nature of the development site. It would be expected that these conditions be accepted and implemented by the developer.

### **Excerpts from the submission by Tweed Head Environment Group**

Tweed Heads Environment Group Inc. supports the current Concept condition B8 which provides that the Director-General act as Moderator. There is community concern that if there is no Voluntary Planning Agreement, the transfer of land will not be dedicated to Council or to OEH (NPWS) in a timely manner.

The following news report highlights the level of disagreement between Council and Project 28 Pty Ltd and the likelihood that any Voluntary Planning Agreement for land transfer, funding/ maintenance will be drawn out or even not made for the Kings Forest Project.

Leda's complaints of corruption dismissed – Echonetdaily - 18.10.2013

<http://www.echo.net.au/2013/10/ledas-complaints-of-corruption-dismissed/>

It has been advised that the proponent claims that compliance cannot be achieved because the Environmental Management Plans (EMPs) are still being revised and because they are also still waiting EPBC approval and because of commercial considerations.

The proponent is requesting instead that the trigger for implementation be "From the commencement of any bulk earthworks in a precinct" and that only the area of land "immediately adjacent to that precinct" is to be environmentally managed.

Tweed Heads Environment Group Inc. considers that it is likely that there will be considerable EPBC environmental conditions added to this development when decided.

As the proponent's EMPs are being revised and times are yet to be set for environmental actions, it is submitted that the Environmental Assessment accompanying the original Concept Plan Approval will need to be updated to provide an adequate Environmental Assessment for the modified project.

The proposed modifications, if approved, raise considerable uncertainty about: the signing of Voluntary Planning Agreements with Tweed Shire Council and OEH; the timely funding and maintenance of dedicated environmental lands and council open space. These adverse impacts to the environment are considered so significant that earthworks for the project should not start until these matters are satisfactorily resolved. The proposed modifications of the Concept Plan is considered to be unsustainable and not in the public interest.

**Compiled from submissions by Tweed Heads Environment Group Inc. and Team Koala**

Summary by Caldera Environment Centre:

As the above extracts illustrate there is considerable community outrage over the current development modifications. The groups opposing this amendment are community based volunteer organisations; we are people with families and careers, taking time out of our schedules to respond to the concerns of a major corporation. The Planning Assessment Commission has made a decision, the Tweed Shire Council has made a decision; LEDA disagrees and decides it wants to change the meaning of the definitions of conditions. This is an extremely cynical move on the part of the proponent; it dishonours their name and has also earned them the contempt of the community who have knowledge and experience of environmental and ecological matters.

The fact of the matters is this: The Koala is a national icon, simply ask any tourist "what defines Australia?" and they will answer that in part that it is the continent's animals and plants. Foremost amongst the instantly recognisable Australian animals is the Koala. The Koala is becoming extinct. Its recent addition to the federal endangered species list attests to this fact. The Tweed coast had, at last count c. 300 Koalas remaining. Since that census in 2010, Tweed Valley Wildlife Carers have reported at least 5 Koalas from that area have died as an indirect result of human activity [indirect in that the animal is hit by a car, found to have chlamydia and is then put down because it is infertile and/or blind]. The population is plagued by disease and car strikes and dog attacks are far too common. The population cannot be sustained at the *current level of development*. Hypothetically, LEDA's King Forest proposal, even with the most stringent conditions attached (and implemented, such as a ban on dogs), it is unlikely that the Koala population decline can be halted and eventual extinction of this population is inevitable. Alarmist arguments are often dismissed as biased, but the facts are there: presently there is a small population; there is consistent and gradual population decline under current conditions; the current proposal will increase Koala risk factors; the current proposal is to minimise obligations of the proponent to mitigate known risks .... what result would you conclude?

Yours Sincerely



Samuel K. Dawson,  
Coordinator, Caldera Environment Centre