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Ms Jane Flanagan  
Senior Planner  
Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001

Dear Ms Flanagan

**Re: Modification to Kings Forest Residential Subdivision Stage 1 Project 08\_0194 (MOD 4)**

Tweed Landcare Inc (TLI) supports people caring for the environment and natural resources of the Tweed. We provide information, training, project coordination, advocacy and representation for our members, locality groups, landholders and community. We appreciate the opportunity to make a submission on the proposed modification.

The proponent seeks to modify conditions A13, 3, 45, 46, 147 and Statement of commitment 18 of the Project Approval.

This application should be understood in context – it is the latest of several attempts to modify the conditions of consent relating to environmental protection measures for this very sensitive site. The stated aim is: “to minimise the number of ‘Concept Plan’ and ‘Project Approval’ conditions that need adjustment” and “to achieve consistency with conditions of the EPBC Act” (Determination: 21 May 2015)

Both Federal & State planning authorities have reported on the conditions of approval that the project has failed to meet. It is clear that this application attempts to achieve compliance **by adjusting the conditions of approval** rather than adjusting the project to conform to the necessary environmental standards. These modifications *do not* satisfy the approval conditions of NSW Dept. of Planning 2017 or the EPBC Act Determination 2015

**Background**

This application is questionable in that it “jumps the gun” on a consultation process already in motion between the proponent and relevant planning bodies. It does not however, resolve or ameliorate the issues of concern that the DoPE, the OEH, and the Commonwealth Dept. of Environment have with this development proposal.

**Summary**

A summary of issues of concern that remain and are exacerbated by this application include:

- Substantially reduced areas of koala habitat offsets
- Non-genuine koala offset areas due to overlaps with existing habitat
- Too much planned secondary habitat offset instead of the primary habitat that is required
- Only partially implementing the East–West wildlife corridor extension
- Removal of fencing and underpasses on roads traversing environmental areas

- A proposed KPoM that does not provide management of existing koala habitat
- A proposed KPoM that does not relate or integrate with other environmental plans vital to koala management – i.e. bushfire management
- Amended timing of koala habitat offsets allowing planting to happen before the relevant environmental management plans are in place
- Amending timing of offset planting so that clearing could occur well before compensatory habitat planting occurs
- A proposed KPoM that does not reconcile with the relevant conditions of approval
- Failure to adequately consider impacts on wallum sedge frog habitat and the retention and revegetation of heathland

## **ASSESSMENT OF PROPOSED MODIFICATIONS**

### **Project Approval 45: Koala Plan of Management**

#### **Existing Condition 45**

- 1) A revised offset strategy for the loss of Koala food trees incorporating the following:
  - a. The restoration & planting of Koala food trees offsite (a 27 ha has been nominated by the OEH)
  - b. Planting of food trees in the new E-W corridor as required by Term B4...
  - c. Planting of Koala food trees in other suitable locations across the site ...

#### **Modification Request:**

- 1a “All compensatory Koala habitat plantings shall be carried out in accordance with the Revised Koala Plan of Management dated 19 May 2017 (issue 9)”

#### **The proposed amendment seeks to do the following:**

- Increase koala habitat to be lost to 15ha whilst reducing compensatory offset habitat to 56.71ha. This compares to the existing State approval in which only 6.68ha of koala habitat is to be lost and 93ha of koala habitat is to be re-established.
- Remove the requirement for 27 ha of off-site compensatory habitat planting in Cudgen Nature Reserve
- Only partial implementation of the proposed E-W corridor
- Offer new mapping for offset planting areas that do not comply with the areas mapped and recommended by planning agencies - after extensive analysis as to their suitability.

#### **Comments:**

1. The amendment does not explain how this reduction in the balance of koala habitat to 42 ha is still able to satisfy the Concept Plan. The Concept Plan requires that the measures to “offset the impact of the development on existing and future koala populations are adequate.” (PAC Nov 2014). Since the time of Plan Approvals, the Tweed Coast koalas have been listed as an endangered population. It is highly unlikely that an application to clear 15ha of koala habitat would be approved today.

2. The proponent argues that the planting of 27ha in Cudgen Nature Reserve is “onerous” and “unreasonable”. Several Department Planning reports explain the need for this offsite-planting requirement. It is part of an overall offset strategy and resolves issues such as proposed onsite koala habitat areas that *overlap and conflict* with areas of a different vegetation type i.e. heath and acid frog habitat. These reports also disapprove of proposals to plant in areas that are already regenerating naturally and would not benefit from planting. Offsite planting sites are a strategic response to such issues.

3. The proponent maps areas for offset planting that are clearly already vegetated with native forest. Such areas are required to be managed in their own right and cannot be claimed as an “offset”. Areas suitable for koala habitat offsets should be already cleared, or highly disturbed, land.

4. It is also very important to note that a concession has already been made to allow the proponent to plant offsets within environmental protection areas and ecological buffers at Kings Forest – when these areas would need to be restored anyway. The SEPP relating to Kings Forest requires areas such as wetlands, habitat significance, connectivity and native vegetation to be managed, maintained and regenerated as well as protected from disturbance, erosion and water run-off. Including environmental lands in the offset options for the site is already a very significant compromise of Stage 1 Project Approval conditions.

5. The proposed KPoM does not focus on creating primary koala habitat - much of the proposed planting is secondary koala habitat. At Kings Forest, this habitat is mostly paperbark - far less useful to koalas than species like swamp mahogany. Unless the offset areas are planted with the appropriate primary habitat they will not fulfil the aim of increasing the carrying capacity for koalas at Kings Forest.

In light of the points made it does not seem reasonable for the proponent to argue that aspects of the offset package are ‘onerous’. It remains highly problematic that they intend to take the measures described above that clearly weaken environmental protection measures and would very likely bring about an outcome that will adversely impact native flora and fauna and native vegetation values. This directly contradicts the Director General’s original intent when granting approving for the Concept Plan for the site.

#### **Concept Plan Condition B4: East-West Wildlife Corridors**

##### Existing Condition

- This condition requires a “fully revegetated east-west wildlife corridor generally 100 metres wide (with a minimum of 50 metres at any one point)” between the existing central corridor and vegetation to the NW

The original requirement for a Northern E-W corridor was replaced with the option of providing a fully revegetated Southern E-W corridor *of the same dimensions*. However, references to this corridor in the proposed KPoM are not compliant with this condition.

- The corridor depicted in Figures 18 & 22 is only 50m wide at best and has a break in it. It is not shown as a continuous linkage extending across the Kings Forest site towards the Eviron Rd koala corridor as it was required to.

This wildlife corridor is required under both Concept Plan B4 and Project Condition 45 Approvals. The DoPE gave clear guidance on the issue and its importance for both threatened wildlife and all wildlife. To comply with this condition the corridor would require an estimated 11ha of land. The corridor depicted in the KPOM map is less than 1/5 of this size.

### **Project Approval 46: Koala Infrastructure**

#### Existing Condition:

- 1) "Any roads through the environmental areas of the site must include:
  - a. fencing on both sides of the road of a design that will prevent the crossing by dog and koalas
  - b. fauna underpasses installed at intervals sufficient to allow unimpeded movement by wildlife including koalas across roads"

#### Modification Request:

- 1) "Any roads through the environmental areas of the site must include:
  - a. Fencing to be erected to prevent Koalas from entering residential area and roadways. These fences will also prevent dogs from entering Koala habitat. Such fencing within Environmental Protection Areas is to be constructed prior to the Commencement of construction in each relevant precinct.
  - b. fauna underpasses installed at intervals sufficient to allow unimpeded movement by Koalas under roads. Underpasses within Environmental Protection Areas are to be constructed during road construction."

The proposed KPOM includes underpasses near the entrance of the site but does not include any such structures under the roads that traverse environmental areas. It also depicts only temporary fencing on either side of these roads. The KPOM also relies heavily on "cattle grids" to keep koalas off the development site. This technology is unproven and would not be effective in deterring dogs from accessing koala habitat and, more importantly, koalas and other wildlife will be vulnerable to vehicle strike when they are forced to cross unfenced roads to reach neighbouring environmental areas.

The reason given by the proponent for this change is: *"the agreed approach...is to exclude Koalas from the urban areas and therefore **fencing on both sides of the road is not required nor are koala underpasses**".*

This is not an acceptable argument and is a totally unacceptable outcome. The Department's comments state that, along with other measures, the use of koala fencing surrounding residential areas should be effective in separating dogs from koalas. But the report also stresses the importance of fencing "on both sides of roads that traverse environmental areas and fauna underpasses installed at intervals sufficient to allow unimpeded movement by wildlife" (Planning Report May 2013).

The proponent offers no further explanation for a modification that effectively puts koalas in direct contact with vehicles on busy urban roads. It also enables large sections of koala habitat to be accessed by people on foot or in vehicles – with or without pets – with no barrier whatsoever between them and koalas. It is in complete contravention of Project Approval Conditions.

Furthermore, the planned location of underpasses is very unclear. Another very confusing point is the contradiction in the proponent's own plans. Despite the comments above removing the need for fenced roads and underpasses the KPoM states that:

- "Koala exclusion fencing will be constructed on both sides of all roads in environmental protection zones" Pg. 46 KPoM/19.05.17

However, maps showing these areas fail to depict any fencing through major environmental zones.

Another serious omission is the permanent koala exclusion fencing required behind the existing houses on Old Bogangar Rd from the Depot Rd intersection to integrate with existing fencing on Tweed Coast Rd. Under the proposed KPoM animals will be vulnerable to road strike by exiting the environmental area of Precinct 2 onto Tweed Coast Road.

### **Concept Plan Condition C2: Management Plans**

#### Existing Condition:

"All future applications are to include precinct specific management plans providing details on timelines for implementation of recommended works...Each plan is to consider all other existing plans for the site to ensure management strategies do not conflict and that each plan can be implemented without negatively impacting on the objectives of another".

There is a stark lack of detail regarding all the environmental management plans required under this condition. The proponent has been asked to provide details of the actions and time schedules of such plans but as yet none have been provided. There is no commitment in the KPoM to manage some 183ha of existing koala habitat. There is no alternate reference in any other environmental management plan. This is a serious omission and highlights the importance of clarifying how the KPoM relates to other management plans. We would recommend that such details be provided in the proposed KPoM before it can be considered for approval.

#### **Inconsistency with other conditions of approval**

The proposed KPoM aims to create consistency with the Project Approvals listed (above). However, it is clear that a significant number of additional conditions would need to be amended to be consistent with it if it were to be approved. These include B4 – Wildlife Corridors, B3- Further Protection of Heathland, 41 – Buffer Management Plans and 50 – Bond for Environmental works and Maintenance.

### **Project Approval A13 Management & Maintenance of Environmental Lands**

- At present the proponent is required to begin planting koala food trees across the site *within one month of the revised KPoM approval*.
- At present the proponent is responsible for management of all future (environmental lands) for conservation purposes and the implementation of all establishment and maintenance period work...from the commencement of the project.

*“Commencement (being) any physical works including clearing vegetation, the use of heavy duty equipment for the purpose of breaking the ground for bulk earthworks, or infrastructure for the proposed project” – Known as “Preliminary Works”.*

Modification Requests:

- The planting of koala food trees is to be in accordance with the plan “Proposed Koala Compensatory Habitat Area Staging Plan” (JWA Pty Ltd 29 Apr 2014)
- The proponent wishes to broaden the above definition of “Preliminary Works” to include maintenance & rehabilitation works, creating access tracks and mobilising heavy-duty equipment, machinery and personnel. They then ask that all this work *be exempt* from triggering the need for environmental management plans for the areas they are affecting. The proponent requests that the trigger for such responsibility occurs only when “the suite of management plans are amended...prior to the issue of a construction certificate

The proponent seeks to proceed with habitat creation and offset work without triggering the commencement of environmental management plans – namely the proposed KPoM. It is vital that such works occur under their relevant management plan and Concept Plan Condition C2 requires that all such plans work together.

The Dept. of Planning has already approved the staging of koala tree planting to occur with bulk earthworks and with a schedule to be detailed in a revised KPoM. The recommended approach is for any offsetting to occur in stages and that the offset planting is established *prior to* the clearing *and in proportion* to the overall impact area ratio. The proposed KPoM does not adopt this approach - it links offsets to the adjacent precinct under works. This clearly allows offsets to fall behind the development’s impacts.

### **Project Approval 3: Environmental Offset Areas**

Existing Condition 3:

- At present the proponent is required to survey, mark and maintain the boundaries of future environmental lands prior to commencement of any physical works including preliminary works.

Modification Request:

- The proponent wishes to delay the requirement to survey, peg and maintain environmental lands until they begin bulk earthworks in a precinct.

This will delay the trigger to maintain and manage these environmental lands for an unknown period during which works can take place as described above. It would also delay defining the boundaries of environmental areas - creating unnecessary risk of negative impact to areas not clearly marked and not under an environmental management plan. It also prevents effective monitoring of the progress of offset plantings in these areas.

## **Project Approval 147: Koala Plan of Management**

### Existing Condition:

- The existing condition refers to an “approved Koala Plan of Management” and requires “calming devices” throughout the estate during the construction phase.

### Modification Request:

- The proponent seeks to insert JWC KPoM dated 19 May 2017 (issue 9) as the “approved Koala Plan of Management” and delete reference to “traffic calming devices”

No Koala Plan of Management has been approved for this project as it is still under revision. The need for traffic calming devices as an extra precaution until fencing and underpasses are complete is required as a condition of approval. Preliminary works will be underway in the meantime. This modification request should be refused until an approved KPoM is in place and the reference to traffic calming devices should be retained.

### **Conclusion**

This modification does not satisfy the State conditions of approval and cannot be justified under Federal EPBC conditions alone. It would result in adverse outcomes for koalas and other threatened species, as well as wildlife in general and other significant vegetative communities.

We recommend that a revision of the proposed KPoM for Kings Forest be undertaken in consultation with the relevant planning bodies, as well as the other environmental management and protection measures referred to above.

We recommend the report by the NRM department at Tweed Shire Council as a guide to achieving the optimum outcomes for the environment at this site without much additional cost to the development.

Yours sincerely,  
Marion Riordan  
On behalf  
Tweed Landcare Inc.