

116

Sandra Fatarella - Fw: Kings Forest

From: "Wayne Smith" <cloud_catcher1@optusnet.com.au>
To: <plan_comment@planning.nsw.gov.au>
Date: 25/01/2012 12:07 PM
Subject: Fw: Kings Forest

Dear Sir/ Madam,

I have lived 25 years in this area as landholder, ecologist and Doctor, mostly in Tweed Shire.

Whilst I realize Australians wish to colonize every viewful area near the sea, and developers care only about maximizing profits..we must also think of our fauna, our watersheds and our childrens' right to live in a beautiful, healthy country. Are we just to bequeath them a Gold Coast style monotony of concrete pavement, chemical lawns and isolated suburbanites, 30% plus of whom have either drug and alcohol problems or depression?

Surely we can think into the future and provide suburbs that use water intelligently, help create community spirit, particularly important for older people and homes that are self sufficient in water, sewerage and power! Surely we can plan developments so adjacent wild life is protected and encouraged.

3% drop in koala numbers on Nth Coast will place them on endangered status (ABC Radio Cr Clough 25/1/12)

I am alarmed about the upcoming Kings Forest development as I believe they are already cleared heath and forest. If this is found to be true this must be prosecuted. Moreover any such clearing MUST BE HALTED, now.

If this is not done the council appears to be open to questions of corruption.

Clearing native forest is neanderthal behaviour which affects rainfall, soil, air and water quality; the foundations of life. We are not separate from our environment, and to flaut this truth will have huge consequences for our climate, seas and health and end up costing far more in GDP and personal happiness than a few intelligent measures now.

Tweed Shire Council could become a beacon of future thinking for all of Australia instead of the ridicule that it drew down itself not so long ago with ICAC. Slow down with the developers requests and start building a way of life that can survive climate change, peak oil and emotional adjustments surely bearing down on us this century!

Thankyou for your wise decisions,
signed

Dr Liz Elliott
2219 Coolamon Scenic Dr
Mullumbimby
nsw 2482

(17)

Sandra Fatarella - Kings Forest Submission

From: "Kay Tarrant" <kay@tarrant.ca>
To: <plan_comment@planning.nsw.gov.au>
Date: 25/01/2012 12:29 PM
Subject: Kings Forest Submission

To the Department of planning NSW,

I would like to express my concern and disappointment over the Kings Forest Development.

Put simply I would rather it not go ahead at all.

But if it must move forward, surely it is more important to protect our native Koalas and other species in this area, than to give precedence to domestic dogs!

How utterly absurd and short-sighted. In case you were unaware, domestic dogs ARE NOT A TREATENED or VULNERABLE SPECIES!

I agree with Cr Milne that retaining Koala Habitat is paramount for this development to go ahead and they must be given priority, over the whims of billionaire Bob Ell.

Sincerely,

Kay Tarrant

52 Lakeview Tce
Bilambil Hts NSW 2486

I am using the Free version of SPAMfighter.
SPAMfighter has removed 15915 of my spam emails to date.

Do you have a slow PC? Try free scan!

--

This message has been scanned for viruses and dangerous content by MailScanner, and is believed to be clean.

118

Sandra Fatarella - KINGS FOREST STAGE 1- APPLICATION NO. 08-0194

From: jane millyard <janemill@hotmail.com>
To: <plan_comment@planning.nsw.gov.au>
Date: 25/01/2012 1:53 PM
Subject: KINGS FOREST STAGE 1- APPLICATION NO. 08-0194
Attachments: Image (9).jpg; Image (5).jpg; Image (6).jpg; Image (7).jpg; Image (8).jpg

Dear Sir/Madam,

I attach for your information my comments on the proposed development at Kings Forest. I feel very strongly that this development will have dire consequences for the biodiversity, koalas and all other flora and fauna on the Tweed coast. I came to live here 5 years ago to escape the rat race of the Gold Coast. I meet people from all around Australia and overseas visiting here, who are horrified when they hear what is planned for this area, and state they come here because of the natural beauty and how it has not changed. LETS KEEP IT THAT WAY and preserve what we have left, before we destroy it forever, once its gone - its gone.

We are curenly experiencing torrential rains, and the likelihood of flooding, and this development will spell the end of the beautiful Cudgeon Creek, which we and visitors to the area, all enjoy swimming in at Kingscliff, as the beach where it flows out of, is totally eroded and destroyed.

We are all fed up with greedy developers. The roads all need upgrading in this area, and there is only one lane out to the highway (M1). How would an extra 10-15,000 cars help? The Koala needs all the protection it can get, it wont stand a chance with this development.

Thank you
Jane Millyard

2

west corridor has been deferred to a later stage whereas it should be identified and included in the KPOM. Current road design, proposed golf course provisions and lack of east west corridor do not provide for adequate protection of Koalas. Koalas currently move through the majority of the site.

There are inconsistencies with other management plans particularly related to the planting of the Koala food trees. Plantings should not be in heathland restoration areas, within the identified Littoral Rainforest and APZs. The PoM should include a detailed implementation table as per previous point. Dogs ownership should be prohibited. The KPOM does not sufficiently address DGRs 9.5 – 9.9.

General Points

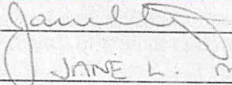
The Bushfire Risk Management Plan to include ecological considerations. The Asset Protection Zones should not be included within Ecological Buffers.

Removal of Littoral Rainforest which is a state and federally listed Endangered Ecological Community.

The proponent requests ongoing maintenance of Blacks Creek within the site which includes removal of sediment. Drainage of the site relies on the flow of Blacks Creek from Kings Forest through Cudgen Nature Reserve to Cudgen Creek. Sections of the creek are within state protected wetlands. Adequate drainage through Blacks Creek is required in time of flood but the EA has not provided details of recommended cross sections.

Monitoring of the success of all plantings and restoration should be undertaken by an independent consultant. An independent environmental officer should be employed throughout the project to ensure compliance with relevant conditions of consent. Both positions to be funded by the proponent through Tweed Shire Council.

Insufficient details of proposed earthworks with likely adverse effects on hydrology and native plant communities. There are proposed cuts of up to 2m adjacent to existing native vegetation.

Signature 
Printed Name JANE L. MILLARD
Address 3 SANDALWOOD DR, BOGANGAR 2488
Date 24/1/12

The Director Metropolitan and Regional Projects North
Major Projects Assessment, Dept of Planning
GPO Box 39,
Sydney, NSW 2001
plan_comment@planning.nsw.gov.au

KINGS FOREST Stage 1: Subdivision and Bulk Earthworks - Application No..08_0194

Dear Sir/Madam,

I hereby wish to object to this Stage 1 application for the following reasons:-

1. Unauthorised Clearing and Drainage works of Blacks Creek

- i. The exhibition of this development should be deferred so that the public can include comment on the impacts to the development of the recent unauthorised clearing and drainage works of Black's Creek in the Cudgen Nature Reserve SEPP 14 Wetlands, adjacent to Kings Forest, including potential disturbance of Aboriginal sites
- ii. An on site environmental compliance officer is required to prevent these problems.

2. Inadequate Protection of Koalas

The new Kings Forest Koala Plan of Management (KPoM) still fails to protect the Tweed Coastal Koalas which are now in serious jeopardy according to the Tweed Coast Koala Habitat Study 2011.

- i. It is totally unacceptable for this development to put at any further risk the largest and most significant Koala colony left in the Tweed, i.e. 75 Koalas affected by this development with only 144 Koalas remaining on the Tweed Coast.
- ii. Due to the seriousness of the new information provided in the Tweed Coast Koala Habitat Study, which was only released after the Concept Plan was approved, it is incumbent on the new government to adopt the more precautionary approach of the reduced development footprint excluding the sensitive areas of the Cudgen Paddock and the Eastern portion, as previously advocated for by Council and officers of the NSW Department of Environment.
- iii. Failing the above (ii) : As no lot yields were proscribed in the Concept Approval for individual precincts, the majority these lots can be redistributed away from these sensitive areas to the west of the site and significantly minimised by allowing only large lots of minimum 10 hectares.
- iv. The claim in the Concept Plan of being able to maintain the free ranging ability of Koalas across the site was previously used to justify the development in these sensitive areas. With the proposed fencing, now acknowledged as best practice, this significantly reduces the range of the koala and accordingly serves as another reason for the footprint to be reduced.
- v. The Koala Beach model should be used as a minimum standard with no dogs, no visitor dogs, speed bumps, 40km speed limit policies etc.
- vi. The inadequacy of cattle grids in stopping dogs, the maintenance of many kilometres of fences, and the unintended consequences to other fauna of the Nature Reserve from fences and dogs is not adequately addressed.

3. Lack of Biodiversity Protection

Tweed Shire has many State, National and International significance listings, including World Heritage Areas, and is identified as one of Australia's 8 National Iconic Landscapes.

"The Cudgen Nature reserve forms part of the largest remnant of native vegetation on the Tweed Coast and is of significance on a local, regional and state level for its natural values, coastal landscapes and provision of significant habitat for native wildlife." (NPWS 1998).

This Shire already has the highest concentration of threatened species in Australia (TSC SoE).

- i. As such the maximum protections and precautionary principles must be applied.
- ii. Cumulative impact on the environmental from coastal development must be assessed, including on the seasonal fauna of the World Heritage areas that use these coastal lowlands in winter. Referral to the Federal Government and UNESCO is essential.

- iii. The ecological buffer zones should be increased where appropriate to include important ecotones and must not serve multiple uses of fire buffers, roads, golf courses, open space, bike or walking trails, or be subjected to earthworks due to the extreme values of the site.

4. Dams and World Heritage Corridors

Water Sensitive Cities project (WSC) embraces stormwater harvesting, flood management, recycling and reuse programs, rainwater harvesting and water use efficiency programs.

If Kings Forest embraced the National Water Initiative's WSC strategies more fully, including recycled water for toilets and gardens, it would assist in many ways including for the cumulative impact of potential damming of World Heritage corridor Values of Byrrill Creek or the values of Clarrie Hall dam.

5. Lack of Marine Protection

The whole Cudgen Nature Reserve including the Cudgen Lake has been classified as a Marine Protected Area. Cudgen Lake is also classified as a State Significant Coastal Lake and a Sustainability Assessment was recommended before further development approvals, and highlighted as urgent by the Department of Water and Energy in the Concept Plan, but has not eventuated.

- i. A Sustainability Assessment for Cudgen Lake must be provided in the exhibition documents.
- ii. Impacts on the marine ecology of Cudgen Lake, Cudgen Ck and Blacks Ck must be provided.
- iii. Excavation and filling should be prohibited or largely limited to limit impacts on marine ecology.
- iv. Stormwater quality targets should achieve 'no net water pollution' from the site.

6. Flooding and Sea Level Rise

With 94% of the site between 0-10m AHD enormous impacts to the ecology, the amenity and basic infrastructure are predictable in the longer term due to inevitable sea level rise and increased extreme weather events in this low lying floodplain.

- i. The primary response to flooding and sea level rise has been to fill the land and poison the weed growth in the Creek rather than adapt the development to the natural conditions.
- ii. The development must be assessed in terms of the post 2100 year viability of the development and safety of residents due to the significant size of the area likely to be affected, as well as in light of the likely revised sea levels of 1.6m - 2m for 2100 due for release by the IPCC in 2014.
- iii. Provision for both human and ecological adaption and retreat must be catered for under a worst case scenario pre and post the year 2100.

7. Sustainability

The development should aim to be carbon neutral and incorporate the full range of sustainability measures available as this will be one of the last, large Greenfield sites developed for the Tweed.

8. Housing Affordability

Tweed has the highest rate of homelessness in NSW yet the development admits that even the cheapest lots will not be affordable for even moderate income workers.

The exhibition documents must include clear commitments to significantly redress affordability at this stage by providing at least 10% low income affordable housing rather than just rely on grants or later agreements.

9. Lack of Faith in the Planning Processes

Erosion of public confidence due to lack of effective consultation, the obviously inadequate biodiversity protection for this internationally significant environment, developer donations and the new State Government's own recognition of the fundamental flaws of the Part 3A Planning Act.

Signature: Jane L Millyard Date: 24/1/12

Printed Name: JANE L MILLYARD

Address: 3 SANDALWOOD DR, BOGANGAR 2488

SAMPLE SUBMISSION POINTS

Re: 08_0194 Stage 1 Project Application - Kings Forest, Kingscliff

To: *The Director, Metropolitan & Regional Projects North,
Major Projects Assessment*
Dept of Planning
GPO Box 39
Sydney NSW 2001
plan_comment@planning.nsw.gov.au

Online: http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=2642

Dear Sir/Madam

I would like to make the following comments on the Kings Forest Stage 1 Plan.

- Golf course should use no toxic organophosphate pesticides – instead use only organic non-toxic pesticides.
- wildlife corridors need to connect and not be fragmented
- need overpasses for wildlife on roads, not just underpasses, including exclusion fencing
- road signage must advise motorists to slow down for wildlife
- speed bumps to ensure maximum speed at 40kph, placed every 100m
- water-saving initiatives to be in place (20,000L water tanks, stormwater harvesting, dual water reticulation, water recycling). This town must be self-sufficient or it will force TSC to build a dam at Byrrill Creek impacting koala colonies and 45 threatened species
- all dogs must be banned no matter what size, age or breed - there is no such thing as a 'koala-friendly dog'
- visitors with dogs or cats must also be prohibited
- no koala habitat or food tree is to be felled, no matter where it is
- Koala Beach style plan
- Developer to set aside funds to establish a Management Committee to ensure koala protection is enforced
- Rate levy to maintain Management Committee
- * An URGENT and THOROUGH investigation into claims of illegal clearing adjacent to Kings Forest must be made and, if found to be true, be prosecuted to the full extent of the law. *

Sincerely

(Signed)

Name:

Address:

Jane Millard
Jane Millard
3 Sandalwood Dr
Bogangar 2488
24/1/12

The Director Metropolitan and Regional Projects North
Major Projects Assessment
Dept of Planning
GPO Box 39
Sydney, NSW 2001
Email: plan_comment@planning.nsw.gov.au

Re: KINGS FOREST Stage 1 Subdivision and Bulk Earthworks - Application No. 08_0194

The proposed development includes or is located adjacent to land of high environmental significance including Cudgen Nature Reserve, Cudgen Creek, Koala habitat, State Protected Wetlands (SEPP 14), Endangered Ecological Communities and habitat of Threatened flora and fauna.

The massive scale of the development requires that Environmental Assessment (EA) undertaken by the Department of Planning (DoP) takes into full consideration all aspects of impacts on the environment. The DoP needs to ensure that the community has full confidence that the development will have minimal impact on native flora, fauna, plant communities and waterways prior to approval of Stage 1.

The trust of the community has already been breached by recent clearing of Melaleuca forest adjacent to Blacks Creek and dredging of the creek within Cudgen Nature Reserve adjacent to the development site. This application should be deferred until there is a court decision on the unauthorised clearing and draining of Blacks Creek.

I object to the Stage 1 application on the following grounds;

Staging of the dedication of environmental protection land to Tweed Shire Council or OEH throughout the project DGR 2.4.

All environmental protection lands to be dedicated and transferred to Tweed Shire Council and OEH in the early stages of the project. It is essential that these lands are transferred in their current condition prior to commencement of earthworks which could cause damage to native vegetation and function of wetlands. Alternatively should the dedications be staged there should be strict conditions and a bond to ensure that there is no clearing or degradation of these areas. There is insufficient detail on the dedication of land to Council and OEH.

Long term management and maintenance of environmental areas and open space DGR 2.5. and Updates of various management plans DGR 9.4.

These two points have not been adequately addressed by the proponent.

All EA and recommendations included in the Koala, vegetation, weed, landscaping and buffer management plans should be consistent and there should be no duplication or overlap. There should be an integrated implementation table (work schedules, timing and costing) included for all related works. Planting and restoration areas should be in suitable locations and habitats, e.g. heath has very specific habitat requirements. There should be clear guidelines for the proponent to implement management of the areas over a minimum 5 year period. Tweed Shire Council and OEH should be involved in the planning of the implementation and maintenance schedules and costings.

Measurable Performance and Completion Criteria requires review and must ensure that the proponent achieves successful outcomes within given timeframes.

Koala Plan of Management (KPoM)

Although the KPoM has been revised is still does not adequately ensure the long term protection of Koalas. The fencing of housing enclaves provides some protection from dogs and vehicles but also brings into question numerous other issues such as ability of dogs to move across grids, maintenance of fencing, barrier to movement and entrapment. The east-

Sandra Fatarella - Kings Forest D.A. 08_0194

119

From: Ian Herscovitch <tetrisking257@gmail.com>
To: <plan_comment@planning.nsw.gov.au>
Date: 25/01/2012 2:13 PM
Subject: Kings Forest D.A. 08_0194

Ian Herscovitch
254 Rowlands Creek Road
UKI, NSW 2484
Re: Kings Forest D.A. 08_0194
Stage 1 Subdivision and Bulk Earthworks

Dear Sir / Madam,

I wish to register my objection to this development. The Kings Forest site is a crucially important locality, supporting at least 23 threatened fauna species and three endangered ecological communities. It borders the Cudgen Nature Reserve and contains much land of high environmental significance. The area is core koala habitat, already hugely fragmented on the coast and poorly protected.

The proposed development will have enormous impact on the coastal environment, and the Department of Planning should take into serious consideration all aspects of this impact.

1. Unauthorised clearing on Blacks Creek within the Cudgen Nature Reserve has already occurred. The D.A. decision should be deferred until there is a court outcome on this illegal clearing.
2. Retaining, enhancing and protecting koala habitat must be a priority in developing the site. Important koala corridors must be protected. Some proposed roads within Kings Forest will dissect and fragment core koala habitat.
3. Dogs of all kinds must be prohibited from the development. *All* dogs pose a threat to koalas. Fences are an inadequate and unreliable solution. Koala Beach estate has proven that a ban on dogs is feasible and enforceable.
4. Core koala habitat areas will be dissected by roads. The animals need to be able to travel safely between these areas. A 40 kph speed limit should be imposed.
5. A proposed golf course encompasses koala migration routes.
6. All environmental protection lands within Kings Forest should be transferred to Tweed Shire Council custodianship. This should occur before there is any earthworks or clearing undertaken.
7. Tweed Shire has the highest concentration of threatened species in Australia. Cudgen Nature Reserve is part of the largest remaining coastal vegetation remnant on the Tweed Coast. The impact of the development on this highly sensitive land could be enormous. Ecological buffer zones should be enlarged. Situated as it is within an area of such high environmental significance, Kings Forest must accept stringent conditions to protect regional biodiversity.
8. Cudgen Lake is a Marine Protected Area. The Department of Water and Energy recommended a Sustainability Assessment to address the possible impact of the Kings Forest development on Cudgen Lake, but this has not yet happened.
9. 94% of the site is less than ten metres above sea level. Dealing with anticipated sea level rise has not been considered.
10. The development should embrace water-saving strategies, such as those recommended by the Water Sensitive Cities project. Mandatory rainwater harvesting, stormwater collection and water recycling should be implemented. Tweed Shire is already threatened with a new dam on Byrrill Creek (a hugely important valley linking two World Heritage national parks) because of ballooning water consumption in this shire.
11. Shire-provided infrastructure of roads and services will be hugely taxed and put under increasing

pressure by the development. Social issues regarding the scale of the project have not been addressed.

In conclusion, I would like to emphasise that it is the magnitude and intensity of the Kings Forest development that is so alarming. Because of the effect of such a massive project on the local environment, every effort must be made to protect biodiversity and ensure the security of threatened species.

I urge your department to exercise the utmost scrutiny on this development, and to demand the highest standards of environmental protection.

Yours faithfully,

Ian Herscovitch



Tweed Heads Environment Group Inc.

116 Figtree Place, Harbour Drive,
The Anchorage, Tweed Heads,
N.S.W. 2485

Phone: 55991315
rwm y125@tpg.com.au

(120)

23 January, 2012

The Director

Metropolitan and Regional Projects North

Major Projects Assessment

Department of Planning & Infrastructure

GPO Box 39

Sydney NSW 2001

plan_comment@planning.nsw.gov.au

Dear Sir

Re Application 08 0194 - Location Kings Forest, Kingscliff - Proponent Project 28 Pty Ltd;
Council area □Tweed.

Tweed Heads Environment Group Inc. makes the following submission in response to the above application and wishes to object and raise concerns about the following issues:

Background

The advertised Project Application seeks approval for Stage 1 of the Kings Forest development

The proposal includes:

1. subdivision to create new lots for future development (proposed Lots 1-8 yielding 4500 dwellings);
2. bulk earthworks across the site;
3. construction of the entrance road into the site and associated intersection works on Tweed Coast Road;
4. construction of the proposed Kings Forest Parkway from Tweed Coast Road via Precincts 4 and 5 through to the western part of the site;
5. construction of 2,126m² of floor-space for rural retail development & access arrangements within Precinct 1;
6. construction of subdivision and infrastructure works within Precinct 5; and
7. maintenance of the existing east-west agricultural drainage channel within the SEPP 14 wetlands

This application differs substantially from the Environmental Assessment Report (EAR) (10681) dated November 2011, which shows the overview of this proposal as described below:

1. Subdivision to create new lots for future development;
2. Bulk earthworks across the site;
3. Road-works comprising:
 - (a) construction of the entrance road into the site and associated intersection works on Tweed Coast Road;
 - (b) alignment and construction of the proposed Kings Forest Parkway from Tweed Coast Road via Precincts 4 and 5 through to the western precincts; and
 - (c) alignment and part construction of two proposed roads through SEPP 14 areas to access the southern precincts;
4. Development of 2,126m² of floor-space for rural retail development & access arrangements within Precinct 1;
5. Construction of subdivision and infrastructure works along the Kings Forest Parkway and within Precinct 5;
6. Maintenance of the existing east-west agricultural drainage channel in the SEPP 14 wetlands within the central part of the site; and
7. The Plan of Development for Precinct 5.
8. This Project Application includes the dedication of land to the National Parks and Wildlife Service.
9. Modification to Concept Plan

This EAR includes a modification to the approved Concept Plan under section 75W (in accordance with the savings and transitional arrangements) of the EP&A Act. The modification seeks amendments to the Concept Plan drawings, specifically in relation to:

The residential density (the provision of up to 4,500 new dwellings);

The number of development precincts;

The road hierarchy and potential bus routes; and

The locations of structured open space,
The future school site,
The neighbourhood centre and zone substation;
The configuration of the proposed lake.

The proponent is also seeking minor changes to the Instrument of Approval for the Concept Plan in relation to the timing for the preparation of various management plans and the need for geotechnical assessments.

(Kings Forest - Environmental Assessment Report - November 2011 - JBA Planning □10681- Overview of the proposal; Para. 1.1, p., 1)

Our Comment to NSW Department of Planning

Tweed Heads Environment Group Inc. questions the Proponent's Application 08_0194 as to why the subject items of Stage 1 differs so greatly from their Kings Forest - Environmental Assessment Report, November 2011. (JBA Planning □10681)

Our concerns include:

- The contents of paragraphs Part 3(b), Part 3(c), Part 5, Part 6 and 7 to 9 and described in the Environmental Assessment Report (10681) dated November 2011 differ substantially to the subject application.
- Paragraph 6 has been altered to show: □within the central part of the site□to □within the SEPP 14 wetlands□
- Questions whether the phrase □within the SEPP 14 wetlands□has any connection to the news reported and ongoing investigation by the NSW Government of □unauthorised dredging of Black□ Creek and removal of vegetation along both banks□for 300 metres, in the Cudgen Nature Reserve?
The news report also advised that Leda had contacted NPWS last July that accidental clearing on the adjoining Cudgen Nature Reserve had occurred.

Conclusion □Advertisement of Development Application 08_0194.

Tweed Heads Environment Group Inc. considers that the present EAR differs so greatly from the Proponent's Application 08_0194 that it warrants either a new EAR, which should be consistent with the current Proponent's Application or an amended development application.

DG's General Requirement No. 9 supports our concern: □That the information contained in the EAR is (not) misleading□

It is very concerning, that even though the council's Tweed Link newspaper exhibits the proposal as publicly advertised elsewhere, council planners are reporting on that part of the project not publicly advertised, but shown in the Environment Assessment Report - November 2011 - JBA Planning -10681.

It is unfair and misleading to the public not to advertise the full facts of this development application as provided in the Kings Forest Environment Assessment Report - November 2011, a document not mentioned in the public advertisement of development application 08_0194.

The Tweed Heads Environment Group Inc. is concerned that some people may not put in a submission on an issue that has not been adequately advertised. This advertisement practice is tantamount to a card game when only some players know that five cards are missing.

Our group notes that the obligation to publicly notify the Kings Forest Environment Assessment Report is a mandatory requirement that could lead to invalidity, if it was not followed.

The Tweed Heads Environment Group Inc. is not of the view that the advertised notice of development application 08_0194 was substantially compliant with any obligation (such as exists) to inform the community that the Environment Assessment Report - November 2011 was on public exhibition.

The public was not to know from the public advertisement that there were other assessments against development application 08_0194 on the Department of Planning's website.

Tweed Heads Environment Group Inc. considers that either an amended EAR should be prepared for public exhibition or an amended development application, before NSW Department of Planning considers this matter any further.

Existing Agricultural Land Use Rights at Kings Forest

Tweed Heads Environment Group Inc. in this submission notes that:

- The Proponent claims the drain has been routinely maintained under existing agricultural Land Use Rights (under section 106 of the EP&A)
- Cattle grazing activities and/or silviculture and associated routine agriculture activity are also carried out.
- Development Approval for Grazing - Golf Course
Part of the Kings Forest site - specifically parts of the land in Precincts 12, 13 and 14 (the future golf course) - is subject to a current development approval for cattle grazing.

The Proponent intends to continue this use of the land in accordance with the approval once earthworks have been completed and pasture re-established. These precincts are the subject of DA05/0840 from TSC dated 15 June 2006, as modified by DA05/0840.01 dated 4 June 2007, and further modified by DA05/0840.02 dated 17 February 2011.

The approval permits the use of the subject land for the grazing of a maximum 45 cattle within defined paddocks. Commencement was conditional upon the making of what subsequently became SEPP (Major Projects) 2005 (Amendment No 10), gazetted in November 2006. The DA commenced in June 2008.

The June 2007 modification clarified certain conditions, while the February 2011 modification extends the permitted grazing areas to include that of the proposed golf course, subject to the Minister's approval of the project application the subject of this EAR, and limits the approved use of the land to a period of five years from commencement.

In accordance with clause 8 M (1) of the *Environmental Planning and Assessment Regulation 2000*, the proponent intends to continue the use approved under Part 4 of the Act once earthworks have been completed and until the land is developed for golf course and residential uses.

(Kings Forest - Environmental Assessment Report - November 2011 - JBA Planning □10681 □Para. 2.3.1, p., 5)

Some open space land will remain in private ownership, namely the owner(s) of the proposed golf course.

These sites include:

- The golf course estate itself, consisting of 60 ha of land in the Urban Expansion zone and 9ha in the Environmental Protection zone; and
- The proposed lake and its immediate surrounds, consisting of 7ha of land in the Urban Expansion zone. These areas will be maintained and managed by the proponent until such time as they are transferred to new ownership.

(Kings Forest - Environmental Assessment Report - November 2011 - JBA Planning □10681- para.,3.10, p, 20)

There is community concern that the proposed Kings Forest golf course is likely to end up as a residential area, given that it is zoned 2 (c) Urban Expansion and its role is supposed to act as a key wildlife corridor within the site.

Community concern is supported by the actions of the proponent's affiliated company when the use of planned golf course land at the Cobaki Lakes development was changed to residential.

Government/Tweed Shire Council should ensure some protection against this happening again.

The Plan of Management detailing environmental management to decommission the golf course adds speculation to this likely change to future residential use when the Kings Forest Residential Development Director-General's Report-Major Project 06_0318, (May 2010), P.16.states:

□The proposed golf course development includes a comprehensive Plan of Management detailing environmental management from the construction to decommissioning of the golf course.□

The above statement lends support to community concern that the decommissioning of the Kings Forest's urban zoned golf course will lead to additional urbanisation of open space and environmental land.

If the 56 hectare Kings Forest golf course (zoned Urban 2(c) residential, is to become additional residential land there would be community outrage at the pointless loss of "core" koala habitat and irreplaceable rare heathland supporting numerous threatened species.

It is noted that the Golf Course Management Plan is not included in this Project Application

Conclusion - Land Use Rights

Tweed Heads Environment Group Inc. requests that the NSW Department of Planning & Infrastructure consider the attached NSW Supreme Court Judgment - Leda Manorstead Pty Ltd (Plaintiff) versus The Chief Commissioner of State Revenue (NSW) (Defendant) in regards to the Cobaki Lakes development and the interpretation of its Land Use rights.

In this Judgment, adverse to Leda Manorstead Pty Ltd, the view was taken that the current business of Leda's Cobaki Lakes development was earthwork activities and not primary production when the judge said:

"I take the view that the earthworks activities predominated".

As the Kings Forest development is proceeding along a similar development pathway to Leda's Cobaki Lakes development, Tweed Heads Environment Group Inc. makes the following request and comments:

Tweed Heads Environment Group Inc. requests that the NSW Government should act on this legal precedent, concerning Land Use Rights and make a decision on whether previous Agricultural Land Use Rights should be continued on the whole of the development site when forthcoming bulk earthworks at Kings Forest becomes the dominant use by the proponent. There is also the question (depending on the terms of the approval) whether this Judgment overrides any existing consents and whether grazing is still permissible on revegetated earthworks for a proposed golf course.

A government decision relative to this Judgment could mean that previous existing Agricultural Land Use rights might no longer apply in both Leda residential developments at Cobaki Lakes and Kings Forest.

Such government decision might also affect Tweed Shire Council which may have applied rates at a rural rate rather than a rating as a residential development.

Continuing grazing Land Use rights at Kings Forest, soon to be altered by massive earthworks, are likely to adversely affect unfenced protected SEPP 14 Wetlands, Nos. 46, 46a and part 47, fauna habitat and threatened flora regenerating in neighbouring environmental protection zones on the Kings Forest site and the Cudgen Nature Reserve.

Tweed Heads Environment Group Inc. considers that further grazing after the earthworks is inappropriate within the golf course area, given that there is an intention to use the land partly as a wildlife corridor (or at least that section of the area should be fenced off from cattle) and its potential impacts on other significant environmental areas.

The argument that this golf course is likely to end up as a residential area, given that it is supposed to act as a key wildlife corridor within the site, is supported by the actions of the proponent's affiliated company when the use of planned golf course land at the Cobaki Lakes development was changed to "residential".

While the Plan of Management detailing environmental management to decommission the golf course adds speculation to the likely event of future residential use, Tweed Heads Environment Group Inc. requests that the NSW Government provides protection for its continuing planned open space and environmental use.

The Environmental Protection Biodiversity and Conservation Act 1999

The Proponent has made a referral of a matter of national environmental significance to the Commonwealth Department of Sustainability, Environment, Water, Population and Communities, under the *Environmental Protection Biodiversity and Conservation Act 1999* for the Wallum sedge frog (Acid frog), a listed vulnerable species.

However the proponent has not included other fauna species reported in the following Overview of Site Issues Para. 3.1- Geolink, 0520846, Kings Forest Planning Report - p. 17. February 2006 and Littoral Rainforest that is Federally listed as *Critically Endangered* and *Endangered* in NSW.

□The SMEC report indicates that there are 19 threatened fauna species and six threatened flora species listed under the *Threatened Species Conservation Act 1995* that occur within the Kings Forest site.

Three of these fauna species (wallum sedge frog, grey-headed flying fox and long-nosed potoroo) and three threatened flora species (stinking cryptocarya, swamp orchid and thorny pea) are also listed as endangered nationally under the *Environment Protection and Biological Conservation Act 1999*.

In relation to threatened flora species, SMEC note that records across the site are not extensive and that it is possible that insufficient targeted flora surveys have been conducted to fully record the threatened species within the site.□

Tweed Shire Council's submission business paper (January 2012) for the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan advises in respect of EPBC threatened fauna and flora:

Wallum Frog Habitat Compensation

DGR 9.12 Provide an update to the Threatened Species Management Plan

Consistent with DGR 9.12, an Appendix has been included within the Threatened Species Management Plans on the proposed acid frog habitat compensation which mainly involves the creation of □melon holes□to intercept the water table in suitable areas in order to retain water for sufficient periods to enable the breeding cycle to be completed.

While further specialist review of these plans is warranted the following points are made:

□The approach appears to be largely experimental and as a consequence caution should be exercised in any approval including contingency plans should it not be successful.

□It is not clear if the required conditions for successful breeding can be replicated in areas where there have been major changes to the land surface, drainage and groundwater relations. For example in the natural environment, accumulations of organic matter typically prevent seepage of water from depressions in the ground, allowing water to be retained long enough for breeding (5-6 weeks) and also contribute to the acid water quality required by these frogs.

These factors are acknowledged by the proponent in the literature review.

Clearing of Littoral Rainforest.

The proponent seeks to remove a small area of Littoral Rainforest from the Ecological Buffer adjacent to Precinct 1 (see Fig 12 and Table 1, Appendix MM).. This proposed clearing is considered inappropriate as: (1) Littoral Rainforest is Federally listed as *Critically Endangered* and *Endangered* in NSW; (2) no statutory assessment is presented to indicate its removal would not be significant; (3) its retention in the Ecological Buffer is consistent with the Clause 7 of Part 6 of SEPP (Major Projects) which regulates the use of Ecological Buffers; and (4) the proposed use of the Ecological Buffer for development infrastructure in this location is not considered consistent with the Clause 7 of Part 6 of SEPP (Major Projects).

See response to General Requirement 6 and Concept Plan Condition C20 below for further details.

Littoral Rainforest is regarded as a *Critically Endangered* ecological community under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

Littoral Rainforest is also considered *Endangered* under the NSW *Threatened Species Conservation Act 1995*.

It does not appear that consideration has been given to the statutory requirements under the relevant Acts for this proposed clearing. However, given the significance of the Littoral Rainforest community and the fact that it is located in the Ecological Buffer it is considered inappropriate to clear it.

RECOMMENDATION: Council considers the proposed removal of Littoral Rainforest inappropriate and recommends Environmental Assessment and associated Management Plans are revised to ensure the retention and management of the Littoral Rainforest community in the vicinity of Precinct 1.

Conclusion - Matters that apply to the Environment Protection and Biodiversity Conservation Act 1999 No 91

Tweed Heads Environment Group considers that the Applicant may have additional obligations to refer matters that apply to the Environment Protection and Biodiversity Conservation Act 1999 No 91 particularly in respect of a small area of Littoral Rainforest from the Ecological Buffer adjacent to Precinct 1 of the Kings Forest Development site and also significant impact on the management of fauna of national environmental significance.

A community member phone call to the Department of Sustainability, Environment, Water, Population and Communities, EPBC Act Commonwealth & Territories Section, Environment Assessment Branch indicates that this Referral matter is far from being finalised.

Pending receipt of further information from the Federal Department, an application to the Minister for the Environment and Water Resources (DEWHA) will be made, seeking determination as to whether this proposed action requires approval under the EPBC Act.

Water Cycle Management at Kings Forest

The Proponent's consultant advises:

A treatment train of stormwater management measures is included in this Project

Application consistent with the principles of water sensitive urban design and the integrated water cycle management strategy (IWCMS) approved under the Concept Plan.

The IWCMS includes concepts for stormwater management and reuse, reduction in potable water demand, and reduction in wastewater generation.

The strategy for Precinct 5 will include:

- Provision of rainwater storage tanks on all lots to capture and reuse rainwater;
Rain water will be captured and re-used for toilet flushing and external uses.

Tweed Shire Council's submission business paper (January 2012) for the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan advises in respect of Water Cycle Management:

□The IWCMS references a □new treatment plant□being built by Council that would enable consideration of dual reticulation. Council is not providing any such treatment plant in the foreseeable future.

There is nothing that actually mandates installation of rainwater tanks for complying development or more than 51% of the roof area to be drained to a tank. Council has adopted a Demand Management Strategy that identified a minimum size rain water tank connected to a minimum roof area as reflected in the table in the Development Code.□

Our Comment

Tweed Heads Environment Group Inc. notes that the IWCMS strategy for Precinct 5 will include the following components:

- Rainwater storage tanks on each allotment to supply water for external uses, toilet flushing and laundry cold water
- The implementation of NSW BASIX requirements and the inclusion of three-star WELS rated fixtures to reduce water demand.

The Water Sector News reported on 10.10.2011 □□The City of Sydney council is finalising plans for a recycled water network to be established throughout much of the city. It will include use of the Botany aquifer which extends from Redfern and Surry Hills, through Centennial Park and on to Botany Bay□

Tweed Heads Environment Group advises that Tweed Shire Council has no future water supply policy in place after recently deferring their unpopular and prohibited future Byrrill Creek Dam project.

The NSW government must also be aware that Tweed Shire Council has failed to use other water saving strategies in their recent planning for approximately 20,000 persons surrounding their updated Banora Point water reclamation plant

The new Kingscliff Sewage treatment plant is just 4 klms away and it make sense to finalise a plan for a recycled water network to be established at Kings Forest.

Conclusion - Managing Kings Forest urban water on a whole-of-water cycle basis.

Tweed Heads Environment Group and the community requests that the NSW Government should implement the National Water Initiative's Water Sensitive City (WSC) Concept and apply WSC water saving strategies at Kings Forest.

The water sensitive cities project (WSC) concept embraces a range of water management techniques, including stormwater harvesting, flood management, urban water recycling and reuse programs, urban rainwater harvesting and urban water use efficiency programs.

It seems unfortunate that the NSW Department of Planning is now being asked to endorse Tweed Shire Council's failed water supply option while elsewhere in NSW local authorities are applying National Water Initiative's Water Sensitive City (WSC) Concept water saving strategies.

Tweed Heads Environment Group advises that Council has failed to implement the National Water Initiative's Water Sensitive City (WSC) Concept and apply the full range of WSC water saving strategies at the Cobaki Lakes development, and in four close-by major areas of future development,

These Tweed Shire Council's major 'greenfield' areas will soon accommodate another 34,003 residents. Greenfield areas outside Major Areas will house another 36395 persons by 2041. By 2041, additional projected infill population is estimated at 28461 persons.

The Tweed community is concerned that Tweed Council's continued wastage of reusable water is being allowed to continue in order to support their 'preferred future water supply option' which is to construct a future Byrrill Creek dam.

Stormwater Quality

Runoff from the site generally flows easterly or southerly via a number of unnamed ephemeral gullies, agricultural drains and the SEPP 14 Wetlands into Cudgen Creek.

(Kings Forest - Environmental Assessment Report - November 2011 - JBA Planning, 10681 □ Para. 7.17.1, p, 75)

The proponent provides the following information in regards to stormwater drainage:

- A system of bio-retention basins and trenches for the management of stormwater runoff; and
- Use of Reduced Infiltration Gravity Sewers (RIGS) to reduce the generation of wastewater.

With the implementation of the treatment train measures, average annual suspended sediments and pollutant loads will be substantially reduced and the quality of stormwater run-off from the site would be acceptable.

In addition, the Stormwater Management Plan establishes the responsibilities and procedures for the management of erosion, sediment and stormwater during the construction, maintenance and operational stages of the development.

- Inclusion of WSUD elements - specifically bio-retention basins and trenches - for the management of stormwater runoff as described in the IWCMP report. A continuous bio-retention system will be constructed along the eastern edge of Precinct 5,
- Reduction in the generation of wastewater by the use of Reduced Infiltration Gravity Sewers (RIGS).

Tweed Shire Council's submission business paper (January 2012) for the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan raises the following concerns in respect of Water Cycle Management:

□The modelling shows that none of the treatment trains are capable of meeting the currently adopted water quality objectives prescribed by the Tweed Urban Stormwater Quality Management Plan (TUSQMP), particularly for total nitrogen. □

□One remaining concern with the proposed stormwater design is the low flow pipe. Typically it is the low flow "first flush" that is targeted for treatment, as it is likely to contain the most gross pollutants, sediments, hydrocarbons, and other contaminants. Under the proposed system it appears that this water would, at least in part, be captured by the low flow system rather than the bio-infiltration treatment areas, and as such, could be discharged directly to Blacks Creek. These same concerns arise should a chemical spill, sewage overflow etc. enter the stormwater system. Council therefore requests the installation of a treatment basin at the outlet of the low flow pipe, for containment of contaminants prior to discharge to Blacks Creek.

The applicant's consultants consider such a basin to be feasible but unnecessary, however Council wishes to pursue this measure to ensure stormwater impacts downstream of the development are minimised. □

Stormwater Management

IDGR 7.3 - The Plan is to demonstrate, through the provision of monitoring and adaptive management plans and commitments, that any proposed surface water/stormwater pollution devices will be monitored to determine their pollutant removal efficiencies and the need for further treatment of drainage to ensure the preservation of water quality in Cudgen Creek and Blacks Creek. □

Tweed Shire Council's submission business paper (January 2012) for the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan's response is as follows:

□It is recommended that the long term water quality objectives for the receiving environment be adopted from existing (under review) policy documents directly relevant to the area, this being the Tweed Coast Estuaries Management Plan 2004-2008 for Cudgen, Cudgera and Mooball Creek 2005.

This document is currently being reviewed, with finalisation of a revised plan expected in 2012.

The water quality objectives for water being discharged from the site should be set in accord with the recommendations of this document and in consultation with the NSW Office of Environment and Heritage, particularly with respect to the nutrients nitrogen and phosphorous and percentage saturation dissolved oxygen. Tweed Shire Council has results for water quality in Cudgen Creek from 2000 onward, and this data would be provided to allow characterisation of the receiving environment.

The Stormwater Management Plan (Appendix FF) does not make reference to the potential impact of stormwater discharge from the Kings Forest development on Cudgen Creek and Cudgen Lake.

A development of this scale cannot be considered in isolation, and must be considered with respect to the cumulative impact that it will have on an estuarine and coastal lake system that has previously shown signs of extreme ecological stress (major fish kills).

The impact of the development must be assessed with consideration of the existing capacity of the receiving environment to assimilate increased nutrient discharge without exceeding a threshold where key ecological processes are compromised. It is noted that the first two objectives of the stormwater management plan are to achieve; (1) appropriate stewardship of natural resources, (2) protection of downstream flora and fauna habitats.

There has been no investigation of or reference to the condition or stress levels of downstream flora and fauna habitats, or water quality

Additional comment specific - A criticism of this document which is common to related water management documents is the proposal to □establish appropriate discharge criteria for the construction phase□(Appendix GG, Table 2.1, page 8) by determining existing surface water quality parameters downstream of the proposed development, prior to construction. As noted previously, Tweed Shire Council has water quality data for Cudgen Creek extending back to 2000, (site CGN 3 is 500m downstream of Cudgen Lake) and this data set would be of value to the proponent to allow characterisation of the receiving environment.

It would be possible to use this existing data to set discharge criteria at this stage of the development's approval. □

Conclusion - Stormwater Quality

Tweed Head Environment Group agrees with the Tweed Shire Council Report, that the Proponent's Stormwater Management Plan is inadequate.

The NSW Department of Planning should review a serious pollution event at the Cobaki Lake (Broadwater) using the same standard of stormwater management as the Kings Forest Development Application.

An aerial photo dated 6 May 2010 of just one heavy rain event shows polluting stormwater drainage from Cobaki Lakes' subdivisional earthwork, which commenced in 2004.

Since 2004, many heavy rain events have added increasing pollution to the Cobaki Broadwater, indicating some failure of the current quality stormwater management plan.

Tweed Heads Environment Group has requested that Council make all future earthworks and development at Cobaki Lakes subject to the 2011 reviewed version of Tweed Shire Council's Stormwater Quality Management Plan (2000) & Design Specification D7 Stormwater Quality Version 1.3 (2005).

There is no indication that there is to be a change in Tweed Shire Council's Stormwater Quality Management Plan for the Kings Forest development.

The NSW Department of Planning should also consider first, the whole Stormwater Drainage Master Plan within the whole Kings Forest development before approving the individual Stormwater Drainage Plans for Precinct 5.

Failure to do this would allow serious stormwater pollution to the receiving Cudgen Creek/Cudgen Lake system from new earthworks to continue while the development at Kings Forest continues over many years.

Threatened flora and fauna will also be adversely affected by any 'poor' stormwater drainage.

Even without an EHMP Health Report for the Cudgen Creek/Cudgen Lake marine system it is likely that the total catchment dissolved inorganic nitrogen (DIN) loads needs to be substantially reduced in both marine catchments.

Failure to improve water quality in the Cudgen Lake catchment now will allow toxic algal blooms to increase in a warming climate

Tweed Head Environment Group Inc. has been advised that the Tweed Shire Council has recently contracted several specialist quality stormwater drainage consultants to prepare a reviewed Quality Stormwater Drainage Management Plan. As this plan is expected to be completed soon, it would seem best practice to use the latest Tweed Quality Stormwater Drainage Management Plan.

Heritage and Archaeology

- The Concept Plan recorded and assessed 17 identified sites for their cultural heritage significance. The Cultural Heritage Assessment submitted and approved under the Concept Plan and the Conservation Heritage Management Plan (submitted January 2010) included site management recommendations for each site. The management recommendations included the preservation in situ of 7 sites and the collection and preservation of 8 sites.
- The remaining two sites did not have management recommendations.
- The implementation of the Cultural Heritage Management Plan and also the determination of an appropriate Keeping Place for collected artefacts from the site are on-going issues. The development within Precincts 1 and 5 does not give rise to any new or additional impacts, requiring further assessment.
(Kings Forest - Environmental Assessment Report - November 2011 - JBA Planning, 10681 □ Para. 7.2, p. 78)

Our Comment

Tweed Head Environment Group Inc. notes the following deficiencies in the proponent's Aboriginal archaeology assessment.

The Kings Forest Residential Development Director-General's Report - Major Project 06_0318 -©NSW Government - May 2010, Paragraph 5.8 page 62 advises:

- The proponent's Aboriginal archaeology assessment contained in the exhibited EA did not constitute a final assessment of the study area as ongoing extensive Aboriginal community consultation and sub-surface excavation was required.
- It also stated that a further comprehensive 'Excavation Strategy' and new Cultural Heritage Management Plan (CHMP) would be developed, subject to the approval and participation of the Aboriginal community.
- The Department engaged an external specialist consultant to undertake a critical review of the November 2008 Aboriginal Cultural Heritage Assessment (ACHA) and February 2008 Cultural Heritage Management Plan (CHMP) documents prepared by Everick Heritage Consultants Pty Ltd for the proponent.
- Key areas requiring further work identified within the Aboriginal heritage assessment included:

A number of methodological, knowledge, and assessment gaps. These weakened the overall Aboriginal archaeological and cultural heritage findings and conclusions the report presented, and the intended future management strategies to be implemented relative to the Kings Forest proposal.

No description of past archaeological work undertaken on the site, no description of specific land use history, no description of survey methodology or assumptions, no details of when and where the survey took place or who was involved, and no description of exactly which portions of the large study area were examined and by extension which areas were not. As a result, it was not possible to determine whether the level of survey undertaken was adequate and hence whether the management recommendations presented are supported by the available evidence.

The report did not include any Aboriginal community documentation that indicates the support or otherwise of the community of the conclusions and recommendations presented.

The February 2008 Cultural Heritage Management Plan prepared for the proposal predates the results of site survey, assessment, and management recommendations presented in the subsequent ACHA. It was therefore not entirely clear to what extent the CHMP took into account the findings of the November 2008 report or the extent of Aboriginal community input into the current CHMP. Key areas requiring further work identified with this document included:

- The report needed to include Aboriginal community documentation that indicates the support or otherwise of the community for the proposed management strategies outlined in this document; and,
- The document did not include sufficient details on specific management approaches proposed for known and potential archaeological resources that could be purposively used to guide the development proposal.

(Kings Forest Residential Development Director-General's Report - Major Project 06_0318 -©NSW Government - May 2010, page 62)

In addition to the above matters, the DECCW raised a number of concerns in relation to the content of both documents and inconsistencies between the two documents.

Conclusion - Aboriginal Cultural Heritage

Tweed Heads Environment Group Inc. considers the proponent's Aboriginal Cultural Heritage assessment to be inadequate as the proponent has not demonstrated that they have made far reaching contact with affected members of the Aboriginal community.

This consultation process appears lacking with the absence of appropriate documentation and Aboriginal community confirmation of same.

Mapping of Aboriginal sites at Kings Forest have been made on a cadastral basis rather than their Aboriginal landscape usage.

Tweed Heads Environment Group Inc. requests that the Office of the Environment and Heritage ensures the very important protection of Kings Forest Aboriginal Cultural Heritage with the co-operation of affected members of the Aboriginal community.

Koala Plan of Management

The Koala Records Map (Figure 16) prepared on the 22 June 2011, shows the historical movement of the Koala mainly through the eastern and central part of the Kings Forest site from their northern and southern connections.

Our Group supports the following Tweed community based ☐Team Koala Inc.☐submission on the koala at Kings Forest:

Submission - Team Koala Inc.

☐ would like to draw your attention to a possible revision of the Environmental Assessment (EA) due to the potentially important impact on matters of National Environmental Significance (NES).

The Director General's requirements pertaining to this:

Requirement 5: Consistency of this project with Environment Planning and Assessment Act 1979

Requirement 6: Consistency of project with matters of NES ☐ (Environment Protection Act and Biodiversity Act 1999)

Key Issues:

1. The current Koala Plan of Management (KPoM) fails in its aim of protecting koalas
2. Retaining and enhancing core koala habitat must be an immediate priority
3. Roads as currently planned present a high risk to wildlife including koalas and other threatened and endangered species
4. The current plans for the golf course present a threat to threatened and endangered species

1. The measures proposed in the current KPoM are inadequate to offset the impact of the development on existing and future koala populations. The KPoM relies solely upon a koala-proof fence to mitigate dog attacks. However, the fence has gaps for vehicle access, where cattle grids are positioned to prevent koalas leaving their protected zones. But these grids have not been tested or proven to prevent *access by dogs into koala protection zones*. Furthermore, fencing breaks down over time and this development offers no maintenance provisions.

Fencing is a good method to separate koalas from vehicles but is inadequate as a way to protect koalas from dogs.

Regarding the management of dogs to prevent koala attacks Government senate committees have been informed that there is ☐ little evidence that management responses to address dog attacks on koalas has been effective thus far ☐ (Threatened Species Scientific Committee 2009)

Various dog management practices that are generally practised include the following:

- (a) Prohibit certain dog breeds
- (b) Limit dog numbers
- (c) Require dusk to dawn housing

The current proposed KPoM for this application fails to do any of these instead it relies *on a single line of defence* ☐ *a fence* ☐ *intending to keep dogs out and keep koalas within its boundaries*.

Regarding koala attacks by dogs, The Friends of the Koala Inc. emphatically state that ☐ all dogs impose a deadly threat to koalas ☐ -irrespective of size.

Furthermore: - Scientific evidence shows that any dog bite can kill koalas

- Dog saliva has been proven to be a deadly toxin to koalas

All of this reinforces the point made by the Tweed Shire Council in 2009 (Reports ☐ Item 9) that *'dogs and koalas must not mix'*.

If this proposal was truly concerned for the continued survival of koalas on and near the property it would *ban the ownership of pet dogs, altogether*.

Such an approach has been applied successfully at Koala Beach Estate ☐ Pottsville. It was equally close to sensitive koala habitat and applied such a ban *from the outset* which is the only way such a measure can be reinforced.

2. At present this proposal transfers several hectares of land into zone 7(a) ☐ environmental protection ☐ included in these areas are ☐ core koala habitat ☐ But these koala habitat areas are noticeably dissected by the proposed development.

Koalas instinctively roam between their areas and *must be allowed to roam in safety if they are to survive*.

This proposal plans to augment their habitat by planting koala food (& other) trees to fill gaps and create contiguous corridors of protected land within and through the estate.

If this is to be effective the following MUST occur:

- ☐ No koala feed trees to be felled, no matter where they are.
- ☐ Owing to the critical time left for the remaining 144 Tweed Coast koalas the planned feed tree planting needs to proceed immediately for it to be effective.
- ☐ These protected corridor zones MUST be suitably fenced to separate koalas and other wildlife from human activities.

3. Under the present plan, specific road design is inadequate for the protection of koalas and their safe passage across habitat areas.

Under the current plan, two-lane roads are designed to go through core koala habitat and environmental protection zones. If the developer is to comply with the aims of protecting koalas and maintaining their safe passage between habitat areas the following needs to apply:

- ☐ No higher than 40 k.p.h. speed limits
- ☐ Speed humps need to be placed at least every hundred metres
- ☐ Speed cameras are needed to enforce prescribed speed limits
- ☐ Electronic traffic speed recorder is needed

4. The golf course management plan is not consistent with the KPoM and the Threatened Species Management Plan.

- ☐ Under the plan current koala migration paths go through the centre of the golf course - this is inconsistent with the KPoM and the Threatened Species Management Plan.
- ☐ Golf courses are well known corridors for feral animals and, therefore, a danger to koalas and other wildlife.
- ☐ Koalas and wildlife crossing golf courses must contend with unrestricted human sport activity.
- ☐ Koalas and other wildlife are under threat from inhaling pesticide fumes from poisons used on golf courses.

Conclusion - Team Koala Inc. - Koala Plan of Management

Team Koala Inc. concludes that this development will have a negative impact on matters of National Environmental Significance and anticipates that the Director General will require the proponent to revise their EA to address these important matters. (End)

Tweed Shire Council's submission business paper (January 2012) for the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan raises concerns and makes recommendations on the following matters concerning an East-West Wildlife corridor and Koala Management Plan Implementation:

East-West Wildlife Corridor. The proponent rejects the need for both east-west corridors conditioned in the Concept Plan approval and seeks to delay the resolution of the issue as required by the Department of Planning. With: (1) the proposed changes in the Koala Plan of Management which seeks to exclude koalas from urban areas; (2) the likely need to find additional areas to plant koala food trees; and (3) the opportunity to augment koala movement to the south west towards the small outlier koala population and the Pacific Hwy underpass in the vicinity of Environ Road, it is considered that corridor options should be resolved prior to determination of the Project Application as originally anticipated in the Concept Plan approval. See response to Concept Plan Condition B4 below for further details.

Management Plan Implementation.

The timing for the implementation of actions within the Management Plans (including the KPOM) is not explicit. Given the number and complexity of issues to be managed it is considered essential that clear implementation schedules are provided.

These schedules should itemise all recommended actions required (including those detailed in other management plans) to ensure that the relevant plan meets its aims.

The schedule should show how each action meets the objectives of the plan, timing, frequency and responsibilities for action, resources required, costs, performance criteria, and outputs.

The commencement and duration of management plans also lacks clarity.

It is considered that all Management Plans should commence on approval of the Project Application and continue to be implemented by the proponent for a period of 5 years, or until 90% of lots are sold, or until completion criteria have been met, whichever is longer.

This issue does not appear to be specifically addressed within the Environmental Assessment except as it relates to koalas (see p80 of the Environmental Assessment and Appendix N).

The proponent directs readers to Appendix E which are series of engineering drawings without any explanation to demonstrate that provision has been made to maintain safe passage of wildlife as required by DGR 5.5.

It is assumed therefore that the measures proposed to mitigate traffic impacts on koalas are intended to apply to wildlife more generally. The following comments are made in relation to koalas but apply equally to measures to protect other wildlife.

The intention expressed in the revised KPOM (Appendix N) to prevent koalas from coming into contact with motor vehicles by the use of fencing, fauna underpasses and traffic calming devices is supported (see section 9.7 of KPOM). However, a number of elements of the design suggest an outcome which will not adequately ensure *safe passage between habitat areas* as required by DGR 5.5 (and DGR 9.8):

□The proposed fencing plan (Figure 17 of KPOM) does not □seal off□Precinct 5, potentially allowing koalas to access to roads from the north of the estate. This could be achieved by extending the fencing along the western boundary of Precinct 4, around the western and northern boundary of the Council sports fields (under construction) then around the ecological buffer at the north of Precinct 3 to link to the proposed fencing shown in Figure 17 of the revised KPOM. Proposed fencing to the south east of Precinct 7 (i.e. north of the proposed Kings Forest Parkway) is not considered necessary or desirable at this stage.

Further fencing along the eastern boundaries of Precincts 7 and 8 should be included in the project applications for those stages.

□All fencing should be completed as soon as possible after approval not prior to occupation of buildings as proposed in Section 9.6 of the revised KPOM.

□Lockable gates should be installed at grids and other locations to ensure that public access is restricted to the undeveloped parts of the site at night and other times when the site is not fully supervised.

□It is not clear what is proposed in relation to fencing along Tweed Coast Road from the bridge over Cudgen Creek to beyond the northern boundary of the Precinct 1. There is an existing koala fence in this area but it will need modified and upgraded to ensure that koalas and other wildlife are effectively prevented from gaining access to this section of road.

□It appears that □traffic calming devices□of unspecified design without associated fencing (see Section 9.6 of KPOM) are proposed for roads that traverse environmental protection areas (and associated Ecological Buffers).

This approach is supported providing:

- (1) the design is such that motor vehicles are physically prevented from travelling more than 40kph (e.g. full width speed humps at a maximum of 200m intervals);
- (2) adequate lighting to road verges is provided (e.g. bollard lights at regular intervals) in these areas not just at the grids; and
- (3) dogs are banned from the development.

As noted elsewhere (see response to DGR 9.7) the use of grids between fenced sections of the roads will not prevent dogs from accessing koala habitat and other environmentally sensitive areas.

The alternative of fencing the road in these areas and using underpasses is considered less desirable as underpasses are not likely to be as readily used as open crossings and the design of the fauna fences would need to be reviewed to ensure that they cannot be breached by dogs (see response to DGR 9.7).

□The design and content of signage is not specified.

1. *RECOMMENDATION: That the revised KPOM be reviewed consistent with DGR 5.5 and 9.8 to address: (1) additional fencing to seal off Precinct 5; (2) timing of fencings which should occur as soon as possible after approval; (3) installation of gates to prevent public access to undeveloped parts of the site; (4) design and modification of fencing adjacent to Tweed Coast Road; (5) design of traffic calming measures to prevent motor vehicle speeds in excess of 40kph through environmental areas; (6) the design of lighting to improve visibility in any areas where koalas and other wildlife are able to cross roads; and (7) the design of signage to ensure that motorists are aware of the possibility of encountering koalas and other fauna on roads through environmental areas.*
2. *RECOMMENDATION: That the Environmental Assessment be revised to specifically outline the suite of measures proposed to maintain safe passage of wildlife through habitat areas consistent with DGR 5.5.*

3. *RECOMMENDATION: That an implementation schedule should be included in a revised KPOM. This schedule should itemise all recommended actions required (including those detailed in other management plans) to ensure that the KPOM meets its aim. The schedule should show how each action meets the objectives of the KPOM, timing, frequency and responsibilities for action, resources required, costs, performance criteria, and outputs.*
4. *RECOMMENDATION: That further review of the management plans is conducted to ensure there are no inconsistencies in the implementation of the plans of management as required by DGR 9.4 and Concept Plan Condition C2.*

Conclusion - Tweed Heads Environment Group Inc. - Koala Plan of Management

Tweed Heads Environment Group Inc. supports Tweed Shire Council's above 4 recommendations concerning an East-West Wildlife corridor and Koala Management Plan Implementation and Team Koala's submission for a "NO DOG" ban while noting that the keeping of cats on the site will be prohibited.

Our group is most concerned by a Echnetdaily reporting of a public meeting near Kings Forest on 10 December 2011, that protesters, wearing vests bearing the name of the developer Leda, taunted protesters, saying "there were no koalas left on the site as wild dogs had got them all"

It is a sad fact that while council planners and developers know the importance of a koala's "home tree" in a healthy koala's life, the cutting down of "koala home trees" has seen the demise of the Tweed Coast koala through "stress"

The current AKF TV advertisement theme to save the koala is applicable at Kings Forest: "No Tree "No Me" and with the statement that it requires 570,000 koala tree plantings to replace one mature koala "home tree"

In this context the revised Kings Forest Koala Plan of Management includes revegetation works of just providing 17,000 Koala food tree plantings.

Our Submission on the following advertised Kings Forest Proposal

1. subdivision to create new lots for future development (proposed Lots 1-8 yielding 4500 dwellings);
2. bulk earthworks across the site;
3. construction of the entrance road into the site and associated intersection works on Tweed Coast Road;
4. construction of the proposed Kings Forest Parkway from Tweed Coast Road via Precincts 4 and 5 through to the western part of the site;
5. construction of 2,126m² of floor-space for rural retail development & access arrangements within Precinct 1;
6. construction of subdivision and infrastructure works within Precinct 5; and
7. maintenance of the existing east-west agricultural drainage channel within the SEPP 14 wetlands

The Site and Surrounding Development

Background

The Kings Forest site is located on the far north coast of NSW in the Tweed Shire Council local government area. It is 880ha in area and bounded by agricultural and rural uses to the north, west and south west, and by the Cudgen Nature Reserve and Cudgen Creek to the south and east.

There is a small area of residential development along Tweed Coast Road to the north of the site.

(Kings Forest - Environmental Assessment Report - November 2011 - JBA Planning - 10681 - Exec Summary - p, ix)

Our Comment

Tweed Heads Environment Group Inc. notes from the Executive Summary statement, that the Proponent has not acknowledged that Cudgen Lake is on the southern boundary of their Kings Forest development site. Yet the Proponent's consultant subsequently advises:

- Cudgen Lake bounds the south east boundary of the site. Cudgen Lake, a Coastal Wetland listed in SEPP 14, is a shallow tidal lagoon covering an area of 160 hectares which drains a catchment of approximately 66 square kilometres via two main creeks.

(Kings Forest - Environmental Assessment Report - November 2011 - JBA Planning - 10681 - Para. 2.6, p, 8) and

The Proponent's consultants also advise:

- A groundwater mound in the southern section of the southern precinct area forces flows in the southern catchment toward Cudgen Lake and flows in the northern catchment towards Blacks Creek and the adjacent wetland areas and
- The Kings Forest development site is on a gently undulating coastal floodplain and is generally low-lying, of low relief, with the exception of three areas in the west, which have slopes exceeding 20%.
- The proposed bulk earthworks will encounter ASS materials requiring treatment.

Our Comment

Tweed Heads Environment Group Inc. considers that sedimentation, acid sulphate and other pollution from proposed earthworks draining to the nationally nominated Reserve of Cudgen Lake should be treated so as to provide water quality acceptable to NSW government authorities and suitable to the Cudgen Creek marine environment.

As Tweed Shire Council has not carried any Ecological Health Study (EHS) of the Cudgen Lake, Blacks Creek and Cudgen Creek system, such a study should be carried out as a matter of urgency, before earthwork drainage enters the Cudgen marine system.

It is only from such an (EHS) study that any true measurement of water quality of drainage can be accurately measured.

There is community concern that a serious pollution event of the Cobaki Coastal Lake, as aerial photographed on the 6 May 2010, emanating from Cobaki development earthworks could again be repeated again in the Cudgen Lake and Cudgen Creek system.

If a similar drainage event was to occur from Kings Forest bulk earthworks there could be catastrophic environmental damage to the three Cudgen nominated Marine Protected Areas.

URS Australia Pty Ltd mapping for a proposed transmission line (08/03/2004) supports our concern about the Acid soils 'High Risk' of occurrence in this Cudgen area.

Cudgen Lake 'A nominated Marine Protected Area (MPA) and a Coastal Wetland listed in SEPP 14,

Cudgen Lake has been nominated as part of a project undertaken for the ANZECC Task Force on Marine Protected Areas (MPA). In July 1999 the ANZECC published the *Strategic Plan of Action for the National Representative System of Marine Protected Areas: A Guide for Australian Governments (ANZECC 1999a)*

In July 1999 the ANZECC Task Force on Marine Protected Areas (MPA) made the following recommendation:

Recommendation 2:

That the following National Park marine extensions be established as no-take aquatic reserves equivalent to IUCN Category 1a sanctuaries; Tweed Estuary NR and Ukerebah NR (Tweed River), Cudgen NR (Cudgen Lake); Richmond River NR (Richmond River), Ballina NR (Richmond River); Clarence Estuary NR (Clarence River); Yuragir NP (Lake Arragan and Cackora Lagoon); Bongil Bongil NP (Bonville Creek).

The Cudgen Lake and Creek system of Cudgen Nature Reserve provides a significant feeding and breeding habitat for water birds such as cormorants, white faced herons, grey and chestnut teals, hardhead ducks, black swans, tawny grassbirds and lewin's rails.

The area is also used for feeding by brahminy and whistling kites and the white bellied sea eagles.

The Cudgen Nature Reserve Plan of Management lists threatened species and the considerable presence of past Aboriginal Culture.

Cudgen Lake was nominated by the Healthy Rivers Commission, as one of the lakes for which a Sustainability Assessment and Management Strategy (SAMP) was to be prepared, however the SAMP for Cudgen Lake has not yet been completed. This is just another reason why the (EHS) is urgently required

(Kings Forest 06_318 * Concept Plan - December 2008 - 7.6.3 Stormwater - p., 75)

Conclusion - Qualities of Cudgen Lake, Cudgen Nature Reserve and Cudgen Creek

The Tweed Heads Environment Group Inc. considers that the marine qualities of Cudgen Lake, Cudgen Nature Reserve and Cudgen Creek should not be placed under any addition threat of pollution/contamination from the proposed Kings Forest development drainage of bulk earthworks.

It is also recommended that the NSW Government monitors accepted water quality standards from the Kings Forest development particularly after heavy rain events on a six monthly basis, and makes this information publicly available.

The Tweed Heads Environment Group Inc. supports the following recommendation in the Tweed Shire Council's submission business paper (January 2012) for the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan:

□Council's Natural Resources Unit, being the arm of Council responsible for the management of estuary and waterway areas in Tweed Shire has requested further assessment of the potential impacts of the residual stormwater pollutants, particularly sediment and nutrients, entering Blacks Creek, Cudgen Creek and Cudgen Lake, with reference to existing Council management plans, water quality data and monitoring programs.□

The Kings Forest project also involves the following Development Application items:

- 2. Application for bulk earthworks across the Kings Forest site**
- 6. Construction of subdivision and infrastructure works within Precinct 5**

The Proponent's consultants advise of the site constraints, indicative staging and sequencing as follows:

Site Constraints

The Kings Forest site has been extensively studied over recent years, including for the preparation of the Concept Plan.

Several of the main constraints to the proposed development include: Low lying land; The presence of acid sulphate soils; Sensitive ecosystems including SEPP 14 wetlands, threatened flora and fauna and endangered ecological communities; Flood affectation; Isolated contamination associated with past agricultural activities; and Bushfire risk.

(Kings Forest - Environmental Assessment Report - November 2011 - JBA Planning, 10681, Para. 2.5)

After bulk earthworks have been completed in Precincts 12, 13 & 14, koala food trees will be planted in accordance with the Koala Plan of Management. All bulk earthworks areas will be revegetated for erosion and sediment control.

(Kings Forest - Environmental Assessment Report - November 2011 - JBA Planning, 10681, Para. 3.11, p. 20/21)

Item 2. - Application for bulk earthworks across the site.

The Proponent's consultant advises:

- (a) Precincts 2, 4 & 5, are generally in cut with an estimated 94,000m³ of excess spoil being transported from here to the western balance site (Precincts 6 to 11);
- (b) The southern precincts, that is, Precincts 12, 13 & 14, are predominately in cut. The golf course cut is 688,800 m³ with an estimated fill of 215,200 m³ and the 473,600m³ of excess spoil being transported to the western balance site (Precincts 6 to 11);

- (c) An anticipated maximum 320,000 m³ of imported fill material may be required within the western balance site (Precincts 6 to 11) to achieve the designated flood levels for residential development at or above the 1:100 ARI

(Kings Forest - Environmental Assessment Report | November 2011 - JBA Planning □10681- Para. 3.2, p. 10)

The Tweed Shire Council's submission business paper (January 2012) for the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan raises the following concerns in respect of the concept bulk earthworks:

□It is not considered appropriate to approve the concept bulk earthworks plans in the absence of this haulage impact assessment. If delivery via Duranbah Road is found to be unfeasible due to unacceptable impacts, the applicant must consider alternatives such as hydraulic placement of fill.

Precincts 12-14 provide the majority of spoil to be transported to the western precincts (almost 500,000m³).

While cut depths are generally less than 1.5m, the cut earthworks are over a very large area, which is surrounded by environmental land. No engineering detail for the future usage of this land has been provided,

Erosion and sediment control during the bulk earthworks phase is of significant concern to Council, particularly in those areas that adjoin environmental protection land and SEPP14 wetlands.

There are several documents that address this issue in concept in the Environmental Assessment Report (EAR), however as the earthworks staging has not been properly determined by the applicant's consultants, there are no operational documents, and therefore nothing that is readily enforceable in the event of a non-compliance with Council engineering requirements (or other environmental requirements imposed by others).

Issues, such as maximum exposed areas, stabilisation timeframes, and stockpile management need to be properly addressed.

To date, the applicant's consultants have proposed to provide a Bulk Earthworks Management Plan with the construction certificate for the bulk earthworks, but consider that issues such as maximum exposed areas are too hard to define at this point, and should be reviewed with each future stage of the development.

Consent conditions may be imposed in this regard; however the issue is raised now for the applicant's information and input via workshops, such that any consent is both workable and enforceable.

While it is likely that provision of a full span bridge over Blacks Creek on roads 9 and 23 would have no negative impact on existing fish passage, the applicant has not addressed this in the EA, as required by DGR 5.6.

RECOMMENDATION: That the Environmental Assessment is revised to include a clear statement of policy and intent with respect to fish passage, along with accurate details of how this will be achieved in reality. Importantly, the impact of structures proposed in addition to road crossings, for example floodgates or causeways should also be addressed, including the location, maintenance, modification or installation of such structures on Blacks Creek. □

The Proponent's consultant also advises:

Potential acid sulphate soils have been identified in some areas of the site, generally coinciding with wetland vegetation communities. Refer to Section 7.12 for a detailed discussion.

The assessment was informed by a soil survey and Acid Sulphate Soil Assessment of the entire site conducted in June 1998 and supplementary drilling and soil sampling undertaken between May and August 2007.

A total of 367 samples were taken across the site.

The analysis revealed that 174 samples were considered to be either actual or potential Acid Sulphate Soils. Of these, 82 samples were located within beach ridge sand areas and 92 within the wetland areas.

(Kings Forest - Environmental Assessment Report - November 2011 - JBA Planning, 10681 □Para. 7.12, p, 66/67)

The High Acid Sulphate Soils Risk of Occurrence for areas in the east and south of the Kings Forest site has also been mapped by URS Australia Pty Ltd on the 8 March 2004 in their Transmission Line Project No.50782-002.

The Tweed Shire Council's submission business paper (January 2012) for the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan raises the following concerns in respect of the haulage of external fill material for Kings Forest:

The applicant proposes to haul the fill material via Duranbah Road however future details on the source of fill, exact haulage routes, traffic routes, volumes, and traffic impacts and any other requisite environmental management measures would be submitted when the additional fill is required for Precincts 6-11 and concludes:

It is not considered appropriate to approve the concept bulk earthworks plans in the absence of this haulage impact assessment.

Conclusion - Application for bulk earthworks across the site.

Tweed Heads Environment Group Inc. agrees with council's recommendation: It is not considered appropriate to approve the concept bulk earthworks plans in the absence of this haulage impact assessment.

Our group notes that standard procedures and practices are to ensure the risks are controlled and any acidic materials excavated would be fully treated and placed safely to minimise any adverse environmental impacts caused during bulk earthworks.

However, careless actions, about six months ago, in the Cudgen Nature Reserve, (A Wetland of National Importance) by the developer's earth-moving contractors, could have a serious detrimental effect on the environmental values of Cudgen Lake, Cudgen Nature Reserve, Black's Creek and Cudgen Creek and might be repeated.

Tweed Shire Council has advised that two other north-south main agricultural drains that pass through Precincts 7-12 and Precincts 9-10 are fed by minor drains ultimately connect to the existing east-west agricultural drainage channel of Black's Creek.

These past agricultural drains all have the potential to discharge acid sulphate to Cudgen Creek and Cudgen Lake.

The existing lake in the western part of the Kings Forest site has been described by Council as a former quarrying operation, now filled with water and is the subject of an investigation of a known acid sulphate condition.

Before any Development Application is approved the above acid sulphate and stormwater drainage issues should be properly managed.

Item 2 - Bulk earthworks across the site - Sensitive ecosystems including SEPP 14 wetlands, threatened flora and fauna and endangered ecological communities

Tweed Heads Environment Group Inc. agrees with the following council concerns:

The Tweed Shire Council's submission business paper (January 2012) for the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan raises the following concerns in respect of the above:

For many of the reasons above, Council is not comfortable with the process adopted at Cobaki.

Also, unlike the Cobaki site where most clearing of habitat was done under old consents, Kings Forest is a true greenfields site.

Also, the bulk earthworks at Kings Forest will result in removal of considerable habitat and precipitate major changes to the land surface, drainage and groundwater relations and it is not clear that all of the mitigation measures proposed will be successful.

It is considered essential that an open and transparent process is adopted that allows for adaptive management over time.

Development Application Item 7

Drainage Maintenance - maintenance of the existing east-west agricultural drainage channel in Blacks Creek within the SEPP 14 wetlands

Tweed Heads Environment Group Inc. notes the following statements from the Proponents consultants:

- The east-west agricultural drainage channel - also known as Blacks Creek - running through the SEPP 14 wetlands within the central part of the site needs to be retained for flood management purposes and will require periodic maintenance to maintain adequate flows in flood events. This will involve removing excessive vegetation growth, obstructions to water flow (e.g. snags etc.) and deposited sediment. Based on the historical maintenance regime, it is expected that removing vegetation growth by chemical spraying will be required at two-yearly intervals, whilst the removal of deposited sediment will be required approximately once every ten years. The drain has been routinely maintained under Existing Use Rights. The project application is seeking consent for the on-going routine maintenance of the east-west drain once these rights are relinquished.

(Kings Forest - Environmental Assessment Report - November 2011 - JBA Planning 10681- Para. 3.8, p., 17)

- On these occasions, the works may result in hydrological impacts, disturbance of acid sulphate soils, water quality impacts (short-term turbidity), erosion and sedimentation and impacts to flora and fauna. Previous studies have characterised these impacts as minor and the proposed frequency of maintenance means the impacts are likely to be experienced only in the short-term.

(Kings Forest - Environmental Assessment Report - November 2011- Para. 7.19 p., 77)

- Groundwater flows from the centre of Precinct 5 in a south-westerly direction toward the north-south drainage line adjacent to the western boundary, Blacks Creek adjacent to the southern boundary, and easterly towards the Cudgen Nature Reserve;
- A groundwater mound in the southern section of the southern precinct area forces flows in the southern catchment toward Cudgen Lake and flows in the northern catchment towards Blacks Creek and the adjacent wetland areas;
- Groundwater in the western portion of the site generally follows the topography and flows towards Blacks Creek.

(Kings Forest - Environmental Assessment Report - November 2011 - JBA Planning - 10681 - p. 70/71).

- The Kings Forest site is located within the Cudgen Creek catchment and is predominantly drained in an easterly direction by Blacks Creek (the east-west drain). Runoff from the site also enters Cudgen Creek under Old Bogangar Road to the north of the site and via the lowlands adjacent to the southern site boundary. Drainage from the north-eastern portion of the site flows into a State Environmental Planning Policy No. 14 (SEPP14) wetland area prior to discharging from the Kings Forest site.

The Tweed Shire Council's submission business paper (January 2012) for the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan raises the following concerns in respect of the maintenance of the existing east-west agricultural drainage channel in Blacks Creek within the SEPP 14 wetlands :

Water Quality in Cudgen Creek - While the Integrated Water Cycle Management Plan describes the way in which stormwater will be treated, and outlines the expected performance of treatment measures, it does not describe the receiving environment, the potential impact of increased nutrient discharge on that environment, or the significance of impacts of this.

The potential impact of increased nitrogen discharge to Blacks Creek and Cudgen Creek should be investigated, specifically, the potential for increased risk of eutrophication and sags in dissolved oxygen levels in the creek due to increased frequency and duration of algae blooms.

The point where Blacks Creek joins Cudgen Creek is approximately 2km downstream from Cudgen Lake.

This is a poorly flushed part of the estuary and it is possible that stormwater inputs to this estuary reach could experience extended residence times and increase algae growth potential.

It is also possible that stormwater discharged to Blacks Creek and Cudgen Creek could be conveyed into Cudgen Lake on incoming tides, increasing the nutrient input to this system.

Additionally, long-term monitoring of the receiving environment is considered necessary to ensure any unanticipated impacts of the development on Blacks Creek, Cudgen Creek and Lake can be promptly addressed. See response to DGRs 7.1, 7.2, 7.3, and 7.7 below for further details. □

Conclusion - Drainage Maintenance - maintenance of the existing east-west agricultural drainage channel in Black's Creek within the SEPP 14 wetlands

Tweed Heads Environment Group Inc. considers that Black's Creek, although modified by past agricultural practices, sand pit mining, unauthorised dredging and removal of vegetation has significant marine environmental values with its connection to Cudgen Creek, a proposed National Park marine extension.

Tweed Heads Environment Group Inc. recommends:

- *The Assessment of Impacts concerning the on-going maintenance of Black's Creek is deficient and the current Drainage Plan of Management should be amended to improve existing and future water quality.*
- *The newspapers' reporting of an ongoing investigation by the NSW Government of 'unauthorised dredging of Black's Creek and removal of vegetation along both banks' for 300 metres, in the Cudgen Nature Reserve is another factor why consent for the on-going routine maintenance of Black's Creek should not be approved.*
- *The Proponent should be required to undertake a marine study of Black's Creek and provide a detailed study of its eco-system and water quality.*
- *With a predominant change from agricultural practice towards residential development, it would be prudent to make a new Drainage Plan of Management to re-establish the marine qualities of Black's Creek and to protect and enhance its water quality.*

For the reader's reference, the Black's Creek catchment map is located at Vol. 6, folder 29, Pt.0007)

State Environmental Planning Policy 14 - Coastal Wetlands (SEPP 14 Nos. 46, 46a and part 47)

The Proponent's consultant advises:

Flora and Fauna

The Kings Forest site includes the following areas of high conservation value flora and fauna:

1. Three endangered ecological communities (EECs), listed under Schedule 1 of the *Threatened Species Conservation Act 1995* (TSC Act), located within larger vegetated areas and within Environment Protection areas:
 - Subtropical Coastal Floodplain Forest of the NSW North Coast Bioregion;
 - Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions; and
 - Freshwater Wetlands on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions.
2. Significant areas of wetland, including wetlands identified under State Environmental Planning Policy 14 - Coastal Wetlands (SEPP 14 Nos. 46, 46a and part 47).
3. Cudgen Lake is a Coastal Wetland listed in SEPP 14.

(Kings Forest - Environmental Assessment Report - November 2011 - JBA Planning □10681, Para. 2.4.3 - p, 7/8)

SEPP 14 aims to ensure that coastal wetlands are preserved and protected. Under Clause 7(1), land clearing, levee construction, land draining or land fill may only be carried out within the wetlands with development consent and with the concurrence of the Director-General of Planning.

However, under Clause 6(2) if the development is a Part 3A development, then concurrence is not required.

Although an assessment of the proposed roads through the SEPP 14 Wetlands was provided in the Concept Plan, the Department of Planning is to be satisfied that the proposed roads will not significantly impact upon threatened species, and subject to the following provisions:

- (a) Disturbance to the SEPP 14 Wetlands and surrounding EECs is minimised,
- (b) Hydrological processes are not disrupted and
- (c) Adequate connectivity and safe passage is provided to koalas and wildlife.

(Kings Forest - Environmental Assessment Report - November 2011 - JBA Planning, 10681 □ Para. 7.1.6, p., 48)

The Proponent's consultant also advised:

- 25% of the coastal plain within the site is permanent wetland.

(Kings Forest - Environmental Assessment Report | November 2011 - Para. 2.4.1, p., 6) and

- There is no statutory definition that can be applied for the classification of a SEPP 14 wetland. Determination of SEPP 14 wetlands was undertaken as a mapping exercise, based upon a set of botanical indicators, which were deemed, for the purposes of the survey, to characterise wetlands (Adam et al. 1985, p. 28).

(910685 DMMP RMF1F.DOCX / KINGS FOREST / PROJECT 28 PTY LTD □ DRAINAGE MAINTENANCE MANAGEMENT PLAN □ p., 5/6 □ Gilbert Sutherland)

The Proponent claims that their disturbance to the SEPP 14 Wetlands and EECs will be minimised, management strategies will be adopted to ensure adequate connectivity and safe passage is provided to koalas and wildlife and the development will not impact upon the groundwater flow regime and groundwater quality.

The Tweed Shire Council's submission business paper (January 2012) for the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan makes the following recommendation in respect of stormwater drainage to Cudgen Creek via Black's Creek:

□ **RECOMMENDATION:** *That the impact of stormwater on Cudgen Creek, particularly Nitrogen export, be investigated more thoroughly consistent with DGR 7.1 which explicitly requires impacts to be assessed on the surrounding environment □ The IWCMP modelling is an indication of the proposals capacity to meet requirements of the Tweed Shire Council's Urban Stormwater Quality Management Plan, but it has not been demonstrated that the development will have no impact on water quality and aquatic habitat values in receiving environments. □*

Conclusion - State Environmental Planning Policy 14 - Coastal Wetlands (SEPP 14 Nos. 46, 46a and part 47)

Tweed Heads Environment Group Inc. considers that before any approval is given to the Proponent the following matters should be determined and the requested information provided:

- *As the Proponent's consultant has emphatically stated: □ There is no statutory definition that can be applied for the classification of a SEPP 14 Wetland □ in Kings Forest site, it is incumbent upon the NSW Government to ensure that that preliminary haulage roads built across the central SEPP 14 wetlands will not impact upon the groundwater flow regime and groundwater quality*
An estimated 473,600m³ of excess spoil is to be transported across the central SEPP 14 Wetland to the western balance site (Precincts 6 to 11) after the cut of 688,800 m³ and estimated fill of 215,200 m³, totalling 904,000 m³, has been made in the adjacent golf course area;
- *In order for planners to understand whether Hydrological processes are not disrupted it is incumbent for the Proponent to provide the following information:*
 - (i) *Adequate information about all existing agricultural drains and the existing water filled quarry on the site,*
 - (ii) *Whether other agricultural drainage from surrounding properties drains to the Kings Forest site or*
 - (iii) *Should it be permitted to allow the proponent's consultant to downgrade the environmental qualities of the mid- reach of the coastal Black's Creek by calling it □ an east-west agricultural drainage channel*

- *The Proponent has not provided sufficient information to ensure that the project will provide adequate connectivity and safe passage is provided to koalas and wildlife. Our community fears for the Kings Forest koalas' survival when the Kings Forest Parkway will ultimately have 15000 - 40000 vehicle trips per day.*

The Tweed Shire Council's submission business paper (January 2012) for the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan raises the following concern in regards to the provisions of SEPP 14:

It is also noted that in relation to the consistency with the provisions of SEPP 14, the Director General's Report states at page 75 that *no development is proposed within a 50 metre buffer of this wetland.*

If, as is proposed in the EA, ecological buffers to SEPP 14 wetlands are eroded through their use for development infrastructure, it may not be possible for them to perform their intended role, resulting in both acute and chronic degradation of the ecological integrity of the wetlands habitats.

Item 2 - Bulk earthworks across the site - Flood affectation

Flooding Following the construction of subdivision and infrastructure works within Precinct 5

The Proponent's consultant advises:

The proposed bulk earthworks and creation of the residential pad levels will provide flood immunity to the proposed development from the ARI 100 year high climate change level and 10% increase in rainfall intensity climate change level.

The proposed roads will be trafficable for all flood events up to and including the 100 year climate change flood and for the ARI 500 year existing situation design flood.

The Flood Assessment considers the impact of flooding on the Kings Forest site following completion of the proposed bulk earthworks and creation of the residential pad levels. The assessment confirms that the proposed earthworks will provide flood immunity as follows:

- The proposed Golf Course and southern precincts (Precincts 12,13 and 14) will be around RL 4.35m AHD, which is approximately 0.95m above the ARI 100 year high climate change level and 1.2m above the 10% increase in rainfall intensity climate change level;
- The mid-western precincts will have indicative pad levels between RL4.5m and RL5m AHD which is approximately 1.1m to 1.6m above the ARI 100 year high climate change level and 1.8m to 1.3m above the 10% increase in rainfall intensity climate change level;
- The far western precincts will have indicative pad levels of RL 5m which is approximately 0.7m above both the ARI 100 year high climate change and 10% increase in rainfall intensity climate change levels;

Our Comment

Tweed Heads Environment Group Inc. notes the existing conditions in regards to local flooding:

- 25% of the coastal plain within the site is permanent wetland.
(Kings Forest - Environmental Assessment Report | November 2011 - Para. 2.4.1, p., 6)
- The site is subject to flood inundation from both local catchment runoff and run-off from Cudgen Creek, its tributaries and Kings Forest's Black's Creek Catchment and drainage from agricultural lands on three sides.
- Local flooding is also influenced by potential sea level rise, storm surge and climate change effects.
- While Precincts 1 and 5 are not currently subject to inundation roads leading to the Kings Forest site will be affected by a possible maximum flood levels.
- Figure 10468.1.7 within the Flooding and Flood Management Assessment identifies the areas of the Kings Forest site which are currently subject to inundation during the ARI 100 year event.

- Following completion of the proposed bulk earthworks and creation of the residential pad levels, Precinct 5 will be at RL 4.5m AHD, which is approximately 1.1m above the ARI 100 year high climate change level and 1.3m above the 10% increase in rainfall intensity climate change level;
- The proposed roads within Precinct 5 will all be trafficable for all events up to and including the 100 year climate change flood and for the ARI 500 years existing situation design flood.

(Kings Forest - Environmental Assessment Report | November 2011, JBA Planning -10681-P., 73)

Conclusion - Bulk earthworks across the site - Flood affectation

Tweed Heads Environment Group Inc. considers that there all purchasers of Kings Forest Lots should be made aware that all roads leading to and all land in the subdivision will be floodable in a Possible Maximum Flood storm event. A notice of flood warning and escape route notice should be provided by a seller of Kings Forest land to a purchaser at the time of purchase.

Tweed Shire Council's submission (January 2012) to the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan also advises about flooding concern:

□The Plans of Development (PoD) for Precinct 5 include a Development Control (No.12) that states that "Kings Forest Precinct 5 has no flood prone lots", which is incorrect. In Development Control Plan Section A3 - Development of Flood Liable Land, Council defines "flood prone" land as being affected by the probable maximum flood (PMF). The Gilbert and Sutherland Flooding and Flood Management Assessment (Appendix CC) shows all of Precinct 5 is affected by the PMF and is therefore flood liable, despite being located above the climate change derived design flood level (100 year ARI). As such, Development Control No.12 should be removed, and DGR 2.2 requiring fill and floor levels to be shown on the PoD for all flood prone lots is still to be satisfied.

Item 2 - Bulk earthworks across the site - Isolated contamination associated with past agricultural activities - A former cattle dip site. (Precinct 11)

The Proponent's consultant advises:

A review of a number of contamination studies undertaken between 1992 and 2003 for the Kings Forest site identified a number of areas adjacent to and within the site which had potential for contamination.

The areas are: A capped, decommissioned Council landfill site (known as Old Bogangar Road Landfill); Northern and southern banana plantations; a fuel storage area and former nursery; a former orchard; and former cattle dip site.

Detailed site investigations for the six identified sites have been undertaken.

The investigations included the drilling and analysis of a total of 43 soil boreholes.

The following contaminants have been identified:

- Concentrations of arsenic within three boreholes (BH37, BH39 and BH42) taken from the southern Banana Plantation area marginally exceed the National Environment Protection
- Measure (NEPM) Environmental Investigation Level (EIL) and phyto-toxicity based investigation level.
- Concentrations of TPH within two boreholes (BH03 and BH 04) taken from the
- Fuel Storage site exceeded the Health Investigation Level (HIL) for standard residential purposes.

(Kings Forest - Environmental Assessment Report - November 2011 - JBA Planning, 10681 □Para. 7.10, p63,64.)

Consultant Gilbert + Sutherland considers that the identified arsenic contamination concentrations is only marginally above the EIL and consistent with background arsenic concentrations and does not present a health risk or a constraint to future residential development.

No remediation of this area is therefore proposed.

The Proponent's consultant advises: □Moreover, as detailed in the Concept Plan, previous detailed investigations of the Cattle Dip Site identified contamination associated with dipping operations. A Remediation Action Plan (RAP)

has been prepared for this land covering remediation actions such as on-site containment, treatment and off-site disposal. □

The Tweed Shire Council's submission business paper (January 2012) for the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan raises the following concern in regards to an adequate Remediation Action Plan (RAP):

□The cattle tick dip site contamination has not been clearly identified and an adequate RAP has not been prepared. No evidence has been submitted that demonstrates Tweed Shire Council will accept contaminated soil within public lands. Further to this the sequencing of remediation actions have not been established in consideration of the bulk earthworks proposed for the site. □

Conclusion - Isolated contamination associated with past agricultural activities - A former cattle dip site. (Precinct 11)

Tweed Heads Environment Group Inc. notes with some concern that in the past remediation of several of Tweed cattle dip sites it was recommended that up to 1650 tonnes of contaminated material should be removed from the dip-site and spray drainage areas to ensure safety for residential use.

It is noted that the Kings Forest dip-site has been identified as an □Existing cattle dip□on map, figure 6 of □Identified contamination sites (source: Gilbert + Sullivan)□ (Kings Forest - Environmental Assessment Report - November 2011 - JBA Planning, 10681 □Para.7.10, p.65)

Tweed Heads Environment Group Inc. considers that the Kings Forest dip-site should be remediated before bulk earthworks commence at Precinct 11.

Tweed Heads Environment Group Inc. also advises that apart from the Duranbah Dip site, the Tweed Council landfill site and the Old Melaleuca Road Farm area have been recognised in a recent LES as contaminated land within the study area.

That LES had also recommended that a special clause be included in any draft LEP for the site to ensure that these areas are remediated prior to the approval of any development in their vicinity.

In this regard the Proponent's consultant advises: □Additional fill required for Precincts 6 to 11 cannot be accurately specified, but is likely to be a maximum of 320,000m³□

Since the Tweed Shire Council has advised that the reconfigured Lake adjacent to Precincts 6 and 10 was a former Quarry/Sand pit site with known high level of Acid sulphate where is the plan for its usage and remediation?

Groundwater Impacts □The construction of subdivision and infrastructure works within Precinct 5

The Proponent's consultant advises:

The bulk earthworks and development of Precinct 5 has the potential to adversely impact upon the existing groundwater flow regimes and groundwater quality across the site.

The issues identified within the groundwater assessment, considered to be manageable are:

- *The residential development at Precinct 5 will not change the flow regime and the groundwater will still flow towards the SEPP 14 wetlands;*
- *A minor reduction in the groundwater level in the northern portion of the southern precinct area is anticipated, however this can be managed appropriately to ensure no adverse impacts are generated;*
- *The SEPP 14 wetlands may be subject to minor changes in groundwater regime, however the works to the southern precincts pose a very low level risk to the wetlands and the changes can appropriately be managed.*

Our Comment

Tweed Heads Environment Group Inc. considers that the bulk earthworks and residential development of Precinct 5 will have an adverse impact upon the existing groundwater flow regimes and the groundwater quality across the site.

The three main sensitive receptors associated with the development likely to be affected are:

- The SEPP 14 wetlands, of which 25% of the coastal plain within the site is permanent wetland. (Kings Forest - Environmental Assessment Report - November 2011 - Para. 2.4.1, p., 6)
- Environmental Protection areas, including the Cudgen Nature Reserve; and
- The capped Bogangar landfill site.

With hard surfaces on The Kings Forest Parkway, concrete footpaths, residential roads, the densely populated 442 residential buildings of Precinct 5 and the expected high flow discharge from a proposed overflow weir will certainly impact adversely on existing groundwater to the three main sensitive receptors.

The hard surfaces on the neighbouring proposed neighbourhood centre for Precinct 4 will add to the disruption of the normal ground water flow through Precinct 5.

Conclusion - Groundwater Impacts ☐ **The construction of subdivision and infrastructure works within Precinct 5**

Tweed Heads Environment Group Inc. considers that there is a lack of detail in the Drainage Plan of Management for Precinct 5 to accommodate and treat heavy stormwater events.

The main stormwater drainage system, yet unplanned, should provide sufficient water filtering retention basins to allow for bio-retention swale treatment overflow and weir overflows before allowing entry into the environmentally sensitive coastal SEPP 14 Wetlands and the Black Creek drainage system.

As this project may take many years to complete after the development of Precinct 5 the main drainage system for the bulk earthworks, which extend to all precincts within Kings Forest, should be immediately constructed.

Tweed Shire Council's submission (January 2012) to the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan advises with concern:

☐ A concept stormwater management plan for the overall estate has not yet been provided, despite requests during the Concept Plan process. ☐

Tweed Heads Environment Group Inc. disagrees strongly with Council's January 2012 unsubstantiated statement that:

☐ *The Stage 1 precincts are largely their own catchments, without significant influence from external land. As such, the application can be adequately considered based on the information provided* ☐

Buffers for purposes such as roads, footpaths, cycleways, bushfire Asset Protection Zones, stormwater management, passive recreation and similar ☐ **compatible** ☐ **purposes.**

Tweed Shire Council's submission (January 2012) to the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan has the following concern on buffers within the Kings Forest development:

☐ Despite Council's concerns and the clear intent of the Department of Planning to consider development within the Ecological Buffers in ☐ certain instances ☐ it is apparent from the Environmental Assessment that such development is proposed as the rule rather than the exception. For example, earthworks are proposed in almost all areas covered by the outer 20m of the 50m ecological buffer (see Fig 5 of Appendix MM and Fig. 3 of Appendix NN). Also, earthworks and permanent stormwater treatment swales extend well into the inner 30m of the 50m ecological buffer in many areas (see for example longitudinal sections on Fig 5 of Appendix MM; Fig. 3 of Appendix NN and Appendix C of Appendix D).

It is also proposed to clear some 30ha of existing native vegetation in the Ecological Buffers to assist with the provision of fill for the developable portion of the site. It is considered that small-scale incursions into the outer 20m of ecological buffer from roads and cycle ways and the like may be acceptable in some circumstances but the extensive use of the outer 20 m and in some cases the inner 30m of the Ecological Buffer, as proposed, is not

consistent with Clause 7 of Part 6 of SEPP (Major Projects) 2005 which explicitly seeks to restrict development and retain native vegetation in these areas. See response to Concept Plan Condition C20 below for further details.

The loss of some 30 ha of existing native vegetation within the Ecological Buffers (mostly heathland; see Table 1 and 2 of Appendix MM, Table 1 of Appendix NN) followed by revegetation (mostly heathland) after earthworks involving both cut and fill of up to 2m (see Appendix D). Although it is proposed to reuse topsoil for revegetation of heathland, little information is provided to ensure that such revegetation can be successfully accomplished especially given the top-soil management cautions outlined by the proponent (e.g. see p19 of Appendix NN), and changes in elevation, drainage and groundwater relations that will arise from the bulk earthworks. □

Conclusion - Buffers for purposes such as roads, footpaths, cycleways, bushfire Asset Protection Zones, stormwater management, passive recreation and similar compatible purposes.

Tweed Heads Environment Group Inc. supports the above concerns of the Tweed Shire Council.

It is likely that earthworks, close to heathland and other plant communities in Precincts 12/14 will be adversely affected by the changed hydrology where 904,000 m³ of cut and fill earthworks will alter ground water flows to many separate adjacent SEPP 14 Wetlands.

There is insufficient detail provided by the proponent to indicate whether retained biota in environmental areas would continue to survive and whether the altered hydrology would support revegetation plans.

The application should not be approved until these matters are resolved.

Protection of Heathland

Tweed Shire Council's submission (January 2012) to the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan has the following concern on the protection of Heathland within the Kings Forest development:

□ The importance of heathland as a locally rare community that supports numerous threatened species was recognised in the Department of Planning at the Concept Plan stage where it was observed that the proposed revegetation measures in the Environmental Protection zones and Ecological Buffers were in response to an overall loss of some 59ha of heathland.

The Department recommended that, where possible, outside of the proposed golf course, the full 50m width of the Ecological Buffer be naturally regenerated to heathland.

In response to this the proponent committed to the retention of 22 ha of heathland already with Environmental Protection zones and the re-instatement of 77ha of heathland, mostly in the Ecological Buffers.

As at least 30 ha of the 59 ha to be removed already exists in the Ecological Buffers, and as noted in the previous point, this is not considered consistent with the intended use of these areas.

Further, it is not clear if heathland can be successfully re-established in areas where the ground surface and drainage has been radically altered by the proposed bulk earthworks.

Also, as noted below, there are conflicting management objectives arising from plans to re-establish heathland within bushfire Asset Protection Zones and to plant koala food trees in areas of existing or proposed heathland.

The Department also required the proponent to consider a mechanism such as environmental protection zoning to better protect heathland but the proponent has not made any such commitment.

See response to Concept Plan Conditions B3 and C20 below for further details. □

Summary of concerns include:

□ Contrary to Concept Plan Condition B3 the Environmental Assessment makes no commitment to a long-term protection mechanism such as land-use zoning.

□ The appropriateness of clearing existing heathland within the Ecological Buffers to win fill and locate development infrastructure.

□ Uncertainties regarding the ability to successfully re-establish heathland in areas where the ground surface and drainage has been radically altered.

□ Conflicting management objectives arising from promoting heathland within bushfire APZs.

□ Overlapping and incompatible proposals for koala food tree planting in areas of existing or proposed heathland.

RECOMMENDATION:

The Environmental Assessment and related Management Plans should be revised to include: (1) a long-term protection mechanism such as Environmental Protection zoning for all heathland to be restored and; (2) specific provisions to manage weeds (and other issues) in areas denoted as □Heath to be Naturally Regenerated□

Conclusion - Protection of Heathland

Tweed Heads Environment Group Inc. shares the above concerns and supports the recommendation of the Tweed Shire Council relating to heathland.

Golf Course at Kings Forest

There is community concern that the proposed Kings Forest golf course is likely to end up as a residential area, given that it is zoned 2 (c) Urban Expansion and its role is supposed to act as a key wildlife corridor within the site.

Community concern is supported by the actions of the proponent's affiliated company when the use of planned golf course land at the Cobaki Lakes development was changed to □residential□

Government/Tweed Shire Council should ensure some protection against this happening again.

The Plan of Management detailing environmental management to decommission the golf course adds speculation to this likely change to future residential use when the Kings Forest Residential Development Director-General's Report-Major Project 06_0318, (May 2010), P.16.states:

□The proposed golf course development includes a comprehensive Plan of Management detailing environmental management from the construction to decommissioning of the golf course.□

The above statement lends support to community concern that the decommissioning of the Kings Forest's urban zoned golf course will lead to additional urbanisation of open space and environmental land.

If the 56 hectare Kings Forest golf course (zoned Urban 2(c) residential, is to become additional residential land there would be community outrage at the pointless loss of □core□koala habitat and irreplaceable rare heathland supporting numerous threatened species.

It is noted that the Golf Course Management Plan is not included in this Project Application.

Conclusion - Golf Course at Kings Forest

Tweed Heads Environment Group Inc. noting that the Gold Coast Local Authority has taken steps to stop land development companies using golf parks as future land banks requests that the NSW Government provides protection for the □Golf area□by continuing in perpetuity its planned open space and for environmental use.

Land Dedication to Tweed Shire Council (TSC)

The applicant has stated that the following land in the Environmental Protection zone is at this stage intended (in principle) to be dedicated to Tweed Shire Council:

□Environmental Protection zone: 154ha (excluding buffer areas).

□Urban Expansion zone: 17ha (structured open space).

Tweed Shire Council's submission (January 2012) to the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan has the following concern that any dedication are more closely linked to specific stages of the development and advises:

□Whilst the applicant's Environmental Assessment Report states that a Voluntary Planning Agreement will be entered into with Tweed Shire Council subsequent meetings with LEDA representatives have stressed that such land dedication would need to be undertaken subject to mutually acceptable terms. Accordingly a voluntary planning agreement may or may not be entered into in the future.

Due to the large scale of the development, uncertainties around timing and viability of future stages and possible changes in ownership it is considered in the public interest to ensure that any dedication are more closely linked to specific stages of the development.

Voluntary Planning Agreements.

The proponent seeks to delay this until after approval of the Project Application. It is considered that the terms and principles of such an agreement should be conditioned at this point to ensure that an approval is not given that effectively imposes an unreasonable burden on existing ratepayers, or which prevents the implementation of works approved under one or more of the management plans that will form part of the development consent

RECOMMENDATION: That the draft Statement of Commitments and/or conditions of approval be revised to ensure that: (1) any Voluntary Planning Agreement is finalised prior to determination of the Project Application; and (2) the proponent assumes responsibility for the implementation of the environmental Management Plans arising from this Project Application (including any necessary revisions) for a period of 5 years, or until 90% of lots are sold, or until completion criteria have been met, whichever is longer. □

Conclusion - Voluntary Planning Agreements

Tweed Heads Environment Group Inc. agrees with Council's position that any dedication is more closely linked to specific stages of the development, and the above recommendation, notwithstanding that the Voluntary Planning Agreement should have been finalised and made available for public scrutiny to ensure that the agreement is in the public interest

Land Dedication to National Parks and Wildlife Services (NPWS)

Tweed Shire Council's submission (January 2012) to the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan has the following concern the timing of any dedication are and advises:

In accordance with the Concept Plan approval, approximately 150 hectares of land within the Environmental Protection zones will be dedicated to the NPWS. A further 28 hectares contiguous with this land will also be dedicated to NPWS, and together they will form proposed Lot 3. The applicant states that a Voluntary Planning Agreement is to be entered into between NPWS and Project 28, with the terms to include:

- the area(s) of land to be dedicated;
- details and timing of rehabilitation and revegetation, fencing, and like works to be carried out;
- monitoring of impacts of development on the Cudgen Nature Reserve and the additional dedicated land;
- the timing of dedication(s);
- maintenance responsibilities after dedication and the funding thereof;
- public access, if any, and the associated conditions.

Conclusion - Land Dedication to National Parks and Wildlife Services (NPWS)

Tweed Heads Environment Group Inc. advises that the timing of the dedication of land to the National Parks and Wildlife Services is uncertain.

The Voluntary Planning Agreement should have been finalised and made available for public scrutiny to ensure that the agreement is in the public interest.

Details of the timing of rehabilitation works and details of their payment should be settled before any conditional development approval is approved.

Community Consultation

The public exhibition of documents for this 4500 lot "mini city" was only on public exhibition from 22 November 2011 to 23 December 2011.

After much complaint from the community and Tweed Shire Council the NSW Department of Planning is to accept submissions up to and including 25 January 2012.

There is the need to say that the timing of the public exhibition of this development application is abominable.

The following inconveniences were experienced in regards to the public exhibition of the development application:

- Council staff were away on holidays from mid-December till early January.

- On their return from holiday council staff were not available to attend a public meeting called to provide information on the Kings Forest development application.
- While helpful on telephone enquiries Council staff were caught up in preparing their own Council submission to the NSW Department of Planning
- The proponent's representative refused a community request to view the Kings Forest site, where entry to public roads is now closed, and engendering loss of public confidence in proponent's development application.
- Advertisement of Development Application 08_0194 was considered by some to be misleading.

Conclusion - Community Consultation

Tweed Heads Environment Group Inc. advises that while the NSW Department of Planning was very helpful, the community consultation was ill timed and deficient in areas described.

Throughout our submission reference is made to Tweed Shire Council's submission (January 2012) to the NSW Department of Planning and Infrastructure Kings Forest on Stage 1 Project Application and Amendment 2 to the Concept Plan. While Council's meeting on the 24 January 2012 is to either endorse or modify the contents of this report to form the response to the NSW Department of Planning, the council planner's comments remain valid.

The CITATION: Leda Manorstead v Chief Commissioner [2010] NSWSC 867 is also attached for your consideration.

Tweed Heads Environment Group Inc. requests that the Department considers this submission

Yours sincerely



Richard W Murray
Secretary

Tweed Heads Environment Group Inc.