

# Strategic justification

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Proposed change to the  
*Kings Forest Development Code* to include 'food and  
drink premises as a 'development use' on the  
employment land

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## Contents

1.	The proposed change	1
2.	The existing planning controls	2
3.	The strategic approach taken outside of Kings Forest	7
4.	Justification	10

# Overview

## Summary

1. The proposed change is to adopt a revised *Kings Forest Development Code* which alters the 'development uses' envisaged for the 'employment land' in the Code's precinct development matrix.
2. Food and drink premises (other than pubs or small bars) would then be expressly envisaged in the 'employment land' identified under the terms of the Kings Forest concept plan approval.
3. Labour-intensive land uses are permitted within the employment land, including office premises and the provision of a wide range of services to members of the public. Land uses that are appropriate to meet the needs of this workforce (and to reduce the need for through traffic) are permitted in this zone, including shopfront services such as banks, betting agencies, dry cleaners, travel agents, medical centres, etc.
4. Localities in which such land uses occur would typically feature take away and dine-in food premises (whether it be fast food, cafés or restaurants). Furthermore, permitting such a land use to be co-located with employment-related and services-related development is good planning policy.
5. It makes little planning sense to separate the preparation and sale of food or drink for immediate consumption, from land uses in which they are frequently associated (such as service stations, garden centres, internet cafes and offices). The omission of 'food and drink premises' from the existing *Kings Forest Development Code*'s precinct development matrix appears to be nothing more than an oversight.
6. The proposed change is justified.

### 1. The proposed change

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The proposed change is to adopt a revised *Kings Forest Development Code* which alters the 'development uses' envisaged for the 'employment land' in the Code's precinct development matrix.

The specifics of the proposed change are as per the letter from the Department of Planning and Environment to the proponent, dated 25 July 2015, which said:

As confirmed in our meeting of 8 July 2015, the Department will proceed to assess your request to modify the Kings Forest Concept Plan to permit the construction and operation of 'food and drink premises' (with the exception of a 'pub' or a 'small bar') within the employment lands. The request may be determined by the Minister under former section 75W of the *Environmental Planning and Assessment Act 1979* ...

The change involves - in relation to 'employment land' - inserting the text

food and drink premises (other than pubs or small bars)

as an additional dot point in the second column of the matrix (the table) appearing in section 1.2 of the Code.

There is no definition of a 'small bar' in the Code. Accordingly, the existing Standard Instrument definition (as per the *Standard Instrument (Local Environmental Plans) Order 2006*) would also be inserted into Appendix A of the Code. This definition is as follows:

**“small bar”** means a small bar within the meaning of the *Liquor Act 2007*.

Additionally, the current definition of 'food and drink premises' in the *Kings Forest Development Code* makes no reference to a 'small bar'. Accordingly, to ensure that there is no confusion, it is proposed to omit the current definition of 'food and drink premises' in Appendix A of the Code, and instead replace it with the definition that appears in the Standard Instrument.

The current Code definition reads as follows

**“food and drink premises”** means *retail premises* used for the preparation and retail sale of food or drink for immediate consumption on or off the premises, and includes *restaurants*, *cafes*, *take away food and drink premises*, *milk bars* and *pubs*.

The revised Code definition (based on the Standard Instrument definition) would read as follows

**“food and drink premises”** means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:

- (a) a *restaurant* or *cafe*,
- (b) *take away food and drink premises*,
- (c) a *pub*,
- (d) a *small bar*.

## 2. The existing planning controls

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### 2.1 Subject land context and location

The Kings Forest site (**the subject land**) is located on the far north coast of NSW, approximately 20 kilometres south of the NSW-Queensland border. It is within the local government area of Tweed Shire Council.

Bogangar and Cabarita Beach lie to the south of the site beyond Cudgen Lake which abuts the site to the south-east. Cudgen and Kingscliff lie to the north. Casuarina lies to the east of the site across the Tweed Coast Road. Cudgen Nature Reserve adjoins the site on the eastern perimeter.

To the east of the site is the Tweed Coast Road. It runs north to south and is the primary arterial road connecting to the development. The Pacific Highway runs to the west of the site.

The subject land is presently rural in character, subject to either cattle grazing or is unused.

### 2.2 The concept plan approval

The subject land is covered by an approved concept plan (06\_0318) under the former Part 3A provisions of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. The concept plan approval is for approximately 4,500 dwellings and associated urban development. However this approval does not authorise any actual use of the subject land.

The concept plan (RPS drawing reference 113691-PSP-4b plan no 1, revision B , 5 December 2013) divides the subject land into:

- 'town centre/neighbourhood centre';
- 'residential';
- 'community facilities/education';
- 'employment land';
- 'structured open space (active)';
- 'environmental protection area';
- '50m ecological buffer';
- 'golf course area'; and
- 'private open space including lake'.

The proposed change to the concept plan approval relates to the 'employment land'.

The concept plan approval also includes a precinct plan (RPDS drawing reference 113691-PSP-4b plan no 1, revision B, 5 December 2013). The precinct plan places all of the employment land in either precinct 1 or precinct 2. Precinct 1 is located east of the Tweed Coast Road, whole precinct 2 is located west of that road, and sits north of (and adjacent to) the planned Kings Forest Parkway. Taken together, the employment land amounts to approximately six hectares.

## **2.3 Legal status of the concept plan**

Under clause 3B of Schedule 6A of the *Environmental Planning and Assessment Act 1979* (**the Act**) the following provisions apply with respect to the Kings Forest development (being a development for which a concept plan has been approved under Part 3A):

- if Part 4 applies to the carrying out of the development, the development is taken to be development that may be carried out with development consent under Part 4 (despite anything to the contrary in an environmental planning instrument);
- any development standard that is within the terms of the approval of the concept plan has effect;
- a consent authority must not grant consent under Part 4 for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the concept plan;
- the provisions of any environmental planning instrument or any development control plan do not have effect to the extent to which they are inconsistent with the terms of the approval of the concept plan.

In short, the concept plan approval is the paramount land use planning instrument applicable to the subject land.

## 2.4 The employment land

The Director-General's assessment report (that led to the grant of the concept plan approval) had this to say (in section 2.1, pages 15-16) in relation to the employment land:

### **Business park/employment lands**

7 hectares [adjusted to six hectares in later documents] of employment land are proposed to be located in two pockets at the entrance to the site and along Tweed Coast Road. The employment land along Tweed Coast Road is proposed to contain approximately 2,000 square metres of **retail area**, including parking.

The ultimate GFA would depend on market conditions and the take up of land by prospective businesses. As such, it is not possible to determine the final GFA at this stage. However, **an indicative GFA of 15,000 square metres** is considered reasonable and realistic. The area available for employment land is reduced due to land set aside for environmental buffers. As well, the uses proposed on the employment land are those which require large areas of land such as emergency services, landscape and garden supplies and vehicle sale premises. Lastly, **land provisions need to be made for amenities that support the businesses** such as car parks, roads, truck turning circles and landscaping.

The land will be used to develop **local business, employment and economic development opportunities**. Specific uses are uncertain at this stage. It will be ultimately determined by a number of factors including demography of future residents, timing of the development and success of individuals establishing businesses (some bold added).

This assessment by the Department of Planning and Environment reflects the provisions of the concept plan approval itself (as per section 2.2.2 of the *Preferred Project Report* by JBA, August 2009 incorporated into the concept plan approval under condition A3).

As the Director-General's report makes clear, the employment land is more in the nature of a business park, rather than a light industrial area. This is reinforced by the terms of the concept plan approval itself. The Executive Summary (page ix) of the *Concept Plan Environmental Assessment Report* (incorporated into the concept plan approval under condition A3) says:

**Employment lands:** Seven hectares [adjusted to six hectares in later documents] of land has been allocated for local business, employment and economic development opportunities including trade services, business services, professional and commercial offices, large format retailing and emergency service providers.

The omission of a blanket 'light industrial' uses from the employment lands was a deliberate strategic planning decision (as per section 2.2.5 of the *Preferred Project Report* by JBA, August 2009 incorporated into the concept plan approval under condition A3). (Large format retailing is not envisaged as a general category in the *Kings Forest Development Code*, but several key large format retail uses are expressly envisaged.)

The concept plan approval explicitly envisages that the employment land will do more than simply meet the employment and services needs of the residents of the Kings Forest development itself. It says (in section 5.4.4 of the *Concept Plan Environmental Assessment Report*, incorporated into the concept plan approval under condition A3):

This area [ie the employment land] has specifically been located at the entrance to Kings Forest and along the Tweed Coast Road to provide employment and services for people from Kings Forest as well **as the surrounding areas, and also to reduce through traffic within Kings Forest** (bold added).

## 2.5 The Kings Forest Development Code

Condition A3 of the concept approval incorporates the *Kings Forest Development Code* (2012). Under clause 1.2(2) of the Code (and the associated 'precinct development matrix'), the following 'development uses' are envisaged on the employment land:

- business premises;
- carpark,
- child care centre;
- emergency services;
- kiosk;
- landscape and garden supplies;
- office premises;
- recreation area;
- roads;
- rural supplies;
- service station;
- shop (maximum 200m<sup>2</sup> gross floor area);
- vehicle sales premises; and
- sewage reticulation.

In this regard, 'business premises' are defined broadly. Under the *Kings Forest Development Code* (Appendix A) they are defined to be:

a building or place at or on which:

- (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, **or**
- (b) a service is provided directly to members of the public on a regular basis, and may include, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, *medical centres*, betting agencies and the like (bold added) ...

The 'urban design principles' applicable to the employment land are as follows:

- Provision of diverse employment opportunities
- Controlled by Development Code
- All required parking located within site
- Maintain vegetative buffer to other land uses
- Must demonstrate sensitive interface with surrounding development

These permissible uses are consistent with the 'business park' nature of the employment land, with no provision for 'industrial' or 'light industrial' development as a general type of envisaged development.

## 2.6 The zoning

The employment land is zoned by the *State Environmental Planning Policy (Major Development) 2005 (the Major Development SEPP)* as 'Zone 2(c) Urban Expansion' (map identification number SEPP\_MD\_KIF\_LZN\_001\_20100201).

The zoning has only limited relevance to the development of the subject land, given:

- the comprehensive provisions embodied in the concept plan approval; and
- the provisions of clause 3B of Schedule 6A of the Act (as set out in section 2.3 above).

However the zoning controls should be briefly addressed.

Under clause 4(2) of Part 6 of Schedule 3 of the Major Development SEPP the objectives and the permissible for uses for the zone are set out in the *Tweed Local Environmental Plan 2000* as it stood on 10 September 2010.

The relevant zone objectives are as follows:

### Primary objectives

- to identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake.

### Secondary objectives

- to allow associated non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents.
- to ensure that sensitive environmental areas within and outside the zone are protected from any adverse impacts of development.
- to enable planning flexibility to achieve the other objectives of the zone by means of detailed guidelines in a development control plan.

These objectives are generally consistent with the purpose and nature of the 'employment land' under the concept plan approval. To the extent that the zoning objectives could be regarded as:

- restricting the range of employment-related or services-related development within Kings Forest; or
- limiting that development to that which is only needed by future residents,

they are inconsistent with the terms of the concept plan approval. Consequently, **to that extent**, they have no effect (see section 2.4 above).

All uses are permitted in the zone (with or without consent), other than those that are expressly prohibited, namely:

- abattoirs;
- airline terminals;
- animal establishments;
- brothels;



- display homes if adjoining an RTA classified road;
- forestry;
- heliports;
- industries (other than home industries or light industries);
- institutions;
- junkyards;
- mines;
- offensive or hazardous industries;
- restricted premises;
- rural industries;
- rural tourist facilities; and
- sawmills.

These prohibitions do not raise any issues in the present context.

### 3. The strategic approach taken outside of Kings Forest

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#### 3.1 Within the Tweed Shire

The contemporary planning approach adopted for the Tweed Shire is reflected in the *Tweed Local Environmental Plan 2014 (the LEP)*.

The zone that bears the most resemblance to the 'employment land' (identified by the concept plan approval) is 'Zone B7 Business Park'.

The objectives of this zone are to:

- To provide a range of office and light industrial uses.
- To encourage employment opportunities.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To encourage a range of compatible uses, including residential, recreational and community facilities to maximise cross utilisation of urban infrastructure.
- To encourage and promote good urban design through the integration of all structures (including buildings) and landscaped areas with strong visual and aesthetic appeal.

The following development types are identified as uses permitted with consent:

Bulky goods premises; Child care centres; **Food and drink premises**; **Garden centres**; **Hardware and building supplies**; Hotel or motel accommodation; Kiosks; Light industries; Neighbourhood shops; **Office premises**; Passenger transport facilities; Respite day care centres; Roads; Serviced apartments; Shop top housing; Warehouse or distribution centres (bold added)  
...

Generally speaking the uses envisaged in the 'employment land' are envisaged in zone B7.

**Significantly, zone B7 permits 'food and drink premises' with development consent.**

More generally, 'take away food and drink premises' are permitted with consent in Zone IN1 General Industrial, Zone B5 Business Development and Zone IN4 Working Waterfront (the latter also permitting 'restaurants or cafes').

### 3.2 Standard Instrument compliant local environmental plans generally

The approach taken to the B7 zone across NSW is illustrated in the following table. This table is the product of a review of **all** Standard Instrument compliant local environmental plans carried out by Gadens on 3 September 2015. Plans that did not have provision for a B7 zone are not included in the table.

<b>Standard Instrument compliant local environmental plans with a B7 zone</b>	<b>Food and drink premises permitted in the B7 Business Park Zone?*</b>
<i>Albury Local Environmental Plan 2010</i>	Yes
<i>Armidale Dumaresq Local Environmental Plan 2012</i>	Yes (take away)
<i>Auburn Local Environmental Plan 2010</i>	Yes
<i>Bankstown Local Environmental Plan 2015</i>	No
<i>Blacktown Local Environmental Plan 2015</i>	Yes
<i>Botany Bay Local Environmental Plan 2013</i>	Yes
<i>Byron Local Environmental Plan 2014</i>	Yes (take away)
<i>Canada Bay Local Environmental Plan 2008</i>	Yes
<i>Canada Bay Local Environmental Plan 2013</i>	Yes
<i>Cessnock Local Environmental Plan 2011</i>	Yes
<i>Cowra Local Environmental Plan 2012</i>	Yes
<i>Dubbo Local Environmental Plan 2011</i>	Yes
<i>Griffith Local Environmental Plan 2014</i>	Yes
<i>Kiama Local Environmental Plan 2011</i>	Yes (restaurants or cafes)
<i>Ku-ring-gai Local Environmental Plan 2015</i>	Yes
<i>Lake Macquarie Local Environmental Plan 2014</i>	Yes (take away)
<i>Leichhardt Local Environmental Plan 2013</i>	No
<i>Lithgow Local Environmental Plan 2014</i>	Yes
<i>Marrickville Local Environmental Plan 2011</i>	Yes (take away)
<i>Moree Plains Local Environmental Plan 2011</i>	Yes (take away)
<i>Nambucca Local Environmental Plan 2010</i>	No
<i>Orange Local Environmental Plan 2011</i>	Yes (take away)
<i>Penrith Local Environmental Plan 2010</i>	Yes
<i>Pittwater Local Environmental Plan 2014</i>	Yes
<i>Port Macquarie-Hastings Local Environmental Plan 2011</i>	Yes (take away)
<i>Port Stephens Local Environmental Plan 2013</i>	Yes (take away)
<i>Queanbeyan Local Environmental Plan (Poplars) 2013</i>	Yes (take away)
<i>Ryde Local Environmental Plan 2010</i>	Yes (restaurants or cafes)
<i>Ryde Local Environmental Plan 2014</i>	Yes (restaurants or cafes)
<i>Shellharbour Local Environmental Plan 2013</i>	No

<i>Shoalhaven Local Environmental Plan 2014</i>	No
<i>Strathfield Local Environmental Plan 2012</i>	Yes
<i>Sutherland Shire Local Environmental Plan 2015</i>	Yes (innominate use)
<i>Sydney Local Environmental Plan 2012</i>	Yes
<i>Tamworth Regional Local Environmental Plan 2010</i>	Yes
<i>The Hills Local Environmental Plan 2012</i>	Yes
<i>Tweed Local Environmental Plan 2014</i>	Yes
<i>Warringah Local Environmental Plan 2011</i>	Yes (take away)
<i>Willoughby Local Environmental Plan 2012</i>	Yes (take away)
<i>Wingecarribee Local Environmental Plan 2010</i>	Yes (innominate use)
<i>Wollongong Local Environmental Plan 2009</i>	No
<i>Wyong Local Environmental Plan 2013</i>	Yes
<i>Young Local Environmental Plan 2010</i>	No

\* An unqualified 'yes' means either that 'food and drink premises' are permitted **or** both 'take away food and drink premises' and 'restaurants or cafes' are expressly permitted.

In summary, of the 43 Standard Instrument compliant local environmental plans, 36 permit food and drink premises (although 11 of these do not provide for 'restaurants or cafes').

### 3.3 Far North Coast Regional Strategy

The *Far North Coast Regional Strategy* (2006) establishes a series of neighbourhood planning principles, relevantly including the following:

Jobs available locally and regionally, reducing the demand for transport services.

Additionally, on the subject of transport, the following 'action' is identified:

Land use and transport planning must be integrated to minimise the need to travel, and to encourage energy and resource efficiency.

### 3.4 State-wide policies

*Improving Transport Choice* (2001) emphasises (on page 25) that:

Compatible land uses **should be located together** to reduce trip lengths, provide viable transport choice, and encourage walking and cycling between activities. In particular, the location, mix and density of higher trip-generating developments should match the accessibility of the area and the ability to manage travel demand ...

As a general principle, decisions concerning the location of land uses, for example, in an LEP, should:

- represent a practical fit between the needs of a land use and the need to improve transport choice
- support a strong pattern of centres **and transport corridors**
- minimise the need for and distance of travel (bold added).

The same document (on page 28) says that:

Commercial activity generates a lot of transport demand through the travel of clients, customers, service providers and employees. The **collocation** of these in accessible centres, or higher density corridors, provides transport advantages (bold added).

The Department of Planning and Environment has consistently recognised that service stations and fast food outlets can be appropriately located in corridors. In the *Draft Centres Policy* (2009) it said (on page 17) that:

Typical uses in the B6 (Enterprise Corridor) zone are ... service stations and fast food outlets.

#### 4. Justification

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The paramount land use planning instrument for the subject land is the concept plan approval.

In giving that approval, the NSW Government determined that there would be two areas of employment land in the general periphery of the designated Kings Forest town centre, located on the Kings Forest Parkway (precinct 2) and the Tweed Coast Road (precinct 1). The use of precinct 1 as a retail area was explicitly contemplated.

It is clear that there were two purposes for designating the land in this way.

**Firstly**, to develop local business, employment and economic development opportunities, including trade services, business services, professional and commercial offices, large format retailing and emergency service providers.

**Secondly**, successful development and use of the employment land also necessitates that the land be used to meet the employment and services needs of people in the surrounding areas (not just those who are locals). The location of the employment land east of Tweed Coast Road (in precinct 1) is a conscious planning decision to reduce through traffic within Kings Forest.

Labour-intensive land uses are permitted within the employment land, including the provision of a wide range of services to members of the public and office premises. Consistent with the use, land uses that are appropriate to meet the needs of this workforce (and to reduce the need for through traffic) are permitted in this zone, including shopfront services such as banks, betting agencies, dry cleaners, travel agents, medical centres, etc.

Localities in which such land uses occur would typically feature take way and dine-in food premises (whether it be fast food, a café or a restaurant). Furthermore, permitting such a land use to be co-located with the employment and services land use is good planning policy. This is evidenced by:

- the permissibility of 'food and drink premises' in the B7 Business Park zone (in the Tweed Shire's very recent LEP);
- the fact that of the 43 Standard Instrument compliant local environmental plans that include a B7 zone, 36 allow food and drink premises; and
- the *Far North Coast Regional Strategy* and *Improving Transport Choice* (which emphasise that locating complementary land uses together avoids unnecessary trips and minimises the use of transport infrastructure).

It makes little planning sense to separate the preparation and sale of food or drink for immediate consumption, from land uses in which they are frequently associated (such as service stations, garden centres, internet cafes and offices). The omission of 'food and drink premises' from the *Kings Forest Development Code's* precinct development matrix appears to be nothing more than an oversight.

The proposed change is justified.