

11 January 2016

Our Ref: KFOR 15/138

The Secretary  
Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001

Attention: Kate MacDonald

Dear Madam

**Kings Forest MP08-0194 (MOD 3) – Proposed Service Station and Food & Drink Premises**  
**Within Precinct 1 – Response to Submissions**

On behalf of the proponent (Project 28 Pty Ltd), we provide the following response to the relevant issues raised in the submissions. We note that there were ten public submissions, two State Agency submissions (RFS and DPI) and one submission from Tweed Shire Council.

The key issues raised in the submissions should be considered in the context of the planning and development history of Kings Forest in general and Precinct 1 in particular.

**Approvals Process**  
**NSW**

In November 1987 Tweed Shire Council prepared the Kingscliff South Planning Report. In pursuance of this Report and following public and agency consultation, Amendment No. 3 of Tweed LEP 1987 was gazetted on 30 September 1989. The LEP Amendment zoned part of the Kings Forest site to Part 1(b) Agricultural Protection, Part 2(c) Urban Expansion, Part 6(c) Recreation Special Purposes, Part 7(a) Environmental Protection and Part 2(e) Residential Tourist. Those zones applied under Tweed LEP 2000 up until the gazettal of the State Environmental Planning Policy (Major Projects) Amendment for Kings Forest on 10 November 2006.

In June 1989, Tweed Shire Council issued Development Consent No. GS488/182 for a 239 lot subdivision and 18 hole golf course. In 1992 Tweed Shire Council issued a further Development Consent No. S92/1 for a 260 lot subdivision and 18 hole golf course over Kings Forest. Whilst those developments did not proceed, the consents were nevertheless granted pursuant to the statutory planning controls in force at those times.

The landowner submitted a State Significant Site Study for Kings Forest to the Minister for Planning in 2006. The Study and a Draft Zoning Plan were publicly exhibited in April and May 2006. Wide ranging submissions were received and considered prior to gazettal of Amendment No. 10 to the Major Projects SEPP on 10 November 2006 and subsequently amended on 10 September 2010.

On 19 January 2007, the NSW Minister for Planning authorised a Concept Plan (06\_0318) for a proposed residential community at Kings Forest. The Director General's Environmental Assessment Requirements (DGEARs) were subsequently issued on 21 August 2007. A Preferred Project Report (PPR) (and associated Management Plans including a KPOM) was prepared, after consultation with the NSW Department of Planning (DoP), addressing the DGEARs.

The Minister for Planning granted Part 3A Approval for the Concept Plan for Kings Forest in August 2010. Modifications to the Concept Plan (and KPOM) were then subsequently approved in the period December 2010 to present, including MOD 5 which specifically enables a service station to be approved in Precinct 1.

The Kings Forest Stage 1 Project Application No. MP 08\_0194 was lodged in November 2011. The Application and Environmental Assessment Report was advertised from December 2011 to January 2012 following which 302 public submissions and 10 agency submissions were received.

The Project Approval authorises the development of 2036m<sup>2</sup> of floor space for a rural supplies building and access arrangements to Precinct 1.

The Project Application was approved with conditions on 11 August 2013.

### Commonwealth

On 20 March 2012, the proposed action was referred to the Commonwealth under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). On 12 November 2012, a delegate for the Minister for the then Department of Sustainability, Environment, Water, Population and Communities (DSEWPC) (now Department of the Environment (DoE)) determined that the proposed action required approval under the EPBC Act. The basis for the decision was that the proposed action had the potential to have a significant impact on matters protected under Part 3 of the EPBC Act: listed threatened species and ecological communities (Sections 18 and 18A) including the local Koala population.

The Department considered the proposal in accordance with Part 9 of the EPBC Act and decided to grant approval to Leda on 21 May 2015.

#### **1. Tweed Shire Council Submission**

##### Response:

DAC Planning Pty Ltd responded to Council's submission by way of a letter to the Department dated 3 December 2015, a copy of which is attached at **Annexure A**.

#### **2. Rural Fire Service Submission**

- *The proposed tanker filling points, including above-ground ventilation infrastructure, should be located a minimum 7 metres from the north boundary and be designed to withstand 25 k/Wm<sup>2</sup> of radiant heat exposure;*

##### Response:

The proponent will accept a condition of approval to this effect.

- *The proposed truck bowzers (stage 2) should be located a minimum 7 metres from the northern boundary and be designed to withstand 25 k/Wm<sup>2</sup> radiant heat exposure;*

Response:

The truck bowzers scale approximately 10m from the northern boundary of the site and therefore comply.

- *No storage of any materials should be permitted within 7 metres of the northern boundary;*

Response:

The proponent will accept a condition of approval to this effect.

- *At the commencement of building works and in perpetuity the land around the Service Station building for a distance of 21 metres or to the property boundary, shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones';*

Response:

The proponent will accept a condition of approval to this effect.

- *The northern and eastern elevations of the proposed Service Station building shall be constructed to the requirements of Sections 3 and 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3. 7 Addendum Appendix 3 of 'Planning for Bush Fire Protection';*

Response:

The Project Bushfire Consultant (Melanie Jackson – Bushfire Risk) has discussed this Condition with Mr Alan Bawden of the Rural Fire Service in relation to the service windows at the fast food outlets on the eastern wall of the building. On the basis that the building will be air conditioned, the services windows will be closed at all times when not in use to service drive through customers. Therefore the Department is requested to include provisions in this requirement varying the building design standards to remove the need for screening of openable windows.

- *The southern and western elevations of the proposed Service Station building shall be constructed to the requirements of Sections 3 and 6 (BAL 19) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' and section A3. 7 Addendum Appendix 3 of 'Planning for Bush Fire Protection';*

Response:

The proponent will accept a condition of approval to this effect.

- *Water, electricity and gas are to comply with the following requirements of section 4.1.3 of 'Planning for Bush Fire Protection 2006'.*

Response:

The proponent will accept a condition of approval to this effect.

### **3. Department of Primary Industries**

In summary, the DPI submission states that:

*It is therefore necessary to consider whether the proposed fencing and landscaping on the subject site is adequate to address potential conflict risk between the service station and current/future agricultural use of the neighbouring land. DPI has no further comments in this regard. If the buffer provisions provided on the subject site are considered adequate, then there should be a condition that requires continued maintenance of the buffer within the conditions of consent.*

*To assist further with potential land use conflict risks, it is suggested that a rural area notice be provided to any purchaser/lessee of the service station that advises that the building is located within close proximity to agricultural industries and as such incidences of noise, odour and dust may occur that some people may find offensive.*

Response:

The comments of DPI are noted. The author of the LUCRA accompanying the Modification Application has provided comments on the issues raised by DPI. A copy of the response dated 24 December 2015 is attached at **Annexure B**. Having regard to those comments, the proponent will accept conditions of approval to the following effect:

**"The proposed buffer to the northern site boundary shall be maintained by the owner of the Precinct 1 site, being Lot 7 DP 875447."**

**"Prospective purchasers or lessees of Precinct 1 (being Lot 7 DP 875447) shall be advised that the building is located within close proximity to agricultural industries and as such incidences of noise, odour and dust may occur that some people may find offensive."**

#### **4. Old Bogangar Road Residents**

We note that four objections have been received from residents of the Old Bogangar Road community, which comprises approximately ten dwellings on the western side of Tweed Coast Road and directly opposite the Precinct 1 site. The key issues raised by these objectors are summarised as follows, together with a response to each issue.

- *This site backs onto Cudgen Creek, which is a breeding ground for fish and prawns. Any run off, spillage or area wash down from this site could eventually end up in the creek having a disastrous effect.*

Response:

The development footprint is separated from Cudgen Creek by a 50m ecological buffer and normal stormwater management facilities are proposed to treat runoff prior to discharging to any waterways (see Stormwater Management Plan at Appendix O of the Modification Report). Accordingly, it is considered that the potential for significant adverse impacts is minimal.

- *Exiting Old Bogangar Road to go south will mean turning left, then instantly crossing two traffic lanes to do a u turn and head south. This will cause a very dangerous situation.*

Response:

The plans for the Service Station show that Tweed Coast Road will be divided with a right turn pocket. This enables vehicles to turn left out of Old Bogangar Road and stop in the right turn pocket and wait for an appropriate gap before performing a U-turn. The Tweed Coast Road/Service station entrance has been designed for a 10m truck to perform a U-turn.

Furthermore, the Kings Forest Way/Tweed Coast Road roundabout (to the south) will cause traffic to form platoons and allow sufficient gaps for vehicles to turn left out of Old Bogangar Road and enter the right turn pocket.

- A 24hour service station will generate excessive noise, extra Traffic and fuel smell.

Response:

Appendix D (Environmental Noise Impact Report) of the Modification Application contains the following information at Section 7.0:

*"The subject site is described as Lot 7 on DP875447 and is bounded by Tweed Coast Road to the southwest, Cudgen Creek to the southeast and a rural residential property to the north. The proposal is to construct a service station with carwash and two drive-through facilities.*

*We are advised that the site intends to operate 24 hours, seven days per week.*

*Based upon the recommended acoustic treatments and management controls, Leq noise impact levels at the nearest offsite noise sensitive receivers are predicted below the daytime external noise criterion; and within 2 dB of the evening and night-time external noise criterion.*

*As the average person cannot generally detect a 3 dB variation in sound pressure level, a 2 dB rise is unlikely to be detectable and is typically considered an acceptable outcome.*

*Based upon the predicted noise impacts we have recommended that the hours of operation for the car vacuums be limited to between 7am and 10pm, with goods delivery (including fuel delivery) also limited to 7am to 10pm to minimise noise events during the night-time period. The restriction to hours of use of the vacuums can be reassessed once the actual plant type is determined, although it is noted that some of the noise from vacuum use is from the actual nozzle itself, and not the suction motor plant.*

*To control noise emissions from the service station development we have also recommended best practice controls such as limiting waste collection to the daytime period.*

*Given that the carwash is located at the northwest corner of the development site, closest to the western offsite noise sensitive receivers, automatic acoustic doors have been recommended for the carwash (to achieve a minimum noise reduction of 15 dB) and solid walls and a solid roof.*

*It is also noted that the dwellings to the north and east are greater than 200m from the subject site; therefore, land buffer will provide significant attenuation of onsite noise emissions. For the western offsite dwellings, Tweed Coast Road separates the site from the dwellings; therefore, traffic noise emissions will likely produce higher noise impacts at the western dwellings than the subject site. As the local area continues to be developed, road traffic on Tweed Coast Road noise will become a more significant noise source, providing higher ambient background noise levels; and resulting in lesser perceived noise impacts from the proposed service station and carwash.*

*We have also provided an indication of potential noise impact levels and acoustical treatment requirements of likely onsite mechanical plant; although the levels are merely a guide as no plant selections have yet been completed. For this reason, additional acoustic assessment/s should be undertaken prior to Commencement of Use (by each of the onsite tenancies) to confirm acceptable noise levels have been achieved; and be conditioned within the Development Approval."*

Appendix C (Traffic Impact Assessment) of the Modification Application contains the following information at Section 6.0:

*"The key findings of the Kings Forest Service Station traffic impact assessment are as follows:*

- *the site was previously approved for a "Rural Retail" development which included a GFA of 2,036m<sup>2</sup> and 135 parking spaces. This site generated a total of 122 trips in the AM and 244 trips in the PM peak hour;*
- *before the completion of the Service Station the following components of the Kings Forest residential development and relevant infrastructure will be constructed:*
  - *Stage 1 of the Kings Forest residential development (approximately 500 dwellings);*
  - *Tweed Coast Road will be widened and median divided in the vicinity of the Service Station and Kings Forest residential development;*
  - *a two-lane roundabout will be constructed at the Tweed Coast Road / Kings Forest Parkway intersection;*
- *the development is calculated to generate 204 trips in the AM and 252 trips in the PM peak hour;*
- *the results of the Aimsun traffic model of Tweed Coast Road including the Service Station and Kings Forest residential development are as follows:*
  - *overall, the operations and performance of the traffic network is adequate to cater for both 2016 and 2026 demands;*
  - *queues and delays remain within acceptable thresholds and do not adversely impact the traffic network in the scenarios tested; and*
  - *the four lane Tweed Coast Road configuration is sufficient to cater for traffic in 2016 but requires extensions by 2026 to the Tweed Coast Road northbound lanes and the Kings Forest Parkway approach to the roundabout.*
- *a turn warrants assessment showed that the development access warrants an AUL and CHR treatments. The design of these treatments was undertaken in accordance with Austroads Guide to Road Design Part 4a: Signalised and Unsignalised Intersections;*
- *the development has provided parking in excess of Council's requirements;*
- *the development provides 6 visitor and 8 staff bicycle parking spaces which is less than Council's requirement but considered appropriate given the type of land uses and that there is additional space for more bicycle parking should the need arise;*
- *the parking and internal road layout was designed in accordance with AS2890 and Council's Parking Code;*
- *the development has supplied an SRV and HRV parking spaces in accordance with Council's Parking Code;*
- *swept paths have shown that a RCV is able to enter and exit the site in a forward gear and access the bins in a safe and efficient manner; and*
- *the development has catered for active transport trips by including direct pedestrian links and crossing points.*

*We conclude that the proposed development does not introduce any significant traffic or transport impacts that would preclude its approval by Council."*

Appendix P (Air Quality Impact Assessment) of the Modification Application contains the following information at Section 8:

## 8.1 Summary of Results

Predicted concentrations and levels of all indicators are within the relevant criteria as summarised in Table 8.1.

Predicted concentrations of all pollutants are within the criteria.

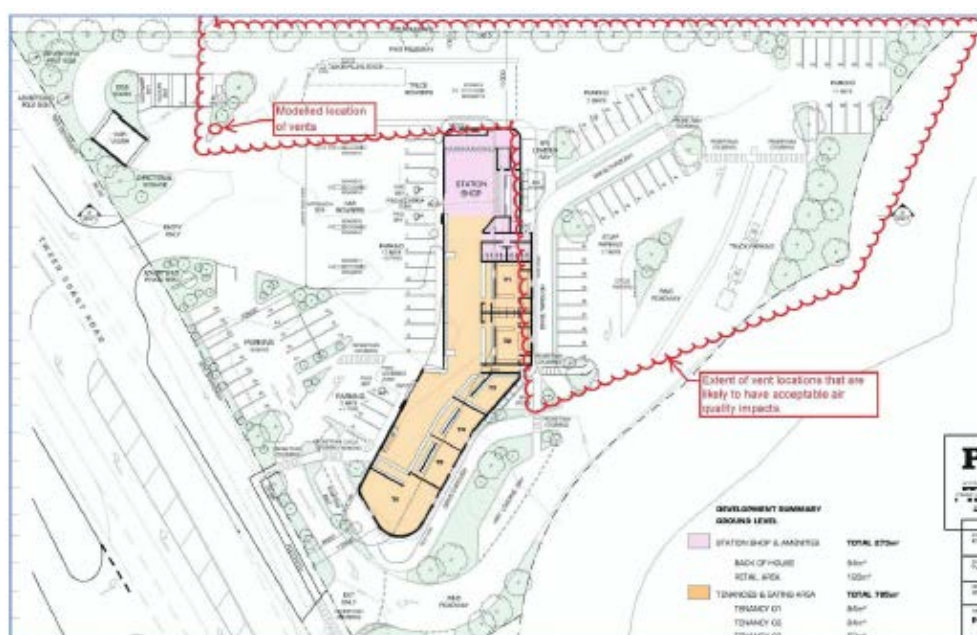
The highest predicted concentration of benzene at a sensitive receptor is 20 µg/m<sup>3</sup> (including background), within the criterion of 29 µg/m<sup>3</sup>. As discussed in Section 7.1, there are substantial conservative assumptions, so the chance of benzene exceeding the criterion is considered to be low. It is very unlikely that exceedances of any other pollutant criteria would occur.

**Table 8.1 Summary of Results**

Indicator & Averaging Period	Worst Affected Receptor	Prediction from Model (µg/m <sup>3</sup> )	Cumulative Prediction with Background (µg/m <sup>3</sup> )	Criterion (µg/m <sup>3</sup> )
1 hour benzene	E	15	20	29
1 hour cyclohexane	E	12	12	19,000
1 hour ethylbenzene	E	3	4	8,000
1 hour n-hexane	E	50	51	3,200
1 hour styrene	A to F	0.1	1.1	120
1 hour toluene	E	27	51	360
1 hour xylene	E	14	56	190
99.9 percentile 1 second odour	E	0.03 (ou)	0.03 (ou)	2 to 7 (ou)

## 8.2 Recommendation

- The location of the vent pipes for the tanks were modelled adjacent to the air and water fill point. The shape of contours in Figure 7.1 indicates that locating the vent pipes to the west or directly to the south may result in predicted levels higher than the criterion. Thus it is recommended that the vent pipes be located either adjacent to the air and water fill point, or to the north or east of the station shop, as shown in Figure 8.1. This recommendation may not be required if Stage 1 vapour recovery were installed.



**Figure 8.1 Vent Locations**

### 8.3 Conclusion

An air quality assessment has been conducted for the proposed service station development to be located on Lot 7 DP875447, Tweed Coast Road, Kings Forest. The results of the assessment are summarised as follows:

- *The location of the vent pipes should be as recommended in Section 8.2.*
- *Based on the methodology used, and the locations assumed, concentrations of specific VOCs and odour are predicted by the dispersion model to be within the relevant criteria at nearby sensitive receptors. It is considered unlikely that exceedances would occur."*

Based on the above information it is considered that the proposal will not result in excessive noise, fuel odours or additional traffic which would exceed the capacity of the road network

- *Rubbish from food outlets will litter area as seen on road side at current 24 hour service station at Chinderah.*

#### Response:

Appendix I of the Modification Report comprises a Preliminary Waste Management Plan which addresses volumes, storage requirements and locations for waste generated during the construction and operational phases. This Plan will assist in minimising littering. Bins will be regularly emptied to ensure that they are not overfilled, resulting in windblown litter and in addition Council Rangers manage and mitigate littering by enforcement action under the Protection of the Environment Operations Act, 1997.

- *Probable road kill. As this site is an area known to be frequented by Koalas, Lights from this will attract not only Koalas but other animals to cross road to investigate this site.*

#### Response:

See Section 1 and Appendix G, Koala Exclusion Fencing Location and Detail Plan. Koalas will be excluded from the development site and the fence will also preclude other animals from entering the site. A revised Koala Plan of Management has also been prepared to manage potential impacts. It is unlikely that native animals will be attracted to the site.

- *This peaceful area will be significantly changed for the worse.*

#### Response:

A change in the character and amenity of the area from rural to urban is inevitable, as that is what the current land zoning, Concept Plan and Development Code contemplate. The Specialist Reports appended to the Modification Application do not identify any unacceptable adverse impacts.

- *A downgrade of our and property values.*

#### Response:

Impacts on property values are not generally a relevant consideration and are difficult to quantify. It can equally be argued that the Kings Forest development (including Precinct1) could increase property values because of significantly improved access to urban services and infrastructure.



- *My residence is directly opposite the proposed development. The noise from a twenty four hour a day business will affect the lifestyle we currently enjoy.*

Response:

See response above in relation to noise issues.

- *I object to the development proposal of a petrol station as the high volume of cars will contribute to heavy noise pollution.*

Response:

See response above in relation to noise issues.

- *The proximity to local Koala populations and Cudgen Nature Reserve and wildlife corridors is not promoting protection of these areas or the associated flora and fauna.*

Response:

The development footprint is well buffered to potential habitat areas and Cudgen Nature Reserve by the 50m ecological buffer and Tweed Coast Road.

Annexure F of the Modification Report contains a Flora and Fauna Assessment which concludes that the proposed development will not have a significant impact.

- *The existing community of Old Bogangar has a relaxed, quiet and rural atmosphere about it, a service station directly across the road is going to ruin the lifestyle we paid for and currently enjoy.*

Response:

See response above regarding a peaceful area.

- *It is directly east from my property as I live at the entrance to Old Bogangar Road and this will cause myself, my family and neighbours a great deal of disturbance with cars and trucks entering and leaving the service station. In particular, at night the vehicle lights will be shining directly into our bedrooms and we will also hear the noise generated from vehicles.*

Response:

See comments above regarding a noise, traffic and fuel odour.

- *The petrol and vehicle fumes, black road dust will also affect our health and wellbeing.*

Response:

See comments above regarding a noise, traffic and fuel odour.

- *Our community is on tank water fed from the rooves of our homes, the development and consequent operation of a service station so close is going to cause dust, fumes and air pollutants to end up in our drinking water.*

Response:

It is not unusual for service stations to be sited in residential areas with minimal impacts. Contemporary service stations do not result in significant dust and odour impacts. The Specialist Reports appended to the Modification Report conclude that the development will not result in significant adverse impacts.

- *I do not agree with the need to have a service station in this area when there is a huge BP a few km's up the road which is set for expansion in the near future.*

Response:

Strategic justification for food and drink premises to be permitted in the employment lands was provided with CP06\_0318 MOD5 which was approved on 10 November 2015. The Kings Forest Development Code also enables a service station to be approved in Precinct 1. The proposal is not for a highway service centre, but rather a service station which is a necessary facility to service local communities and the travelling public.

- *I am also concerned what effect this will have on the value of my property, a decrease in value will affect my ability to invest and earn an income.*

Response:

See comments above regarding property values.

- *If the development does get approval then the existing residents to the West need to have any possible effects mitigated against, including:*

*The closing of the entrance / gap at Old Bogangar Road and moving the entrance to the South prior to the commencement of any works.*

Response:

It is not possible to relocate Old Bogangar Road to the south because of geometric road design standards which cannot be complied with. See further comments above regarding traffic and access.

- *Providing privacy and lights/noise protection from Tweed Coast Road through erecting a high noise and visual reduction barrier with thick planting of trees on the inside of the barrier prior to the commencement of any works.*

Response:

The existing paling fence (approximately 2m high) on the western alignment of Old Bogangar Road provides some noise and visual screening. The Visual Impact Assessment at Appendix E of the Modification Report contains the following information:

***"Tweed Coast Road***

*The views into and of the subject site when travelling along Tweed Coast Road will be minimal due to the large existing stands of vegetation associated with the plantation to the north of the site and the environmental and buffer planting to the south of the subject site. The alignment of Tweed Coast Road at this point (curved) also acts in limiting potential views of the subject site.*

*The car parking area of the service station will be predominately screened through proposed planting along the road boundary. Clear trunked tree species to the Tweed Coast Road frontage will also provide a visual break to the built form of the service station beyond.*

*Vegetation stands to the rear of the service station associated with the ecological buffer will provide a vegetated backdrop to the service station and visually link the vegetation stands that exist to both the north and south of the subject site. Planting associated with the plantation will grow over time and provide greater screening to the north over time.*

*The impact to Tweed Coast road from the proposed service station is considered medium to low, becoming lower as surrounding vegetation and proposed landscaping vegetation reaches maturity.*

### **Hamlet Residences**

*The majority of the 12 hamlet residences to Old Bogangar Road are screened through the large existing stands of vegetation and an existing acoustic fence. It is noted that this fence is to be upgraded during works associated with Kings Forest Residential development however its level of visual mitigation will remain.*

*The visual impact to the hamlet residences from the proposed service station is considered low."*

The Environmental Noise Impact Report at Appendix D of the Modification Report contains the following recommended acoustic treatments.

*"Based upon the adopted noise source levels, the following acoustic treatments and management controls are recommended to mitigate onsite activity noise emissions:*

- *The Service Station and Carwash operate 24 hours per day.*
- *The car vacuums be limited to 7am and 10pm, or a further assessment be undertaken to review restriction of use once actual plant is selected.*
- *Goods delivery (including fuel delivery) be limited to 7am and 10pm.*
- *Waste collection be limited to 7am and 6pm Monday to Saturday.*
- *The carwash is to be constructed with solid walls and a solid roof. The carwash is to also have the installation of automatic doors. These doors should provide more than 15 dB noise reduction.*
- *Drainage grates over trafficable areas be well fixed to avoid rattling when a vehicle passes over the grate.*
- *Mechanical plant be designed and installed to comply with the noise criterion presented in Section 4. As final plant requirements are not known at this stage, additional acoustic assessment/s should be undertaken prior to Commencement of Use to confirm acceptable noise levels have been achieved; and be conditioned within the Development Approval. Based upon the assumed plant noise source levels, acoustic screening to the western dwellings is likely to be required such as locating plant on the eastern side of the service station building envelope; or incorporating acoustic barriers / enclosures at roof-top plant."*

Based on the above information it is considered that light and noise impacts will be within acceptable limits.

- *Incorporation of town water to the existing residents.*

Response:

Provision of town water to the existing residences on Old Bogangar Road is a matter for the owners and the water supply authority (Tweed Shire Council).

## 5. Paula Stevns

- *Proximity to Cudgen Creek. This tidal creek flows both to Cabarita Lake and to the Ocean within a few km's of the proposed development. The threat of pollution to this water way is too great to allow these tenancies within a few metres of the creek.*

Response:

See comments at Section 4.

- *Proximity to Cudgen Nature Reserve and the local Koala Population. Nature corridors are in place for species protection and a Service station and Drive through food tenancies will not enhance the protection of this sensitive area or wildlife.*

Response:

See comments at Section 4.

- *There has already been a huge increase in roadside rubbish since the installation of the drive through tenancies at Chinderah and this will increase with another similar development. This is dire for wild life and the overall aesthetics of the area.*

Response:

See comments at Section 4.

- *I question the very need for the service station when there are several within a small area. Namely Chinderah 5.7 km away and Kingscliff 4.8km away. Additionally with the completion of the Casuarina Town Centre which is due to open by Dec 2015 there will be a supermarket and food outlets less than 1 km away.*

Response:

See comments at Section 4.

- *The Nature of a Service Station and Drive through food businesses mean they will have very long trading hours and this will severely impact our lifestyle and add an enormous strain on our living conditions. Including but not limited to: increased noise and light pollution and a potential to reduce air quality, thus greatly impacting our physical and mental health.*

Response:

See comments at Section 4.

- *The removal of the 10m agricultural buffer to the North of the site is of huge concern and does not fit with the local zoning and existing use of AI agricultural land in this area of the local council plan.*

Response:

See comments at Section 4.

- A Service station and two drive through food tenancies will decimate the value of our home and land and I cannot abide this.

Response:

See comments at Section 4.

**6. Unnamed Objection No. 7 (Organic Farmer for 30 years)**

*Environmental Health concerns*

- The proposed petrol storage underground tanks should be assessed as to the risk of contamination to our environment. The main drain alongside the proposed site flows into the Cudgen creek and out to the ocean and is the main drain that carries the flood waters from Cudgen farmland. Any breach of the underground tanks would contaminate this waterway

Response:

Issues relating to stormwater management and water quality are addressed in Section 4. In addition, a Multi Level Risk Assessment accompanies the Modification Application at Appendix R of the Modification Report. The Assessment concludes as follows:

*"Plotting the frequency against consequence, it can be clearly seen that the societal risk is negligible. Therefore, only a level one qualitative Risk Analysis is required.*

*This analysis is referred to in Applying SEPP 33 as a Preliminary Hazard Analysis (PHA), which has been included as Appendix C.*

*All equipment must be installed to manufacturer's recommendations and must comply with all the relevant standards listed within.*

*Specific safety features of the site have been included in the PHA, including all monitoring procedures.*

**Further comments**

*Listed below are the minimum required separation distances for Fuel Systems (Petrols) to boundaries, together with references.*

**Fuels (Petrol & Diesel)**

**Australian Standards & Clauses references**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Fill point : 3 & 4 metres | AS 1940-2004, Clause 5.3.2(c) & AS/NZS 60079.10.1:2009 Annex ZA Clause 5.2.2 (c) & Clause 5.2.9 (c). |
| <input checked="" type="checkbox"/> Dispensers : 4 metres     | AS 1940-2004, Clause 7.3.1(b) & AS/NZS 60079.10.1:2009 Annex ZA Clause 4.4.2.2 & Fig. ZA.4.          |

*The design of this proposal meets and exceeds the above Australian Standard requirements. These distances can also be achieved if vapours barriers are installed, if required. These distances can also be achieved if vapours barriers are installed, if required."*

- *The subject land is very flood prone and overflows to the neighboring property, subsequently could carry contamination into the creek as well as into neighboring properties and dams*

Response:

As indicated in Section 5.4.1.2 of the Modification Report, the development site is not flood prone.

- *Excessive noise and pollution generated by the proposed development would severely impact the amenity to all neighboring properties tremendously with the amount of traffic entering and exiting at all times of the day and night and especially with trucks using air brakes slowing down on entry and or changing gears exiting the station.*

Response:

See comments at Section 4.

- *Litter thrown from cars is already a problem on this road as it appears we are just a big mac and fries consuming distance from the established service station at Chinderah, mitigation of visual waste along Tweed Coast Road needs to be evaluated as it is an eyesore already and would only become worse with another service station – food outlet in this area*

Response:

See comments at Section 4.

- *Bulk Bin waste removal by large trucks is another noise and pollution problem envisaged on the site*

Response:

See comments at Section 4.

- *Lighting and signage will be a visual eyesore on this rural road expected to be a rural buffer between seaside villages*

Response:

The Visual Impact Assessment at Appendix E of the Modification Report addresses these issues. See comments at Section 4.

- *Storm water management in the proposal is to pipe runoff to Cudgen Creek which could lead to contamination of the sensitive ecological environment of the waterway*

Response:

See comments at Section 4 and Stormwater Management Plan at Appendix O of the Modification Report.

*Koala Habitat*

- *The application does not appear to acknowledge the many Management Plans that have been put in place to protect the Koala and their habitat in this area*

Response:

See Section 1. This application only proposes a modification of the Project Approval in respect of Precinct 1. Relevant conditions of Concept Plan Approval No. 06\_0318 and Major Project Approval No. 08\_0194 will continue to apply, including applicable Management Plans.

- *The proposed koala exclusion fencing is now set 20m inside the ecological buffer contrary to PAC condition 46 which says that fencing should be located on the outer edge of the 50mtr buffer.*

Response:

See comments at Section 1.

Land Use

- *The proposed rural farm store was approved as it was only trading through daylight hours and it provide a service the Cudgen rural community surrounding it, as opposed to a service station trading 24/7 as such has no rural connection or intention and is totally out of keeping with prior permissions granted*

Response:

Under the provisions of Tweed Local Environmental Plan 2000 (which is adopted by the SEPP Zoning Amendment), the land is zoned 2 (c) Urban Expansion and the proposed development is permissible with consent, as are numerous other uses. The proposal is also consistent with the Amended Concept Plan and Amended Development Code.

- *The proposed development is surrounded on all sides by "Environmentally Protected Land" and abuts the "Cudgen Nature reserve" - therefore a petrol station in the middle of such a an ecologically sensitive area should constitute inappropriate use of this land.*

Response:

See comments at Section 4.

- *The farmland surrounding the area has also been classified with State Significant Agricultural Protection – again it is inappropriate land use to place a service station*

Response:

See Section 3 and **Annexure B**.

- *Tweed Coast Road is part of a Greenbelt conservation path and forms part of the vegetated setting which enhances the farmlands and divides it from its urban neighboring suburbs. A service station on this path is not in keeping with a greenbelt and destroys it's integrity*

Response:

See comments at Section 1.

- *The developer is also proposing to alter buffer zone requirements which affects neighboring property. Although the farmer has a vegetative buffer at this point in time this could change in future.*

Response:

See comments at Section 3 and **Annexure B**.

*Bush Fire Hazard*

- *The proposed development area has experienced many severe bushfires which have swept through from Bogangar or Kings Forest and on to the farmlands of Cudgen. The proposed development is on the northern end of the areas previously devastated by these fires. The adjoining farmer has also forested his property thus the proposed site is now in the middle of an extremely dangerous fire zone and holding tanks of petrol would pose an added threat to this district.*

Response:

As indicated in Section 2, the Rural Fire Service has not raised any objection to the proposal, subject to various conditions.

- *Residents on this road do not even have town water to put a fire out with should they be threatened by either bushfire or petrol explosion.*

Response:

See comments above.

**7. Unnamed Objection No. 8**

*Koala habitat*

- *A portion of the site of the is classified as koala habitat and, regardless of intermittent koala counts in the area, the local residents can confirm that koalas are active on this site and move between the adjoining farm lands on one side to the Cudgen Creek reserve on the other. Koalas do cross this site although it is open country.*

Response:

Section 6.4 and the Flora and Fauna Assessment at Appendix F of the Modification Report address the provisions of SEPP 44 – Koala Habitat Assessment and conclude that the site does not comprise core Koala habitat. Koala Exclusion Fencing is proposed to mitigate potential impact. This approach is consistent with the revised Kings Forest KPOM.

- *Over the years that I have lived in the area the koala populations have fluctuated, and I have witnessed the decline in numbers due to tree clearing and the eventual return of the population when the new habitat adjoining this site was created by the neighbouring farmer.*

Response:

See comments above.

- *I believe the proposed service station and associated activity will impact severely on the movement of the koalas and their ability to survive in this locality.*

Response:

See comments above.



- *The application does not appear to acknowledge the various Koala management plans that have been developed over this site.*

Response:

See comments at Section 1.

- *It also appears that part of the ecological buffer has been nominated for car parking and bushfire asset protection, which means that the Koala exclusion fencing is now inside the buffer zone, reducing the koala protection and habitat around the site.*

Response:

See comments at Section 1.

*Adjoining Farmlands*

- *All the farmers adjoining the Kings Forest land have believed that an agricultural buffer zone would be maintained as part of the Kings Forest Development, but it appears that this buffer has been turned into driveway and truck fuelling station.*

Response:

See comments at Section 3.

- *The the removal of the buffer zone could seriously impact on the adjoining farmer if he decided to apply of organic farm status as other farms have in the district. Hence reducing the future viability of the farming operation.*

Response:

See comments at Section 3.

- *Further, if the removal of the buffer zone is approved for this part of the development, it will set a precedent that it can be removed over the whole Kings Forest development, have a detrimental impact on all the farms adjoining this development from Cudgen through to Duranbah.*

Response:

See comments at Section 3.

*Visual impacts*

- *The Tweed Shire Council has attempted to maintain the Tweed Coast Road through to Bogangar as a continuation of a rural or forested stretch of road to enhance the rural environment of the district.*

Response:

See comments at Section 1.

- *A service station located in the middle of farmlands and environmental protection zones is not in keeping with the surrounding environmental features.*

Response:

See comments at Section 4.

- *The visual impact of the service station (and associated signage, lights and commercial structures) would be an extreme contrast to the adjoining properties, and since there is not likely to be any similar developments in the area, would forever continue to be in stark contrast to the surrounding environment.*

Response:

See comments at Section 4.

*Bush fire hazard*

- *The Kings Forest and Cudgen nature reserve areas have experienced some severe bushfires over the years. There have been extremely bad bushfires over the years which swept through the area from Bogangar to the farmlands of Cudgen. Everything in the path of the fires was destroyed; the proposed service station is on the northern end of the areas previously devastated by these fires. Since then the adjoining farmer has forested his property thus the proposed site is now in the middle of an extremely dangerous fire zone. Although there would be precautions taken, it is a dangerous site to have a service station.*

Response:

See comments at Section 2.

*Impact on local residents*

- *The residents to the west of the site do not have street lights, town water or sewerage. They are part of a rural community with farms and trees around them. At night there is very little noise except for nature and a few cars on the road. The proposed rural store was acceptable as it would be trading during daylight hours and in some way would maintain the rural environment.*

Response:

See comments at Section 1.

- *The proposed service station will trade day and night, there will be lights, noise, signage, dewatering and other activities which will have a detrimental impact on those residents.*

Response:

See comments at Section 1.

- *The proposal does not appear to take into consideration the impact on the residents to the west.*

Response:

See comments at Section 1.

8. **Hector Alwyn Smith & Donna Smith (Owners of Lot 8 DP 870042 immediately adjoining Precinct 1 to the north)**

- *We conduct ongoing farming activities on land that is zoned RU1, RU2 and 1A, this entire development does not recognise or value the significance of these state government zonings.*

Response:

See comments at Section 3.

- *The removal of the meagre 10 meter agriculture buffer along the northern boundary is totally not acceptable. How can you have state significant agricultural land activities occurring next door to a service station and fast food outlets without a buffer area.*

Response:

As above.

- *A buffer zone on the north boundary is essential for the protected wildlife namely the koala, bush stone curlew and lace monitor, giving east /west movement between nature corridors and habitats.*

Response:

See comments at Section 7.

- *The parcel of land in question is prone to flooding with ground water draining into our property and thus into our irrigation dam. The Cudgen creek with a high tide mark less than 50 meters away will also be subject to run off of pollutants. The pollution to this environmentally sensitive waterway by toxic industrial waste is unacceptable.*

Response:

See comments at Section 6.

- *The need for this scale of development on this site is to be questioned as within a 5km radius there are 2 service stations, one with approval for expansion. There is also, less than 1km away at Casuarina a shopping centre which will have food outlets; and indeed just across the road from the proposal site in the same development there is a planned town centre. Would this not be a more suitable place?*

Response:

See comments at Section 4.

- *Since the opening of the service centre and fast food outlets at Chinderah the amount of take away food packaging littered along Tweed Coast Road has increased dramatically, with more than double the number of fast food outlets in the modified proposal then the volume of roadside litter, not to mention the litter thrown into the Cudgen Creek at the Bogangar Bridge crossing just 500meters from the site will be environmentally degrading.*

Response:

See comments at Section 4.

- *The visual pollution of tar and cement, signage and night lighting in what is primarily a rural and protected bushland setting is unacceptable.*

Response:

See comments at Section 4.

- *The increased vehicle movements will increase the risk of roadkill of our native animals, already 2x echidnas this year.*

Response:

See comments at Section 4.

## 9. Jodie Smith

- *It is too close to Cudgen Creek, stormwater runoff collecting fuel and rubbish will end up polluting the creek and surrounding rural area.*

Response:

See comments at Section 4.

- *The proximity to local Koala populations and Cudgen Nature Reserve and wildlife corridors is not promoting protection of these areas or the associated flora and fauna.*

Response:

See comments at Section 4.

- *The thought of having 6 fast food outlets next to prime agriculture and eco tourism zonings is ludicrous.*

Response:

See comments at Section 3. There are no adjoining or adjacent "eco tourism zones." Adjoining zones are 7(l) Environmental Protection (Habitat), 7(a) Environmental Protection Wetlands, R2 Low Density Residential, RU1 Primary Production and RU2 Rural Landscape. The adjoining land to the north is zoned RU2 and 1(a) Rural. There are no adjoining lands mapped as State or Regionally Significant Farmland with the exception of a short length on the eastern side of the northern site boundary which will abut the 50m ecological buffer (see Aerial Photograph attached at **Annexure C** showing extent of State Significant Farmland).

- *I am part of a family that's generations have been in this hamlet for over 100 years and to see it change so dramatically has a huge affect on all members of our families past generations and upcoming generations.*

Response:

See comments at Section 4.

- *The existing community of Old Bogangar has a relaxed, quiet and rural atmosphere about it, a service station directly across the road is going to ruin the lifestyle we paid for and currently enjoy.*

Response:

See comments at Section 4.

- *It is almost directly across from my property as I live at the entrance to Old Bogangar Road and this will cause myself, my family and neighbours a great deal of disturbance with cars and trucks entering and leaving the service station. In particular, at night the vehicle lights will be shining directly into our bedrooms and we will also hear the noise generated from vehicles.*

Response:

See comments at Section 4.

- *The signs for the service station will impact our quiet lifestyle 24 hrs a day 7 days a week.*

Response:

See comments at Section 4.

- *The petrol, vehicle fumes, black road dust will also affect our health and wellbeing.*

Response:

See comments at Section 4.

- *Our community is on tank water fed from the rooves of our homes, the development and consequent operation of a service station so close is going to cause dust, fumes and air pollutants to end up in our drinking water.*

Response:

See comments at Section 4.

- *I do not agree with the need to have a service station in this area when there is a huge BP a few km's up the road which is set for expansion in the near future.*

Response:

See comments at Section 4.

- *I am also concerned what effect this will have on the value of my property, a decrease in value will affect my ability to invest and earn an income.*

Response:

See comments at Section 4.

Alternatives.

- *A service station on the land for sale at the traffic lights on Cudgen Road would better serve the community in my opinion, also catching through traffic going to Kingscliff or heading South.*

Response:

A service station at this location would be in close proximity to the Chinderah Highway Service Centre and would not conveniently service residents of the Tweed Coast. In addition, the Cudgen site is close to urban areas and may involve State Significant Farmland.

- *A service station in Casuarina town centre that is currently being built approx. 1km south on Tweed Coast Road.*

Response:

Neither the Casuarina Town Centre Concept Plan nor Major Project Approval No. MP06\_0258 for Casuarina Town Centre appear to authorise a service station. It would be difficult to retro fit a service station given current approvals and adjacent residential precincts.

Comments:

- *Does development of Precinct 1 include the closing of the gap at Old Bogangar Road and moving the entrance to the south.*

Response:

See comments at Section 4.

- *Is there intention to maintain our existing community lifestyle by providing privacy and lights/noise protection from Tweed Coast Road through erecting a high noise and visual reduction barrier with thick planting of trees on the inside of the barrier to block noise from the increasingly busy road and proposed developments?*

Response:

See comments at Section 4.

Yours faithfully  
DAC Planning Pty Ltd



Darryl Anderson  
Director

Encl.



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**ANNEXURE A      Response to Tweed Shire Council Submission Dated 3 December 2015**

3 December 2015

Our Ref: KFOR 15/138

Mr Chris Ritchie  
Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001

Dear Sir

**Kings Forest Major Project Approval No. 08-0194 (MOD 3)**  
**Proposed Service Station & Food and Drink Premises Within Precinct 1**

On behalf of the proponents (Project 28 Pty Ltd) we provide the following response to Tweed Shire Council's email submission dated 20 November 2015. Issues raised by Council are reproduced in **bold text**.

**Building BCA Matters**

***"The modification is from a Rural Supplies Building (Class 6 & 7b building) to a Service Station – six (6) food outlets building (Class 6).***

- **Council would recommend additional conditions to MP08/0194 as follows:**

***Insert after Condition 99***

***General***

- The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from a NATA accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.***
- An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for any water, sewerage or drainage works including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality control devices or erosion and sediment control works, prior to the issue of a construction certificate.***
- Pursuant to Section 68 of the Local Government Act, 1993 an approved pre-treatment device (eg. grease arrestor, oil separator, basket traps) must be installed in accordance with Tweed Shire Council's Policy - Discharge of Liquid Trade Waste to Council's Sewerage System. Submission of detailed hydraulic plans and specifications indicating the size, type and location of pre-treatment devices and full details of drainage installations in accordance with AS 3500 shall be submitted to Council for approval along with a Liquid Trade Waste Application Form and all required information required therein."***



Response:

As indicated in Table 3 of the Modification Report (DAC Planning Pty Ltd, September 2015) Condition 99 is proposed to be deleted as it is not relevant to the amended project. However, the proponent has no objection to the inclusion of Items i) to iii) above as a new Condition 99.

***"Insert after Condition 108***

***108a. Details of the kitchen exhaust system are to be provided and approved prior to release of the Construction Certificate if required. Such details are to include the location of discharge to the air, capture velocity, size and hood and angle of filters. The system shall comply with AS1668.2 - Ventilation Requirements."***

Response:

The proponent has no objection to proposed Condition 108a.

***"Insert after Condition 113***

**General**

- i) All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).***
- ii) The developer/contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times."***

Response:

The proponent has no objection to inclusion of the above in the Advisory Note.

**Ecology Matters**

***"The application should specifically address the current approvals and management plans and relate this application to those approvals including the EPBC Approval Conditions. Any surveys and desktop analysis should focus on any changes in the physical, ecological or planning conditions that may affect the site since the previous approvals."***

Response:

There is no need to revisit the Management Plans because Condition 39 of the Project Approval requires all Environmental Management Plans to be revised. Any changes to the Environmental Management Plans required as a result of the current modification will be addressed in the revised plans required under Condition 39. The EPBC Approval only deals with the Koala and Wallum Sedge Frog. An amended Environmental Management Plan for these species, incorporating the requirements of both the EPBC Approval, Major Project Approval 08\_0194 and Concept Plan Approval 06\_0118 is currently being prepared as part of MP08\_0194 MOD 4 (reconciliation of EPBC and MP/CP conditions).

There have been no changes in the physical or ecological conditions that may affect the site since the previous approval. Current planning requirements are addressed in the MOD 3 Report (DAC Planning Pty Ltd, September 2015).

***"The current application does not appear to:***

- Acknowledge the Preliminary Determination by the NSW Scientific Committee to list the Tweed Coast Koalas as an Endangered Population under the Threatened Species Conservation Act (1995)."***

Response:

The Preliminary Determination is acknowledged in the Revised Koala Plan of Management currently in preparation.

- Acknowledge the draft Tweed Coast Comprehensive Koala Plan of Management which will apply to lands surrounding the site."***

Response:

The Tweed Coast Comprehensive Koala Plan of Management (TCKKPO) is acknowledged in the Revised Koala Plan of Management currently in preparation. The TCKKPO has not been approved by the Department of Planning and Environment under SEPP44 at this stage.

- Acknowledge the Kings Forest Koala Plan of Management."***

Response:

See comments above regarding the Revised Koala Plan of Management.

- Acknowledge the EPBC Act approval."***

Response:

The EPBC Act Approval is acknowledged in the Revised Koala Plan of Management.

- Acknowledge the numerous environmental management plans that apply to the site."***

Response:

There is no need to acknowledge the numerous Environmental Management Plans that apply to the site as they will continue to be required (and revised) pursuant to Condition 39.

***"The outer 20m of the 50m ecological buffer appears to be nominated for car parking and bushfire asset protection which appears contrary to the approved Preferred Project Report which locates these uses outside of the ecological buffer. As a consequence of this the proposed koala exclusion fencing is now located 20m inside the ecological buffer contrary to PAC condition 46 which specifically requires such fencing to be located on the outer edge of the 50m buffer. The application provides no justification for this, incorrectly stating that: This proposed modification maintains the approved strategies of the Koala Plan of Management for Kings Forest excluding Koalas from the development footprint area and positions boundary fencing in the previously approved locations.(See p 15 of Modification Report)."***

Response:

Condition 46 of the Project Approval, as modified, is relevantly in the following terms:

Koala Infrastructure

1.

- (4) Precinct 1 fauna exclusion fencing should be sited at the outer edge of the 50m ecological buffer,

We **attach** the Koala Exclusion Fencing Location Plan, (Planit Consulting, 05/15) which shows the fencing on the outer edge of the 50m ecological buffer.

We also **attach** amended Architectural Drawings (Push, 12 Sheets) showing the fence on the outer edge of the 50m ecological buffer. The amended plans are consistent with Condition 46(4) of the Project Approval.

### **Environmental Health**

***"The assessment should specifically consider:***

- Underground Petroleum Storage System and the risk assessment required for such facilities."***

#### **Response:**

The Multi Level Risk Assessment at Appendix R includes an appropriate risk assessment.

***"• Acid Sulfate Soils and Dewatering - The dewatering plan has not demonstrated the consideration of investigations required by condition C10 of MP06\_0318 nor Condition 17 of MP08\_0194. The plan has not considered any noise nuisance impacts of dewatering operations on residents to the west of the subject site. The Plan states that aluminium was elevated and did not meet discharge criteria however provides for an off-site discharge option that does not address aluminium treatment."***

#### **Response:**

See Dewatering Management Plan at Appendix Q of the Environmental Assessment Report (prepared by HMC).

Concept Plan 06\_0318, Condition C10, requires an Acid Sulphate Soils Assessment prior to the issue of a Construction Certificate. Major Project Approval 09\_0194, Condition 17, requires an Acid Sulphate Soils Management Plan prior to the issue of a Construction Certificate.

In addition, an Acid Sulphate Soils Assessment for Kings Forest Stage 1 (Gilbert & Sutherland, July 2012) was contained at Appendix 20 in the Preferred Project Report for Major Project Application No. 08\_0194. That Report addressed acid sulphate soils for the whole Kings Forest Stage 1 development, including Precinct 1.

In the circumstances, it is considered that Conditions C10 and 17 are not applicable and that acid sulphate soils have been adequately addressed.

We also **attach** a copy of a revised Dewatering Management Plan (HMC, December 2015) addressing Council's concerns in relation to noise nuisance including typical acoustic treatments (Section 8.6), impacts of dewatering and aluminium criteria (Section 8.5.1).

***"• Amenity/Noise - It is noted in the Consolidated Project Approval at A12. (1) that the approval does not give approval to the first use of the rural supplies building in Precinct 1. The condition would therefore need to be amended."***

#### **Response:**

See Table 3 of the Modification Report. Condition A12 is proposed to be amended for the reasons identified in the table.

***"Suitable conditions that should be imposed if the application were to be approved include:***

***GEN – Service Centre***

***The development shall be carried out in accordance with the provisions of Section 6 – Recommended Acoustic Treatments of the Environmental Noise Impact prepared by CRG Acoustics dated 21 September 2015.***

***PCC Service Centre***

- ***The carwash is to be constructed with solid walls and a solid roof. The carwash is to also have the installation of automatic doors. These doors should provide more than 15 dB noise reduction.***
- ***Drainage grates over trafficable areas be well fixed to avoid rattling when a vehicle passes over the grate.***
- ***Mechanical plant be designed and installed to comply with the noise criterion presented in Section 4. As final plant requirements are not known at this stage, additional acoustic assessment/s should be undertaken prior to Commencement of Use to confirm acceptable noise levels have been achieved; and be conditioned within the Development Approval. Based upon the assumed plant noise source levels, acoustic screening to the western dwellings is likely to be required such as locating plant on the eastern side of the service station building envelope; or incorporating acoustic barriers / enclosures at roof-top plant."***

**Response:**

The proponent has no objection to conditions of consent as proposed above.

***"USE – Service Centre***

- ***The car vacuums be limited to 7am and 10pm, or a further assessment be undertaken to review restriction of use once actual plant is selected.***
- ***Goods delivery (including fuel delivery) be limited to 7am and 10pm.***
- ***Waste collection be limited to 7am and 6pm Monday to Saturday"***

**Response:**

The proponent has no objection to conditions as proposed above.

***"Lighting - Retain existing condition 104"***

**Response:**

The proponent does not propose modification or deletion of Condition 104.

***"Food Premises New Conditions***

- ***Prior to the construction certificate being issued copies of 3 plans drawn to a scale of 1:50 detailing the following with regards to all food related areas shall be submitted to Tweed Shire Council for assessment and approval, on the approved form and accompanied by the adopted fee:***
  - a) ***Floor plan***
  - b) ***Layout of kitchens and bar showing all equipment***

- c) All internal finish details including floors, wall, ceiling and lighting
- d) Hydraulic design in particular method of disposal of trade waste
- e) Mechanical exhaust ventilation as per the requirements of AS1668 Pts 1 & 2 where required
- f) Servery areas including counters etc.

**Any premises used for the storage, preparation or sale of food are to comply with the NSW Food Act 2003, FSANZ Food Safety Standards and AS 4674-2004 Design, construction and Fit-out of Food Premises."**

Response:

The proponent has no objection to a condition of consent as proposed above.

**Planning**

**"It is noted that the Concept Approval MP06\_0318 has been amended to accommodate food and drink premises.**

**The Department should consider the following matters as part of their assessment:**

- **The visual implications of the proposed development on Tweed Coast Road;**
- **The visual implications of signage and lighting associated with the facility;"**

Response:

See the Statement of Landscape Intent at Appendix B and the Visual Impact Assessment at Appendix E of the Planning Report. Section 5.2.4 of the Planning Report also addresses these issues. In summary, the Report concludes that the proposal will not have significant adverse visual impacts.

**"• Tweed DCP Section B9**

**Historically, Council has attempted to retain the existing vegetated setting along Tweed Coast Road, with the Casuarina and Salt developments originally being shielded from Tweed Coast Road with significant vegetation where possible.**

**This position strategically emanated from Tweed Shire 2000+ Strategic Plan which stated that Greenbelts will be provided by conserving open space between South Kingscliff and Bogangar and maintaining agricultural zones over land between Cudgen and Kingscliff and between Kingscliff and Kings Forest/Kings Beach (Policy and Action 117)**

**Tweed DCP Section B9 endorsed this Policy and Action by encouraging the establishment and management of green belts to identify and contain urban areas.**

**The DCP states:**

**B9.7.9 Protected Green Belt**

**The character of the Tweed Coast includes urban areas surrounded by open countryside. There are no continuous stretches of significant urban areas. This character will be continued with future urban release areas with each one being separated from other urban areas. It is essential that this character be retained.**

**To achieve this the Strategy addresses two inter-related issues**

- **the identification of the land to be set aside as green belt, and**
- **the uses such land may be put to.**

**B9 - Map 2 indicates that the land currently separating urban areas includes a wide range of landscapes, environments and zones, but all of which collectively add up to a significant asset which separates each of the District settlements and contributes to their individual character. Much of this land is already set aside for special attention - flood liable land, prime agricultural land, habitat etc. What is required is a framework to ensure that it collectively fulfils the function as a green belt.**

**The protected green belt incorporates land zoned 'Open Space', 'Environmental Protection' and 'National Parks and Nature Reserves' under Tweed LEP 2000. This includes the entire coastal foreshore of the district, the majority of the Cudgen Creek riparian zone and extensive wetlands and areas of native forest.**

**The green belt maintains the natural character of the coastline and provides physical and visual separation between towns. It provides for significant recreational opportunities for residents and tourists alike and ensures public access to the entire coastal foreshore. The green belt also has an important biological function by protecting significant coastal wetlands and forests and significant parts of the catchment area of Cudgen Creek and Cudgen Lake.**

**The integrity of the Protected Green Belt will be maintained by such measures as:**

- **Ensuring infrastructure for adjoining urban areas is only located there if there are no other suitable locations;**
- **Protecting its visual characteristics which help to define the character of urban areas;**
- **Encouraging appropriate land uses.**

**The recommended Basis for Draft Tweed Coast Structure Plan includes Clause B9.7.9 Protected Green Belt. It emphasises that the Green Belt has essentially been defined by the environmental values and resources of the area: significant vegetation, wetlands and prime farmland. The significance of the use of the green belt is that it is not an independent policy layer as such but a concept which brings the protection of the environmental resources together under the one collective banner to ensure the containment and separation of coastal communities, thereby assisting in the definition of their individual character. Its integrity is to be maintained by a number of measures set out in Section 9.3 of the Discussion Paper.**

**It is recommended that these elements of Section B9 be addressed in more detail in the assessment of the current application.**

**An extract from Map 2 is as follows which shows the intended green belt along Tweed Coast Road:" (Map not reproduced)**

Response:

The Project Approval and any modification of it continues to be governed by the terms of Part 3A of the Environmental Planning and Assessment Act 1979 (**the Act**), as preserved by Clause 3(1) of Schedule 6A of the Act.

As a result, the Minister's delegate is not bound by any Development Control Plan: *Moorebank Recyclers Pty Ltd v Liverpool City Council* (No 2) [2013] NSWLEC 93 [114].

The paramount land use planning document for the site is the Concept Plan Approval. The designation of the site as 'employment land' is clearly the key consideration and any contrary provisions in the Development Control Plan should not be given any weight.

As the Land and Environment Court said in a Part 3A case where a similar issues was argued: 'Put bluntly, the horse has bolted. ... [T]he proper time for [such] broad consideration ... was when the (then) Minister approved the broad concept plan for development ...': *Lend Lease Communities (Australia) Limited v Minister for Planning and Infrastructure, Shellharbour City Council and Wollongong City Council* [2013] NSWLEC 1153 [66]-[67]

However, even if there were no Concept Plan Approval in place, the provisions of the 'green belt' provisions of the DCP would have no effect in any event.

This is because the land is zoned (2)(c) Urban Expansion under the SEPP (Major Development) 2005. Any 'green belt' designation is inconsistent with this zoning. Section 74C(5)(b) of the Act says that any provision of a Development Control Plan that is inconsistent or incompatible with a provision of an Environmental Planning Instrument has no effect.

In addition to the above, we note that the report to Council's Planning Committee Meeting on 5 November 2015, at Item a10, in relation to the Kings Forest Concept Plan 06\_0318 MOD 5 to facilitate approval of food and drink premises in Precinct 1, contains a detailed assessment of B9.7.9 Protected Green Belt and concludes that:

"An extract from Map 2 is as follows which shows the intended green belt along Tweed Coast Road:



The green corridor along Tweed Coast Road has been interrupted with the State Government Approval for the Casuarina Town Centre which incorporated a new Coles Development on the corner of Tweed Coast Road and the newly erected traffic lights at Grand Parade as established vegetated that had shielded the development from Tweed Coast Road has now been removed.

Furthermore, the rezoning of Kings Forest under the Major Project SEPP 2005 authorised that part of Kings Forest on the eastern side of Tweed Coast Road to be used for development purposes when the earlier Tweed DCP Section B9 indicated a preference for this part of Kings Forest to be environmentally protected.

Given this re-zoning and the Department of Planning's ultimate approval of the Kings Forest Concept Plan, The Kings Forest Development Code and the Kings Forest Project Application which have all allowed development (specifically a rural supplies building) on the eastern side of Tweed Coast Road, no objection is raised to the definition of food and drink premises being incorporated into the land use matrix table for the employment land areas.

Any possible merit issues associated with changing the approved rural supplies building into another land use (possibly service station with food outlets) would be assessed on its merits as another matter, as the Modification currently before the Council is a strategic exercise to change the adopted Kings Forest Development Code to allow a new use to be permissible."

We further note that Council Officers recommended that:

"Council raises no objections to MOD 5 to the Kings Forest Concept Plan (Council Reference GT1/51 Department's Reference MP06/0318 MOD 5) to enable food and drink premises to be considered on merit as permissible land uses within the "employment land" areas of Kings Forest."

The recommendation was adopted by Council (Minute No. 589).

In light of the Assessment, Recommendation and Council Decision in relation to the Concept Plan MOD 5, it is inappropriate for Council Officers to be again raising the "Protected Green Belt" issue in respect of Major Project Application No. 08\_0194 (MOD 3) for the very same reasons that they were dismissed in respect of the Concept Plan MOD 5. That is to say, the 2006 rezoning of the Kings Forest site rezoned that part of Precinct 1 on which the service station and food and drink premises are proposed to 2(c) Urban Expansion.

A Concept Plan has been approved over the site which designates the site as "employment land". A Development Code has been prepared and approved pursuant to the Concept Plan which envisages a range of employment generating uses for Precinct 1.

Major Project Approval No. 08\_0194 has been issued by the Department of Planning and Environment for a "rural supplies" development on the subject land with essentially the same site footprint as is now proposed for the service station and food and drink premises. Clearly, previous zoning decisions and Project Approvals have given no weight to the green belt concept and clearly it cannot now be implemented.

### **Waste**

**"The Waste Management Plan for the service station states that construction waste will be managed under existing provisions for this development application.**

**Waste and recycling for the service station will be serviced by a number of bulk bins that are considered suitable for this type of development."**



Response:

The comments are noted.

**Water & Sewer TSC is the Water Authority**

**"The following consent conditions are recommended:**

**MP08\_0194 Part 3 Prior to Issue of Construction Certificate**

- # **The size and shape of the site shown on the drawings is considered preliminary and may need to vary on the basis of the final design of the sewer pumping station.**
- # **The designs shown are considered preliminary and sufficiently more information is required to obtain a Construction Certificate for the Water Supply and Sewerage works.**

**MP08\_0194 Part 3 Prior to Issue of Occupation Certificate**

- # **A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council. Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 64 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.**

**Based on the detail/plan submitted the following water and sewer contributions would be applicable.**

Description	Unit/Area	kL/a	Water Rate	Sewer Rate	Water ET	Sewer ET
<b>Stage 1</b>						
Car Wash	1		5.7	9	5.7	9
Dog Wash*		584,000			2.5391	4.1714
Service Station	8		0.6	0.9	4.8	7.2
Tenancies	795m2		0.008	0.013	6.36	10.335
Roof Lounge	62		0.008	0.013	0.496	0.806
<b>Sub Total</b>					<b>19.8951</b>	<b>31.5124</b>
<b>Stage 2</b>						
Truck Bowers	2		0.6	0.9	1.2	1.8
<b>Grand Total</b>					<b>21.0951</b>	<b>33.3124</b>

**\*Dog Wash Bay - assume 50L per dog, 4 dogs per hour 8 hours per day**

**Water currently \$13,128 per ET  
Sewer currently \$6,307 per ET"**

Response:

The proponent concurs with the ET calculation methodology for all elements of the project with the exception of the Dog Wash Bay. We consider that the assumptions are excessive and that a more realistic scenario is 30ltr per day, 2 dogs per hour, 8 hours per day (ie. 175,200KL/a).

Alternatively, rather than paying headworks contributions based on assumed consumption/discharge, the proponent would accept a condition of approval requiring a water meter to be installed at the Dog Wash Bay, with headworks payable based on actual consumption.

### **Traffic**

***"A revised traffic impact assessment (TIA, Appendix C of the application) has been provided by the applicant's consultants. On review, this revised report has satisfactorily addressed the previous comments and concerns. As such, the service station / food and drink premises development has been demonstrated to have manageable impacts on peak traffic volumes on Tweed Coast Road and related intersections and driveway accesses; have adequate carparking, service and delivery areas and manoeuvring to allow for forward entry and egress; and addresses existing consent conditions associated with the Kings Forest development and assessment of traffic impacts on the TSC road network. If unforeseen traffic impacts are seen to occur once the service station is operating, and with increased traffic generation from Kings Forest residential precincts, further road and/or intersection upgrade works can be conditioned through later precinct DAs.***

***Modifications to the existing conditions as proposed in the application are supported, and generally change the approved land use from "rural supplies" to "service station / food and drink premises". Section 94 contributions (TRCP) will need to be updated to reflect the revised traffic generation as outlined in the TIA if the Department want to approve the application.***

***One additional condition is recommended, as the TIA assumes that the development will not be operational until adequate road infrastructure to service has been constructed. This condition will ensure that the service station development cannot proceed out of sequence, and impact on Tweed Coast Road and nearby residences:***

#### **MP08\_0194 Part 3 Prior to Issue of Occupation Certificate**

- # The service station / food and drink premises shall not be operational until the following road infrastructure works are completed and open to traffic, as described in Bitzios Consulting "Kings Forest Service Station Traffic Impact Assessment" (Project No. P1745, Version 002, 22 September 2015):**
- a) Widening and construction of a dividing median and turning lanes on Tweed Coast Road in the vicinity of the development site, and**
  - b) Construction of a two-lane roundabout at the intersection of Tweed Coast Road and Kings Forest Parkway."**

### **Response:**

Comments noted. The proponent has no objection to the proposed condition above.

### **Stormwater Management**

***"The application includes a stormwater management plan (Appendix O) and engineering report (Appendix K). The proposal is to pipe runoff from the site to a stormwater line running down Tweed Coast Road and then discharging to Cudgen Creek. It is proposed to treat stormwater via garden filter beds and a proprietary end of pipe treatment device.***

**Subject to detailed design, modelling confirmation and a separate s68 application prior to construction, this approach is acceptable. However the drawings submitted with the stormwater management plan show the treatment device located on the future regional sewer pump station site (WGM Consulting Drawing No.J049.0002.A). The design needs to be amended to remove all private stormwater infrastructure from this pump station site. The treatment device must be located on private land, and be maintained by the landholder in perpetuity. A consent condition is recommended to enforce this requirement.**

#### **MP08\_0194 Part 3 Prior to Issue of Construction Certificate**

- # No private stormwater infrastructure is to be located within the land to be dedicated to Council as the site of the regional sewer pump station. The proposed stormwater treatment device must be located wholly within the development site, and must be maintained in perpetuity by the landholder in accordance with manufacturer's specifications and as required to meet Council's stormwater quality objectives."**

#### Response:

WGM Consulting has prepared a revised Stormwater Management Plan (Version 2, 1 December 2015), a copy of which is **attached**. The amended Plan removes stormwater infrastructure from the proposed sewer pump station site.

#### Engineering

- "• No information has been provided on the proposed height and location of the proposed retaining walls and batters for the site."**

#### Response:

Mortons Urban Solutions report of May 2015 indicates that walls may be utilised at the interface of the petrol station and any vegetation that may need to be retained. Drawing 12301-SK061 (Amend A), provides cross sections of earthworks proposed in Drawing 12301-SK060A (Amend B) (copies **attached**). These drawings nominate that no retaining is required. Levels of existing earthworks and Finished Service Station levels are nominated at the bottom of the cross sections shown to show if the areas are in cut or fill and the overall height of these works.

- "• Further detail was requested on the proposed cut & fill for the development. This has not been provided and the engineering report prepared by Mortons dated 5 May 2015 provides the same information as lodged in February for the 'Test of Adequacy'.**
- No calculations have been provided to show that the balance of cut and fill can be contained on site. Therefore it is not known if imported fill is required from another location to make up the balance on site or if excess fill is required to be removed from site."**

#### Response:

The amended Mortons Urban Solutions Cut and Fill Plan (12301-SK-060B) nominates the total cut volume for the site, the total fill volume for the site and the amount of import required. We note that the actual cut to fill will vary depending on compaction rates and depth of proposed pavement structure. The pavement structure can only be determined once subgrade material testing can be performed during the physical construction of the site.

We **attach** the amended Drawing No. 12301-SK-060B, Amend B, 1 December 2015 – Kings Forest Precinct 1 Cut and Fill Plan.

- “• A geotechnical assessment of the site is required to determine the depth of topsoil and unsuitable material as specified in the Mortons engineering report lodged with the application.
- No geotechnical report has been provided, therefore the following condition is recommended for the proposed service station;

# Prior to the issue of a Construction Certificate, a Detailed Geotechnical Investigation shall be undertaken by an appropriately qualified practising professional Geotechnical Engineer, unless considered unjustified by the Geotechnical Engineer and supported in writing and endorsed by Council or the PCA.

*The investigation shall identify any areas of compressible clay materials, loose sands, landslip, subsidence or reactive soil profiles which may impact on construction or building activities. If unsuitable materials are identified the investigation shall provide recommendations such as a preloading or other forms of treatment necessary to achieve surface movement (ys) rates consistent with a site classification M as defined by AS 2870 (current version). All consolidation resulting from preloading shall be monitored by settlement plates or detailed survey to determine consolidation/settlement characteristics.”*

Response:

The proponent has no objection to a condition of approval generally in the terms above proposed by Council.

The Department is requested to consider this response in assessing Council's submission.

Please do not hesitate to contact Darryl Anderson should you require any further information in relation to this matter.

Yours faithfully  
DAC Planning Pty Ltd

  
Darryl Anderson  
Director

Encl.



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ANNEXURE B

Copy of Response from Allen & Associates Dated 24 December 2015 to DPI  
Submission



Allen & Associates  
209 Ballina Road  
Alstonville NSW 2477

P: 0416 241 513  
E: jallen@agrimac.com.au

ABN 14 625 275 025

24<sup>th</sup> December 2015

### **Kings Forest Project Approval MP08\_0194 MOD 3**

Dear Darryl,

Thankyou for your email relating to the NSW DPI letter dated 17<sup>th</sup> November 2015 requesting more information or clarification in regard to the LUCRA for the Kings Forest Project.

The concerns appear to specifically be in relation to the adequacy of the proposed buffer in the context of land use conflict avoidance. The proposed buffer is a combination of:

- 2.5 metre colourbond fence – to be erected by the owner/operator of the service station along the Site's northern boundary.
- Planting of a combination of tall evergreen trees (average of 15 metres height) and dense hedge along the southern side of the 2.5 metre colourbond fence.
- Spatial separation including vegetation zones and open spaces (farm access road, intervening area between the fence and bowser parking) and;
- 10 metre zone of pre planted vegetation (Wallum) as a fauna corridor within the forestry land and directly adjacent to an existing farm access road that runs along the Site's northern boundary.

The land currently being utilised for a small forestry enterprise directly to the north has the greatest potential for conflict development with the proposed service station in the future.

The NSW DPI notes the project in close proximity to State Significant Farmland and also the potential for land use change over time; that is the possibility that forestry use on the neighbouring land may change to alternative agriculture in the future.

I refer to my original report dated 29<sup>th</sup> September 2013. The soil type within the site is identified as a Podzol soil type.

- Podzols are typically coarse sandy textured soils which have extremely low fertility levels and poor water retention<sup>1</sup> characteristics. They are soils that generally only support plants that are suited to grazing purposes<sup>2</sup>. The soils have a single grained structure which means that they are

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<sup>1</sup> McKenzie, N., Jacquier, D., Isbell, R., and Brown, K. (2004). Australian Soils and Landscapes. An illustrated compendium. CSIRO Publishing.

<sup>2</sup> Charman P.E.V., Murphy B.W. ed (1991) Soils Their Property and Management. A Soil Conservation Handbook for New South Wales, Sydney University Press, Sydney.

extremely vulnerable to the processes of soil erosion (wind and water) when not stabilised by a suitable ground cover. Any tillage of these soils therefore for agricultural purposes would disturb any groundcover that is present resulting in a high soil erosion hazard.

This soil type inherent to the site also extends into the neighbouring forestry land to the north. On the basis of historical air photos it is also believed that the Podzol soil type extends to the north-east into part of that land that is mapped as State Significant Farmland. That is it is the belief of the writer that lower lying lands and some lower slope areas directly to the north and north-east (within the neighbouring property) that are directly adjacent to the site have been incorrectly mapped as State Significant Farmland.

It is acknowledged that land use may change over time. In the case of the land directly to the north and north east it is not believed that any land use in the future will be anything more intensive than the current Forestry operation or alternatively low intensity grazing operations on unimproved pastures. The land principally because of the poor associated soil is quite simply not capable of supporting a State Significant Farmland land use such as intensive horticulture. The soil is naturally infertile and is highly erodible.

It is acknowledged that the 10 metre wide wallum scrub buffer being on the neighbouring property is not a guaranteed component of the long term buffer design. If present it will certainly add to the site's intended buffer zone effect. However and at the same time it is believed that the colourbond fence, tall evergreen trees and dense hedge and zone of spatial separation are in combination sufficient for the purposes of conflict avoidance between the proposed development and existing or future land use/s on the land directly to the north.

The land directly to the north and north east is not capable of supporting a more intensive land use than that which is currently in place. The risk of conflict between this type of land use and those that are non-agricultural in nature is minimal and can be easily avoided with a buffer zone design as per the proposed.

If you have any further enquires in relation to this please don't hesitate to contact me.

Kind regards,



John Allen  
0416241513



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**ANNEXURE C      Aerial Photograph Showing Extent of State Significant Farmland, Date of  
Photograph 2012, Source: Tweed Shire Council**



## Planning

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