

## ASSESSMENT REPORT

Kings Forest, Tweed  
MP 08\_0194 MOD 3

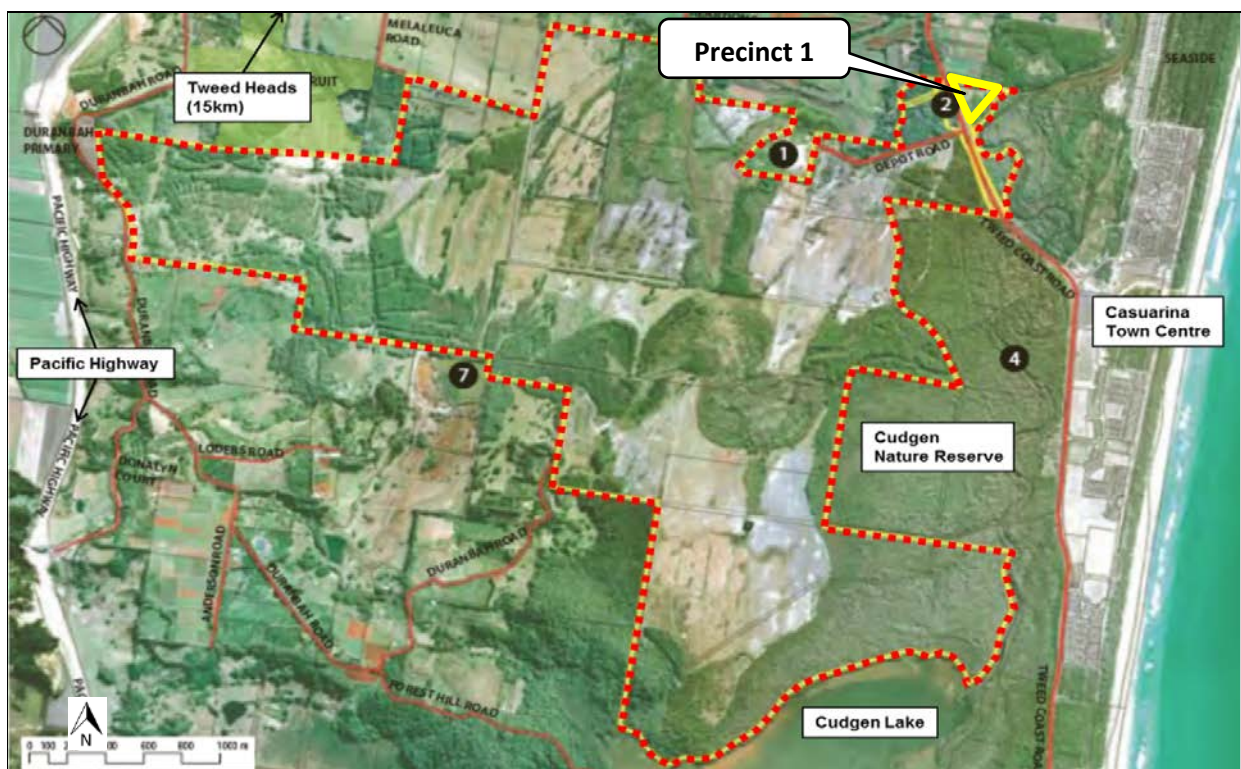
### 1. INTRODUCTION

This report is an assessment of a request to modify the Project Approval (MP 08\_0194) for the Kings Forest subdivision in the Tweed local government area. The request has been lodged by DAC Planning Group Pty Ltd on behalf of Project 28 Pty Ltd (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

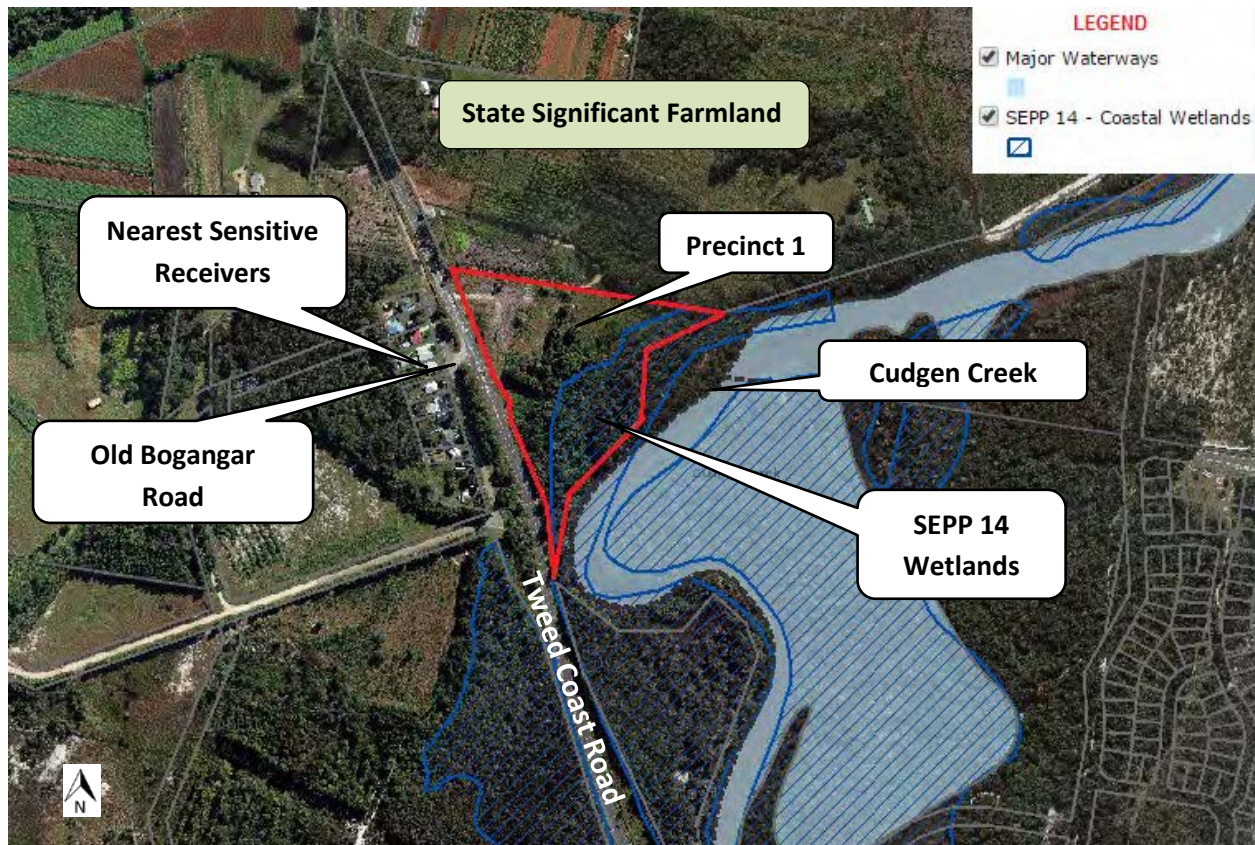
The modification seeks approval to remove the rural supplies building in Precinct 1 and replace it with a service station, a station shop, six food and drink outlets including two drive throughs and an associated dining area, and a car and dog wash. The modification request also seeks approval to remove the 10 metre (m) wide agriculture buffer on the northern boundary of the site.

### 2. SUBJECT SITE

The Kings Forest site is approximately 880 hectares (ha) in area and comprises 19 parcels of land. It is located approximately 15 kilometres (km) south of Tweed Heads, close to the townships of Bogangar, Cabarita Beach and Casuarina. Precinct 1 (the subject site) is surrounded by agricultural and pastoral lands to the north, wetlands protected under *State Environmental Planning Policy No. 14 – Coastal Wetlands* (SEPP 14) to the south and east, and the Tweed Coast Road to the west. The subject site is approximately 7.5 ha in size. The site location and its surroundings are depicted in **Figures 1 and 2**.



**Figure 1:** Kings Forest Project Approval Boundary (red dashed line), with Precinct 1 Highlighted in Yellow



**Figure 2: Precinct 1 and Surrounding Land Uses**

### 3. APPROVAL HISTORY

#### Concept Approval MP 06\_0318

On 19 August 2010, a Concept Plan (MP 06\_0318) for the redevelopment of the site was approved by the then Minister for Planning. The Concept Plan permits:

- residential development for approximately 4,500 dwellings across 24 development precincts;
- the creation of a town and neighbourhood centre with associated employment land, and community and education facilities;
- a golf course, open space, wildlife corridors, protection and rehabilitation of environmentally sensitive land;
- water management areas and a lake;
- a conceptual road, bicycle and pedestrian network; and
- conceptual plans for servicing infrastructure.

The Concept Approval has been modified on five occasions, as summarised in **Table 1** below.

**Table 1: Approved Modifications to Concept Plan MP 06\_0318**

Mod No.	Description of Modification	Approved
MOD 1	Incorporation of the Kings Forest Development Code into the Concept Approval, amendments to the schedule of approved plans and administrative changes to the terms of approval.	22/12/2010
MOD 2	Amendments to the Concept Plan drawings, reduction in the number of precincts from 24 to 14, provision of an east-west wildlife corridor, and modifications to the terms of approval to require the implementation of management plans in perpetuity, and clarify the plans that need to be prepared prior to the dedication of land to Tweed Shire Council.	11/08/2010
MOD 3	Amendments to the conditions of approval and definitions table, extension of the approval lapsing date, and amendments to the precinct specific management plans.	16/05/2014
MOD 4	Amendments to the schedule of definitions and terms B5, B7, C3, C29 (to reflect the amended definitions) and C30 (relating to provision of affordable housing)	20/11/2014



Mod No.	Description of Modification	Approved
	and insertion of the Department's standard dispute resolution clause.	
MOD 5	Amendments to the Kings Forest Development Code to include food and drink premises as permissible uses on employment lands.	10/11/2015

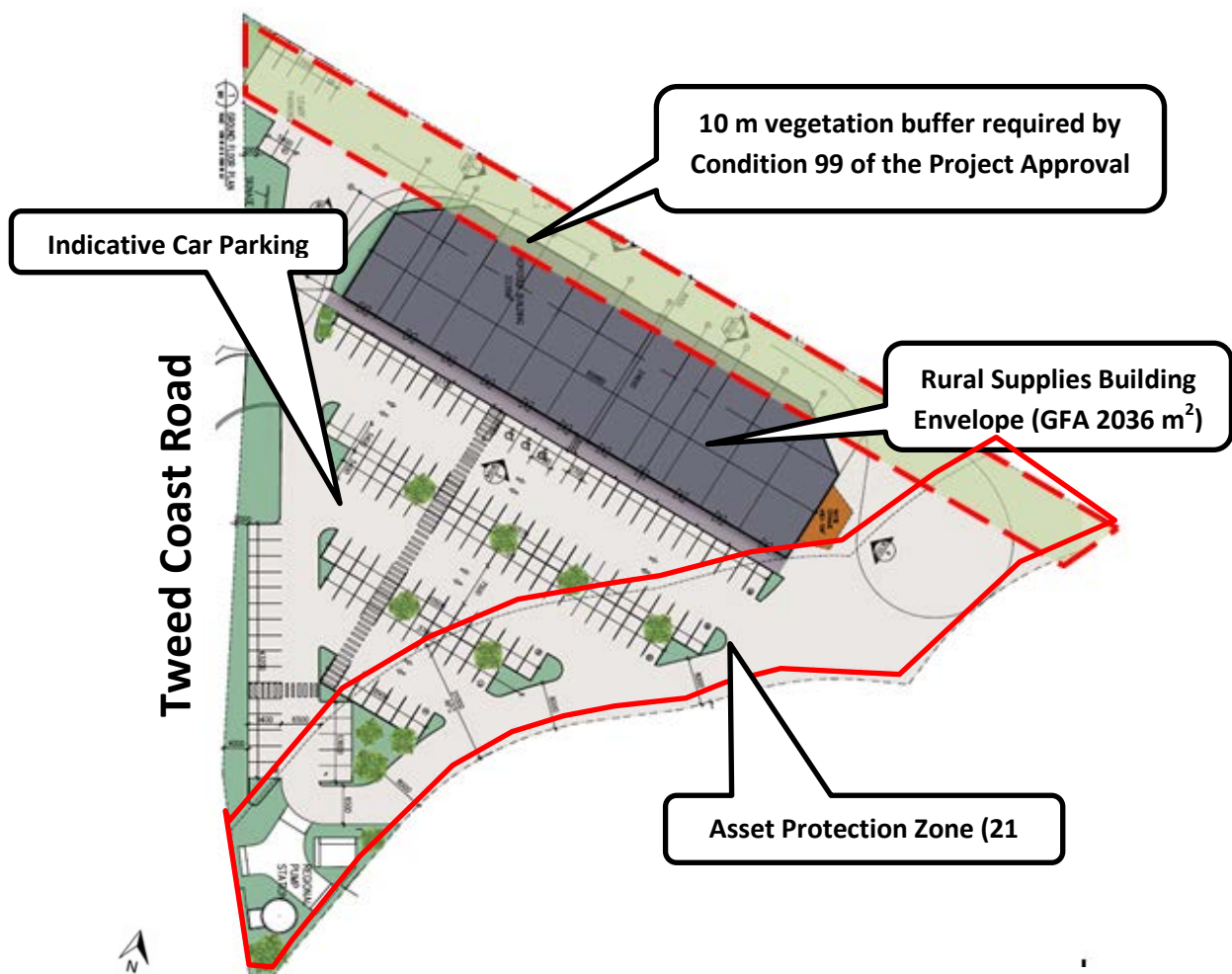
### Project Approval (MP 08\_0194) Stage 1

On 11 August 2013, the Planning Assessment Commission (the Commission) approved MP 08\_0194. The Project Approval permits the following development on the site:

- creation of 10 development lots to be created in four stages;
- subdivision of Precinct 5 into 376 residential lots;
- infrastructure construction works along the Kings Forest Parkway and within precincts 1 and 5; and
- construction of 2,036 m<sup>2</sup> of floor space within Precinct 1 for future use as a rural supplies building with associated car parking and landscaping.

Whilst the project approval permits subdivision works across the site and the construction of 2,036 m<sup>2</sup> of floor space for future use as a rural supplies building, Condition A12 of the Project Approval requires the Proponent to obtain separate development consent for the fit-out, on-going use, hours of operation, car parking and signage for the rural supplies building.

The rural supplies building as it is currently approved is shown in **Figure 3**.



**Figure 3:** Approved Rural Supplies Building

On 16 May 2014, MP 08\_0194 MOD 1 was approved by the Acting Director, Industry, Key Sites and Social Projects. The modification permitted changes to the conditions of approval to extend the timeframes for submitting the environmental management plans, amendments to the weed

management plan, changes to the staging plans for works adjacent to the environmental protection zones, and the inclusion of former Crown reserves into the project area description.

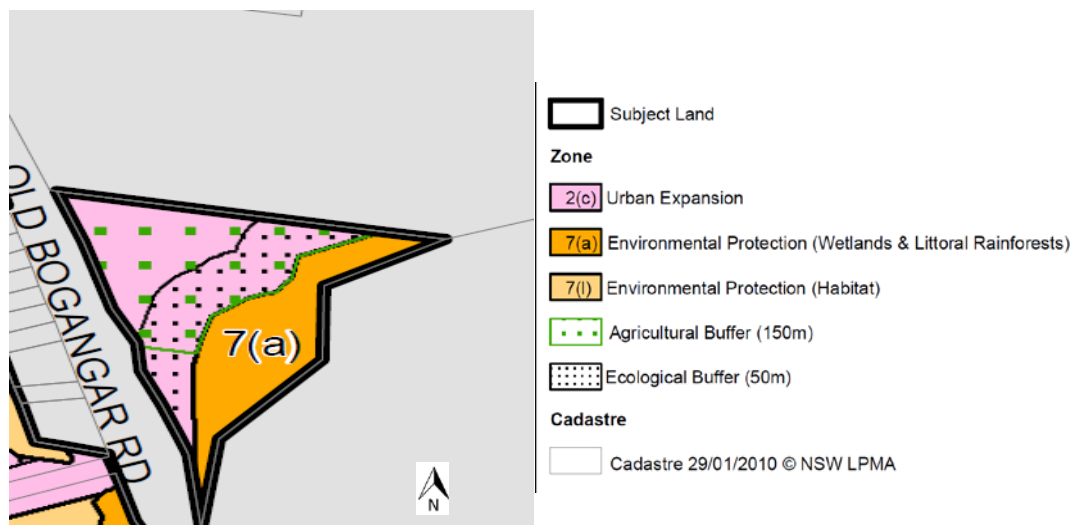
On 20 November 2014, MP 08\_0194 MOD 2 was approved by the Commission. The key changes included:

- revisions to the existing definitions and the insertion of new definitions in Schedule 1;
- changes to the timing of:
  - the planting of Koala food trees;
  - the management of the 'Potential Council Land' and 'Future Office of Environment and Heritage (OEH) Land';
  - the commencement of baseline environmental monitoring;
  - the surveying and delineation of the environmental offset areas, the boundaries of the Cudgen Nature Reserve and the SEPP 14 wetlands; and
  - the submission of audit reports;
- the introduction of a modified process for bond payments;
- changes to the dust mitigation measures; and
- inclusion of a new condition of approval related to dispute resolution.

#### 4. PERMISSIBILITY

##### 4.1 State Environmental Planning Policy (Major Development) 2005 (MD SEPP)

In November 2006, Kings Forest was listed as a State Significant Site within Schedule 3 of *State Environmental Planning Policy (Major Development) 2005* (MD SEPP). In this regard, the subject site (Precinct 1) is zoned 2(c) Urban Expansion and 7(a) Environmental Protection (Wetlands and Littoral Rainforests). In addition, a 150 m agricultural buffer is identified between the 2(c) and 7(a) zoned land. The zoning applicable to development within Precinct 1 is depicted in **Figure 4** below.



**Figure 4:** Zoning of Precinct 1 under the Major Development SEPP

The footprint of the proposed development is wholly within the 2(c) zoned land and the proposed uses (service station, takeaway food and drink premises, and a car and dog wash) are permissible within this zone.

In addition the proposed development encroaches into the 150 m agricultural buffer. In this regard, Part 6, clause 8 of Schedule 3 the MD SEPP requires a consent authority to consider the potential impact of the proposed development on agricultural activities on land adjoining the buffer, and of those agricultural activities on future occupiers of the land within the buffer, and consult with the Department of Primary Industries.

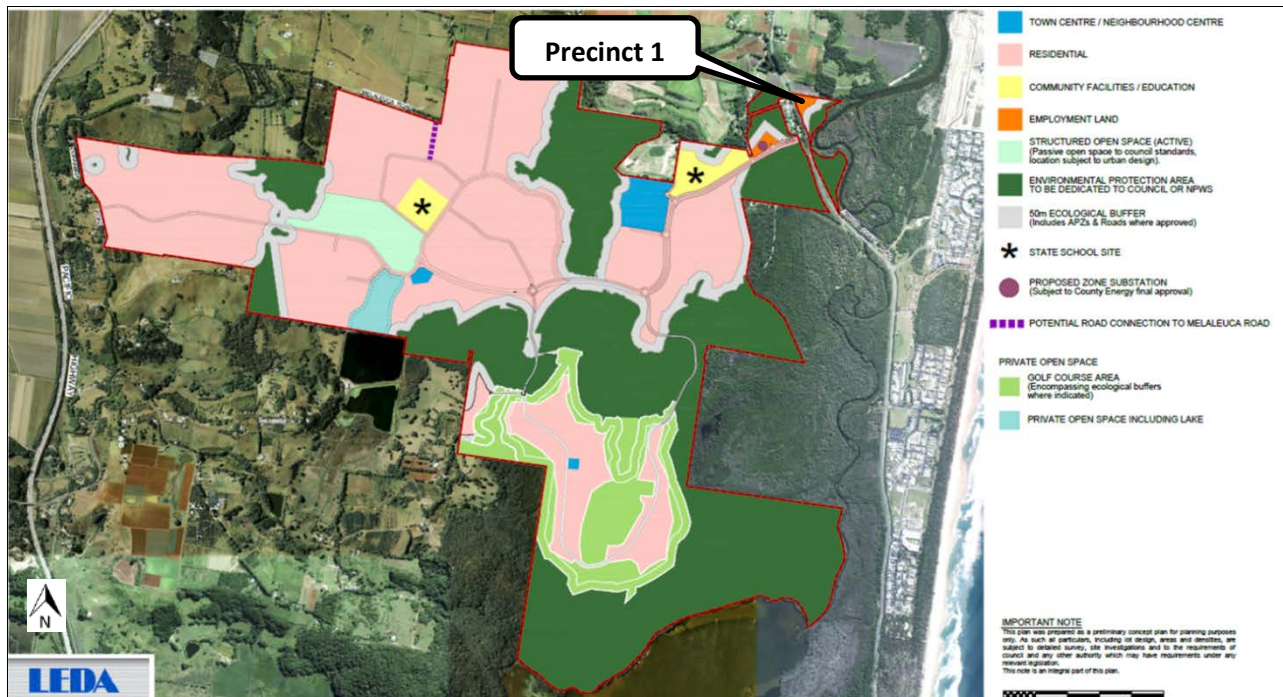
Whilst the modification request is not a 'development application' section 75R of the now repealed provisions of Part 3A specifies that State environmental planning policies (SEPPs) apply to, and in

respect of an approved project. Accordingly, an assessment of the proposed development against the provisions of Part 6, clause 8 of Schedule 3 of the MD SEPP is provided in **Section 8** of this report.

## 4.2 Kings Forest Concept Plan

The Kings Forest Concept Plan, as modified, permits a town centre, neighbourhood centre, school, employment land and golf course uses across the 2(c) zoned land.

As previously outlined, the subject site is located within Precinct 1 which is designated for future use as employment land within the Concept Plan (see **Figure 5** below). Service station and food and drink uses are permitted on employment lands subject to development consent.



**Figure 5:** Land Uses Permitted within Precinct 1 under the Kings Forest Concept Plan

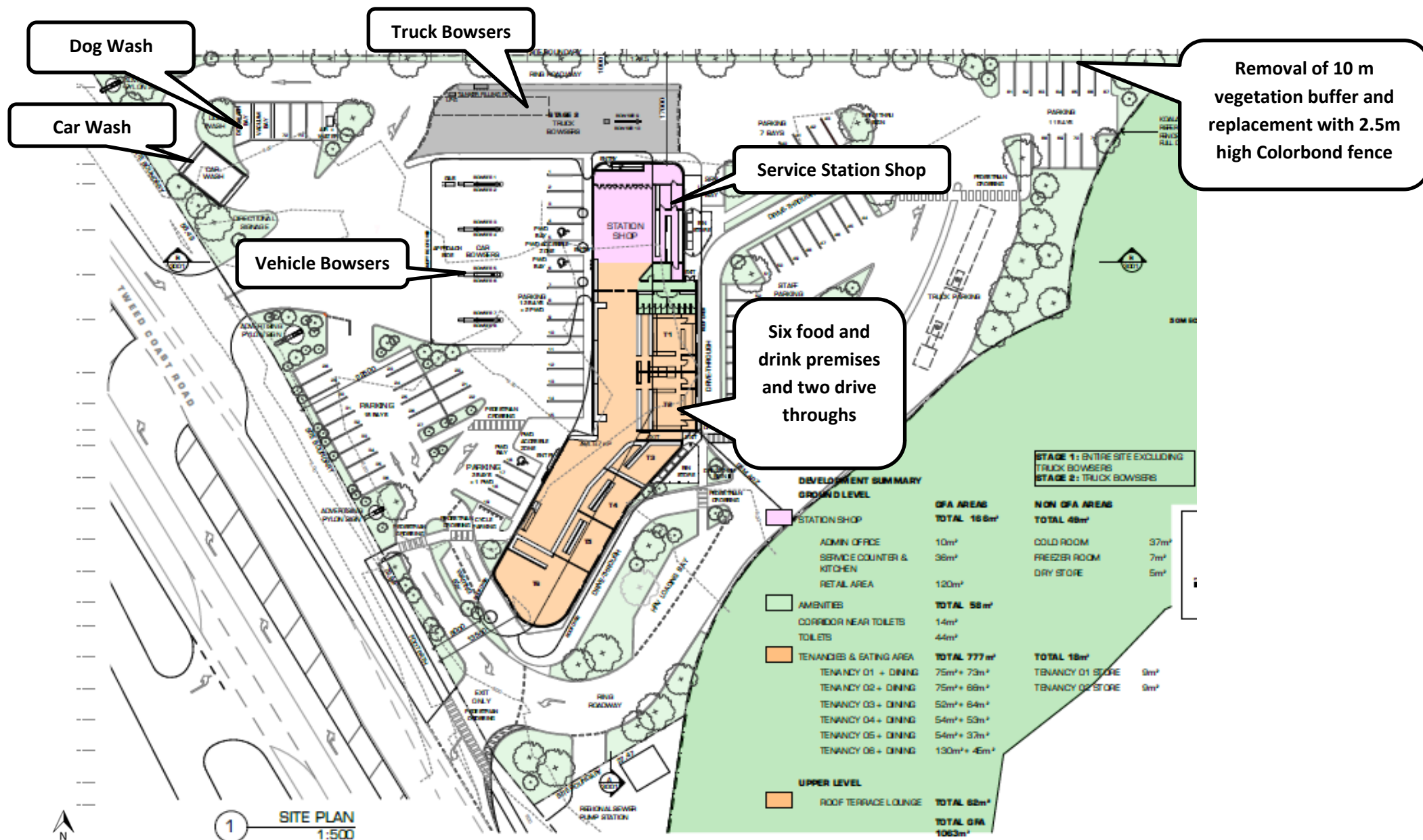
## 5. PROPOSED MODIFICATION

On the 23 September 2015, the Proponent lodged a section 75W modification request to amend the Project Approval to delete the rural supplies building in Precinct 1 and replace it with a service station and food and drink premises, operating 24-hours-per-day, seven-days-per-week. The proposed modification is described below:

- construction and operation of a 1,068 m<sup>2</sup> service station building with eight retail tenancies for future use as takeaway food and drink premises with two associated drive-through facilities and outdoor dining areas (62 m<sup>2</sup> roof terrace);
- a 150 m<sup>2</sup> car and dog wash facility;
- installation and operation of three 110,000 litre (L) underground petroleum storage system (including associated fuel vents up to 4.5 m in height);
- installation and operation of a 30,000 L underground liquid petroleum gas (LPG) vessel;
- dewatering to accommodate the underground storage vessels/systems;
- construction and use of 73 car parking spaces, two loading bays and 14 bicycle parking spaces;
- installation and use of three 7.5 m high pylon signs, one 9.5 m high pylon sign, three fascia signs and two wall signs to service the proposed development within Precinct 1;
- installation of stormwater management infrastructure and landscaping; and
- installation of a 2.5 m Colourbond fence in-lieu of the 10 m wide vegetated buffer.

The proposed development is depicted in **Figure 6** overleaf.





**Figure 6: Proposed Service Station and Food and Drink Premises**

## 6. STATUTORY CONSIDERATION

### 6.1 Section 75W

Part 3A of the EP&A Act, as in force immediately before its repeal on 1 October 2011, and as modified by Schedule 6A to the EP&A Act, continues to apply to section 75W modification requests to Part 3A projects.

The modification request has been lodged with the Secretary pursuant to section 75W of the EP&A Act. The Minister's approval is not required if the project, as modified, remains consistent with the original approval. As the modification request seeks to modify the conditions of the approval to convert the rural supplies building to a service station with associated food and drink premises, the Minister's approval is required.

This report has been prepared in accordance with the requirements of Part 3A of the EP&A Act and the *Environmental Planning and Assessment Regulation 2000* (EP&A Reg). The Minister (or his delegate) may approve or disapprove of the modification of the project under section 75W of the EP&A Act.

The modification request was originally lodged on 23 September 2015, however, following a review of the modification request the Department concluded that it was outside the scope of section 75W and returned the request to the Proponent on 8 October 2015. On 9 October 2015, the Proponent submitted legal advice outlining that there are no statutory provisions available to the Minister to return a modification request because it is outside the scope of section 75W, and as such the Minister must accept and determine the request. After further consideration of the matter, the Department accepted the modification request on 6 November 2015.

### 6.2 Approval Authority

The Minister for Planning delegated responsibility for the determination of section 75W modification requests to the Executive Director, Key Sites and Industry Assessments where:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there are less than 25 public submissions in the nature of objections.

The proposal complies with the terms of the delegation as Council did not object to the proposal, a political disclosure statement has not been made in relation to the modification request, and less than 25 public submissions were received in the nature of objection. Accordingly, the Executive Director, Key Sites and Industry Assessments may determine the modification request in accordance with the Minister's delegation.

## 7. CONSULTATION

The Department made the modification request publicly available on its website on 9 November 2015, and consulted with Tweed Shire Council (Council), the Rural Fire Service (RFS) and the Department of Primary Industries (DPI).

Due to the scope of the modification request the Department also invited comments from adjacent landowners, including residents along Old Bodangar Road between Wednesday 25 November 2015 and Wednesday 9 December 2015.

The Department received submissions from Council, the RFS and DPI. None of the submissions objected to the modification request, however concerns were raised in relation to the proximity of the service station to the State significant farmland, and the proposed location of the Koala exclusion fencing. The Department also received 10 public submissions of objection.

A summary of the issues raised in the agency and public submissions is provided in **Section 7.1** and **7.2**.

## 7.1 Agency Submissions

**Council** did not object to the modification request, however it raised concerns with the location of the Koala exclusion fencing, noise associated with dewatering activities, treatment of potential aluminium in the groundwater, visual impacts on Tweed Coast Road, and public amenity and risks associated with the UPSS. Council also requested floor plans and finishes for the food and drink premises, and further detail to determine whether the proposed development is consistent with the relevant management plans and Commonwealth approvals for the project.

The Council also recommended a number of conditions relating to:

- the engineering and design of the footings, slabs, mechanical plant, car wash and UPSS;
- installation requirements for water, sewerage and stormwater infrastructure;
- design details for the food and drink premises, in particular the location of kitchen exhaust systems;
- noise mitigation treatments and hours of deliveries; and
- development contributions for traffic and the sequencing of road works.

**DPI** did not object however it raised concern that the site is located within close proximity to State significant farmland that is a highly important resource for food production in the North Coast region. DPI also advised that a service station is a significant departure from a rural supplies building and places further risk to nearby agricultural land. In addition, DPI does not support the reliance on the neighbouring property to provide a vegetation buffer.

**RFS** did not object to the modification request and recommended a number of conditions relating to the design of the service station, bushfire management and asset protection zones for the facility.

## 7.2 Public Submissions

The Department received ten public submissions all objecting to the proposal. A summary of the public submissions is provided below.

### Ecology

- impacts on Koala movements associated with increasing the intensity of the development and extending the hours of operation;
- the proposal does not adequately consider the approved Koala Plan of Management;
- the proposed parking is located inside the ecological buffer and as such, the Koala fencing is also located inside the ecological buffer;
- the food and drink premises will attract other fauna looking for food scraps resulting in additional road kill; and
- run-off and spills from the service station will impact on the fish and prawn populations in Cudgen Creek.

### Water Quality

The proposal will result in additional water quality impacts in Cudgen Creek from:

- run-off, spills, and flooding which may result in contaminants entering Cudgen Creek and the SEPP 14 wetlands. This will reduce the water quality in Cudgen Creek and the SEPP 14 wetlands in comparison to the approved project; and
- the impacts of dewatering.

### Amenity and Aesthetics

The intensification of the use will have the following additional impacts:

- traffic impacts for residents on Old Bogangar Road which will result in conflicts for vehicles travelling south along Tweed Coast Road;
- amenity impacts associated with increased noise, odour, dust, light spill and signage;
- roadside litter;



- visual impacts; and
- changes to the rural character of the area.

### Justification

- the proposed service station is not strategically justified as there are already two service stations within a five km radius of the site.

### Agricultural Buffer

- the removal of the 10 m wide agricultural buffer is not supported, and if removed will set a poor precedent for other projects that adjoin State significant farmland; and
- the proposed development does not recognise the on-going farming activities conducted on land immediately adjacent to the site, or the State significance of these agricultural activities.

### Other

- the proposal will reduce property values in the area; and
- the site is located on bushfire prone land and as such, the introduction of fuels associated with the operation of a service station would increase the risk of bushfires in the area.

The Department has considered all issues raised in the agency and public submissions, and the Department's assessment of the key issues is provided in **Section 8** of this report.

## 7.3 Response to Submissions

On 11 January 2016, the Proponent provided a Response to Submissions (RtS) Report. The RtS included revised engineering drawings, a Dewatering Management Plan and a Stormwater Management Plan.

The RtS also included commentary which addressed the following issues raised in the public and agency submissions:

- land use conflicts with the State significant farmland adjacent to the site;
- visual impacts;
- the management of rubbish;
- the odour and air quality impacts associated with the proposed change of use;
- noise impacts associated with the dewatering activities;
- the dewatering impacts of the proposed development and how groundwater will be discharged off-site; and
- hours of operation for car vacuums, delivery of goods and waste collection.

The Proponent also committed to adopting the majority of conditions proposed by the Council and the RFS.

The Department's consideration of the information provided in the RtS is outlined in **Section 8** of this report.

## 8. ASSESSMENT

In its assessment of the modification request, the Department has considered the following:

- the planning report provided to support the proposed modification;
- the Secretary's assessment reports for the original Concept Application and subsequent modification requests;
- the Secretary's assessment reports for the original Project Application and subsequent modification requests;
- the agency and public submissions; and
- the Proponent's RtS.

Based on the above, the Department considers the key issues for assessment are:

- compliance with the requirements of the MD SEPP;
- the intensity of the development and the impacts of changing the approved uses within

Precinct 1; and

- the additional environmental impacts associated with the modification request.

### 8.1 Compliance with Part 6, Clause 8 of Schedule 3 of the MD SEPP

The modification request seeks approval to delete the rural supplies building located within Precinct 1 and replace it with a service station with associated food and drink premises and car and dog wash facilities. As previously outlined, the proposed development is located within the 150 m agricultural buffer identified in the MD SEPP.

The modification request includes a Land Use Risk Assessment (LURA) and Supplementary LURA prepared by Allen and Associates which assesses the potential land use conflicts associated with changing the use of the rural supplies building within Precinct 1 to a service station, and removing the 10 m wide vegetation buffer adjacent to the northern boundary of the site. The LURA concludes that:

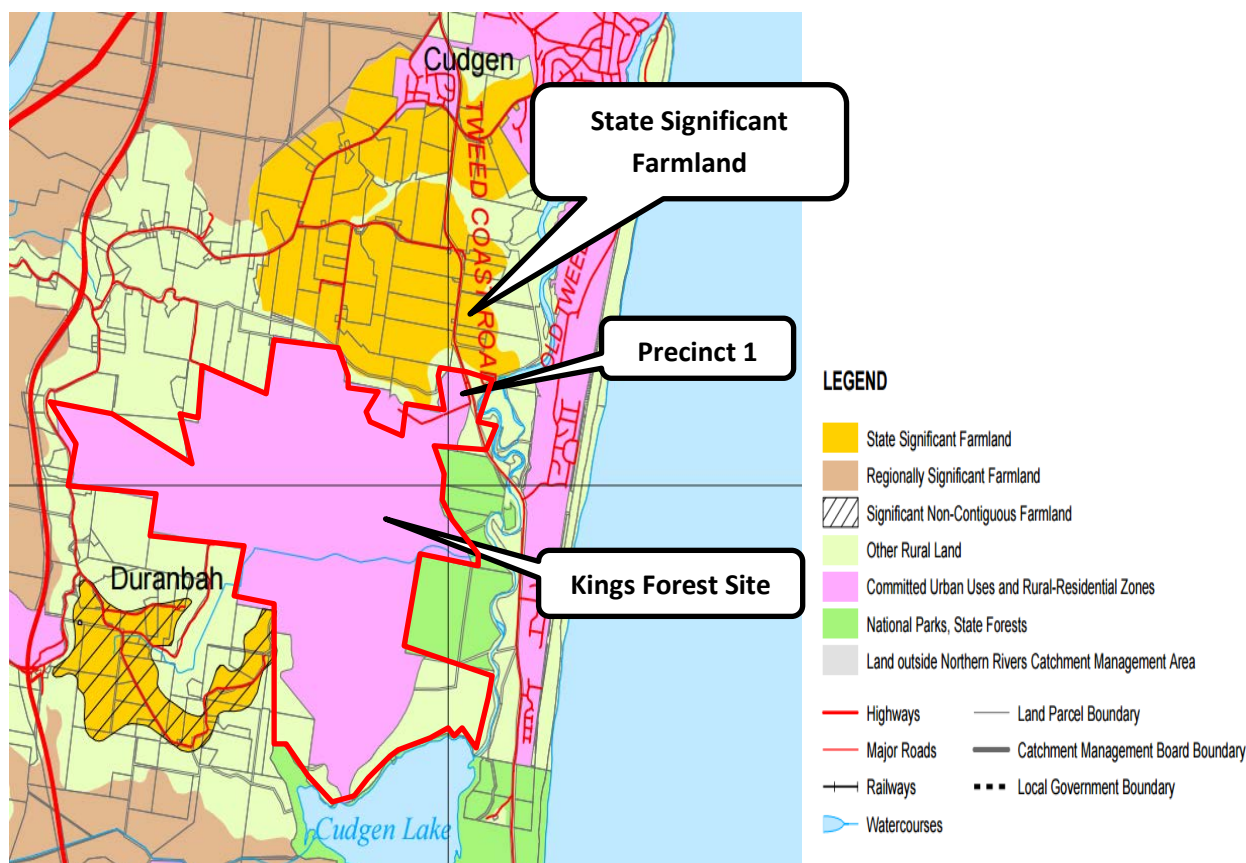
- the operation of the service station will have no impact on the adjacent State significant farmland;
- the State significant farmland has been incorrectly mapped, as the soil north of the site is comprised of Podzols which are infertile and highly erodible and are therefore incapable of supporting State significant farmland;
- the forestry operations adjacent to the site are small scale; and
- the forestry enterprise only uses spot spraying to apply herbicides/pesticides and as such spray drift from the adjacent agricultural lands will be negligible.

Part 6, clause 8 of Schedule 3 of the MD SEPP prevents a consent authority from consenting to development on land within an agricultural buffer unless it has:

- considered the potential impact of the proposed development on agricultural activities on land adjoining the buffer, and of those agricultural activities on future occupiers of the land within the buffer; and
- consulted with DPI.

The Department has considered the potential impacts of the proposed development on the on-going agricultural activities on the land to the north of the site, as well as the impacts of these activities on the future occupiers of land within the 150 m agricultural buffer. In addition, the Department consulted with DPI who advised that:

- the land adjacent to the site has been identified as State significant farmland in the *Northern Rivers Farmland Protection Project 2005* as the soil type and climatic conditions will support sub-tropical horticulture within the North Coast region (see **Figure 7**);
- the removal of the 10 m wide vegetation buffer is not supported as it is not appropriate to rely on vegetation on the adjoining site to manage the impacts of spray drift given the site is currently used for agricultural purposes (forestry). The intent of the buffer is to provide for the on-going use and protection of State significant agricultural land, as well as future changes to agricultural practices and/or uses on this land; and
- whilst it could not confirm that the soils on the adjacent farmland are Podzols, the land currently supports important agricultural activities and as such an appropriate buffer should be provided to manage any potential land use conflicts.



**Figure 7: Location of State Significant Agricultural Land**

The Department has reviewed the Proponent's LURA as well as the comments provided by DPI and considers that:

- the Kings Forest Concept Plan permits development within the 150 m agricultural buffer, however, all future developments need to demonstrate that future land use conflicts can be managed to ensure the on-going viability of the State significant farmland;
- based on the *Standard Instrument – Principal Local Environmental Plan* (Standard Instrument) definition, a 'rural supplies' building could accommodate land uses such as the sale or hire of stock feeds, grains, veterinary supplies, or other goods and materials uses for farming and primary production, which are compatible with the State significant farmland;
- whilst the suite of land uses contemplated under the Project Approval would be compatible with the adjoining agricultural development, Condition 99 of the Project Approval, which requires the provision of a 10 m wide vegetated buffer along the northern boundary of the site, was imposed to provide a conservative approach in the management of potential land use conflict on the basis that the final land uses within the building require separate approval under Part 4 of the EP&A Act;
- the 10 m vegetation buffer was derived from the Queensland Department of Natural Resources' Planning Guideline *Separating Agricultural and Residential Land Uses* (Planning Guideline) and the *Tweed Development Control Plan 2008* (Tweed DCP). It should be noted that these guidelines recommend:
  - Planning Guideline: the application of a 40 m wide buffer comprised of a 20 m wide vegetation screen and a 10 m wide open area either side, where pesticides are not applied via the use of aircraft; and
  - Tweed DCP: the use of a 30 m wide vegetation buffer;
- removing the buffer and changing the land use mix to incorporate uses that are more sensitive to the application of agricultural pesticides (food and drink premises with associated outdoor seating and drive-through facilities) would require further assessment of the human health impacts associated with pesticide application on the adjacent agricultural lands (both now and if the agricultural land uses change in the future). As the LURA does not address this issue the Department does not support the removal of the 10 m wide vegetated buffer; and
- the change of use from a rural supplies building to a service station will increase the risk of



contaminants migrating to the State significant farm lands. This is considered an unacceptable risk given that the strategic importance of these lands for food production and the reliance on these lands for employment generating opportunities within the North Coast region. Particularly given that the Proponent asserts that the Podzol soils on the adjoining site are highly permeable and may result in contaminants leaching off-site.

Based on the above, the Department has concluded that the proposed modifications would significantly change the risk profile (human health and contamination risks) for development in Precinct 1 in comparison to the approved project. Furthermore, the changes to the risk profile would result in land use conflicts that do not exist under the current Project Approval. As the LURA does not assess whether the new land use conflicts can be managed if the 10 m vegetation buffer is removed, the Department has concluded that the proposed development is inconsistent with the requirements of Part 6, clause 8 of Schedule 3 of the MD SEPP.

The Department has also concluded that changing the land use from a rural supplies building to a service station with associated food and drink premises would not have limited environmental consequences in comparison to the approved project. Given the above, the proposed modification constitutes a fundamental change to the approved project that is outside the scope of section 75W.

## 8.2 Intensity of Development and Change of Use

The Project Approval currently permits the construction of a 6.5 m high building with 11 tenancies and a total gross floor area of 2,036 m<sup>2</sup> for future use as a rural supplies building. However, Condition A12 requires the lodgement of separate development applications with the Council for the final use, fit-out, hours of operation, signage, car parking and access to Tweed Coast Road for each of the 11 tenancies prior to the issue of a Construction Certificate for any building works within Precinct 1.

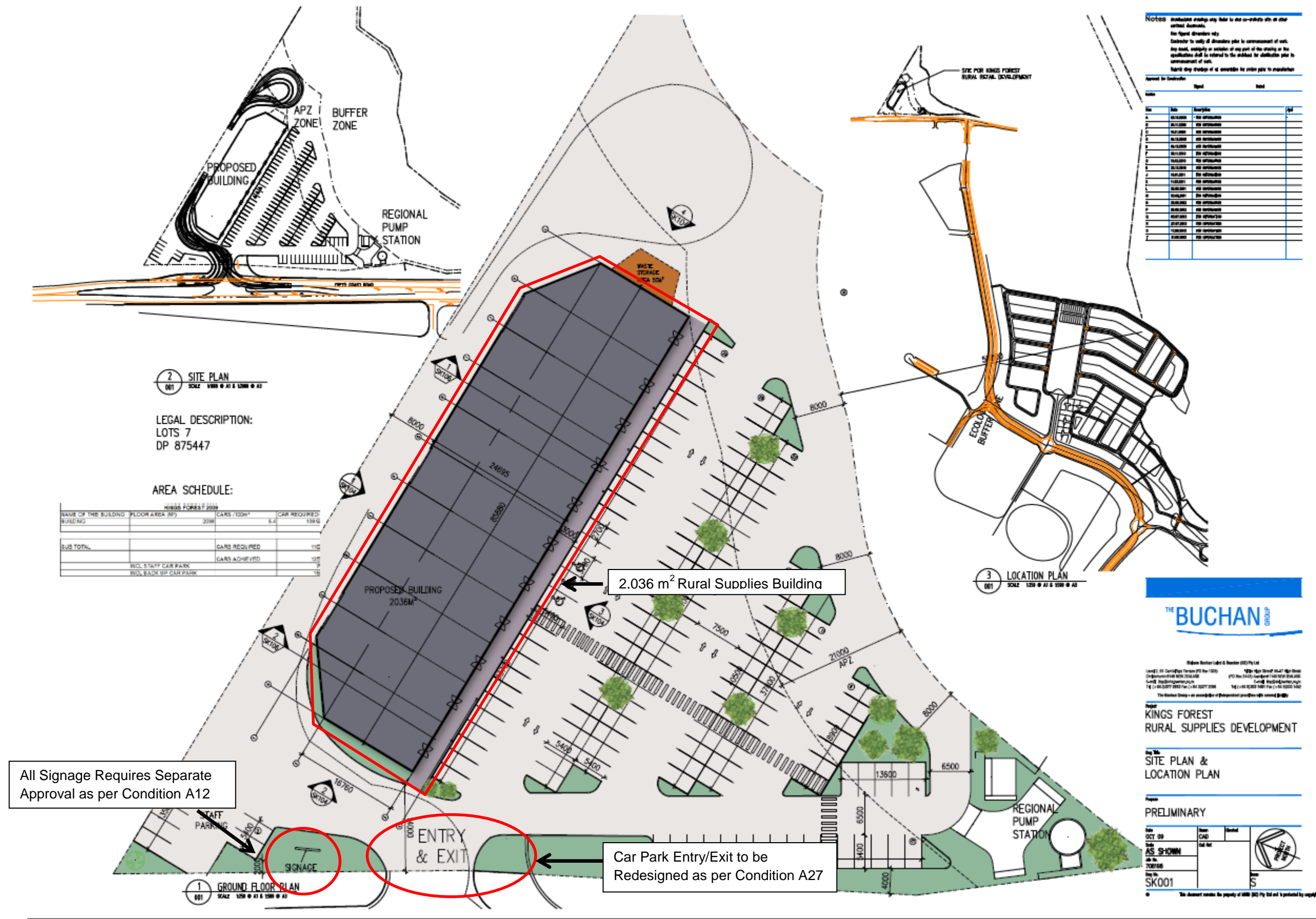
In addition, as there were a number of outstanding concerns about site access, Condition A27 requires the Proponent to redesign the site access arrangements to the satisfaction of the Director-General (now Secretary).

As previously outlined, this modification request seeks to delete the rural supplies building within Precinct 1 and replace it with:

- a 1,068 m<sup>2</sup> service station building with eight associated retail tenancies for future use as takeaway food and drink premises;
- a 150 m<sup>2</sup> car and dog wash facility;
- outdoor dining areas (62 m<sup>2</sup> roof terrace);
- two drive-throughs to service the takeaway food and drink premises; and
- three 7.5 m high pylon signs, one 9.5 m high pylon sign, three fascia signs and two wall signs to service the proposed development within Precinct 1.

The application also seeks approval to create 73 car parking spaces and 20 bicycle parking spaces on-site.

A comparison of the approved and proposed development is provided in **Figures 8 to 13**.



**Figure 8:** Approved Site Layout and Car Parking Requirements (note a 10 m vegetation buffer is required along the northern boundary of the site, and the site access arrangements are not approved)

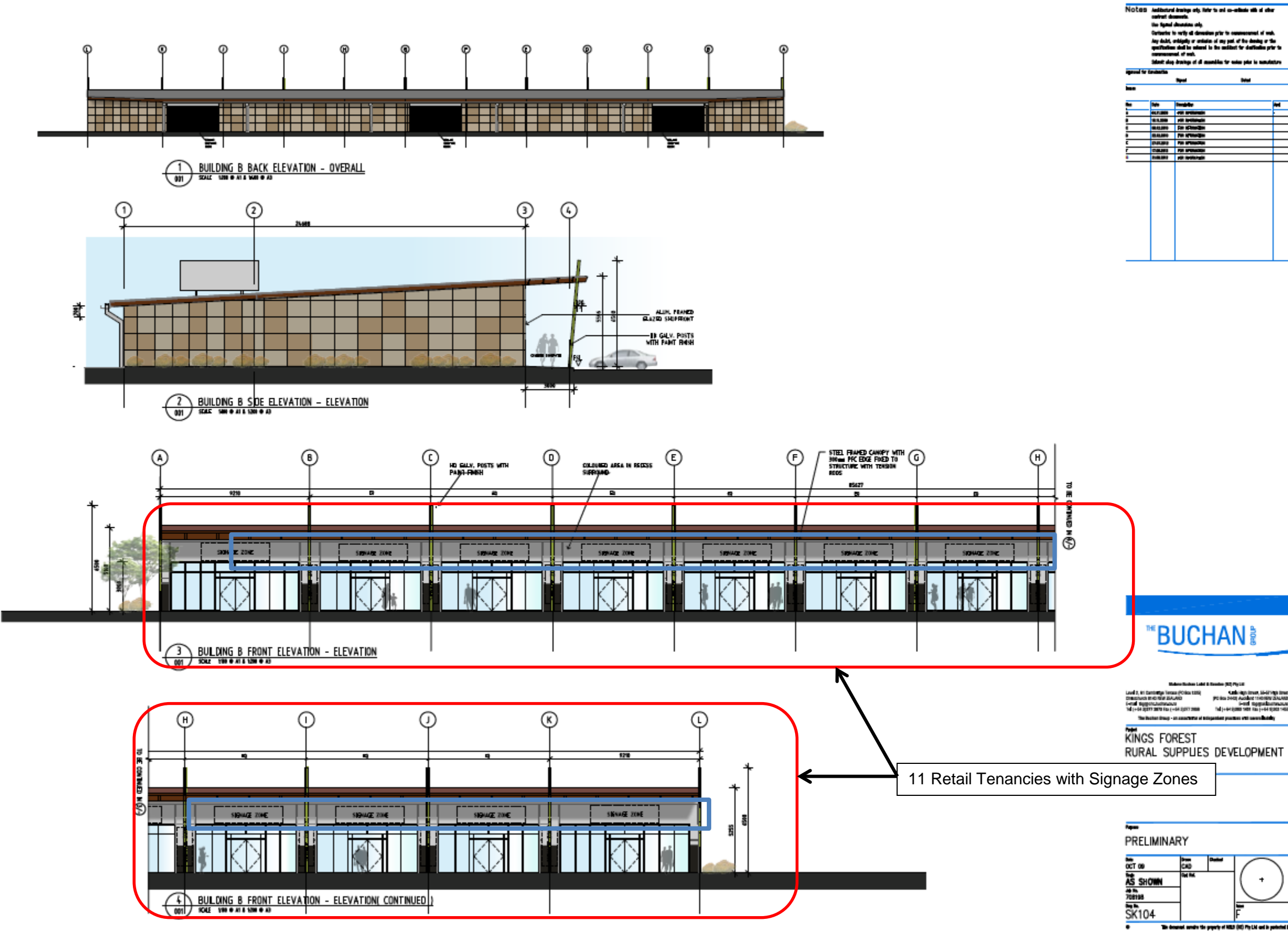


Figure 9: Approved Elevations



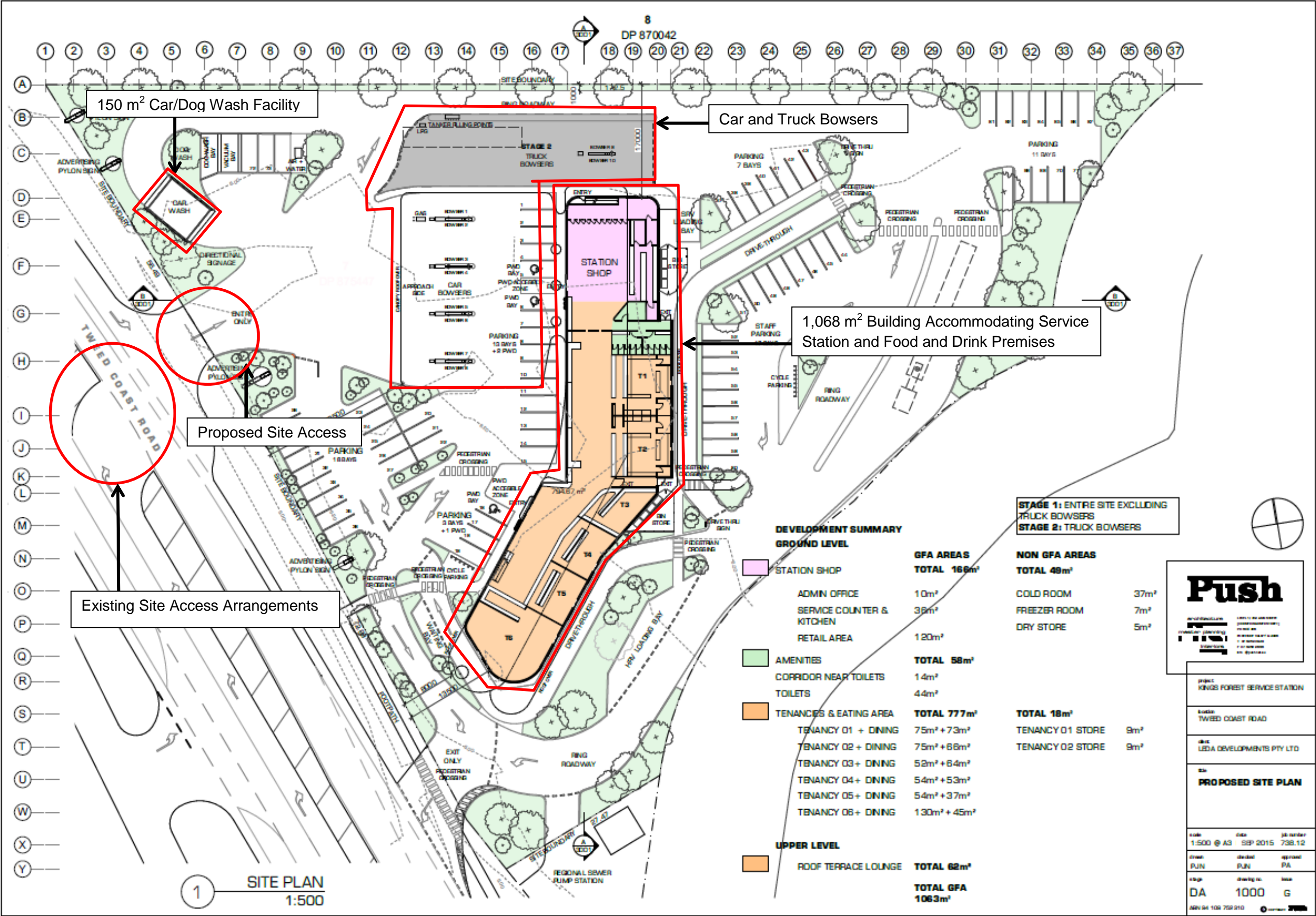


Figure 10: Proposed Floor Plan

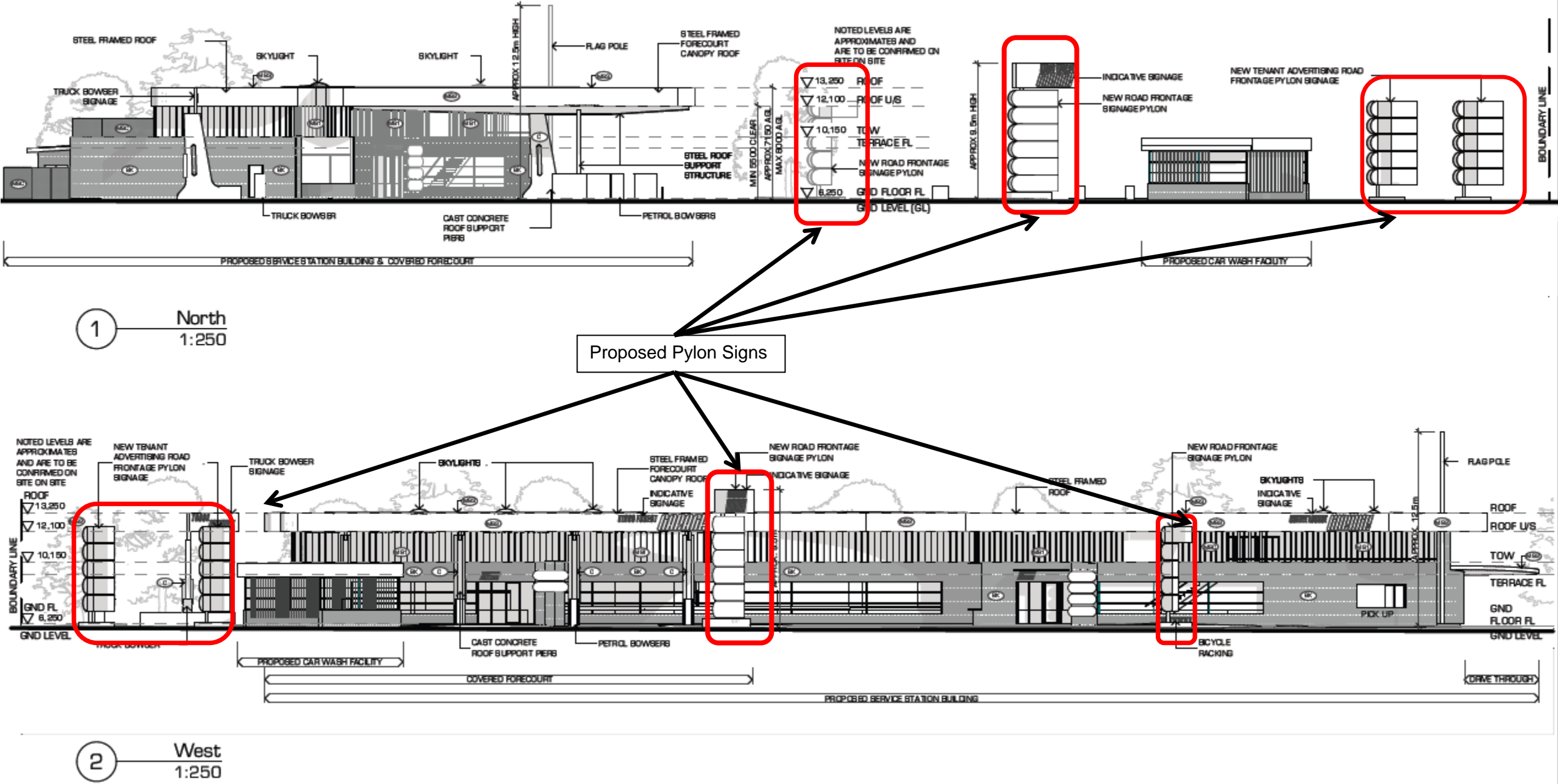


Figure 11: Proposed Northern and Western Elevations

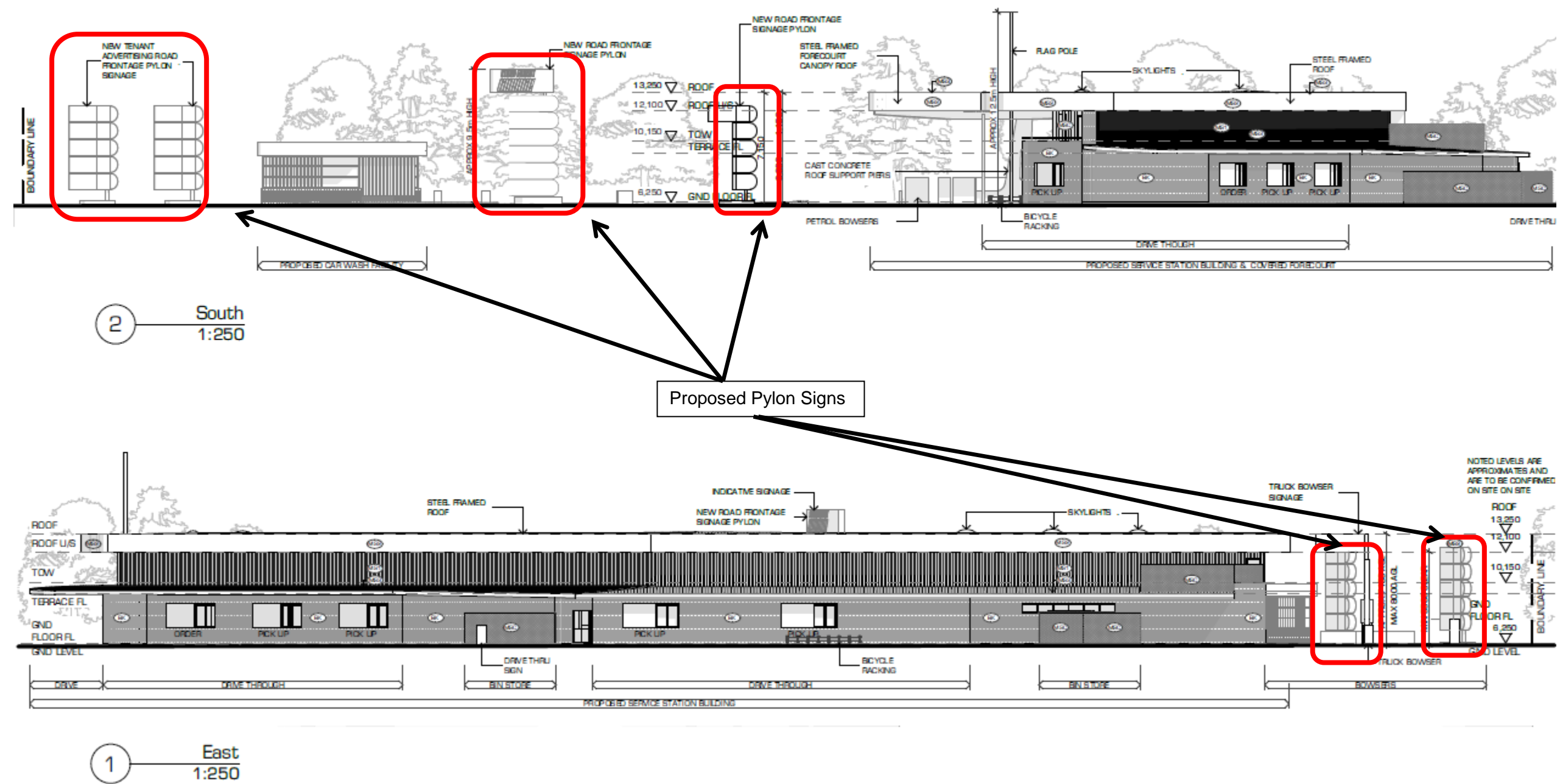


Figure 12: Proposed Southern and Eastern Elevations





Figure 13: North Western Perspective

The Department notes that whilst the development of Precinct 1 is only one component of the overall Project Approval, any change to the approved land use within Precinct 1 needs to be carefully considered given the site is adjacent to State significant farmland and ecological assets which are protected under the MD SEPP and SEPP 14.

The Department has assessed the proposed changes to the approved design, site layout and land use mix for Precinct 1 and has concluded that whilst the modification request would not result in the creation of additional floor space, it would result in the following new environmental impacts:

- increased bulk and scale when viewed from Tweed Coast Road and the surrounding residential premises as it will introduce large contiguous canopy structures, petrol bowzers, new illuminated pylon signage and will move the built form closer to Tweed Coast Road (see **Figure 13**).
- the proposed built form would detract from the existing rural character of Tweed Coast Road immediately north, south and west of Precinct 1 and would be inconsistent with the strategic objectives of the Tweed DCP, which seeks to provide a 'green belt' between Cudgen and Kingscliff and Kingscliff and Kings Forest/Kings Forest Beach to provide a distinct character for each urban settlement;
- the size, number and location of the proposed signs would result in significant visual clutter and light-spill which would detract from the rural character of Tweed Coast Road (see **Figures 11 to 13**);
- the site access arrangements are inconsistent with the minimum intersection separation distances recommended in the Austroads Guidelines (a minimum distance of 350 m to 500 m between intersections recommended, approximately 220 m proposed). Furthermore, introducing higher trip generating uses with 24-hour site access would exacerbate the traffic safety issues in comparison to the approved project;
- it would introduce new noise (associated with vehicles idling in the drive-through and the use of roof top outdoor dining areas), odour (associated with petrol vapours and the preparation of food on-site) and air quality impacts (associated with the operation of the proposed petrol bowzers and CO, CO<sub>2</sub> and volatile organic compound (VOCs) emissions from additional cars and trucks accessing the site), all of which would occur 24-hours-per-day, seven-days-per-week;
- it would introduce land uses that are sensitive to the application of agricultural pesticides (takeaway food and drink premises, outdoor dining areas, and drive through facilities) and would significantly increase the risk of land use conflict in comparison to the approved project; and
- it would introduce a land use (proposed service station) that significantly changes the risk profile of the development and could result in potential contamination and water quality impacts on the adjoining State significant farmland and SEPP 14 wetlands.

The Department has concluded that the change to the land use mix and proposed hours of operation represent a significant intensification of the uses within Precinct 1 in comparison to the approved project, which would have more than limited environmental impacts in comparison to the approved project. Furthermore, the proposed change in land use composition within Precinct 1 would be inconsistent with the strategic vision for the locality for the following reasons:

- the rural supplies land use permitted under the Project Approval is less intense than the uses proposed in the modification request. The definition of a rural supplies building (as outlined in the Standard Instrument LEP) permits development for the purpose of displaying, selling or the hiring of stockfeeds, grains, seed, fertilizers, veterinary supplies and other goods or materials used in farming and primary industry production;
- the rural supplies building permitted under the Project Approval is compatible with the adjacent State significant farmland as it provides support facilities that augment and reinforce the strategic significance of the State significant farmland. Furthermore, the use of the rural supplies building would result in a negligible risk of environmental harm as any potential contaminants stored on-site would be physically separated from the receiving environment via the use of an enclosed concrete slab;
- the storage and use of petrol on-site would significantly increase the risk profile for development within Precinct 1 and therefore increases the risk of environmental harm in

- comparison to the approved project; and
- the proposed food and drink premises with associated outdoor dining and drive-through facilities are sensitive to the application of agricultural pesticides and would increase the risk of land use conflict in comparison to the approved project. This is inconsistent with the provisions of the MD SEPP, which seeks to ensure the long term viability of the State significant farmland for employment generating agricultural uses.

The Department has concluded that the modification will result in new and adverse visual, traffic and amenity impacts within Precinct 1 which are inconsistent with the rural character of development along Tweed Coast Road. In addition, the modification request would increase the potential risk of environmental harm by introducing hazardous land uses that may reduce the ongoing viability of the State significant farmland and increase the risk of adverse impacts to the SEPP 14 wetlands and significant vegetation adjacent to the site.

The Department has also concluded that the proposed modification would not have limited environmental consequences in comparison to the approved project. Given the above, the proposed modification constitutes a fundamental change to the approved project that is outside the scope of section 75W.

### **8.3 Additional Environmental Impacts Associated with Proposal**

The Project Approval does not permit the storage of flammable dangerous goods on-site. Further, based on the Standard Instrument definition of a rural supplies building, goods which are likely to be stored on-site include feeds, grains, seed, fertilizers, veterinary supplies and other goods or materials used in farming and primary production. In addition, the Project Approval does not permit the construction of any below ground structures.

The modification request seeks approval to install and operate three 110,000 L UPSS, an underground LPG tank, car and dog wash facilities and food and drink premises which will have more than limited environmental impacts in comparison to the approved project. The additional impacts associated with the proposed development are discussed below.

#### Contamination

The Project Approval currently permits the construction of a rural supplies building with a pad level that achieves a suitable freeboard from the 1 in 100 year average recurrence interval (ARI). Furthermore, conditions A12 and 100 require the Proponent to obtain consent for the fit-out and final use of the 11 retail tenancies within the rural supplies building. Given the size of each retail tenancy (approximately 185 m<sup>2</sup>), and the requirement for the pad to be constructed above the 1 in 100 year ARI, it is unlikely the approved project would result in any contaminants having the potential to interact with soils, ground or surface water on-site.

As the proposed service station would store fuel below ground the risk of contamination to soil and groundwater is increased in comparison to the approved project. Further, the impacts of storing large quantities of fuel in UPSS' would have more than limited environmental impacts in comparison to the approved project given that Precinct 1 is located on low lying land adjacent to environmentally sensitive areas.

Contamination from operational service stations can be caused by UPSS leaks, spills associated with tankers refuelling and run-off from car wash and cleaning facilities. In addition, parking areas, footpaths and trafficable areas, whilst at a lower risk than the refuelling and fuel delivery areas, can also contribute to contamination via run-off. Contaminants that are commonly associated with service stations include total petroleum hydrocarbons, benzene, toluene, ethylbenzene, total xylene, benzo(a)pyrene, phenol and polycyclic aromatic hydrocarbons. A number of these contaminants are known to be carcinogenic.

Of particular concern is Cudgen Creek which is a tidal creek that flows in a northerly direction through the SEPP 14 wetlands and towards the State significant farmland. Should contamination at the site occur it could have detrimental effects on these environmentally sensitive areas and leave



a legacy of contamination. The Department has concluded that the introduction of a service station within Precinct 1 would be inconsistent with the aims and objectives of SEPP 14 as it may undermine the preservation and on-going protection of the SEPP 14 wetlands.

Whilst it may be possible to manage the risk of leaks and spills associated with the storage of contaminants on-site, these risks do not exist under the current Project Approval. Accordingly, the Department has concluded that the proposed modification would not have limited environmental consequences beyond those permitted under the current Project Approval. Given the above, the proposed modification constitutes a fundamental change to the approved project that is outside the scope of section 75W.

#### Air Quality

As conditions A12 and 100 require the Proponent to obtain development consent for the fit-out and use of each tenancy within the rural supplies building, no assessment of the operational air quality impacts of the approved project has occurred. Further, given the Standard Instrument definition of a rural supplies building and the size of each approved retail tenancy, it is unlikely that the operation of each retail tenancy would result in any adverse air quality or odour impacts.

As the proposed modification seeks approval to change the use of the rural supplies building to a service station with associated food and drink premises, the proposed development would result in the following new air emissions that have the potential to affect public amenity and health:

- petroleum emissions (other than diesel and LPG) in the form of VOCs emitted from tank vents, bowsers and spillages when refuelling; and
- odour emissions 24-hours-per-day, seven-day-per-week.

Given the above, the Department has concluded that the proposed modification would not have limited environmental consequences beyond those permitted under the current Project Approval. As such, the proposed modification constitutes a fundamental change to the approved project that is outside the scope of section 75W.

#### Hazards

The Project Approval does not authorise the storage of dangerous goods on-site. As such, any safety impacts associated with the operation of the rural supplies building would be negligible. However, this would vary greatly under the proposed modification, as the proposed petrol station will result in the storage and handling of the following dangerous goods on-site:

- 300,000 L of petroleum products, which are classified as Class 3 – Flammable liquids under the ; and
- 30,000 L of liquefied petroleum gas (LPG), which is classified as Class 2.1 - Flammable gases.

The Department considers the following two events are likely to have the greatest impacts on the surrounding land uses:

- a LPG leak at the fill point during calm weather conditions may extend off-site and if ignited, will result in a flash fire;
- a petrol leak at the fill point if ignited may result in a jet fire. Taking into account that the fill points are proposed to be located approximately five metres away from the northern boundary, under certain meteorological conditions, the thermal radiation from the jet fire would have the potential to have significant off-site impacts.

The activities related to storage and handling of these materials carries inherent risk, which cannot be completely eliminated. The quantities of dangerous goods (DGs) and the location of the equipment associated with these materials is such that the provisions of *State Environmental Planning Policy No 33* (SEPP 33) apply, and the petrol station falls under the definition of 'potentially hazardous development'. Even though the probability of the abovementioned events is very low and may be acceptable on the basis of risk, these events cannot be ruled out and arise as a direct result of the proposed modification.

On this basis, the Department has concluded that the proposed modification would not have limited environmental consequences beyond those permitted under the current Project Approval, particularly due to the additional and increased hazard and risk impacts the proposal would introduce. Given the above, the proposed modification constitutes a fundamental change to the approved project that is outside the scope of section 75W.

### Dewatering

No underground structures are permitted under the current Project Approval, and as such dewatering and the associated water quality impacts were not assessed.

The extent of earthworks in Precinct 1 will increase as an excavation of 30 m x 20 m x 4.5 m is proposed to facilitate the installation of the three UPPS' and the underground LPG tank. The site is located on low lying land in the vicinity of Cudgen Creek and SEPP 14 wetlands and experiences shallow groundwater depths.

A revised Dewatering Management Plan (DMP), prepared by HMC Environmental Consulting dated December 2015, was submitted with the RtS. The depth to groundwater was found to be 0.75 m below ground level. As such, the Proponent has indicated that dewatering would be required and groundwater drawdown would be 3.5 m.

Dewatering is a controlled activity under the *Water Management (WM) Act 2000* and requires approval by the DPI. The groundwater has been reported to be acidic and contains elevated levels of soluble aluminium above the Environment Protection Authority's discharge criteria. The Proponent proposes to discharge groundwater to a lime dosing facility to either a storage tank or sedimentation pond to balance flows prior to irrigation on-site, with the receiving waters being Cudgen Creek and SEPP 14 wetlands. There is also a possibility that water would be discharged off-site to Cudgen Creek and the SEPP 14 Wetlands. The DMP notes that discharge off-site would require lime dosing (which may reduce the levels of soluble aluminium), removal of sediment and increased aeration.

As such, dewatering could impact on groundwater and surface water quality entering Cudgen Creek and the SEPP 14 wetlands and is an additional environmental impact that does not have limited environmental consequences in comparison to the approved project. The Department considers this to be a fundamental change from the currently approved rural supplies building which does not require dewatering or large excavations.

Accordingly, the Department has concluded that the proposed modification would not have limited environmental consequences in comparison to the approved project. Given the above, the proposed modification constitutes a fundamental change to the approved project that is outside the scope of section 75W.

## **9. CONCLUSION**

The Department has assessed the modification request and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment has concluded that the proposed modification would:

- introduce new and more sensitive land uses (takeaway food and drink premises with associated outdoor dining facilities) within Precinct 1 which will increase land use conflict with the adjoining State significant farmland in comparison to the approved project. The introduction of such land uses, coupled with the proposed removal of the 10 m wide agricultural buffer, are inconsistent with the requirements of Part 6, clause 8 of Schedule 3 of the MD SEPP;
- introduce a new land use (proposed service station) within Precinct 1 which would change the risk profile of the approved development and would result in the potential for increased contamination on land adjacent to State significant farmland, SEPP 14 wetlands and a number of endangered ecological communities. These changes would be inconsistent with the requirements of Part 6, clause 8 of Schedule 3 of the MD SEPP and the aims and objectives of SEPP 14;
- increase the bulk and scale of the approved project in a manner that is incompatible with the rural character of Tweed Coast Road and is inconsistent with the strategic objectives of the

Tweed DCP which applies to the land along Tweed Coast Road immediately north, south and west of Precinct 1; and


- the combined water, air quality, contamination, hazards, traffic and amenity impacts of the proposed modification would generate more than limited environmental impacts in comparison to the approved project that are not in the public interest.

The Department considers the proposed changes to be outside the scope of section 75W of the EP&A Act. Consequently, it is recommended that the modification be refused.

## 10. RECOMMENDATION

It is **RECOMMENDED** that the Executive Director, Key Sites and Industry Assessments as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report;
- **refuses** the application under section 75W, subject to conditions; and
- **signs** the Instrument of Refusal (**Appendix A**).

 31/03/16  
Kate MacDonald  
Team Leader  
Industry Assessments

 4/4/16.  
Chris Ritchie  
Director  
Industry Assessments

Prepared by:  
Kate Masters  
Senior Planner

Anthea Sargeant  
Executive Director  
Key Sites and Industry Assessments

## APPENDIX A: INSTRUMENT OF REFUSAL

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# Modification Refusal

## Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning under delegation executed on 16 February 2015, I the Executive Director, Key Sites and Industry Assessments, disapprove the request to modify the Project Application referred to in Schedule 1 for the reasons set out in Schedule 2.

**Anthea Sargeant**  
**Executive Director**  
**Key Sites and Industry Assessments**

Sydney

2016

### SCHEDULE 1

**Project Approval:** MP 08\_0194

**Proponent:** Project 28 Pty Ltd

**Land:** Lots 76, 272, 323 and 326 in Deposited Plan 755701;  
Lot 6 in Deposited Plan 875446  
Lot 2 in Deposited Plan 819015;  
Lot 1 in Deposited Plan 706497;  
Lot 40 in Deposited Plan 7482;  
Lots 38A, 37A and 38B in Deposited Plan 13727;  
Lot 1 in Deposited Plan 129737;  
Lot 1 in Deposited Plan 781633;  
Lot 7 in Deposited Plan 875447;  
Lot 1 in Deposited Plan 1178256 (closed road); and  
Lots 1 to 3 in Deposited Plan 11757616 (closed roads)

**Description:** Deletion of the 2,036 m<sup>2</sup> building and 10 m wide landscape buffer along the norther boundary of the site within Precinct 1 and replacing it with:

- construction and operation of a 1,068 m<sup>2</sup> service station building with eight retail tenancies for future use as takeaway food and drink premises with two associated drive-through facilities and outdoor dining areas (62 m<sup>2</sup> roof terrace);
- a 150 m<sup>2</sup> car and dog wash facility;
- installation and operation of three 110,000 litre (L) underground petroleum storage system (including associated fuel vents up to 4.5 m in height);
- installation and operation of a 30,000 L underground liquid petroleum gas (LPG) vessel;
- dewatering to accommodate the underground storage vessels/systems;

- construction and use of 73 car parking spaces, two loading bays and 14 bicycle parking spaces;
- installation and use of three 7.5 m high pylon signs, one 9.5 m high pylon sign, three fascia signs and two wall signs to service the proposed development within Precinct 1;
- installation of stormwater management infrastructure and landscaping; and
- installation of a 2.5 m Colourbond fence in-lieu of the 10 m wide vegetated buffer.

## SCHEDULE 2

The modification request represents an intensification of the uses approved within Precinct 1 that do not result in limited environmental consequences in comparison to the approved project. Accordingly, these modifications are beyond the scope of modifications contemplated under section 75W of the *Environmental Planning and Assessment Act 1979* for the following reasons:

1. The modification request would introduce new and more sensitive land uses (takeaway food and drink premises with associated outdoor dining facilities) within Precinct 1 which will increase land use conflict with the adjoining State significant farmland. The introduction of such land uses, coupled with the proposed removal of the 10 m wide agricultural buffer, are inconsistent with the requirements of Part 6, clause 8 of Schedule 3 of *State Environmental Planning Policy (Major Developments) 2005*.
2. The modification request would introduce a new land use (proposed service station) within Precinct 1 which would change the risk profile of the approved development and would result in the potential for increased contamination on land adjacent to State significant farmland, SEPP 14 wetlands and a number of endangered ecological communities. As such, the introduction of a service station would be inconsistent with the requirements of Part 6, clause 8 of Schedule 3 of *State Environmental Planning Policy (Major Developments) 2005* and the aims and objectives of *State Environmental Planning Policy No. 14 – Coastal Wetlands*.
3. The modification request would increase the bulk and scale of the approved project in a manner that is incompatible with the rural character of Tweed Coast Road and is inconsistent with the strategic objectives of the *Tweed Development Control Plan 2008* which applies to the land along Tweed Coast Road immediately north, south and west of Precinct 1.
4. The combined water, air quality, contamination, hazards, traffic and amenity impacts of the proposed modification would generate more than limited environmental impacts in comparison to the approved project that are not in the public interest

## APPENDIX B: MODIFICATION REQUEST

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The following supporting documents and information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request:  
[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7302](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7302)
2. Submissions:  
[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7302](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7302)
3. Response to Submissions:  
[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7302](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7302)



