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+ S75W MODIFICATION OF MAJOR PROJECT APPROVAL NO. 08_0194 (MOD 6)

KINGS FOREST STAGE 1 – PRECINCT 1 SERVICE STATION & FOOD OUTLETS

At Kings Forest, Kingscliff

• Prepared For: Project 28 Pty Ltd | • Prepared by: DAC Planning Pty Ltd | • August 2017 – Revised 18 October 2017 |

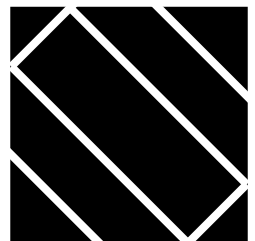


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ANNEXURE B	Rural Fire Service Submission Dated 24 November 2015
ANNEXURE C	Email from Tweed Shire Council Dated 12 July 2017 in Relation to Applying the 40% Discount to Condition 154(c)
ANNEXURE D	Tweed Shire Council Business Investment Policy, Version 2.0 – Commencement Date 1 December 2016

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MODIFICATION OF MAJOR PROJECT APPROVAL NO. 08_0194 (MOD 6)

PROPOSED SERVICE STATION & FOOD OUTLETS AT PRECINCT 1 AT KINGS FOREST, TWEED COAST ROAD, KINGSCLIFF

1.0 INTRODUCTION AND BACKGROUND

Project 28 Pty Ltd (the owner of the land) has commissioned DAC Planning Pty Ltd to prepare an application under Section 75W of the Environmental Planning and Assessment Act for modification of Major Project Approval No. 08_0194 (MOD6) which relates to a residential subdivision at Kings Forest.

Following comments from the Department of Planning and Environment, the original Modification Report (August 2017) has been amended to insert a revised, proposed amended Condition 116.

1.1 Summary of Modification Application

This application seeks to amend:

1. Condition 26 to permit development of Precinct 1 but preclude the issue of an Occupation Certificate prior to construction of the Tweed Coast Road/Kings Forest Parkway roundabout.
2. Condition 116 to correct an error in the description of the inner protection area (IPA);
3. Condition 154(c) to apply the 40% employment generating incentive discount to the Stage 1, Precinct 1 Service Station Section 94 Plan No. 4 – Tweed Road Contribution Plan contribution;

On 19 August 2010, the Minister for Planning issued Concept Plan Approval No. 06_0318 in respect of Lots 76, 272, 323 and 326 in DP 755701, Lot 6 DP 875446, Lot 2 DP 819015, Lot 1 DP 705497, Lot 40 DP 7482, Lot 37A DP 13727, Lot 38A DP 13727, Lot 38B DP 13727, Lot 1 DP 129737, Lot 1 DP 781633 and Lot 7 DP 875447 for the carrying out of:

- ♦ Residential development for approximately 4500 dwellings;
- ♦ Town centre and neighbourhood centre for future retail and commercial uses;
- ♦ Community and education facilities;
- ♦ Employment land;
- ♦ A golf course;
- ♦ Open space;
- ♦ Wildlife corridors;
- ♦ Protection and rehabilitation of environmentally sensitive land;
- ♦ Utility services infrastructure;
- ♦ Water management areas and lake; and
- ♦ Roads and pedestrian and bicycle paths.

On 22 December 2010 the Concept Plan Approval was modified (MOD 1).

On 11 August 2013, the Concept Plan Approval was further modified (MOD 2) in conjunction with approval of the Kings Forest Stage 1 Project Application No. 08_0194.

On 16 May 2014, the Concept Plan Approval was further modified (MOD 3).

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On 20 November 2014, the Concept Plan Approval was further modified (MOD 4).

On 10 November 2015, the Concept Plan was further modified (MOD 5).

The proposed modification of Conditions 26, 116 and 154(c) is not inconsistent with the Concept Plan, as modified.

2.0 MAJOR PROJECT APPROVAL NO. 08_0194

On 11 August 2013 the Planning and Assessment Commission, as delegate for the Minister for Planning, issued Project Approval No. 08_0194 in respect of Lots 76, 272, 323 and 326 DP 755701; Lot 6 DP 875446; Lot 2 DP 819015; Lot 1 DP706497; Lot 40 DP 7482; Lot 38A DP 13727; Lot 38B DP 13727; Lot 1 DP 129737; Lot 1 DP 781633; Lot 7 DP 875447 and Lot 37A DP 13727 for Kings Forest Stage 1 comprising the following key project elements:

"Kings Forest residential subdivision Stage 1 bulk earthworks, road works and subdivision of Precinct 4, including:

- ♦ *Subdivision of the site into 10 development lots in four stages;*
- ♦ *Bulk earthworks across the site;*
- ♦ *Road works comprising:*
 - *Construction of the entrance road and associated intersection works with Tweed Coast Road*
 - *Construction of the Kings Forest Parkway from Tweed Coast Road via Precincts 4 and 5 through to the western site precinct; and*
 - *Construction of 2 roads providing access to the southern site precincts*
- ♦ *Plan of Development for Precinct 5;*
- ♦ *Development of 2036m² of floor space for a rural supplies building and access arrangements to Precinct 1;*
- ♦ *Construction of subdivision and infrastructure works along Kings Forest Parkway and within Precincts 1 and 5;*
- ♦ *Subdivision of Precinct 5 into 376 residential lots comprising:*
 - *1 townhouse lot (7860m²);*
 - *37 terrace house lots (minimum lot size 150m²)*
 - *25 duplexes (minimum lot size 450m²)*
 - *192 zero lot dwellings (minimum lot size 240m²)*
 - *121 traditional detached dwellings (minimum lot size 400m²)"*

On 16 May 2014, the Project Approval was modified (MOD 1).

On 20 November 2014, the Project Approval was further modified (MOD 2).

On 20 February 2017, the Project Approval was further modified (MOD 3, Precinct 1 – Land and Environment Court).

On 25 May 2017, Section 75W Modification Application MOD 4 was lodged with the Department. The modification relates to reconciliation of EPBC Act conditions and a revised Koala Plan of Management. At the date of preparing this Report, the Modification Application had not been determined.

A copy of the Consolidated Project Approval incorporating Modifications 1, 2 and 3 is attached at **Annexure A**.

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3.0 CONSULTATIONS

Tweed Shire Council was consulted in relation to amendment of Condition 154(c). Council's response is contained at **Annexure B**.

The Department of Planning and Environment advised, at a meeting with the proponents on 14 July 2017, that a Section 75W Modification Application would be required to amend Condition 154(c).

4.0 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AND REGULATIONS

Section 75W of the Act facilitates the lodgement and determination of an application to modify a Part 3A approval. Section 75W is in the following terms:

"Modification of Minister's approval

75W

(1) *In this section:*

Minister's approval means an approval to carry out a project under this Part, and includes an approval of a concept plan.

Modification of approval means changing the terms of a Minister's approval, including:

- (a) revoking or varying a condition of the approval or imposing an additional condition of the approval, and
 - (b) changing the terms of any determination made by the Minister under Division 3 in connection with the approval.
- (2) *The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.*
- (3) *The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.*
- (4) *The Minister may modify the approval (with or without conditions) or disapprove of the modification.*
- (5) *The proponent of a project to which Section 75K applies who is dissatisfied with the determination of a request under this section with respect to the project (or with the failure of the Minister to determine the request with 40 days after it is made) may, within the time prescribed by the regulations, appeal to the Court. The Court may determine any such appeal.*
- (6) *Subsection (5) does not apply to a request to modify:*
 - (a) *an approval granted by or as directed by the Court on appeal, or*
 - (b) *a determination made by the Minister under Division 3 in connection with the approval of a concept plan.*
- (7) *This section does not limit the circumstances in which the Minister may modify a determination made by the Minister under Division 3 in connection with the approval of a concept plan."*

Currently there are no regulations of relevance to a Modification Application.

5.0 PROPOSED MODIFICATIONS

The proposed modifications are addressed in the following sections.

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5.1 Condition 26 – Intersections

Existing Condition:

"Intersections

26. A two lane roundabout shall be constructed in general accordance with Mortons Urban Solutions Drawing Number 12301-EMAW-101 (Amendment D) at the intersection of Tweed Coast Road and the Kings Forest Parkway prior to the release of the first residential lot in Precinct 5 or the development of Precinct 1."

Reason for modification:

The requirement in Condition 26 for the two lane roundabout at the intersection of Tweed Coast Road and Kings Forest Parkway to be constructed prior to any development of Precinct 1 is considered to be unreasonable and unnecessary.

The objective of the Condition is considered to be that the roundabout is constructed and operational prior to the use of any development on Precinct 1 commencing. Construction traffic impacts on Precinct 1, prior to the construction of the two lane roundabout, can be managed by way of appropriate provisions in the Construction Environmental Management Plan required by Condition 52 and the Construction Traffic and Pedestrian Management Plan required by Condition 55.

Modification of the Condition as proposed, would enable construction of Precinct 1 to be proceeding in conjunction with construction of the roundabout, however an Occupation Certificate to authorise the use of the Precinct 1 would not be issued until the roundabout is completed.

Requested Modified Condition

Having regard to the above, the Department is requested to amend Condition 26 as follows:

Intersections

26. A two lane roundabout shall be constructed in general accordance with Mortons Urban Solutions Drawing Number 12301-EMAW-101 (Amendment D) at the intersection of Tweed Coast Road and the Kings Forest Parkway prior to the release of the first residential lot in Precinct 5 **or prior to the issue of an Occupation Certificate for Precinct 1.**

5.2 Condition 116 – Bushfire Management

Existing Condition:

"Bushfire Management

116. Prior to the commencement of works and in perpetuity the entire area north-west of the Koala exclusion fence shown on the diagram titled 'Proposed Site Plan' prepared by Push (ref: Job No. 738.12, Drawing 1000, Issue P3, dated December 2016) excluding the 10 metres wide vegetated buffer along the northern boundary, must be managed as an inner protection area (IPA) as outlined in 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."

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Reason for modification:

A copy of the Proposed Site Plan referred to in Condition 116 is contained at **Annexure A**. The north point on the Plan points to the top of the page and therefore the northern boundary of Precinct 1 runs generally in an east/west direction.

The Condition requires the inner protection area (IPA) to be northwest of the Koala exclusion fence shown on the Proposed Site Plan. The fence is located on the northern boundary of the subject land.

Clearly, the IPA cannot be provided on the north western side of the fence because it would mean that the IPA is on the adjoining Lot 8 DP 870042, which is to the north of Precinct 1 and is not owned by Project 28 Pty Ltd.

The Rural Fire Service submission for MOD 3 (service station and food outlets), a copy of which is contained at **Annexure B**, proposed the following condition:

"At the commencement of building works and in perpetuity the land around the service station building for a distance of 21m 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 Bushfire Protection, 2006" and the NSW Rural Fire Service document "Standard for Asset Protection Zones"."

The Condition proposed by the Rural Fire Service is considered to be appropriate as it requires the IPA to be on the development site, which is consistent with normal practice and the provisions of Planning for Bushfire Protection, 2006.

Following advice from the Department of Planning and Environment in relation to the originally proposed modified Condition 116, the condition has been revised to require the whole site to be maintained as an IPA, excluding the 10m vegetated buffer to the northern boundary.

Requested Modified Condition

Having regard to the above, the Department is requested to delete Condition 116 and insert a new Condition 116 as follows:

Bushfire Management

116. Prior to the commencement of works and in perpetuity the entire area north-west of the Koala exclusion fence on the eastern side of the site shown on the diagram titled 'Proposed Site Plan' prepared by Push (ref: Job No. 738.12, Drawing 1000, Issue P3, dated December 2016) excluding the 10 metres wide vegetated buffer along the northern boundary, must be managed as an inner protection area (IPA) as outlined in 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.

5.3 Condition 154(c) – Section 94 Contributions – Section 94 Plan No. 4 Tweed Road Contribution Plan**Existing Condition:**

"154.

(c) In accordance with Division 6 of Part 4 of the Act, the Proponent shall pay, in proportion to the additional lots created by each stage of the subdivision, the following monetary contributions:

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Stage 1 – Precinct 1

	<i>Trips/ET</i>	<i>Rate per trip/ET</i>	<i>Total Contribution</i>
S94 Plan No. 4 (7)***	680.2213 trips	\$1395 per trip	\$948,908.71
S94 Plan No. 18	N/A	N/A	N/A

* ET = Equivalent Tenements

** Any works in kind for cycleways will be considered and offset against CP 22 when construction and costings are available.

*** Where the development includes construction of works identified in the Tweed Road Contribution Plan Works Schedule, "in-kind" credits may be applied as offsets to CP4 up to the value contained in the Works Schedule"

Reason for modification:

As reflected in the email at **Annexure C**, Tweed Shire Council applied the 40% employment generating incentive discount to the Section 94 Plan No. 4 contributions for the Melaleuca Station Highway Service Centre on the M1 at Chinderah (DA13/0469). However, the discount was not applied to the Kings Forest Precinct 1 Service Station and Food Outlets. As indicated in the email from Tweed Shire Council at **Annexure C**, Council acknowledges that the 40% concession could be applied.

A copy of Tweed Shire Council's Business Investment Policy is contained at **Annexure D**. relevant provisions of the Policy are reproduced as follows:

"Developer Contributions – Incentives

The Policy provides incentives for the establishment or reinvestment in employment generating businesses.

Employment Generating Incentive

Name:	Employment Generating Incentive
Type:	Discount
Delegated Approval:	Director Planning and Regulation
Applies to:	• Tweed Roads Contributions Plan (TRCP) (S.94 Plan No.4)
Eligibility:	An incentive is offered to all job creating Business Premises across the Shire.
Ineligible	Residential development, including residential components of mixed use developments.
	The concession is not available for developments exploiting 'existing use rights' as defined in Clause 3.6.1 of the TRCP, and nor can Local Area Contributions be discounted by the concession.
Security:	Nil
Min. Threshold:	Nil
Incentive:	Forty percent (40%) discount. Council may review the concession on an annual basis at 1st July each year.
Application:	Applicants will need to nominate their development as an Employment Generating Development in their Development Application to Council.

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Business Premises: means a building or place at which commercial, industrial or professional activities are undertaken. A business can be any legal entity including, an individual, a partnership, a private company, a public company, a not for-profit entity or a trust."

The service station/food outlet is a "commercial activity" and the proposal is not inconsistent with the relevant criteria in the table above. Application of the 40% discount would therefore be consistent with the Policy and Council's decision in relation to DA13/0469.

Requested Modified Condition

Having regard to the above, the Department is requested to delete Condition 154(c) and insert a new Condition 154(c) as follows:

154.

(c) In accordance with Division 6 of Part 4 of the Act, the Proponent shall pay, in proportion to the additional lots created by each stage of the subdivision, the following monetary contributions:

Stage 1 – Precinct 1

	Trips/ET	Rate per trip (less 40% employment generating discount contained in Council's Business Investment Policy, Ver 2.0, commenced 1 December 2016)/ET	Total Contribution
S94 Plan No. 4 (7)***	680.2213 trips	\$1395 per trip – 40% = \$837	\$569,345.23
S94 Plan No. 18	N/A	N/A	N/A

* ET = Equivalent Tenements

** Any works in kind for cycleways will be considered and offset against CP 22 when construction and costings are available.

*** Where the development includes construction of works identified in the Tweed Road Contribution Plan Works Schedule, "in-kind" credits may be applied as offsets to CP4 up to the value contained in the Works Schedule.

6.0 ENVIRONMENTAL ASSESSMENT

Modification of the Project Approval as proposed will correct existing anomalies and errors in the Approval and will enable the development to proceed in an efficient and timely manner, including constructing the required roundabout at the intersection of Tweed Coast Road and the proposed Kings Forest Parkway.

In the circumstances, it is therefore submitted that the Environmental Assessments accompanying the original Project Approval (and Modifications) and Concept Plan Approval and this Report provide an adequate Environmental Assessment of the modified project.

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7.0 CONCLUSION

Modification of the conditions and terms of the approval as proposed is authorised by Section 75W(1)(a) and (b) of the Environmental Planning and Assessment Act, 1979 (as amended).

The proposed modifications do not give rise to any physical changes to the scale, nature or footprint of the approved Project and therefore no impacts other than those addressed in the original Environmental Assessments subsequent Modification Assessments and this Report are likely to arise.

The proposed modification of the Project Approval is considered to be sustainable and in the public interest and therefore approval of the application is respectfully requested.

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