

## ASSESSMENT REPORT

### KINGS FOREST STAGE 1, PRECINCT 1 MP 08\_0194 MOD 6

#### 1. INTRODUCTION

This report is an assessment of a request to modify the Project Approval for the Kings Forest subdivision in the Tweed local government area (LGA).

The request has been lodged by DAC Planning Pty Ltd on behalf of Project 28 Pty Ltd pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to amend three conditions of approval to:

- permit construction works in Precinct 1 prior to the completion of the roundabout at the intersection of the Tweed Coast Road and Kings Forest Parkway
- clarify the bushfire management requirements applicable within Precinct 1
- amend the development contributions applicable to employment generating uses within Precinct 1.

#### 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 located in the north-eastern corner of the site. The 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 (see **Figure 1**).



**Figure 1: Site Location**

### 3. APPROVAL HISTORY

#### Concept Approval (MP 06\_0318)

On 19 August 2010, the then Minister for Planning granted Concept Approval for:

- 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
- 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 lapse 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) and insertion of the Department's standard dispute resolution clause.	20/11/2014
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 for:

- the staged creation of 10 development lots
- subdivision of Precinct 5 into 376 residential lots
- infrastructure works along the Kings Forest Parkway and within Precincts 1 and 5
- 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.

The Project Approval has been modified on three occasions, as summarised in **Table 2** below.

**Table 2: Approved Modifications to Project Approval MP 08\_0194 Stage 1**

Mod No.	Description of Modification	Approved
MOD 1	Amendments to the weed management plan, changes to the staging plans for works adjacent to the environmental protection zones, inclusion of the former Crown reserves into the project area description, and amendments to the conditions of approval to extend the timeframes for submitting the environmental management plans.	11/08/2013
MOD 2	Amendments to the list of definitions in Schedule 1, introduction of a modified process for bond payments, changes to dust mitigation measures, inclusion of a new dispute resolution condition, and amendments to the timing of the: <ul style="list-style-type: none"> <li>• planting of Koala food trees</li> <li>• management of the 'Potential Council Land' and 'Future Office of Environment and Heritage (OEH) Land'</li> <li>• commencement of baseline environmental monitoring</li> <li>• surveying and delineation of the environmental offset areas, the boundaries of the Cudgen Nature Reserve and the SEPP 14 wetlands</li> <li>• the submission of audit reports.</li> </ul>	20/11/2014
MOD 3	Amendments to replace the previously approved rural supplies building in Precinct 1 with a service station/food and drink premises, including six food tenancies, an outdoor dining area, eight car bowzers, car and dog wash, and two pylon signs of between 7.5-9.5 metres high.	20/02/2017

Modification applications currently under consideration by the Department include:

- MOD 4, which seeks approval to implement a new Koala Plan of Management and undertake related changes to the conditions of approval
- MOD 5, which seeks to facilitate the construction of a private water and waste water treatment plant and associated sewerage and water supply infrastructure.

At the time of writing this report the above modifications had not been determined.

#### 4. PROPOSED MODIFICATION

On 24 August 2017, the Proponent lodged a section 75W modification request (MP 08\_0194 MOD 6) seeking approval to amend:

- Condition 26 to defer the timing for the construction of the roundabout at the intersection of Tweed Coast Road and Kings Forest Parkway from prior to the release of the first residential lot in Precinct 5, or the development of Precinct 1, to prior to the release of the first residential lot in Precinct 5, or the issue of an Occupation Certificate within Precinct 1, whichever occurs first
- Condition 116 to correct an error in the description of the inner protection area (IPA) to ensure the IPA is located entirely within the site boundaries
- Condition 154(c) to apply a 40 per cent 'employment generating incentive' discount to the road infrastructure contributions applicable to development within Precinct 1.

The modification is requested to:

- facilitate construction works within Precinct 1 prior, to or concurrent with, the construction of the roundabout, whilst ensuring the roundabout is completed prior to the Precinct 1 service station becoming operational
- correct an error in the description of the inner protection area (IPA) in Condition 116 of the Project Approval
- facilitate the application of the development contributions discount for employment generating businesses applicable under the *Tweed Shire Council No.4 Tweed Road Contribution Plan* and Council's *Business Investment Policy*.

#### 5. STATUTORY CONSIDERATION

##### 5.1 Section 75W

The project was originally approved under Part 3A of the EP&A Act. Although Part 3A was repealed on 1 October 2011, the project remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act, and hence any modification to this approval must be made under the former section 75W of the Act.

The Department is satisfied the proposed changes are within the scope of section 75W of the EP&A Act, and the proposal does not constitute a new application.

##### 5.2 Approval Authority

The Minister for Planning is the approval authority for the request. However, the Director, Modification Assessments may determine the modification request under delegation as:

- the relevant local council has not made an objection
- a political disclosure statement has not been made
- there are no public submissions in the nature of objections.

#### 6. CONSULTATION

The Department made the modification request publicly available on its website, and consulted with Tweed Shire Council (Council), the NSW Rural Fire Service (RFS), Roads and Maritime Services (RMS), and the Office of Environment and Heritage (OEH) about the proposed modification.

**RFS** did not object to the proposal and did not raise any concerns, however it recommended the preparation of a site plan to identify the boundaries of the IPA for new developments within Precinct 1.

**OEH** did not object to the proposal and did not raise any concerns.

**Council** did not object to the proposal, and advised the development was eligible for Council's 40 per cent employment generating development contributions discount. In addition, Council recommended additional changes to Condition 116 to clarify the boundaries of the IPA for the site, and ensure all planting in the IPA is undertaken in accordance with the requirements of *Planning for Bushfire Protection 2006* (PBP 2006).

**RMS** did not object to the proposal, and provided the following comments:

- traffic impacts associated with the construction of development within Precinct 1 can be managed via conditions 52 and 55 of the Project Approval
- the Project Approval currently requires the construction of the roundabout at the intersection of Tweed Coast Road and the Kings Forest Parkway prior to residential development occurring on-site
- it is unclear why the proposed modifications to Condition 26 have different hold points for Precincts 1 and 5 in terms the construction of roundabout at the intersection of Tweed Coast Road and the Kings Forest Parkway.

There were no **public** submissions received on the proposal.

### **Response to Submissions**

The Department requested a Response to Submissions (RTS) to address the comments provided in the agency submissions.

The Proponent provided a RTS on 5 December 2017. In summary, the RTS concluded:

- a plan is not required to clarify the boundaries of the IPA within Precinct 1
- different hold points are required for the construction of the roundabout at the intersection of Tweed Coast Road and the Kings Forest Parkway to provide flexibility in the staging of the construction of the development.

## **7. ASSESSMENT**

The Department considers the key issues associated with the proposed modification are:

- management of potential traffic impacts at the intersection of Tweed Coast Road and the Kings Forest Parkway
- bushfire protection within Precinct 1
- changes to development contributions in Precinct 1.

### **7.1 Intersection timing**

Condition 26 of the Project Approval requires the construction of a two-lane roundabout 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.

The modification request seeks approval to amend Condition 26 as follows:

*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 **issue of an Occupation Certificate for development within Precinct 1, whichever occurs first.***

This would delay the construction of the roundabout from prior to the development within Precinct 1 to prior to the issue of an Occupation Certificate for development within Precinct 1. No other changes to the timing of the roundabout are proposed.



The Department notes Precinct 1 is the service station site. The Department considers the revised timing is acceptable as the roundabout would still be required to be constructed prior to the operation of the service station. This would ensure appropriate traffic management devices are in place to meet the additional traffic demand associated with the development, as per the intent of the original condition.

The Department also notes the proposed wording of Condition 26 is consistent with the Condition 125, which also seeks to ensure all road infrastructure required to manage the traffic impacts of development within Precinct 1 is completed prior to the service station and associated food and drink premises becoming operational.

Further, the Department is satisfied the Construction Environmental Management Plan and Construction Traffic and Pedestrian Management Plan required under conditions 52 and 55 will ensure potential traffic impacts are managed during the construction phase of the project.

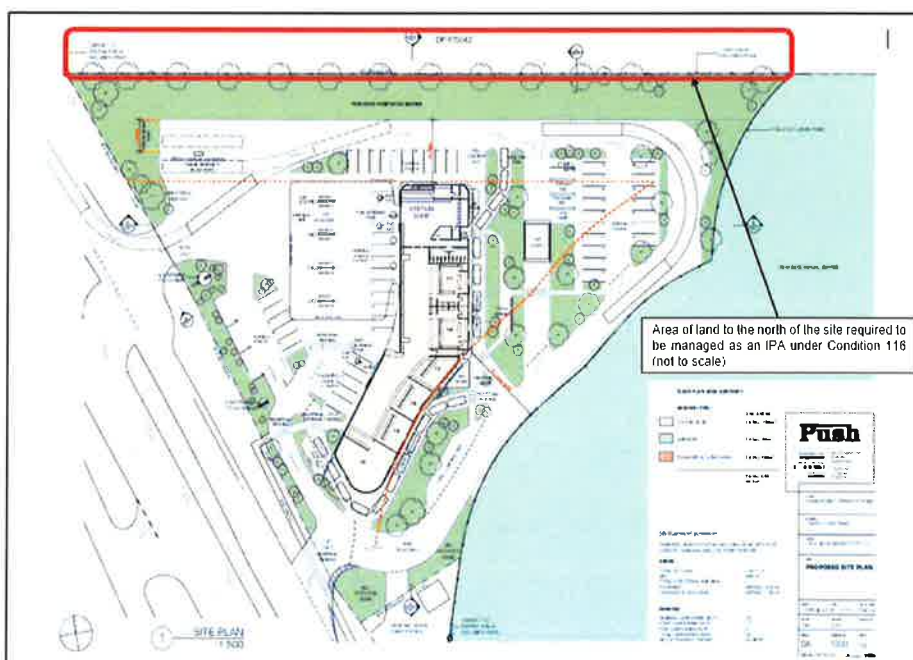
The Department notes RMS raised concern with the proposed wording of Condition 26 on the basis it proposes different hold points for the construction of the roundabout at the intersection of Tweed Coast Road and the Kings Forest Parkway. However, the Department is satisfied different hold points are appropriate as the timing for the completion of works within these precincts is not yet known and it would provide flexibility for the staging of the development.

Given the above, the Department supports the proposed modifications to Condition 26, subject to a minor change specifying the roundabout must be completed prior to issue of the first Occupation Certificate for development within Precinct 1.

## 7.2 Bushfire Protection within Precinct 1

On 20 February 2017, the NSW Land and Environment Court (the Court) approved MP 08\_0194 MOD 3 for the construction and operation of a service station with associated food and drink premises in Precinct 1. As part of its determination, the Court inserted new Condition 116 identifying the land within Precinct 1 that must be managed as an IPA.

The Proponent has reviewed the wording of Condition 116 and has advised the condition appears to contain a drafting error as the requirement to manage the area referenced in the condition as an IPA is not possible, as part of the land is located outside the project area on land not owned by the Proponent (see **Figure 2**). Accordingly, the modification request seeks to amend the wording of the condition.



**Figure 2:** Site Plan Precinct 1

The Department notes both Council and the RFS support the proposed modification, subject to the Proponent:

- providing a new plan that delineates the boundary of the IPA
- ensuring all planting within the IPA complies with the requirements of section A2.2(vi) of PBP 2006

The Department has reviewed the current wording of Condition 116 and has concluded the description of the IPA is incorrect and requires revision. In addition, the Department has reviewed the agency submissions and has concluded it would be beneficial to reference a new plan in the condition to clearly delineate the boundaries of the IPA. Further, the Department considers Condition 116 should be updated to ensure all vegetation within the IPA is consistent with the vegetation structures outlined in section A2.2(vi) of PBP 2006.

The Department considers the proposed modifications to Condition 116 are appropriate on the basis they will clarify the location of the IPA within Precinct 1. However, the Department has recommended additional changes to Condition 116 to require the Proponent to:

- prepare a new plan delineating the boundaries of the IPA in consultation with the RFS and Council, and submit the Plan to the Secretary for approval prior to the issue of the first Construction Certificate for development within Precinct 1. This will ensure the IPA is defined and established prior to the commencement of construction works, as per the intent of the current condition
- ensure all vegetation planted within the IPA is consistent with the vegetation structures outlined in section A2.2(vi) of PBP 2006.

### **7.3 Changes to Development Contributions in Precinct 1**

The modification request seeks approval to amend Condition 154(c) to apply a 40 per cent discount to the road infrastructure contributions applicable to development within Precinct 1.

The Proponent has advised the development approved in Precinct 1 meets the definition of a 'job creating business', and as such qualifies for the 40 per cent discount on the contributions identified in the *Tweed Shire Council No.4 Tweed Road Contribution Plan*.

The Department notes Council confirmed the proposal is eligible for the 40 per cent development contribution discount, and provided revised development contribution figures for inclusion in Condition 145(c). Given the above, the Department supports the proposed modifications to Condition 145(c) to reflect the revised figures provided by Council. These revisions have been included in the recommended notice of modification.

## **8. 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 concludes the proposed modification is appropriate on the basis that:

- the roundabout would still be constructed prior to the operation of the service station, ensuring traffic impacts associated with the proposal would be appropriately managed
- the proposed modifications to Condition 116 would clarify the boundaries of the IPA for Precinct 1, and provide consistency with the landscape requirements outlined in PBP 2006
- the service station and food outlets in Precinct 1 are eligible for Council's 40 per cent employment generating uses discount for development contributions.

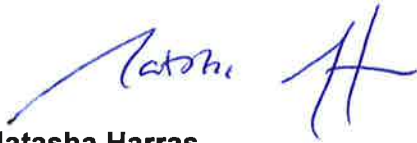
Consequently, it is recommended that the modification be approved subject to the recommended conditions.

## 9. RECOMMENDATION

It is recommended that the Director, Modification Assessments, as delegate for the Minister for Planning:

- consider the findings and recommendations of this report
- determine that MP 08\_0194 MOD 6 is within the scope of section 75W of the EP&A Act
- modify the Project Approval for MP 08\_0194
- sign the attached notice of modification (see **Attachment A**).

Recommended by:



**Natasha Harras**  
**Team Leader**  
**Modification Assessments**

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## DECISION

The recommendation is: Approved by:



**Anthony Witherdin**  
**Director**  
**Modification Assessments**  
as delegate of the Minister for Planning.



## **APPENDIX A: NOTICE OF MODIFICATION**

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A copy of the notice of modification can be found on the Department's website at:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8698](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8698)

## **APPENDIX B: SUPPORTING INFORMATION**

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The following supporting documents and supporting 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=8698](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8698)

2. Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8698](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8698)

3. Response to Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=8698](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8698)