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+ MODIFICATION OF CONCEPT PLAN APPROVAL NO. 06_0318 (MOD 5)

KINGS FOREST STAGE 1 – PROPOSED RESIDENTIAL SUBDIVISION

At Kings Forest, Kingscliff

• Prepared For: Project 28 Pty Ltd | • Prepared by: DAC Planning Pty Ltd | • September 2015 |



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MODIFICATION OF CONCEPT PLAN APPROVAL NO. 06_0318 (MOD 5)

PROPOSED RESIDENTIAL DEVELOPMENT AT KINGS FOREST, KINGSCLIFF

1.0 INTRODUCTION

DAC Planning Pty Ltd has been engaged by Project 28 Pty Ltd to prepare an application proposing the modification of Concept Plan Approval No. 06_0318 (MOD 5).

This Modification Application seeks to make amendments to the Approval and Kings Forest Development Code to permit the construction and operation of "food and drink premises" with the exception of a "pub" or "small bar", within the employment lands.

2.0 CONCEPT PLAN APPROVAL NO. 06_0318

On 19 August 2010 the then Minister for Planning approved a Concept Plan for Kings Forest under Section 75O of the EP&A Act, following the Planning and Assessment Commission review.

This approval comprised the following:

- ♦ 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 area and lake; and
- ♦ Roads, bicycle and pedestrian network.

Following the grant of the original approval, the Concept Plan has been modified on four occasions. These modifications have, among other things, facilitated the Kings Forest Development Code.

A copy of the consolidated Project Approval incorporating Modifications 1 to 4 is provided at **Annexure B** to this report.

Section 75W of the Act, states, inter alia:-

"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*

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-
- (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."*

Clause 3C(1) of Schedule 6A of the Act states that:

*"Section 75W continues to apply for the purpose of the modification of a concept plan approved before or after the repeal of Part 3A, **whether or not the project or any stage of the project is or was a transitional Part 3A project** (bold added)."*

This means that the provisions of Section 75W apply. It does not matter whether or not the development is a transitional Part 3A project. The proposed modification is sought pursuant to these requirements.

3.0 PROPOSED MODIFICATIONS

The proposed change is to adopt a revised *Kings Forest Development Code* which alters the 'development uses' envisaged for the 'employment land' in the Code's precinct development matrix. This requires a modification of Condition A3.

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

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

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

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

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

There is no definition of a 'small bar' in the current Code. Accordingly, it is proposed to insert the existing Standard Instrument definition (as per the *Standard Instrument (Local Environmental Plans) Order 2006*) into Appendix A of the Code. This definition is as follows:

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

Additionally, the current definition of 'food and drink premises' in the *Kings Forest Development Code* does not refer to a 'small bar'. Accordingly, to ensure that there is no confusion, it is proposed to omit the current definition of 'food and drink premises' in Appendix A of the Code, and instead replace it with the definition that appears in the Standard Instrument.

The current Code definition reads as follows:

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

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

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

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

The proposed new amended *Kings Forest Development Code* also includes the textual changes envisaged in Condition B6 of the Concept Approval. If this is approved it makes Condition B6 unnecessary, and, as a result, it is also proposed to delete Condition B6.

A request to amend the Kings Forest Development Code was included in the CP06_0318 Modification Application (MOD 2). Not all of the requested amendments were approved. In summary, the following amendments were approved:

B6 Kings Forest Development Code

The Kings Forest Development Code dated 2012 submitted with the proponent's PPR dated October 2012 is modified as follows:

- 1) *Part A, Schedule 1*
 - a. *Part 2.1.15 is amended to be consistent with Clause 4A.1 of SEPP (Exempt and Complying Development Codes) 2008*
 - b. *Part 2.1.72 is amended to be consistent with clause 2.70 of SEPP (Exempt and Complying Development Codes) 2008*
- 2) *Part A, Schedule 2*

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a. Part 2.2.1(ac) is amended to be consistent with clause 3.36B of SEPP (Exempt and Complying Development Codes) 2008

4) Part B, Section 5.6

b. Control 1(b) - Delete Control 1(b) and replaced with new Control 1(b) as follows:

(b) A notation that development on the dwellings/buildings adjacent to Asset Protection Zones is subject to the requirements of 'Planning for Bushfire Protection 2006' and AS3959-2009 Construction of Buildings in Bushfire Prone Areas

c. Control 1(j) - The deletion of the words "dwellings per lot" is not approved. Immediately after the words "dwellings per lot" in Control 1(j), insert the words "and bedrooms per dwelling"

Condition A2 of MOD4 refers to a Revised Precinct Plan, Rev B, 5 December 013. The Revised Precinct Plan has been included at Figure 5.1.1 of the proposed amended Kings Forest Development Code. Condition A2 of MOD4 also refers to a Revised Concept Plan, Rev B, 5 December 2013 which has been included at Figure 1.2.1 of the proposed amended Kings Forest Development Code.

A copy of the proposed amended Kings Forest Development is contained at **Annexure C**.

4.0 ENVIRONMENTAL ASSESSMENT

A strategic justification for the proposed change, prepared by Gadens, is included as **Annexure A** to this document.

The proposed modification will have no impact in respect of the functionality or efficiency of the Kings Forest Development Code. No adverse social or environmental impacts are considered likely in the context of the proposed modification and further assessment is not considered required in this instance. The proposed modification will lead to beneficial environmental outcomes as it is likely to avoid some unnecessary trip generation and better manage transport demand. The change will also contribute to the economic and social vitality of the employment land located within the Kings Forest site.

5.0 CONCLUSION

The proposed Modification of MP06_0318 as proposed is authorised by Section 75W(1)(a) and (b) of the Environmental Planning and Assessment Act.

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

The proposed modification of the approval is considered to be sustainable, lead to a better planning outcome and is in the public interest. Approval of the application is respectfully requested.

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