

**TWEED SHIRE COUNCIL  
MEETING TASK SHEET**

**User Instructions**

If necessary to view the original Report, double-click on the 'Agenda Report' blue hyperlink above.

**Action Item - PLANNING COMMITTEE MEETING Thursday, 5 November  
2015**

Action is required for Item **a10** as per the Planning Committee Recommendation outlined below.

**ATTENTION:**

**PLEASE NOTE THE ADOPTION OF THE COMMITTEE RECOMMENDATIONS BY COUNCIL AT ITS MEETING HELD Thursday, 5 November 2015 (Minute No 589 Refers)**

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**TITLE: [PR-PC] Kings Forest Concept Plan Modification (Council Reference GT1/51 Department's Reference MP06/0318 MOD 5) to Allow Food and Drink Premises Within the Mapped Employment Land Area of the Kings Forest Release Area**

**DECLARATION OF INTEREST**

**Cr K Milne** declared a Non-Significant, Non-Pecuniary Interest in this item. The nature of the interest is that Cr K Milne has ongoing legal matters in regard to defamation with the Chairman of Leda Holdings, the developer of the Kings Forest development. Cr K Milne will manage the Interest by staying in the Chair and assessing the matter on merit alone.

**Cr C Byrne  
Cr P Youngblutt**

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

**AMENDMENT 1**

**Cr K Milne  
Cr G Bagnall**

**PROPOSED** Council raises objection to MOD 5 to the Kings Forest Concept Plan (Council Reference GT1/51 Department's Reference MP06/0318 MOD 5) to enable food and drink

premises to be considered on merit as permissible land uses within the "employment land" areas of Kings Forest on the grounds of the following:

1. The proposal is not in accordance with Tweed DCP sB9.7.9 Protected Green Belt.
2. There is already a major outlet for this type of activity in relatively close proximity at the Chinderah BP.
3. These types of activities are usually visually obtrusive and should be contained in strategic locations to minimize the visual impact.
4. Existing business centres would be unfairly disadvantaged, and these types of facilities should be restricted to areas that require servicing of long distance travellers.
5. The imposition of one supermarket is not a sufficient reason to further erode long held scenic values that are so important to Tweed's natural character and the economic development of the Shire's tourism image.
6. The Casuarina supermarket has had a significant impact on the landscape and adding to this will likely lose the integrity of the Tweed Coast Road as a scenic route.

Amendment 1 was **Lost**

**FOR VOTE - Cr G Bagnall, Cr K Milne**

**AGAINST VOTE - Cr B Longland, Cr C Byrne, Cr W Polglase, Cr P Youngblutt**

The Motion was **Carried**

**FOR VOTE - Cr B Longland, Cr C Byrne, Cr W Polglase, Cr P Youngblutt**

**AGAINST VOTE - Cr G Bagnall, Cr K Milne**

**TITLE:** [PR-PC] Kings Forest Concept Plan Modification (Council Reference GT1/51 Department's Reference MP06/0318 MOD 5) to Allow Food and Drink Premises Within the Mapped Employment Land Area of the Kings Forest Release Area

**SUBMITTED BY:** Development Assessment and Compliance

**FILE REFERENCE:** DA11/0565 Pt9

Valid



## Civic Leadership

### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- |       |  |
|-------|--|
| 1     | Civic Leadership   |
| 1.2   | Improve decision making by engaging stakeholders and taking into account community input       |
| 1.2.1 | Council will be underpinned by good governance and transparency in its decision making process |

**SUMMARY OF REPORT:**

In February 2015 the NSW Department of Planning & Environment advised Council that they were undertaking a test of adequacy on proposed MOD 5 to the Kings Forest Concept Plan to change the approved rural supplies building on the eastern side of Tweed Coast Road to a proposed service station with 6 food outlets. This would have necessitated a change to both the Concept Plan (and Development Code) and the first Project Application.

Council raised technical matters with the proposed modification but specifically questioned whether the proposed food outlets were permissible.

The Department has since been liaising with the applicant Project 28 Pty Ltd and on 2 October 2015 the NSW Department of Planning & Environment wrote to Tweed Shire Council asking for Council's official comments on Project 28 Pty Ltd (Leda's) proposed Modification to the Kings Forest Concept Plan (MOD 5).

The amended Modification (MOD 5) to MP 06/0318 now specifically seeks approval to permit food and drink premises (other than pubs or small bars) in the employment land areas of the Kings Forest site.

The employment land matrix table already allows land uses such as business premises, car parks, child care centres, emergency service facilities, kiosks, land and garden supplies, office premises, recreation areas, roads, rural supplies, service stations, shop (max 200m2 GFA), vehicles sales premises and sewerage reticulation systems. And therefore the modification seeks to include the words "food and drink premises" into the permissible development table (land use matrix within the Development Code for Kings Forest).

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

The applicant has supported their application with a Strategic Justification for the change, which concludes:

*"It makes little planning sense to separate the preparation and sale of food or drink for immediate consumption, from land uses in which they are frequently associated (such as service stations, garden centres, internet cafes and offices). The omission of 'food and drink premises' from the Kings Forest Development Code's precinct development matrix appears to be nothing more than an oversight. The proposed change is justified".*

This conclusion is agreed with, and the amendment is supported.

Following a recent request for comment on the proposed amendment from the Councillors, some concerns were raised in respect of the proposal by a Councillor, and as such the matter is being reported to Council for a determination.

**RECOMMENDATION:**

**That Council raises no objection to MOD 5 to the Kings Forest Concept Plan (Council Reference GT1/51 Department's Reference MP06/0318 MOD 5) to enable food and**

**drink premises to be considered on merit as permissible land uses within the "employment land" areas of Kings Forest.**

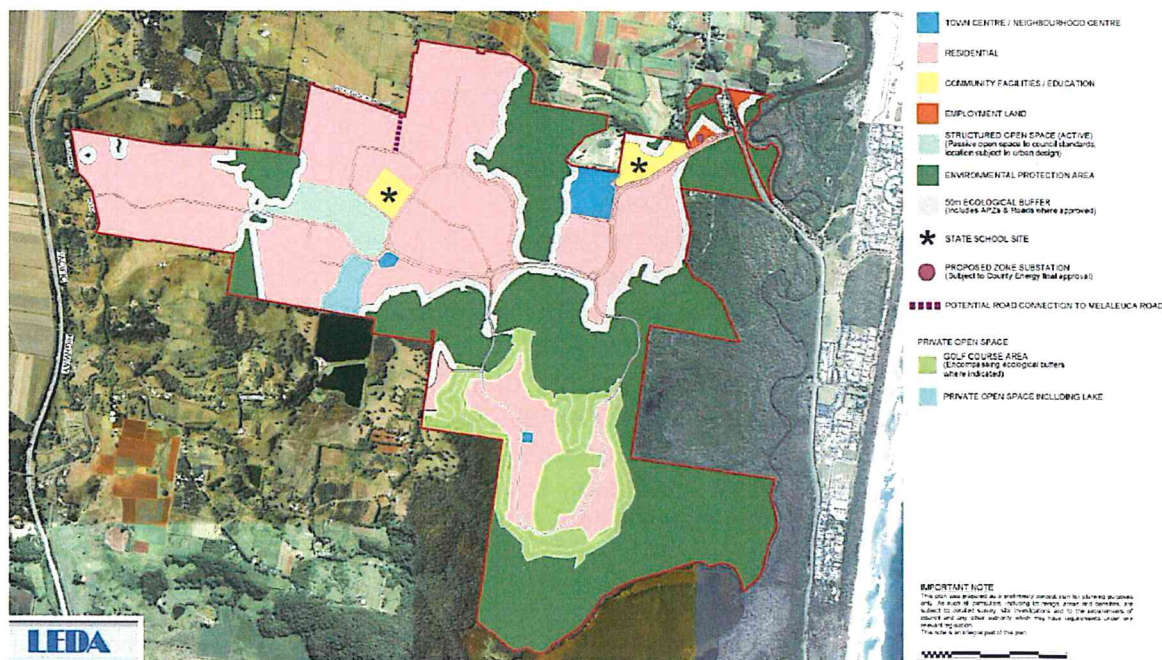


**REPORT:**

**Applicant:** Project 28 Pty Ltd/Narui Gold Coast Pty Ltd  
**Owner:** Project 28 Pty Ltd/Narui Gold Coast Pty Ltd  
**Location:** Lot 6 DP 875446; Depot Road, Kings Forest; Lot 2 DP 819015; No. 102 Melaleuca Road, Duranbah; Lot 37A DP 13727; No. 126 Melaleuca Road, Kings Forest; Lot 7 DP 875447; No. 231 Tweed Coast Road Kings Forest; Lot 1 DP 129737 & Lot 1 DP 706497 & Lot 1 DP 781633 & Lot 272 DP 755701 & Lot 323 DP 755701 & Lot 326 DP 755701 & Lot 38A DP 13727 & Lot 38B DP 13727 & Lot 40 DP 7482 & Lot 76 DP 755701; No. 86 Melaleuca Road Kings Forest  
**Zoning:** In accordance with SEPP (Major Development) 2005 Kings Forest Land Zoning Map - 2(c) Urban Expansion, 7(a) Environmental Protection (Wetlands and Littoral Rainforest) and 7(l) Environmental Protection (habitat).

**Background:**

The Concept Plan for Kings Forest approved by the NSW Department of Planning shows two areas marked for "employment land" totalling 7ha in size. One of these areas is on the eastern side of Tweed Coast Road and the other is on the western side of Tweed Coast Road north of the new Kings Forest Parkway as entering the broader Kings Forest site. They are shown on the Concept Plan as orange:



	CLIENT <b>PROJECT 28 Pty Ltd</b>	PLAN <b>KINGS FOREST                  STAGE 1 PROJECT APPLICATION</b>	REVISIONS <table border="1"> <tr> <th>NO.</th> <th>DETAILS</th> <th>DATE</th> <th>BY</th> </tr> <tr> <td>A</td> <td>REVISION</td> <td>21.01.12</td> <td>DAJ</td> </tr> <tr> <td>B</td> <td>REVISION</td> <td>05.12.13</td> <td>BJB</td> </tr> <tr> <td>C</td> <td></td> <td></td> <td></td> </tr> <tr> <td>D</td> <td></td> <td></td> <td></td> </tr> <tr> <td>E</td> <td></td> <td></td> <td></td> </tr> <tr> <td>F</td> <td></td> <td></td> <td></td> </tr> <tr> <td>G</td> <td></td> <td></td> <td></td> </tr> <tr> <td>H</td> <td></td> <td></td> <td></td> </tr> </table>	NO.	DETAILS	DATE	BY	A	REVISION	21.01.12	DAJ	B	REVISION	05.12.13	BJB	C				D				E				F				G				H				RPS Australia East Pty Ltd 2/21 140 292 752 140 292 752 Suite 8, Tweed Coast City, Carrington Park 24/241 241 241 Carrington Drive, Kings Forest NSW 2486 P: 61 2 565 39900 F: 61 2 565 39999 www.rps.com.au
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The approved Development Code which formed part of the approved Concept Plan has design parameters for the Kings Forest site.

The objectives and controls for the Kings Forest Employment Land are as follows:

### 4.3 Development Within the Kings Forest Employment Land

#### Objectives

- (1) To provide land for *business premises, office premises, retail premises* and other employment generating uses which require larger land areas or which are not suitable in the Town Centre Precinct.
- (2) To provide high visual amenity to the entry to Kings Forest, well designed buildings and pleasant streetscapes.

#### Controls

- (1) Provide a range of *building heights* to a maximum of three *storeys*.
- (2) Provide high quality built form and landscaping particularly to primary street frontages and frontages visible from Kings Forest Parkway and Tweed Coast Road.
- (3) Side and rear *setbacks* are to be in accordance with the *plan of development*.
- (4) Blank walls visible from the public domain are not permitted.
- (5) Provide a minimum 2m *building line setback* to the primary frontage.
- (6) Provide signage envelopes within the building design to co-ordinate the appearance of signage.
- (7) Site servicing and loading facilities, waste storage and other infrastructure is to be designed to minimise visual impact on the public domain and impacts on neighbours.
- (8) Parking access and loading is to be provided in accordance with Tweed DCP 2008, Section A2.
- (9) Avoid parking between within the *primary road frontage building line* unless screened from public view.

The urban design principles for the employment land are as follows:

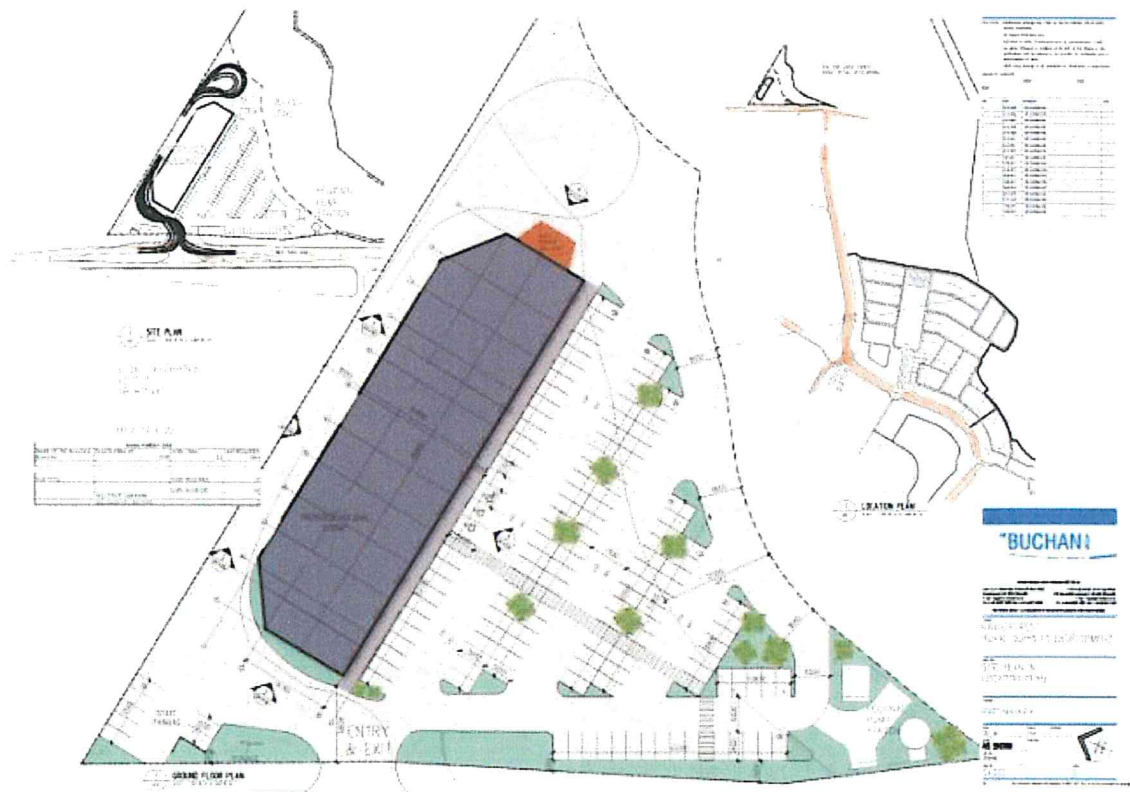
- Provision of diverse employment opportunities
- Controlled by Development Code;
- All required parking located within site
- Maintain vegetated buffer to other land uses;
- Must demonstrate sensitive interaction with surrounding development.

In the land use matrix table of the Development Code, the following land uses are allowed in the employment land areas with consent: business premises, car parks, child care centres, emergency service facilities, kiosks, land and garden supplies, office premises, recreation areas, roads, rural supplies, service stations, shop (maximum 200m<sup>2</sup> Gross Floor Area), vehicles sales premises and sewerage reticulation systems (Note the blue text food and drink premises (other than pubs or small bars) is proposed as part of this MOD).

Employment Land	<ul style="list-style-type: none"> <li>• Business premises</li> <li>• Carpark</li> <li>• Child care centre</li> <li>• Emergency services facility</li> <li>• Food and drink premises (other than pubs or small bars)</li> <li>• Kiosk</li> <li>• Landscape and garden supplies</li> </ul>	<ul style="list-style-type: none"> <li>• Office premises</li> <li>• Recreation area</li> <li>• Roads</li> <li>• Rural supplies</li> <li>• Service station</li> <li>• Sewage reticulation system</li> </ul>	7.0 ha	<ul style="list-style-type: none"> <li>• Provision of diverse employment opportunities</li> <li>• Controlled by Development Code</li> <li>• All required parking located within site</li> <li>• Maintain vegetated buffer to other land uses</li> <li>• Must demonstrate sensitive interface with surrounding development</li> </ul>
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The approved Development Code and the approved Project Application for the employment land on the eastern side of Tweed Coast Road (Precinct 1) shows a Rural Supplies Development with 2,036m<sup>2</sup> of floor space for rural supplies development within one building with access, parking and landscaping arrangements all within Precinct 1. The development was shown sited outside the 50m ecological buffer. Outside the 50m buffer is a further 21m

for an asset protection zone. In this location the applicant shows some car parking spaces and the regional pump station.



The approval for the fit out of the building, use and hours of operation and signage will be the subject of future development applications submitted to Tweed Shire Council and determined under Part 4 of the EP&A Act 1979.



**AERIAL 2015:**



**AERIAL PHOTO - April 2015**  
KINGS FOREST

**SOURCE:**  
Aerial imagery was captured  
April 2015 © AAM Pty Ltd and NSWLPI

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Cadastre: 28 October, 2015  
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Boundaries shown should be considered approximate only.

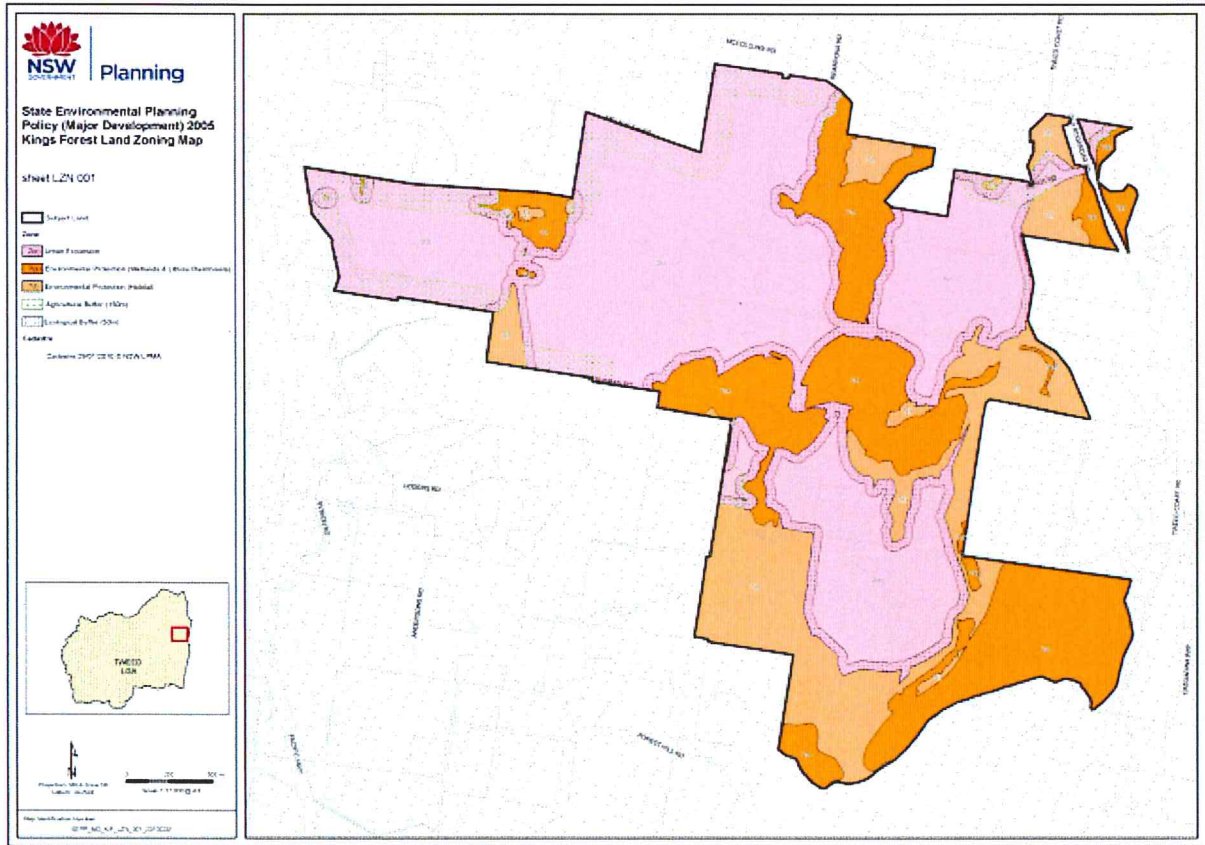
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**GDA** Map Projection: Universal Transverse Mercator  
Horizontal Datum: Geoidic Datum of Australia 1994  
Grid: Map Grid of Australia, Zone 56

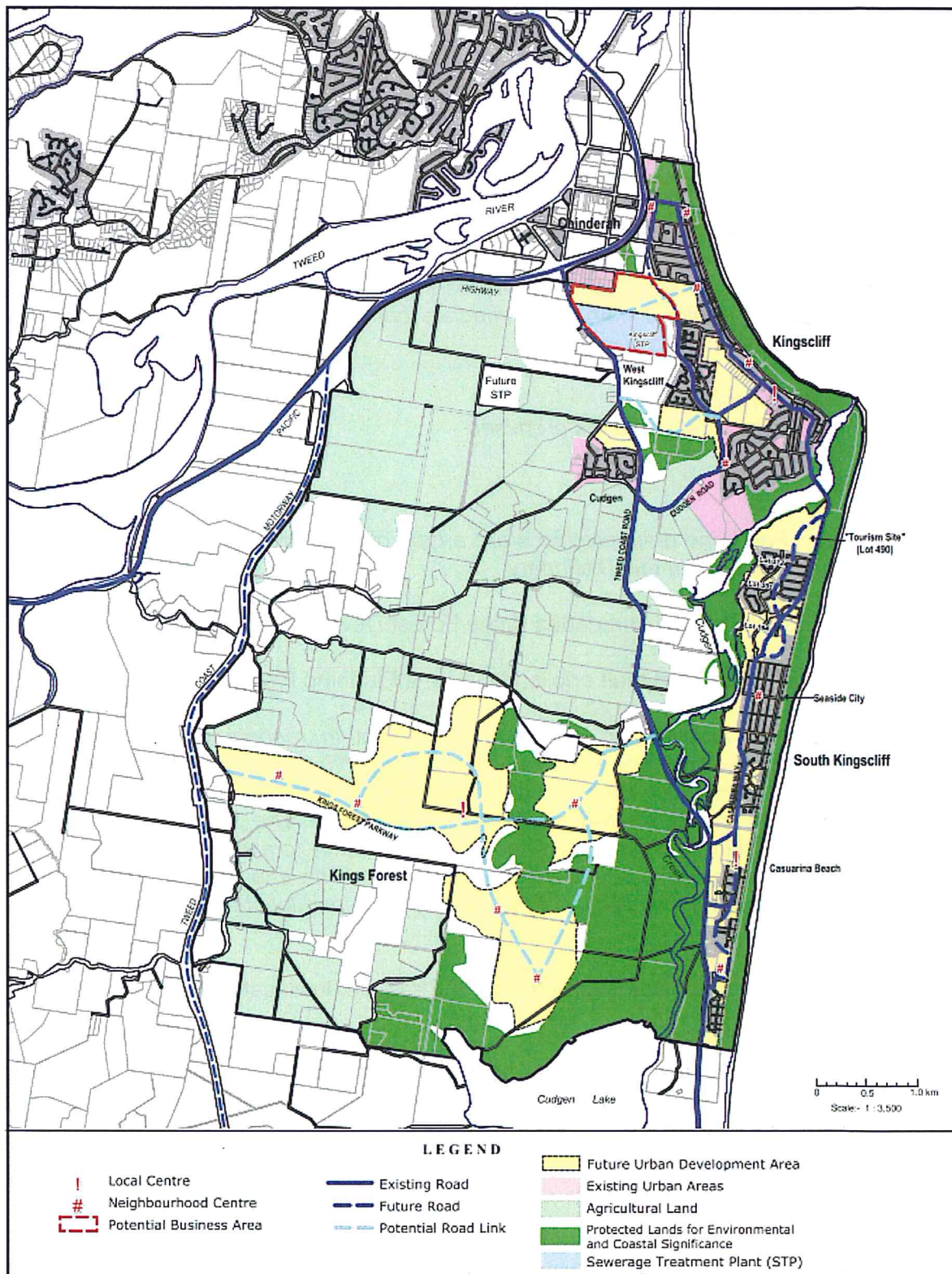
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# ZONING MAP:



**TWEED DCP B9 MAP 2 EXTRACT:**



Section B9  
Tweed Coast Strategy  
**Structure Plan**

**MAP 2**

## PROPOSAL

On 2 October 2015 the NSW Department of Planning & Environment wrote to Tweed Shire Council asking for Council's official comments on Project 28 Pty Ltd (Leda's) proposed Modification to the Kings Forest Concept Plan (MOD 5).

The amended Modification (MOD 5) to MP 06/0318 specifically seeks approval to permit food and drink premises (other than pubs or small bars) in the employment land areas of the Kings Forest site.

A food and drink premises is defined under the Standard Instrument as:

*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.

*Note: Food and drink premises are a type of retail premises—see the definition of that term in this Dictionary.*

This would necessitate a new amended Kings Forest Development Code.

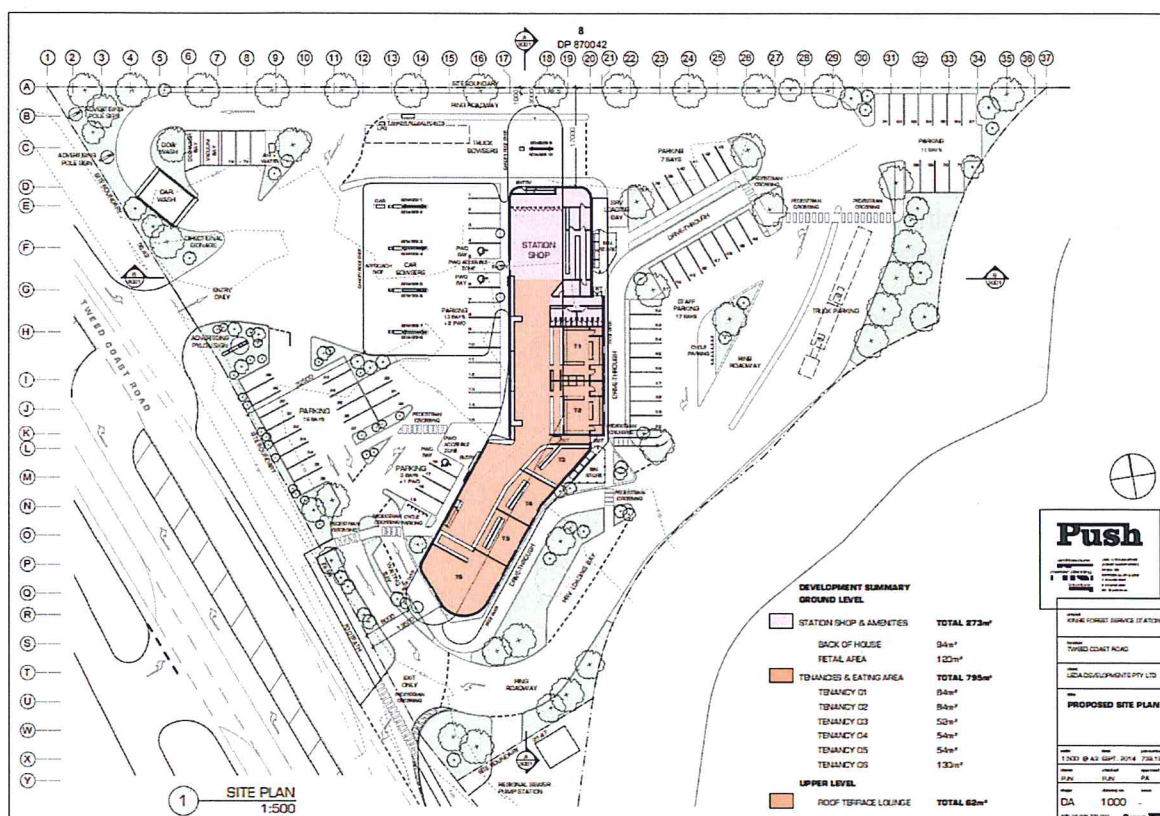
The applicant has supported their application with a Planning Report which states:

*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.*

In addition the application was supported by a Strategic Justification for the change, which concludes:

*"It makes little planning sense to separate the preparation and sale of food or drink for immediate consumption, from land uses in which they are frequently associated (such as service stations, garden centres, internet cafes and offices). The omission of 'food and drink premises' from the Kings Forest Development Code's precinct development matrix appears to be nothing more than an oversight. The proposed change is justified".*

It is understood that the applicant wants to pursue a service station with approximately 6 Tenancies & Eating Area on the employment land east of Tweed Coast Road. The following plan depicts a version of the proposed service station as at February 2015 (this may change when the applicant seeks approval for the land use as the current MOD only seeks approval for the strategic exercise to change the adopted Development Code to allow a new use to be permissible).



There are many normal merit issues with a proposed service station and ancillary shops development (including traffic implications, signage assessments, ecological impacts etc.). However Council has not been asked to review these merit issues to date.

Council is only being asked whether it has any objection to food and drink premises (excluding pub and small bar) becoming a permissible land use in the employment lands section of the site.

The applicant's Strategic Justification for the change undertook a review of other standard Instruments and stated that the Kings Forest Employment Land is most aligned to Zone B7 Business Park and Food and Drink premises are generally permitted in these zones in most instances.

In review of the Modification, it is considered that there is no apparent planning reason to object to the proposed amendment as issues of merit could be assessed with future individual DA's.

However the proposed modification could open up the land (particularly on the eastern side of Tweed Coast Road) to be used as a stand-alone, take away fast food outlet, which raise some amenity impact issues.

In regard to these issues, LEDA has further advised:

*"There is no intention to have a fast food outlet without a service station. We would have no concern about a condition to that effect."*

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

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

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

#### *B9.7.9 Protected Green Belt*

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

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

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

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

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

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

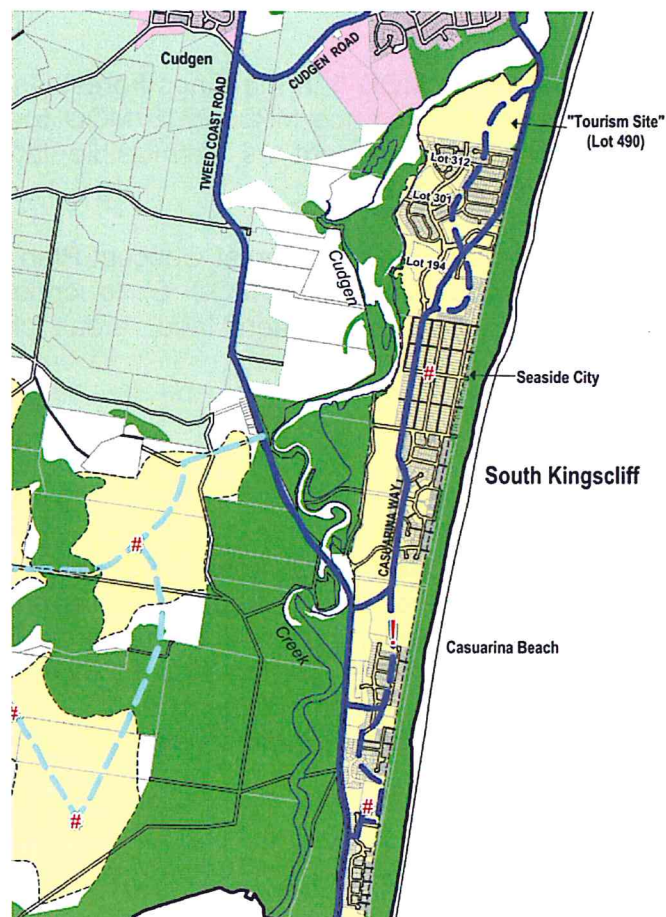
*The integrity of the Protected Green Belt will be maintained by such measures as:*

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

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

*However, there is neither a discussion in the Discussion Paper of the Green Belt concept before appearing in the Recommended Basis; nor have the nominated measures been included as a specific policy statement. This ambiguity needs to be remedied if the objectives are to be achieved.*

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



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

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

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

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

Following a recent request for comment on the proposed amendment from the Councillors, some concerns were raised in respect of the proposal by a Councillor, and as such the matter is being reported to Council for a determination.

#### **OPTIONS:**

1. That Council raises no objection to MOD 5 to the Kings Forest Concept Plan (Council Reference GT1/51 Department's Reference MP06/0318 MOD 5) to enable food and drink premises to be considered on merit as permissible land uses within the "employment land" areas of Kings Forest or
2. That Council objects to MOD 5 to the Kings Forest Concept Plan (Council Reference GT1/51 Department's Reference MP06/0318 MOD 5) to oppose food and drink premises being allowed within the "employment land" areas of Kings Forest and provide reasons for the objection.

Option 1 is recommended.

#### **CONCLUSION:**

Through various approvals processes, the Kings Forest site now has the benefit of a defined development footprint (by virtue of the zoning), an approved Concept Plan and Development Code nominating permissible land uses, and an approved Project Application which further authorises development on the eastern side of Tweed Coast Road. The inclusion of one additional land use for the employment land is considered minor and capable of support at a strategic level with further merit considerations to be undertaken at a later date.

#### **COUNCIL IMPLICATIONS:**

##### **a. Policy:**

Corporate Policy Not Applicable.

##### **b. Budget/Long Term Financial Plan:**

Not Applicable

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Inform: We will keep you informed.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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