

## ASSESSMENT REPORT

### Kings Forest, Tweed MP 06\_0318 MOD 5

#### 1. INTRODUCTION

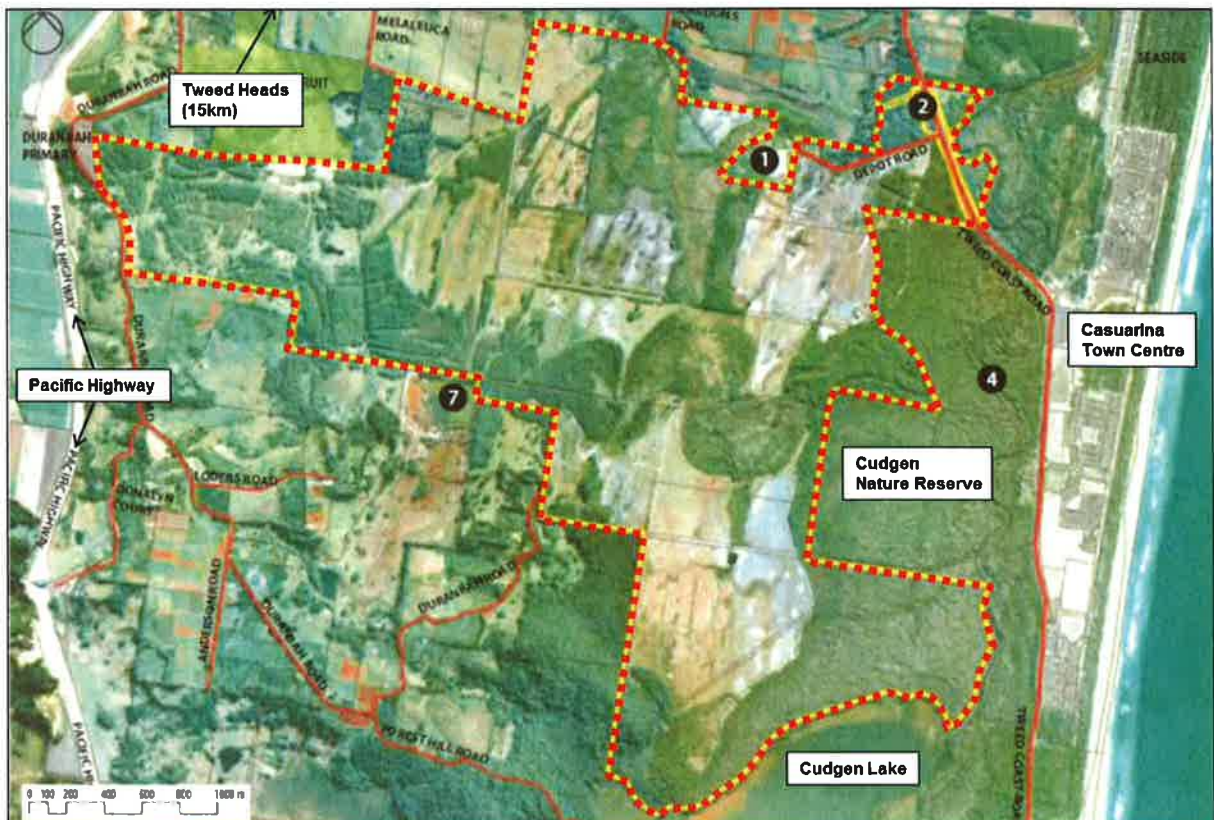
This report is an assessment of a request to modify the Concept Plan (MP06\_0318) for the Kings Forest subdivision in Tweed. The request has been lodged by DAC Planning Group Pty Ltd on behalf of Project 28 Pty Ltd (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The proposal seeks to modify the Kings Forest Development Code to permit the construction and operation of food and drink premises (with the exception of a pub or small bar) in the employment lands, amend the definition of 'food and drink premises' and insert a definition for 'small bar'.

#### 2. SUBJECT SITE

The site is approximately 880 hectares in area and comprises 19 parcels of land. It is located approximately 15km south of Tweed Heads, in the Tweed LGA close to the townships and coastal suburbs of Bogangar, Cabarita Beach and Casuarina.

The site is surrounded by agricultural and pastoral lands to the north, south and west. Cudgen Lake, wetlands and the Cudgen Nature Reserve border the southern and eastern site boundaries. Further east on the opposite side of Cudgen Nature Reserve is the coastal suburb of Casuarina. The site location and its surroundings are shown in **Figure 1**.



**Figure 1: The site (dashed outlined) and its surroundings**

### 3. APPROVAL HISTORY

#### Concept Approval MP06\_0318

On 19 August 2010, the Concept Plan (MP 06\_0318) was approved by the then Minister for Planning, following the Planning Assessment Commission review (Concept Approval). The Concept Approval allows for:

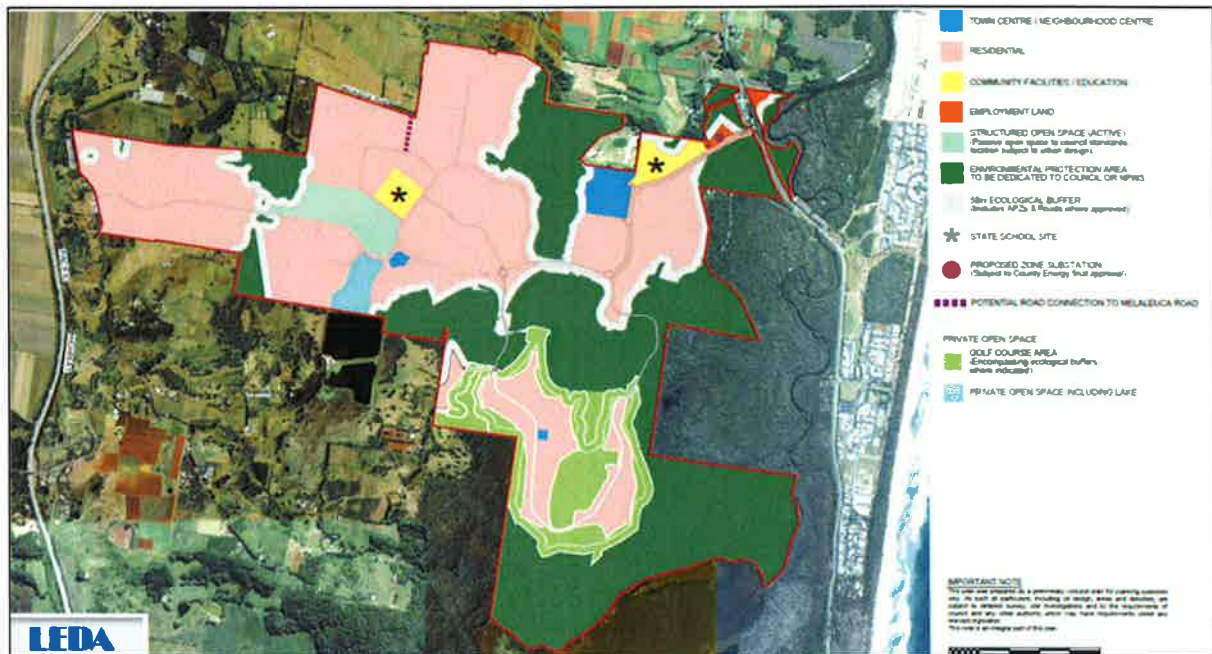
- residential development for approximately 4500 dwellings;
- town centre and neighbourhood centre for future retail and commercial uses;
- employment land and community and education facilities;
- a golf course, open space, wildlife corridors, protection and rehabilitation of environmentally sensitive land;
- water management areas and lake; and
- roads, bicycle and pedestrian network and utility services infrastructure.

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

**Table 1 – Modifications to approved Concept Plan MP 06\_0318**

Mod No.	Description of Modification	Approved
Mod 1	Incorporation of the Kings Forest Development Code into the approval, amendments to plans and clarification of terms of approval.	22/12/2010
Mod 2	Amendments to the Concept Plan drawings, reduction of precincts from 24 to 14, provision of a east-west wildlife corridor, implementation of management plans in perpetuity, future development applications to provide details of land dedications to Tweed Shire Council.	11/08/2010
Mod 3	Amendments and additional definitions, extension of approval lapsing date, and amendment of precinct specific management plans.	16/05/2014
Mod 4	Amendments to the definitions, terms B5, B7, C3, C29 (to reflect amended definitions) and C30 (relating to provision of affordable housing) and amendment to resolution of disputes and the Secretary as moderator.	20/11/2014

Design guidelines and planning controls that give effect to development in accordance with the Concept Approval are provided within the Kings Forest Development Code (the KFDC). The KFDC contains site specific exempt and complying development code and site specific development controls. A Precinct Development Matrix specifies the land uses for each precinct (**Figure 2**).



**Figure 2: Approved land-use locations within the site. The employment lands land-use is located in the north east corner of the site (highlighted orange)**

Currently, the land uses in the employment lands include business premises, child care centre, kiosks, shops, office premises, emergency service facility, a service station and associated landscaping and infrastructure.

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

On 11 August 2013, the PAC, as delegate of the Minister, approved MP08\_0194 (in conjunction with modification 2 of the Concept Plan). The project approval included the following:

- bulk earthworks across the site;
- a plan for development and subdivision of Precinct 5 into 376 residential lots;
- development of a rural supplies building and access arrangements (Precinct 1); and
- construction of subdivision and infrastructure works along Kings Forest Parkway and within precincts 1 and 5.

On 16 May 2014, MP 08\_0194 MOD 1 was approved under delegation involving the addition of allotments, definition changes, amendments to statutory requirements, changes to timeframes for various conditions, changes to Section 94 contributions, amendments to the weed management plan, amendments to the water and sewer arrangements, geotechnical certification, registration of easements and typographical errors.

#### **4. PROPOSED MODIFICATION**

On 18 December 2014, the Proponent lodged a section 75W modification (MP 06\_0318 MOD 5) seeking approval to:

- amend the KFDC to:
  - allow food and drink premises (with the exception of a pub or small bar) in the employment lands;
  - amend the definition of 'food and drink premises';
  - insert a definition for 'small bar'; and
- delete condition B6, which sets out required changes to the KFDC as the changes have now been incorporated into the revised KFDC.

The Proponent has advised that the modification will contribute to the economic and social vitality of the employment lands and that food and drink premises are an appropriate land use that is commonly associated with office and business premises.

#### **5. STATUTORY CONSIDERATION**

##### **5.1 Section 75W**

The project was originally approved under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Although Part 3A was repealed on 11 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 that the proposed changes are within the scope of section 75W of the EP&A Act, and do not constitute a new application.

##### **5.2 Approval Authority**

The Minister for Planning is the approval authority for the application. However, the Acting Director, Regional Assessments may determine the application under delegation as:

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

#### **6. CONSULTATION**

The Department made the modification application publicly available on its website and consulted with Tweed Shire Council (Council), Rural Fire Service, Roads and Maritime Services, Department of Primary Industries and NSW Department of Industry about the proposed modification.

Council and all other public authorities, noted above, raised no objection to the proposed modification.

There were no public submissions received on the proposal.

## 7. ASSESSMENT

The modification seeks approval to amend the Precinct Development Matrix within the KFDC to allow for food and drink premises (with the exception of a pub or small bar) within employment lands. The proposal also seeks the following amendments to the KFDC definitions (refer to **Table 2**):

- replace the definition of 'food and drink premises' with the Standard Instrument 'food and drink premises' definition; and
- insert the Standard Instrument's definition of a 'small bar'.

**Table 2: Comparison of the KFDC and Standard Instrument Definitions**

Land Use	KFDC Definition	Standard Instrument Definition
<b>Food and drink premises</b>	Means <i>retail premises</i> used for the preparation and retail sale of food or drink for immediate consumption on or off the premises, and includes <i>restaurants, cafes, take away food and drink premises, milk bars and pubs</i> .	Means <i>retail premises</i> used for the preparation and retail sale of food and drink for immediate consumption on or off the premises, and includes any of the following: a) a <i>restaurant</i> or <i>café</i> , b) take away food and drink premises, c) a <i>pub</i> , d) a <i>small bar</i> .
<b>Small bar</b>	No definition	Means a small bar within the meaning of the <i>Liquor Act 2007</i>

The proponent considers that the omission of 'food and drink premises' from the KFDC employment lands land-use was an oversight and has stated that it makes little sense to separate the preparation and sale of food and drink for immediate consumption, from land uses in which they are frequently associated (offices, services stations, garden centres, internet cafés). Further, the land-use definitions are revised to be consistent with the Standard Instrument definitions.

The Department notes that there are two areas zoned as employment land, which are located within the north eastern corner of the site (refer to **Figure 2**).

The Department considers that permitting the construction and operation of food and drink premises (with the exception of a pub and small bar) within the employment lands of the site is acceptable, as:

- it would support the employment and service related uses within the employment lands therefore fostering economic growth and social vitality;
- it would be consistent with planning practice across the State and Tweed Shire Council as food and drink premises are generally permitted within Zone B7 Business Park of the Standard Instrument (which is the zone most closely aligned to the employment land land-use) and the B7 Business Park zone in Tweed Local Environmental Plan 2014 (TLEP);
- co-locating food and drink premises with employment uses and close to future and existing residential areas is likely to encourage walking and cycling and reduce trips by car;
- the modification would not give rise to any changes to the footprint, scale or nature of the approved project; and
- detailed consideration of the acceptability of any proposed future food and drink premises will be undertaken by Council at the development application stage.

The Department also supports the amendment of the KFDC definitions to reflect the Standard Instrument definitions of 'food and drink premises' and 'small bars' as this provides consistency with the definitions within the B7 Business zone in the TLEP, without resulting in any material change to permitted land uses.

In addition to the above changes, the wording of the KFDC has been amended to include the minor wording changes required by Modification B6 of the Concept Approval. In light of this, the proponent has requested that Modification B6 be deleted. The Department has reviewed the revised wording of the KFDC and is satisfied the changes required by Modification B6 have all be incorporated into the revised KFDC. The Department therefore recommends that Modification B6 be deleted and reference to Modification B6 be deleted from Term of Approval A3.

## 8. CONCLUSION

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is appropriate on the basis that the construction and operation of food and drink premises (with the exception of a pub or small bar) is appropriate within employment lands. The amendments to definitions will ensure consistency with the TSC LEP.

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

## 9. RECOMMENDATION

It is RECOMMENDED that the Acting Director, Regional Assessments as delegate of the Minister for Planning:

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

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Approved by:

Anthony Witherdin  
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Regional Assessments

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

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Refer to the Department's website at:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=6880](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6880)

## **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=6880](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6880)

2. Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=6880](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6880)