



MODIFICATION REPORT

CONCEPT PLAN APPROVAL NO. 06_0318 (AS MODIFIED)

MODIFICATION OF KINGS FOREST DEVELOPMENT CODE
VERSION 1.4, 17 JANUARY 2022 (MOD9)

at Kings Forest
Tweed Coast Road, Kingscliff

PREPARED FOR:
Kings Forest Estates Pty Ltd

PREPARED BY:
DAC Planning Pty Ltd

28 April 2022

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CONCEPT PLAN APPROVAL NO. 06_0318 (AS MODIFIED)

MODIFICATION OF KINGS FOREST DEVELOPMENT CODE VERSION 1.4, 17 JANUARY 2022 AT KINGS FOREST, TWEED COAST ROAD, KINGSCLIFF

1.0 INTRODUCTION AND BACKGROUND

Kings Forest Estates Pty Ltd (the owner of the land – formerly Project 28 Pty Ltd) has instructed DAC Planning Pty Ltd to prepare an application under Section 4.55(1A) of the Environmental Planning and Assessment Act to modify Conditions A3(9) and C26 of Concept Plan Approval No. 06_0318 (as modified) to refer to an amended Kings Forest Development Code, Version 1.4.

In summary, this Application seeks to modify CP06_0318 (as modified) to adopt an amended Kings Forest Development Code (Version 1.4 dated 28 April 2022 **Appendix 4**).

The proposed amendments to the Code include:

- Changes to the physical parameters of the project (the development) by including a wider range of uses in the Precinct Development Matrix. These changes are intended to enable Development Applications for a wider range of uses to be considered on their planning merits.
- Updating of the Glossary to include current Standard Instrument definitions.
- Amend Section 1.2, Control (1) to provide an appropriate degree of flexibility in applying the provisions of Part B of the Code.
- Amend Section 1.6 of the Code to clarify the status of the various planning controls applicable to Kings Forest.
- Clarify anomalies in Table 5.4.1 of the Code.

2.0 BACKGROUND

2.1 Concept Plan Approval No. 06_0318

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.

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The current modified Concept Plan description is as follows:

Concept Plan approval is granted for the project as described below:

- 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, bicycle and pedestrian network.

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).

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).

On 24 May 2018, the Concept Plan was further modified (MOD 8).

A copy of the Consolidated Concept Plan Approval (as modified) is provided at **Appendix 1**.

2.2 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 (as modified) in respect of:

Lot 76, 272, 323 and 326 of DP 755701;
Lot 6 DP 875446;
Lot 2 DP 819015;
Lot 1 DP706497;
Lot 40 DP7482;
Lot 38A DP 13727;
Lot 38B DP 13727;
Lot 1 DP 129737;
Lot 1 DP 781633;
Lot 7 DP 875447;
Lot 37A DP 13727,
Lot 2 DP 1159231 (closed road)
Lot 1 DP 1178256 (closed road); and,
Lot 1, 2 & 3 DP 11757616 (closed roads).

The current modified Project Description is as follows:

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Kings Forest Residential Subdivision Stage 1 Bulk Earthworks, Roadworks and Subdivision of Precinct 5, including:

- subdivision of the site into ten development lots in 4 stages;
- bulk earthworks across the site;
- roadworks 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 precincts; and
 - construction of two roads providing access to the southern site precincts;
- Plan of Development for Precinct 5;
- development of 998 sqm of floorspace for a service station and food and drink premises 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:
 - one townhouse lot (7,860sqm)
 - 37 terrace house lots (minimum lot size 150sqm)
 - 25 duplexes (minimum lot size 450sqm)
 - 192 zero lot dwellings (minimum lot size 240sqm)
 - 121 traditional detached dwellings (minimum lot size 400sqm)

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 8 May 2019, the Project Approval was further modified (MOD 4).

On 21 December 2017, the project was further modified (MOD 6).

On 24 May 2018, the approval was further modified to extend the lapse date (modified by the Department of Planning & Environment) and Condition A18 was inserted on 17 July 2018 (Land & Environment Court) (MOD 7).

On 26 November 2019, the Approval was further modified by deleting Condition 8, amending Condition 14 and amending Condition 23 (MOD8).

On 19 March 2020 the MOD9 Application was withdrawn.

On 8 October 2020, the Approval was further modified by amending the timing for submission of the Landscape Plan required under Condition 35 and the Environmental Management Plans required under Conditions 40, 41, 42, 43, 44, 47 and 48 (MOD10).

On 2 November 2020 the MOD11 application was withdrawn.

On 15 December 2021, MOD12 was lodged relating to amendment of Conditions 154 and 155 concerning contributions.

On 31 May 2019, an Order was published in the Government Gazette No. 55 declaring the Kings Forest project to be State Significant Development.

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Therefore, this Modification Application is submitted under Section 4.55 (1(A)) of the *Environmental Planning and Assessment Act, 1979* (as amended) (The Act) and Clause 99 of the *Environmental Planning and Assessment Regulation 2021*. However, in accordance with Clause 3BA(6) of Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*, the threshold test of substantially the same development is between the most recently modified Approval and the proposed modified Approval.

3.0 CONSULTATIONS

A copy of the draft amended Kings Forest Development Code was provided to Tweed Shire Council on 29 June 2021. On 20 August 2021 Council provided a response, a copy of which is contained at **Appendix 3**.

Council's comments have been considered in finalising the amended draft Kings Forest Development Code at **Appendix 4** and the Code has been amended, where appropriate.

On 21 January 2022, a "pre DA Scoping Meeting" was held between representatives of the applicant and Departmental Officers Kendall Clydsdale and Jonathan Kerr.

Subsequently, on 11 March 2022, the Department provided comments on the draft documents discussed at the meeting. A copy of the Department's correspondence is provided at **Appendix 6**.

This Modification Report and the draft amended Kings Forest Development Code have been further amended to address the key issues raised by the Department.

4.0 PROPOSED MODIFICATION

In summary, this Modification Application seeks to modify Conditions A3(9) and C26 of CP06_0318 to refer to the amended Kings Forest Development Code, Version 1.4, DAC Planning Pty Ltd.

No change to the project description is proposed or required.

The key proposed changes to the Kings Forest Development Code and reasons for the proposed changes are summarised as follows:

Section 1.2, Control (1) of the Code is in the following terms:

*"(1) All development is to be undertaken generally in accordance with the Kings Forest concept plan at **Figure 1.2.1** subject to compliance with the objectives and development controls set out in this Code."*

Unlike a State Environmental Planning Policy (eg. Codes SEPP) the Kings Forest Development Code (KFDC)/Concept Plan can only be amended by way of a Modification Application which can take many months to prepare, assess and determine.

Town planning and development policies, community tastes and market demand will vary many times over the life of the Kings Forest project (estimated at 20 plus years) and therefore there is a need to provide greater flexibility in the application of the Code.

Accordingly, it is proposed that the following words be inserted after the word "Code" in Control 1.

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Exceptions to provisions

- (1) The objectives of this clause are as follows—
 - (a) to provide an appropriate degree of flexibility in applying provisions of Part B of this Code or the concept plan approval to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene any provision of this Code or the concept plan approval.
- (3) Development consent must not be granted for development that contravenes such a provision unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the provision by demonstrating—
 - (a) that compliance with the provision is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the provision.
- (4) Development consent must not be granted for development that contravenes a provision unless the consent authority is satisfied that—
 - (a) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (b) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the urban design principles for development within the precinct in which the development is proposed to be carried out.

State Environmental Planning Policy (Precincts—Regional) 2021, at Appendix 1, contains the Kings Forest statutory planning provisions. Clause 4(2) of Appendix 1 applies the Tweed Local Environmental Plan 2000 (TLEP) Land Use Table to Kings Forest. The TLEP2000 Meanings of Terms in Schedule 1 of the Plan are not the same as the definitions in the Glossary to the KFDC. The KFDC generally adopts the Standard Instrument Local Environmental Plan definitions.

Similarly, the permitted uses in the TLEP2000 Land Use Table are not the same as the permitted uses in the Precinct Development Matrix.

It is therefore proposed to insert a new Clause 1.2 – Control (3) in the following general terms:

- (3) The Kings Forest Concept Plan Approval 06_0318 and Kings Forest Development Code are the principal controls regulating land use at Kings Forest. In the event of an inconsistency between Tweed Local Environmental Plan 2000, the Kings Forest Concept Plan Approval and the Kings Forest Development Code, the Concept Plan Approval and Kings Forest Development Code shall prevail to the extent of the inconsistency.**

Section 1.6 How to Use the Code

The Planning Regime for Kings Forest is complex, prescriptive and extensive. Given the need to ensure that the proposed development is permissible, with development consent, consistent with the TLEP2000 zone objectives, consistent with the Precinct Development Matrix and consistent with TDCP2008, Sections A2, A3, A4 and relevant parts of A5, for the avoidance of doubt, it is proposed to include a new Clause 1.6(1) in the following terms:

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For the avoidance of doubt, in the event of an inconsistency between the Kings Forest Concept Plan Approval 06_0318 (as modified), Kings Forest Development Code, Tweed Local Environmental Plan 2000 and relevant Sections of Tweed Development Control Plan 2008, the Kings Forest Concept Plan Approval 06_0318 (as modified) and Kings Forest Development Code shall prevail, to the extent of the inconsistency, as the Concept Plan and Kings Forest Development Code are the principal Planning Controls regulating land use for the Kings Forest site.

It is also proposed to include a wider range of permitted uses in the various Precincts to which the Matrix relates and to amend Section 1.7 by deleting reference to Section A11 of TDCP2008 and inserting the Tweed Community Engagement and Participation Plan 2019-2024. (Note: A11 was repealed on 3 December 2019 and replaced by the Tweed Community Engagement and Participation Plan 2019-2024).

Glossary

The KFDC is now some 10 years old. The current Standard Instrument Glossary does not include all current Standard Instrument definitions (eg. child care centres) accordingly, it is proposed to insert the current Standard Instrument definitions that are not in the Glossary and make any necessary consequential amendments to the Precinct Development Matrix.

Table 5.4.1

Table 5.4.1 in relation to **plex dwellings** refers to Part 5.10, however Part 5.10 does not exist. Therefore, it is proposed to delete the words "in accordance with Part 5.10" and insert "**Clause 3.3.6**".

Table 5.4.1 in relation to **mews dwellings** refers to Parts 5.9 and 5.10, however Part 5.9 deals with easements and Part 5.10 does not exist. Therefore, it is proposed to delete the words "in accordance with Part 5.10 or Part 9" and insert "**Clause 3.3.7**".

Table 5.4.1 in relation to the **neighbourhood centre** refers to Part 5.10, however Part 5.10 does not exist. Therefore, it is proposed to delete the words "in accordance with Part 5.10".

Figure 1.2.2 Precinct Development Matrix

The revised Kings Forest Development Code also proposes changes to the physical parameters of the project (the development) by amending the Precinct Development Matrix to include a wider range of permitted uses in the various Precincts to which the Matrix relates, including additional definitions in the Glossary and deleting reference to Tweed Development Control Plan 2008, Section A11 (Repealed) and inserting the Community Engagement and Participation Plan 2019 – 2024.

Condition C26

Condition C26 is in the following terms:

"C26 Implementation of Part B of the Kings Forest Development Code

All future project/development applications for residential subdivision or for the construction of dwellings or commercial premises must demonstrate consistency with Part B of the Kings Forest Development Code."

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It is considered that no amendments to this Condition are required to facilitate approval and implementation of the amendments outlined above, other than the addition of the words **the provisions of Control 1.2(1) Exceptions to Provisions of the Kings Forest Development Code, Version 1.4, dated 28 April 2022 shall prevail over this Condition to the extent of any inconsistency.**

In summary, this Modification Application seeks to:

- Amend Condition A3(9) to call up the amended Kings Forest Development Code, Version 1.4, DAC Planning Pty Ltd dated 28 April 2022; and
- Delete Condition C26 and insert an amended Condition C26 as follows:

C26 Implementation of Part B of the Kings Forest Development Code
All future project/development applications for residential subdivision or for the construction of dwellings or commercial premises must demonstrate consistency with Part B of the Kings Forest Development Code, subject to the exceptions to provisions contained in Section 1.2, Control (1) of the Code.

A copy of the draft amended Kings Forest Development Code, Version 1.4 with amendments in **orange** highlighted text and a pdf version are provided at **Appendix 4**.

5.0 THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021

Pursuant to Clauses 99 and 100 of the Regulation, an application for modification of a development consent is required to contain information as discussed below.

Clause 99 is in the following terms:

"99 Making a modification application

- (1) A modification application must—
 - (a) be in the approved form, and
 - (b) contain all the information and documents required by—
 - (i) the approved form, and
 - (ii) the Act or this Regulation, and
 - (c) be submitted on the NSW planning portal.
- (2) If the modification application is for State significant development—
 - (a) the application must also include particulars of the nature of the modification, and
 - (b) the applicant must consider the State Significant Development Guidelines in preparing the application.
- (3) The fees payable for a modification application are specified in Schedule 4 and determined in accordance with Part 13.
- (4) A modification application is **lodged**—
 - (a) on the day on which the fees payable for the modification application under this Regulation are paid, or
 - (b) if the applicant is notified under Part 13 that no fee is payable—on the day the applicant submitted the application on the NSW planning portal.
- (5) A fee is not payable for an application for the modification of a development consent granted by the Court on appeal from a consent authority."

This Application addresses all relevant provisions of this Clause.

This Application is made on the Form approved by the Secretary and has been lodged on the portal. This Report has been prepared having regard to the state significant development Guidelines.

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a) The Name and Address of the Applicant

The applicant for this Section 4.55(1A) Application is Kings Forest Estates Pty Ltd, P O Box 1914 Surfers Paradise QLD 4217. Additional details are provided on the Application Form.

b) The Development to be Carried Out Under Concept Plan Approval No. MP06_0318

The development to be carried out under MP06_0318 (as modified) is described in Section 2.1 of this Report.

c) Address and Formal Particulars of Title of the Land

Formal particulars of the title of the land are contained in Section 2.1 of this Report.

d) Description of the Proposed Modification to Concept Plan Approval No. MP06_0318 (as modified)

The proposed modifications are described in Section 4.0 of this Report.

e) Effect of Proposed Modification

The Application is intended to modify Conditions A3(9) to refer to an amended Kings Forest Development Code, Version 1.4, dated 28 April 2022 and modify Condition C26 as proposed in Section 4.0.

The modification is relatively minor in nature and does not give rise to a larger development footprint or significant variations in yields. In this context, it is considered that the effects of the proposed modifications will be minimal.

In this regard, the proposed modification is to be made pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979.

f) Description of Expected Impacts of the Modification

The proposed amendments to the Kings Forest Development Code are of a "housekeeping" nature and are intended to provide flexibility in implementation of the Code and clarity in terms of the status of CP06_0318 (as modified) and the Kings Forest Development Code, being the principal planning controls regulating land use at Kings Forest.

Having regard to the administrative nature of the proposed modifications, it is not expected that the modified project will have any significant adverse impacts.

In granting approval for the original Concept Plan, the Minister for Planning has accepted that the potential impacts associated with the proposal were not unreasonable.

Similarly, in approving MODs 1 to 5 and 8, the approval authority has accepted that the project as modified will not have any unacceptable adverse impacts.

In summary, given the administrative nature of the proposed modifications to the Kings Forest Development Code, the potential impacts are likely to be minimal.

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- g) An undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved**

As indicated in Section 5.0, the modification as proposed will not result in any significant physical changes to the project as approved. Therefore, as modified, the project will remain substantially the same as the most recently modified approval.

- g1) in the case of an application that is accompanied by a biodiversity development assessment report, the reasonable steps taken to obtain the like-for-like biodiversity credits required to be retired under the report to offset the residual impacts on biodiversity values if different biodiversity credits are proposed to be used as offsets in accordance with the variation rules under the *Biodiversity Conservation Act 2016***

No Biodiversity Assessment Report is required, as the application does not involve any disturbance or clearing of the site.

- h) If the applicant is not the owner of the land, a statement signed by the owner of the land to the effect that the owner consents to the making of the application (except where the application for the consent the subject of the modification was made, or could have been made, without the consent of the owner)**

Owner's Consent is **attached**.

- i) A statement as to whether the application is being made to the Court (under section 4.55) or to the consent authority (under section 4.56), and, if the consent authority so requires, must be in the form approved by that authority.**

The application is made under Section 4.55(1a) of the Environmental Planning and Assessment Act, to the Minister for Planning as the Consent Authority. The relevant Application Form is attached to the application.

6.0 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (AS AMENDED) & ENVIRONMENTAL PLANNING AND ASSESSMENT (SAVINGS, TRANSITIONAL AND OTHER PROVISIONS) REGULATION, 2017

On 1 March 2018 amended transitional arrangements were introduced for former Part 3A approvals. For new requests to modify concept plan approvals, clause 3BA(5) of schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (the Savings and Transitional Regulation)* relevantly says:

“(5) A concept plan may continue to be modified under section 75W pursuant to a request lodged on or after the cut-off date ... but only if the Minister is satisfied that:
(a) the proposed modification is to correct a minor error, misdescription or miscalculation, or
(b) the proposed modification is of minimal environmental impact, or
*(c) the project to which the concept plan as modified relates is **substantially the same as the project to which the concept plan currently relates** (including any modifications previously made under section 75W).”*

There have been a number of Court Decisions in relation to the “substantially the same development test” for normal Part 4 Development Applications, Section 4.55(1(A)(b) requires the proposed modified development to be substantially the same as the original approved development. The principles established by the Court are considered to be applicable to the “substantially the same test” for this Modification Application.

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Pursuant to Section 4.55(1A)(b) (as varied by Clause 3BA(6)), before the consent authority can modify the consent, it must be satisfied in relation to the threshold requirement that the development to which the consent as modified relates is substantially the same development as the development authorised by the consent, as most recently modified (ie. MOD10).

The Land and Environment Court has made a number of decisions in relation to this threshold question, as discussed in the following sections.

In *Moto Projects (No. 2) Pty Ltd v North Sydney Council* (1999) Bignold J described the following test in determining the threshold question:

"The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."

Further, in *Wolgan Action Group Incorporated v Lithgow City Council* (2001) Talbot J addressed the question of "substantially the same development" in the context of Section 4.55.

In forming his view, Talbot refers to case law as follows (note relevant definitions underlined):

*"In Vacik Pty Limited v Penrith City Council (Stein J, NSWLEC, 18 February 1992, unreported), Stein J adopted a meaning for "substantially" where used in the earlier s 102(1)(a) of the EP&A Act as "essentially or materially or having the same essence". In *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 97 LGERA 433 at 440, Mason P expressly agreed with the view taken by Stein JA. Mason P also said, at p 439, that in the context of s 102 the verb modify meant "to alter without radical transformation (see Sydney City Council v Ilenace Pty Ltd (1984) 3 NSWLR 414 at 421)". In *Standley* Stein JA also reiterated the view he expressed in *Vacik*.*

In *Standley*, Stein JA also reiterated the view he expressed in *Vacik*.

Following on from the tests established in these cases and based on numerous Land and Environment Court decisions, it is apparent that the following key principles apply:

- The comparison is undertaken at a general level rather than between detail;
- The question is whether the development as a whole is essentially or materially similar to the originally approved development;
- If the impacts of the modifications are minor, the modified development is more likely to be essentially or materially the same development;
- It is relevant to consider the magnitude of any physical changes to the development and any changes to the use of the land.

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Having regard to the fact that the overall details of the development will not change in terms of the footprint and lots/dwelling yields and the key principles discussed above, it is submitted that the threshold question is satisfied on the basis that:

- The project, as a whole, will remain unchanged.
- The proposed modification will not alter the statutory or policy compliance of the proposal, create any other material difference and does not give rise to any significant environmental impacts.
- The likely impact of the modification is minor.

Accordingly, it is submitted that the proposed modification will not represent a material change to the Concept Plan Approval as most recently modified and that the proposed modification to the Approval will represent substantially the same development as the development for which the Approval was originally granted and subsequently modified.

It is therefore open to the consent authority to modify the approval as proposed.

Pursuant to Section 4.55(1A)(c), public notification of the proposed modification to the Approval is to be in accordance with the Regulation. Clause 117(2) of the Regulation states that the notification of Section 4.55(1A) Applications are to be in accordance with a Development Control Plan.

TDCP2008, Section A11 Public notification of development proposals was repealed on 3 December 2019 and has been replaced by the Tweed Community Engagement and Participation Plan 2019-2024. Appendix 2: Land Use Notification Tables sets out Council's requirements for community consultation in relation to Development Applications.

Clause 5.13 of the Community Engagement and Participation Plan is as follows:

"5.13 How will consent modifications or reviews be notified?"

Requests for a modification or review of determination will be notified in the same manner as the original application. If in the opinion of the relevant Council officer a modification application under Section 4.55 of the EP&A Act will have no additional impact on any adjoining or nearby properties, no notification will be required."

The Kings Forest site is zoned 2(c) Urban Expansion under TLEP2000. There are no equivalent zones in the Land Use Notification Tables. In view of this and having regard to the nature of the proposed modification, it is considered that advertising and notification is not required under this Plan.

7.0 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (AS AMENDED)

In considering an application to modify an Approval under Section 4.55(1A) of the Act, Section 4.55(3) requires the consent authority to take into account relevant Section 4.15(1) matters.

Relevant Section 4.15(1) matters are addressed as follows:

a) the provisions of:

- i) Any Environmental Planning Instrument

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7.1 State Environmental Planning Policy (Precincts—Regional) 2021

Kings Forest was rezoned under State Environmental Planning Policy (State Significant Precincts) 2005 (SSD) on 10 November 2006 and subsequently amended on 10 September 2010. Appendix 5, Clause 4 of the Policy applies the provisions of TLEP2000 to Kings Forest. Appendix 1 (Kings Forest site) of State Environmental Planning Policy (Precincts—Regional) 2021 is the same as the previous Policy. No changes to the zoning or LEP provisions are proposed or required, as part of this Application.

In summary, the proposed modifications are not inconsistent with this Policy.

ii) Development Control Plans

Section A2 – Site Access and Parking Code

The proposed modifications have no implications for access and car parking.

Section A3 – Development of Flood Liable Land

The proposed modifications have no implications for the development of flood prone land.

Section A4 – Advertising Signs Code

The proposed modifications have no implications for this Code.

Section A5 – Subdivision Manual

The proposed modifications have no implications for this Manual.

Section A11 – Public Notification of Development Proposals

This Section has been repealed and replaced by the Community Engagement and Participation Plan 2019-2024, which is addressed above.

iii) Planning Agreements

Not applicable.

iv) Provisions of the Regulations.

This Modification Application addresses relevant provision of the Regulations (see Section 4.0).

v) Any coastal zone management plan.

Not applicable.

b) Likely Impacts of the Development

Given the scale and nature of the proposed modification, no significant adverse impacts are likely to occur.

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c) The Suitability of the Site for the Development

As acknowledged when the project was originally approved, the site was and remains suitable for, the proposed development.

d) Any Submissions Made In Accordance With the Act or Regulations

It is a matter for the Department to consider any submissions made in respect of the Modification Application.

e) The Public Interest and Strategic Context

Approval of this Application would be consistent with the public interest having regard to the ongoing demand for housing in the Tweed Local Government Area and the strategic context of this project, which is summarised as follows:

Under the provisions of the Far North Coast Regional Strategy (FNCRS) 2006-2031, the Kings Forest site is within the existing urban footprint.

Under the North Coast Regional Plan 2036 (NCRP), which replaces the FNCRS and came into force in March 2017, the Kings Forest site remains in the urban growth area footprint (Figure 18).

In the foreword, the Strategy states that new housing will be accelerated in other centres to maximise existing services, meet the community's diverse housing needs and to improve housing affordability.

New release areas, including Cumbalum, **Kings Forest**, Cobaki and Thrumster will be new communities providing the North Coast with greater housing choice (bold added).

The Regional Plan anticipates population growth of 76,200 in the period 2016-2036, meaning that 46,000 extra homes are required. The Regional Plan says that the 'minimum additional dwellings required' for the Tweed between 2016 and 2036 is 11,600. This is an increase from 44,450 dwellings in the Tweed in 2016 to 56,050 in 2036. The Regional Plan's Direction 22 is to deliver greater housing supply.

Under this Direction the Regional Plan states that, having a ready supply of well-located land for residential development will create downward pressure on house prices, maximise the use of existing infrastructure and ensure that environmentally sensitive areas are avoided.

Under the heading 'housing' the Regional Plan identifies the following priorities: Deliver housing in Kingscliff, Cobaki, Bilambil, Terranora, and **Kings Forest** ... Enhance housing diversity by increasing the number of homes in Tweed Heads, Kingscliff, Cobaki, **Kings Forest** and Dunloe Park (bold added) ...

In summary, the Regional Plan demonstrates the continuing relevance of the Concept Plan Approval (and the Project Approval). Nonetheless, for completeness, it should be noted that:

- (a) The development incorporates significant measures to protect Koala Habitat and local ecological features.

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- (b) The development addresses multiple community needs, ie. the need for:
 - (i) housing;
 - (ii) employment of a kind suitable for integration into a master planned urban setting;
 - (iii) conservation and environmental protection; and
 - (iv) passive and active recreation.
 - (c) It does this in a balanced way as a result of a careful and extensive assessment process. By addressing multiple needs within the overall site, a better outcome is achieved than if the site's use was devoted to a single purpose.
 - (d) Agricultural and industrial use of the site would not deliver the environmental, social and economic benefits that flow from the development envisaged by the Concept Plan Approval and the Project Approval.
 - (e) The environmental, social and economic objectives of the community are best served by the proposed use of the site, relative to the other possible uses of the site.

In summary, the project is consistent with the NCRP and the FNCRS.

As there has been no relevant change in the statutory or strategic planning regime for the site since the original project was approved and as there are no changes to the development footprint, it is submitted that the proposed modification would not be inconsistent with the public interest and would not give rise to any significant adverse environmental impacts.

8.0 CONCLUSION AND JUSTIFICATION

Modification of the Approval as proposed is authorised by Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979 (as amended).

The proposed modification results in physical changes to the Project, as discussed in Section 1.0. No changes to the footprint of the approved Project are proposed and therefore no significant 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 Concept Plan Approval is considered to be sustainable and in the public interest and therefore approval of the application is respectfully requested.

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