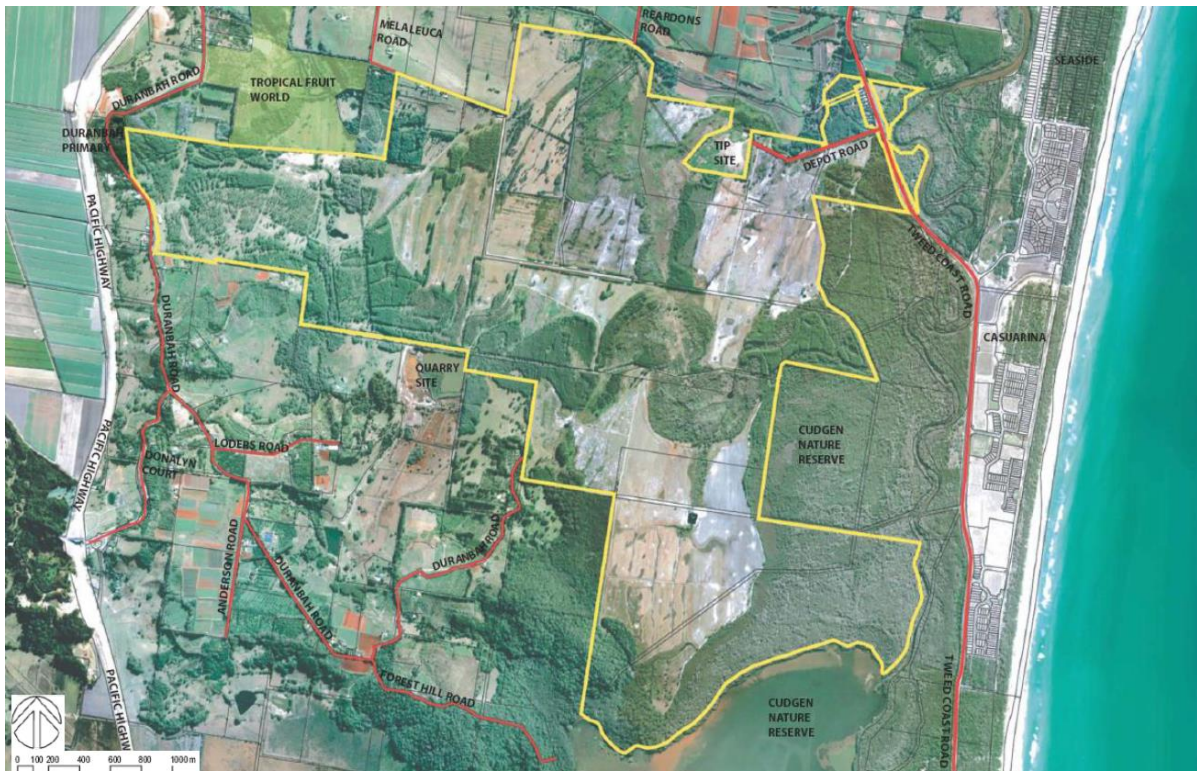




# Kings Forest Concept Plan Modification 9

Modification to amend the Kings Forest Development Code  
Section 75W Modification Assessment  
(MP 06\_0318 MOD 9)

January 2023



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Title: MP 06\_0318 MOD 9 Amendment to the Kings Forest Development Code

Subtitle: Section 75W Modification Assessment

*Cover image: Land to which the Development Code Applies.*

*Source: Kings Forest Development Code version 1.4*

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# Glossary

Abbreviation	Definition
<b>Council</b>	Tweed Shire Council
<b>Conservation Agreement</b>	The Conservation Agreement under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> which was entered into by the former NSW Minister for Planning, the former NSW Minister for Climate Change and the Environment, and the former Federal Minister for Environment, Heritage and the Arts on 20 August 2009.
<b>CPP</b>	Community Participation Plan
<b>DCP</b>	Development Control Plan
<b>Department</b>	Department of Planning and Environment
<b>EIS</b>	Environmental Impact Statement
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EPI</b>	Environmental Planning Instrument
<b>LEP</b>	Local Environmental Plan
<b>Minister</b>	Minister for Planning
<b>Planning Secretary</b>	Secretary of the Department of Planning and Environment
<b>SEPP</b>	State Environmental Planning Policy
<b>ST&amp;OP Regulation</b>	Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017
<b>TfNSW</b>	Transport for NSW
<b>VPA</b>	Voluntary Planning Agreement

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# 1 Introduction

This report provides the NSW Department of Planning and Environment's (the Department's) assessment of a request to modify the approved Kings Forest Concept Plan (MP 06\_0318) in the Tweed local government area (LGA).

The request seeks approval to amend the Kings Forest Development Code (Code) to:

- allow for variations of the Code
- allow additional land uses in the Precinct Development Matrix
- update the glossary to reflect Standard Instrument definitions
- clarify the status of various planning controls; and
- correct errors in Table 5.4.1.

The modification request was lodged by Kings Forest Estates Pty Ltd (the Applicant) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act), as called up by Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (ST&OP) Regulation).

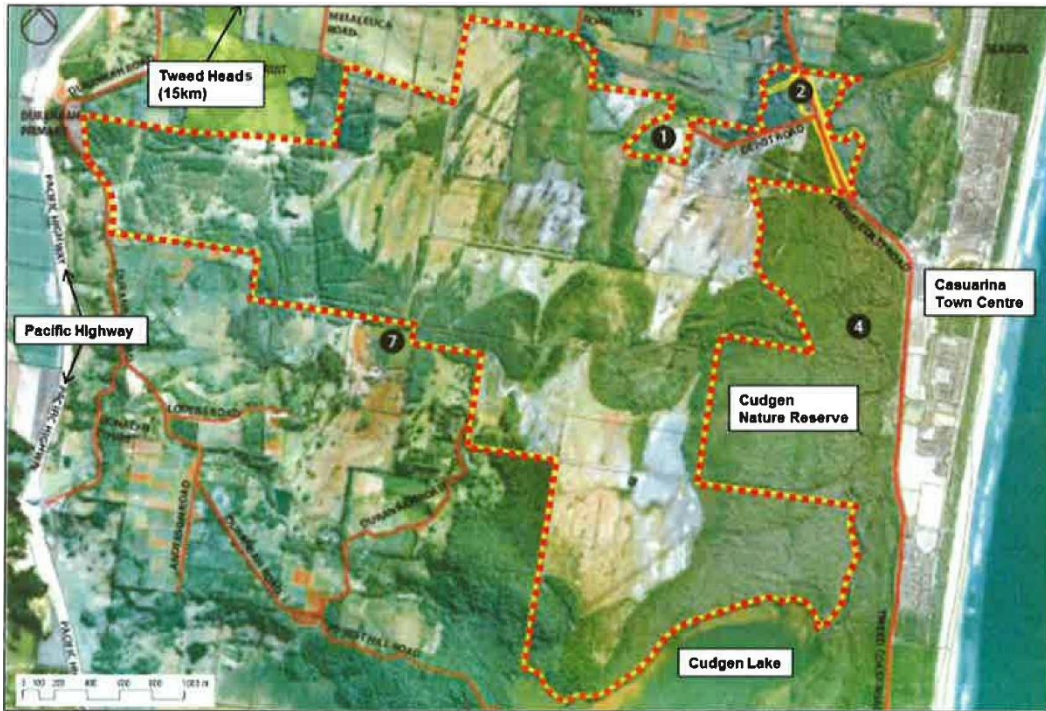
## 1.1 Site

The Kings Forest site is approximately 880 hectares in area and comprises 19 parcels of land (see **Table 1**). It is located approximately 15 kilometres (km) south of Tweed Heads, close to the townships 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 to the east, on the opposite side of Cudgen Nature Reserve, is the coastal suburb of Casuarina. (**Figure 1**).

**Table 1 | Lots and Deposited Plans constituting the Site**

Deposited Plan	Lots
755701	76, 272, 323 and 326
875446	6
819015	2
705497	1
7482	40
13727	37A, 38A and 38B
1	129737
1	781633
7	875447



**Figure 1 |** The site (dashed outlined in red and yellow) and its surroundings (Source: DPE 2020)

## 1.2 Approval history

### Concept Plan (MP 06\_0318)

On 19 August 2010, the Concept Plan (MP 06\_0318) was approved by the then Minister for Planning. 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 six occasions, as summarised in **Table 2** below.

**Table 2 | Summary of Modifications to Concept Approval (MP 06 \_0318)**

<b>Mod No.</b>	<b>Summary of Modifications</b>	<b>Approval Authority</b>	<b>Type</b>	<b>Status</b>
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.	Department	75W	Approved 22 December 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.	Planning Assessment Commission	75W	Approved 11 August 2013
MOD 3	Amendments to the terms of approval and definitions table, extension of the approval lapse date (from 19 August 2015 to 31 December 2016), and amendments to the precinct specific management plans.	Department	75W	Approved 16 May 2014
MOD 4	Amendments to the schedule of definitions and terms 85, 87, 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.	Planning Assessment Commission	75W	Approved 20 November 2014
MOD 5	Amendments to the Kings Forest Development Code to include food and drink premises as permissible uses on employment lands.	Department	75W	Approved 10 November 2015

Mod No.	Summary of Modifications	Approval Authority	Type	Status
MOD 6	Modify definition of Koala Plan of Management. Insert a new Condition A6, modify or delete Conditions B1 and C2 to achieve consistency with the conditions and definitions attached to the EPBC Act Approval 2012/6328 issued on 21 May 2015.	-		Withdrawn
MOD 7	Rezoning of a portion of the site (amendment to the Major Project SEPP) and amendment to the concept plan to facilitate a private wastewater treatment plant.	-		Withdrawn
MOD 8	Amendment to the lapse date of the Concept Plan and Project Approval, and insertion of a new condition into the Project Approval to clarify that a construction certificate may be issued for preliminary investigative and monitoring work, without meeting other pre-conditions of approval	Department	75W	Approved 24 May 2018

### Project Approval (MP 08\_0194)

On 11 August 2013, the then Planning Assessment Commission granted project approval (MP 08\_0194) for:

- the staged creation of 10 development lots
- bulk earthworks across the site
- subdivision of Precinct 5 into 376 residential lots
- infrastructure and roadworks 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 eight occasions as outlined in **Table 3** below.



**Table 3 | Summary of Modifications to Project Approval (MP 08\_0194)**

Mod No.	Summary of Modifications	Approval Authority	Type	Status
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 terms of approval to extend the timeframes for submitting the environmental management plans.	Director	75W	Approved 16 May 2014
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 various environmental requirements.	IPC-N	75W	Approved 20 November 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 bays, car and dog wash, and two pylon signs of between 7.5-9.5 metres high.	LEC	75W	Approved 20 February 2017
MOD 4	Implement a Revised Koala Plan of Management and undertake related changes to the terms of approval.	IPC-N	75W	Approved 8 May 2019
<i>Note: MOD 4 was lodged before MOD 5 but was approved between MOD 7 and MOD 8</i>				
MOD 5	Amendments to water servicing arrangements.			Withdrawn
MOD 6	Amendments to conditions to defer the timing for the construction of the roundabout, correct an error in the description of the inner protection area (IPA) for bushfire management at the service station site, and apply a discount to road infrastructure contributions applicable to development within Precinct 1.	Director	75W	Approved 21 December 2017
MOD 7	To extend the time for physical commencement of works and clarify that a construction certificate may be issued under the project approval for the carrying out of investigative and monitoring work.	Director	75W	Approved 17 July 2018

Mod No.	Summary of Modifications	Approval Authority	Type	Status
MOD 8	Amendments to reduce pavement widths in certain sections of the Kings Forest Parkway, delete a requirement for developer contributions for heavy haulage and correct a typographical error.	Director	4.55 (1A)	Approved 26 November 2019
MOD 9	Amend Conditions 45A(8) and 50, clarify bond calculations of Condition 45A(8) and delete Condition 45A(7)(a)(v)			Withdrawn
MOD 10	Amend the timing for the submission of amended civil works drawing under Condition 5; Amend the timing for the submission of the landscape plan, under Condition 35; Amend the timing for submission of the environmental management plans under Conditions 40, 41, 42, 43, 44, 47 and 48.	Director	4.55 (1A)	Approved 8 October 2020
MOD 11	Construction of a zone substation			Withdrawn

### 1.3 Background relevant to modification

The subject request seeks approval to modify Conditions A3(9) and C26 of the Concept Plan (as modified), and the adoption of an amended Kings Forest Development Code (Code).

The following conditions and modifications are relevant to the subject request:

- Concept Plan consent conditions, including B5 Kings Forest Development Code, that requires the Code to be submitted, to the satisfaction of the Director-General, prior to the determination of Stage 1
- MOD 1 that included a Code and deleted condition B5, introduced condition A3(9) to reference the new Code, and introduced condition C26 requiring all proposals to be consistent with the Code
- MOD 2 that introduced condition B6 requiring the Code be modified to be consistent with parts of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP) and requiring changes to four controls, and amended condition A3(9) to include reference to condition B6
- MOD 5 that deleted condition B6, updated condition A3(9) to delete reference to condition B6, and updated condition A3(9) to reference Version 1.3 of the Code submitted with the application.

## 2 Proposed modification

The request seeks modify the approved Concept Plan to amend the Kings Forest Development Code (Code) to:

- allow for variations to development controls in ‘Part B Development Controls’
- facilitate additional land uses in Town Centre, Neighbourhood Centre, Residential, Community Facilities / Education, Employment Land and Environmental Protection Area precincts
- update the glossary to include Standard Instrument definitions
- clarify that the Concept Plan Approval and Code prevail to the extent of any inconsistency with *Tweed Local Environmental Plan 2000* (TLEP 2000) and relevant sections of Tweed Development Control Plan 2008 (the DCP)
- correct references for Plex Dwellings, Mews Dwellings and Neighbourhood Centre in Table 5.4.1.

The key features of the modification request are detailed in **Table 4**.

The Applicant has stated that the modification is required:

- to address that 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
- to allow a wider range of uses in the Precinct Development Matrix to enable applications for a wider range of uses to be considered on their planning merits
- as the Standard Instrument Glossary does not include all current Standard Instrument definitions
- as the Planning regime for Kings Forest is complex, prescriptive and extensive, the modification will confirm that the Concept Plan and Code are recognised as the principal planning controls regulating land use for the Kings Forest site.

**Table 4 | Summary of proposed modifications**

Component	Description
<i>Changes to Concept Plan – Terms of Approval (TOA)</i>	
1. TOA - A3(9)	The modification seeks to amend A3(9) to refer to a proposed amended Code.
2. TOA - C26	The modification seeks to amend C26 to describe that all proposals may depart from the Code in accordance with proposed amended Control (1) in Section 1.2 of the (amended) Code.
<i>Changes to Kings Forest Development Code</i>	
3. Amended Code (1): Variations	<p>The modification seeks to amend Control (1) in Section 1.2 of the (amended) Code to include an Exceptions to Provisions clause in order to allow for flexibility in applying the provisions of Part B Development Controls of the Code in subsequent development assessment.</p> <p>The modification also seeks to insert new Control (3) that describes that the Concept Plan Approval and Code prevail to the extent of any inconsistency with TLEP 2000.</p>

Component	Description														
4. <b>Amended Code (2): Additional land uses</b>	<p>The modification seeks to amend the Precinct Development Matrix to permit new land uses and delete land uses, as outlined below:</p> <table border="1"> <thead> <tr> <th>Zone</th> <th>Proposed new land use</th> </tr> </thead> <tbody> <tr> <td>Town Centre</td> <td>Advertisement, Advertising Structure, Affordable Housing, Amusement Centre, Bed and Breakfast Accommodation, <del>Child care centre</del>, Centre Based Child Care Facility, Commercial Premises, Education Establishment (<del>Indoor</del>), Function Centre, Health Consulting Room, Recreation Facility (Indoor), Registered Club and Shop Top Housing</td> </tr> <tr> <td>Neighbourhood Centre</td> <td>Advertisement, Advertising Structure, Amusement Centre, <del>Child care centre</del>, Centre Based Child Care Facility, Commercial Premises (excluding Landscaping Material Supples, Roadside Stalls, Specialised Retail Premises, Timberyards, and Vehicle Sales and Hire Premises), Health Consulting Room, Registered Club and Shop Top Housing</td> </tr> <tr> <td>Residential</td> <td>Affordable Housing, Bed and Breakfast Accommodation, <del>Child care centre</del>, Centre Based Child Care Facility, Exhibition Home, Health Services Facility, Home Occupation and Secondary Dwelling</td> </tr> <tr> <td>Community Facilities / Education</td> <td><del>Child care centre</del>, Centre Based Child Care Facility and Emergency Services Facility</td> </tr> <tr> <td>Employment Land</td> <td>Advertisement, Advertising Structure, Amusement Centre, <del>Child care centre</del>, Centre Based Child Care Facility, Electricity Transmission or Distribution Network, Garden Centre, Light Industry, Storage Premises, Transport Depot, Truck Depot, Vehicle Repair Station and Veterinary Hospital</td> </tr> <tr> <td>Environmental Protection Area</td> <td>Environment Protection Works</td> </tr> </tbody> </table>	Zone	Proposed new land use	Town Centre	Advertisement, Advertising Structure, Affordable Housing, Amusement Centre, Bed and Breakfast Accommodation, <del>Child care centre</del> , Centre Based Child Care Facility, Commercial Premises, Education Establishment ( <del>Indoor</del> ), Function Centre, Health Consulting Room, Recreation Facility (Indoor), Registered Club and Shop Top Housing	Neighbourhood Centre	Advertisement, Advertising Structure, Amusement Centre, <del>Child care centre</del> , Centre Based Child Care Facility, Commercial Premises (excluding Landscaping Material Supples, Roadside Stalls, Specialised Retail Premises, Timberyards, and Vehicle Sales and Hire Premises), Health Consulting Room, Registered Club and Shop Top Housing	Residential	Affordable Housing, Bed and Breakfast Accommodation, <del>Child care centre</del> , Centre Based Child Care Facility, Exhibition Home, Health Services Facility, Home Occupation and Secondary Dwelling	Community Facilities / Education	<del>Child care centre</del> , Centre Based Child Care Facility and Emergency Services Facility	Employment Land	Advertisement, Advertising Structure, Amusement Centre, <del>Child care centre</del> , Centre Based Child Care Facility, Electricity Transmission or Distribution Network, Garden Centre, Light Industry, Storage Premises, Transport Depot, Truck Depot, Vehicle Repair Station and Veterinary Hospital	Environmental Protection Area	Environment Protection Works
Zone	Proposed new land use														
Town Centre	Advertisement, Advertising Structure, Affordable Housing, Amusement Centre, Bed and Breakfast Accommodation, <del>Child care centre</del> , Centre Based Child Care Facility, Commercial Premises, Education Establishment ( <del>Indoor</del> ), Function Centre, Health Consulting Room, Recreation Facility (Indoor), Registered Club and Shop Top Housing														
Neighbourhood Centre	Advertisement, Advertising Structure, Amusement Centre, <del>Child care centre</del> , Centre Based Child Care Facility, Commercial Premises (excluding Landscaping Material Supples, Roadside Stalls, Specialised Retail Premises, Timberyards, and Vehicle Sales and Hire Premises), Health Consulting Room, Registered Club and Shop Top Housing														
Residential	Affordable Housing, Bed and Breakfast Accommodation, <del>Child care centre</del> , Centre Based Child Care Facility, Exhibition Home, Health Services Facility, Home Occupation and Secondary Dwelling														
Community Facilities / Education	<del>Child care centre</del> , Centre Based Child Care Facility and Emergency Services Facility														
Employment Land	Advertisement, Advertising Structure, Amusement Centre, <del>Child care centre</del> , Centre Based Child Care Facility, Electricity Transmission or Distribution Network, Garden Centre, Light Industry, Storage Premises, Transport Depot, Truck Depot, Vehicle Repair Station and Veterinary Hospital														
Environmental Protection Area	Environment Protection Works														
5. <b>Amended Code (3): Status of planning controls</b>	<p>The modification seeks to insert new Control 3 into Part 1.2 The Kings Forest Concept Plan, that describes that the Concept Plan Approval and Code prevail to the extent of any inconsistency with TLEP 2000 and relevant sections of Tweed Development Control Plan 2008 (the DCP).</p>														
6. <b>Amended Code (4): Definitions</b>	<p>The modification seeks to update the glossary to reflect Standard Instrument definitions.</p>														
7. <b>Amended Code (5): Correct errors</b>	<p>The modification seeks to correct referencing errors in Table 5.4.1. The table currently makes a number of references to Part 5.10 of the Code which does not exist. It is proposed to delete the incorrect references and to insert correct references to the Code.</p> <p>The proposal also seeks to:</p> <ul style="list-style-type: none"> <li>delete reference to Tweed Development Control Plan 2008</li> <li>delete reference to Section A11 (Repealed)</li> <li>insert the Community Engagement and Participation Plan 2019 – 2024.</li> </ul>														

Component	Description
<b>8. Amended Code (6): Miscellaneous</b>	The modification seeks to: <ul style="list-style-type: none"><li data-bbox="475 300 1158 329">• delete reference to Tweed Development Control Plan 2008,</li><li data-bbox="475 356 1038 385">• delete reference to Section A11 (Repealed), and</li><li data-bbox="475 412 1283 441">• insert the Community Engagement and Participation Plan 2019 – 2024.</li></ul>

## 3 Statutory context

### 3.1 Scope of modifications

The concept plan was originally approved under Part 3A of the EP&A Act, which has been repealed. The power to modify concept plans approved under Part 3A of the EP&A Act under former section 75W of the EP&A Act is being wound up.

Clauses 3BA(5) of Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (ST&OP) Regulation) provides that an approved concept plan can only be modified under section 75W in response to a request lodged after 1 March 2018 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).

The Department is satisfied that the subject proposal is within the scope of clause 3BA(5)(a), (b) and (c) as it corrects errors, is of minimal environmental impact and is substantially the same as the approved project. Further consideration of the environmental impacts is provided at **Section 5**.

### 3.2 Consent authority

The Minister for Planning is the approval authority for the modification request. However, under the Minister's delegation dated 9 March 2022, the Team Leader, Regional Assessments, may determine the application as:

- a political disclosure statement has not been received
- there are no public submissions in the nature of objections
- Council has not made a submission by way of objection

It is noted that Council's submission indicated that they did not support the inclusion of Storage Premises in the Employment Lands Precinct. The Department forwarded Council a copy of the draft condition that requires the proposed Code be updated to delete the inclusion of Storage Premises, and Council has since confirmed that the condition resolves their concern. Refer to **Section 5** below for further information.

### 3.3 Relevant matters for consideration

The following matters are relevant to the consideration of the modification request:

- relevant Environmental Planning Instruments (EPIs)
- objects of the EP&A Act

#### Environmental Planning Instruments

The original concept plan was assessed against the provisions of the following Environmental Planning Instruments (EPIs):

- State Environmental Planning Policy (Major Development) 2005;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy No. 14 – Coastal Wetlands;

- State Environmental Planning Policy No. 44 – Koala Habitat Protection;
- State Environmental Planning Policy No. 55 – Remediation of Land;
- State Environmental Planning Policy No. 71 – Coastal Protection;
- North Coast Regional Environmental Plan; and
- Tweed Local Environmental Plan 2000.

The Department is satisfied that the proposed changes do not significantly alter the conclusions of the original assessment of the concept plan against those EPIs or any subsequent replacement EPIs.

### Objects of the EP&A Act

The Minister or delegate must consider the objects of the EP&A Act when making decisions under the Act. The Department is satisfied the proposed modification is consistent with the objects of the EP&A Act as outlined in **Table 5**.

**Table 5 | Objects of the Act**

Objects of the EP&A Act	Consideration
a) to promote the social and economic welfare of the community and a better environment by the management, development and conservation of the State's natural and other resources	The proposal increases the number of permitted land uses across land use precincts including relating to child care, commerce and environmental protection works. The proposal thereby promotes new social and economic uses of land and management of the environment. The proposal does not impact on any of the State's resources.
b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	Detailed ESD initiatives and sustainability measures will be assessed by Council in future DAs.
c) to promote the orderly and economic use and development of land	The proposal improves flexibility in applying built form controls in development assessment. The proposal also standardises the development code and corrects errors within that Code.
d) to promote the delivery and maintenance of affordable housing	The proposal introduces Affordable Housing as a permitted Development Use in the Town Centre and Residential precincts.
e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The proposal introduces Environmental Protection Works as a permitted Development Use in the Environmental Protection Area precinct.
f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	The modification request does not impact on cultural heritage.

Objects of the EP&A Act	Consideration
g) to promote good design and amenity of the built environment	The proposed flexibility provision includes the objective 'to achieve better outcomes' where 'compliance with the provision is unreasonable or unnecessary in the circumstances of the case', 'there are sufficient environmental planning grounds' and '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 of the relevant precinct'. Accordingly, the Department considers the proposal would not result in unacceptable built form impacts.
h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The construction of buildings pursuant to this concept approval will be subject to future development applications.
i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	The Department notified the modification request, which included consultation with Council ( <b>Section 4</b> ) and consideration of their responses ( <b>Section 5</b> ).
j) to provide increased opportunity for community participation in environmental planning and assessment.	The Department notified the application as outlined in <b>Section 4</b> .



## 4 Engagement

### 4.1 Department's engagement

The Department notified the modification request for a period of 14 days between 19 May 2022 and 1 June 2022. The request was made publicly available on the Department's website and written notice was provided to surrounding landowners and residents, as well as Tweed Shire Council (Council).

The Department received one submission from Council. No submissions were received from the public on the proposal.

### 4.2 Key issues raised in Council's submission

Council did not object to the modification request but raised the following concerns:

#### 1. Modification to allow for variations of the Code without need for modification of the Concept Plan

- The draft wording of Control 1 in Section 1.2 of the Code includes reference to the concept plan approval and as such, appears to allow the Code to vary the Concept Approval.

#### 2. Modification to allow additional land uses in the Precinct Development Matrix at Figure 1.2.2

- Landscaping material supplies, roadside stalls, specialised retail premises, timber yards and vehicles sales & hire premises are not appropriate in a designated Neighbourhood Centre Precinct.
- Storage premises are not appropriate in the Employment Land Precinct. The employment generation associated with a storage premises is low compared to the high floor space requirements.'

### 4.3 Response to submissions

Following notification, the Department placed Council's submission on its website and requested the Applicant provide a response to the issues raised in the submission. The Department also requested the Applicant respond to issues raised by the Department relating to more intensive land uses proposed for the Lakes Precinct and exclusion of the application of clause 4.6 of the Tweed Local Environmental Plan 2014 (LEP 2014) to the site.

On 14 July 2022, the Applicant provided a Response to Submissions (RtS) on the issues raised including:

- legal advice describing that Clause 4.6 of LEP applies to the site because Clause 4.6 is an exception to the general rule that the only environmental planning instruments that apply to a transitional Part 3A project are SEPPs, and describing that the concept plan approval (and the KFDC) are the paramount statutory planning documents for the site
- an amended Code deleting proposed Recreation Facility (Indoor), Recreation Facility (Major) And Recreation Facility (Outdoor) in the Proposed Lake precinct
- an amended Code that excludes Landscaping Material Supplies, Roadside Stalls, Specialised Retail Premises, Timber Yards, and Vehicles Sales and Hire Premises from Commercial Premises in the Neighbourhood Precinct.

The RtS was made publicly available on the Department's website.

### 4.4 Additional Information

The Department requested the Applicant respond to issues raised by the Department relating to references in the proposed flexibility provision to the Concept Plan Approval, and Council's concerns regarding Storage Premises and employment generation in the Employment Lands precinct.

On 17 November 2022, the Applicant responded providing additional clarification and information, including:

- an amended Code:
  - deleting the reference to the Concept Plan Approval in the proposed flexibility provision
  - excluding Landscaping Material Supplies, Roadside Stalls, Specialised Retail Premises, Timber Yards, and Vehicles Sales and Hire Premises from Retail Premises
  - deleting the proposed reference to Section 3.3.6 for Plex Dwellings
- a land use feasibility review, prepared by Think Economics, identifying the trends driving demand for self-storage facilities in the locality.

The Department has considered the information in its assessment (**Section 5**).

## 5 Assessment

In assessing the merits of the proposed modification, the Department has considered:

- the Modification Report and associated documents including the RtS and additional information
- the Environmental Assessment and terms of the original approval and previous modifications
- Council's submission received on the proposal
- relevant EPIs, policies and guidelines
- the requirements of the EP&A Act.

The Department considers the key issue associated with the proposal is the new land uses for Precincts. An assessment of all other issues is set out at **Table 6**.

### 5.1 New land uses for Precincts

The modification seeks to amend the Development Matrix in the Development Code to include new land uses for Town Centre, Neighbourhood Centre, Residential, Community Facilities / Education, Employment Land and Environmental Protection Area precincts, as detailed in **Table 4**.

The Department consulted Council on the proposed new landuses for precincts. Council did not object to the changes, however Council did raise concerns over the suitability of certain landuses within the Neighbourhood Centre and Employment Lands precincts. Council stated that landscaping material supplies, roadside stalls, specialised retail premises, timber yards and vehicles sales & hire premises are not appropriate in a designated Neighbourhood Centre precinct. Council also raised concerns over storage premises being included in the Employment Land precinct, stating this use is not suitable due to the uses low employment generation compared to the high floor space requirements.

The Applicant's provided a response to submissions (RtS) on 14 July 2022 which was accompanied by a revised Development Code. The revised Code removed the unsuitable landuses from the Neighbourhood Centre precinct in response to Council concerns and some landuses within the Proposed Lake precinct. However, the revised Code did not remove storage premises from the Employment Lands precinct. Instead, the Applicant justified the retention of storage premises stating that there will be demand for conveniently located storage premises to meet the needs of future residents of Kings Forest, and the Employment Lands precinct is the most appropriate precinct for this land use.

The Department requested the Applicant to further consider Council's concerns over the inclusion of storage premises within the Employment Lands precinct and low employment generation and consider removal of the landuse or provide adequate justification for its inclusion.

In response, the Applicant submitted additional information dated 17 November 2022 reiterating the need for storage premises in the area and a letter by Think Economics describing that:

- smaller dwellings & lots are increasing demand for self-storage facilities
- small e-commerce businesses, tradespeople & business and increase in remote working require self-storage facilities
- there are no self-storage facilities in the local area of Kings Forest, and are subject to flood, and storage facilities provide indirect but strong support for employment.

The Department considers that the RtS and additional information provided does not provide sufficient justification for the inclusion of storage premises in the Employment Lands precinct. In particular, the information does not:

- acknowledge that Kingscliff is 12mins drive, Chinderah is 13mins drive, and Potsville is 20mins drive to Kings Forest
- detail existing storage capacity (used/unused) in the local area and region
- detail whether Storage Premises include similar levels of direct employment generation
- distinguish between work-from-home (WFH) uses requiring and not requiring storage, or detail the common WFH occupations in the local area and region

On balance, the Department does not support the inclusion of storage premises within the Employment Lands precinct and recommends the landuse be removed. To resolve Council’s concerns, and to ensure that the land provides for suitable employment generating land uses, the Department has recommended a new condition (**Term of Approval B9**) requiring the Code be updated post approval to delete the Storage Premises from the Employment Lands precinct within the Precinct Development Matrix.

On 20 December 2022, the Department consulted Council on the recommended condition to remove storage premises, and Council responded in support of the recommended condition to resolve Council’s concerns.

On 23 December 2022, the Department forwarded a copy of the draft Instrument of modification to the Applicant containing the recommended conditions, including the deletion of ‘storage premises’. On 10 January 2023, the Applicant accepted the Instrument of modification.

Subject to the recommended condition, the Department considers that the changes to the land uses for the precincts are appropriate as they are consistent with the Urban Design Principles contained in the Code.

## 5.2 Other issues

**Table 6 | Assessment of other issues**

Issue	Findings	Recommendations
<b>Status of planning controls</b>	<ul style="list-style-type: none"> <li>• The proposal seeks to include a new control in Part 1.2 of the Code to clarify the hierarchy of planning instruments and documents that apply to the site. Specifically, the added control seeks to identify that the Concept Approval and Code are the prevailing documents where there is an inconsistency with the Tweed LEP 2000.</li> <li>• Council did not raise any concern with the proposed modification.</li> <li>• The RtS dated 14 July 2022 included legal advice describing that no environmental planning instrument is capable of erecting a barrier to the grant of development consent for development that is the subject of a concept plan approval.</li> <li>• The Department considers that the application is consistent with Part 3B(2) of Schedule 2 of the ST&amp;OP Regulation, and the application is considered to sufficiently clarify the relationship between the Concept</li> </ul>	<b>Term of Approval A3(9) be amended to reference the new Code</b>

Issue	Findings	Recommendations
	Plan approval, the Code, SEPP Regional and TLEP 2000.	
<b>Variations of Part B of the Code</b>	<ul style="list-style-type: none"> <li>The proposal seeks amend Control (1) in Section 1.2 of the Code to allow for variations in applying the provisions of Part B of the Code. The Department notes the wording of proposed Control (1) appears to be modelled on Clause 4.6 within the Standard Instrument.</li> <li>Council did not raise any concern with the proposed modification however noted that the wording provided appears to indicate that the Code could vary the Concept Plan approval.</li> <li>The Applicant submitted further information on 17 November 2022 that omitted references to the Concept Plan Approval in Control (1).</li> <li>At present, section 2.1 Exempt Development of the Code provides standards for some uses (bed &amp; breakfast accommodation, events, and home-based childcare), commercial change or uses, minor earthworks, and ancillary development (minor alterations, signs, sheds and the like). Section 3.1 Complying Development provides standards (height, floor area and setbacks) for detached-, semi-attached- and attached- dwellings, secondary dwellings and ancillary development.</li> <li>Section 1.8 of the Code does not permit variation to the exempt and complying development standards of the Code. Section 1.8 describes that, where a proposal does not comply with those standards, a development application is required. The proposed amended Code adds that any proposed variations under a DA must be accompanied by justification indicating how the relevant objectives are met.</li> <li>The Department notes that, to permit a variation of controls in Part B of the Code, future applications will need to provide a written justification demonstrating the planning merits of the variation proposed to the satisfaction of the consent authority. As such, the Department considers that the proposed changes permit a degree of flexibility to provide a better planning outcome for the development, subject to the satisfaction of the future DA consent authority.</li> </ul>	<p><b>Term of Approval A3(9) be amended to reference the new Code</b></p> <p><b>Term of Approval C26 be amended to describe that all proposals may depart from the Code in accordance with proposed amended Control (1) in Section 1.2 of the (amended) Code</b></p>

Issue	Findings	Recommendations
<b>Standard Instrument definitions</b>	<ul style="list-style-type: none"> <li>The proposal seeks to update the glossary of the Code to reflect Standard Instrument definitions.</li> <li>Council did not raise any concern with the proposed glossary changes.</li> <li>The Department notes that the proposed glossary achieves consistency with the Standard Instrument and, as such, considers the changes acceptable.</li> </ul>	<b>Term of Approval A3(9) be amended to reference the new Code</b>
<b>Correction of errors</b>	<ul style="list-style-type: none"> <li>The proposal corrects referencing errors in Table 5.4.1 Minimum Area and Dimension Controls for New Lots as the table currently makes a number of references to Part 5.10 of the Code which does not exist. It is also proposed to delete the incorrect references and to insert correct references to the Code.</li> <li>The proposal corrects referencing errors as outlined in <b>Table 4</b>.</li> <li>Council did not raise any concern with the correction of errors.</li> <li>The Department notes that the amendments simply seek to correct referencing errors in the document and, as such, considers the changes as acceptable.</li> </ul>	<b>Term of Approval A3(9) be amended to reference the new Code</b>

## 6 Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department has carefully considered the issues raised in the submission received and the 'Applicant's response, and considers the proposal to be acceptable as:

- the amended Code improves consistency with the Standard Instrument through adoption of its land use terms
- the amended Code corrects referencing errors and provides an appropriate degree of flexibility for future development to deliver better planning outcomes
- the amended Code clarifies that the Concept Approval and Code are the prevailing documents where there is an inconsistency with the Tweed LEP 2000
- the proposed landuses for precincts are appropriate, subject to the recommended condition deleting 'storage premises' from the Employment Lands precinct

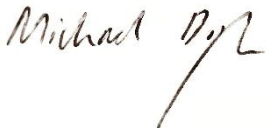
Consequently, the Department is satisfied that the modification should be approved, subject to the recommended terms of approval (**Appendix D – Notice of modification**).

## 7 Recommendation

It is recommended that the Team Leader, Regional Assessments, as delegate of the Minister for Planning :

- **considers** the findings and recommendations of this report
- **determines** that the application MP 06\_0318 MOD 9 falls within the scope of section 75W EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modifies** the concept approval MP 06\_0318
- **signs** the attached Modification of Minister's Approval (Appendix D).

**Recommended by:**



Michael Doyle

**Senior Planner**

**Regional Assessments**

**Recommended by:**



Michelle Niles

**A/Team Leader**

**Regional Assessments**



## 8 Determination

The recommendation is **Adopted** by:

A handwritten signature in black ink, appearing to read "Louise Densmore". The signature is written in a cursive style with a large, looped initial 'L'.

Louise Densmore

**Team Leader**

**Regional Assessments**

as delegate of the Minister for Planning

# Appendices

## **Appendix A – Modification report**

[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=10709](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10709)

## **Appendix B – Submissions**

[http://www.majorprojects.planning.nsw.gov.au/?action=list\\_submissions&job\\_id=10709&title=EA%20-%20Website%20Submissions&type=6](http://www.majorprojects.planning.nsw.gov.au/?action=list_submissions&job_id=10709&title=EA%20-%20Website%20Submissions&type=6)

## **Appendix C – Response to Submissions**

[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=10709](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10709)

## **Appendix D – Notice of modification**

[http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=10709](http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10709)