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TRANSCRIPT OF PROCEEDINGS

O/N H-994229

INDEPENDENT PLANNING COMMISSION

MEETING WITH APPLICANT

**RE: MODIFICATION TO KINGS FOREST RESIDENTIAL SUBDIVISION
KOALA PLAN OF MANAGEMENT**

PANEL:

**ROSS CARTER
PROF RICHARD MACKAY
CATHERINE HIRD**

ASSISTING PANEL:

**DAVID KOPPERS
BRAD JAMES**

**DEPARTMENT OF
PLANNING AND
ENVIRONMENT:**

**ROBERT ELL
GREG MILES
DARRYL ANDERSON
JAMES WARREN
STEVE PHILLIPS**

LOCATION:

**IPC OFFICE
LEVEL 3, 201 ELIZABETH STREET
SYDNEY, NEW SOUTH WALES**

DATE:

2.57 PM, MONDAY, 18 FEBRUARY 2019

MR R. CARTER: Okay. Good afternoon, and welcome. Before we begin I would like to acknowledge the traditional owners of the land on which we meet, the Gadigal people, and pay my respects to their elders past and present. Welcome to this meeting on development application MP 09_0194 modification 4 in relation to the
5 Kings Forest subdivision request to modify its koala management plan under section 75W of the EP&A Act. A detailed description is available in the department's assessment report of the modification. I'm Ross Carter and the chair of this IPC panel. Joining me are my fellow commissioners Catherine Hird and Professor
10 Richard Mackay. The other attendees at the meeting are David Koppers and Bradley James.

In the interests of openness and transparency and to ensure the full capture of information today's meeting is being recorded, and a full transcript will be produced and made available on the commission's website. This meeting is one part of the
15 commission's decision-making process, and it's taking place at the preliminary stage of this process and will form one of several sources of information upon which the commission will base its decision. It's important for the commissioners to ask questions of attendees and to clarify issues whenever they consider it appropriate. If you're asked a question and are not in a position to answer, please feel free to take
20 the question on notice and provide any additional information in writing, which we will then put up on our website. So I might just ask if you can just introduce yourselves down the table so we can put that on the transcript as well.

DR S. PHILLIPS: I'm Steve Phillips. Amongst other things, I'm a specialist koala
25 ecologist. I work on threatened species management, survey design. I have - I'm here, basically, to talk about biochemistry, ecology of forest red gum, issues associated with its replanting in that landscape, aspects of the endangered koala population at Tweed, monitoring of endangered populations and Koala Beach, which has some direct relation to that. I've got a copy of my CV here, which I can give to
30 the panel members so you get some background, if that's okay.

MR CARTER: Yes. Thank you.

MR J. WARREN: James Warren, the managing director of James Warren &
35 Associates. I've been an ecologist for a long time and also been working on this site since 1993.

MR CARTER: Thank you.

40 MR D. ANDERSON: Darryl Anderson. I'm a consulting town planner for the project. I've been in planning for over 40 years, planning and development, and my key role here today is, I guess, to present to you either in words or by handing around a submission, which is a background history of the Kings Forest project generally and mod 4 in particular, just so that it sets a context, if you like, for the commission
45 and to assist with any questions, particularly in relation to the proposed conditions.

MR CARTER: Thank you.

MR G. MILES: And Greg Miles, just in-house adviser of Leda Holdings, the applicant.

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MR CARTER: Thanks.

MR R. ELL: And Robert Ell, the managing director of Leda Holdings, the applicant.

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MR CARTER: Thanks, Robert. Well, we've got about an hour, and I guess over to you, really. We're obviously really interested in what you just mentioned, to run through those issues, and we received a submission this morning, which we haven't had a chance to go through. So perhaps if you came to that as well and stepped us through the issues.

15

MR ANDERSON: Well, I have a hard copy of my background history.

MR CARTER: Yes.

20

MR ANDERSON: Which I'm happy to provide hard copies of. If you'd like me to read through it, I can, or I can just go to the highlight points, whichever is the most convenient. I don't have an electronic copy, although I could email you one tomorrow. That's not a problem. I had to produce it early this morning, and I left with hard copies only, so - - -

25

MR CARTER: Yes. Look, if you could just go through - - -

MR ANDERSON: Okay.

30

MR CARTER: - - - in summary the key kind of points that you wanted to make to us.

MR ANDERSON: Well, I've personally been involved in Kings Forest since 1990 in a previous life as a town planner with Tweed Shire Council, at which time I was involved in the granting of two separate approvals for an 18-hole golf course and about a 470 lot rural residential subdivision. Those developments never proceeded, but, nevertheless, they were granted, but Kings Forest - and I'm not sure whether you're familiar with the local. It's about three kilometres south of Kingscliff, about one kilometre inland of the beach. It's bordered in the east by the Tweed Coast Road, which is the main trunk road on the Tweed Coast between Kingscliff and Pottsville. In the west it's bordered by a small rural road known as Duranbah Road. Kings Forest is about 880 hectares in total. Now, I have some maps which may or may not be of interest to you. They're all public domain maps.

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MR CARTER: That would be really handy.

MR ANDERSON: Which might give you a bit better appreciation of the context. So here in the east you have the Casuarina Beach development. Kingscliff is in here. This is Durambah Road here, and this is the Pacific Motorway, the M1, and so the Kings Forest site - and it's a little bit hard to pick up on this black air photo, but I'm
5 just running my arm around the site. There's about 880 hectares in there. The site was first zoned by Tweed Shire Council in 1989 for urban purposes, and the development consents I mentioned earlier were issued pursuant to that original rezoning. In 2006 the site zonings were rationalised by a SEPP major projects amendment, which you might require - might recall involved declaring the site to be
10 a state significant site.

So the rezonings - the footprint was essentially the same. The zoning outcomes were just really tweaking the boundaries. There was a minor amendment to that SEPP amendment, amendment number 1, in September 2010, and then the basic planning
15 structure, if you like, was in place in terms of the zoning footprint and the land use controls and so on. The next step in the process - as you might recall, part 3A of the Act was introduced in, I think, about 2004 or '05, and that allowed for the approval of concept plans. So a concept plan was approved for Kings Forest in August 2010, and I've set out the details of what was involved in that concept plan, but, essentially,
20 about four to five hundred dwellings, business and retail type land, community vegetation, employment land, a golf course, open space, wildlife corridors and environmental protection areas, and that plan is effectively a structure plan. Okay.

It identifies precincts within which there will be residential, commercial and other
25 things. It gives an idea of yields, and it has with it a development code, which sets out all the controls that apply to future residential development. It's a code which - the concept plan and the code prevail over most other planning instruments, and that was the intent of part 3A. So in August 2013 pursuant to the concept plan approval the first project approval was issued. That's major project approval number 08_0194.
30 It is that approval which we're seeking to modify by way of mod 4. It was issued for bulk earthworks over most of the site, a master lot subdivision, road works and drainage for precinct 4 and 5, which - precinct 5 involves a residential subdivision of some - about 300 residential lots, and in precinct 1, which is on the Tweed Coast Road right here, approval was granted for, originally, a rural supplies business, but
35 there was a modification to make that a service station and food or drink premises.

So those two approvals were in place by 2013. The project triggered a requirement for approval under the Federal Environmental Protection and Biodiversity Conservation Act because of several threatened species. That approval was sought
40 and obtained on the 21st of May 2015. At that point the project approval required an amended koala plan of management to be submitted, condition 45. The difficulty we had was that the Federal approval conditions - many of them were inconsistent with the project approval conditions, and the Federal and state agencies weren't prepared to cooperate and compromise. Each agency said, "No, no. We're the experts, so, you
45 know, you guys sort it out."

5 So following some initial consultations with the Department of Planning we lodged the first modification application, the first mod 4, in August 2015, and that mod was specifically to reconcile the inconsistencies between the conditions so that we could actually implement the project approval. Because there were conditions which were so totally different that to comply with the more onerous one led to unacceptable outcomes in terms of the project. Following some initial assessments of that approach the Department of Planning said they weren't prepared to support that mod and they weren't prepared to amend all of the conditions that had to be amended to achieve consistency, but following some consultations with the Federal department they thought we could probably achieve most - or solve most of the inconsistencies by way of the detailed koala plan of management.

10 So we withdrew the original mod. We lodged a fresh mod 4 on the 16th of March 2017 together with an amended koala plan of management. That was the subject of lengthy consultations with the key state agencies, particularly OEH, Tweed Shire Council and the community, as a result of which we submitted a revised version, version 11, in December 2017 addressing the issues raised by the agencies and the community. That version was then the subject of further assessment by the department and public consultation. And, indeed, there were multiple versions after that version 11 backwards and forwards between the applicant and the Department of Planning and the council and OEH, before finally in October 2018 we lodged version 16. And that's dated 4 October 2018. And it is that version, version 16, which is currently before the IPC for determination as part of this mod 4.

25 The KPoM is a critical tool in terms of being able to move forward in implementing the project approval, because most of the other management plans for threatened species and the like all hang off the Koala Plan of Management, for want of a better word, because they have to be consistent with it. And it's the overarching document, if you like.

30 So just very briefly and finally, in a strategic context Kings Forest is a critical site in the State Government's strategy for rural – sorry – for urban land released on the far north coast generally and particularly in the Tweed Shire. That strategy identifies a need for another fifty-six – sorry – total of 56,000 dwellings by 2036 in the Tweed Shire. Currently, there are about 36,000. So we need another 20,000. And Kings Forest will supply about four and a-half thousand of those dwellings. Essentially, we are ready to get construction certificates approved to start bulk earthworks and civil works, but they can't be approved till the KPoM is approved; it's a prerequisite.

40 So, strategically, this is an important site in the government's planning strategy to deliver more housing, more housing choice in a timely manner on the north coast. That's the context in which this mod is currently before you. So I have a spare – another spare copy if anybody requires another one. And I can email that around tomorrow if anybody wants an electronic version.

45 MR CARTER: Yes. Look, I might just ask that if you're providing anything to us, if you can give it to us electronically - - -

MR ANDERSON: Yes.

MR CARTER: - - - because we do put everything up on our website, so - - -

5 MR ANDERSON: I can certainly do that tomorrow. I apologise, because I do that on the run this morning before I left.

PROF MACKAY: Just to be clear, I think that relates to anything that's mentioned, so including that plan, for example.

10

MR ANDERSON: Okay.

PROF MACKAY: So that would – that would also go on our website as something that was referenced in the transcribed - - -

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MR ANDERSON: I can scan it.

PROF MACKAY: - - - meeting. Please. Thank you.

20 MR CARTER: Steven, did you want your CV going on our website or do you - - -

DR PHILLIPS: It doesn't worry me where it goes. I think I actually left some of my notes on the bottom of that one - - -

25 MR CARTER: Okay

DR PHILLIPS: See that wrinkly piece of paper.

MR CARTER: I'll give you your personal notes - - -

30

DR PHILLIPS: No. No.

MR CARTER: - - - back.

35 DR PHILLIPS: That's fine. That was what I was after. Thank you. I don't need them, but they're just a good prompt.

MR CARTER: Okay. Well, thank you. That was a very good summary of background to the modification that we're now looking at. So if you can just run through, I guess, where your thoughts are in relation to modification and the assessment report from the department. It'd be really useful.

40

MR ANDERSON: Well, the key focus – and James will speak about this in detail, because most of the issues arising from the recommended conditions are ecological in nature. There are several conditions which are purely administrative, where we'd seek to correct typographical and grammatical errors, purely just for sort of avoidance of doubt, if you like, so we don't get tangled up down the track when we

45

come to implement them. The structure of the instrument of approval, there appear to be some conditions out of place, which we've sought to correct in the submission from James.

5 But the substantive conditions, with the possible exception of condition A18 and recommended condition 65, I think it is – sorry – 45C. We have – the project approval has been amended by the Land and Environment Court to insert condition A18, which enables us to commence preliminary works, preliminary investigatory and monitoring works, prior to approval of the full suite of management plans and
10 prior to compliance with a number of other prerequisite conditions, because the preliminary works are very minor in nature. But they are necessary for us to gather background data on groundwater flora, fauna, to place survey pegs, take levels and prepare detailed construction certificate plans.

15 Now, we've already lodged the constructions certificate for the preliminary works. And it may well be that that certificate is issued this week. So we simply say is we'd like to add some words to condition 45C, the last sentence, that condition 45C does not affect the status of any CC issued prior to the insertion of this condition 45C into the project approval. Apart from that, that's the only main planning condition. As I
20 say, there are several conditions in there which – yes, the administrative conditions which I probably don't need to take you through line by line, but I can if you like.

MR CARTER: Well, yes. We'll work through that in the document. Yes.

25 MR ANDERSON: So the key ones are the ecological conditions. And I'll hand over to James to

MR WARREN: How would you like to do this? I can go through these conditions, these ecological conditions rote, so to speak, or I can just summarise them and you
30 can ask questions.

MR CARTER: Look, it's probably good if you give us sort of an overview summary, but then go through each of them. And it's really - - -

35 MR WARREN: Yeah. Yes. The time - - -

MR CARTER: - - - your time, so - - -

MR WARREN: Yeah. Okay.

40

MR CARTER: And, obviously, we're all ears. We want to sort of understand.

MR WARREN: Well, let's just try condition 45(6). Condition 45(6) refers to koala offsets. And this is one of the major – our conditions that we have issues with.

45

MR ANDERSON: What section, 2.3?

MR WARREN: 2.3. We don't have a problem with the first part of the condition that talks about:

5 *The following offsets must be provided to compensate for the loss of 1.59 hectares of primary and 6.42 hectares of secondary class A koala habitat on site.*

10 You know, that's, obviously, a scientific fact. But part A we do have a problem with. The condition as it is talks about the restoration of planting of koala food trees on 27 hectares of land within Cudgen Nature Reserve. And that condition came out of a – out of the concept plan, I think, Darryl, didn't it? It was nominated in the concept plan as a condition. And that condition talked about ex-banana land – old banana land in Cudgen Nature Reserve that had fallen fallow and needed revegetation. It's in the nature reserve. We were a bit reticent to embrace that
15 hectareage, because of arsenic issues in the soil. We didn't think it was an appropriate site for us to be working on.

 And, as it turns out anyway, I received an email the other day from OEH saying that that land was now no longer available – or most of it was now no longer available.
20 So that particular condition as it was written in the concept plan has moved – it's – you know, we can't use it. And this condition now still talks about 27 hectares of land within Cudgen Nature Reserve or, where the full 27 hectares cannot be planted within Cudgen Nature Reserve, the balance of the koala food tree planting, which will need to be all of it now, will be undertaken on other lands at Koala Activity
25 Precinct or Koala Linkage Precinct in the Tweed Shire Council local government area, as approved by the secretary.

 Now, apart from the fact that this conditions doesn't give Project 28 approval to actually go into state land to do the planting – they're not allowed to do that. They
30 would have to provide a financial contribution to OEH and they would do the work. OEH would not want anyone else going on to their land to do that restoration. There has been, you know, issues with planning agreements with OEH over the last few years, Darryl, I believe where they've been problematic in reaching - - -

35 MR ANDERSON: Yeah. After many years of negotiation agreement, still hasn't been reached. The concept plan approval requires agreement to be reached between – sorry – OEH and Project 28 in relation to transfer of certain land to OEH and the terms and conditions under which it'll be transferred. And, to date, those negotiations have not been resolved. It's a very difficult process.

40 MR WARREN: And the two things that we contend are that the current condition doesn't allow for the planting to occur actually on Kings Forest site itself. It's not offsite. The condition says “offsite offset”, but Project 28 may decide down the track that they wish to plant the 27 hectares on site. OEH have said, “We can't help you.”
45 They've said, “Go to Tweed Shire Council.” If we're in a situation where Tweed Shire Council say, “We can't help you”, it's a condition that just cannot be complied with. And we want the option of being able to plant the 27 hectares on Kings Forest.

We'd also like the option of making a financial contribution for the whole 27 hectares, so everyone can move on. Making a financial contribution is allowed for in the recent 2016 legislation. And Project 28 would like that option.

5 MR ANDERSON: So if I can just say, there is text in section 2.32 that goes into
some detail about what James has just outlined. But, in particular, in James'
submission, we've also inserted our request at amended condition 45C to address the
concerns that James just raised. And we've done it in each case. We've taken the
department's recommended condition and we've reproduced it as the applicant's
10 requested amended condition.

MR WARREN: You know, the main problem here is if Tweed Shire Council are
not able to assist us, OEHL can't assist us, we're stymied. Can't move. The next
issue is with – we don't have a problem with getting the recommended condition.
15 We don't have a problem with the creation of 6.26 hectares of compensatory habitat
within the east-west corridor. That's fine. What we would like to see is – we don't
have a problem with C either – sorry – the creation of 62.51 hectares of
compensatory koala habitat on residual lands on site. All that means is that there'll
be 6.26 hectares in the east-west corridor, which is on site. There will be an
20 additional 62.51 hectares on site, which is the compensatory koala habitat. Total of
68.77 hectares on the site total. So we don't have a – you know, we're not quarrying
with that.

Part D, the onsite compensatory koala habitat, inclusive of the east-west corridor,
25 must comprise 65.44 hectares of primary koala habitat, 3.33 hectares of secondary
koala habitat. Now, there's a number of issues tied in with this particular part of the
condition, a number of issues. And - - -

30 PROF MACKAY: James, could you – sorry to interrupt. But you could just take us
to the actual page of your submission this morning.

MR WARREN: Page – bottom of page - - -

35 PROF MACKAY: Please.

MR WARREN: - - - 5 I'm talking to and top of - - -

PROF MACKAY: All right.

40 MR WARREN: - - - page 6.

PROF MACKAY: Okay.

45 MR WARREN: You know, this is in the recommended condition.

PROF MACKAY: Okay. Thanks.

MR WARREN: So, point D. I'm now talking about point D. And this issue has got a number of sub-issues associated with it. One is that last year at almost the eleventh hour, Tweed Shire Council, we – I'll preface that by saying we'd gone through two years of getting a Commonwealth approval that worked. Part of that approval
5 required us to do groundwater modelling pre and post development, and also we did mapping of the pre-clearing vegetation on the site – that is, the vegetation that was there prior to European intervention. So we knew what would – what was supposed to grow where on the site. And the – we had then used that information to base our koala conservatory habitat or the locations of it on site, and what would grow where.

10 So we took into account the groundwater development modelling post development – it was up or down – and what grew there originally, and that's what we based our planting strategy on. Council then came to us last year at the eleventh hour and said, "That's really great work, James, and it's fantastic. But what we want you to do is
15 plant a lot of forest red gum on the site, which is a primary koala food tree species." So they asked us to throw out our scientific work and just plant forest red gum on the site, in plantation style. And as part of that deal they said, "You plant forest red gum at 9 square metre centres," instead of 25 square metres that we were going to do, based on the science, "and we won't require you to plant groundcovers or shrubs."

20 So for Leda – sorry – Project 28, that meant in terms of total numbers of plants that you're putting in the ground there wasn't a lot of difference between planting 70,000 forest red gums, or trees, because we were planting trees, plus shrubs, plus groundcover. So the actual number of plants weren't that much different. We said,
25 "Okay. We'll do what you want – no shrubs or groundcovers." So, you know, the problem was, that we had, was that the science told us that forest red gum wouldn't prosper in certain areas of where we wanted to do the compensatory koala habitat, and we were worried about that. Because, as you know, with management plans, you put all these plants in, some don't survive. And if forest red gum was being
30 planted in areas that wasn't suitable, then you might just end up, you know, keeping planting and they keep dying.

You can go on for years replacing plants that were never, ever going to survive. So we had that problem. You know, it was all very well for council to ask us to do that
35 and we said, "Yeah. Okay." But then we decided, well, that might not work so well. So then we went in and got another study done by the people who did the original pre-clearing mapping. We said, "Have a look at it." They came back and they – and we looked at the groundwater modelling as well, when they came back with their second report. And we worked out where forest red gum was likely to do well,
40 where it was possibly going to do okay, and where it would not do well, and that's what we've now incorporated into the condition in our recommended – well, our amended recommended position.

MR ANDERSON: Which is 2.33 at the top – on top of page 9.

45 MR WARREN: That's correct.

MR ANDERSON: Requested amended conditions.

MR WARREN: Yeah, that's right.

5 MR ANDERSON: So basically that outline that you've just given results in our requested condition – amended condition on page 9.

MR WARREN: Yes. Yeah, that's correct. Yeah. Okay. Yes, yes. So there's a whole lot of text there in my response that, you know, you can refer to.

10

MR ANDERSON: And that's what underpins our requested amendments.

MR WARREN: That's correct. That's correct. And the comments that I've added to the document as of this morning, in red in your new document, provides a bit more explanation to try and make it a bit clearer, because it is quite a complex issue.

15

PROF MACKAY: Thank you, James. Could I just intervene and ask that if this condition on page 9, with – well, condition (c) on page 9 were included, does that make some of the subsequent concerns in this document fall away, relating to seven years monitoring and liabilities, remedial actions?

20

MR WARREN: There's - yes and no. Yes, but no in that we still have the issue that because - the overarching issue here is that forest red gum is not a species that appeared in pre-clearing report. Didn't occur. They did not say that forest red gum was a species that occurred pre-clearing originally on the site. We still have that worry, even though, you know, the pre-clearing report said they are likely to do well. They didn't say they will do well, and the reason they've said likely is because it wasn't - you know, they didn't predict it would have occurred on the site originally. So there is still a little bit of uncertainty there, and Steve might have some comment there in relation to that - in relation - - -

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30

DR PHILLIPS: Do you want me to talk about it now?

MR WARREN: Yes. Yes. Yes.

35

DR PHILLIPS: As you'll see from both my CV and the sort of background work that we do for local government and State Government, koala tree preference is something that has driven me nuts over decades now and unravelling that complexity. What we know about species like forest red gum is that they're biochemically volatile, and so when they get put into places where they don't like to grow like crests of dunes then they tend not to be thrifty. They're a water-loving eucalypt. They like to have their roots in water, and so what happens when they get put in an inhospitable environment is that they stunt. They die.

40

45 They don't maintain any readiness at all, and the intent here is to get these trees ready for koalas, and so the other aspect of them is that when they're growing in landscapes like that what we know about them now is that they put their surplus carbon into

these phenolic-based defence systems, which makes them unpalatable to koalas, and so if we're trying to recreate habitat on this site, we need to put red gums where red gums want to grow, not where people think they should grow, and the other issue that has come up in our discussions is this issue of the science in forming 25 square metre spacings of things like red gums in appropriate landscapes and nine metres.

When you put these trees close together, these symphomyrtus eucalypts, they'll compete with each other for moisture, and when they're competing with each other for moisture, again, they put their surplus carbon into phenolic-based defence systems. So by planting out a lot of forest red gums here or acceding to that request it's unlikely to be successful in terms of creating the koala habitat which is intended, and there needs to be some relaxation of that so that the species is put into the appropriate place in the landscape where it will grow fast and it will become a useful food tree for koalas.

MR ANDERSON: And that's what our requested amended condition seeks.

DR PHILLIPS: Yes, and that's what the requested amendment is seeking.

PROF MACKAY: Yes.

DR PHILLIPS: Is that flexibility.

PROF MACKAY: So just - - -

MR WARREN: Yes. We need flexibility. If it's planted, you know, in hectare areas - hectarages - and it's not prospering, we need the flexibility, you know, to be able to not plant it again and again and again but concentrate on the areas where it is, you know, prospering.

DR PHILLIPS: And there may be, like, little swales within these sort of more elevated ridges that might be suited to that species, in which case, yes, that's where it will go or right on the edges where it might have better access to water. That's the intent of the flexibility so that it can be applied with the maximum benefit for the tree species and for the koalas.

PROF MACKAY: So you've turned your minds and expertise to that and come up with an alternative plan that is introducing far more swamp mahogany to the reveg, as I understand this.

DR PHILLIPS: Yes. Yes.

PROF MACKAY: Right.

DR PHILLIPS: Yes.

PROF MACKAY: So I guess my question is that being the case, therefore, doesn't some of the subsequent concern about obligations that arise from planting red gum, firstly, in areas that you don't think it should be planted - - -

5 MR WARREN: True. Yes.

PROF MACKAY: - - - and, secondly, at a density that you question - that kind of falls away because this is now doing exactly what you've just recommended. I'm just - I'm seeking to understand it. I'm not making a - forming a view on it at the
10 moment.

MR WARREN: Yes. Substantially, it does. I think - - -

DR PHILLIPS: The revised amendment, you mean.
15

PROF MACKAY: Yes.

DR PHILLIPS: Yes. Yes. That's the intention.

20 PROF MACKAY: Thank you. Great. Thanks very much. Sorry to - - -

MR WARREN: No. You're right.

PROF MACKAY: - - - be so interventionate.
25

MR CARTER: And, sorry, just - if you could just clarify, Steven. With forest red gums at a point in growth they can be visibly assessed as to whether or not they're stressed and available for koala habitat.

30 DR PHILLIPS: Yes.

MR CARTER: So that's a sort of a readily assessed kind of thing.

DR PHILLIPS: Yes.
35

MR CARTER: Yes.

DR PHILLIPS: And it has. It's taken a long time to get that understanding.

40 MR CARTER: Yes.

DR PHILLIPS: You know, for most people who know a bit about koalas and eucalypts the forest red gum is koala food tree, but what we know now is that once it gets its roots out of the water - and sometimes there's seed blow onto mid-slopes - it just switches its biochemistry and koalas don't touch it. So it's got to have water. It's got to be in the right place if you're going to use it to create habitat. Otherwise, it's a total waste of it.
45

MR CARTER: Okay. Thanks.

MR WARREN: Condition 45(7) I don't think - - -

5 MR ANDERSON: So the administrative correction speaks for itself.

MR WARREN: That's administrative. 45(1)(a) is the same.

10 MR ANDERSON: Corrected just a spelling error.

MR WARREN: Yes. Condition 45A(1)(c) is administrative again.

MR ANDERSON: Yes.

15 MR WARREN: Condition 45A(2). Now, obviously, it, you know, refers to the 27 hectares of koala food tree planting in Cudgen Nature Reserve. We've already discussed that at length, and - but in the previous - in section 2.3.2 we discussed that, and there's probably no need to go through it again unless someone has a question about that particular condition.

20 MR CARTER: No. I think we're happy. Richard. Catherine. Yes.

MR ANDERSON: So what the requested amended condition does at section 2.7.3 is to seek greater flexibility in terms of how we comply with that 27 hectares.

25 MR WARREN: And - - -

MR ANDERSON: Monetary contribution, on-site compensatory plannings that are offsetting and so on.

30 MR WARREN: And also I've lengthened the timeframes. You'll notice that, for example, in part (c) of the recommended condition on page 13:

35 *All koala food tree planting that will occur in Cudgen Nature Reserve must commence within 24 months of the OEH identifying the lands available for koala food tree planting.*

And there's another 24 months mentioned in part (ii):

40 *Planting must commence within 24 months.*

I've put that out to 36 months to allow more time, and I think that was the only other - yes. I've also said that - for part (d) in the recommended condition it talks about:

45 *All off-site koala food tree planting will be finalised within three years of planting commencing in accordance with see above.*

I've changed that to five years, given that these areas are large areas we're talking about. We're talking about very large areas of plantings, and the amount of time that will actually take to get these things in the ground in nominated areas - I think five years is more appropriate.

5

MR ANDERSON: So, again, it's 45A(3). It's section 2.8, page 15. Administrative condition fixing up a typo. I think the next substantive one is - - -

MR WARREN: 45A(4).

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MR ANDERSON: 45A(4), James. Yes.

MR WARREN: Yes. Condition 45A(4), vegetation management. We don't have a problem with (a)(i), which says:

15

The performance indicators, performance criteria and corrective actions only apply to the compensatory koala habitat.

That's fine. No problem. What - we do have a problem with (ii). This refers specifically to the vegetation integrity scores, and as part of the monitoring of the plantings we'll be using the biodiversity assessment method, you know, which is the New South Wales standard, and part of that is assessing vegetation integrity scores, and that's comprised of composition, structure and function. I'll try and be as brief as I can. Composition is what species are in there, and, you know, this is looked at in relation to a benchmark plant community of the same type.

20
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So your benchmark community of the same type might have five trees in it, five tree species, 15 shrubs and, you know, whatever. 15 groundcovers. If you've got all of that in your rehabilitation, well, you'll get 100 if you composition. Same with structure, it's, you know, the size of the trees, the shrubs and, you know, and so on, whether you've got coverage over the ground of these things. And if you've got what the - you know, the benchmark says is right, well, you get 100. Same with function. So, basically, if we're planting wholesale forest red gum and little others, there's no way in the world we can reach, you know, the benchmark of 100. Can't do it.

30
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What the condition is saying - what the condition is saying is that, "If you don't reach 100 for your composition in the first seven years, then you'll go in and plant the - you know, the requisite numbers of species, shrubs and groundcovers to come up with 100." On the other hand, we were told by council last year in writing that we wouldn't have to plant shrubs or groundcovers as part of the deal to plant forest red gum, so we feel a little bit peeved about that.

40

PROF MACKAY: If I may, can I - - -

45

MR WARREN: Sure.

PROF MACKAY: Again, I mean - - -

MR WARREN: Sure.

5 PROF MACKAY: - - - this is a similar question to before. And, I mean, we're at a very preliminary stage, so - - -

MR WARREN: Sure.

10 PROF MACKAY: - - - in the event that the commission's of a mind to approve the modification and accepts what you've said about condition - what is it, 45A - - -

MR WARREN: Four we're on.

15 PROF MACKAY: - - - 4, and as part of that didn't require the nine metre - the greater density of red gum planting - in other words, reverted to the kind of thing that - - -

MR WARREN: We - - -

20

PROF MACKAY: - - - you would propose with the groundcovers.

MR WARREN: Yeah. We originally proposed, yes.

25 PROF MACKAY: Then, presumably, this concern about the BAM falls away.

MR WARREN: It does.

PROF MACKAY: Okay.

30

MR WARREN: It does.

PROF MACKAY: So, I mean, I'm just seeking to have - - -

35 MR WARREN: Yes, it does.

PROF MACKAY: - - - clarity in the choice before us, so - - -

MR WARREN: We'd be planting the species mix and - - -

40

PROF MACKAY: Yes. Yes.

MR WARREN: - - - so on and so on, yes.

45 PROF MACKAY: Yes.

MR WARREN: Exactly.

PROF MACKAY: So you're saying, "Look, either let us plant the groundcovers and the shrubs as per what we would choose to do" - - -

MR WARREN: Yep.

5

PROF MACKAY: - - - "and judge us according to BAM, or, if you're imposing a structure for the planning that is greater density of red gums without the understory"
- - -

10 MR WARREN: Yes.

PROF MACKAY: - - - "then the BAM's not reasonable", if I could - - -

MR WARREN: Exactly.

15

PROF MACKAY: - - - paraphrase your position.

MR WARREN: Exactly.

20 PROF MACKAY: Thank you. Thank you.

MR WARREN: So I've got a detailed explanation in there, in my report, about what that is all about, you know, the 100, 100, 100 and so on. But with the – when you do your assessment, we have – in the KPOM we say, because we can't reach that
25 100 for structure, that – sorry – for composition, then we'll put an automatic number into the computer when we do the assessment, so we don't have to worry about reaching 100, you know, for the – but they're saying now, "You must do the planting to reach it." So we've got a problem with that. And - - -

30 MR ANDERSON: But our requested amended condition at the bottom of page 18
- - -

MR WARREN: Yes.

35 MR ANDERSON: - - - addresses that problem.

MR WARREN: Yes. Indeed.

MR ANDERSON: Condition 48 – sorry – condition 4 roman - - -

40

MR WARREN: Yep.

MR ANDERSON: 4A(2).

45 MR WARREN: And I've got a number of dot points there at the bottom of page 17 which says why we – why Project 28 shouldn't be required to plant shrubs and groundcovers. And there's probably no need to go through those, Darryl. Keep in

mind that Tweed Shire Council agree with us in relation to those vegetation integrity scores. We don't know why Department of Planning hasn't put them in when Tweed Shire Council were okay with them. So 45A(8), I think, Darryl, we're up to.

5 MR ANDERSON: Yes.

MR WARREN: Again, I've got a fairly detailed response there, but this particular condition, 45A(8), relates to provision of pro rata compensatory koala habitat if part of the compensatory habitat fails to reach maintenance period performance targets.
10 And, obviously, an important component in this performance will be the shrubs and groundcovers, again. So we've been over this ground. It's the – in our performance. And we won't be able to reach those performance levels if we – you know, given that they want 100, 50, 25. Is there any – are there any more questions about that particular issue?

15 MR ANDERSON: So the requested amended condition addresses those issues by building in greater flexibility?

MR WARREN: Yes, it does.
20

MR ANDERSON: In essence.

MR WARREN: Yes. This condition also talks about the Tweed Coast endangered koala population. They don't mention it, but that's what they're referring to here as a
25 background. They talk about, in condition 8A(iii):

A bond or bank guarantee must be provided for the implementation of suitable conservation measures in the event there is a statistically significant decline in koala numbers on site until five years after the project is complete.

30 You know, the provision of a bank guarantee is very problematic for Project 28. You know, the issue is, of course, that there's an endangered koala population, which is the Kings Forest koala's a part of. If that population is in trouble, which it, obviously, is, because it's been listed as endangered, and if that population is on the
35 way out and Project 28 start turning soil and two years after they start turning soil and doing things the koalas become extinct, they were going to become extinct away, all of a sudden there's a bank guarantee there because of the koala demise and that bank guarantee gets snavelled. But - - -

40 MR ANDERSON: But the cause of the demise may have nothing to do with Kings Forest.

MR WARREN: Exactly.

45 MR ANDERSON: It's a critical point.

MR WARREN: Steve's probably better placed than most people to talk about this particular issue.

5 DR PHILLIPS: Okay. Look, my role in this is the regional habitat assessment that was done for Tweed Shire Council. I also drafted the nomination to the New South Wales Scientific Committee for that population to be listed as endangered. And the reason for that listing was that the population had declined by 50 per cent within three consecutive koala generations, a massive decline. The reason that James has sort of included Koala Beach in the context of this discussion is, if you're unaware, 10 Koala Beach site in the Tweed Shire is the benchmark koala-friendly development that is in place. I was instrumental in that, as well. Darryl would certainly be aware of it, but it was a radio-tracked population and the subdivision was designed around their food trees and their shelter trees. And there's no dogs allowed on the site and vehicle speeds are controlled and there's linkages through the site.

15 Since that development was approved in 1996, I have continued to monitor that population every year, primarily to find out what happened. You know, it was like, "How has this population handled it?" And so I've been able to track this population over consecutive koala generations, since I now have 20-odd years of data for that 20 site. And the thing that was very interesting is that the thing that drove the Tweed Coast koalas to that verge of extinction into where they sit now was not development per se or it was not loss of habitat in the sense that most understand it. It was a fire event, massive fire events in 2009/2010. And that, effectively, drove the population to the brink where now it's likely that its recovery and its ability to withstand 25 domestic dog attacks and vehicle strikes is likely to be unstable, the population level.

The thing that – what happened then at Koala Beach was after watching successive generations of females and male koalas move into that estate, was that, commensurate with the 2009/2010 fire event, there was no more recruitment into the 30 state estate, and koala numbers just dropped out. And it is still struggling to put back a population that was, you know, living in harmony with the residential population there. And so what I learnt from that is that we couldn't view Koala Beach in isolation, because it was a key part of the broader landscape. It was reliant on more intact areas of habitat outside to recruit into that estate as older animals died 35 and needed to be replaced.

And, from that context, I've, obviously, learnt, and we do a lot of monitoring work on koala populations, that you cannot view these developments in isolation; you have to think about them in the broader landscape context. And so it's entirely 40 possible, as James has just alluded to, the population could go in places like Kings Forest, because there is nothing for it to recruit from.

MS HIRD: The – sorry – the fire occurred outside the Koala - - -

45 DR PHILLIPS: Yes.

MS HIRD: - - - Beach, not within the Koala Beach?

DR PHILLIPS: No. No. And that was – I guess that was an amazing lesson, you know. It was, like, the fire occurred five kilometres to the north – and it did. It took out, like, 50 per cent of the habitat – Round Mountain, Cudgen Lake. Recruitment into all areas – Kings Forest to the north, Kyla Beach to the south – coastal
5 populations just stopped, because the key source population that was feeding those was gone.

MS HIRD: And would you say bushfire was the biggest single threat?

10 DR PHILLIPS: Yes. We've now done several, I guess, profiles of populations now. And our original nomination to the New South Wales Scientific Committee was it ain't cars, it ain't dogs – it's fire. It's done this. The southern Clarence arcs, which we've just done for Grafton, has the same cause – fire's driving it. In Port Stephens
15 LGA, we've just done that as well, fire's driving the extinction curves there. And it is probably the biggest threat that these animals face up and down the coast, is increased fire frequencies.

MR CARTER: So say your work has really shown that, if you like, a site-based view of the populations is an artificial view.
20

DR PHILLIPS: Yes.

MR CARTER: It's a lot bigger - - -

25 DR PHILLIPS: Yes.

MR CARTER: - - - population.

30 DR PHILLIPS: Yeah. And, I mean, I think all of us probably hope that there's enough habitat set aside as part of the Kings Forest site. We've got the capacity to, you know, hold the number of animals if it all works, but it's still going to need, for that initial few years, to be relying on recruitment from those outside populations to build up a substantive number of animals. So, yes, your assessment's spot on.

35 MR CARTER: Which is outside of the control of Project 28.

DR PHILLIPS: Yes. It's outside their control.

40 MR WARREN: Yes.

DR PHILLIPS: Yep.

MS HIRD: And how do prescribed burns fit into that analysis?

45 DR PHILLIPS: That's the Pandora's box. Mostly because, in principle - - -

MS HIRD: Yeah.

DR PHILLIPS: - - - prescribed burns can work really well and I think that's the challenge. But the reality is that probably, I don't know, 30 per cent of the time a prescribed burn becomes a wildfire. They lose it. And if it's in a critical koala habitat area, they're gone. And everywhere that we look – north Hawks Nest, Myall
5 Lakes, Port Stephens – it's this three to five-year frequencies of big fire incidents, which is only going to get worse. The Pilliga is another classic example now where just the fire frequency is so high that the populations just can't respond, in a reproductive sense, and build up their numbers.

10 MR WARREN: So the recommended condition talks about a bank guarantee. We say that, you know, that the best way to go is to, if we find a statistical drop in occupancy rates of koalas on Kings Forest site, then what we'll do immediately is alert Tweed Shire Council, OEH experts, like Steve, and whoever, get them together and come up with a solution. You know, the imposition of a bank guarantee to cover
15 the loss of a population that Project 28 has had nothing to do with is problematic. Project 28 could be planting anywhere between 20-odd and 70,000 trees and – you know, depending on whether we go with the dense forest red gums or our original proposal – then, you know, we think – or we're hoping, as Steve said, that there'll be enough there in the short to medium term to sustain a permanent population in the
20 area.

MR ANDERSON: So 40 – condition 45A(9), bottom of page 21. James, I'm not sure. Do you want to walk through that one there? The key part of that is recommended condition 9(g), which refers to the administrative changes referred to
25 in Tweed Shire Council submission dated the 15th of November 2018. Now, those administrative changes, as we interpret it, are a series of dot points in the council's submission, which we've brought a copy of, because we've actually numbered the documents so that you can actually equate the issue to our response. Now, I'm not sure, have you provided a copy of that?

30 MR WARREN: Yeah, I've got a couple of copies.

MR ANDERSON: I'm pretty sure it was emailed around, but we can give you hard
35 copies now.

MR WARREN: Yeah. I've just drawn handwritten – you know, the first dot point is dot point 1, DP2, DP3 and so on, which makes it easier to follow, if you would like me to go through them.

40 MR CARTER: I mean, we can work through that if you – yeah.

MR WARREN: There are - look, there's some issues in there, but, basically, a lot of them are quite minor in nature, and we've already covered all of them, but, you know, if you like, we can just have a quick run through.

45 MR CARTER: Yes. If there's any major ones you want to draw our attention to in particular.

MR WARREN: Yes. Yes. Dot point 15. If you go to dot point 15. Steve can probably talk to that.

5 DR PHILLIPS: The - that goes to exactly the conversation we were just having, but subsequent to the Tweed Coast koala habitat study council have undertaken two monitoring events based on our design for monitoring the population, and both of those events still indicated the population is still declining. So that goes to that very discussion we were just having. The population has not yet stabilised. It has not yet recovered. It is still going down, and that's causing increased concern.

10 MR WARREN: One of the issues - I think dot point 42, Darryl, says that:

Wildlife, including koalas, would be able to access the golf course area in case of wildfire affecting the environment protection zones.

15 All the gates would be open. The idea there is that during a wildfire event there'll be gates positioned about every hundred metres around the Kings Forest site. If there's a wildfire, all those gates would be open, and some other panels would be removed as well to allow koalas to move into the golf course area of the Kings Forest development down the track, and dot point 46 - the - you might want - do you want
20 to give a background to that one about the koala fence and the golf course?

DR PHILLIPS: You can.

25 MR WARREN: Okay. That issue relates to the - council requesting that the koala fence - or the fauna exclusion fence being placed midway in the 50 metre buffer zone around the Cudgen paddock, as we call it, or the southern large area of Kings Forest where the golf course is going - residential area and the golf course. There's a 50 metre buffer all around that development area shown in this - - -

30 MR ANDERSON: So that's the statutory zoning map. The land is zoned 2C, urban expansion, and there's a 50 metre ecological buffer around the edge, which is dotted. We say the koala fence should be on the outer edge of the buffer, ie, on the zone boundary between the ecological zone and the residential zone, but council wants the fence, you know, 30 metres into that buffer. We say that's inconsistent with the
35 concept plan approval because it shows the golf course greens and fairways actually within the buffer.

40 MR WARREN: Coming all - yes, within the buffer all the way out to the outer edge of the buffer.

MR ANDERSON: Yes. So we say the fence should be on the outer edge but with appropriate gates to meet wildfire situations and for access for servicing and maintenance and so on.

45 MR WARREN: I can show you the approved golf course plan. If you have a look at - and I can hand copies around, but if I just have that. You can see here - I haven't

done an overlay. I'm sorry, but if you have a look. See that bit there, that bit that pokes out there. That's that bit there, and it goes around here. That bit there is that bit there. It - now, that's a 50 metre buffer. You can see the golf course - this is the approved golf course layout. There's fairways almost up to the boundary within the
5 50 metre zone, and that's the approved plan. So if the golf course is to go ahead as approved, we cannot have the koala fence halfway through the buffer. It has to be on the outer edge next to the environmental protection zone, and I think that's about it. I think the other conditions are relatively okay, Darryl.

10 MR ANDERSON: Well, with - the outcome of that response to condition 45A(9) is we seek to amend that condition as set out in section 2.11.3 where we're only calling up certain dot points within the council's letter. Correct, James?

MR WARREN: Yes.

15

MR ANDERSON: On top of page 26.

MR WARREN: That's correct.

20 MR ANDERSON: Okay. The last one. Dot - we say we have to comply with dot points 1 to 10, etcetera. We've listed those, and we've numbered them on that letter so it's quite clear.

MR WARREN: So we're happy for, you know, those amendments to be made that
25 council has requested.

MR ANDERSON: For certainty and clarity and finality - it's very difficult to call up dot points in a letter. So they really need to be numbered. It's unfortunate council didn't number them when they made the submission, but we've now done that to
30 make it easier to interpret, and condition 45C, I think, is the one that I dealt with earlier in relation to condition A18 and the connection between the two. All we seek to do is to add a sentence at the end of the recommended condition as shown in our recommended - requested amended condition - - -

35 MR CARTER: Yes.

MR ANDERSON: - - - on page 27 simply stating the condition does not affect the status of any issued under condition 45C. As I say, that's likely to be issued in
40 the next week. Condition 46, James, is another ecological type condition.

MR WARREN: Koala infrastructure.

MR ANDERSON: Yes.

45 MR WARREN: Item 3 of their condition talks about the design and precise location of fauna exclusion fencing:

Must ensure that the buffer area available to fauna is maximised and makes provision for a functional maintenance zone each side of the fencing in order to allow sufficient room for replacement and maintenance of the infrastructure.

5 And then in 4 they talk about precinct 1. That's fine, but, you know, we raised that issue about the - you know, the Cudgen paddock again and where the fence should go, and I think that's it, Darryl.

10 MR ANDERSON: Well, so, in effect, what we're saying is, particularly in light of that golf course example, we want to delete recommended condition 46(3) and simply renumber the conditions. So the fence can be on the zone boundary, and, yes, I think that's it for our presentation, unless there are any other issues or questions you may have.

15 MR CARTER: Okay. Well, thank you very much for that. That was really helpful in taking us through your issues and concerns. Obviously, we've - as we said at the beginning, we've thought about the initial stages of working through the material.

20 MR WARREN: Sure. Sure.

MR CARTER: And we've got the site inspection, which I think will be really helpful for us to get our heads around - - -

25 MR WARREN: Yes.

MR CARTER: - - - on the ground as well as the public meeting.

MR WARREN: Yes.

30 MR CARTER: So if we've got any sort of further questions or issues, we will come back to you, and if we can get an electronic copy by itself, that would be really handy.

35 MR WARREN: Okay. A PDF version of the - - -

MR CARTER: Just - - -

PROF MACKAY: Yes.

40 MR CARTER: Yes. Anything that you've provided or used.

MR WARREN: Right.

45 PROF MACKAY: Anything that's been tabled today, please.

MR CARTER: Yes.

MR WARREN: Right. Okay.

PROF MACKAY: So, for example, the Tweed - - -

5 MR WARREN: The dot points.

PROF MACKAY: - - - submission as annotated - - -

MR WARREN: Yes.

10

PROF MACKAY: - - - so that someone who reads the transcript and wants to - - -

MR WARREN: Sure.

15

PROF MACKAY: - - - match it to the documents - - -

MR WARREN: Okay.

PROF MACKAY: - - - is easily able to do that, please.

20

MR WARREN: Yes. Okay.

MR ANDERSON: And I'll send through my background summary document electronically and that aerial photograph. I mean, do you want - would you like me to send you the zoning maps, the concept plan map and all the statutory approved maps that go with that planning regime? Is that going to be of any use to you?

25

PROF MACKAY: No. I think they're already there.

30

MR CARTER: No. Yes. I think we've got those, so - - -

MR ANDERSON: They're available on the department's website.

PROF MACKAY: Yes. Yes. They're already - - -

35

MS HIRD: Yes. Yes.

PROF MACKAY: They're already present.

40

MR CARTER: Yes.

PROF MACKAY: Okay.

MR CARTER: Okay. Well, thank you very much, and I'll declare the meeting closed.

45

DR PHILLIPS: Good. Thanks for your time.

MS HIRD: Thank you.

MR WARREN: Thank you. Thank you for your interest.

5 PROF MACKAY: Thank you.

MR CARTER: So thank you.

10 PROF MACKAY: Thank you.

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[3.59 pm]