



Kings Forest Residential Community Development

*Part 3A Section 75W
Modification Assessment
(MP 08_0194 MOD 4)*



December 2018

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Glossary

Abbreviation	Definition
Council	Tweed Shire Council
Department	Department of Planning and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
KPOM	Koala Plan of Management
LEP	Local Environmental Plan
Minister	Minister for Planning
OEH	Office of Environment and Heritage
Proponent	Project 28 Pty Ltd
Planning Secretary	Secretary of the Department of Planning and Environment
RTS	Response to Submissions
RTS Addendum	Response to Submissions Addendum
SEPP	State Environmental Planning Policy



Executive Summary

This report provides an assessment of a section 75W modification request seeking to amend the Stage 1 Project Approval for the Kings Forest Residential Community Development. The site is located at Kings Forest, approximately one-kilometre (km) west of the coastal town of Casuarina, within the Tweed Shire local government area (LGA). Surveys have identified that the site supports koalas within the Tweed and Brunswick Rivers Endangered Koala population, located between the Tweed and Brunswick Rivers, east of the Pacific Highway.

On 11 August 2013, the then Planning Assessment Commission approved a Project Application which permits subdivision, bulk earthworks and the construction of roads across the site. The Project Approval also permits the clearing of 7.49 hectares (ha) of koala habitat.

To offset the loss of koala habitat and manage the residual impacts of the development on koalas, the Project Approval includes conditions requiring the Proponent to provide a comprehensive offset package and implement a Koala Plan of Management (KPOM) for the life of the development. This includes the provision of koala offsets in the following locations:

- 27 ha off-site within the Cudgen Nature Reserve
- approximately 6 ha on-site within the east-west wildlife corridor
- 54.9 ha on-site within other suitable locations.

Following the Project Approval, the Proponent referred the proposal to the Commonwealth under the requirements of the *Environment Protection and Biodiversity Conservation Act 1999*. The Commonwealth approved the proposal, permitting more clearing and fewer offsets, compared to the Project Approval.

Subsequently, the Proponent submitted a modification request seeking to align both approvals, by increasing the amount of koala habitat to be removed from 7.49 ha to 14.92 ha (due to previous mapping errors) and reducing the required koala offsets by:

- deleting the requirement to provide 27 ha of off-site offsets
- partially providing the east-west wildlife corridor, with 2 ha of koala offsets
- reducing the on-site offsets from 54.9 ha to 54.71 ha.

The modification request also seeks approval to update several koala management and mitigation measures including koala corridors, fencing, and koala crossings.

Engagement

The Department exhibited the modification request for an extended period between 29 June 2017 and 18 August 2017. The Department also met with Tweed Shire Council (Council), the Office of Environment and Heritage (OEH) and Team Koala (a local community group which advocates for the protection of Koalas), to gain a better understanding of the key issues associated with the proposal. The Department also inspected the site with officers from Council and OEH.

The Department received 1,664 public submissions (including 10 submissions from special interest groups), 1,647 of which objected to the proposal. Council objected to the proposal and OEH raised a number of concerns.

Key issues raised in the submissions include:

- the loss of additional koala habitat
- the reduction in koala offsets
- the suitability of the proposed offset areas
- the suitability of the koala corridors, fencing, and road crossings.

Given the technical nature of the concerns raised in the submissions, the Department engaged an independent ecologist (Dr Steven Ward) to review the revised KPOM. In summary, the review found that the proposal was inconsistent with the offset framework established under the Project Approval and a number of changes were required to the proposed management measures to ensure the long-term survival of koalas. The review also noted that the quantum of offsets between the State and Commonwealth approvals do not need to align and the Commonwealth approval should not be used to justify the proposed reduction in offsets.

Response to Submissions

The Department requested the Proponent to address the issues raised by the independent ecologist, as well as the issues raised in public and agency submissions. The Department also worked closely with Council and OEH to review a number of versions of the revised KPOM.

On 4 October 2018, the Proponent submitted its Response to Submissions Addendum and revised KPOM responding to the issues raised throughout the assessment of the proposal. Key amendments to the proposal include:

- reinstating the requirement to provide 27 ha of koala offsets in Cudgen Nature Reserve, or an alternative location, as approved by the Secretary
- delivering the full east-west wildlife corridor, providing 6.26 ha of on-site offsets
- increasing the on-site offsets in other locations from 54.9 ha to 62.51 ha
- revising the design and location of koala fencing and road crossings.

The Proponent also clarified that the final amount of koala habitat identified to be removed from the site has reduced from 14.92 ha to 8 ha, resulting in the loss of 0.51 ha of additional koala habitat than currently permitted.

The Department made the revised proposal publicly available on its website. It also sought comments from Council, OEH and Team Koala. While changes to the offsets and the design of the koala fencing and crossings were supported, concerns were maintained about several technical and administrative issues which could potentially impact on the implementation of the KPOM.

The independent ecologist reviewed the final KPOM and concluded it was consistent with the offset framework established under the Project Approval and is suitable subject to conditions to ensure: the provision of offsets are not delayed; the offsite offsets are secured; revised GIS mapping is provided; and appropriate contingency measures are put in place should the koala population unexpectedly decline.

Assessment

The Department has carefully considered the advice of the independent ecologist as well as the issues raised in the agency and public submissions. The Department considers the final KPOM is consistent with the offset framework established under the Project Approval and would provide for the long-term management of koalas on the site. In particular, the Department considers the proposal is acceptable as:

- it fully complies with the quantum of offsets required under the Project Approval
- the full east-west wildlife corridor has been provided, in accordance with Concept and Project Approvals
- the proposed offset areas are suitable for establishing koala habitat

- the number of koala food trees to be planted on the site has increased from 20,578 to 76,411
- a greater mix of primary koala food trees would be provided
- the koala fencing and crossings have been amended, allowing koalas to move through the site and preventing koalas from entering the development zone and dogs entering environmental areas.

Notwithstanding, the Department notes the timing and delivery of the offsets, the proposed contingency measures and a number of technical and administrative matters remain issues for the independent expert, government agencies and Team Koala. Consequently, the Department has recommended a suite of conditions to address these concerns, including requirements to:

- verify the vegetation and habitat mapping to ensure the boundaries of the koala offset areas are correct
- identify the location of and timing for the provision of the 27 ha of offsite offsets
- ensure the provision of koala offsets are not delayed and are provided ahead of development impacts
- update the contingency strategy to identify the triggers for implementation and actions that will be implemented, if koala numbers decline and koala offsets do not establish
- ensure the installation of koala fencing does not isolate areas of retained vegetation or offset habitat
- ensure appropriate vegetation management targets and weed management methods are identified
- manage roaming dogs within the Feral Animal Management Plan.

Conclusion

The Department has carefully assessed the merits of the proposal and considers the Proponent has appropriately responded to the key issues raised by the independent expert as well as issues raised in public and agency submissions.

The Department is satisfied the revised KPOM would now provide appropriate offsets and ongoing management measures for the long-term protection of koalas, consistent with the Concept and Project Approvals and the objectives of the North Coast Regional Strategy and the NSW Koala Recovery Plan.

While the key issues associated with the proposal have been appropriately addressed, further revisions to the KPOM are required to address the recommendations contained in this report. Subject to those recommendations, the Department's assessment concludes the proposal is approvable.

The modification request is referred to the Independent Planning Commission (the Commission) for determination as Council objects to the proposal and more than 25 public objections were received.



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1. Introduction

1.1 Background

This report provides an assessment of a request to modify the Stage 1 Project Approval (MP 08_0194 MOD 4) for the Kings Forest residential subdivision in the Tweed Shire local government area (LGA).

The proposed modification seeks approval to implement a revised Koala Plan of Management (KPOM) and amend the conditions of approval to be consistent with the offsets specified in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC) Approval.

The request has been lodged by Project 28 Pty Ltd (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 Subject Site

The Kings Forest site is approximately 880 ha in area and comprises 19 parcels of land. It is located approximately 15 kilometres (km) south of Tweed Heads, close to the townships of Bogangar, Cabarita Beach and Casuarina (see **Figure 1**).



Figure 1 – Location of Kings Forest

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 site to the south and east. Further to the east, on the opposite side of Cudgen Nature Reserve, is the coastal suburb of Casuarina (**Figure 2**).

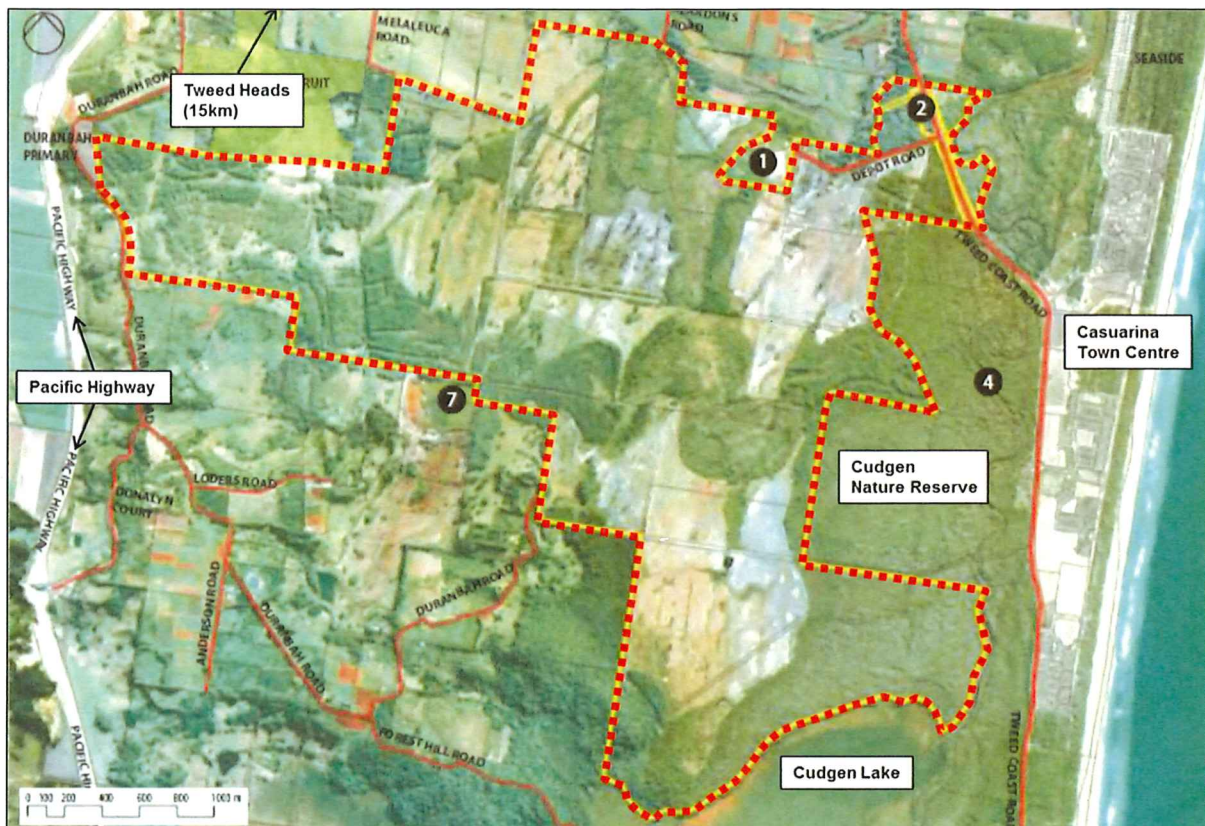


Figure 2 | The site (dashed outlined) and its surroundings

The site also contains approximately 32 ha of primary and 181 ha of secondary Koala habitat which supports part of the Koala population between the Tweed River and Brunswick River east of the Pacific Highway (Tweed and Brunswick Rivers Endangered Koala Population). This population is listed as endangered under the *Biodiversity Conservation Act 2016* and comprises approximately 144 individuals across four discrete sub-populations. The Tweed and Brunswick Rivers Endangered Koala Population also forms part of the Queensland, New South Wales and the Australian Capital Territory koala population which is listed as vulnerable under the provisions of the *Environment Protection and Biodiversity Conservation Act 1999*. Based on historical site surveys, the site supports approximately 15 of the 36 individuals within the the broader Bogangar/Kings Forest/Forest Hill sub-population.

1.3 Approval History

Concept Plan

On 19 August 2010, the then Minister for Planning approved a Concept Plan for a residential subdivision on the site. The Concept Approval permits:

- residential development for approximately 4,500 dwellings
- the creation of a town and neighbourhood centre for future retail and commercial uses
- employment lands and community and education facilities

- a golf course, open space, wildlife corridors, protection and rehabilitation of environmentally sensitive land
- water management areas and a lake
- roads and a bicycle and pedestrian network
- the delivery of utility services infrastructure.

The Concept Approval has been modified on six occasions, as summarised in **Table 1**.

Table 1 - Approved Modifications to Concept Plan MP 06_0318

MOD	Description	Determination Date
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.	22/12/2010
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.	11/08/2010
MOD 3	Amendments to the conditions of approval and definitions table, an extension of the approval lapse date to 31 December 2016, and amendments to the precinct-specific management plans.	16/05/2014
MOD 4	Amendments to the schedule of definitions and terms B5, B7, C3, C29 (to reflect the amended definitions) and C30 (relating to the provision of affordable housing) and insertion of the Department's standard dispute resolution clause.	20/11/2014
MOD 5	Amendments to the Kings Forest Development Code to include food and drink premises as permissible uses on employment lands.	10/11/2015
MOD 7	Modifications to the Kings Forest Development Code to permit the construction of a private wastewater treatment plant and associated sewerage supply infrastructure and rezone a portion of Lot 1 in DP 781633 SP2 Infrastructure.	Withdrawn
MOD 8	Amendment to Condition A5 to extend the lapse date to 31 December 2019 and clarify the physical works required to prevent the approval lapsing.	25/05/18

The Concept Plan (as modified) establishes an environmental management framework for the site, including measures to mitigate and manage potential impacts on koalas, including:

- the preparation of updated KPOMs for each stage of the development
- the transfer of conservation lands to OEHL
- the preparation of annual flora and fauna monitoring reports
- the provision of an east-west wildlife corridor of up to 100 metres (m) wide (with a minimum of 50 m at any one point) illustrated below in **Figure 3**
- traffic and wildlife protection measures, to maintain the safe passage of wildlife between habitat areas.

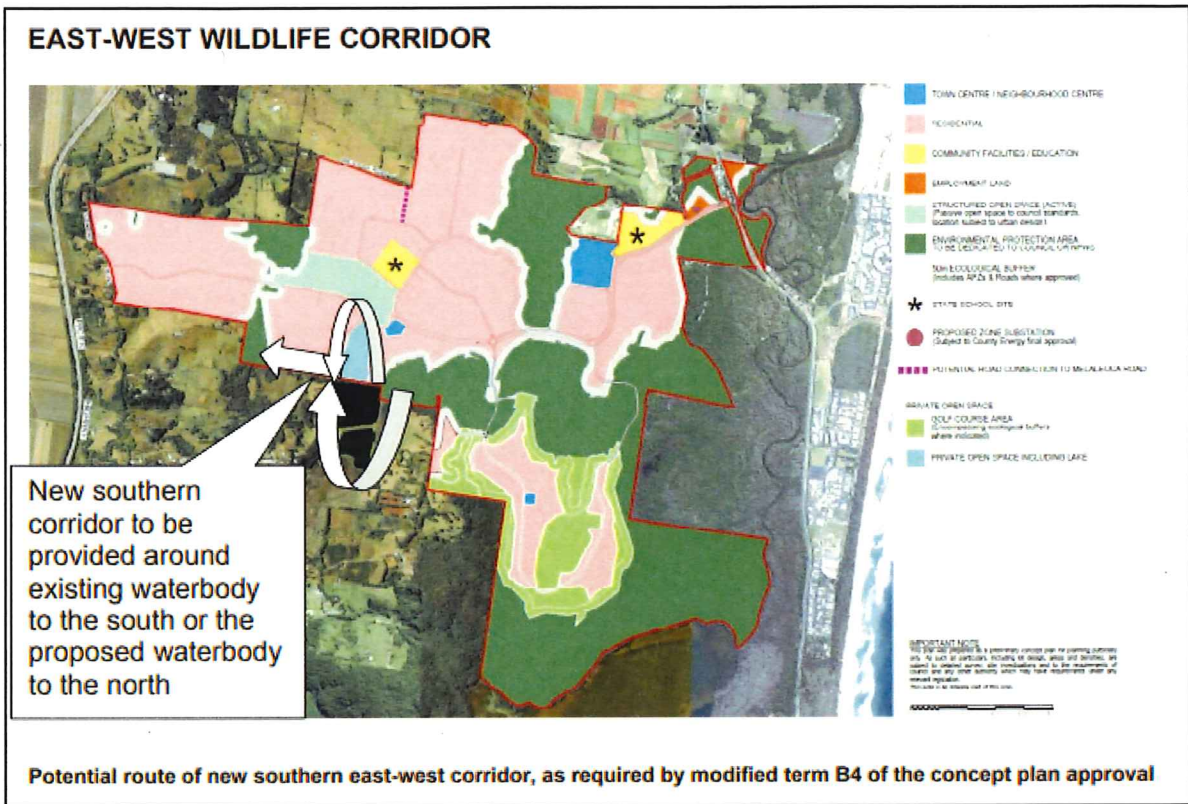


Figure 3 – Location of an east-west wildlife corridor

Project Approval (MP 08_0194 Stage 1)

On 11 August 2013, the then Planning Assessment Commission approved a Stage 1 Project Application (MP 08_0194) permitting the following works:

- the staged creation of 10 development lots
- bulk earthworks within Precincts 1 and 2 and 4 to 24
- 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 m² of floor space within Precinct 1 for future use as a rural supply building with associated car parking and landscaping.

The Project Approval has been modified on five occasions, as summarised in **Table 2**.

Table 2 - Approved Modifications to Project Approval MP 08_0194

MOD	Description	Determination Date
MOD 1	Amendments to the weed management plan, changes to the staging plans for works adjacent to the environmental protection zones, the inclusion of the former Crown reserves into the project area description, and amendments to the conditions of approval to extend the timeframes for submitting the environmental management plans.	16/05/2014
MOD 2	Amendments to the list of definitions in Schedule 1, the introduction of a modified process for bond payments, changes to dust mitigation measures, the inclusion of a new dispute resolution condition, and amendments to the timing of the:	20/11/2014

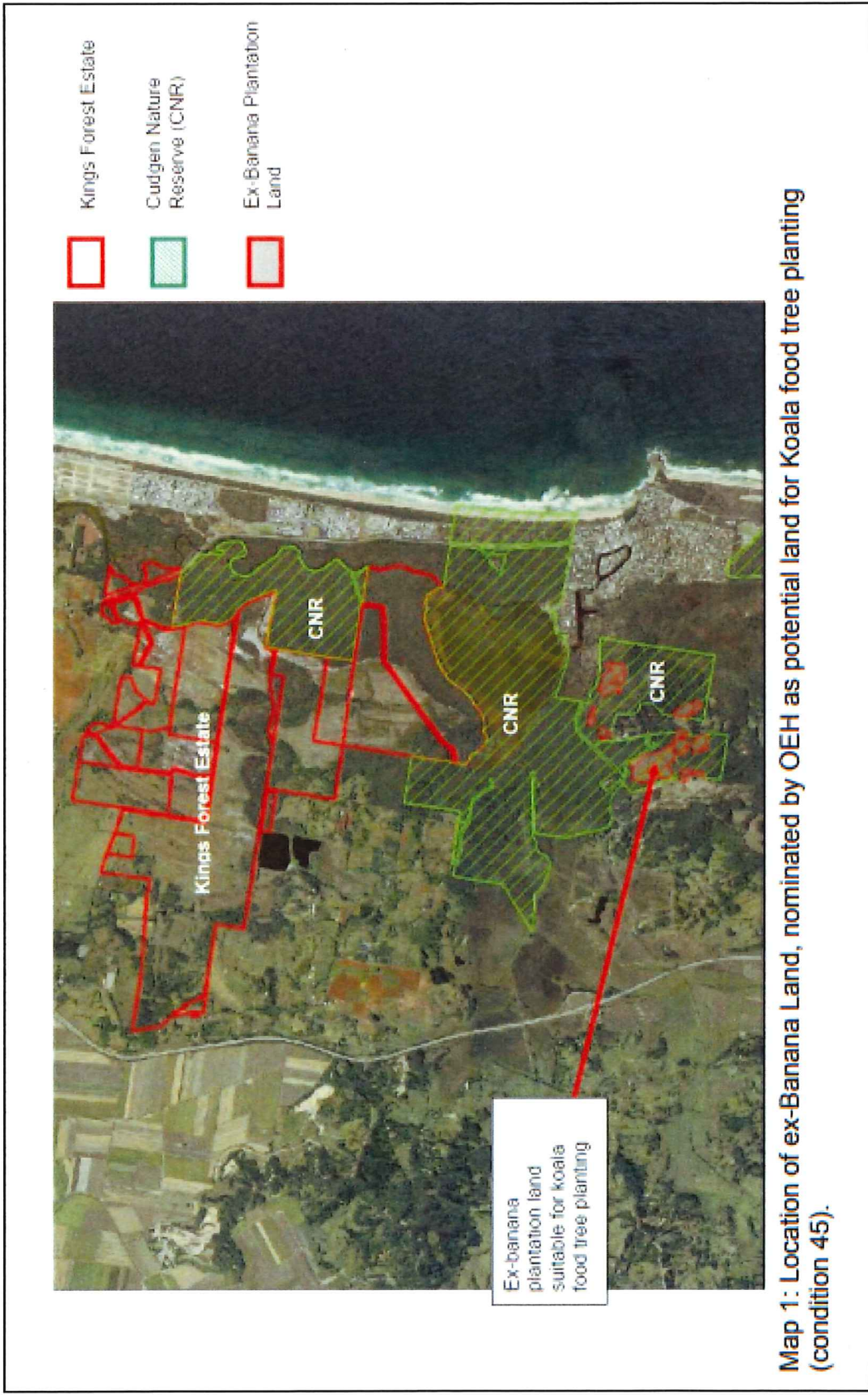
	<ul style="list-style-type: none"> • planting of koala food trees • management of the 'Potential Council Land' and 'Future Office of Environment and Heritage (OEH) Land' • commencement of baseline environmental monitoring • surveying and delineation of the environmental offset areas, the boundaries of the Cudgen Nature Reserve and the SEPP 14 wetlands • the submission of audit reports. 	
MOD 3	Amendments to replace the previously approved rural supplies building in Precinct 1 with a service station with associated food and drink premises.	20/02/2017
MOD 5	Modifications to conditions 2, 30, 31, 118, 142, 154 and 157 to permit the construction and operation of a private wastewater treatment plant and associated sewerage supply infrastructure.	Withdrawn
MOD 6	Amendments to conditions to defer the timing for the construction of the roundabout on Tweed Coast Road, 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.	21/12/2017
MOD 7	Amendment to Condition A17 to extend the lapse date to 31 December 2019 and clarify the physical works required to prevent the approval lapsing.	24/05/2018

The Project Approval includes conditions requiring the Proponent to mitigate and manage the potential impacts of the proposal on koalas. Condition 45 of the Project Approval establishes a framework to offset the loss of existing koala food trees on-site. In summary, it requires the Proponent to update the KPOM to ensure koala food trees are planted in the following locations:

- 27 ha off-site within Cudgen Nature Reserve
- approximately 6 ha on-site within the required east-west wildlife corridor
- 54.9 ha on-site, within other suitable locations (in accordance with the approved Koala Compensatory Habitat Area Staging Plan).

The areas nominated for koala food tree planting as well as the Cudgen Nature Reserve are identified in **Figure 4**. The approved Staging Plan is provided in **Figure 5**.

The Project Approval also includes conditions requiring the Proponent to the revise the KPOM to provide the koala offsets outside existing natural regeneration areas and to minimise overlaps between the offsets proposed for the koala, Wallum Sedge Frog and heathland vegetation.



Map 1: Location of ex-Banana Land, nominated by OEH as potential land for Koala food tree planting (condition 45).

Figure 4 - 27 ha Parcel of Land in Cudgen Nature Reserve Suitable for Koala Food Tree Planting

Commonwealth Approval

Following the Project Approval, the Proponent referred its proposal to the Commonwealth for assessment under the provisions of the EPBC Act. In May 2015, the Commonwealth authorised the removal of 14.92 ha of koala habitat, subject to the Proponent providing 43.45 ha of compensatory koala habitat, conserving and managing 183.05 ha of existing koala habitat, and preparing and implementing a KPOM (EPBC Approval 2012/6328). This approval also incorporated offset and management requirements for the removal of 44 ha of Wallum Sedge Frog habitat.

The EPBC Approval (2012/6328) was subsequently amended on 29 June 2017, to update the terms of approval and increase the amount of compensatory koala habitat from 43.45 ha to 56.71 ha.

Following the issue of the Commonwealth approval, the Proponent lodged a request to increase the amount of koala habitat clearing from 7.49 ha to 14.92 ha (due to mapping errors) and modify the offset framework identified in Condition 45 of the Project Approval to provide consistency with the Commonwealth approval, by:

- deleting the requirement to provide 27 ha of off-site offsets
- partially providing the east-west corridor, with 2 ha of koala offsets
- reducing the on-site offsets across other parts of the site from 54.9 ha to 54.71 ha.

However, it should be noted that the Commonwealth and State approvals are separate approvals issued under different jurisdictions and Acts. There are no statutory provisions requiring the two approvals to align as they can operate independently.



2. Proposed Modification

2.1 Original modification request

On 21 June 2017, the Proponent lodged a section 75W modification request (MP 08_0194 MOD 4) seeking approval to implement a revised KPOM and amend the conditions of approval to:

- increase the amount of koala habitat to be removed from the site by from 7.49 ha to 14.92 ha (due to mapping errors)
- remove the requirement to plant koala food trees on a 27 ha parcel of land within the Cudgen Nature Reserve
- provide 56.71 ha, of koala offsets across the site, comprising 2 ha of koala offsets within the required east-west koala corridor and 54.71 ha of koala offsets within other parts of the site
- revise the “commencement of works” definition to provide consistency with the EPBC Act approval for the project
- revise the locations of the koala fencing and fauna underpasses, and amend the timing for the construction of this infrastructure
- remove the requirement to provide traffic calming devices to manage koala movements across the site
- remove references to the KPOM dated August 2012 and replace them with the revised KPOM.

2.2 Revised modification request

In response to issues raised during the exhibition of the proposal, the Proponent revised the request in its RTS and RTS addendum to:

- reduce the amount of additional koala habitat to be cleared from 14.92 to 8 ha, as less vegetation was identified as koala habitat within the development site
- amend Condition 45 to require 27 ha of koala food tree planting in Cudgen Nature Reserve or an alternate location approved by the Planning Secretary
- increase the width of the east-west wildlife corridor from approximately 50 m to 100 m, providing 6.26 ha of on-site offsets
- increase the proposed on-site offsets from 54.71 ha to 62.51 ha
- increase the total number of koala food trees from 20,578 to 76, 411 trees and increase the proportion of primary koala habitat from 74 % to 95 %
- amend the fencing details and provide seven koala culvert crossings and one “cattle grid” to manage koala movements across the site
- correct administrative errors in the numbering of conditions 148 and 149

Table 3 and **Figures 6** and **7** below identify how the KPOM has evolved since the approval of the Stage 1 Project Application. **Appendix A** contains a link to the Proponent’s modification request, RTS and RTS addendum.

Table 3 – Summary of changes to the KPOM

Aspect	Proposal (as approved)	Proposal (as exhibited)	Proposal (as amended by the RTS Addendum)
Retained Koala habitat	No figure specified	183.05 ha	206.05 ha
Total Koala habitat clearing	7.49 ha	14.92 ha	8.00 ha
Total off-site offset	27 ha of within Cudgen Nature Reserve	Nil	27 ha within Cudgen Nature Reserve, or an alternate location, as approved by the Planning Secretary
Proposed offset planting within the east-west corridor	Planting on approximately 6 ha within a 100 m wide east-west corridor	Planting on 2 ha within a 50 m wide east-west corridor	Planting on 6.26 ha, within a 100 m (approx.) wide east-west corridor
Total on-site offset	54.9 ha ¹	54.71 ha	62.51 ha
Combined offset area (on- and off-site)	87.9 ha ¹	56.71 ha	95.77 ha
Total primary Koala offset habitat	No figure specified	42.4 ha ²	65.44 ha
Total proposed primary Koala food trees	No figure specified	16,460	43,554
Total proposed secondary Koala food trees	No figure specified	5,724	32,857
Total proposed Koala food trees	10,284 koala food trees, and 10,294 endemic sclerophyll forest species	22,184	76,411
Number of fauna underpasses	2 fauna underpasses identified	A maximum of 2 underpasses identified	Minimum of 7 fauna underpasses

Note¹: 54.9 ha of compensatory koala habitat is identified in the Staging Plan approved under MP 08_0194 MOD 2

Note²: includes secondary koala habitat

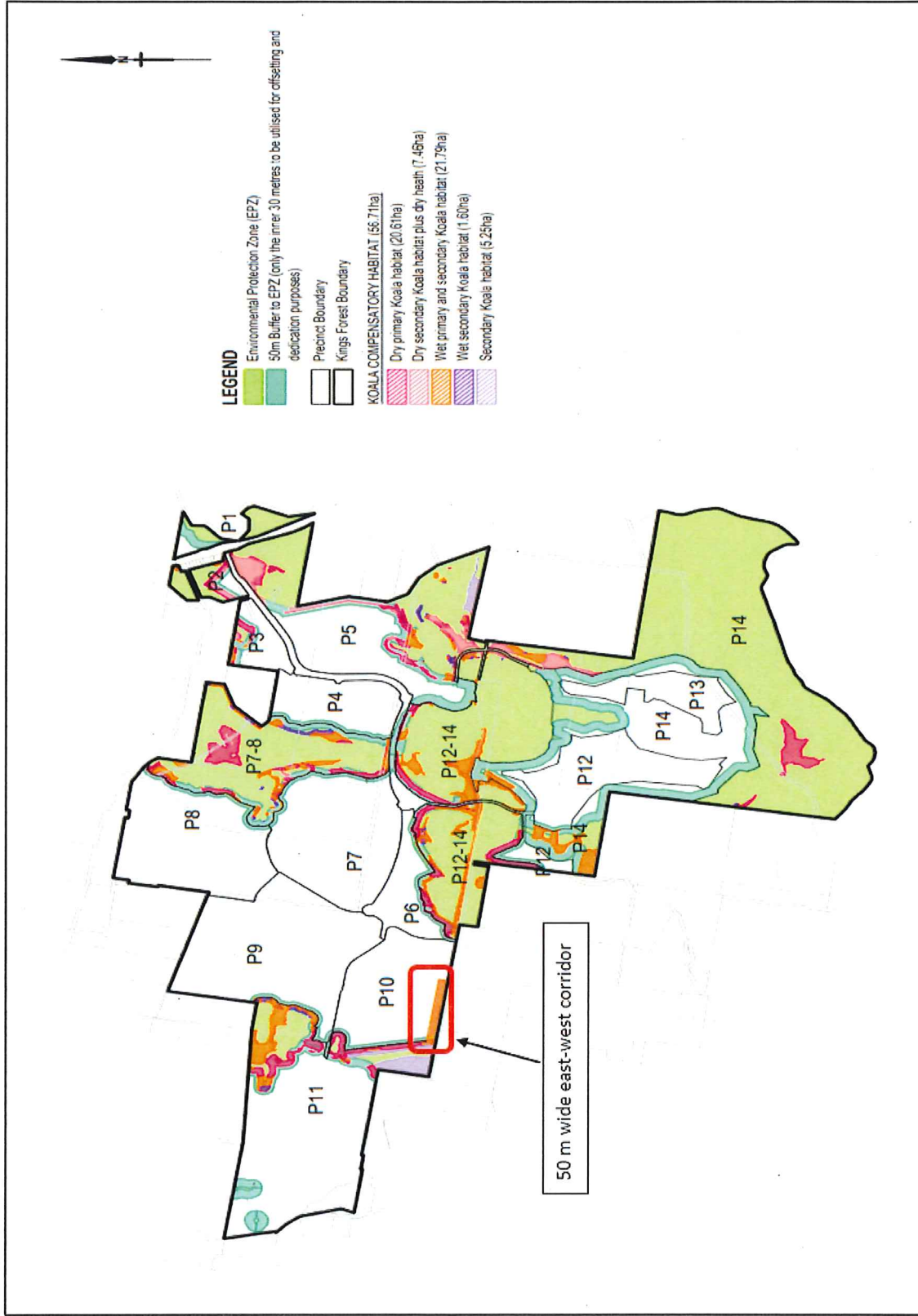


Figure 6 | Proposed Koala Offset Habitat (as identified in the Proponent's Original Modification Request)

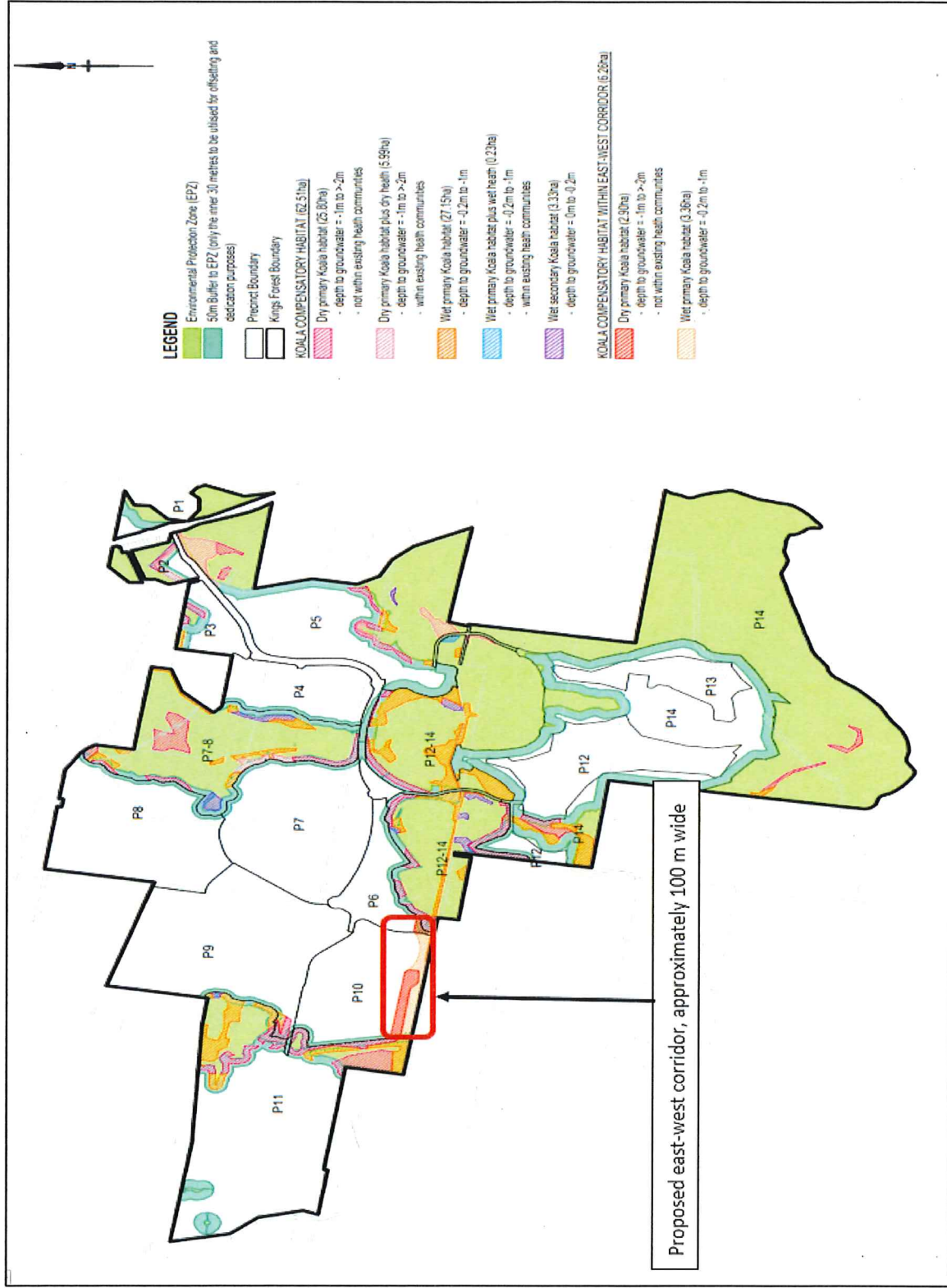


Figure 7 | Proposed Koala Offset Habitat (as identified in the Proponent's Final RTS)



3. Strategic Context

3.1 North Coast Regional Plan 2036

The North Coast Regional Plan sets the planning priorities for 12 local government areas on the far and mid-north coast and provides guidance and direction for regional and local planning decisions.

The Plan seeks to ensure the North Coast region is the best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities. It seeks to leverage off the natural beauty of the environment to enrich the lives of its residents and sustain a thriving tourism and lifestyle economy. It also seeks to safeguard and enhance the environment to deliver a prosperous future and ensure the region remains one of the most beautiful parts of the State.

The Department considers the proposal is consistent with the Regional Plan as it will:

- provide for the protection of the Tweed Coast Endangered Koala population by delivering a total of 95.77 ha of koala offset habitat and associated environmental protection works to manage and mitigate the potential impacts of development within Kings Forest
- facilitate additional revegetation works to enhance diversity and habitat for flora and fauna, including the region's iconic koala population
- provide a suitable balance between development and the protection of the region's significant environmental assets.

3.2 NSW Koala Recovery Plan

The NSW Koala Recovery Plan outlines the current status of koalas in NSW, the threats to their survival, and the actions required to aid the recovery of the species.

The Plan identifies the loss and degradation of habitat as the most significant threat facing NSW koala populations and encourages the conservation of koala habitat. In terms of the Tweed Shire LGA, the Plan notes numerous small Koala populations occur along the coast and many are separated as a result of urban and rural development, roads and other forms of fragmentation.

The Department has considered the proposal against the provisions of the NSW Koala Recovery Plan and has concluded it is consistent with the Plan as it would improve koala linkages in the Kings Forest/Cudgen area, and provide a total of 95.77 ha of koala offsets for the removal of 8 ha of koala habitat.

3.3 Tweed Coast Comprehensive Koala Plan of Management

The Tweed Coast Comprehensive Koala Plan of Management (Tweed Coast KPOM) has been prepared by Council to address the requirements of *State Environmental Planning Policy No. 44 - Koala Habitat Protection*. The provisions of the Tweed Coast KPOM apply to Part 4 development applications on land where a site-specific KPOM does not apply.

Whilst the Tweed Coast KPOM does not apply to the assessment of the proposal, the Department notes it provides guidance for the management of the local koala population. The Department considers that subject to the recommended conditions of approval, the proposed KPOM will incorporate best practice management measures and improve connectivity between the Cudgen and Duranbah Koala Linkage Precincts and the Cudgen Lake Koala Activity Precinct, consistent with the intent of the Tweed Coast KPOM.



4. Statutory Context

4.1 Section 75W

The project was originally approved under Part 3A of the EP&A Act. The project is a transitional Part 3A project under Schedule 2 of the EP&A (Savings, Transitional and Other Provisions) Regulation 2017. The power to modify transitional Part 3A projects under section 75W of the EP&A Act, as in force immediately before its repeal on 1 October 2011, is being wound up – but as the request for this modification was made before the ‘cut-off-date’ of 1 March 2018, the provisions of Schedule 2 (clause 3) continue to apply. Consequently, this report has been prepared in accordance with the requirements of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove the carrying out of the project under section 75W of the EP&A Act.

The Department is satisfied that the proposed changes are within the scope of section 75W of the EP&A Act.

4.2 Approval Authority

The Minister for Planning is the approval authority for the proposed modification. However, in accordance with the Minister’s delegation, the Independent Planning Commission (Commission) may determine the request as Council objected and more than 25 public submissions of objection were received.

4.3 Mandatory/Relevant Matters for Consideration

The following are the mandatory/relevant matters for consideration:

- relevant environmental planning instruments (EPIs)
- objects of the EP&A Act
- ecologically sustainable development (ESD)
- Environmental Planning and Assessment Regulation 2000 (EP&A Reg).

These matters are considered below.

4.3.1 Consistency with the Relevant EPIs

The Department has reviewed the relevant EPIs that applied to the development identified in the Project Approval, including:

- *State Environmental Planning Policy (State Significant Precincts) 2005*
- *State Environmental Planning Policy No. 44 – Koala Protection*
- *State Environmental Planning Policy No. 55 – Remediation of Land*
- *State Environmental Planning Policy (Affordable Rental Housing) 2009*
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy (Coastal Management) 2018*
- *Tweed Local Environment Plan 2014.*

The Department undertook a comprehensive assessment of the proposal against the relevant EPIs, in its original assessment. The Department is satisfied the proposal is permissible and it remains consistent with the EPIs considered in the assessment of the original proposal.

4.3.2 Objects of the EP&A Act

The objects of the EP&A Act are the underpinning principles upon which the assessment is conducted. The statutory powers in the EP&A Act (such as the power to grant approval) are to be understood as powers to advance the objects of the legislation, and limits on those powers are set by reference to those objects. Therefore, in making an assessment, the objects should be considered to the extent to which they are relevant.

A consideration of the Objects of the EP&A Act, as they relate to the proposal is provided at **Table 4**.

Table 4 | Response to the objects of section 1.3 of the EP&A Act

Objects of the EP&A Act	Consideration
(a) <i>to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i>	<ul style="list-style-type: none"> • The proposal seeks to specify the quantum and location of koala offset habitat and identify the management measures required to maintain Koala occupancy rates on the site. • The Department concludes the implementation of a revised KPOM, consistent with the requirements of Term 45 of the Project Approval, would improve the quality and connectivity of koala habitat in the locality and would promote the conservation of the State's natural resources, consistent with the objects of the Act.
(b) <i>to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment</i>	<ul style="list-style-type: none"> • The proposal includes the following mechanisms to implement ecologically sustainable development: <ul style="list-style-type: none"> ▪ supplementary koala food tree plantings on 27 ha of land in Cudgen Nature Reserve, or on an alternate site, as approved by the Secretary; ▪ the creation of 68.77 ha of koala offset habitat, inclusive of the east-west corridor, and the planting of 76,411 koala food trees across the site; and ▪ koala monitoring, management and contingency measures. • The Department has recommended conditions to ensure the biodiversity impacts of the proposal are offset, and the proposal improves local and regional koala habitat connectivity.
(c) <i>to promote the orderly and economic use and development of land,</i>	<ul style="list-style-type: none"> • The proposal will continue to promote the orderly and economic use and development of land as it will provide for the staged delivery of koala offsets.
(e) <i>to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	<ul style="list-style-type: none"> • Subject to the recommended conditions of approval, the Department has concluded the proposal will incorporate suitable measures to provide for the conservation of koalas on-site and in the broader locality.
(f) <i>to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	<ul style="list-style-type: none"> • Not applicable, as the proposal does not affect the implementation of the Aboriginal Cultural Heritage Program for the site.

Objects of the EP&A Act	Consideration
(g) to promote good design and amenity of the built environment,	<ul style="list-style-type: none"> Not applicable, as the proposal will not affect future built form outcomes on the site.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	<ul style="list-style-type: none"> The Department publicly exhibited the proposal (Section 5), which included consultation with Council, and other public authorities and consideration of their responses (see Sections 5 and 6).
(j) to provide increased opportunity for community participation in environmental planning and assessment.	<ul style="list-style-type: none"> The Department publicly exhibited the proposal (see Section 5), which included placing a notice in newspapers and displaying the proposal on the Department's website notifying, Friends of Cudgen Nature Reserve, the Friends of Koala Inc. and Team Koala.

4.3.3 Ecologically Sustainable Development

The EP&A Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1991* (POEA Act). Section 6 (2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- (a) the precautionary principle
- (b) inter-generational equity
- (c) conservation of biological diversity and ecological integrity
- (d) improved valuation, pricing and incentive mechanisms.

The Department considers that subject to the recommended conditions of approval, the proposal represents a sustainable use of the site, as it would:

- facilitate the creation of 95.77 ha of compensatory koala habitat to offset the loss of 8 ha of koala habitat within the approved development footprint
- implement a range of management measures to ensure the long-term survival of koalas.

4.3.4 Environmental Planning and Assessment Regulation 2000

Subject to any other references to compliance with the EP&A Regulation as cited in this report, the relevant requirements for notification and fees have been complied with.

4.3.5 Threatened Species Conservation Act 1995 (TSC Act)

In 2016, the Tweed and Brunswick Rivers Koala Population was listed as an endangered population under the now repealed provisions of the TSC Act.

Under the terms of the Project Approval, the KPOM is required to have regard to any relevant recommendations in the NSW Scientific Committee's final determination for the Tweed and Brunswick Rivers Endangered Koala Population. The Department is satisfied the KPOM has addressed the relevant findings and recommendations outlined in the NSW Scientific Committee's final determination.



5. Engagement

5.1 Department's Engagement

The Department notified the modification request for an extended period between 29 June 2017 and 18 August 2017. The request was made publicly visible on the Department's website and advertised in the Sydney Morning Herald, the Daily Telegraph, and the Tweed Daily News.

The Department also notified adjoining landowners, the relevant State and local government authorities and local community groups of the proposal. In addition, the Department met with representatives from Team Koala, Council and OEH to gain a better understanding of the issues raised.

The Department received two submissions from government agencies, including an objection from Council and a submission from the OEH. In addition, the Department received 1,664 public submissions (including 10 submissions from special interest groups), 1,637 of which objected to the proposal (see **Tables 5** and **6**). The Department notes that 68 % of submissions were received from residents who live within 10 km of the site.

Table 5 | Overview of Submissions

Submitters	Number	Position
OEH	1	Comment
Council	1	Object
Community	1637	Object
	16	Comment
	1	Support
Special interest groups	10	Object
TOTAL	1,666	

Table 6 | Overview of community and special interest group submissions

Submitters	Number	Position
Community	1,664	
• < 10 km	68.1 %	Object
• 10 - 50 km	9.0 %	Object
• 50 - 100 km	2.5 %	Object
• 100 – 500 km	3.3 %	Object
• > 500 km	3.7 %	Object
• other	13.0 %	Object
TOTAL	100%	

5.2 Response to Submissions and Response to Submissions Addendum

Response to Submissions

In June 2018, the Proponent provided a RTS (see **Appendix A**). The RTS amended the scope of the modification to retain the requirement to provide koala food tree planting on a 27 ha parcel of land within the Cudgen Nature Reserve, or an alternate location approved by the Planning Secretary. The RTS also included a revised KPOM in response to the issues raised by the independent ecologist, Council, the OEH and the community.

The Department made the RTS publicly available on its website and notified Council, OEH and Team Koala. The Department received submissions from Council, the OEH and Team Koala. While some of the proposed amendments were supported, several concerns remained about the proposed offsets, the design of koala fencing and crossings as well as a number of technical and administrative issues. The issues raised are summarised in detail in **Section 5.3 and 5.4** below.

RtS Addendum

In response to the issues raised about the RTS, the Proponent lodged an RTS Addendum in October 2018. The RTS Addendum included a final KPOM proposing changes to the planting densities, increased the quantum of compensatory koala habitat and revised the location and design of the koala fencing, underpasses and “cattle grids”.

The Department made the RTS Addendum publicly available on its website and notified Council, OEH and Team Koala. The Department received submissions from Council, the OEH and Team Koala, all of which continued to raise concerns about several technical and administrative issues which could potentially impact on the implementation of the KPOM. The issues raised are summarised in detail in **Section 5.3 and 5.4** below.

The final scope of the proposal as amended by the RTS and RTS Addendum is outlined in detail in **Section 2**.

5.3 Key Issues – Government Agencies

The Council and OEH submissions are summarised in **Table 7** below.

Table 7 | Summary of Council and OEH Comments

Council

Modification Request	
	<p>Council objects to the loss of any additional koala habitat or any reduction in the approved koala protection measures. In addition, Council raised the following concerns with the KPOM:</p> <ul style="list-style-type: none">• inconsistencies in the Proponent’s vegetation and habitat mapping• additional offsets should be provided to mitigate the loss of all koala habitat that was not mapped prior to the determination of the original Project Approval• the proposed koala offsets overlap with existing habitat and do not comply with the offset framework established under the Concept Plan and Project Approval• koala offsets should focus on creating primary rather than secondary koala habitat• the proposed koala fencing, underpasses and “cattle grids” would not ensure the safe movement of koalas through the site• no clearing should be permitted prior to the approval of the EMPs applicable to the site• the Department should engage an independent expert to review the KPOM.

RTS and Addendum

Council continues to object to the proposal. While Council supports the location of the compensatory koala habitat, the proposed increase in the amount of primary koala habitat, and the density of koala food tree planting, it requested further amendments to:

- ensure the off-site offset is delivered within a suitable timeframe
- ensure the on-site koala offsets are provided ahead of impacts
- ensure vegetation clearing and habitat creation does not occur prior to the approval of the EMPs
- ensure the management of all existing koala habitat commences once physical works or vegetation clearing occurs on-site
- facilitate the use of the Blacks Creek culvert as a koala underpass and ensure the Golf Course fencing is located within the inner protection zone of the ecological buffer
- identify the measures that will be implemented to manage the key threatening processes applicable to koalas on-site
- address the relevant conditions of the State and Commonwealth approvals and the EMPs applicable to the development
- ensure the Contingency Strategy is amended to clarify its purpose and identify triggers for its implementation.

OEH**Modification Request**

OEH raised the following concerns about the proposal.

- the 27 ha offset in the Cudgen Nature Reserve should be retained and the Proponent should liaise with the OEH to determine a suitable site
- the proposed east-west corridor should be provided in accordance with the terms of the Concept Approval (100 m required, 50m proposed)
- the impacts of clearing additional koala habitat have not been assessed and this habitat should either be retained or offset
- the Proponent should clarify whether the proposed modifications to the commencement of works definition would permit vegetation clearing without triggering the requirement to manage the Potential Council and Future OEH lands
- final fencing and underpass designs should not be approved until the koala offset areas are finalised.

RTS and Addendum

OEH continued to raise concerns about the proposal and requested further revisions to:

- identify the location of the off-site offset and the timing for its delivery
- ensure koala offsets are provided prior to impacts (i.e. prior to the clearing of koala habitat)
- ensure the KPOM is consistent with the provisions of the residual EMPs for the project, and a single map is provided to depict the rehabilitation areas identified in each EMP
- ensure the existing koala habitat is managed following the commencement of works on-site
- bring the rehabilitation of the east-west corridor forward to Stage 2 of the development as per the requirements of Condition C28 of the Concept Plan
- the Contingency Strategy should be amended to clarify its purpose and identify the triggers for implementation
- provide consistent definitions that link with the management actions identified in the KPOM.

5.4 Key Issues – Community and Special Interest Groups

A total of 1,664 public submissions were received during the exhibition of the modification request, including 1,637 submissions of objection, 16 submissions providing comments and one submission of support. The key issues raised in submissions are summarised below.

- the quantum and location of koala offset habitat
- the consistency of the proposal with the requirements of the Project Approval
- the use of existing vegetation as koala offsets
- the proposed species and mix of primary and secondary koala food trees
- the suitability of the proposed koala fencing, underpasses and “cattle grids”
- the timing for the delivery of the koala offset habitat
- consistency between the KPOM and the residual EMPs required under the Project Approval
- the impacts of changing the commencement of works definition on the management of koalas and other threatened species on-site.

The Department also received submissions from Team Koala on the Proponent’s RTS and RTS Addendum. In summary, Team Koala supported the quantum and location of the offsets and the revised tree planting schedule identified in the final KPOM. However, it raised the following concerns:

- the KPOM should identify the location of the off-site offset and the timing for its delivery
- the timing for the delivery of retained koala habitat should be identified in the KPOM and should be consistent with the requirements of Condition 28 of the Concept Plan
- the fencing and underpass plans should be revised to ensure the Blacks Creek culvert can be used as a koala underpass, and fencing within the golf course precinct is set in 30 m from the boundary of the ecological buffer to provide consistency with the fencing requirements in the residual development precincts
- the KPOM should detail the bushfire management measures required to manage threats to the koala population.

5.5 Independent Review of the KPOM

The Department engaged an independent ecologist to review the merits of the KPOM. The review raised a number of concerns with the quantum and location of the proposed koala offsets, koala food tree species selection, and the suitability of the proposed koala corridors, fencing, and road crossings.

The review also recommended changes to the vegetation performance targets and monitoring procedures identified in the KPOM, as well as revisions to the Contingency Strategy to identify actions for implementation in the event there is a significant decline in koala numbers on-site. A copy of the review is provided at **Appendix E**.

5.6 Supplementary Reviews of the KPOM

The Proponent’s RTS and RTS Addendum updated the KPOM to address the issues raised by the independent ecologist. Each version of the KPOM was reviewed by the independent ecologist with the final review concluding the KPOM is consistent with the offset framework established under the Project Approval and is suitable subject to the Proponent:

- engaging an independent ecologist, with skills in GIS mapping, to verify the boundaries of any koala offset areas that adjoin retained koala habitat
- providing GIS mapping of all areas of retained and offset habitats (koala, Wallum Sedge Frog and heathlands)

- securing a 27 ha site in Cudgen Nature Reserve prior to the issue of the first Construction Certificate for bulk earthworks, or identifying a process to facilitate the payment of funds to the OEH to undertake koala revegetation or rehabilitation works on other suitable lands within the Tweed LGA
- ensuring offsets are provided for each stage of the development at a ratio of 1:8.6
- updating the Contingency Strategy to identify a trigger for undertaking contingency measures if there is a significant decline in koalas on-site
- ensuring the installation of koala fencing will not result in the clearing of retained vegetation, or other compensatory habitat being isolated from the conservation lands
- identifying circumstances where minor changes can be made to the KPOM without seeking the Planning Secretary's approval
- clarifying the vegetation benchmarks for each vegetation zone
- addressing the management of roaming domestic dogs in the Feral Animal Management Plan.

The Department's assessment of the suitability of the final KPOM is discussed in **Section 6** of this report.



6. Assessment

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

- the modification request and associated documents
- the Environmental Assessment and conditions of approval for the original Concept and Project Approvals
- all submission received on the proposal and the Proponent's responses to the submissions
- relevant environmental planning instruments, policies and guidelines
- the advice provided by the independent ecologist.

The Department considers the key issues associated with the proposal include: the suitability of the proposed koala offset strategy; the design of the koala fencing and crossings; and the adequacy of the contingency measures. All other issues are discussed in **Table 10** below.

6.1 Koala offset strategy

The proposed amendments to the koala offsets was a key issue raised by the community and government agencies. The Department considers the key issues associated the proposed koala offsets include: the quantum of offsets; the location of the offsets; and the timing and delivery of the offsets. These issues have been considered in detail below.

Quantum of offsets

Condition 45 of the Project Approval establishes a framework to offset the loss of existing koala habitat on-site. It requires the planting of koala food trees to offset the impacts of the proposal in the following locations:

- 27 ha off-site, within Cudgen Nature Reserve
- approximately 6 ha on-site, within the required east-west wildlife corridor
- 54.9 ha on-site, within other suitable locations.

The Department notes the original modification sought to amend the conditions of approval to be consistent with the EPBC Approval. This included increasing the amount of koala habitat to be removed from 7.49 ha to 14.92 ha (due to previous mapping errors) and reducing the required koala offsets, as outlined in **Table 8** below.

Table 8 – Compliance with Condition 45 (original proposal)

Offset Location	Required offset	Proposed offset	Complies
Offsite	27 ha	0 ha	No
East-west corridor	6 ha (approx.)	2 ha (approx.)	No
On-site	54.9 ha	54.71 ha	No
Total	87.9 ha	56.71	No

Public and agency submissions raised concern that the proposed offsets were inconsistent with the requirements of the Project Approval and reducing the required offsets would result in a poor outcome for koalas. Concerns were also raised about the east-west wildlife corridor only being partially provided and not complying with the requirements of the Concept and Project Approvals.

The independent ecologist shared these concerns and recommended that the KPOM be revised to comply with the offsets required by the Project Approval. The independent ecologist also noted that the quantum of offsets between the State and Commonwealth approvals do not need to align and the Commonwealth approval should not be used to justify the proposed reduction in offsets.

In response, the Proponent revised the scope of the modification by:

- reinstating the requirement to provide 27 ha of koala food tree planting in Cudgen Nature Reserve, or an alternate location, as approved by the Secretary
- delivering the full east-west wildlife corridor, providing 6.26 ha of on-site offsets
- increasing the on-site offsets in other locations from 54.71 ha to 62.51 ha

The Proponent also clarified that the final amount of koala habitat identified to be removed has reduced from 14.92 ha to 8 ha, resulting in the loss of 0.51 ha of additional koala habitat than currently permitted.

The final version of the KPOM was reviewed by the independent ecologist who confirmed the quantum of compensatory koala habitat is suitable and consistent with the offset framework established under the Project Approval. The independent ecologist also considered the planting of koala food trees within the full extent of the east-west wildlife corridor satisfied the requirements of Condition B4 of the Concept Approval. Council and OEHL also support the proposed quantum of offsets and the provision of the east-west wildlife corridor.

The Department has carefully assessed the revised KPOM and is satisfied it now provides an appropriate quantum of offsets, to compensate for the loss of koala habitat from the site. As demonstrated in **Table 9** below, the proposal now fully complies with the quantum of offsets required under Condition 45 of the Project Approval.

Table 9 – Compliance with Condition 45 (revised proposal)

Offset Location	Required Offset	Revised Offset	Complies
Off-site	27 ha	27 ha	Yes
East-west corridor	6 (approx.)	6.26 ha	Yes
On-site	54.9 ha	62.51 ha	Yes

The Department also notes the amount of additional koala habitat identified to be removed from the site has reduced from 14.92 ha to 8 ha (+0.51 ha). The Department considers the increase in on-site offsets from 54.9 ha to 62.51 ha would appropriately offset the loss of 0.51 ha of additional koala habitat from the site.

Accordingly, the Department’s assessment concludes the proposed quantum of offsets are consistent with the framework established under the Project Approval and are sufficient to compensate for the loss of koala habitat from the site.

Location of onsite offsets

The conditions of approval require the Proponent to amend the KPOM and related EMPs to:

- minimise the overlap in the offsets proposed for the koala, Wallum Sedge Frog and heathland vegetation (Conditions 40, 41, 43 and 45)
- ensure offset planting is located outside of natural regeneration areas to avoid unintended impacts on flora and fauna associated with vegetation rehabilitation works.

The Proponent submitted revised habitat and vegetation mapping to demonstrate the proposed koala offsets comply with the conditions of the Project Approval. However, Council, the OEH and the independent ecologist reviewed the proposed koala offset areas and raised concern that:

- the modification request does not clearly explain why the area of mapped koala habitat has changed
- the proposed offset areas contain vegetation which is required to be retained under the Project Approval
- the KPOM does not identify how the koala offset areas were selected
- several koala offset areas would be difficult to monitor due to their size, shape and location.

To resolve these issues, the independent ecologist recommended all koala offsets should be located on cleared lands outside heathland and Wallum Sedge Frog offset areas and have a minimum area of 1,000 m². In addition, the independent ecologist recommended that the final KPOM include GIS mapping to demonstrate the koala offset areas comply with the conditions of the Project Approval and do not conflict with the management outcomes for other retained or offset habitat.

In response, the Proponent revised the KPOM to:

- remove koala food tree planting in the Wallum Sedge Frog offset areas and in areas where koala food trees are naturally regenerating
- reduce the overlaps between the koala offset and heathland revegetation areas from 10.21 ha to 6.22 ha
- outline the method used to select the koala offset areas
- amend the size, shape and location of the koala offset areas to improve future monitoring and management outcomes.

In addition, the Proponent provided GIS mapping of all existing vegetation and retained and offset habitat on-site, as well as mapping of the post-development groundwater levels to demonstrate koala offsets will be provided in suitable locations.

The independent ecologist reviewed the final KPOM and concluded the proposed koala offset areas are located on cleared lands and have been sited to minimise habitat overlaps as per the conditions of the Project Approval. However, the independent ecologist noted that the changes to the area of existing koala habitat have not been fully explained and the boundaries of the retained and proposed koala offsets do not fully align with the revised vegetation map (see **Figure 9**). To resolve these issues, a condition was recommended requiring verification of final habitat boundaries by an ecologist with experience in GIS.

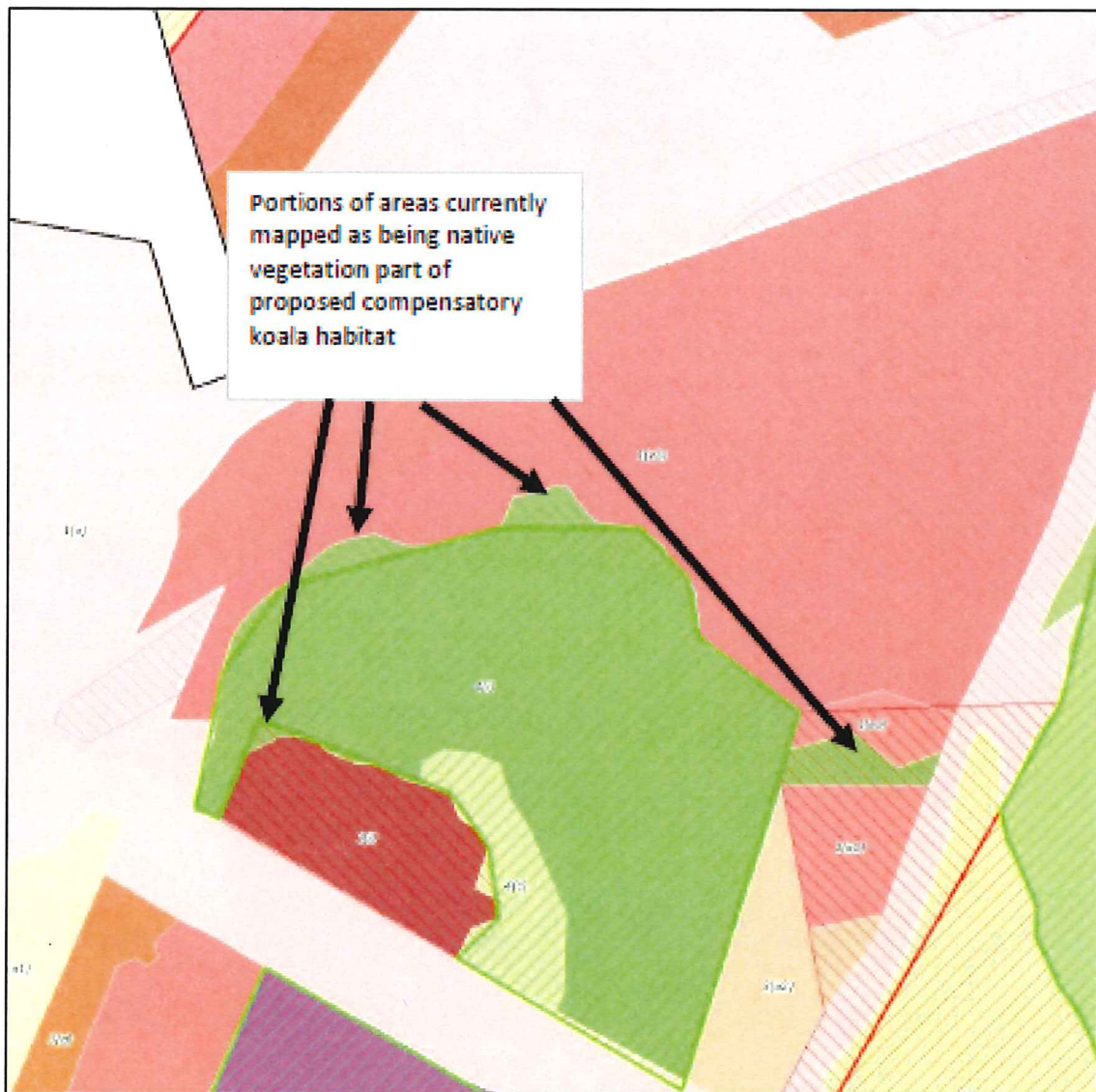


Figure 9 | Example of areas where vegetation and habitat mapping do not align

To verify the suitability of the proposed offset areas, the Department inspected the site with officers from Council and OEH. All parties generally agreed the proposed koala offset areas were highly disturbed and therefore are suitable locations for re-establishing koala habitat.

The Department is also satisfied that the Proponent has reduced the overlaps between the Koala offsets and heathland regeneration areas from 20 % (in the original Project Application) to 9 %, which is considered to be reasonable given the site constraints and distribution of vegetation.

Further, the Department is satisfied that the location and distribution of the proposed offsets would link isolated patches of vegetation within the site and improve connectivity between the Cudgen Creek, Cudgen Lake, Forest Hills and the Environ Road Koala corridors as per the intent of the Concept Plan and Project Approval.

However, as the proposed boundaries of the retained and offset koala habitat do not fully align with the revised vegetation mapping, the Department has recommended conditions of approval requiring the Proponent to:

- engage an independent ecologist with skills in GIS mapping to verify the boundaries of all retained and proposed offset habitats (Koala, Wallum Sedge Frog and heathland) within three months of the determination of MP 08_0194 MOD 4
- submit the final GIS shapefiles to the Department
- update the residual EMPs to reflect the boundaries of the retained and proposed koala offset habitat.

The Department notes that changes to the boundaries of the retained and proposed offset habitat may affect the quantum of koala offsets provided on-site. Accordingly, should there be any shortfall in the proposed offsets, other suitable locations (on cleared lands) will need to be identified to ensure the total quantum of on-site offsets are provided. The Department has recommended a new condition accordingly.

Overall, the Department's assessment concludes the proposed offset locations are suitable for re-establishing koala habitat and the overlaps with other native vegetation areas have been appropriately minimised. However, the Department considers further revisions to the mapping are required to verify the boundaries of all retained and proposed koala offset habitats.

Timing of on-site offsets

The KPOM proposes to stage the delivery of koala offsets across the site. However, concerns were raised about the Staging Plan delaying much of the koala offsets (40.44 ha) until the last two stages of the project.

The independent ecologist reviewed the final Staging Plan and concluded that it should be revised to deliver a higher percentage of koala offsets in the early stages of the project to ensure the offsets are delivered ahead of clearing. To achieve this outcome, the independent ecologist recommended the use of an offset ratio, based on the ratio of cleared habitat to on-site offset habitat, to ensure there is a net biodiversity gain before clearing occurs in each stage of the development (i.e. an offset ratio of 1:8.6).

The Department agrees that the koala offsets should be delivered ahead of clearing to manage the impacts of the project on koalas and their habitat. Accordingly, the Department supports the use of the offset ratio recommended by the independent ecologist and has recommended conditions of approval requiring the koala offsets, for each stage of the development, to be provided at a ratio of 1:8.6. This will ensure suitable offsets and habitat linkages are created and maintained during the construction phase of the project.

Concerns were also raised about the timing of the east-west wildlife corridor, as it is sought to be provided at Stage 6 of the development. Instead, Council and OEH suggested that the east-west wildlife corridor should be delivered earlier as a part of Stage 2.

The Department notes Condition C28 of the Concept Approval requires the Proponent to provide the east-west wildlife corridor as a part of Stage 2. The intent of the Condition C28 was to ensure the east-west corridor is established prior to development occurring in the western portion of the site, to provide connectivity for koalas and other wildlife across the site. The Department, therefore, considers the east-west wildlife corridor should be delivered as a part of Stage 2, consistent with the requirements of the Concept Approval.

Subject to the recommended conditions of approval, requiring the use of an offset ratio and the delivery of the east-west wildlife corridor in Stage 2, the Department is satisfied the proposed offsets would be provided within an appropriate timeframe, to compensate for the loss of koala habitat from the site.

Timing and delivery of off-site offsets

The request originally sought approval to delete the requirement to provide 27 ha of koala offsets within Cudgen Nature Reserve, as no offsite offsets were required under the EPBC Approval. However, as previously discussed, the Proponent's RTS now seeks to amend this condition to provide 27 ha of koala offsets within Cudgen Nature Reserve, or an alternate location approved by the Secretary.

While all stakeholders support reinstating the requirement to provide 27 ha of off-site offsets, concerns were raised regarding the lack of details about when and where the offsets were going to be provided. In addition, the independent ecologist suggested that should the 27 ha not be secured prior to the release of the first Construction Certificate, a monetary contribution should be provided to OEHL to the equivalent value.

The Proponent advised the land previously identified within Cudgen Nature Reserve has been planted out by others and it is unclear whether 27 ha of additional land is available within Cudgen Nature Reserve. As such, an alternative site may need to be found.

The Department notes the OEHL has advised additional lands are available within Cudgen Nature Reserve, however, the amount of land is yet to be determined.

All stakeholders recognise there may be a need to provide the koala offsets in an alternative location, as parts of the Cudgen Nature Reserve have already been revegetated. As such, it was recommended that the KPOM be amended to specify the timing of the offset and any alternate site being located within a Koala Activity Precinct or a Koala Activity Linkage in the Tweed LGA, within an appropriate timeframe.

The Department has considered the above comments and agrees the delivery of the off-site offset is a critical component of the koala offset package and should be delivered within an appropriate timeframe and location. As such, the Department has recommended a new condition requiring the Proponent to update the KPOM to specify:

- the timing for securing the off-site offset
- the timing for the commencement of planting within the off-site offset
- an appropriate location for the 27 ha off-site offset, should land not be available within the Cudgen Nature Reserve
- the standards for achievement and any on-going monitoring measures required within the off-site offset area.

The Department notes, the independent ecologist recommended that a monetary contribution be required should the off-site offset not be delivered within an appropriate timeframe. However, the Department considers that the Proponent should maintain the current obligation to physically plant out 27 ha of koala food trees off-site.

Subject to the recommended conditions of approval, the Department's assessment concludes off-site offset would be appropriately secured within an appropriate timeframe and location.

Conclusion

The Department is satisfied the revised KPOM would now provide appropriate offsets in accordance with the framework established under the Project Approval. However, further revisions of the KPOM are required to appropriately address the timing of the east-west wildlife corridor, the timing and location of the 27 ha of off-site offsets and verify the mapping. Subject to these revisions, the Department is satisfied the proposed offsets would appropriately compensate for the loss of koala habitat from the site.

6.2 Koala Fencing and Road Crossings

Condition 46 of the Project Approval sets out a number of requirements relating to the design and location of the koala underpasses and fencing to facilitate the safe movement of koalas across the site, prevent koalas entering the development zone and exclude dogs from the environmental areas.

The Proponent submitted updated plans to satisfy the requirements of the condition. However, concerns were raised about the proposed design and location of the proposed fencing and underpasses, the number of underpasses, the use of cattle grids and the need to provide traffic calming measures where fencing is not proposed on both sides of an access road.

In response to these issues, the Proponent amended the KPOM to:

- clarify the location and number of fauna underpasses
- revise the design of the fauna underpasses to facilitate the safe movement of koalas on-site
- provide fencing plans for the construction and operational phases of the project
- provide supplementary information to support the use of temporary and permanent "cattle grids" on-site.

The Department notes the Council and community submissions were generally supportive of the proposed modifications to the koala infrastructure. However, Council and Team Koala requested minor revisions to the design of culvert five to facilitate its use as a fauna underpass. In addition, Council and Team Koala requested modifications to the location of the fencing proposed in precincts 12 to 14 to ensure the golf course does not extend over the full width of the ecological buffer. However, the Department notes MOD 2 approved this expansion.

The independent ecologist reviewed the proposed changes to the koala infrastructure and concluded the revised fencing and underpass designs have been substantially improved and would facilitate the protection and safe movement of koalas across the site. However, there are several locations where fencing would result in the clearing of additional vegetation and/or isolate retained or offset habitat. As such, conditions are recommended to require the Proponent to ensure the installation of fencing will not result in additional clearing, or fragment or isolate retained or offset areas from the conservation lands.

The Department has reviewed the proposed changes and agrees the design of the koala corridors, fencing and crossings have been substantially improved and would minimise the potential for koalas to enter the development zone and prevent dogs from entering the environmental areas. Importantly, the changes would also facilitate the safe movement of koalas across the site.

Notwithstanding these improvements, minor modifications are recommended to ensure the fencing avoids additional vegetation clearing and habitat fragmentation. The Department notes this would also partly address Council's concerns as it would help prevent the fragmentation of habitat around the golf course. The Department has also included a condition requiring the design of culvert five to be amended to facilitate its use as an underpass. Subject to these changes, the Department is satisfied the proposed koala crossings and fencing are acceptable.

The Department also notes the proposal seeks to change the timing of the koala infrastructure by bringing forward the requirement to provide fencing and delaying the requirement to provide underpasses. The Department has considered the proposed changes and is satisfied the proposed timing is acceptable as:

- the proposed changes to the timing for the installation of fencing would provide a positive outcome as it would ensure temporary and/or permanent fencing is in place to protect koalas and other wildlife prior to the commencement of works

- the proposed changes to the timing for the construction of the underpasses is necessary given the underpasses form part of the road construction works and cannot be undertaken prior to bulk earthworks commencing (i.e. bulk earthworks are required to facilitate the construction of the roads and associated infrastructure).

Overall, the Department supports the proposed koala infrastructure, subject to the Proponent revising the fencing plans to ensure it does not result in additional vegetation clearing, or fragment retained or offset habitat and amending the design of culvert five to facilitate its use as an underpass.

6.3 Contingency Measures

The KPOM identifies an overarching framework for the development of a Contingency Strategy if there is a statistically significant decline in the number of koalas on the site and koala habitat does not establish in accordance with the KPOM.

The Department notes the independent ecologist raised concerns about the proposed contingency strategy and recommended the KPOM be revised to require the retirement of Tweed Endangered Population Koala credits, or a monetary contribution into the NSW Biodiversity Conservation Trust Fund, equivalent to the value of the credits, if there is a significant decline in koala numbers on-site.

In response, the Proponent revised the proposed contingency strategy to include a requirement to undertake an independent review of key threatening processes if there is a significant decline in koala number on-site. The review would be undertaken jointly with the Commonwealth Department of Environment, OEH and the Department, and will be used to identify potential corrective actions to improve the use of koala habitat on-site. However, the final KPOM does not require the retirement of Tweed Endangered Population Koala credits, or a monetary contribution, if there is a significant reduction in koala numbers on-site.

The independent ecologist reviewed the amended Contingency Strategy and reiterated his previous concerns about the need to provide suitable measures should the koala population unexpectedly decline. In addition, the independent ecologist advised the implementation of further studies is not a suitable contingency measure and recommended the Department consider the use of a bond equivalent to the cost of the proposed revegetation works to secure koala credits, or other koala protection works if there is a significant decline in koala numbers on-site.

The Department has reviewed the final KPOM and agrees that the Contingency Strategy requires additional work to define the triggers for implementation and require suitable measures to be provided if there is a significant reduction in koalas on-site. To address this issue, the Department has recommended a condition of approval requiring the Proponent to provide a bond or bank guarantee, to the satisfaction of the Secretary, which would be used for conservation works to benefit the Tweed Coast Endangered Koala Population, if there is a significant reduction in koalas on-site.

The Department also notes Council raised concern about the Contingency Strategy not providing sufficient details of the measures that would be implemented if the koala offsets do not establish in accordance with the KPOM. The Department agrees that the Contingency Strategy should be amended to identify the additional offsets that will be provided if the koala offsets do not fully establish in accordance with the targets identified in the KPOM. To address this issue, the Department has recommended conditions requiring the Proponent to specify the timing and quantum of additional offsets that would be provided if the proposed revegetation works are unsuccessful.

Subject to the recommended conditions of approval, the Department is satisfied suitable contingency measures would be provided if there is a significant reduction in koala numbers on the site, or koala habitat does not successfully establish.

6.4 Other Issues

The Department's assessment of other issues raised by the independent ecologist and in the agency and public submissions is provided in **Table 10** below.

Table 10 | Assessment of other issues

Issue	Department's Consideration	Recommendation
Tree selection	<ul style="list-style-type: none"> • The modification request originally sought approval to provide a total of 22,184 trees on the site, comprising a mix of primary and secondary koala food trees. • Council and the community did not support the creation of secondary koala habitat as it would not provide sufficient koala food trees to improve the koala carrying capacity of the site. • In addition, Council and community raised concern that the tree selection and composition was inconsistent with the requirements of the NSW Koala Recovery Plan and should be revised to comprise a minimum of 50% <i>Eucalyptus robusta</i> and <i>Eucalyptus tereticornis</i> (combined) trees in the wet areas of the site, and a minimum of 50% <i>Eucalyptus tereticornis</i> in the drier areas of the site. • The independent ecologist reviewed the koala habitat and tree species selection and advised the KPOM should be revised to: <ul style="list-style-type: none"> ▪ provide for the planting of a 10,294 <i>Eucalyptus robusta</i> or <i>Eucalyptus tereticornis</i> koala food trees ▪ specify the area and number of food trees proposed in each habitat 'type'. • The Proponent revised the KPOM to respond to the recommendations of the ecological review, and the issues raised in the agency and public submissions. In summary, the final KPOM seeks to provide: <ul style="list-style-type: none"> ▪ 65.44 ha of primary and 3.33 ha of secondary koala habitat on-site ▪ the planting of 76,411 food trees comprising 43,554 ha of primary koala food trees (including <i>Eucalyptus robusta</i> and <i>Eucalyptus tereticornis</i> trees) and 32,857 secondary koala food trees ▪ identify the area and number of food trees in each habitat 'type'. • The independent ecologist, Council and the OEH support the revised balance of primary and secondary habitat proposed on-site, and the type and density of koala food tree plantings. • The Department has reviewed the balance of primary and secondary koala habitat proposed on-site and the revised tree planting schedule and agrees the revised KPOM will ensure 95% of the proposed offset areas comprise primary habitat capable of increasing the koala carrying capacity of the site. • Accordingly, the Department supports the proposed mix of koala food trees and the revised tree planting schedule. 	<p>The Department has recommended modifications to the conditions of approval to ensure koala food tree planting is delivered in accordance with the requirements of the final KPOM.</p>
Management of existing koala habitat	<ul style="list-style-type: none"> • The KPOM seeks approval to stage the management of existing koala habitat on-site. • The Council, OEH and public submissions raised concern the proposed staging arrangements would delay the management of 75% of the retained koala habitat to the final stage of the development. Both agencies advised these lands contain large areas of koala habitat and the cumulative impacts of construction works 	<p>The Department has recommended a condition requiring the KPOM to be updated to ensure all retained koala habitat is managed in accordance with</p>

	<p>may reduce the ecological value of these lands and their effectiveness as koala habitat.</p> <ul style="list-style-type: none"> • In addition, concern was raised about delaying the management of these lands as it would be inconsistent with the requirements of Condition A13 of the Project Approval, which requires all land proposed for dedication to Council and the OEH to be managed from the commencement of the project. • The Department has reviewed the agency and public submissions and agrees that delaying the management of the majority of the retained koala habitat would result in poor ecological outcomes and may affect the viability of the koala population during construction works. As such, the Department has recommended a condition requiring the Proponent to update the KPOM to ensure retained koala habitat is managed in accordance with the requirements of Condition A13 of the Project Approval. 	<p>Condition A13 of the Project Approval.</p>
<p>Consistency with the conditions of approval and EMPs</p>	<ul style="list-style-type: none"> • Agency and public submissions raised concern that the KPOM does not specify the koala management measures that should be included in the other EMPs for the project. • The Department has reviewed the agency and public submissions and agrees the KPOM should be updated to identify the koala management measures for inclusion in the residual EMPs. The Department has recommended conditions of approval to ensure the KPOM is updated to include this information, and the relevant EMPs are updated prior to the issue of any Construction Certificate. • Council's submission also raised concern that the KPOM may permit the Proponent to forfeit the environmental bond required under Condition 50 of the Project Approval, rather than continuing to meet the establishment and maintenance period requirements so it can commence clearing in subsequent stages of the development. • The Department has reviewed the KPOM and agrees it may permit the Proponent to forfeit its environmental bond and commence clearing works in the subsequent stages of the project. Whilst the Department does not consider this was the intent of the KPOM, it has included a condition requiring the Proponent to delete these statements in the final KPOM. 	<p>The Department has recommended conditions of approval requiring the Proponent to update the KPOM to:</p> <ul style="list-style-type: none"> • identify the koala management measures that must be incorporated into the residual EMPs • update the relevant EMPs to incorporate koala management measures. • Remove references to forfeiting the bond.
<p>Commencement of Works</p>	<ul style="list-style-type: none"> • The Proponent is seeking to amend the commencement of works definition in conditions A13 and 3 to provide consistency with the requirements of the Commonwealth approval and permit preliminary works such as habitat creation, monitoring and survey work to be undertaken without triggering the obligation to commence the management of all potential Council and future OEH lands. • The Department notes the agency and public submissions raised concern that the proposed changes to the commencement of works definition would permit clearing prior to the approval of the EMPs. The Department has reviewed these submissions and agrees the proposed changes could permit vegetation clearing prior to the approval of the EMPs. 	<p>No additional conditions or amendments necessary.</p>

- Further, the Department notes the proposed modification is inconsistent with the requirements of Term B7 of the Concept Plan, which requires the Proponent to manage the Potential Council and Future OEH lands from the commencement of any preparatory works, including vegetation clearing, or the use of heavy-duty equipment used to break ground for bulk earthworks. The modification would also be inconsistent with Condition A18 of the Project Approval which requires the KPOM and all EMPs to be submitted to and approved prior to a Construction Certificate being issued for any clearing of vegetation.
 - The Department also considers the proposed changes to the commencement of works definition would be inconsistent with current practice in NSW, where it is accepted that certain survey works, geotechnical investigations etc. constitute 'works' for the purpose of activating a development consent or approval.
 - Given the above, the proposed modifications to the commencement of works definition are not supported.
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7. Evaluation

The Department has assessed the modification request and supporting information in accordance with the relevant requirements of the EP&A Act. The Department has also carefully considered the advice from the independent ecologist as well as issues raised in the public and agency submissions.

The Department's assessment concludes that the proposal is acceptable as:

- it fully complies with the quantum of offsets required under the Project Approval
- the full east-west wildlife corridor has been provided, in accordance with Concept and Project Approvals
- the proposed offset areas are suitable for establishing koala habitat
- the number of koala food trees to be planted on the site has increased from 20,578 to 76,411
- a greater mix of primary koala food trees would be provided
- the koala fencing and crossings have been amended, allowing koalas to move through the site and preventing koalas from entering the development zone and dogs entering environmental areas.

The Department is satisfied the revised KPOM would now provide appropriate offsets and ongoing management measures for the long-term protection of koalas, consistent with the Project and Concept Approvals and the objectives of the North Coast Regional Strategy and the NSW Koala Recovery Plan.

While the key issues associated with the proposal have been appropriately addressed, further revisions to the KPOM are required to address the recommendations contained in this report. This includes securing the delivery and timing of the offsets, verifying mapping, ensuring koala fencing is appropriately located and updating the Contingency Strategy.

The Department's assessment, therefore, concludes the modification request is approvable, subject to conditions (outlined in **Appendix D**). This assessment report is hereby presented to the Commission for determination.

Recommended by:

Anthony Witherdin
Director
Regional Assessments

Recommended by:

Anthea Sargeant
Executive Director
Key Sites and Industry Assessments



Appendices

Appendix A – Relevant Supporting Information

Appendix B – Consolidated Consent (MP 06_0318)

Appendix C – Consolidated Consent (MP 08_0194)

Appendix D – Notice of Modification

Appendix E – KPOM Peer Reviews

Appendix F – EPBC Act Approval

Appendix A – Relevant Supporting Information

The following supporting documents and supporting information to this assessment report can be found on the Department's website at:

1. Modification request

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8650

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8650

3. Response to Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8650

4. Response to Submissions Addendum

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8650

Appendix B – Consolidated Consent (MP 06_0318)

A consolidated consent for can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8650

Appendix C – Consolidated Consent (MP 08_0194)

A consolidated consent for can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8650

Appendix D – Notice of Modification

A copy of the notice of modification can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8650

Appendix E – Independent Ecologist’s Reviews

A copy of Dr Ward’s reviews can be found on the Department’s website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8650

Appendix F – EPBC Act Approval

A copy of EPBC Approval 2012/6328 can be found on the Department of Environment's website at:

<http://epbcnotices.environment.gov.au/referralslist/>