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TRANSCRIPT OF PROCEEDINGS

TRANSCRIPT IN CONFIDENCE

O/N H-1003397

INDEPENDENT PLANNING COMMISSION

MEETING WITH TWEED SHIRE COUNCIL

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

PANEL: **ROSS CARTER
PROF RICHARD MACKAY
CATHERINE HIRD**

ASSISTING PANEL: **BRAD JAMES
DAVID KOPPERS**

COUNCIL: **DENISE GALLE
DR MARK KINGSTON
TRACEY STINSON**

LOCATION: **MANTRA ON SALT BEACH, THE PAVILLION
ROOM GUNNAMATTA AVENUE KINGSCLIFF,
NEW SOUTH WALES**

DATE: **1.58 PM, TUESDAY, 12 MARCH 2019**

MR R. CARTER: All right. I need to kick off a little opening statement, so I will just do that. So good morning and – good afternoon and welcome. Before we begin, I would like to acknowledge the traditional owners of the land on which we meet. I would also like to pay my respects to their elders past and present and to the elders
5 from other communities who may be here today. I think it's the Bundjalung community, isn't it?

MS: It is.

10 MR CARTER: Yes. Welcome to the meeting today, Project 28 Proprietary Limited, the proponent, who is seeking approval to implement a revised Koala Plan of Management and amend the conditions of approval for the Kings Forest residential subdivision. My name is Ross Carter. I'm the chair of this Independent
15 Planning Commission New South Wales Panel which has been appointed to help determine this proposal. Joining me are my fellow Commissioners Professor Richard Mackay and Catherine Hird and David Koppers and Brad James from the Commission's Secretariat. In the interests of openness and transparency, today's meeting is being recorded and a full transcript will be produced and made available
20 on the Commission's website.

This meeting is one part of the Commission's decision-making process. It is taking place at the preliminary stage of this process and it will form one of several sources of information upon which the Commission will base its decision. It is important for the Commissioners to ask questions of attendees and to clarify issues whenever they
25 consider it appropriate. If you're asked a question and are not in a position to answer, please feel free to take the question on notice and provide any additional information in writing which we will then put up on our website. I request that all members here today introduce themselves before speaking for first time and for all members to ensure they do not speak over the top of each other to ensure accuracy of
30 the transcript. So we will now begin.

MS T. STINSON: Tracey Stinson, Director of Community and Natural Resources with Tweed Shire Council. Thank you.

35 MR CARTER: Tracey.

DR M. KINGSTON: Mark Kingston, Biodiversity Policy officer, Tweed Shire Council.

40 MS D. GALLE: Denise Galle, team leader, Development Assessment Tweed Shire Council.

MR CARTER: Right. Well, we've got, I guess, just a bit of an agenda and really quite a basic one. We've done the opening statement. You've provided us with
45 quite detailed submissions so if you – just over to you really to go through that and we will ask any sort of questions as we go. Okay. Yes.

DR KINGSTON: I'm not quite sure how much you've studied the – our submission yet and whether you would prefer us to just go through some of the basic issues that we've identified first and then perhaps, you know any questions that, you know, might have come to your minds in – after hearing what happened today and your
5 other submissions and so on. So if that's okay, I might just, sort of, go through the basic points and feel free to interrupt me if you've got any questions. So, as you would have heard today, there's a fair bit of interest from the community, particularly around koalas but the development is quite a bit bigger than that and there's lots of technical issues to do with planning and other species and so on. But
10 in terms of this MOD 4, it was first brought in in 2017 in August and there was lots of submissions from the public and council had some major concerns with it. And the Department at that time, I think, realised that there were some fairly major issues and they sought to – rather than just try and determine it, then they sought to – you know, engage with the proponent and with us to try and get something that was a bit
15 closer to what they were looking for and what we were looking for.

So there were a couple of versions of the koala plan that went through that process, I think one in May 2018 and another one in October and essentially we're commenting now on the October version. We've come a long way since the initial MOD 4. So
20 from our point of view, it's probably 95 per cent there but there are a couple of issues, some of which you heard today, that we feel still need addressing. Some of those issues interesting are not – do not appear to have come directly from the proposal of the proponent. They seem to have arisen out of the consideration of the Department, whether intentionally or not. So I will come to the individual issues.

25 So I guess the first one was around that 27 hectares offsetting. So as you would be aware, there has been a longstanding condition of approval which seeks to provide the 27 hectare offset site so the Kings Forest site is here, down in Cudgen Nature Reserve. Now, this was back in 2013 I think that was identified. In the subsequent
30 time, the proponent had not really taken the opportunity that we know of to secure that site that was offered up by OEH and, you know, set that site aside to do that offsetting. In the meantime, OEH has allowed others, including council, to do projects on that site including restoration of koala habitat. So we had a \$2 million koala grant from the Federal Government and we spent quite a bit of money
35 ourselves on Cudgen Nature Reserve, restoring some of that area and it's going fantastically well - - -

MR CARTER: Actually, could we just – on that, if you've got some information on that program and the - - -
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DR KINGSTON: Yes.

MR CARTER: - - - sort of planting and the success of it, that would be really useful to - - -
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DR KINGSTON: Yes. Okay. So that project is called Koala Connections but I can send in – I can send you through some summary information of that - - -

MS: Take note of that.

DR KINGSTON: Yes. You take note of that?

5 MS: Yes.

DR KINGSTON: Okay. So since then, as you heard, there is probably estimated roughly maybe eight hectares left although at least one of the projects I know was planted quite sparsely so there might be – and it hasn't done so well – not our project
10 but one done by Southern Cross Uni. So it's possible there could be some more. But we haven't had any clear estimate of how much is available. So let's just say, you know, it is eight hectares is available. I think what the Department have realised this and then have tried to condition – well, how do we deal with the remainder, you know, whether it be 19 hectares or whatever. So what they've done there is to say
15 that if there's to be some other land identified, that needs to occur within six months of a Construction Certificate for bulk earthworks which is – I think it's condition 45A(2), I think - - -

MS: Yes, it is.
20

DR KINGSTON: Is it? Yes. And our view is that we think that should be sorted out at least to securing a site or sites prior to that because, you know, in all honesty, the proponent has had this condition for more than five years and hasn't progressed with it. Our view is that it should be – the security of that site – it should be sorted
25 out before we start work.

MS GALLE: And it should be noted that a Construction Certificate for the preparatory investigation works was issued in the last couple of days by private certifier Michael Shaw, so that's in accordance with condition A18 which allowed
30 preparatory and investigation works to be done prior to meeting any other PCC conditions that require all the environmental management plans to be sorted.

PROF R. MACKAY: Okay. So, Mark, just to be very clear about that, council's position is that that land should be identified - - -
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DR KINGSTON: Yes.

PROF MACKAY: - - - as opposed to locked in or works done or whatever - - -

40 DR KINGSTON: Well, no - - -

PROF MACKAY: - - - just identify the land?

DR KINGSTON: Identify and secure it, so that - - -
45

PROF MACKAY: Identified and secured?

DR KINGSTON: Yes. A legally binding security - - -

PROF MACKAY: All right. Thank you.

5 DR KINGSTON: - - - whether that's a purchase of land or it's a contract with a landholder - - -

PROF MACKAY: Yes. Okay. And, again, if I could just tie you down – or on behalf of council - - -

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DR KINGSTON: Yes. Sure.

PROF MACKAY: - - - on the timing – or the sequence. That is before construction works commence – is that what you said before?

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DR KINGSTON: Yes, that's right.

PROF MACKAY: Okay. Thank you. So that's clear.

20 DR KINGSTON: Yes. Now, there was a couple of – on sub-condition (c) and (d) of 45A(2).

PROF MACKAY: Yes.

25 DR KINGSTON: We've got that the koala tree planting must commence within 24 months of them identifying the land, right, and that they essentially – and – or, if it was an alternate site, 24 months of, you know, the secretary approving the alternative sites. We feel that that should be 12 months. There doesn't seem to be any real reason why 24 months is needed after you've already determined what land is going
30 to be used for that purpose. And that the koala, you know, food tree planting – this is sub-part (d) – should be finalised within two years rather than three years, and there's always – you know, if, for instance, there's adverse weather conditions or something, and I think there's other provisions that would allow the secretary to vary that.

35 PROF MACKAY: Okay. So, again, if I could tell you the council's position is slightly different from the position that was expressed in the public meeting earlier today where a number of - - -

DR KINGSTON: I don't - - -

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PROF MACKAY: - - - representatives were saying that the planting of the 27 hectares should actually come ahead of construction works.

DR KINGSTON: Yes. They - - -

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PROF MACKAY: Council is saying, "Look - - - ."

DR KINGSTON: Yes.

PROF MACKAY: “- - - two years plus one year for the planting.”

5 DR KINGSTON: All we’re asking for is the land to be secured so everyone knows there’s no problem with that. Because we have had problems in the past, or difficulties, in our, say, Koala Connections project, in getting landholder commitments, and, you know, like I said, we planted 70,000 trees or something.

10 PROF MACKAY: And while I’m interrupting, and to ask the same question that was asked in the public meeting, if all or part of that 27 hectares were actually on the subject development site would that be appropriate - - -

DR KINGSTON: Yes. Absolutely.

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PROF MACKAY: - - - in council’s view?

DR KINGSTON: Absolutely.

20 PROF MACKAY: Okay.

DR KINGSTON: And I note that the proponent, in their submission to the IPC, actually put – suggested a condition along those lines, and I think we’ve reflected that in our proposed conditions.

25

PROF MACKAY: Yes.

DR KINGSTON: Where they do that it probably doesn’t matter to us so much, but I would have thought the better place to do it would be in and around the golf course area.

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MS C. HIRD: So much a better place.

DR KINGSTON: Yes. But we’d be open to it occurring anywhere onsite.

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MR CARTER: Would that be provided there was connectivity?

DR KINGSTON: There’s a reasonable amount of connectivity provided onsite already.

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MR CARTER: Yes. Right.

DR KINGSTON: And, of course, well, you know, there’s been a lot of focus today on the 27 hectares, but they’re also planting 50-odd hectares - - -

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PROF MACKAY: Yes.

MS HIRD: Yes. Yes.

MR CARTER: Yes.

5 DR KINGSTON: - - - of offsetting onsite anyway.

PROF MACKAY: It wasn't mentioned once.

10 DR KINGSTON: No. Well, I think – yes, I mean, the community are obviously looking at – you know, they're issues of their concern, not the issues that they're happy with.

15 MS GALLE: I think, as well, those other 50-odd hectares is a lot of slivers of land in the, what you call, buffer areas. So you've got a 50-metre wide buffer that's split, where some can be used for drainage reserves and some can be used for planting. So it's not as easy for people to understand where that 50 hectares arrives when you've got such a large site and it's really along the fringes or the perimeters.

20 PROF MACKAY: Yes.

DR KINGSTON: Yes.

PROF MACKAY: Fair enough.

25 DR KINGSTON: So one thing I have noticed that, when we were looking at the proponent's submission, they had a fallback position of paying out this offset cost through the Biodiversity Conservation Trust. We've got some concerns about that. One in relation to the fact that the cost, as they were saying as to how to calculate it, by getting two quotes, and da, da, da, and averaging them, is not the way the
30 Biodiversity Conservation Trust would calculate an offset requirement, for a start, because they would use the biodiversity assessment method to do that. And, secondly, that the approval was not under their jurisdiction as well, the way that offset has come about.

35 And, thirdly, I don't think they would have any legislative obligation to ensure that that offset was delivered locally in relation to, you know, the Koala Activity Precincts that were specified by the department. So we would be quite concerned if it were to go that way, because as far as the Biodiversity Act is concerned, the Tweed Coast koala population is effectively treated as a separate species.

40 Because it has been identified as an endangered population it has exactly the same status as a different species. So it can't be thought of as koalas in Lismore. And so we – I mean, we were the – council actually put up the nomination to the Scientific Committee to get that nominated on the basis of studies that we had done in the
45 2010s, and that was successful with the Scientific Committee.

MR CARTER: I think you also mention that you would see that, even if that mechanism was pursued, the trust would have some difficulty securing land, given council's experience with landholders.

5 DR KINGSTON: That's right. I mean, you'd be better off, you know – I don't know. See, OEH doesn't have much other land in this part of the world that could be planted up for koala purposes. There are other sites that I can think of, but whether they can convince the landholders is another matter.

10 MS GALLE: So when Tweed Shire Council does its own roadworks we struggle in this area to find our own offsets for our own roadworks. So if this applicant were to require them in the Tweed but not on their site, there's just a very limited supply of them.

15 DR KINGSTON: Yes. So I think when we – in our proposed revised condition we more or less left it the same as the department but added in the possibility of doing it onsite. So that's that issue. Any particular other questions on the 27 hectares? Okay. The fencing around the golf course, there was probably a little bit of misinformation around that today. So I've got a few figures just for you to look at.

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MR CARTER: If you've got anything that we don't have it would be good to get them electronically after the meeting.

DR KINGSTON: Sure. Okay. Well, I can - - -

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MR CARTER: We can then put them up with the transcript. So - - -

MS GALLE: I've got notes on anything that you request, so we'll send that through. So we'll take – so, so far I've got that we'll – Tweed Shire Council is going to give you details on the Koala Connection program to the IPC and, second, we'll give you some indicative fencing parameters around the golf course.

30

MR CARTER: Okay.

35 DR KINGSTON: Okay. So this – on this figure 28, which was out of the October 2018 Koala Plan, they've got the fencing along the golf course in-between the environmental protection zone and the golf course itself. Now, the second figure essentially shows it, on the boundary between the environmental zone and the golf course. The golf course is Precinct 14 in that map. And, again, it's shown here on the concept plan, and you can see that white line, which represents the 50-metre ecological buffer.

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Now, whilst it says it's encompassing the ecological buffers where indicated, the golf course, that information was presented on the basis of the Koala Plan of Management at that time, which says that:

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Fencing to exclude koalas from residential areas are Precincts 12 and 13 –

so that's these –

containing the golf course area –

5 being Precinct 14; right –

and additional required underpasses or grids shall be the subject of future DA.

10 So they were thinking, at that time, they were going to have to deal with fencing, somehow, around the golf course. And you'll see from this diagram, again from the – I can give you one of these – two each – that at that time they were proposing planting koala food trees in what is the golf course area.

15 PROF MACKAY: Is that the seven-point-something hectares that was mentioned to us today?

DR KINGSTON: I think so.

20 PROF MACKAY: So that is proposed - - -

DR KINGSTON: At that time, replanting - - -

PROF MACKAY: - - - koala food planting within the golf course.

25 DR KINGSTON: Yes.

PROF MACKAY: It was sort of mentioned as proposed and mentioned as being in place, but it's proposed.

30 DR KINGSTON: That's right, I'm pretty sure it's proposed.

PROF MACKAY: Thank you.

35 DR KINGSTON: So essentially, that land is fairly well cleared at the moment, and they were going to plant out these areas, you know, in amongst the fairway so that koalas could use the golf course, and that's how they were going to deal with the SEPP – the major project SEPP about Kings Forest site. When – when I've looked up MOD 2, which – the department said in their Director-General's report recently that they believed that the fencing along that line had been authorised under MOD 2.

40 But I've gone through everything I can find, and I can't find any evidence that the SEPP was addressed which would have needed to have been addressed to address that particular issue. So as far as I can see, there's still a requirement for – either you put the fencing on the outside of – to separate out the – from the urban area to the
45 golf course, or you possibly do it back on the 30 metre line, as we've had elsewhere. But then you haven't got a golf course, because you've got a fence running in the middle of it.

MS GALLE: We put that concern to the Department of Planning that we thought that they might have made an error in writing the current report, and we gave them our evidence for that basis. We haven't had a response back for them or asking for clarification yet, but we thought that they might have addressed how they came to their interpretation to you as a panel.

PROF MACKAY: So it's – and just from the point of view of an optimal solution for koala habitat, where on this plan – this is the precinct 12 to 14 - - -

10 DR KINGSTON: Yes.

PROF MACKAY: - - - koala habitat and koala offset plan. Where would the fencing go?

15 DR KINGSTON: It should go – if they're going to use the golf course as part of the ecological buffer, it needs to go on the boundary between - - -

MR CARTER: P12.

20 MS STINSON: P12, yes, and 14.

DR KINGSTON: The development footprint. It needs to go between the development footprint and the golf course, which is the line between precinct 13 and 12 versus 14, which is the golf course.

25 PROF MACKAY: Okay. So that would be, as I understand this map, down the western side of precinct 13 and down the eastern side of precinct 12.

30 DR KINGSTON: Yes, and possibly round the middle, too, through the middle here. So basically following that black line around, somewhere like that.

MS HIRD: So does - - -

35 DR KINGSTON: And obviously have gates and grids, and so on, so people can enter the golf course, and so on.

MS HIRD: Yes. So could they put more than 7.86 hectares of trees without upsetting the golf course?

40 DR KINGSTON: Well, I think so, but as it happens now, there's no requirement for them to include those trees because they've restructured where they're going to do their offsets elsewhere on the site. But that still doesn't address the requirement of the set in relation to it functioning as an ecological buffer. It seems to me pretty difficult to claim that a golf course is an ecological buffer when, you know, the
45 terrestrial part of the ecology can't actually use the golf course.

MS HIRD: But they haven't said where they're going – if they're going to put 19 hectares of offset on their own property. They haven't said that yet.

DR KINGSTON: No.

5

MS HIRD: Located.

DR KINGSTON: But they may choose – let's say they chose to find 19 hectares
- - -

10

MS HIRD: So that's where - - -

DR KINGSTON: - - - and possibly put it on the golf course.

15 MS HIRD: Yes, yes. That's where I was coming from, yes.

DR KINGSTON: Yes, that's right.

MR CARTER: So the intent of people speaking today was that, in effect, koalas
20 could move through this sort of southern area through P14 into that - - -

DR KINGSTON: Yes, that's right.

MR CARTER: - - - and those P12 and P13 would be sort of - - -
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DR KINGSTON: Would be enclaved.

MR CARTER: Would be enclaved with fencing - - -

30 DR KINGSTON: That's right, yes.

MR CARTER: - - - rather than that whole area excluded by fencing.

DR KINGSTON: That's right, yes. So originally, the – there was a – the first koala
35 plan that came out had no fencing and it had koalas moving through the landscape
and, you know, potentially in people's yards, and so on. And we said, "Look, that
might work at Koala Beach, and you heard a bit about Koala Beach, because it's
large lots. But this style of development is much more contemporary. It would be
much smaller lots and much higher densities. You know, cars moving around a lot.
40 You've got 10,000 people versus a couple of hundred." So we managed to get the
proponent to restructure the whole koala plan to have this enclave, in effect.

MR CARTER: And it would seem to be contradictory to this koala food planting
45 areas, you know, without considering whether they want to use that for the 19
hectares, because koalas wouldn't be able to access it.

DR KINGSTON: Yes, and I guess from a planning point of view, they would need to convince decision-makers such as yourselves that they can meet the objectives of the ecological buffer requirements in the Kings Forest major project SEPP, and that hasn't been addressed, as far as I'm concerned.

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MS GALLE: Clause 7 of that SEPP.

DR KINGSTON: Yes. So it says:

10 *Development on land within an ecological buffer is to incorporate effective measures to manage wetlands, areas of particular habitat of significance, be designed and sited to maintain connectivity vegetation, minimise vegetation clearing –*

15 blah, blah, blah:

...retain/manage all existing native vegetation, incorporate measures to regenerate native vegetation for disturbed areas, incorporate appropriate stormwater erosion controls –

20

etcetera, etcetera. So it's actually quite a strict requirement for that ecological buffer. All right. Did you want a copy of that? We've got one copy of – a couple of copies of the SEPP here.

25 MS STINSON: And we will send you all this out

DR KINGSTON: Issue number 3. The off-leash dog areas. I think this was an oversight by the department, but the concept approval condition C2(3)(f). and C2 talks about management plans and specifically the koala plan, and under the koala plan it says that it needs – the koala plan needs to be updated and take account of various things. And update must improve stage-specific detail on the following. So into stage 1, and (f) is specifications for any off-leash dog exercise area to ensure appropriate separation from koala habitat.

35 Now, we've raised this in our submissions and it seems it didn't get incorporated into the MOD, and we've said that as a development of that size, we will – and we have a policy to support this – that we would require off-leash dog areas to be provided within the development on the lake well away from koala habitat. So not right up against the buffer, for instance. And as an aside to that, we are also having fairly major issues with managing, you know, domestic dogs elsewhere on on beaches, and so on. So we're looking at, you know, as well, having to restrict dogs on some areas of beaches, and so on, because there's - - -

MS STINSON: A lot of conflicts, yes.

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DR KINGSTON: A lot of conflicts, yes.

MS HIRD: What do you mean by “well away”? It’s a buffer zone, so

DR KINGSTON: Well, not right – not directly - - -

5 MS STINSON: Not butting up against it.

DR KINGSTON: Not directly adjacent, but somewhere around the inside of the development envelope.

10 MS HIRD: So you could condition some kind of buffer zone now, where possible?

DR KINGSTON: Yes, well, they – they - - -

MS STINSON: Would be a fenced off-leash area.

15

DR KINGSTON: We would have expected that they would address that in updating the koala plan to show where that was going to be, and as a result of – I mean, the koala plan is still not going to need to be approved by the secretary, and so we would look at that and say, yes, that appears to be satisfactory. It’s not right against core habitat or – and it’s not right against the buffer where you’re planting up koala food trees, for instance.

20

MS GALLE: The only part of the estate that we’ve seen a plan in terms of what it’s going to look like is precinct 5. Precinct 5 has small lots, you know, down to 200-odd square metres, so there are generous parks in that area because that’s what the whole ethos of the estate is about, is more intense development but greater parks and edge effects. So there is a large park shown there, and it might just be as simple as nominating part of that park – not all of it – as an off-leash dog area. So it could be quite simple.

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MS HIRD: So enclosed by urban areas.

MS STINSON: Yes, you can fence - - -

35 MS GALLE: Enclosed by the urban areas, just not hard up against that ecological buffer area.

DR KINGSTON: Okay. So the other major issue – and it’s one that wasn’t raised today – relates to the performance criteria for plantings. Now, there seems to be a little bit of confusion in the consent about this, and it relates – so it relates to clause 45A(4)(ii), I think.

40

PROF MACKAY: Sorry, Mark. Do you mean in the consent or do you mean the draft conditions of consent?

45

DR KINGSTON: The draft – sorry; the draft MOD.

PROF MACKAY: Thank you.

MS HIRD: 45A(4)?

5 PROF MACKAY: Yes.

DR KINGSTON: 45A(4), yes. Yes. So in particular, (a)(ii)

PROF MACKAY: Yes.

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DR KINGSTON: 45 four – yes – so, in particular, A(2) which says:

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...the following Biodiversity Assessment Method ... vegetation integrity scores for each vegetation sown must be achieved for the relevant plant community types – composition 100, structure 50, function 25 –

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so under the Biodiversity Assessment Method, if you have a particular plant community type, you can calculate these figures. Right. The problem is that OEH have currently got a project on the far north coast trying to determine what the plant community types are. So we don't actually have a list at the moment. And some of the ones that have been quoted by the proponent previously have actually been plant community types south of Coffs Harbour, for instance. So it's not – we haven't got any equivalence that we can base it on. So what we're suggesting – and the other more fundamental thing is that most of this – we're not trying to necessarily fully

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recreate a pristine plant community type. We're trying to offset the koalas. Koalas use a particular suite of species and so we've focused the offset planting to maximise the benefit for koalas. And most of it's in ecological buffers and all of that, so we recognise that there's going to be effects and all sorts of other things. So we're not saying you need to try and replicate a particular plant community type. The other issue is that these – how we measure the success of the plantings needs to be – under the consent needs to be framed in terms of what we call the establishment period and the maintenance period. And they're very deliberately put in the consent, in the definitions, and the establishment period is essentially the work you have to

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get up till – you know, there's not – you get all the plants grown, they're more or less self-sustaining. And after that point, you just monitor them and make adjustments as necessary. So the way this is framed is it's not framed in terms of those two periods. And those two periods are really important because they go to – I think it's condition – it might be 49 and 50 or 39 and 50, which look at the environmental monitoring and audit reports and the bond. So there's a bond payable and the koala plan needs to be structured in terms of those periods, so that we can tick off when they've reached – successfully reached those periods and monitored and it's not framed in that way - - -

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PROF MACKAY: Well, just coming back on that if I may, Mark. There's – are you suggesting then that we should not use that numeric vegetation integrity score?

DR KINGSTON: That's right.

PROF MACKAY: And - - -

5 DR KINGSTON: Yes. So my solution is four – well, actually, five very simple
measures. Seedling survival. So seedling survival is – you know, we need 95 per
cent of the seedlings to be surviving. So you plant, you know, 100 per cent. If
you've got 95 per cent by the time you get your establishment period done, we're
10 okay with that. Okay. Native canopy cover. So then that – you would look at the
canopy cover. Now, most forest communities have a – and that's what we're trying
to create – a forest community, not an open woodland, not a woodland. They range
from 50 to 80 per cent - - -

MS: Yes.

15 DR KINGSTON: - - - you know, they're well recognised measures. Weed
presence. Obviously, we don't want very many weeds at any point in time. Ground
cover recruitment. And that would be how well is the ground cover recruiting and if
it's not recruiting well, there may be some need for supplementary planting because
20 we've said to them – in this part of the world – and you – when you go out there
today, you will see the problem is not going to be getting plants going. It will be
stopping the – all the regrowth coming up and smothering the trees in the early
stages.

25 PROF MACKAY: Yes.

DR KINGSTON: That will be the problem.

30 MS HIRD: So hence the dense planting regime?

DR KINGSTON: Dense planting - - -

MS HIRD: Is it nine square metres or - - -

35 DR KINGSTON: Yes. Nine square metres, so that's every three metres – and we
know that – well, their – they have had a consultant look at forest red gum which – I
don't know whether you've got to that issue yet, but - - -

40 PROF MACKAY: Yes, we have - - -

MS HIRD: Yes – yes, we

DR KINGSTON: Okay.

45 PROF MACKAY: Yes.

DR KINGSTON: And they said that nine square metres is appropriate, one every nine square metres, in their report, in their conclusions and they've also said that forest red gum is entirely appropriate for that site, as we had suggested early on because they were wanting to use a species called scribbly gum, which is not a
5 preferred koala food tree, so – you know, you might as well go and plant pine trees. And it had not been – there was another planting for Cobaki – an offset for Cobaki down there that they had had to do and it's not performing particularly well with scribbly gum. The scribbly gum – if you look around – it turns up in very odd places and it's hard to know what the exact environmental tolerances are, whereas forest red
10 gum is a much more widespread tree, you know, in coastal communities and it's a preferred koala food tree. So that's – that was the basis for that.

PROF MACKAY: What's the fifth measure?

15 DR KINGSTON: The fifth measure is infrastructure. So that's fencing, you know, the condition of the fencing, signage – all those sorts of things.

PROF MACKAY: And just in relation to the ground cover recruitment, council is seeking a significantly denser tree planting regime than was - - -
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DR KINGSTON: That's right.

PROF MACKAY: - - - proposed by the proponent or the Department. With a greater tree cover, what about the nexus between that and the ground cover
25 recruitment? I mean, is the ground cover recruitment affected – prejudiced by the fact that, you know, after a time, there's in fact more trees, less opportunity for ground cover recruitment?

DR KINGSTON: Well, we think we won't have too much trouble with the ground
30 cover recruiting on its own. They were initially planning on planting ground covers out. And we said, "Look, we don't think it's necessary to go to that effort, planting. We would rather you focus on the actual koala food trees because that's fundamentally what we're here to do". And so what we're suggesting is that if it doesn't – I think in 45A(4)(a) - - -

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DR KINGSTON: Yes.

DR KINGSTON: - - - (3) we're suggesting that where natural regeneration of native scrub and ground cover has not occurred within the first – and they had seven years,
40 and we're suggesting three years of management, planting of suitable native should be – would be undertaken to achieve compliance and we probably should get rid of the veg integrity scores there - - -

PROF MACKAY: Yes. I mean, I - - -
45

DR KINGSTON: - - - if you know what I mean?

PROF MACKAY: It's not for us to put - - -

DR KINGSTON: No.

5 PROF MACKAY: - - - the words in the proponent's mouth, but I think, as I understand their position on this point, it is, "Well, look, we put forward a revegetation regime - - -

DR KINGSTON: Yes.

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PROF MACKAY: - - - it included a more natural kind of density profile, leaving aside the species selection between scribbly gum - - -

DR KINGSTON: Yes.

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PROF MACKAY: - - - or swamp mahogany or red gum - - -

DR KINGSTON: Yes.

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PROF MACKAY: - - - and we were going to plant under storey and herbs and therefore that's okay to assess our performance including the ground cover coverage because we're planting them but if we're not planting them because we're doing more trees, why is that one of the - why are ground covers one of the measures rather than trees because what you're actually wanting to do is establish effectively a

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koala food plantation - - -

DR KINGSTON: Yes.

MS: Yes.

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PROF MACKAY: - - - so why don't we just measure that?"

DR KINGSTON: Well - - -

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PROF MACKAY: And I'm not sure I'm representing that correctly but - - -

DR KINGSTON: No, no, I think you are - - -

PROF MACKAY: - - - I'm just putting that to you to respond to - - -

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MS: Yes.

DR KINGSTON: Yes. And that's - - -

45

PROF MACKAY: - - - to help us understand.

DR KINGSTON: That's a reasonable position except ultimately we want something to, you know, reasonably mimic the – you know, a natural environment. That – so that would include normally ground covers. And so what we're saying is that, "Don't plant them initially but see how they go and then if after three years of trying, you can't get anything to happen, well, then replant – then plant some".

MS HIRD: Don't – when you say, "Don't plant anything - - -

DR KINGSTON: Don't plant any ground covers - - -

MS:

MS HIRD: Any ground covers? Okay.

PROF MACKAY: Just - - -

MS GALLE: Just focus on the koala food trees.

DR KINGSTON: Yes.

PROF MACKAY: Right.

MS GALLE: Because that's the principal objective.

MS STINSON: And natural regeneration

DR KINGSTON: Yes.

PROF MACKAY: And it's your understanding that red gum is common ground now?

DR KINGSTON: Well, according to their - - -

MS: Consultants.

DR KINGSTON: - - - their own consultants' report, which was – just hang on a sec. There's their conclusions there, so I will just read that out - - -

MS GALLE: Just read it from – it's coming from page - - -

DR KINGSTON: Page 8, the Terrestria Consultants report, that:

Eucalyptus tereticornis is relatively fast-growing and, once established, should take about 15 years to reach its mature height. Although it was not present on the site pre-clearing, there is no reason why planting this species on the site will not be successful. The better drained soils are more likely to be successful for the establishment of this species than the poorly drained soils.

And then the recommended planting rate of one per nine square metres reflects a density of a natural plant community, which is what we've been advising them for some time on the basis of our experience elsewhere.

5 MR CARTER: So there would be a bit of a tension between weed control and groundcover establishment, so they might choose to control weeds through some groundcover planting, so - - -

10 DR KINGSTON: Yes, well, we would imagine that they would have a professional bush regenerator, and there's a number of them around that council uses. They're all very good. They will only, you know, control the weeds, as necessary. They won't control the groundcovers unless they need controlling, for instance, if the groundcovers were taking over – you know, smothering the planted trees so they would keep the planted trees a bit clear.

15 And I think that would be more of the issue that you will encounter, although there's some parts of the site that it might just be a bit difficult, but we just – we need to take an adaptive management approach, and that's what we've always said to them. We need to set up the objectives in the management plan as to what we really want to
20 achieve and then have an adaptive management approach to deal with this.

I don't – personally, I don't think that you can codify in terms of consent adaptive management, other than saying it needs to be in the koala plan, because, you know, you just don't know what's going to happen. For instance, out here, it's salt. When
25 this development was first built, there was quite a lot of, you know, native coastal wattle. It just took over the whole place. And we had bush regenerators go in and clear bits of it and let other stuff just naturally come through, and you go through there now; it's beautiful. So I think you will have probably much the same sort of issues out there.

30 PROF MACKAY: Okay. But if I – again, if I can reflect what I'm understanding back at you, the primary focus is on establishment of a koala food resource rather than integrity of some putative vegetation community that's now gone.

35 DR KINGSTON: That's right.

PROF MACKAY: Yes, okay. That's very clear. Thank you.

40 DR KINGSTON: Yes. Okay. So let me – rehab.

MS GALLE: So up to fencing and underpasses through environmental areas.

DR KINGSTON: Okay. Yes. So this one was raised a bit this morning.

45 MS GALLE: Misguided, perhaps, but - - -

DR KINGSTON: Now, on reading the department's report, they say that it's going to be difficult to – for various engineering reasons to get the underpasses in at the same – until they've got levels and all of that, before they start moving, you know, dirt around from one part of the site to another. We accept that that may be the case.

5 What the department have got in the MOD – proposed MOD 46 is that prior to the commencement of construction works in each precinct, the proponent must install the fencing. And then the underpasses don't come until the roadwork is approved for the construction certificates. So what that means is that once they get their final roads done, then they put the underpasses in. Now, if they do their temporary

10 fencing, as they proposed in the koala plan, without the underpasses, it will be as people are saying. It will - - -

MS STINSON: It will just isolate them.

15 DR KINGSTON: - - - cut off those environmental areas, and it was very clear in the original conditions that they needed to maintain connectivity at all times. So our suggestion is to put in a subclause that says – a subclause that says fauna – yes, put in a subclause that says, “Any other temporary measures to maintain habitat connectivity and minimise the risk to wildlife including koalas during construction”,

20 as a sort of an open approach to say, well, look, maybe there's another solution here.

Perhaps we cannot put the temporary fences in at all and just put gates at either end that are closed off at night when they're not working there, or when they're not working, and they have a construction management plan that controls – you know,

25 they've got an environmental person onsite. The construction management plans should control the speeds of the trucks and all of that, and it's unlikely that – koalas don't generally move in the day. They generally move, you know, at dusk or at night. So that may be a solution to that problem, if it is a problem.

30 PROF MACKAY: Do you – do you actually link the fences and underpasses? In other words, say, you've got to sort it out in terms of your traffic management, but you can't be putting up fences till you have your underpasses, and you can decide.

DR KINGSTON: Exactly, yes, and so that's essentially what our amendment to that

35 clause would allow.

MS GALLE: I think the reason they haven't done that is that the underpasses are so substantial in size and distance that they – you really can't sort of build those without the road being built. So what we're just sort of saying is try and take a proactive

40 approach to that, and precinct 14 is unlikely to be touched for quite a while, or do it in a temporary manner, as Mark is suggesting, with gates.

PROF MACKAY: And, like, I think we appreciate that especially where there are landfall changes, the levels might not work. It's not helpful to have underpasses that

45 are either in the air or underground.

MS GALLE: That's right.

DR KINGSTON: Yes, yes. But, you know, we – you know, until someone had brought that to our attention, it's not something that enters our minds, because we're not necessarily considering all the fine details of their engineering.

5 MS GALLE: I think we also have to remember this is a 30 year project, and precinct 14, whilst it's the last precinct, the project application that has been approved approves bulk earthworks across the entire site. Now, there is a limit as to how much that site can be open at any one time from a dust management point of view, but theoretically, you're going to have a large part of this site being worked
10 simultaneously just to get the bulk earthworks done.

Then you might have a stay where, for 20 years, nothing happens in precinct 14 because it's the last precinct of the development. So I think the approach that council has always tried to take with this is that all the management plans need to be
15 adaptive so that as you get your head more into each stage in the relevant time period – it could be 15 years from now – you've got an adaptive management plan that can be adapted to whatever's being done on the ground at the time.

MR CARTER: So the point that you originally made was, you know, an objective
20 of maintaining connectivity at all times.

DR KINGSTON: That's right.

MS GALLE: Yes.
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MR CARTER: And then would there – you know, have you turned your mind at all to saying, well, there would be some criteria underneath that, so if you're in an adaptive management mode, you would say, "Well, how is that being given effect to on a site that might be changing status quite regularly?"
30

MS GALLE: I think very basically. I don't think we've thought about it in a complex manner. The idea is to let koalas get from A to B via C, D and E. You know, like, we literally just want the koalas to be able to traverse this landscape.

35 PROF MACKAY: Without having to climb fences or cross roads.

MS GALLE: Exactly, and get to the vegetation. And ideally, as well, the vegetation, in terms of planting, would be done sooner rather than later because of the long establishment periods. But these are the things that we've been arguing
40 about for - - -

MS STINSON: Yes.

MS GALLE: - - - the best part of 10 years. And we just want to make sure – like,
45 the consent is so complicated. We're just – like, unfortunately, changing just one condition with whatever you do might not be enough. You have to sort of critically analyse the entire consent to make sure it's representative all the way through.

MR CARTER: Yes. Thank you.

MS GALLE: So we're – you've done the fencing and underpasses through the environmental areas.

5

DR KINGSTON: Yes, so I think the only other one is a bunch of minor corrections. Now, the – we went through the koala plan, you know, pretty thoroughly and made a number of suggestions, you know, rearrange a sentence, fix this, da-da-da. The purpose of that was to bring it down into a document that serves the consent, all right. Now, some of the things they – there's one issue particularly in relation – was it in relation to the bond. They were – they had claimed – they had put a particular interpretation in the koala plan that they didn't need to pay the bond. They only needed to pay the bond if – if they hadn't done the works whereas they needed to pay the bond upfront.

15

MS GALLE: Regardless.

DR KINGSTON: And they get the bond back, you know, when the works have been approved. Now, that interpretation of the bond I am not sure – I'm not entirely sure of, but what I am sure of is you can't have a management plan that's in conflict with the conditions of consent. So I've suggested some of those things that they remove them from the koala plan because we don't want a situation down the track where they're saying, "Oh yes, but that koala plan says this is how we interpret it," and so on, so I've gone through the plan trying to sort those things out. And there's a bunch of other issues like they talk about road, you know, road mortality for koalas. And they go on Clothiers Creek Road.

Well, we know that Clothiers Creek Road is a problem, and we address it – we've got a broad comprehension of koala plan management for the Tweed Coast, and we're addressing that as best we can. But they don't – they neglect to talk about potential road mortality within their own estate. Obviously, if it's about Kings Forest Estate it should address that issue. So there's some things where we've said, look, you know, you need to put a few sentences in here because for anyone reading it they need to understand what the potential impacts are even if they've completely addressed them. And we believe that once a consent is in place they will have completely addressed those issues.

So it's really about just tidying it up and taking – there's a bit of – a bit of long history because they've – it's cobbled – the koala plan has been cobbled together over a very long period of time. It doesn't always flow nicely and, so, our suggestion is rather than take their proposed condition as, yes, we accept this change, we don't accept that change, da-da-da, we say that it – that those issues need to be sorted out in consultation with council and approved by the secretary.

So we can talk those issues through. And, quite frankly, this whole thing we would have rather the department had just gone the little bit extra, a bit more consultation. We were so close with almost all of these issues, and you will probably from your

understanding there might even be some stuff that we're saying is an issue that Leda are saying it's no longer in issue because we were going to do that anyway.

MS HIRD: Yes.

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DR KINGSTON: So we would have rather gone that little bit extra and – and taken it to the step where we were – we were happy with it and, you know – and then we wouldn't be having to bother the community too much more about it and so on. So – so we probably prefer if we could handle that in that way rather than trying to use a – conditions of consent to remove particular paragraphs from the management plan. It just seems ridiculous.

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MR CARTER: As I understand it, the department's assessment report simply refers to that council submission and says please address the relevant bits.

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DR KINGSTON: That's right. Yes.

MR CARTER: The proponents come back with quite a detailed – there's 62 dot points, and it has come back with a comment on each of those 62 dot points. I think it would be very helpful for the panel if council considered the proponent's response and maybe came back with the matters where there's a disagreement that council really wants to press. In other words, this – some of them I think go to tidying up interpretation.

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DR KINGSTON: Yes. Yes. Yes.

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MR CARTER: And we understand that. But where council says, "Look, this is actually - - -"

MS HIRD: Here's the priority.

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MR CARTER: This is impactful, it is important for this reason, it would be really helpful to hear again from council - - -

MS GALLE: We did - - -

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MR CARTER: - - - a kind of response to the response.

MS GALLE: Well, we did try to do that. We had a – the written letter that you had just a few days ago was drafted before we saw Leda's response.

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MR CARTER: Yes.

MS GALLE: And then we reworked that after we saw their response. And there wasn't a lot that needed changing, but it was just tweaking of the conditions. So we have tried to do that but, perhaps, it hasn't been made as clear as it could be, like, in the same format that the proponent has.

45

DR KINGSTON: Yes.

MR CARTER: I think if council were prepared to number - - -

5 DR KINGSTON: Yes.

MR CARTER: - - - DP 1 to 62 can say, look - - -

10 DR KINGSTON: We can certainly do that.

MR CARTER: - - - insofar as the proponent has made a response these are the ones where we fundamentally disagree and why, that just helps us focus in on those things that matter.

15 DR KINGSTON: Yes. Thank you. So I think that's sort of – the nub of it for the council. As I said, you know, we worked pretty cooperatively with the developer and we – you know commend them for doing – for doing that. And certainly, the relationship is a lot better than it had been in the past. And I think we're, you know, very close to getting something that the community would be happy with and, you
20 know, us as council representing the community meet the technical requirements and so on that, you know, we believe need to occur on that site to get a good outcome for the koalas and the future residents of the area.

25 MS GALLE: Yes. I just reiterate that from Mark's point of view that, you know, this modification's had a long life. When it first came in we actually, sort of, had to draw in OEH, we had to draw in the department, and we had to draw in the Feds and have some joint meetings to sort of pull it back onto course, and it's come a long way. And I think we almost could have got it across the line if we just had have had one more meeting, but the department seemed adamant to, sort of, put it to you guys
30 instead of having that one last meeting that could have finished it off.

PROF MACKAY: Lucky us.

35 MS GALLE: Yes. It was disappointing.

DR KINGSTON: And also, you know, I must say that the department have been very good to work with on this too. So despite, you know, these few issues that are outstanding, you know, I think we've come a long way from where it was when they first put in that MOD. Yes.

40 MR CARTER: All right.

MS HIRD: I think we're good.

45 MR CARTER: Well, look, thank you very much. I'll close the meeting in a moment, but it would be good to, if you could, provide us with a little bit more against the dot points from the proponent, and I think in this instance it's probably

likely that we will seek some more clarification from you on some issues as we work further through it.

MS GALLE: Sure.

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DR KINGSTON: Yes.

MR CARTER: And I just want to alert you to when we're likely to do that. But, anyway, on that note, thanks very much, and - - -

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DR KINGSTON: Yes. And we would certainly, you know, welcome that, because it's always good to have, you know, another set of eyes with a different perspective looking at some of these conditions, because they can be quite complicated and - - -

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MS GALLE: Have a long history.

DR KINGSTON: - - - you know, our main issue is to – because we will probably end up with a compliance issue, and the monitoring and so on, but we wanted to be as straightforward as possible into the future, and we want to be able to get over this, sort of, process of getting approval through so that, you know, we can all move forward with it and take the community with us.

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MS HIRD: I've just got one last question I just thought of. When we questioned the proponent I asked him what was the single biggest problem with maintaining koalas, and he came back with fire, which I think we all know. And I did hear this morning that the original fire management plan was changed so it was less focused on human asset protection and more on the wildlife. So what were the particular components of that that protected fire?

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DR KINGSTON: Well – yes. So the original – one of the problems with his consent, in our view, is that in 2013 it was probably rushed through a bit and too much focus on environmental management plans that needed to be updated. So you'll notice in the consent, this management plan needs – all the management plans need to be updated, and so on.

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35

MS HIRD: Yes. Yes.

DR KINGSTON: One of the issues is, bushfire is probably the biggest issue for koalas on the Tweed Coast, at least historically, and we're still seeing legacy effects from bushfires in 2009 in terms of their breeding and so on. This is a complex site with lots of bushland areas, and so on, and it has a bushfire management plan. But the Bushfire Management Plan referred to the Koala Plan and the Koala Plan referred to the Bushfire Management Plan, but they did nothing. So one of our big issues early on was saying, "You need to have these – you need – if you're going to use the Bushfire Management Plan to talk about koalas you need to say, in the Koala Plan, exactly what you're trying to achieve and how that's likely to be done." In other words, giving terms of reference to whoever does the bushfire plan.

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And similarly for all the other management plans, because they all need to talk to one another. And we haven't seen the new Bushfire Management Plan, but we have made – council have prepared some guidelines for bushfire management for koalas on the Tweed Coast that we use ourselves, and we've referred – we've said, "Look, we've done all this work. Here it is. Just refer it to that and, you know, construct your Bushfire Management Plan appropriately." But it'll be interesting to see what happens when we do see a Bushfire Management Plan because it will need to have, you know, where all the asset protection zones are; where the tracks are; how they're going to manage, you know, a potential wildfire in that area. Remember you've got fences, and all sorts of things.

MS HIRD: Yes.

DR KINGSTON: So it is a potentially big issue, and that's one of the reasons we also were quite concerned about them at one time putting – they wanted to plant koala food trees in the middle of dry heath. Now, dry heath goes up very, very hot and fast, whereas forest communities don't tend to burn as quickly because you don't have as many fine fuels. And so we said, "Look, you know, it's not appropriate in this circumstance, because, you know, we need to be very, very careful about fire, and you've got, you know, possibly 10,000 residents very close to very flammable areas as well." So it is a very key issue, and we're looking forward to seeing the Bushfire Management Plan to see how that's all going to pan out.

MS HIRD: Okay. Good. Thanks.

MR CARTER: All right. Well, thank you very much, it's been really helpful, and I'll call the meeting to a close.

MS GALLE: Thanks for the opportunity.

DR KINGSTON: Thank you. Cheers.

MS HIRD: Thank you.

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[2.59 pm]