



**AUSCRIPT AUSTRALASIA PTY LIMITED**

ACN 110 028 825

**T:** 1800 AUSCRIPT (1800 287 274)

**E:** [clientservices@auscript.com.au](mailto:clientservices@auscript.com.au)

**W:** [www.auscript.com.au](http://www.auscript.com.au)

**TRANSCRIPT OF PROCEEDINGS**

---

O/N H-994228

**INDEPENDENT PLANNING COMMISSION**

**MEETING WITH DEPARTMENT OF PLANNING AND ENVIRONMENT**

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

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

**ASSISTING PANEL:** **DAVID KOPPERS  
BRAD JAMES**

**DEPARTMENT OF  
PLANNING AND  
ENVIRONMENT:** **ANTHONY WITHERDIN  
KATE McDONALD**

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

**DATE:** **1.27 PM, MONDAY, 18 FEBRUARY 2019**

MR R. CARTER: All right. We might start. So good morning and welcome. Before we begin, I would like to acknowledge the traditional owners of the land on which we meet, the Gadigal People, and pay my respects to their elders past and present. Welcome to this meeting on development application MP090194,  
5 application 4, in relation to the Kings Forest subdivision request to modify its Koala Plan of Management under section 75W of the EP&A Act. Detailed description is available in the department's assessment report of the modification. The department's assessment report can be found on the Commission's website. I'm  
10 Ross Carter and the chair of this IPC panel.

Joining on my are my fellow Commissioners, Catherine Hird and Professor Richard Mackay. The other attendees of the meeting are Bradley James and David Koppers. In the interest of openness and transparency and to ensure the full capture of information, today's meeting is being recorded and a full transcript will be produced  
15 and made available 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 will form one of several sources of information upon which the Commission will base its decision. It's important for the Commissioners to ask questions of attendees and to clarify issues whenever they consider it appropriate. If  
20 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 ..... So yes, just start with, I guess, an overview.

PROF R. MACKAY: Okay. Who you are - - -  
25

MR CARTER: Yes. Sorry. Yes. If you can just say who you are as you commence speaking, that would be great.

MR A. WITHERDIN: Sure. So my name is Anthony Witherdin. I'm the director  
30 of regional assessments in the Department of Planning.

MS K. McDONALD: I'm Kate McDonald. I'm assisting the department with the assessment of the application and I'm from KM Urban Planning.

MR WITHERDIN: So to begin, I will start with a bit of a background on the Kings  
35 Forest redevelopment and the approvals that have been issued today and then I will move on to the departments assessment of the KPoM modification and its findings. So the Kings Forest site is located 15 kilometres south of Tweed Heads and it sits directly west of the township of Casuarina. As you can see, the department's  
40 assessment report, figure 2, the site is – has an area of 880 hectares so it's a large site, and to the north, west and south-west, it's jointed by predominantly agricultural land uses. Directly to the east and to the south-east lies the Cudgen Nature Reserve and Cudgen Lake.

45 Now, importantly to note, the site contains koala habitat and it supports part of the Tweed and Brunswick Rivers endangered koala population. Now, in August 2010

the then Minister approved a concept plan which permits 4500 dwellings across the site, a new town centre, employment, community and educational uses, and a golf course in the southern precinct. It also requires the transfer of conservation lands so that is the land to the south near Cudgen Lake and some land adjoining the Cudgen Nature Reserve too and that land will be transferred to OEH. It also required the preparation of a Koala Plan of Management and updates to that Koala Plan of Management as the development progresses. And the other important thing to note was it also required an east-west wildlife corridor to provide additional connectivity for wildlife throughout the site.

10

MR CARTER: And that's in addition to – that's not just koala.

MR WITHERDIN: It's a broad range of wildlife.

15 MR CARTER: Broad range of wildlife.

MR WITHERDIN: Yes. That concept plan has been modified six times. Following the concept approval, in August 2013 the then Planning Assessment Commission approved a project application and it permitted development across 10 precincts, bulk earthworks across the site, and 375 lot subdivision in stage 5. It also approved supporting infrastructure for the residential development. In terms of koalas and the requirements for protecting and offsetting and managing koalas on the site, condition 45 of the project application is a critical condition and it, essentially, establishes a framework to offset the loss of koala habitat from the site.

25

And it basically requires offsets within 27 hectares with the Cudgen Nature Reserve, koala food trees within the east-west corridor of approximately six hectares, and then 54.9 hectares of koala offsets in other appropriate locations within the site. There was a condition also which required those offsets to be outside areas that are naturally regenerating and to minimise overlaps with other offset areas. I know the heath regeneration areas - - -

30

MS McDONALD: And the Wallum sedge frog.

MR WITHERDIN: - - - and the Wallum sedge frog. And then finally, following that approval, because the proposal involved the clearing of koala habitat, the proponent had to get approval from the Commonwealth, under the Environmental Protection and Biodiversity Conservation Act. Now, that approval from the Commonwealth permitted more clearing than what the project application permitted and that approval required fewer offsets than the offsets established under the project approval. So following that approval, the proponent then sought to modify the project application to align both approvals. So that's sort of the approval history in the site and the background. So I will move on to the modification itself. So - - -

40

45 MS C. HIRD: Can I just ask one question?

MR WITHERDIN: Yes.

MR CARTER: You said the approval of 10 precincts so the 11, 12, 13 and 14 precincts, where do they come in?

MR WITHERDIN: Look - - -

5

MS McDONALD: Can I just clarify?

MR WITHERDIN: Yeah, yeah. Sure.

10 MS McDONALD: It was actually – I think it's 24 precincts initially.

MS HIRD: Yes.

15 MS McDONALD: So if you have a look at the approval background in the report - - -

MS HIRD: Yes.

20 MS McDONALD: And I think it's modification 2 changed the staging arrangement and that decreased that down to 14 precincts.

MS HIRD: 14, yes.

25 MS McDONALD: Yeah.

MS HIRD: Okay. Right.

30 MR WITHERDIN: I think that number that I mentioned might have been Superlux, was it?

MS McDONALD: Yes, it is. That was the first line item.

35 MR WITHERDIN: Yep. Superlux. So the modification sought to increase the clearing of koala habitat from 7.49 hectares up to 14.92 hectares, so to delete the requirement to plant koala food trees within the 27 hectares off site within the Cudgen Nature Reserve. And it sought to provide a total onsite offset of 56.71 hectares and that comprises, like, 54 hectares – approximately 54 hectares across the entire site and then two hectares within the required east-west corridor. It also sought to revise the timing and the location of the fencing and the koala crossings  
40 and remove the requirement to provide koala crossings - - -

MS McDONALD: The traffic calming devices.

45 MR WITHERDIN: The calming devices.

MS McDONALD: Yes.

MR WITHERDIN: Yes.

MS McDONALD: And the commencement of works definition change as well.

5 MR WITHERDIN: Yes. The department exhibited that proposal and it attracted a  
lot of public interest. We received 1650 submissions, most of which objected to the  
proposal. Council also objected to the proposal and OEH raised concerns about a  
number of aspects. Because the proposal is quite complex application, the  
10 department engaged an independent expert to assist it with its assessment. And the  
key issues, in summary, basically were the loss of the additional koala habitat from  
the site, the reduction in the total offsets, the suitability of the selected offset areas  
and the suitability of the koala corridors, fencing and road crossings.

15 They were the real key issues associated with the proposal. Then, in response, the  
proponent submitted a response to submissions which amended the proposal.  
Essentially, reduce clearing from 14.92 hectares to eight hectares, so that's about half  
a hectare of additional koala habitat - - -

20 MS McDONALD: In total - - -

MR WITHERDIN: - - - clearing from the original.

MS McDONALD: From original.

25 MR WITHERDIN: It reinstated the planning of offsite offsets within the Cudgen  
Nature Reserve or within an alternative location agreed by the secretary. And then,  
increased onsite offsets from 54.7 hectares to 62.5 hectares.

30 MS McDONALD: Five, yes.

MR WITHERDIN: - - - and it then amended the design of the fencing and the  
crossings and things like that. So in terms of our findings, the key issue that we  
really focused on was the offsets. And there was a few aspects of – to that issue and  
that involved the total quantum of offsets, making sure that was sufficient, the  
35 location of those offsets. And so I will just run through those quickly. If you refer to  
figure 9 of the Department's assessment report – table 9, sorry, of the Department's  
assessment report on page 23, it provides an easy summary of what's currently  
proposed and how that complies with the offset framework established under the  
project application.

40 The original application sought to provide less offsets, but the proposal was then  
amended and it now provides sufficient offsets which full complies with the  
framework established under the project application. So you can see the 27 hectares  
of off-site offsets was reinstated, the east-west corridor is now provided in full – the  
45 proponent originally sought to provide part of the east-west corridor and now  
provides full, so that comprises about 6.26 hectares of offsets. And then 62.51  
hectares of offsets across the rest of the site. So the Department is comfortable with

the provision of offsets. And in terms of the additional offsets provided for the 0.51 hectares of additional koala habitat clearing, we felt that that was an appropriate amount.

5 The next key issue was the location of the offsets. So as I mentioned previously, the condition requires the offsets to be located outside areas that are naturally regenerating with koala food trees and it also required the proponent to minimise the offsets – the overlap of offsets with Wallum sedge frog and - - -

10 MS McDONALD: And heathland, yes.

MR WITHERDIN: - - - regeneration areas. Council, OEH and our independent expert were all not satisfied with the location of those offsets as they were originally presented and that was basically because the areas that were selected – it was unclear as to why those areas were selected. Some of those areas contained existing  
15 vegetation and some of the areas that were selected to be offset – the polygons were of a weird - - -

MS McDONALD: An unusable shape, yes.  
20

MR WITHERDIN: - - - irregular shape. So some of them were small and some of them have very sharp slivers and things. In response the proponent minimised the overlap of koala food trees from the natural regenerating areas and the Wallum sedge frog areas and that reduced from about 20 per cent to about nine per cent - - -

25 MS McDONALD: I think it might be six but I will double-check. It has gone from 10.21 hectares for overlap with heathland revegetation to 6.22 hectares of overlap. Yes, it is – sorry. It's nine per cent.

30 MR WITHERDIN: Yes. So it went from 20 to nine per cent.

MS McDONALD: Yes. Yes.

MR WITHERDIN: They established a methodology for selecting the offset areas  
35 and they amended the size and the shape of the offset areas, as well. To verify whether all those offset areas were acceptable or not, OEH, the council and the Department representative went on-site and – to inspect those offset areas and they were generally comfortable with most of those locations.

40 MS HIRD: So these slivers – is it just a mapping thing or they were just isolated slivers in the middle of nowhere and that was the reason they were abandoned?

MS McDONALD: It's a mapping exercise. So it's looking at the shape of - - -

45 MS HIRD: Yes.

MS McDONALD: - - - each different habitat category and because some of them were awkwardly shaped, it means that when they go into the field to try and map where they are, it can be difficult to identify where those boundaries are and then from an ongoing management perspective, it can be difficult to monitor just because  
5 of the small size and the irregular shape.

MS HIRD: Okay.

MR WITHERDIN: And, so, generally, we were satisfied that the selected areas  
10 were okay. They've appropriately minimised the overlaps. A lot of the offset areas appropriately link up and provide some connectivity across the site. But there were a few remaining issues. And if you turn to figure 9 on page 25 of the Department's assessment report, it provides an image where we had some concerns, where some of the retained and offset koala habitat do not fully align. You can see where the  
15 boundaries overlap each other. So we've recommended a condition requiring that the proponent verify those boundaries by an ecologies with some GIS expertise.

MS McDONALD: Expertise, yes.

MR WITHERDIN: And if there's any shortfall in the required offset amounts, well,  
20 the condition will require the proponent to locate those elsewhere on the site in a suitable location. Another important issue with the offsets was the timing for the provision of those offsets. The proponent originally sought to provide the offsets in a sequenced fashion but a lot of those offsets would be delayed to later stages of the  
25 development. So we were concerned with that. And to ensure the offsets were provided ahead of clearing, we took advice from our independent ecologist and he recommended that we use an offset ratio. And essentially that offset ratio requires for every hectare of koala habitat cleared, the proponent would have to provide a .6  
30 hectares of offsets.

Also the other issue with timing was the provision of the east-west corridor. It was sought to be provided at a later stage of the development but because it provides a critical, sort of, link between the east and the west – the western parts of the site, we sought that that be delivered as a part of stage 2, which was consistent with the  
35 original approvals.

MS HIRD: So when does stage 2 occur?

MS McDONALD: Precinct 6 is the first, so - - -  
40

MS HIRD: Yes.

MS McDONALD: - - - there's eight stages. Stage 1 is precincts 1 to 5 and then it goes sequentially, so 2 to 7 is precincts 6 to 11 and then stage 8 is precincts 12 to 14.  
45

MS HIRD: Yes. So one of the issues that was raised by the council is most of the offsets were happening in stage 12 to 14.

MS McDONALD: Yes. And that's why we've used the offset ratio – it kicks it up early, so that the offsets stay ahead of the impacts.

5 MS HIRD: Yes. But, still, the biggest amount of offsets will happen - - -

MS McDONALD: No – will affect the staging arrangements, so that's the intent of the condition is to change the table in – I think it's in appendix 5 - - -

10 MS HIRD: Yes.

MS McDONALD: - - - which shows the staging arrangements. So it effectively - - -

15 MS HIRD: Evens it out?

MS McDONALD: It evens it out – that's the whole point.

MS HIRD: Right. Okay.

20 MS McDONALD: Yes. Yes.

MR WITHERDIN: So that's for the on-site offsets. Another key issue was the delivery and securing the off-site offsets and that's referring to the 27 hectares in the Cudgen Nature Reserve. So a lot of submissions and council raised concern about  
25 securing those offsets because there wasn't sufficient details about the timing and the delivery of those offsets. And so the Department – to address that issue, the Department has recommended that the KPoM be updated to clearly specify the timing for those offsets, the location of those offsets because – I will just go on to that location a little bit more. Part of the 27 hectares of the Cudgen Nature Reserve  
30 that was to be planted out with the koala food trees may already be planted by others - - -

MS McDONALD: There has been previous rehab works that have been undertaken on some - - -  
35

MS HIRD: Yes.

MS McDONALD: - - - of those lands.

40 MR WITHERDIN: So we need to make – we need to verify how much land is available within the Cudgen Nature Reserve. So the Department's position is we would like any remaining area to be planted out within the Cudgen Nature Reserve because it's very close. It's next door to the impact area and the development site. And then any remaining area, the proponent will have to come back to us and  
45 provide other suitable locations, preferably as close to Kings Forest as possible. And the condition also requires the proponent to come back and specify the standards at which the offset should be provided.

MS McDONALD: So, effectively, setting up a similar framework to what's in the KPoM for the on-site offsets, so it will establish how you do that, so - - -

5 MS HIRD: And in the timings – so they can do these 8.6 hectares to one hectare anywhere?

MS McDONALD: No, that's for the on-site offsets.

10 MS HIRD: Right.

MS McDONALD: So the off-site offsets are a separate timing issue.

MS HIRD: And when do they come in?

15 MS McDONALD: At this stage, that's to be determined, so they will need to update the Koala Plan of Management to identify - - -

MS HIRD: Okay. For that one.

20 MS McDONALD: - - - the timing for that because we don't have – the OEH need to verify what land is available and where before we can work out the timing for delivering it.

25 MS HIRD: So can – hypothetically, condition a time after OEH confirms or - - -

MS McDONALD: That's the intent - - -

MS HIRD: Yes.

30 MS McDONALD: - - - of the revisions for the KPoM at that time would be identified within the KPoM itself once OEH has verified it - - -

MS HIRD: Right.

35 MS McDONALD: - - - or if it's not done – I think it's – the condition is drafted that if it's not done prior to the first construction certificate for vegetation clearing, that's when they need to come back and work out if an alternate site needs to be provided somewhere else outside of Cudgen Nature Reserve.

40 MS HIRD: Okay.

45 MR WITHERDIN: So moving on to the fencing and crossings issue. Now, this was a key issue raised in the submissions and by the Department, its expert and OEH and council. All parties weren't satisfied that the original fencing locations and design and the crossings weren't suitable to protect koalas from entering the development zone, and things like dogs entering the environmental zone. So the proponent went away and redesigned the fencing and crossing locations. And it substantially

improved that aspect of the proposal. And the Department is pretty much satisfied that the revised proposal will work and – but there were a few remaining issues. One of the issues was around the precise location of some of the koala fencing areas. We just want to make sure that it won't result in any additional vegetation clearing - - -

5

MS McDONALD: It's also that it won't isolate any areas of retained or compensatory habitat, as well, so our expert had identified there were some locations where the fence might bisect its proposed or compensatory Wallum sedge frog habitat. So it's just making sure that it - - -

10

MR CARTER: Yes.

MS McDONALD: Yes, the fence goes around the habitat instead of through it.

15 MR CARTER: Okay. So it keeps the connectivity.

MS McDONALD: Yes. Yes.

20 MR WITHERDIN: Yes. And then there was another detailed concern. Council raised some concern about the design of culvert 5.

MS McDONALD: Yes.

25 MR WITHERDIN: And so we've put a condition in there to make sure that that culvert can operate as an underpass - - -

MS McDONALD: Koala crossing, yes.

30 MR WITHERDIN: - - - yes – yes.

MR CARTER: And is there a timing issue with the infrastructure, as well, for the koala infrastructure and its – how it relates to construction occurring on the site?

35 MS McDONALD: It's - - -

MR CARTER: So for access of construction equipment and those sorts of things?

MS McDONALD: They've got temporary and permanent fencing - - -

40 MR CARTER: Yes.

MS McDONALD: - - - which will be delivered in a staged manner to deal with those - - -

45 MR CARTER: Yes.

MS McDONALD: - - - construction-related issues.

MR CARTER: Yes. Okay.

MR WITHERDIN: And then the final issue, the final key issue was about the contingency measures. So our independent ecologist raised some concerns with the  
5 contingency strategy that was proposed. The proponent recommended – they put  
forward a contingency strategy that if there was a statistical decline in koala numbers  
on the site, that they would commission an independent review and find out what the  
problem was and then try and put in corrective actions to resolve those, but our  
independent ecologist preferred a different contingency strategy. Basically, he  
10 preferred that we would retire - - -

MS McDONALD: No, we would bond – so you would work out what the dollar  
value of the number of – sorry. You work out the – what the offset area equates to in  
terms of biodiversity credits and then convert that back to a dollar value, so you  
15 could hold that money in trust over the life of the project or as a bond.

MR WITHERDIN: Yes. And so if there was a decline, they could draw on that to  
implement some corrective measures to make sure of the long term survival of koalas  
on the site. And then the next issue was about contingency measures for the koala  
20 food trees. So if the koala food trees didn't take, we just saw that there should be a  
bit of a strength and measure there so that if the koala food trees basically didn't  
grow - - -

MS McDONALD: It wasn't just the food trees. It's the habitat - - -  
25

MR WITHERDIN: Yes.

MS McDONALD: - - - in general - - -

30 MR WITHERDIN: Yes.

MS McDONALD: - - - because it's a fully structured community, so it would  
include under-storey .....

35 MR WITHERDIN: Yes. So it's quite complicated in that regard.

MS McDONALD: Yes .....

MR WITHERDIN: But if it did fail, that the proponent would have to implement  
40 suitable measures to make sure that it would succeed in – potentially in other areas of  
the site, so it has got a condition in there - - -

MR CARTER: So it's not just a, sort of, a plant and forget.

45 MS McDONALD: Yes.

MR CARTER: It's an actual, sort of, make sure that it matures.

MR WITHERDIN: Yes.

MR CARTER: Yes.

5 MR WITHERDIN: So that was it for the key issues. Our assessment report also  
covers some other issues about tree selection, management of koala habitat – existing  
koala habitat, the commencement of works definition and the consistency with the  
conditions of approvals and other environmental management plans that are required  
10 across the site. So I'm happy to go through those if you want, but let me know – but  
happy to take questions on anything.

MS HIRD: Just one – so in addition to these offsets which we're focusing on, there  
is also a requirement for them to fix up the koala – the existence of what's already  
15 there - - -

MR WITHERDIN: Yes.

MS HIRD: - - - that's not an offset? So they're – that's the two components, isn't  
20 it, of the management plan – it's offsets and existing management?

MS McDONALD: Yes, it's existing management, plus management of created  
habitat areas.

MR WITHERDIN: Yes.  
25

MS HIRD: Yes. Yes. Yes.

MS McDONALD: Yes.

30 MS HIRD: So – okay.

MR WITHERDIN: Yes. And so one of the issues about the management of the  
existing areas was the timing of that occurring.

35 MS HIRD: Yes. Yes. That's where I'm coming .....

MR WITHERDIN: Yes.

MS HIRD: Yes.  
40

MR WITHERDIN: And so concern was raised about that being delayed. So the  
Department has recommended that the KPoM be updated basically to bring that  
management of the existing vegetation forward - - -

45 MS HIRD: All forward at once or just on a stage by stage?

MS McDONALD: Just on the – using the ratio. So it would - - -

MS HIRD: Okay.

MS McDONALD: It's probably confusing - - -

5 MS HIRD: The golden ratio.

MS McDONALD: Yes. Yes.

10 MS HIRD: ..... the koala ratio - - -

PROF MACKAY: That makes sense.

MR WITHERDIN: And, look, we had to take advance from our independent expert on that, as well, so I think that would result in a reasonable outcome.

15

MR CARTER: Okay. Richard, any .....

20 PROF MACKAY: Well, just in terms of the Cudgen Nature Reserve, if the 27 hectares can't be provided there, bearing in mind that that seems to also be – having been made available to others for similar purposes, as I understand it, the obligation just falls back on the proponent to find suitable proximal lands. If they can't do that, is there an option to just pay out into the biodiversity fund?

25 MS McDONALD: That wasn't the intent.

MR WITHERDIN: No. So our preference would be that those offsets be physically provided. If they can't, it's then another issue that we would have to consider, but our first preference is that they be delivered and physically planted out somewhere within the general location.

30

PROF MACKAY: So in terms of that process, are you saying then therefore the appropriate condition requires that to happen and insofar as that turns out to be not possible in the fullness of time, that would require another MOD and a consideration of that MOD on its merits?

35

MS McDONALD: No. So it's at the Secretary's discretion. So, in the first instance, you work with the OEH to find nominated lands - - -

PROF MACKAY: Yes.

40

MS McDONALD: - - - within Cudgen. We're of the understanding that there is sufficient land available. It's just a matter of where that potentially could be.

45 PROF MACKAY: Yes.

MS McDONALD: If that falls away, then you would look to other lands off-site preferably, I think, in a koala activity precinct or koala activity linkage area identified in council's - - -

5 PROF MACKAY: Yes.

MS McDONALD: - - - KPoM. That may be difficult if you're having to negotiate with other landowners to secure that land. So that would be a negotiation – that would be a provision that would be included in the KPoM that would be in  
10 negotiation between the proponent and the Secretary and the Secretary would have to be satisfied that the outcome provided effectively gives an equivalent outcome to the  
- - -

15 PROF MACKAY: Yes.

MS McDONALD: - - - 27 hectares.

PROF MACKAY: All right. And if that proves not possible?

20 MS McDONALD: Then we would probably have to take that on notice, do you think, Anthony, or - - -

MR WITHERDIN: Yes. As I say, our preference is for that to be planted out – the 27 hectares to be planted out in a suitable location. If that's not possible, we would  
25 have to look at other measures potentially and that could include, like, a monetary contribution - - -

PROF MACKAY: Yes.

30 MR WITHERDIN: - - - to the biodiversity conservation trust, but – yes. We're pretty confident that land could be found within the area - - -

PROF MACKAY: Well, we're very happy for it to be taken on notice. I guess the issue for us is if we were of a mind to approve the MOD in some form, whether that  
35 mechanism should be brought in as a condition in this MOD or whether you leave it at Cudgen Nature Reserve or other suitable nearby lands and then if that proves not to be possible, that would have inevitable consequence on a future MOD - - -

40 MS McDONALD: I think we were trying to find - - -

PROF MACKAY: Or whether we build in that mechanism now.

MS McDONALD: That mechanism – yes. I think we were trying to make it as flexible as we could if it's not possible to find the land within Cudgen, but you  
45 potentially could build in a mechanism that avoids the need to do a modification in the future.

MS HIRD: The - - -

MR CARTER: If - - -

5 MS HIRD: - - - letter – sorry.

MR CARTER: I was just going to say perhaps if you can just have a think about that. In effect, it would be a cascading - - -

10 MS McDONALD: Yes.

MR CARTER: - - - condition - - -

MS McDONALD: Yes.

15

MR CARTER: - - - that might whilst sort of retaining flexibility actually give a frame around it, so that it wasn't ..... like too flexible or drove another modification when, in fact, if the condition provided for it, it might be able to - - -

20 MS McDONALD: So it's more like a - - -

MR CARTER: - - - be sorted out.

MS McDONALD: ..... standard that you're looking for in lieu - - -

25

MR CARTER: Well, it's – I guess it's leaning towards what are the priorities - - -

MS McDONALD: Yes.

30 MR CARTER: - - - and then setting them out, so that if not that, then - - -

MS McDONALD: Yes.

35 MR CARTER: - - - here's the next, sort of, cab off the rank, but actually putting the onus of proof obviously on the proponent to demonstrate that they couldn't achieve the preferred outcome before they went to the next approach - - -

MR WITHERDIN: Yes. No, happy to take that on notice and we will - - -

40 MR CARTER: - - - so have a think about that - - -

MR WITHERDIN: - - - give you some advice.

45 MS HIRD: The – and the proponent raised in this document that came today – you've seen that – where they actually put it on their own property, so that was - - -

MS McDONALD: .....

MS HIRD: It's in here somewhere in red.

MR CARTER: I don't know that the Department has seen that yet. So the  
5 proponent has submitted today a report by James Warren & Associates ecological  
consultants which will go up on our website - - -

MS HIRD: Yes.

MR CARTER: - - - and which includes various commentary on various of the  
10 conditions and on the Department's assessment report.

MS McDONALD: Do you know which page the - - -

MS HIRD: I'm sorry.  
15

MR CARTER: Well, look – I mean, rather than going through that - - -

MS McDONALD: Yes, we can have a look.

MS HIRD: Yes. I'm just - - -  
20

MS McDONALD: Yes.

MS HIRD: I'm just saying that was the gist of it, anyway.  
25

MS McDONALD: Okay. No, that's great. Thanks.

MR CARTER: We will make that available and if you want to make any  
30 observations to the Commission on that, that would be good.

PROF MACKAY: But the – well, there is one, kind of, general question that I think  
it would be useful to raise either now or on notice, which is this report, among other  
things, suggests that some of the areas proposed on-site for reforestation with red  
35 gum were never used for red gum and then coupled with that, it also makes  
representations to the effect that the densities that are being requested by council in  
its submission are unusually high densities that have consequences for reveg of  
under-storey. And where that all leads in the submissions of the proponent is to say,  
“Well, given that we're being asked to put species where we don't think they were in  
40 a density that we don't think is appropriate, why should we be ultimately responsible  
if that initiative - - -

MS McDONALD: Fails.

PROF MACKAY: - - - fails?"  
45

MS McDONALD: Yes.

PROF MACKAY: And I think it would be very useful to have the Department's view about that position. Again, if we're of a mind to approve the MOD, how do we deal with that question about the red gum? You just say, "Well, look, if it fails, that's bad luck. You have to have your own plan B" or do you provide some other  
5 mechanism to deal with that? And, of course, that's jumping forward seven years, I guess.

MS McDONALD: Yes. It would be once you get into the maintenance period and then - - -  
10

PROF MACKAY: Yes.

MS McDONALD: - - - if you don't meet those initial rehab targets, so it's probably  
15 - - -

PROF MACKAY: Yes.

MS McDONALD: - - - like five to seven years potentially from when you commence your maintenance - - -  
20

PROF MACKAY: Yes.

MS McDONALD: - - - that you would be need to be thinking about that.

25 PROF MACKAY: And I think specifically the concern that they're expressing – I mean, the report speaks for itself, but as I understand it, the concern they're expressing is we're being pushed into a rehab regime species and densities that's not what we would put forward, therefore - - -

30 MS McDONALD: That was volunteered, though, so - - -

PROF MACKAY: Yes.

MS McDONALD: - - - that my understanding is that our independent expert - - -  
35

PROF MACKAY: Yes.

MS McDONALD: - - - didn't recommend that necessarily as an option. They put that forward in consultation with council.  
40

PROF MACKAY: Yes.

MS McDONALD: So we've just assessed what has been given to us - - -

45 PROF MACKAY: Yes.

MS McDONALD: - - - on its merit and our independent expert didn't see any problem with the strategy that they had recommended but we can understand - - -

PROF MACKAY: Yes.

5

MS McDONALD: - - - issues that the proponent has raised.

MR WITHERDIN: And so that can be quite a technical issue about the success or not of those trees growing there, and it can depend on groundwater conditions and things like that. And we've taken a lot of our advice from OEH and council's ecologist on that issue because they've got some good knowledge of what can and can't grow in that area but we're happy to look into that.

10

PROF MACKAY: Yes. I guess it breaks into two. One is it would be useful just to have a comment on good idea or not and then, secondly, the conditional question is if it happens to fail after the seven years, what's a reasonable position to put in any consent conditions to deal with that?

15

MR WITHERDIN: So our contingency strategy for the veg - - -

20

MS McDONALD: Yes.

MR WITHERDIN: - - - is the measure that I think you're referring to - - -

PROF MACKAY: Yes.

25

MR WITHERDIN: - - - but – yes. Whether or not – that goes to the full extent of what you're talking about, we will – I had better have a look at that.

PROF MACKAY: Thank you.

30

MR CARTER: Do you have anything more, Catherine, or - - -

MS HIRD: No, I don't think so. No.

35

MR CARTER: Brad or David?

MR B. JAMES: Nothing from me.

MR D. KOPPERS: .....

40

MR CARTER: Okay. Well, look, thank you very much for that. You dealt very well with all of the issues that we were interested in, so we don't have any more questions at this point, but obviously as we go through the process, we're likely to come back with some, you know, requests for additional information or clarification. So I will draw the meeting to a close.

45

MR WITHERDIN: No worries.

MS McDONALD: Thank you.

5 MR WITHERDIN: Thank you.

MR CARTER: Thank you.

10 **RECORDING CONCLUDED**

**[2.04 pm]**