

Council Reference: DA11/0565.03 LN8987
Your Reference: D544-18



6 March 2019

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Dear Independent Planning Commission

TSC Comments on Applicants Response to Submissions and revised Koala Plan of Management - Kings Forest Modification MP08/0194 MOD 4 (Council reference DA11/0565.03)

Council welcomes the opportunity to meet with the Independent Planning Commission privately on 13 March at 11am at the Tweed Heads Civic Centre. The following written material will be the matters that Council wishes to discuss with the IPC at this time. Pages 1-9 of this letter incorporate commentary on the amendment while Pages 10 – 19 provide a tracked changes version of the modified Instrument which Council recommends.

Council will also be present at the public meeting on 12 March 2019 as an observer only and we will be sure to introduce the Council Team to the IPC at this time.

In August 2017, Council made a submission to the Department of Planning and Environment (DP&E) in relation to the Kings Forest Project Approval Modification 4 which sought approval for a revised Koala Plan of Management (KPoM) and substantive changes to the conditions of approval. Council's submission concluded that the proposed amendments were fundamentally inconsistent with the State conditions of approval, and that if approved would see a worse outcome for koalas.

As a result of issues raised during consultation and after discussions between Council, the proponent and State agencies, the proponent provided further drafts of the KPoM dated May 2018 and October 2018. The October 2018 draft revised KPoM was regarded as a substantial step forward although there remained a number of important technical issues which Council subsequently raised in its October 2018 submission to DP&E.

This letter responds to DP&E's consideration of the issues as contained in the Secretary's report and the recommended modification to the Project Approval. Upon assessing these documents Council notes that the vast majority of issues raised previously have now been adequately addressed in the Department's recommended modification to the approval. The proponent is also to be commended for working cooperatively with Council and the State agencies to realise the community's clear aspiration for sound planning and ecological outcomes at Kings Forest.

Although most of Council's concerns have been adequately addressed, there remain a few substantive issues which are likely to adversely affect workability and ecological outcomes of the Project Approval. These issues, including recommended amendments to MP 08_0194 Draft Mod 4 are detailed in the sections below.

SUMMARY OF ISSUES

27ha offsite offset

Under the existing Project Approval Condition 45(1)(a) the proponent is required to restore and plant koala food trees on 27ha offsite in Cudgen Nature Reserve. The proposed modification (Condition 45A(2)) maintains the 27ha offset requirement but allows approval of details of an alternative offset site to be provided 6 months after the approval of a Construction Certificate (CC) for clearing or bulk earthworks. This potentially allows the proponent to carry out clearing without certainty about the delivery of the required offset. Council recommends that any alternative site be secured before CC.

It is noted from the proponent's response to the proposed conditions (Feb 2019, p9) that they are seeking an amendment to allow the offsite obligation to be discharged via a payment to the Biodiversity Conservation Trust (BCT) based on a particular formula. Council doubts if this approach could be legally achieved by the BCT as neither the offset nor the proposed financial compensation were determined under the *Biodiversity Conservation Act 2016*. Further it is unlikely the BCT could be bound to deliver an offset locally in accordance with the intent of the proposed Condition 45A (2)(a). Notwithstanding, Council supports the proponent's suggestion proposed to include possible offsetting on the Kings Forest site as a further option if that is considered necessary.

Golf course fencing

The draft revised KPoM (October 2018) proposes to install permanent fauna exclusion fencing on the inside of the Ecological Buffer in the in the area of the proposed golf course (see middle diagram on Fig 28; see also Fig 40B). Council maintains this is inconsistent with the ecological buffer requirements of the Kings Forest Major Projects SEPP and the Concept Plan which contemplated koalas using the proposed golf course which would act as a buffer. It is recommended that the fauna exclusion fencing should encompass the golf course itself.

Off leash dog areas

Concept Plan Condition C2(3)(f) requires consideration in any updated KPoM, of the need for off-leash dog areas at Kings Forest. Consistent with previous advice, Council requires a suitable area within the development envelope to be identified within the KPoM.

Rehabilitation performance criteria

The proposed DP&E modification Condition 45A(4) suggests that the success of the koala plantings is assessed against "the relevant plant community type". This is not considered practical or workable because: 1) the plantings are primarily for koalas and

are not designed to replicate a particular Plant Community Type (PCT); 2) under the approval all performance criteria need to be framed in terms of the “establishment period” and “maintenance period”; 3) the proposed performance criteria do not address the critical early phases (establishment period) of the plantings; and 4) PCTs for the far north coast are not finalized or useable for the site. What is needed here are measurable indicators that define progress on establishing the plantings. Council recommends using a number of simple and easily defined indicators, framed in terms of establishment and maintenance periods, to address this issue.

Fencing and underpasses through environmental areas

Existing Project Condition 46 requires fauna exclusion fencing and underpasses for roads through environmental areas to be in place prior to bulk earthworks. This is to ensure unimpeded fauna movement across roads during construction and in the long term. The proposed modification of Condition 46 allows the underpasses to be delayed until road works. DP&E suggest this is because it may be difficult to establish the underpasses prior to bulk earthworks. The issue with this is that if fencing was installed either side of the roads without underpasses, koalas and other terrestrial fauna would be prevented from moving between environmental areas - perhaps for many years. To address this issue, Council recommends an amendment to avoid the need for temporary fencing on either side of the roads during construction in favour of gates at either end of the environmental areas which would be closed at night thus allowing free movement between habitat areas at night.

ANALYSIS OF RESIDUAL ISSUES IDENTIFIED IN COUNCIL SUBMISSION OF NOVEMBER 2018

Council Nov 2018 Comments	Council response to DP&E proposed Mod - Jan 2019
<p>The 27ha offsite offset requirement is mentioned but has insufficient detail to satisfy Project Condition 45 as requested by DP&E.</p>	<p>Substantially addressed by proposed DP&E revised approval Conditions 45 and 45A(2).</p> <p>However, DP&E propose to allow approval of details of an alternative offset site to be provided 6 months after CC for clearing or bulk earthworks. There is a significant risk that it will take longer than 6 months this to secure an alternative offset site, potentially allowing the proponent to carry out clearing without certainty about the delivery of the required offset. It is therefore recommended that this approval be required before CC.</p> <p>Additionally the proposed Condition 45A(2) (c) and (d) require offset planting to commence within 2 years of suitable offset sites being identified, and completed within 3 years. Council do not see the need for this delay and recommend that such planting should commence within 1 year and be completed within 2 years.</p>

Council Nov 2018 Comments	Council response to DP&E proposed Mod - Jan 2019
	<p>It is noted from the proponent's response to the proposed conditions (Feb 2019, p9) that they are seeking an amendment to allow the offsite obligation to be discharged via a payment to the Biodiversity Conservation Trust (BCT) based on a particular formula. It is doubtful if this approach could be legally achieved by the BCT as neither the offset nor the proposed financial compensation were determined under the Biodiversity Conservation Act 2016. Further it is unlikely the BCT could be bound to deliver an offset locally in accordance with the intent of the proposed Conditions 45(1)(a) and 45A (2)(a). Notwithstanding, Council supports the proponent's proposed amendment of Conditions 45(1)(a) and 45A (2)(a) to include possible offsetting on the Kings forest site as a further option if that is considered necessary.</p> <p>See proposed Council revisions to Conditions 45(1)(a) and 45A(2) below.</p>
<p>The timing of the commencement of the new E-W corridor is proposed to be delayed until the final stages of the project (Stage 6). Concept Plan Condition C28 requires that commencement should be at Stage 2 (i.e. with Precinct 6; see p73, Table 10).</p>	<p>Addressed by proposed DP&E revised approval Condition 45A(3ii).</p>
<p>The management of retained koala habitat remains very heavily weighted to the later stages of the project which may not commence for decades (e.g.156ha of 206ha in the last stage; see p73, Table 10). This is contrary to the Project Condition A13 which requires all conservation lands to be managed from commencement of the project.</p>	<p>Addressed by proposed DP&E revised approval Condition 45A(3).</p>
<p>The proposal to install permanent fauna exclusion fencing on the inside of the Ecological Buffer in the area of the proposed golf course (see middle diagram on Fig 28; see also Fig 40B of draft KPOM) is inconsistent with the ecological buffer requirements of the Kings Forest Major Projects SEPP and the Concept Plan which contemplated koalas using the proposed Golf Course which would act as a buffer. The fauna exclusion fencing should encompass the golf course itself.</p>	<p>Not addressed by DP&E in the proposed Mod.</p> <p>Contrary to DP&E statement that Mod 2 approved the "expansion" of the golf course (see p 28 of DP&E Secretary's report of Dec 2018) Council is not aware of any modifications that would require that fauna exclusion fencing be placed on the inside of the ecological buffer in the vicinity of the proposed golf course. Under the original Concept Plan the golf course included the ecological buffers where it was anticipated that koalas and other fauna could use the entire golf course area. Although the revised Mod 2 Concept Plan noted that the golf</p>

Council Nov 2018 Comments	Council response to DP&E proposed Mod - Jan 2019
	<p>course encompassed the ecological buffers, the expectation that koalas and other fauna would be able to utilise the golf course continued to be reflected in proposed Koala Plan of Management for Mod 2 which: 1) shows koala tree planting within the golf course itself (see Figures 14 and 20); and 2) mentions the need for fencing to prevent koalas from accessing the adjacent urban areas (p24). Further, the DGs Assessment Report of May 2013 makes no mention of the need to adjust the fencing or contains any consideration of how excluding faunal use of the ecological buffers in the golf course could meet the ecological buffer requirements of the Kings Forest Major Project SEPP.</p> <p>TSC recommend that fauna exclusion fencing is located between the golf course and adjacent urban areas so that koalas and other wildlife can use the golf course as contemplated in the Concept Plan.</p> <p>See proposed TSC revisions to Condition 45A(7) below.</p>
<p>The draft revised KPOM continues to state that underpass number 5 over Blacks Creek "is unlikely to provide underpass opportunities for koalas" (p82; October 2018). It is recommended the that the bridge abutments be set back 2m on either side of the banks as shown for the Culvert 9 cross-section (Fig 30C).</p>	<p>Addressed by proposed DP&E revised approval Condition 45A(7b).</p>
<p>The draft revised KPoM (October 2018) now acknowledges all relevant environmental management plans (see Table 1, p7) but does not identify specific issues related to koala management that should be addressed in these related plans. This is inconsistent Concept Plan Condition C2 which requires all environmental management plans to consider each other.</p>	<p>Addressed by proposed DP&E revised approval Conditions 45A(5) and 45A(6).</p>
<p>There are conflicting definitions in the draft revised KPoM (October 2018) relating to commencement of the project which affect the timing of various works under the Plan. Council maintains that on ground works should not commence until all relevant environmental management plans have been revised, updated and approved in accordance with Concept Plan Condition B7 and Project Condition A13, but no objection</p>	<p>Addressed by proposed DP&E revised approval Conditions A18 and 45A(10)</p>

Council Nov 2018 Comments	Council response to DP&E proposed Mod - Jan 2019
<p>is raised to activities such as monitoring or manual weed control that will not adversely affect the environment.</p>	
<p>Project Condition 39 requires performance criteria for implementation actions to be tied to “establishment” and “maintenance period” phases of management. Establishment and maintenance period performance criteria are only included for Appendix 6. To facilitate the operation of Project Conditions 49 and 50 (which require independent environmental audits and the administration the environmental bond respectively) it is necessary that such criteria are included for all mitigation actions identified in the Plan.</p>	<p>Addressed by proposed DP&E revised approval Condition 45A(9)</p> <p>It is noted that the proponent objects to the proposed condition 45A(9)(f) (Feb 2019, p22) relating to the proposed forest red gum plantings and appears to hold that this species should be dropped if initial losses are greater than 15%. This approach does not appear to be justified on the basis of the study commissioned by the proponent to look at the feasibility of forest red gum (<i>E. tereticornis</i>) as a koala food tree on the Kings Forest site (Terrestria 2019 included as Appendix 1 to the proponents response of Feb 2019). This study concluded (p8) that “...there is no reason why planting of this species on the site will not be successful”</p> <p>Council maintains that corrective actions need to be specified for all offset plantings not just for forest red gum.</p> <p>A recommended revision to the proposed DP&E Condition 45A(9)(f) addresses this issue.</p>
<p>Concept Plan Condition C2(3)(f) requires consideration of the need for off-leash dog areas at Kings Forest. Consistent with previous advice, Council requires a suitable area within the development envelope to be identified.</p>	<p>Not addressed by DP&E in the proposed Mod.</p> <p>Council has previously advised that an off-leash dog area would be required and Concept Plan Condition C2 (3)(f) specifically requires any such areas to be included within stage specific updates of the KPoM.</p> <p>A recommended revision to the proposed DP&E Condition 45A(9) addresses this issue.</p>
<p>The provision in the draft revised KPoM (October 2018, p89) that the proponent nominates a representative to sit on the Tweed Coast Koala Management Committee is not supported. However, Council is open to options for keeping lines of communication open and would welcome periodic representations to the Koala Management Committee to discuss issues of mutual concern.</p>	<p>Addressed by proposed DP&E revised approval Condition 45A(9d)</p>

Council Nov 2018 Comments	Council response to DP&E proposed Mod - Jan 2019
<p>The protocols for injured koalas need to involve Friends of the Koala (FOK) who are the only licenced koala care group in the region.</p>	<p>Addressed by proposed DP&E revised approval Condition 45A(9e)</p>
<p>The text on p73 of the draft revised KPoM (October 2018) could be interpreted to mean that the proponent may choose to forfeit the environmental bond (Project Condition 50) rather than continuing to meet the establishment or maintenance requirements thus allowing them to proceed to the next stage of the development. This is contrary to Concept Plan Condition B7 and Project Condition A13 which both require the proponent to continue to implement all environmental management plans from the commencement of the project.</p>	<p>Addressed by proposed DP&E revised approval Condition 45A(9b)</p> <p>It is noted that the proponent objects to the proposed condition 45A(9)(b) (Feb 2019, p21) which requires the removal of text in the KPoM relating to the environmental bond. The key issue here is that it is not appropriate to include text in the KPoM that may conflict with the operation a condition of consent, in this case Condition 50.</p>
<p>The “Contingency and Offset Strategy” covers a wide range of issues, but is very unclear as to its triggers, operation and consequences. The detailed comments make numerous suggestions regarding this issue.</p>	<p>Partly addressed by proposed DP&E revised approval Condition 45A(8)</p> <p>Council retains some concerns regarding the timing and workability of this proposed condition. Specifically it is considered that 10 years is too long before triggering contingency measures. Seven years is recommended as this provides plenty of time to get the offsets established and take corrective actions before triggering contingency measures at another site.</p> <p>It is noted from the proponent’s response to the proposed conditions (Feb 2019; p20) that they are concerned about the final density of trees given potential self-thinning. To address this they propose using a “relevant pre-clearing PCT” as a baseline to set an appropriate performance target for the final tree density measure. However as noted below (1) the plantings are primarily for koalas and are not designed to replicate a particular Plant Community Type (PCT). And (2) there are no relevant pre-clearing PCTs for the site as they are yet to be determined by OEH. To address this issue a simple measure of crown cover (<i>sensu</i> Walker and Hopkins 1990) should suffice. For example a crown cover of 50-80% is typical of most coastal sclerophyll forests.</p> <p>More significantly, it is not clear whether iii – v are workable due to low numbers of koalas and difficulties associated with determining the cause of any population declines, (statistically significant or otherwise) are due to the development.</p>

Council Nov 2018 Comments	Council response to DP&E proposed Mod - Jan 2019
<p>It is recommended that Appendix 6 which addresses rehabilitation specifications should focus on offsets only. The detailed comments provide explicit guidance on appropriate performance indicators, performance criteria and corrective actions for the koala offset plantings.</p>	<p>Acknowledged by proposed DP&E revised approval Condition 45A(4) but some of the specified performance criteria under 45A(4a)ii) are not considered workable.</p> <p>This is because 1) the plantings are primarily for koalas and are not designed to replicate a particular Plant Community Type (PCT); 2) under the approval all performance criteria need to be framed in terms of the in terms of the “establishment period” and “maintenance period”; 3) the proposed performance criteria do not address the critical early phases (establishment period) of the plantings; and 4) PCTs for the far north coast are not finalized. What is needed here are measurable indicators that define progress on establishing the plantings.</p> <p>It is noted from the proponent’s response to the proposed conditions (Feb 2019) that they are seeking an amendment to proposed Condition 45A(4)(ii) to reflect Council’s submission of Nov 2018 in relation to shrub and ground cover establishment which recommended the use of criteria based on a “comparable PCT”. Although it was initially thought that a comparable PCT might be workable for the shrub and ground cover components we have since been working with OEH on their far north coast PCT project, and note that many of the proposed PCTs are strongly influenced by the nature of the shrub and ground cover components. We now feel this approach could be fraught.</p> <p>Council therefore suggests using a number of simple and easily defined indicators, framed in terms of establishment and maintenance periods to address this issue.</p> <p>See recommended changes to the DP&E Condition 45A(4a)ii) of the proposed Mod below.</p>

ADDITIONAL ISSUES ARISING FROM THE PROPOSED MODIFICATION

Issue	Council response to DP&E proposed Mod - Jan 2019
<p>Proposed deletion of Conditions 46(1) and 46(2) which requires (1) fauna exclusion fencing and underpasses for roads through environmental areas and (2) the integration of fauna exclusion fencing with existing fencing at Tweed Coast Road respectively.</p>	<p>The proposed removal of these sub-clauses is premature. This is because the fencing and koala crossing designs are to be revised under proposed condition 45A (7) and these sub-clauses remain relevant to way in which these revisions are carried out. Council recommend retaining these conditions.</p> <p>See recommended changes to the DP&E Condition 46(1) of the proposed Mod below.</p>
<p>Changes to timing of fencing and underpasses. Existing Project Condition 46 requires fauna exclusion fencing and underpasses for roads through environmental areas to be in place prior to bulk earthworks. This is to ensure unimpeded fauna movement across roads during construction and in the long term. The revised DP&E Condition 46 allows the underpasses to be delayed until road works. DP&E suggest that it may be difficult to establish the underpasses prior to bulk earthworks. The issue with this is that if fencing was installed either side of the roads without underpasses, koalas and other terrestrial fauna would be prevented from moving between environmental perhaps for many years.</p>	<p>While it would be preferable to ensure that the underpasses were in place at the time of fencing the practical difficulties with this are acknowledged. A possible solution would be not to use temporary fencing on either side of the roads during construction in favour of gates at either end of the environmental areas which would be closed at night thus allowing free movement between habitat areas at night. This would need to be accompanied by construction management measures to minimize road strike during the day.</p> <p>To accommodate this or other solutions (while maintaining the option of completing the underpasses upfront), Council recommends revising the proposed Mod to include a new sub-clause 46(1c) to allow "any other temporary measures necessary to maintain habitat connectivity and minimize the risks to wildlife including koalas during construction".</p> <p>See recommended changes to the DP&E Condition 46(1) of the proposed Mod below</p>
<p>Minor corrections or clarifications of wording</p>	<p>A number changes to the draft Modification are recommended to correct typographic errors, numbering and improve clarity.</p> <p>It is noted from the proponent's response to the proposed conditions (Feb 2019) that they object to a number of revisions to the draft KPoM suggested in Councils submission to of November 2018 and referred to under proposed DP&E Condition 45A(9)(g).</p> <p>It is Council's view that these issues should be addressed but that this is best done in consultation with Council with final approval by the Secretary in accordance with Condition 45A.</p>

	An amendment to the proposed DP&E Condition 45A (9)(g) reflects this approach.
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**TWEED SHIRE COUNCIL
RECOMMENDED AMENDMENTS TO MP 08_0194 DRAFT MOD 4**

SCHEDULE 1

- Project Approval:** **MP 08_0194** granted by the Planning and Assessment Commission on 11 August 2013
- For the following:** Kings Forest Residential Subdivision Stage 1 Bulk Earthworks, Roadworks and Subdivision of Precinct 5, including:
- subdivision of the site into ten development lots in 4 stages;
 - bulk earthworks across the site;
 - roadworks comprising:
 - construction of the entrance road and associated intersection works with Tweed Coast Road
 - construction of the Kings Forest Parkway from Tweed Coast Road via Precincts 4 and 5 through the western site precincts; and
 - construction of two roads providing access to the southern site precincts;
 - Plan of Development for Precinct 5;
 - development of 998 sqm of floorspace for a service station and food and drink premises and access arrangements to Precinct 1;
 - construction of subdivision and infrastructure works along Kings Forest Parkway and within Precincts 1 and 5;
 - subdivision of Precinct 5 into 376 residential lots comprising:
 - one townhouse lot (7,860sqm)
 - 37 terrace house lots (minimum lot size 150sqm)
 - 25 duplexes (minimum lot size 450sqm)
 - 192 zero lot dwellings (minimum lot size 240sqm)
 - 121 traditional detached dwellings (minimum lot size 400sqm)

Proponent: Project 28 Pty Ltd.

Approval Authority: Minister for Planning

The Land: Kings Forest Estate
Lot 76, 272, 323 and 326 of DP 755701;
Lot 6 DP 875446;
Lot 2 DP 819015;
Lot 1 DP 706497;
Lot 40 DP 7482;
Lot 38A DP 13727;
Lot 38B DP 13727;
Lot 1 DP 129737;
Lot 1 DP 781633;
Lot 7 DP 875447;
Lot 37A DP 13727,

Lot 2 DP 1159231 (closed road)
 Lot 1 DP 1178256 (closed road); and,
 Lot 1, 2 & 3 DP 11757616 (closed roads).

Modification:

MP 08_0194 MOD 4: the modification includes:

- amendment to Condition 45 to specify the koala offset requirements
- inclusion of new conditions 45A and 45B requiring updates to the Koala Plan of Management and the delivery of the on-site compensatory koala habitat
- amendments to Condition 46 and 64 to clarify the requirements for koala infrastructure and the timing for its delivery
- amendments to Condition 148 to include references to the final Koala Plan of Management approved by the Secretary under Condition 45A
- renumbering conditions 148 and 149 to correct an administrative error.

SCHEDULE 2

The above approval is modified as follows:

- (a) Schedule 2 Administrative Conditions, Condition A18 is amended by the insertion of the **bold and underlined** words and deletion of the ~~struck out~~ words/numbers as follows:

Investigatory and Monitoring Works

A18.

1. Despite any other condition of the Project Approval, but subject to sub-conditions (2)-(5) below, a construction certificate may be issued under the Project Approval for Investigatory and Monitoring Work relating to the works authorised by this Project Approval. Any other conditions ~~precedent~~ **previously** imposed by this Project Approval for the issue of a construction certificate do not apply to a construction certificate issued pursuant to this condition.
2. A construction certificate issued pursuant to this condition must not authorise work that is the use of heavy duty equipment for the purpose of breaking ground for bulk earthworks or infrastructure.
3. Prior to the issue of a construction certificate pursuant to this condition for any works, the Environmental Management Plans referred to in conditions 40, 41, 42, 43, 44, ~~45A~~, 47 and the Summary of Management Plans referred to in condition 48 of this Project Approval must be submitted to the Secretary in accordance with those conditions.
4. A construction certificate pursuant to this condition for any clearing of vegetation must not be granted prior to the approval of the Environmental Management Plans referred to in conditions 40, 41, 42, 43, 44, ~~45A~~, 47 and the Summary of Management Plans referred to in condition 48 of this Project Approval by the Secretary.
5. Any work authorised by a construction certificate issued pursuant to this condition must be consistent with the Environmental Management Plans submitted to the Secretary in accordance with sub-condition (3) above and any approved Environmental Management Plans.

- (b) Schedule 2 Part Two – Bulk Earthworks and Civil Works (All Precincts), Condition 45 – Koala Plan of Management is amended by the insertion of the **bold and underlined** words and deletion of the ~~struck out~~ words/numbers as follows:

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Koala Plan of Management

45. The Koala Plan of Management shall be amended as follows:
- 1) ~~A revised offset strategy for the loss of Koala food trees incorporating the following:

 - a) ~~the restoration and planting of Koala food trees offsite (a 27ha area of land has been~~
 - b) ~~nominated by OEH and identified in Map 1. (attached)).~~
 - c) ~~planting of Koala food trees in the new east-west corridor as required by Term B4 of the Concept Plan approval.~~
 - d) ~~planting of Koala food trees in other suitable locations across the site within each relevant precinct of the development in general accordance with the plan titled "Proposed Koala Compensatory Habitat Area Staging Plan, Condition 45, Figure 1, JWA Pty Ltd, 29 April 2014", and as modified by any approval of the revised Koala Plan of Management under this condition. The timing of plantings shall be in accordance with the approved revised Koala Plan of Management required by Condition 45(2).~~
 - e) ~~Koala food tree plantings are to be minimised in areas that are identified as naturally regenerating~~~~
 - 2) ~~The amended KPoM approval shall include details of the Koala food tree planting schedule with numbers and staging and be prepared in consultation with Council and submitted to the Secretary for approval within 6 months of the date of determination of the application (No. 2012/2328) made under sections 130(1) and 133 of the Commonwealth Environmental Protection and Biodiversity Conservation Act or prior to issue of any construction certificate, whichever occurs first.~~
 - 3) ~~The amended KPoM shall have regard to any determination of the NSW Scientific Committee established by the Threatened Species conservation Act 1995~~

Koala Offsets

- ~~45.~~
(a) **1) The following offsets must be provided to compensate for the loss of 1.59 ha of primary and 6.42 ha of secondary (Class A) koala habitat on-site:**
- a) **the restoration and planting of koala food trees on 27 ha of land within Cudgen Nature Reserve; or where the full 27 ha cannot be planted within Cudgen Nature Reserve, the entire or balance of the koala food tree planting will be undertaken on other lands in a Koala Activity Precinct or Koala Linkage Precinct (as defined in the Tweed Coast Comprehensive Koala Plan of Management 2015) in the Tweed Shire Council local government area, or on the Kings Forest site as approved by the Secretary**
 - b) **the creation of 6.26 ha of compensatory koala habitat within the east-west corridor**
 - c) **the creation of 62.51 ha of compensatory koala habitat on residual lands on-site**
 - d) **the on-site compensatory koala habitat, inclusive of the east-west corridor must comprise:**
 - i. **65.44 ha of primary koala habitat;**
 - ii. **3.33 ha of secondary koala habitat; and**
 - iii. **the planting of primary and secondary koala food trees.**

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~~(b)e)~~ **All compensatory koala habitat must be located in the areas identified in the updated Koala Plan of Management approved by the Secretary under Condition 45A of this approval.**

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- (c) Schedule 2 Part Two – Bulk Earthworks and Civil Works (All Precincts), insert new Condition 45A - Koala Plan of Management Update(s) after Condition 45 as follows:

45A Koala Plan of Management Update(s)

Prior to the issue of any Construction Certificate, the Proponent must submit an updated Koala Plan of Management prepared in consultation with council and submitted to the Secretary for approval. The updated Koala Plan of Management must address the following:

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1. Verification of Habitat and Vegetation Mapping

- a) the boundaries of the retained koala habitat and the compensatory koala habitat identified in Figures 19 to 21 of the Koala Plan of Management dated 4 October 2018, must be verified by a suitably qualified independent ecologist, with ~~h~~ skills in GIS mapping; and
- b) provide offset areas with a minimum of 1,000 m² in area; and
- c) the updated KPOM must include GIS shapefiles, including metadata describing each shapefile and what it represents, and how each polygon is coded for the following GIS layers:
 - i. retained koala habitat;
 - ii. compensatory koala habitat;
 - iii. retained Wallum Sedge Frog habitat;
 - iv. compensatory Wallum Sedge Frog habitat;
 - v. retained heathland;
 - vi. heathland regeneration areas; and
 - vii. any other conservation outcomes affecting the implementation of the Koala Plan of Management.

Note: For clarity, the management outcomes identified within the GIS layers required under b) iii) to vi) above will not form part of the final Koala Plan of Management approved by the Secretary.

These layers will be used to confirm:

- there are no overlaps between the retained and compensatory koala habitat, or the compensatory Wallum Sedge Frog habitat as outlined in Section 10.5.3 of the Koala Plan of Management dated 4 October 2018, and
- overlaps between the compensatory koala habitat and heathland regeneration areas do not exceed 10% of the total on-site offset area, as identified in the Koala Plan of Management dated 4 October 2018.

2. Offsite Offset

Update Section 10 of the Koala Plan of Management dated 4 October 2018, to include a framework for securing and implementing the 27 ha off-site offset required under Condition 45 above. This framework must specify:

- a) that 27 ha of koala food tree planting will be undertaken in Cudgen Nature Reserve, and where the full 27 ha cannot be planted in Cudgen Nature Reserve, the entire or balance of the koala food tree planting will be undertaken on other lands within a Koala Activity Precinct or Koala Linkage Precinct (as defined in the

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~~Tweed Coast Comprehensive Koala Plan of Management 2015)~~ in the Tweed Shire Council local government area ~~or on the Kings Forest site~~;

- b) if 27 ha of suitable land is not identified within Cudgen Nature Reserve ~~prior to the issue of the first Construction Certificate for either vegetation clearing or bulk earthworks~~, the Proponent will request the Secretary's approval to undertake any residual koala food tree planting on an alternate site within a Koala Activity Precinct or Koala Linkage Precinct ~~(as defined in the Tweed Coast Comprehensive Koala Plan of Management 2015)~~ within the Tweed Shire Council local government area ~~prior to the issue of the first Construction Certificate for either vegetation clearing or bulk earthworks~~. ~~Any request to undertake koala food tree planting outside Cudgen Nature Reserve must be lodged within six months of the issue of the first Construction Certificate permitting vegetation clearing or bulk earthworks~~;
- c) all koala food tree planting that will occur:
- i. in Cudgen Nature Reserve must commence within ~~24-12~~ months of the OEH identifying the lands available for koala food tree planting;
 - ii. in an alternate offset location as approved by the Secretary pursuant to Condition 45 of this approval, planting must commence within ~~24-12~~ months of the Secretary approving an alternate offset location; and
- d) all off-site koala food tree planting will be finalised, ~~unless otherwise approved by the Secretary~~, within ~~3-2~~ years of planting commencing in accordance with c) above; and
- e) the mechanisms required to secure the in-perpetuity conservation of any koala food tree planting(s) located outside Cudgen Nature Reserve.

3. Staging of Retained and Compensatory Koala Habitat

- a) Update the Staging Plan in Table 10 of the Koala Plan of Management dated 4 October 2018, to:
- i. ensure compensatory koala habitat is provided at a ratio of at least 1:8.6 for each stage of the project where koala habitat clearing is proposed;
 - ii. require koala food tree planting within the east-west corridor prior to the commencement of works within Stage 2; and
 - i. clarify all retained koala habitat will be managed in accordance with the approved Vegetation Management Plan following the commencement of the project, as per the requirements of Condition A13.

Note: 3. a) ii. above will require the Management Plan for the east-west corridor to be lodged and approved by the Secretary prior to the commencement of works within Stage 2.

4. Vegetation Management

- a) update Appendix 6 of the Koala Plan of Management dated 4 October 2018, to specify:
- i. the performance indicators, performance criteria and corrective actions only apply to the compensatory koala habitat (i.e. the koala offset plantings)
 - ii. ~~the establishment and maintenance period performance criteria for the following indicators: seedling survival, native canopy cover, weed presence shrub and ground cover recruitment, and infrastructure (e.g. associated fencing and signage); the following Biodiversity Assessment Method (BAM) vegetation integrity scores for each vegetation zone must be achieved for the relevant plant community types: composition 100, structure 50, and function 25; the following Biodiversity Assessment Method (BAM) vegetation integrity~~

Commented [A10]: As noted previously. Needs appropriate reference for Koala Activity and Linkage precincts.

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Commented [A12]: As noted previously. Needs appropriate reference for Koala Activity and Linkage precincts.

Commented [A13]: DP&E propose to allow approval of details of an alternative offset site to be provided 6 months after CC for clearing or bulk earthworks. There is a significant risk that it will take longer than 6 months this to secure an alternative offset site potentially allowing the proponent to carry out clearing without certainty about the delivery of the required offset. It is therefore recommended that this approval be required before CC.

Commented [A14]: 2 years lag time is too long. Recommend 12 months. Note under Proposed condition 45B onsite offsets must be "substantially established" prior to CC for clearing. It is not clear why such a lengthy delay is proposed for the offsite offset.

Commented [A15]: 3 years is too long to commence planting. Suggest make it 2 years with a provision for the secretary to vary this if there are extenuating circumstances e.g. prolonged drought.

Commented [A16]: The proposed condition is not workable this is because: 1) the plantings are primarily for koalas and are not designed to replicate a particular Plant Community Type (PCT); 2) under the approval all performance criteria need to be framed in terms of the in terms of the "establishment period" and "maintenance period"; 3) the proposed performance criteria do not address the critical early phases (establishment period) of the plantings; and 4) PCTs for the far north coast are not finalized. What is needed here are measurable indicators that define progress on establishing the plantings.

Commented [A17]: This is not considered workable 1) the plantings are primarily for koalas not designed to replicate a particular PCT; 2) the critical trigger is meeting the establishment period criteria which may not contain all species for a particular not a theoretical endpoint which is not time bound; 3) PCTs for the far north coast are not finalized; and; 4) under the approval all performance criteria need to be framed in terms of the Establishment and Maintenance periods.

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~~scores for each vegetation zone must be achieved for the relevant plant community types: composition 100, structure 50, and function 25;~~

- iii. where natural regeneration of native shrub and groundcover species has not occurred within the first ~~7-3~~ years of management, planting of suitable native shrub and groundcovers will be undertaken to achieve compliance with the vegetation integrity scores for each plant community type (PCT);
- iv. the management measures required to ensure the removal of slash pine will not result in the clearing of retained koala habitat;
- v. the tree species selection and planting densities for all planting proposed within the off-site offset area; and
- vi. the details of any on-going monitoring and management measures, and the standards for achievement for all off-site koala food tree planting. Bushfire Management

Commented [A18]: This is not considered workable 1) the plantings are primarily for koalas not designed to replicate a particular PCT; 2) the critical trigger is meeting the establishment period criteria which may not contain all species for a particular not a theoretical endpoint which is not time bound; 3) PCTs for the far north coast are not finalized; and; 4) under the approval all performance criteria need to be framed in terms of the Establishment and Maintenance periods.

Commented [A19]: Suggest 3 years is plenty of time to decide if enhancement planting is required. Based on past natural regeneration on the site it is considered more likely that in some cases natural regeneration may need to be temporarily suppressed to ensure that offset plantings survive

- a) specify site specific bushfire management measures, including the location of fire breaks and details of fuel reduction burns (i.e. frequency) required to facilitate the persistence of Koalas on-site.

5. Consistency with other Environmental Management Plans (EMP)

- a) specify the koala management measures that must be incorporated into the residual EMPs for the project; and
- b) specify the management of roaming domestic dogs must be included in the Feral Animal Management Plan.

6. Fencing and Koala Crossings

- a) the Fencing Plan(s) ~~contained in the Koala Plan of Management dated 4 October 2018~~ must be revised to demonstrate temporary or permanent fencing will not result in:
 - i. the clearing of any retained koala or Wallum Sedge Frog Habitat
 - ii. clearing within any heathland regeneration areas; or
 - iii. the creation of isolated patches of compensatory koala or Wallum Sedge Frog habitat, or heathland revegetation areas within the environmental protection zone or the ecological buffers;
 - iv. ~~barriers to wildlife movement, including koalas, during the construction period;~~
 - v. ~~barriers to wildlife movement, including koalas, over the proposed golf course (Precinct 14); and~~
- b) amend the bridge abutments for the Blacks Creek underpass to provide a setback of 2 m either side of the creek bed to provide underpass opportunities for koalas.

Commented [A20]: Consistent with other similar proposed conditions

Commented [A21]: This permits the replacement of temporary fences either side of roads through environmental areas to be replaced by gates during the construction period if underpasses cannot be established prior to bulk earthworks

Commented [A22]: This ensures that koalas and other terrestrial wildlife can use the golf course as contemplated in the Concept Plan. Contrary to DP&E statement that Mod 2 approved the "expansion" of the golf course (see p 28 of DP&E report of Dec 2018), it is noted the golf course was always located partly within the ecological buffers and anticipated koalas using the entire golf course. This includes the KPoM for Mod2 – see figures 14 and 20 which show koala tree planning within the golf course and mention the need for fencing to prevent koalas from accessing the adjacent urban areas. Further, Mod 2 contains no consideration of how excluding faunal use of the ecological buffers in the golf course could meet the ecological buffer requirements of the Kings Forest Major Project SEPP.

Commented [A23]: Reflects revisions required under 7a)

Commented [A24]: Same terminology as 7a) to which the note refers.

Commented [A25]: Suggest that "area for area" more precisely reflects the requirement here (i.e. if one ha of offset is deemed to have failed one ha should be offset elsewhere).

Commented [A26]: It is highly unlikely that the Maintenance Period will be triggered if the offsets are failing. This is because the Maintenance Period commences once the Establishment Period criteria have been achieved.

Commented [A27]: 10 years is too long. Seven years provides plenty of time to get the offsets established and take corrective actions before triggering contingency measures at another site.

Note: The Fencing Plan(s) may also need to be amended revised if the boundaries of the compensatory or retained koala habitat require revision due to the requirements of 45A 1.a) above.

7. Contingency and Offset Strategy

- a) Revise section 13.1 of the Koala Plan of Management dated 4 October 2018, to specify:

Contingency Measures for the Establishment of the Compensatory Koala Habitat

- i. offsets will be provided on ~~an area for area pro-rata~~ basis, for any compensatory koala habitat that does not meet the ~~maintenance required period~~ performance targets within ~~10-7~~ years; and

- ii. identify the timing for providing any offsets required to achieve consistency with (i) above.

Contingency Measures to Address a Decline in Koala Numbers On-Site

- iii. a bond or bank guarantee must be provided for the implementation of suitable conservation measures in the event there is a statistically significant decline in koala numbers on-site until five years after the project is complete;
- iv. the sum of the bond must be agreed by the Secretary prior to the issue of the first Construction Certificate permitting the clearing of vegetation on-site; and
- v. the bond must be paid to and held by the Secretary from the issue of the first Construction Certificate permitting the clearing of vegetation, until five years after the project is complete and the Proponent has demonstrated that there has been no statistically significant reduction in koala number on-site to the satisfaction of the Secretary.

Commented [A28]: It is not clear whether iii – v are workable due to low numbers of koalas and difficulties associated with determining the cause of any population declines, statistically significant or otherwise. Also, the proposed test statistic is koala occupancy rate rather than koala numbers.

Commented [A29]: This could be decades

8. Administrative Changes

- a) remove all references to a “horticultural or environmental specialist” confirming “substantial establishment” of compensatory koala habitat has occurred, and replace them with references to a “an independent restoration ecologist approved by the Secretary”;
- b) remove all references to the Proponent forfeiting the environmental bond where substantial establishment of the compensatory koala habitat is not achieved;
- c) ensure establishment and maintenance phase performance criteria are identified for all mitigation actions included in the updated Koala Plan of Management;
- d) remove all references to the Proponent nominating a representative to sit on the Tweed Coast Management Committee;
- e) confirm the Friends of the Koala are the relevant licenced koala care group in the Tweed local government area;
- f) specify corrective actions for implementation if the forest red gum koala offset plantings do not initially survive on-site; and
- g) address the relevant administrative changes recommended in Tweed Shire Council’s submission dated 15 November 2018, in consultation with council and to the satisfaction of the Secretary.

Commented [A30]: Forest red gum is only one of the koala food trees proposed for planting on the site. Corrective actions should apply to all planting areas not just individual species.

Commented [A31]: It is presumed this relates to changes recommended by council that are not otherwise addressed elsewhere in this draft Mod.

Commented [A32]: This is consistent with other existing conditions relating the revisions of the environmental management plans

Commented [A33]: Council has previously advised that an off-leash dog area would be required. This condition addresses this issue and Concept Plan Condition C2 (3)(f) which specifically requires any such areas to be included within stage specific updates of the KPOM

- h) provide specifications for an off leash dog exercise area which is to be located outside of environmental areas and ecological buffers and well away from existing or proposed koala habitat.
9. Any approval to the updated Koala Plan of Management does not authorise vegetation clearing works, and the Environmental Management Plans and the Summary of Management Plans required under conditions 40, 41, 42, 43, 44 and 47 must be approved in accordance with Condition A18, prior to any vegetation clearing occurring on-site.

- (d) Schedule 2 Part Two – Bulk Earthworks and Civil Works (All Precincts), insert new Condition 45B – Delivery of On-Site Compensatory Koala Habitat after new Condition 45A as follows:

45B Delivery of On-Site Compensatory Koala Habitat

- ~~(e)~~(a) All on-site compensatory koala habitat must be provided at a ratio of 1:8.6 (i.e. for every hectare (ha) of koala habitat removed, 8.6 ha must be provided) over the life of the project; and
- ~~(e)~~(b) Prior to the issue of each Construction Certificate authorising the clearing of koala habitat, the Proponent shall provide evidence to the Certifying Authority that the

compensatory koala habitat in the preceding stage is substantially established meets the relevant establishment period completion criteria.

Commented [A34]: This terminology ensures consistency with Project Condition 39 which requires all environmental management plans to be revised to include

Note: Condition 45B only applies to each Construction Certificate issued after the first Construction Certificate authorising the clearing of koala habitat.

- (e) Schedule 2 Part Two – Bulk Earthworks and Civil Works (All Precincts), insert new Condition 45C – Environmental Management Plan Updates after new Condition 45B as follows:

45C Environmental Management Plan (EMP) Updates

- 1. The Proponent must update the residual EMPs to incorporate the relevant koala management measures identified in the Koala Plan of Management approved by the Secretary under Condition 45A, prior to the issue of any Construction Certificate issued under Condition A18.

Commented [A35]: The proposed removal of these sub-clauses is premature. This is because the fencing and koala crossing designs are to be revised under proposed condition 45A (7) and these sub-clauses remain relevant to way in which these revisions are carried out.

- (f) Schedule 2 Part Two – Bulk Earthworks and Civil Works (All Precincts), Condition 46 – Koala Infrastructure is amended by of the insertion of **bold and underlined** words and deletion of the ~~struck out~~ words/numbers as follows:

Commented [A36]: This revision responds to the issue raised by DP&E whereby it may be difficult to establish the underpasses prior to bulk earthworks. A possible solution under this condition is to not use temporary fencing on either side of the roads during construction in favor of gates at either end of the environmental areas which would be closed at night thus allowing free movement between habitat areas at night. This would need to be accompanied by construction management measures to minimize road strike during the day.

46. Koala Infrastructure

- 1. Any roads through the environmental areas of the site must include:
 - a) fencing on both sides of the road of a design that will prevent the crossing by dogs and koalas;
 - b) fauna underpasses installed at intervals sufficient to allow unimpeded movement by wildlife including koalas across roads. Such fencing and underpasses within Environmental Protection Areas are to be constructed prior to the commencement of bulk earthworks in the southern and/or western development precincts; and
 - c) any other temporary measures necessary to maintain habitat connectivity and minimise the risks to wildlife including koalas during construction.

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- ii. ~~vi. Precinct 1 and 5 Fauna exclusion fencing must be integrated with fencing at Tweed Coast Road. Such fencing is to be constructed at the completion of bulk earthworks.~~
- iii. ~~2. Precinct 1 and 5 Fauna exclusion fencing must be integrated with fencing at Tweed Coast Road. Such fencing is to be constructed at the completion of bulk earthworks.~~

Commented [A37]: The proposed removal of these sub-clauses is premature. This is because the fencing and koala crossing designs are to be revised under proposed condition 45A (7) and these sub-clauses remain relevant to way in which these revisions are carried out.

- vi. ~~Precinct 1 and 5 Fauna exclusion fencing must be integrated with fencing at Tweed Coast Road. Such fencing is to be constructed at the completion of bulk earthworks.~~
- 2. ~~Precinct 1 and 5 Fauna exclusion fencing must be integrated with fencing at Tweed Coast Road. Such fencing is to be constructed at the completion of bulk earthworks.~~
- vii. ~~3. The design and precise location of fauna exclusion fencing must ensure that the buffer area available to fauna is maximised and makes provision for a functional maintenance zone each side of the fencing in order to allow sufficient room for replacement and maintenance of the infrastructure.~~

Commented [A38]: OK to delete this as timing now covered under 46(6)
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- viii. ~~4. Precinct 1 fauna exclusion fencing should be sited at the outer edge of the 50m ecological buffer.~~

~~5. **Koala infrastructure must comply with the following requirements:**~~

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- ~~iv-a) **prior to the commencement of construction works in each precinct, the Proponent must install temporary or permanent the fencing identified for that precinct in the updated Koala Plan of Management approved by the Secretary;**~~
- ~~b) **prior to the issue a Subdivision Certificate for each precinct, the Proponent must install all permanent koala fencing and underpasses identified for that**~~

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precinct in the updated Koala Plan of Management approved by the Secretary;

- c) fauna underpasses must be constructed in the locations identified in the updated Koala Plan of Management approved by the Secretary. All fauna underpasses must be constructed concurrent to the road works approved under the Construction Certificates for precincts 2 – 5, 6, 11 and 12 - 14 of the project.**

v.
ix.

~~4-6.~~ Signage shall be erected in strategic locations within Precincts 1, 2, 3, 4 and 5, such as in the public open space areas within Precinct 5 and at fauna underpasses, advising residents that Koalas are active in the area and dogs should be kept on a leash at all times and encourage residents to keep dogs in enclosed yards between the hours of 6pm and 6am.

~~2-7.~~ Erection of permanent vandal proof signs shall be erected at regular intervals to inform people about the purpose of the Koala exclusion fencing and the importance of maintaining the fence.

- (g) Schedule 2 Part Two – Prior to Commencement of Construction Works, Condition 64 – Koala Infrastructure is amended by of the insertion of **bold and underlined** words and deletion of the ~~struckout~~ words/numbers as follows:

Exclusion Fencing and Underpasses

64. ~~Fauna exclusion fencing and underpasses (including any temporary fencing and underpasses) for roads traversing Environmental Protection Areas are to be constructed prior to the commencement of bulk earthworks in any of the southern and/or western development precincts.~~

Prior to the commencement of construction works in each precinct where roads traverse the Environmental Protection Areas, the Proponent must install all temporary and/or permanent fauna exclusion fencing identified for that precinct in the updated Koala Plan of Management approved by the Secretary.

All fauna underpasses on roads traversing the Environmental Protection Areas must be constructed concurrent to the road works approved under the Construction Certificates for precincts 2 – 5, 6, 11 and 12 - 14 of the project.

- (h) Schedule 2 Part Two – Bulk Earthworks and Civil Works (All Precincts), Condition 148 – Koala Plan of Management is amended by of the insertion of **bold and underlined** words and deletion of the ~~struckout~~ words/numbers as follows:

Koala Plan of Management

148. All necessary management measures relevant to Precinct 5 (exclusion fencing, road grids, traffic calming devices, underpasses etc) required by the ~~approved Koala Plan of Management prepared by James Warren and Associates dated August 2012~~ **updated Koala Plan of Management approved by the Secretary under Condition 45A**, must be constructed and functional prior to the release of a Subdivision Certificate for the first stage of the subdivision in Precinct 5. Evidence is to be obtained from a suitably qualified ecological professional that certifies management measures have been constructed in accordance with the **updated** approved Koala Plan of Management **approved by the** Secretary and ~~submitted to the Secretary for approval.~~

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Commented [A39]: May be a combination for any precinct

- (i) Schedule 2 Part Two – Bulk Earthworks and Civil Works (All Precincts), Condition 148 - Public Reserves & Drainage Reserves is amended by of the insertion of **bold and underlined** words and deletion of the ~~struckout~~ words/numbers as follows:

149 ~~148~~. The Proponent must make necessary arrangements for the progressive dedication of the public reserves and drainage reserves within Precinct 5 on the registration of the relevant plan of subdivision for each stage. Areas to be dedicated are to be consistent with sheets 1 to 11 'Plan of Proposed Subdivision of Lot 2 (Precinct 5) Kings Forest for Stage 1 Project Application' dated 5 September 2012, revision D, prepared by Landsurv Pty Ltd.

End of Modification

For further information regarding this matter please contact either:

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Yours faithfully

Vince Connell
DIRECTOR PLANNING AND REGULATION