



7 November 2018

**Casuarina Town Centre – Concept and Project Approval
MP 06_0258 MOD10**

1. INTRODUCTION

1. On 19 September 2018, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning and Environment (**Department**) a modification application (**MOD 10 Application**) from Newton Denny Chapelle, on behalf of Clarence Property (**Proponent**) to amend the existing Concept and Project Approvals for the Casuarina Town Centre (**Project**).
2. The project is a transitional Part 3A project under clause 2 of Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (**Transitional Regulation**), and the Commission is the consent authority in respect of such transitional Part 3A projects under the Minister for Planning's delegation of that function to the former Planning Assessment Commission by instrument of delegation dated 14 September 2011. The Commission is to be taken to be the same legal entity as the Planning Assessment Commission, pursuant to clause 7 of the Transitional Regulation.
3. Under the Minister's delegation dated 14 September 2011 the Commission is the consent authority in respect to the Proponent's MOD 10 Application because:
 - the Project constitutes a development of a kind declared by an environmental planning instrument as development for which a public authority (other than a Council) is the consent authority; and
 - the Department received more than 25 submissions from the public objecting to the MOD 10 Application.
4. Professor Mary O'Kane AC, Chair of the Commission, nominated Professor Zada Lipman (Chair), Peter Duncan AM, and Russell Miller AM to constitute the Commission determining the MOD 10 Application.

1.1 Site and locality

5. According to the Department's Modification Assessment Report MP 06-0258 MOD 10 provided to the Commission on 19 September 2018 (**DMR**) the Casuarina Town Centre is a 26.2 hectare (**ha**) site, which is located approximately 15 kilometres (**km**) to the south of Tweed Heads.

"Low to medium density residential developments adjoin the northern and southern boundaries of the site. The Casuarina Beach foreshore is located to the east of the site, and the Tweed Coast Road adjoins the western boundary of the site, with the Cudgen Nature Reserve located further to the west".

6. A site inspection was conducted by the Commission on 22 October 2018 (see section 3.4) to gain an understanding of the physical attributes of the Project. From this inspection the Commission noted that significant parts of the western and southern portions of the Project have been developed, and that the area subject of the MOD 10 Application is generally vacant land with the exception of a public carpark which has been constructed in the eastern portion of the site.
7. The Commission further noted at the site inspection that the vacant portions of the Project have been significantly altered through the development of stormwater swales and depositing of excess fill from neighbouring developments.
8. The Project, as is the subject of the MOD 10 Application is shown in **Figures 1 and 2** below.

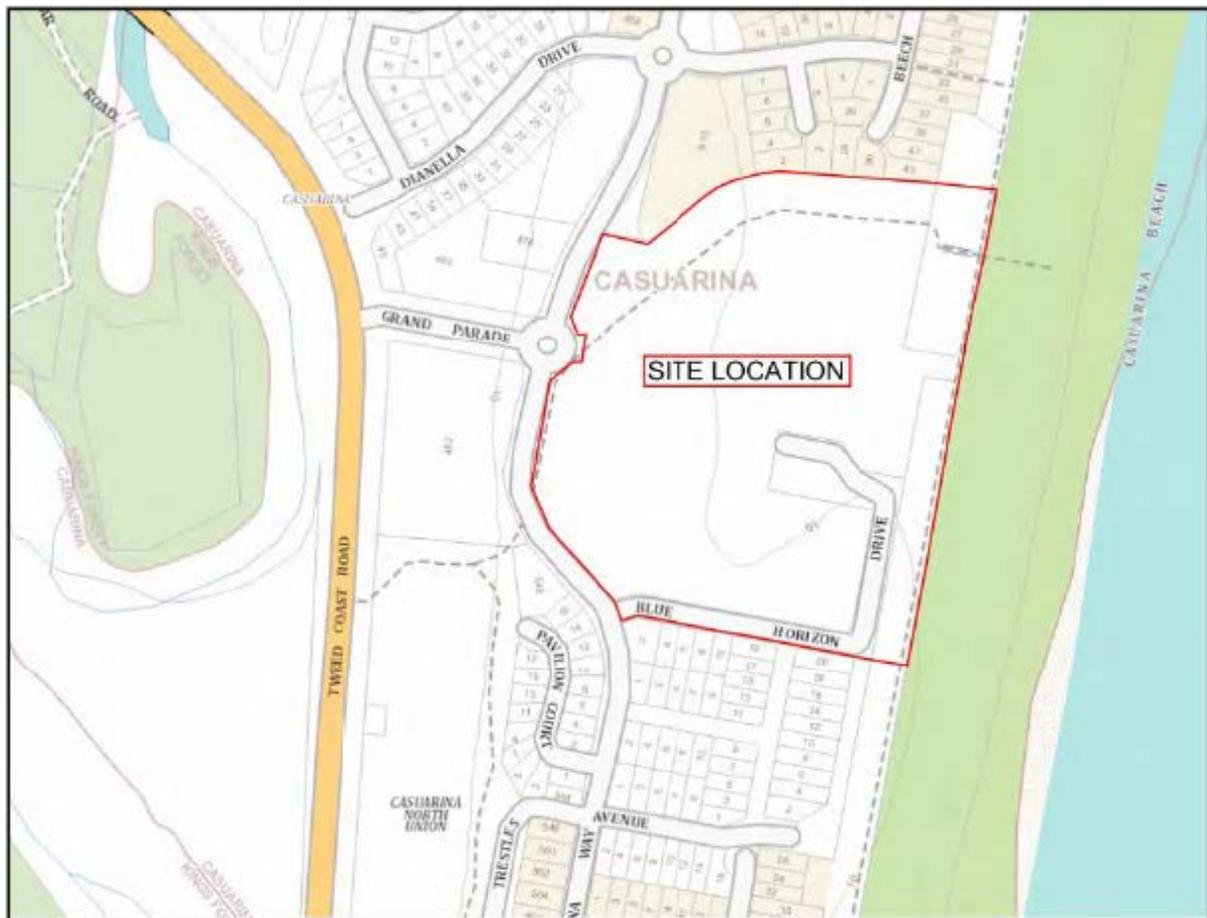


Figure 1 – MOD10 Site Location (Source: Proponent's s75W Modification No. 10)



Figure 2 – MOD10 Site Location (Source: Proponent's s75W Modification No. 10)

1.2 Background to Development Application

9. The DMR and the Proponent's section 75W (**s75W**) Modification No. 10 Report (**Proponent's MOD 10 Report**) provide a historical summary of the Concept and Project Application. From these sources the Commission understands the history of the Project to be:
 - Concept Plan and Stage 1 Project Application approved by the Minister of Planning on 20 September 2009, which approved:
 - Concept Plan:** subdivision of 61 allotments, construction of retail centre, hotel, road network and car parking, services, landscaping and open space; and
 - Stage 1 Project Approval:** subdivision of 61 allotments, construction of retail centre, bulk earthworks and vegetation clearing, road construction, closure of Dianella Drive, provision of infrastructure and services, and landscaping.
 - Modification 1 - approved 17 June 2010;
 - Modification 2 - approved 1 July 2011;
 - Modification 3 - approved 7 March 2012;
 - Modification 4 - approved 24 April 2013;
 - Modification 5 - approved 24 September 2013;
 - Modification 6 - approved 16 May 2014;
 - Modification 7 - approved 18 June 2014;
 - Modification 8 - approved 21 January 2014; and
 - Modification 9 - approved 15 June 2016.
10. A more detailed description of the original approvals and subsequent modification is contained in sections 1.2.1 and 1.2.2 of the Proponent's MOD Report.

1.3 Summary of Development Application

11. The DMR stated that the initial MOD 10 Application lodged with the Department sought the following amendments to the Project:
 - modification of the approved lot layout and increase in the number of single residential lots permitted on-site from 97 to 177 lots;
 - change in the use of a hotel and some medium density residential lots to low density residential development;
 - increase the height of the buildings permitted along Grand Parade from 3 storeys to 4 storeys;
 - modifications to the road layout and on-street parking;
 - modifications to open space, parks and pedestrian and cycleway linkages;
 - revisions to the drainage concept including changes to the approved piping and filling of an existing drainage swale along the northern boundary and stormwater infrastructure within the adjoining Council reserve;
 - reduction in width of the northern green buffer above the piped swale from 20 metres (m) to 10.5m;
 - changes to the approved staging including changes to timing for the provision of additional beach access; and
 - administrative changes to the conditions of approval in response to the above changes.
12. The DMR stated that on 30 October 2017 the Proponent submitted a Response to Submissions (**RtS**) which responded to issues raised by the public and through agency submissions. The DMR further stated that the Proponent provided additional information on 15 December 2017, 19 January 2018, 6 February 2018, 13 March 2018 and 10 April 2018.
13. The DMR further stated that the amendments included:
 - reinstatement of the approved 20m wide green buffer along the northern boundary;
 - changes to the stormwater design, including changes to the pipe design and landform works as agreed with Council engineers;
 - changes to the intersection design along Grand Parade to incorporate roundabouts to meet Council requirements;
 - increased on-street car parking;
 - creation of two additional residential allotments in Stage 1E; and
 - inclusion of Asset Protection Zones (**APZs**) on the eastern boundary of the site.
14. Based on the information before it and as stated by the DMR (section 2.2) the Commission understands that the MOD 10 Application before it for determination includes all details contained in Appendix 1.

1.4 Stated need for modification

15. The Proponent's MOD 10 Report stated that the amendments:

"...will deliver an improved design outcome which importantly preserves the core land uses within their location within the Casuarina Town Centre as originally approved by the Department of Planning and Environment".

2. THE DEPARTMENT'S CONSIDERATION OF THE APPLICATION

2.1 Key steps in Department's consideration of the Development Application

16. The MOD 10 Application was lodged with the Department on 14 January 2016 and was accompanied by a range of supporting documentation.
17. The DMR stated that the MOD 10 Application was placed on public exhibition for 35 days, commencing on 24 February 2016, and concluding on 29 March 2016. During the exhibition period the Department received 116 submissions which included five from agencies and 105 objections from members of the public.
18. A breakdown of the key issues raised, and the number of submissions during exhibition is provided in **Figure 3**.

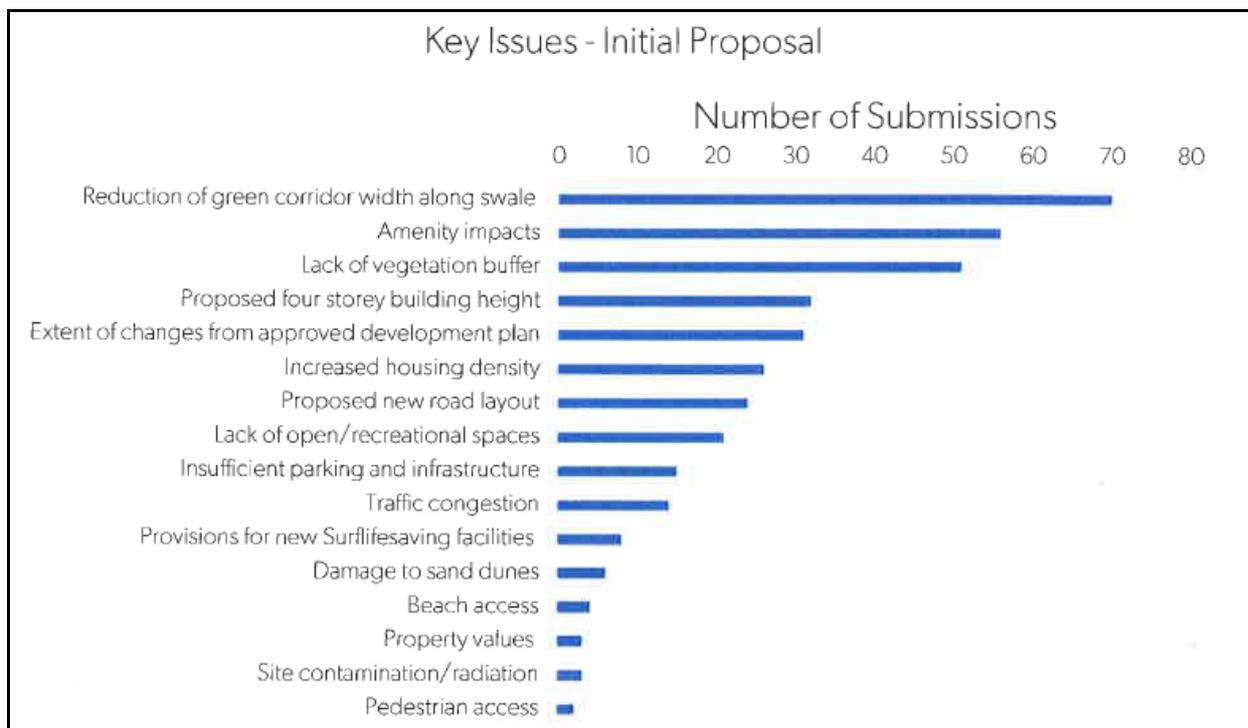


Figure 3 – Public Objections - Exhibition (Source: DMR)

19. The DMR further stated that the Proponent's RtS was made available on its website and notified to agencies and members of the public who made submissions during the original exhibition period. This further notification period lasted 14 days between 17 November 2017 and 30 November 2017. During this period the Department received a total of 58 submissions which included four from agencies and 54 objections from members of the public.
20. A breakdown of the key issues raised, and the number of submissions during notification is provided in **Figure 4**.

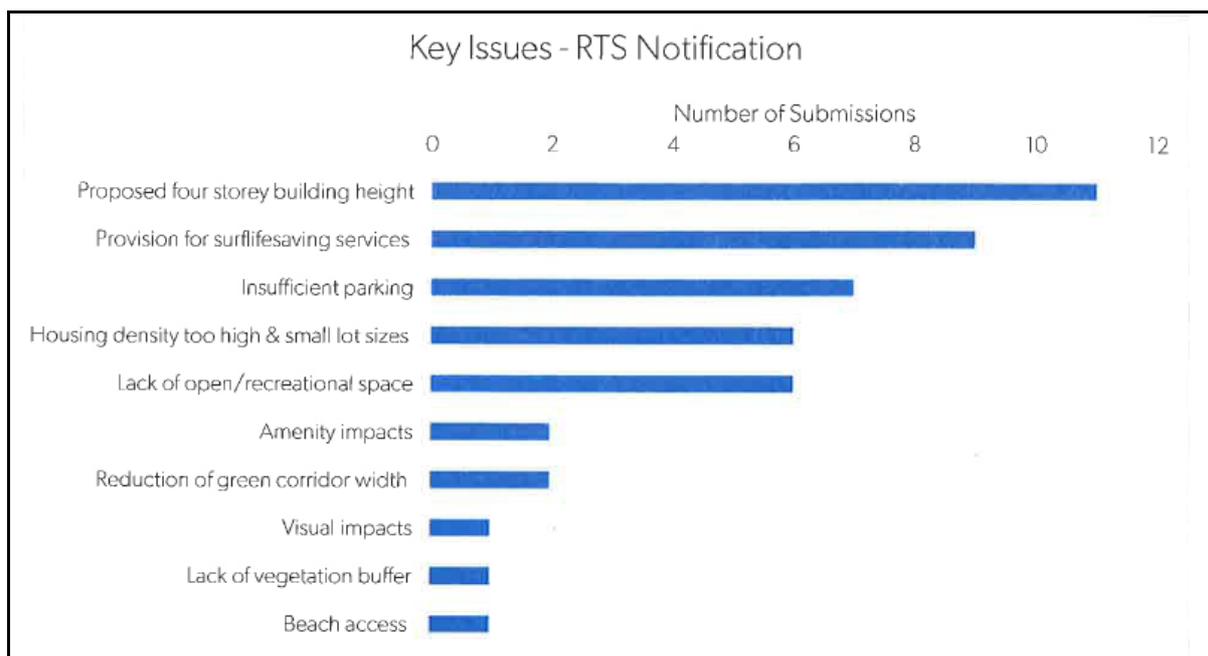


Figure 4 – Public Objections - Notification (Source: DMR)

21. The DMR stated that no agency objected to the MOD 10 Application, but many raised concerns or sought clarification. The nature of agency comments is discussed in greater detail within section 4.2 of the DMR.
22. The Department has prepared an assessment report (referred to as the DMR) in respect to the MOD 10 Application.

2.2 The Department's modification report

23. The DMR, dated 14 September 2018, identified the following key issues associated with the Project:
 - density and land use;
 - urban design and character;
 - road design;
 - open space provision;
 - cycleway layout; and
 - staging.
24. The DMR concluded that *“the proposed modification is appropriate”* and that the Department is *“satisfied the proposal would not result in any significant impacts beyond those already assessed and approved. The Department considers the proposal is approvable subject to the conditions of approval outlined within this report”*.

3. THE COMMISSION'S MEETINGS AND SITE INSPECTION

25. As part of its determination, the Commission met with various interested parties as set out below.

3.1 Meeting from the Department

26. On 15 October 2018, the Department met with the Commission. A copy of the meeting agenda is available on the Commission's website, and a copy of the meeting transcript was made available on the Commission's website on 31 October 2018.

3.2 Meeting from the Proponent

27. On 15 October 2018, the Commission met with the Proponent. A copy of the meeting agenda is available on the Commission's website, and a copy of the meeting transcript was made available on the Commission's website on 31 October 2018.

3.3 Site inspection

28. On 22 October 2018, the Commission conducted an inspection of the site (being the area subject of the MOD 10 Application) assisted by representatives of the Applicant. The inspection included the extension of Grand Parade, a walk around the perimeter of the site, including inspections of existing stormwater infrastructure, the existing car park and beach access points along the foreshore. The Commission was also shown the location of nearby sporting fields to the south west of the site. The following local community representatives attended, observed the site inspection and assisted the Commission's understanding of the issues:
- Julie Murray (Kingscliff Ratepayers and Progress Association Inc); and
 - Mark Grunwald (Casuarina Seaside Salt Resident Association).

3.4 Meeting with Tweed Shire Council

29. On 23 October 2018, the Commission met with Tweed Shire Council (**Council**). A copy of the meeting agenda is available on the Commission's website, and a copy of the meeting transcript was made available on the Commission's website on 5 November 2018.

3.5 Public meeting

30. To hear the community's views on the MOD 10 Application, the Commission held a public meeting at the Mantra on Salt Beach, Gunnamatta Avenue, Kingscliff on 23 October 2018. A list of the speakers who presented to the Commission is available on the Commission's website. A transcript of the public meeting is also available on the Commission's website. A copy of the material tendered at the public meeting is also available on the Commission's website. The Commission was assisted in its assessment of this MOD 10 Application by the contributions from each speaker. All persons were offered the opportunity to provide written submissions to the Commission within seven days after the public meeting. A summary of issues raised in written submissions and by speakers is outlined below.
31. An opportunity to lodge any written comments was afforded until seven days following the public meeting. Comments were made available on the Commission's website on 29 October 2018 and on 31 October 2018. Five written comments were received prior to the close of the seven-day period.
32. In summary, the main issues of concern:
- the proposal to increase the height of three buildings from three to four storeys;

- opposition to any additional beach access;
- the provision of a new surf club and opposition to that; and
- concerns about the nature and quality of open space.

33. As noted above, the Commission received oral and written comments from the public regarding the provision of a surf club within the Casuarina precinct. The Commission also received written comments from Surf Life Saving Far North Coast noting that the provision of a new surf club is not supported by the Far North Coast Branch, but that the development of an appropriate storage facility would be supported. The Department considered this issue in the DMR, noting that the *“matter is outside the scope of the current proposal and the final size and nature of the facilities is a matter which can appropriately be determined as part of the assessment of a future DA, in consultation with Surf Lifesaving Australia”*.

4 THE COMMISSION’S CONSIDERATION

4.1 Material considered by the Commission

34. In this determination, the Commission has carefully considered the material (**material**) contained in Appendix 2.

4.1.1 Building Heights

Public comments

35. The Commission heard concerns from speakers at the public meeting and received written comments regarding the impacts of the MOD 10 Application’s proposed building heights on the locality. These concerns included that:

- Council is reducing building heights in the area; and
- buildings exceeding three storeys would be inconsistent with the locality and should not be permitted.

Proponent’s consideration

36. The Proponent in its MOD 10 Application is seeking to modify the Project to permit medium density allotments in parts of the site to be developed from the currently approved maximum of three storeys to 4 storeys. The areas of the site subject to this change are illustrated in the plans submitted by the Proponent titled “Density” and “Built Form” and prepared by RPS (see **Figures 4 and 5**).

37. The Proponent’s MOD Report stated that:

“The modified master plan encompasses two four storey apartment sites which bookmark the western end of Grand Parade as the entry point by utilising built form as a way to create a threshold in to the town centre area”.

38. The Proponent provided to the Commission a ‘Built Form Compliance Table’ (**see Table 2**) which was submitted as part of the original concept plan approval. The Proponent also provided a copy of the now superseded Tweed Development Control Plan – Part C which provided the applicable building height controls of the time, which is consistent with the ‘Built Form Compliance Table’.

Land Use Type	Height		Density		Retail Floor Space	Min Landscape Area of Site
	Ridge & Ceiling	No. of Storeys	Plot Ratio	Min No. Units per m ² of site area		
Retailing (Lot 1)	13m – 10m	3	0.5	N/A	3,660m ²⁽²⁾	30%
Commercial (Lot 2)	13m – 10m	3	0.5	N/A	N/A	30%
Commercial (Lot 17)	10 – 8m	2	1.0	N/A	2000m ²	10%
Mixed Use (Lots 5, 6, 12, 13)	12.2m – 9.6m	3	2.0	1 per 130m ²		20%
Medium Density Residential (Lots 3-4, 7-11, 14-16, 18)	12.2m – 9.6m	3	1.2	1 per 130m ²	N/A	20%
Low Density Residential (Lots 19-56)	9m – 7m	2	0.6	N/A	N/A	25%

Table 2 – Built Form Compliance Table

39. The Proponent's MOD Report further stated that:

“The Grand Parade is lined with three and four storey mixed use retail (ground floor) and residential units (levels 2 & 3) and thus seeks to establish a diverse and strong built form edge within this precinct. Importantly, the proposed building height accords with the 13.6m building height limit prescribed within the Tweed Local Environmental Plan”.

40. The Proponent's RtS confirmed that:

“The maximum building height continues to accord with the Tweed LEP 2014 [Tweed Local Environmental Plan 2014] of 13.6m. Future development of the key medium density and shop-top housing lots will be governed by the Council's maximum building height stipulated for the site at 13.6m”.

“Reference is made to the fact this proposal does not seek approval for the buildings as they will be dealt with by a separate approval process with Tweed Shire Council”.

Department's consideration

41. The DMR stated that:

“The original Concept Plan set a three-storey height limit for all mixed use, medium density and hotel development. The proposal seeks to modify the approved building envelopes and increase the height of some buildings from three storeys to four storeys”.

42. In relation to the Departments consultation with Council the DMR stated that:
“Council did not object to the proposed building heights, noting that the current Council controls under LEP 2014 [Tweed Local Environmental Plan 2014] allow a building height of 13.6m, which would support 4 storeys”.
43. The DMR stated that the proposed building heights raises concerns regarding the bulk and scale of the proposed building envelopes as *“they have been designed with minimal building separation and setbacks”*. The DMR further stated that *“the four-storey building envelope in the north-west corner of the site has been designed as one continuous building, occupying most of the site”*.
44. The DMR concluded that:
“the proposed building heights are appropriate, as they would align with Council’s current planning controls, which permit buildings up to four storeys in height. The proposed four storey buildings would also be set back from the beach, and located behind three storey buildings, so they would not look visually dominant of significantly impact on views from the beach”.
45. To address the concerns referred to in paragraph 43 the DMR concluded that:
“the three and four storey building envelopes should therefore be further refined, to appropriately break down their scale and ensure they achieve appropriate levels of residential amenity for future residents. In the case of the four-storey building envelope in the north-west corner of the site, it should be split up into separate building envelopes to achieve a more appropriate scale”.
46. To reinforce the importance of the conclusion referenced in paragraph 47 the DMR has recommended new conditions of consent which:
- clarify that *“the future built forms shown in the concept plans are only approved to the extent that they indicate the location of where three and four storey building envelopes can be developed [Condition B8 - Concept Plan Approval];*
 - clarify that *“the GFA [gross floor area] of the proposed building envelopes shown in the plans is not approved as the buildings will be subject to further design refinement as part of the assessment of future development applications [Condition B8 - Concept Plan Approval]; and*
 - require that *“new Future Environmental Assessment Requirement, requiring the design of the buildings to be considered against the relevant requirements of the Apartment Design Guide and the built form controls of Tweed LEP 2014 [Condition C1 - Concept Plan Approval];*
47. The DMR finally concluded that:
“Subject to refinement of the three and four storey building envelopes at the Development Application stage, the Department considers the proposal is acceptable”.

Council’s consideration

48. Council stated that it did not object with the building height / storey amendments, and that there were no current plans within Council to amend the building height controls for the Casuarina area.
49. Council further confirmed the information referred to in paragraph 48 in a letter to the Commission dated 30 October 2018 which stated:

“it is noted that there are no current Council controls or policies which propose to amend the building height control over the subject development site”.

Commission’s consideration

50. The Commission accepts the conclusions of the Department outlined in paragraphs 44, 45, 46 and 47 above, and the recommendations outlined in paragraph 48, because of the reasons provided in paragraph 51.
51. The Commission considered a number of factors in deciding that it was appropriate, at the concept stage, to allow the Proponent the opportunity to develop up to four storey buildings on three sites identified in the MOD 10 Application. First, the proposal is consistent with the permissible building height in the area of 13.6m as specified in the Tweed Local Environmental Plan 2014 and which is capable of supporting four storey development. Secondly, buildings of up to four storeys on the sites identified would not be higher than the adjoining Santai building. Third, the MOD 10 Application involves an overall reduction in density on the site, not an increase. Finally, the proposed location of the three four storey buildings is not inappropriate having regard to the overall concept.
52. Based on the material, including the factors considered at paragraph 51, the Commission finds that the request to increase the maximum building height from three to four storeys for three building envelopes, in the locations indicated, should be approved.
53. The Commission notes that building design and layout will be subject to future assessment under the relevant statutory controls.

4.1.2 Density

Proponent’s consideration

54. The Proponent’s RtS responded to a request by the Department to provide additional clarification around the dwelling density that would result from the MOD 10 Application.
55. The Proponent’s RtS stated that:
“The density for the unit sites have been obtained from the Environmental Assessment Report prepared by Victor G Feros Town Planning Consultants (2008) as lodged with the Department of Planning. Section 3 of the Environmental Assessment Report identified a dwelling yield of 1 dwelling/130m² of site area for the original lots 4-16 & 18”.
56. The Proponent’s RtS further stated that:
“We note the Department of Planning & Environment has not approved a specific dwelling yield as all future development on the approved lots is subject to a separate development approval process. However, the density outlined in the original approval does provide a basis for technical assessments associated with the development of the Casuarina Town Centre”.
57. The Proponent’s RtS provided a ‘Dwelling Yield Analysis’ table (**refer Table 3**) which provides a comparison of the changes in dwelling yields under the original approval, Modification 6 and the MOD 10 Application. The RtS stated that only Precincts B and C are the subject of Modification 10.

Casuarina Town Centre Precinct / Area (m ²)	Original Approval – No. of Dwellings	Modification 6 – No. of Dwellings	Modification 10 – No. of Dwellings
A – 27,228m ²	209	40	40
B – 41,990m²	307	307	201
C – 27,442m²	211	211	129
D – 8,821m ²	67	67	29 (see note 1)
E – 4,433m ²	8	8	8
F – 8,351m ²	18	18	18
G – 5,765m ²	12	12	12
TOTAL	832	663	437

Note 1: Development Application 2014/605 was approved by Tweed Shire Council for 29 townhouses.

Table 3 - Dwelling Yield Analysis

58. The Proponent's RtS concluded that MOD 10:
- “will have a reduction in dwellings from 518 to 330 dwellings” [36% reduction].
 - “The population within Precincts B and C will decline as a result of Modification 10 from 1,139 to 726 being a reduction of 413 residents” [36% reduction].

Department's consideration

59. The DMR stated that:
“The proposed modification seeks to reduce the overall density of the development by replacing the medium density residential development with single dwelling lots. This would reduce the overall number of dwellings on the site from 663 to 437 (-226 dwellings) and increase the overall number of single dwelling lots from 97 to 178 (+81 lots)”.
60. In relation to the Department's consultation with Council, the DMR stated that:
“Council raised concern about the proposed reduction in density, noting the site has been designed as a town centre, where higher residential densities would normally be developed in proximity to retail and other services”.
61. In response to Council's concerns, the DMR stated that:
*“The Proponent submitted an Economic Impact Assessment (EIA) (**Appendix B**) to support the proposal. The EIA assessed the potential impacts of reducing the residential density on the viability of the town centre”*

“The EIA concludes the proposal would therefore have a negligible impact on the economic viability of the town centre, given it would draw most of its business from a broader catchment area than the subject site itself”.
62. The DMR stated that “increased density was a key issue raised in public submissions” and noted that the “Proponent has since clarified the proposal would reduce the overall density of the development by 47% compared to the original approval”.
63. The DMR further stated that it:
“accepts the findings of the EIA and considers the reduced density would have negligible impact on the viability of the town centre”.

64. The DMR stated that it:
“is satisfied the proposal is acceptable, as:
- *the proposed low density lots in the southern part of the site would be consistent with development typically expected in the R1 General Residential zone*
 - *medium density and mixed-use development would generally be retained through the central part of the site, adjacent to Grand Parade, consistent with development normally expected within the B2 Local Centre zone*
 - *the proposed lower density housing within the R3 Medium Density Residential zone and is permissible and consistent with the housing immediately adjoining the northern boundary of the site, which is also within the R3 zone”.*
65. The DMR stated that in seeking to activate the retail frontage on Grand Parade:
“A modification has therefore been recommended to convert this block to a mixed-use development incorporating retail frontages...the provision of additional retail uses at this location would result in a better outcome for the town centre”.
66. The DMR concluded that:
“The proposal would not result in any additional environmental, amenity or traffic impacts given the proposed reduction in density. Further, the Department is satisfied the town centre would remain viable despite the reduced density and the proposal would still be compatible with the underlying zoning of the site. As such, the Department is satisfied the reduced density and changes to the housing type and land use are acceptable”.

Commission’s consideration

67. The Commission notes that in paragraph 57 that the dwelling and allotment figures quoted from the DMR relate to the extent of change from the Project as originally approved, and not the extent of change as currently approved under Modification 6 as referenced in paragraphs 55, 56 and Table 3. The Commission has considered the extent of change and how it relates to what is currently approved. The Commission also notes that the hotel use has been deleted as part of the MOD 10 Application and replaced with low density residential allotments.
68. The Commission accepts the conclusions of the Department outlined in paragraphs 62, 63 and 65 above for the reasons provided in paragraph 67 and below in paragraph 69.
69. The Commission understands that as per paragraph 65, allotment 72 and 78 to 83 would be converted to a single medium density mixed use allotment. The Commission finds that this would promote greater activation of the street frontage in accordance with condition B38(3) of Stage 1 Project Approval.
70. Based on the material, the Commission finds that the reduction in dwelling density and subsequent reduction in population appropriate, because it is consistent with the applicable zoning objectives for the site under the *Tweed Local Environmental Plan 2014*, and that the economic viability of the town centre will not be unduly compromised by the reduced density.

4.1.3 Open Space

Public and Council comments

71. The Commission heard concerns from Council and received written comments regarding the impacts of the MOD 10 Application on the provision of open space within the site. These concerns included concerns in relation to:
- the reduction in open space from the original approval; and
 - impact of stormwater and sewerage infrastructure on the usability of the open space areas.

Proponent's consideration

72. The Proponent's MOD Report did not specifically address amendments to the open space provisions of the MOD 10 Application with the exception of amendments to the development plans submitted with the MOD 10 Application.

73. The Proponent's RtS provided a response to concerns raised in submissions to the Department regarding the MOD 10 Application's amendments to open space.

74. The Proponent's RtS stated that:

"The amended subdivision design has increased the area of greenspace through the reinstatement of the 20m green buffer in the northern portion of the town centre".

"The northern buffer will be embellished with the shared pedestrian/cycleway which extends from Casuarina Way through to the coastal pathway providing a link for residents to the commercial and public recreational areas within Casuarina".

75. In relation to the Civic Park the Proponent's RtS stated that:

"the project does not qualify for a neighbourhood park, but rather a local park under Specification D14 [Tweed Development Control Plan 2018]. A local park is to be designed within area of 0.25ha – 0.4ha and used for children's play. The current proposal creates a public reserve in the order of 3,200sqm [0.32ha] which falls within the requirement of the local park design standards within Specification D14".

76. The Proponent's RtS further stated that:

"Council has identified the landscaping master plan and neighbourhood park is now generally supported".

Department's consideration

77. The DMR stated that:

"Concerns were raised in public submissions about the size and quality of public open space on the site. It is noted that many of these concerns specifically related to reducing the width of the northern green corridor, which is no longer sought. Other concerns related to the size and quality of the main Civic Park".

78. The DMR stated that:
“The proposal seeks to make a number of changes to open space on the site, including:
- *an additional area of open space/stormwater infiltration site in the south-west corner of the site (2,071 m²)*
 - *a reduction in the size of the Civic Park and adjoining foreshore land (from 6,563 m² to 3,500 m²)*
 - *deletion of the southern neighbourhood park (a small 454 m² pocket park) and adjoining foreshore open space area.*
79. The DMR further stated that:
“the proposed changes would result in a reduction in the total amount of open space to be dedicated to Council from 16,450 m² to 13,8058 m².
- “the proposal would reduce the amount of open space to be dedicated to Council by 16%. However, the proposal would reduce dwelling numbers by 47% compared to the original approval, thereby reducing the demand for open space”.*
80. In relation to the Department’s consultation with Council the DMR stated that:
“Council did not object did to the proposed reduction in open space. Council noted there would be less demand for open spaces given the proposed reduction in density”.
- “Council suggested a new condition be imposed requiring detailed landscape plans to be submitted to and approved by Council” [Condition B52 - Project Approval].*
81. The DMR concluded that:
“future residents would still have good access to open space, noting:
- *the proposal incorporates a high quality and accessible local park with structured play equipment and recreation facilities, in addition to other informal open space areas*
 - *the development adjoins the coastal reserve and the beachfront immediately to the east of the site and playing fields immediately to the west of the site, providing additional casual and structured open space for residents*
 - *the approval requires the payment of developer contributions towards regional open space, enabling the provision of further open space in the region to serve future residents and the wider community*
 - *the modification results in an increased amount of private open space, with more dwelling houses and backyards”.*
82. The DMR further concluded that:
“the Civic Park would provide a high-quality space which will appropriately integrate with the adjoining coastal reserve, meeting the needs of residents and visitors”.

Commission’s consideration

83. The Commission notes that the Proponent provided additional clarification to the Commission by way of email dated 19 October 2018, and further clarification by way of

email dated 31 October 2018.

84. The Proponent's email of 31 October 2018 stated that:
"The area to be dedicated within Precinct B & C equates to 12,596sqm under the current approval (Areas 1, 3 & 5). The proposed modification provides for 11,297sqm (refer to attached plan & areas 1-6). The reduction is generated through the loss of the cycleway between Santai and Lot 51 and 200sqm from the civic park".
85. The Commission notes that in paragraph 79 the open space figures quoted from the DMR relate to the extent of change across the entire Project site as originally approved and not the extent of change across only Precincts B and C to which MOD 10 applies. The Commission has considered the extent of change how it relates to the MOD 10 Application (Precincts B and C) only as referenced in paragraph 82.
86. The Commission accepts the conclusions of the Department outlined in paragraph 79 and 80 above because of the reasons provided in paragraph 85.
87. Based on the material, the Commission finds that the overall 1,299sqm reduction in open space, which includes a 200sqm reduction in the civic park, is not inappropriate, because it is consistent with the reduction in population as referenced in paragraph 55, and it will not unduly compromise the quality and quantity of the open space provided by the Project for the community.

4.1.4 Sewer Pump Station and Odour

Council comments

88. The Commission heard concerns from the Council, regarding the impacts of the proposed sewer pump station (**SPS**) encroaching on areas of open space. The Commission also raised questions about the potential for associated odour impacts on users of the Civic Park, particularly children using the proposed play equipment area. In response to questions from the Commission in the meeting with the Council, a Council officer expressed the view that possible odour, the visual impact and maintenance access required for the SPS could impact on the ambience of the area however the location was an acceptable compromise.

Proponent's consideration

89. The Proponent's MOD Report did not specifically address amendments to the sewerage infrastructure of the Mod 10 Application with the exception of amendments to the development plans submitted with the MOD 10 Application.
90. The Proponent's RtS provided a response to concerns raised in submissions to the Department regarding the MOD 10 Application's amendments to the sewerage infrastructure.
91. The Proponent's RtS stated:
"The current design provides for a combination of conventional gravity sewer and the inclusion of a sewer pump station. This approach addresses the depth of sewer infrastructure as faced with the originally lodged Modification to the satisfaction of Tweed Shire Council".

92. In the Proponent's letter dated 18 October 2018, the Commission was provided with further clarification on the location of the SPS which stated:

"Multiple options were considered within Tweed Shire Council's 2100 Coastal Hazard (further away from the park). All options were deemed to be non-compliant, and advice was received from Tweed Shire Council that the pump station could not be located within the 2100 Coastal Foreshore zone. This position is reinforced by Condition B55 which states the sewer pumping station shall not be located within DCP B25 Coastal Hazard 2100 max zone

Based on the above point the pump station was located in the only remaining available location which provided 30m of buffer to the residential and mixed use lots".

93. The Proponent's letter dated 18 October 2018 also provided further clarification on the predicted odour impacts of the SPS on the Civic Park and stated:

"With respect to the play equipment, based on a 10m offset from the pump station and maximum play equipment height of 4m, the project engineer has advised a maximum odour concentration of 0.23OU [Odour Unit] is predicted. This level is significantly less than the adapted criteria of 2.5OU".

Department's consideration

94. The Commission notes that the DMR does not specifically address concerns regarding the impact of the SPS and associated odour impacts on the open space provided and the Civic Park.

Council's consideration

95. During the Commission's meeting with Council on 23 October 2018, Council confirmed that the location of the SPS had compromised the extent of land available for open space and the usability of such open space areas. However, Council also confirmed that they were satisfied with the overall outcome in relation to the sewerage aspects of the development, noting the engineering limitations that exist.

Commission's consideration

96. The Commission accepts the information provided by the Proponent outlined in paragraphs 90 and 91 above because of the reasons provided in paragraph 95.
97. Based on the material, the Commission finds that whilst the location of the SPS is not ideal, it is acceptable, because of the engineering limitations on where it could be located. The Commission accepts that, while proximity to the proposed play equipment area is not optimal, the imposition of a 10m offset between the sewage pump station and playground area will minimise the odour impact on users.
98. The Commission also considers that sufficient open space has been provided within the site, and that Council as the regulatory authority for sewerage and public open space is generally satisfied with the MOD 10 Application.

4.1.5 Beach Access

Public and Council comments

99. The Commission heard concerns from Council, speakers at the public meeting, and received written comments regarding the impacts of the Project on local ecology due to the requirement to create an additional beach access off Grand Parade. In Council's 30 October 2018 letter to the Commission, Council's Natural Resource Management (NRM) Unit stated:

"NRM Unit preference is that, if required, an existing beach access is upgraded rather than creation of a new beach access. Creation of an additional access would not be supported.

Any relocation of an existing access would require detailed assessment of design, impact on flora and fauna, impact on coastal processes (i.e. increase in potential for dune erosion). If the proponents are keen to pursue a relocated beach access, a preliminary concept design and impact assessment would be useful to discuss with Council officers prior to progressing with detailed plans and seeking Reserve Trust consent to lodge".

Proponent's consideration

100. The Proponent's MOD Report stated that:
"the residents of Casuarina Town Centre already enjoy the benefit of existing two access pathways which are appropriately located for the frontage of the Town Centre".

Department's consideration

101. The DMR considered timing of the beach access proposed by the Proponent but did not address whether that beach access as proposed by the Proponent is required.

Commission's consideration

102. The Commission observed during its site inspection on 22 October 2018 that there is a well-established native vegetation zone between an existing public coastal walkway and the beach, providing shoreline erosion protection and wind and sand protection for dwellings. The Commission noted that there are three existing beach access points, one of which already exists in close proximity to Grand Parade.
103. The Commission further notes the reduction in density, dwellings and population as outlined in paragraphs 55 and 56, and the corresponding reduction in open space outlined in paragraph 82.
104. Based on the material, the Commission finds that an additional access to the beach from the existing coastal walkway is not justified because there is an existing beach access, close to the eastern end of proposed Grand Parade, and the reduction in density, dwellings and population sought under the MOD 10 Application do not justify retention of this requirement and the associated environmental impacts associated with vegetation clearing.

4.2 The public interest

105. The Commission notes that neither the Proponent or the DMR have specifically addressed the public interest of the MOD 10 Application.

Commission's consideration

106. In determining the public interest merits of the proposed modification, the Commission has had regard to the objects of the EP&A Act.

107. Under section 1.3 of the EP&A Act, the relevant objects applicable to the project are:

- a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- c) *to promote the orderly and economic use and development of land,*
- e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- f) *to promote the sustainable management of built and cultural heritage,*
- g) *promote good design and amenity of the built environment,*
- h) *promote the proper construction and maintenance of buildings, including the protection of health and safety of their occupants,*
- i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State, and*
- j) *to provide increased opportunity for community participation in environmental planning and assessment.*

108. A key relevant object of the EP&A Act to the MOD 10 Application, as outlined in paragraph 107, is the facilitation of Ecologically Sustainable Development (ESD). The Commission notes that section 6(2) of the *Protection of the Environment Administration Act 1991* states that ESD requires the effective integration of social, economic and environmental considerations in its decision-making, and that ESD can be achieved through the implementation of:

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

109. The Commission finds that the MOD 10 Application, if approved, is generally consistent with the ESD principles and the Objects of the Act because the MOD 10 Application:

- does not increase the overall disturbance footprint of the site as noted by the Commission on review of the development plans submitted with the MOD 10 Application;
- reduces the overall density and population impacts on the locality as discussed in paragraph 67-70; and
- will continue to provide the same benefits of the Project as originally approved without additional environmental impacts as discussed in paragraph 104.

110. The Commission finds that the modification, if approved, is in the public interest particularly having regard to the following:

- the requested increase in maximum building storeys from three to four in relation to three proposed buildings in locations proposed in the MOD 10 Application, within the 13.6m building height limits is appropriate as discussed in paragraph 51;
- the reduction in dwelling density is appropriate as discussed in paragraph 67 and 68;
- the reduction in open space is proportionate, because it is consistent with the reduction in population, and it will not unduly compromise the quality and quantity of the open space provided by the Project for the community as discussed in paragraph 85;
- that whilst the location of the SPS is not ideal, it is acceptable, because it will have limited odour impacts on users of the playground and Civic Park and sufficient open space has been provided within the Project site as discussed in paragraph 95;
- that an additional beach access is not justified because an existing access already exists in close proximity to the proposed beach access location, and the reduction in density, dwellings and population sought under the MOD 10 Application do not justify retention of this requirement and the associated environmental impacts associated with vegetation clearing as discussed in paragraph 104; and
- it demonstrates consistency with the objects of the EP&A Act as discussed in paragraph 108.

5. HOW THE COMMISSION TOOK COMMUNITY VIEWS INTO ACCOUNT IN MAKING DECISION

111. The views of the community were expressed through:

- public submissions and comments received (as part of exhibition and as part of the Commission's determination process) as discussed in paragraphs 18, 20, 35, 68 and 96; and
- members of the public who spoke at the public meeting or sent written comments during or after that meeting as discussed in paragraphs 35, 68 and 97.

112. In summary, views expressed by the community are discussed in paragraphs 18, 20, 36, 70 and 97;

113. The Commission carefully considered all of these views as part of making its decision. The way in which these concerns were taken into account by the Commission is set out in **section 4** above.

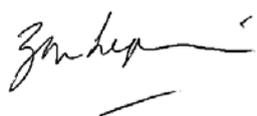
6. CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

114. The Commission has carefully considered the Material before it.

115. The Commission finds that the proposed modification to the development is within the broad scope of section 75W, and therefore the request to modify can be considered under section 75W.

116. For the reasons above at paragraphs 51, 67, 68, 85, 95, 103, 108 and 109, the Commission has determined that the consent should be subject to conditions. These conditions are designed to prevent, minimise and/or offset adverse environmental impacts and impacts on the community.

117. The reasons for the Decision are given in this Statement of Reasons for Decision dated 6 November 2018.



Prof. Zada Lipman (Chair)
Member of the Commission



Russell Miller AM
Member of the Commission



Peter Duncan AM
Member of the Commission

Appendix 1 - MOD 10 Application before the Commission

Aspect	Approved	Proposed
Staging	<p>Construction in 4 stages:</p> <p>Stage 1 (the Project Approval) carried out in 4 substages:</p> <ul style="list-style-type: none"> • 1A – development of Casuarina Way, roads 1, 5 and 6, development lot 1 (retail centre), lots 19 – 56 (low density residential) and associated bulk earthworks, landscaping and services • 1B – development of lots 58 to 97 (low density) and associated road and infrastructure works • 1C – development of lot 3 (medium density) and Lot 2A (childcare centre) • Balance of Stage 1 – Stormwater works, open space works, construction of Grand Parade <p>Stage 2 (subject to future assessment) being development of mixed use and commercial lots 2, 5, 12 and 17 (Icon building)</p> <p>Stage 3 (subject to future assessment) being development of mixed use and medium density residential lots 4, 6, 10, 11, 13 and 16</p> <p>Stage 4 (subject to future assessment) being development of the hotel</p>	<p>Construction in 2 stages:</p> <p>Stage 1 (the Project Approval) carried out in 5 substages:</p> <ul style="list-style-type: none"> • 1A – development of Casuarina Way, roads 1, 5 and 6, development lot 1 (retail centre), lots 19 – 56 (low density residential) and associated bulk earthworks, landscaping and services • 1B – development of lots 58 to 97 (low density) and associated road and infrastructure works • 1C – development of lot 3 (medium density) and Lot 2A (childcare centre) • 1D – Stormwater works, open space works, construction of all remaining roadworks and civil works • 1E – subdivision to create 84 low density Torrens Title and 8 medium density / mixed use lots <p>Stage 2 (subject to future assessment) being development of five mixed use, 3 medium density and 1 commercial lot</p>
Subdivision and land use	<p>Subdivision of land into 97 lots comprising:</p> <ul style="list-style-type: none"> • 78 low density residential lots; • 5 medium density residential lots; • 5 mixed use lots; • 2 commercial lots; • 1 retail lot; • 1 hotel lot; • 3 open space lots; and • 2 lots for the purposes of drainage 	<p>Subdivision of land into 178 lots comprising:</p> <ul style="list-style-type: none"> • 162 low density residential lots • 3 medium density residential lots • 5 mixed use lots • 2 commercial lots • 1 retail lot • 5 open space and drainage lots
Number of Dwellings	<p>663, including:</p> <ul style="list-style-type: none"> • 585 medium density • 78 low density 	<p>437, including:</p> <ul style="list-style-type: none"> • 275 medium density • 162 low density
Building Height	<ul style="list-style-type: none"> • 3 storey height limits for all mixed use, medium density and hotel development • Dwellings houses generally 2 storeys in height 	<ul style="list-style-type: none"> • 3 medium density lots would have a height of 4 storeys • 5 mixed use lots would have a height of 3 storeys • All remaining lots would have

		dwelling houses generally 2 storeys
Open Space Provision	<p>Total Open Space dedication 16,450m²</p> <ul style="list-style-type: none"> Northern green corridor 6,033m² Civic Park / foreshore land 6,563m² Other foreshore land 1,240m² Southern Park 454m² SW infiltration basin 1,680m² NW infiltration basin 480m² <p>(as per original approval)</p>	<p>Total Open Space dedication 13,805m²</p> <ul style="list-style-type: none"> Northern green corridor 4,965m² Civic Park / foreshore land 3,500m² Other foreshore land 741m² New stormwater reserve 2,071m² SW infiltration basin 1,643m² NW infiltration basin 885m²
Cycleways	<ul style="list-style-type: none"> An east-west cycleway within a green corridor in the northern part of the site, dedicated to Council A north-south cycleway within a green corridor on private land associated easements and connections to Casuarina Way 	<ul style="list-style-type: none"> East-west cycleway in northern green corridor retained and dedicated to Council North-south cycleway provided as part of proposed new road reserves and dedicated to Council. One connection to Casuarina Way deleted.
Road Layout	<ul style="list-style-type: none"> Three public roads provided in this part of the site. All other access is by private roadways / driveways 	<ul style="list-style-type: none"> Amended road layout incorporating five public roads plus six public laneways provided in this part of the site.
Car Parking	170 public spaces in the part of the site to which this modification relates	<p>Open Swale to be converted to piped drainage system with single 2700 mm x 1800 mm culvert and associated changes to landform works</p> <p>Provision of modified stormwater infiltration basin within the adjoining Council reserve</p>
Stormwater	Existing open swale approved to be converted to piped drainage system, incorporating 3 x 900 mm diameter pipes with associated landform works	<p>Open Swale to be converted to piped drainage system with single 2700 mm x 1800 mm culvert and associated changes to landform works</p> <p>Provision of modified stormwater infiltration basin within the adjoining Council reserve</p>
Bushfire	No asset protection zones (APZs) required to be provided	APZs to be provided for lots immediately adjoining the Council reserve

Appendix 2 - Material considered

- December 2009:
 - Presentation Plans, Cardno, Clarence Property, Dec 2009;
- January 2014:
 - Tweed Local Environment Plan Maps, Tweed Shire Council, 2014;
- June 2015:
 - Pump Station Plans, Tweed Shire Council, June 2015;
- October 2017:
 - Response to Submissions Cover Letter & Attachments, Newton Denny Chapelle, 3 Oct 2018;
- December 2017:
 - Response to RFS Comments, Newton Denny Chapelle, 15 Dec 2018;
- January 2018:
 - Response to Information Request, BG&E, 19 Jan 2018;
- April 2018:
 - Bushfire Threat Performance Solution Report, Peter Thornton, 9 April 2018;
- September 2018:
 - Referral Letter to IPC, Department of Planning, Sept 2018;
 - Modification Assessment, Department of Planning, Sept 2018;
 - Appendix A Environmental Assessment, Department of Planning, Sept 2018;
 - Appendix B Submissions, Department of Planning, Sept 2018;
 - Appendix C Notice of Modification Concept Plan, Department of Planning, Sept 2018;
 - Appendix C Notice of Modification Stage 1;
 - Appendix D Summary of Previous Modifications, Sept 2018;
 - Appendix E Consideration of Coastal SEPP, Sept 2018;
 - Conflict of Interest Register, IPC, 21 Sept 2018;
- October 2018:
 - Public Meeting Schedule, IPC, 23 October 2018;
 - Applicant Briefing Agenda, IPC, 15 Oct 2018;
 - Council Briefing Agenda, IPC, 23 Oct 2018;
 - Department Briefing Agenda, IPC, 15 Oct 18;
 - Public Meeting Notice, IPC, Oct 18;
 - Registration Form, IPC, Oct 18;
 - Comments & Presentations received before 30 Oct 18;
 - Correspondence emails between the proponent, IPC, 18 Oct 18 – 1 Nov 18;
 - Application DA Letter, Tweed Shire Council, 30 Oct 18;
 - Advice about buffer correspondence, Emma Butcher DPE, 16 Oct 18;
 - Advice about buffer to SPS correspondence, Emma Butcher DPE, 16 Oct 18;
 - Correspondence emails, Emma Butcher DPE, 11 Oct 18;
 - Correspondence emails, Damien Chapelle, 31 Oct 18;
- Submissions received by the Department of Planning, Agencies, July 2017 – April 2018;
- Open Space Dedication Plan, Clarence Property, Date unknown;
- Updated Site Layout Plan, Clarence Property, Date unknown;
- Submissions in response to PPR, Multiple Agencies, November 2017 – August 2018;
- PPR Website Submission, Govt Agency & Org;
- PPR Website Submissions, Public;
- Website Submissions, Public Feedback;
- EA Website Submissions, Gov Agency & Org; and
- EA Website Submissions, Public Feedback.