

ETHOS URBAN

Section 75W Modification

DA187-8-2004

9-13 Dianella Drive, Casuarina
Section 75W Modification

Submitted to The Department of Planning
and Environment
On behalf of Casuarina Corporation Pty Ltd

14 January 2019 | 16653



Contents

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1.0 Introduction

This Modification Application is submitted to the NSW Department of Planning & Environment in relation to State Significant Development consent DA187-8-2004 for the Santai Resort Tourist Facility at 9-13 Dianella Drive, Casuarina. The modification is made pursuant to Section 75W and Schedule 6A of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

In brief, a flexible change of use is proposed for 22 units within the Santai Resort. The flexible change of use will seek to permit:

- The ongoing use of the units as a form of short-term (tourist) accommodation; and
- The use of the units as a form of permanent residential accommodation.

No physical works are proposed as part of this modification application.

This report has been prepared by Ethos Urban on behalf of Casuarina Corporation Pty Ltd (the Proponent). The report describes the proposed modifications; outlines the purpose of the modifications; and provides a detailed assessment of the potential environmental impacts.

This report should be read in conjunction with the conditions of consent for State Significant Development Application (DA) DA187-8-2004 for the original project (**Appendix A**) and the Architectural Drawings and Design Verification Statement prepared by BKA Architecture, at **Appendix B** and **Appendix C** respectively.

2.0 Background

2.1 Consultation

Advice was sought from the Department of Planning and Environment (the Department) regarding the proposed modification application. The feedback received from the Department has been addressed within the modification application.

A summary of feedback received is provided in **Table 1** below.

Table 1 - Feedback received by the Department of Planning and Environment

Feedback	Comment
Detailed justification for the proposed modification.	<p>This Planning Report provides detailed justification of the proposed modification. Specifically, the modification:</p> <ul style="list-style-type: none"> • Is consistent with all relevant plans and policies (Section 5.1); • Is capable of providing appropriate residential amenity in accordance with SEPP 65 and the <i>Apartment Design Guide</i> (ADG) (Section 5.5); • Is not a matter of precedence in the region and supports local housing demand and short term tourist accommodation trends (Section 5.7); and • Will not generate any significant adverse environmental impacts.
Demonstration that the proposed modification is able to be assessed under section 75W of the EP & A Act.	Refer to Section 2.1 .
Proposed changes sought to the conditions of consent.	Refer to Section 4.2 .
The reason(s) for the imposition of Condition G12 within the conditions of consent.	Refer to Section 4.2 .
Any potential impacts on the proposed modification particularly in terms of Council's car parking requirements and Section 94 contributions.	Refer to Section 5.6 .
The views of the local council, if known.	Refer to Section 5.7 .
The preparation and accompaniment of detailed plans if relevant.	<p>Architectural Drawings and a Design Verification Statement has been prepared by BKA Architecture and is provided at Appendix B and Appendix C respectively.</p> <p>As no physical works are proposed as part of the modification, the technical information prepared by BKA Architecture is a means of demonstrating only, that the units applicable to this modification can generally achieve the objectives and requirements of SEPP 65 and the ADG.</p>

2.2 Planning Framework

2.2.1 Development Consent DA187-8-2004

Development consent DA187-8-2004 was approved by the (then) Minister for Planning on 12 September 2004 for the State Significant Development Santai Resort. Consent was granted for:

114 unit 2 storey tourist accommodation complex with lobby/reception area, guest dining area, guest lounge, central recreation courtyard with pools and restaurant and conference room.

The proposed development was categorised as a Tourist Facility pursuant to the *State Environmental Planning Policy No. 71 – Coastal Protection* and was therefore classified State Significant Development.

Two subsequent modification applications were made in 2006 to approve an extension of trading hours for the guest dining areas, and changes to the managers residence.

Development consent DA187-8-2004 was further modified in 2015 pursuant to Section 75W of the EP&A Act in order to enable the operation of the guest dining room as a public restaurant.

2.2.2 Part 3A Repeal

On 1 October 2011, Part 3A of the EP&A Act was repealed. Despite this, Part 3A continues to apply to certain projects subject to the transitional provisions identified in Schedule 6A of the EP&A Act. DA187-8-2004 is subject to these transitional arrangements and is therefore proposed to be modified pursuant to Section 75W of the EP&A Act.

2.3 Ownership Structure

Santai Resort is comprised of 114 individual short term (tourist) accommodation units, all of which are under strata ownership. Casuarina Corporation, the proponent of this modification, is the owner of 22 of these units. This modification is limited to the 22 units owned by Casuarina Corporation.

2.4 Land Owners Consent

Owner's consent for the 22 units which are the subject of this modification is provided at **Appendix E**. Consent of the Owners Corporation is provided at **Appendix F**.

3.0 Site Analysis

The site is situated within Casuarina, 4km south of the Kingscliff Town Centre within the far North Coast region of New South Wales. Casuarina is a coastal township situated adjacent Cudgen Creek to the west and Casuarina Beach to the east.

3.1 Site Location and Context

The site address is 9-13 Dianella Drive, Casuarina within the Tweed Shire Local Government Area. The site is located within the southern portion of Casuarina within a low and medium density, predominantly residential suburb.

The site is approximately 150m north east of the Casuarina Town Centre and Shopping Village.

The site's locational context is shown at **Figure 1**.

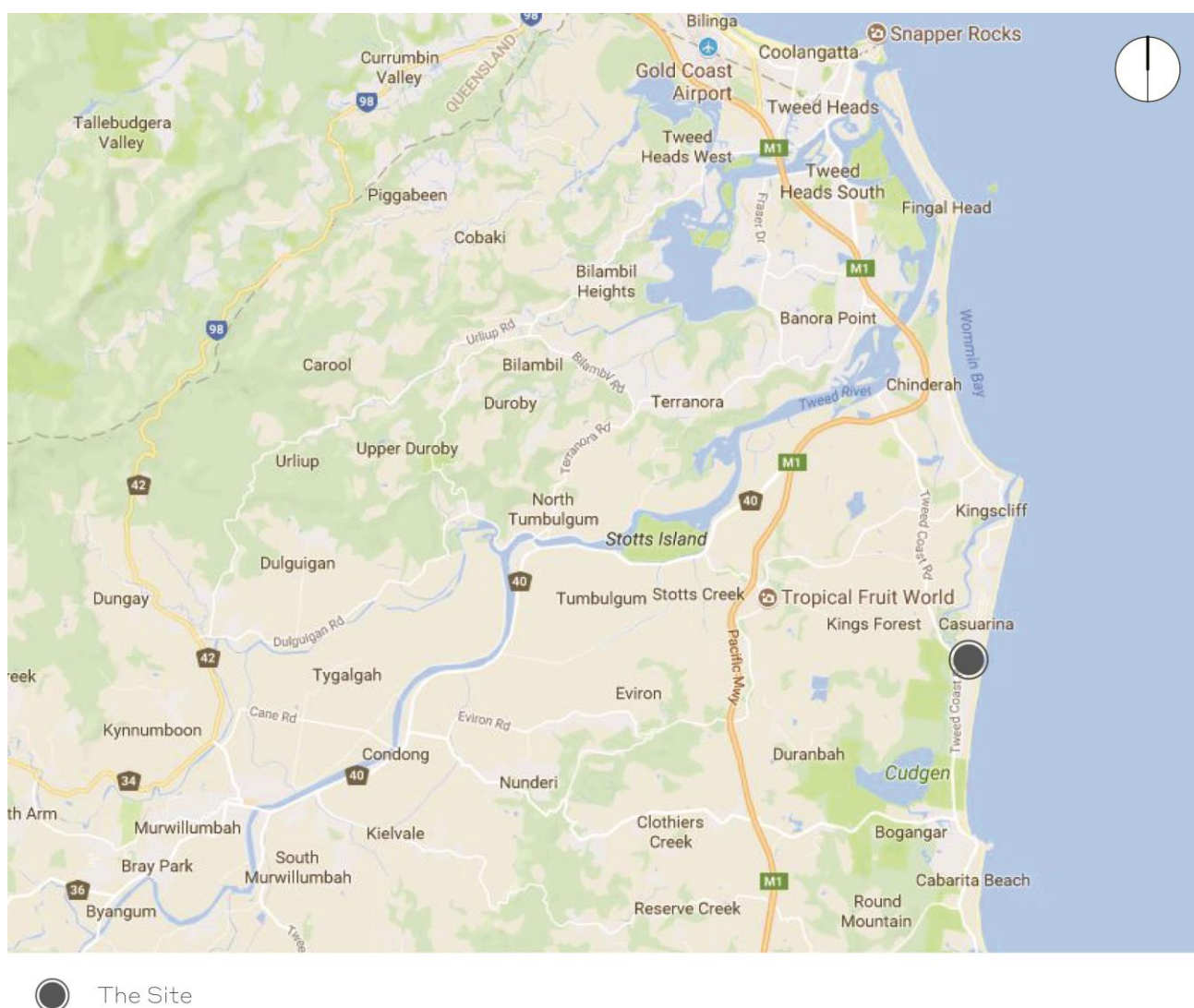


Figure 1 - Site context map

Source: Ethos Urban and Nearmaps

3.2 Site Description

The site is legally described as Lot 224 in DP 1048494. The site is irregular in nature and has a total area of 8,208m², with a frontage of 140m to Casuarina Way and 60m to Dianella Drive.

An aerial photo of the site is shown at **Figure 2**.



 The Site

Figure 2 - Site aerial

Source: Ethos Urban and Nearmaps

3.3 Existing Development

Santai Resort occupies the entire site and is comprised of 3 storey buildings with 3 habitable floors above parking. The buildings are arranged around a central pool and alfresco area.

Specifically, the Santai Resort comprises:

- 114 short term (tourist) accommodation units;
- Basement car park with capacity for 115 car spaces;
- 3 on grade car parking spaces; and
- Ancillary tourist accommodation services in the form of conference rooms, restaurant and bar.

3.4 Surrounding Development

The site is surrounded primarily by residential land uses comprising detached, low density typology. Specifically:

- North of the site and across Dianella Drive, lies public recreational land in the form of a small public park. Land beyond the park comprises detached low density residential development.
- Land directly east and west of the site comprises low density residential development. This development typology continues east to Casuarina Beach and west to Cudgen Creek. Casuarina Village Shopping Centre is located south west of the site and provides retail and supermarket services; and
- Vacant, undeveloped land adjoins the site's eastern boundary. Although vacant, the land is zoned for medium density residential purposes.

Photographs of the Santai Resort and surrounds is provided at **Figure 3** to **Figure 7**.



Figure 3 - North façade of the Santai Resort from Dianella Drive

Source: Ethos Urban



Figure 4 - Balcony and vertical privacy screening

Source: Ethos Urban



Figure 5 - Ground floor thoroughfare

Source: Ethos Urban



Figure 6 - Internal pool and communal open space

Source: Ethos Urban



Figure 7 - Open space directly opposite the site on Dianella Drive

Source: Ethos Urban

4.0 Description of Proposed Modification

Casuarina Corporation is seeking approval under Section 75W to modify State Significant Development Application DA187-8-2004.

This modification seeks a flexible change of use which relates to the 22 short term (tourist) accommodation units under the ownership of Casuarina Corporation. This application does not propose any physical works.

The scope of the modification application is addressed in the following sub-sections.

4.1 Change of Use

This modification seeks a flexible change of use to enable the units to also operate as a form of permanent residential accommodation.

As the units are contained within a development which will contain three or more dwellings, the residential accommodation will constitute a *Residential Flat Building*.

4.1.1 Units to Which this Modification Applies

The units under the ownership of Casuarina Corporation that are proposed for the dual use are identified in **Table 2**. Each comprise a combination of studio and one-bedroom units.

A copy of the Strata Plan for the units is provided at **Appendix D**.

Table 2 - Units under the ownership of Casuarina Corporation

Units								
Ground Floor	Lot No.	Mix	First Floor	Lot No.	Mix	Second Floor	Lot No.	Mix
Unit 103	3	studio	Unit 210	43	studio	Unit 318	92	studio
Unit 117	17	studio	Unit 218	51	studio	Unit 319	93	studio
Unit 119	19	studio	Unit 227	60	studio	Unit 320	94	1-bedroom
Unit 126	26	studio	Unit 228	61	studio	Unit 326	100	studio
Unit 127	27	studio	Unit 229	62	studio	Unit 327	101	studio
Unit 128	28	studio	Unit 241	70	studio	Unit 329	103	studio
Unit 131	31	studio	Unit 237	74	studio	Unit 337	111	studio
Unit 133	33	1-bedroom						

4.2 Modifications to the Conditions

The proposed flexible use necessitates amendments to the consent conditions of DA-187-8-2004. Words proposed to be deleted are shown in ~~bold strike through~~ and words to be inserted are shown in **bold italics**.

PART A – ADMINISTRATIVE CONDITIONS

A1 Development description

Development consent is granted only to carrying out the development described in detail below:

- (1) 114 unit 2 storey tourist accommodation **and permanent residential** complex, with lobby/recreation area, guest dining area, guest lounge, central recreation courtyard with pools and restaurant and conference room
- (2) Permanent residential accommodation is limited to Units 103, 117, 119, 126, 127, 128, 131, 133, 210, 218, 227, 228, 229, 241, 237, 318, 319, 320, 326, 327, 329, and 337**
- (3) All other lots and units in SP77971 are to be used in accordance with approved State Significant DA-187-8-2004.**

Justification

To identify units within the Santai Resort which can operate under a permanent residential or short term (tourist) accommodation land use.

PART G – POST OCCUPATION

Tourist Facilities

G12 Occupation Period

*The tourist facility approved by this consent will not be occupied by any proprietor or occupier of the unit for longer than forty two (42) consecutive days or an aggregate one hundred and fifty (150) days in any twelve (12) month period, **unless occupation is in respect to Units 103, 117, 119, 126, 127, 128, 131, 133, 210, 218, 227, 228, 229, 241, 237, 318, 319, 320, 326, 327, 329, and 337.** Such periods are to be calculated from the date of the first occupation of the tourist facility.*

Justification

Condition G12 currently restricts periods of occupation within the Resort. The amendment of Condition G12 will enable the units owned by Casuarina Corporation to have an unrestricted period of occupation and provide long term accommodation, in line with the residential land use proposed.

5.0 Assessment of Environmental Impacts

This chapter contains an assessment of the environmental effects of the proposed modification as described in the preceding chapters of this report.

5.1 Built Form and Design

No internal and or external fitout works are proposed as part of this modification. As such, the modification will not alter the built form parameters, design or façade of the Santai Resort.

The built form and design of the Resort provides a high level of amenity, comfort and services suitable for permanent residential accommodation. The use of deeply overhang eaves, hipped roofs and cantilevered balconies has provided a design considerate of the subtropical climate of the area, without compromising internal amenity.

5.2 Compliance with Relevant Strategic Plans and Policies

The consistency and compliance of this modification with the relevant strategic plans and policies is provided in **Table 3** below.

Table 3 - Consistency with key strategic documents

Strategy	Comment
North Coast Regional Plan	<p>This modification is consistent with the North Coast Regional Plan in that it:</p> <ul style="list-style-type: none"> Increases housing diversity and choice, and contributes to the 11,600 dwellings required for Tweed by 2036; Provides a form of residential accommodation suitable for couples and single person households, the household make-up expected to generate one third of the population growth expected in the region over the next 20 years. Provides a flexible use which preserves existing tourist and visitor accommodation, and reemphasises the continued importance of the tourism industry within the North Coast; and Provides a flexible change of use which accommodates seasonal accommodation and long-term housing demand.
Tweed Shire Council Community Strategic Plan 2011/2021	<p>This modification is consistent with Tweed Shire Community Strategic Plan 2011/2021 in that it:</p> <ul style="list-style-type: none"> Improves opportunities for housing diversity within an existing urban area; Provides residential accommodation to support Tweeds population growth, which is expected to exceed 100,000 by 2021; Provides a form of urban consolidation for residential development, ensuring open space and or agricultural land is not lost; Provides residential accommodation in an existing development, which utilises existing services, reducing the impacts to the community; and Does not impact on existing natural assets.

5.3 Environmental Planning Instruments

The original application was assessed against the following State Environmental Planning Policies:

- *State Environmental Planning Policy 55 – Remediation of Land (SEPP 55)*;
- *State Environmental Planning Policy No 44—Koala Habitat Protection (SEPP 44)*; and
- *State Environmental Planning Policy No 71—Coastal Protection (SEPP 71)*.

The proposed modifications sought do not affect the assessment of DA187-8-2004 against SEPP 55, SEPP 44 and SEPP 71, as such the assessment undertaken under the original project approval remains unchanged.

The proposed modifications sought however necessitate an assessment against *State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65)* and consideration of the *Apartment Design Guide (ADG)*. The proposal's consideration of the ADG is detailed in **Section 5.5** below.

Furthermore, consistency with the nine design principles of SEPP 65 has been detailed in the Design Verification Statement prepared by BKA Architecture and provided at **Appendix C**.

5.3.1 Tweed Local Environmental Plan 2014

The proposed modification has been assessed against the relevant provisions of the *Tweed Local Environmental Plan 2014* (Tweed LEP 2014), as detailed in **Table 4** below.

Table 4 - Consistency with the Tweed LEP 2014

Control	Comment	Compliance
Clause 2.1 Land use zoning	The site is zoned R1 General Residential.	✓ Residential flat buildings are permissible with consent in the R1 General Residential zone.
Zone objectives	<ul style="list-style-type: none"> • <i>To provide for the housing needs of the community;</i> • <i>To provide for a variety of housing types and densities;</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents;</i> • <i>To encourage the provision of tourist accommodation and related facilities and services in association with residential development where it is unlikely to significantly impact on amenity or place demands on services beyond the level reasonably required for residential use.</i> 	<p>The introduction of permanent residential accommodation is consistent with the zone objectives as it:</p> <ul style="list-style-type: none"> • Will improve long term housing options and availability within Casuarina; • Improve the diversity of high density housing options in line with local demand; • maintain tourist accommodation in conjunction with a residential land use; • provide a land use suitable to the existing development and capable of providing necessary facilities and services for permanent residential use; and • Will not generate an unsuitable land use which will reduce the amenity or increase the demand on services for the existing site.

Control	Comment	Compliance
Permitted with consent	<i>Attached dwellings; Bed and breakfast accommodation; Boarding houses; Child care centres; Community facilities; Dwelling houses; Food and drink premises; Group homes; Home industries; Hostels; Kiosks; Markets; Multi dwelling housing; Neighbourhood shops; Places of public worship; Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Serviced apartments; Shop top housing; Any other development not specified in item 2 or 4</i>	✓
Clause 4.3 Height of Buildings	The site has a maximum height of 13.6m. No physical works and or changes to the maximum height are proposed under this modification.	N/A No physical works and or changes to the maximum height are proposed under this modification.
Clause 4.4 Floor space ratio	The site has a maximum FSR of 2:1. No physical works and or changes to the maximum FSR are proposed under this modification.	N/A No physical works and or changes to the maximum FSR are proposed under this modification.
Clause 5.10 Heritage conservation	The site is not a heritage item, nor is it located within a heritage conservation area.	✓
Clause 7.5 Coastal risk management	The site is not located within a coastal risk area.	✓

5.4 Sustainability

A Sustainability Report has been prepared by Action Sustainability and is located at **Appendix H**. The report provides a sustainability assessment of the modification to demonstrate the suitability of the existing Santai Resort for long term residential development. Specifically, the report provides:

- An assessment of local weather conditions using historical weather data, to determine how the existing building form and design manages under local conditions (refer to **Section 5.5.3**);
- Commentary on the existing sustainability attributes of the Santai Resort (refer to **Section 5.7.4**);
- An embodied energy assessment to evaluate the environmental impacts and emissions related to the demolition and reconstruction of a building similar to the Santai Resort (refer to **Section 5.7.5**); and
- An assessment of air change rates achievable within the existing units to determine their ability to provide sufficient internal ventilation (refer to **Section 5.5.3**).

5.5 Residential Amenity

The proposed modification seeks to permit permanent residential use in addition to existing tourist use of some of the units within a building of three or more storeys, containing four or more dwellings. SEPP 65 is therefore applicable.

Architectural drawings, and a Design Verification Statement which provides an assessment of compliance against the ADG guidelines, has been prepared by BKA Architecture and is provided at **Appendix B** and **Appendix C** respectively.

The technical information prepared by BKA Architecture demonstrates that the units applicable to this modification can generally achieve the objectives and requirements of SEPP 65 and the ADG.

An assessment against the ADG is provided in **Table 5** below. Elements that warrant consideration in respect of internal amenity are outlined below.

Table 5 – Consistency with the NSW Apartment Design Guide

Objectives and Design Criteria			Consistent
Part 3 Siting the Development			
3D Communal and Public Open Space			
Objective An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping			✓
Design Criteria Communal open space has a minimum area equal to 25% of the site			The site provides 15% of communal open space. This minor departure from the design criteria is elaborated below in Section 5.5.1 .
Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter)			✓
3E Deep Soil Zones			
Objective Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.			✓
Design Criteria Deep soil zones are to meet the following minimum requirements:			✓
Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)	15% of deep soil is provided.
Less than 650m ²	-	7%	
650m ² – 1,500m ²	3m		
Greater than 1,500m ²	6m		
Greater than 1,500m ² with significant existing tree cover	6m		

Objectives and Design Criteria			Consistent
3F Visual Privacy			
<i>Objective</i>			
Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.			✓
<i>Design Criteria</i>			
Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:			✓
Building Height	Habitable rooms and balconies	Non-habitable rooms	The existing building configuration achieves the applicable building separation distances.
Up to 12m (4 storeys)	6m	3m	
Up to 25m (5-8 storeys)	9m	4.5m	
Over 25m (9+ storeys)	12m	6m	
3J Bicycle and Car Parking			
<i>Objective</i>			
Car Parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas			✓
<i>Design Criteria</i>			
For development in the following locations:			✓
on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or			
on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre			
The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.			
The car parking needs for a development must be provided off street.			
Part 4 Designing the Buildings			
4A Solar and Daylight access			
<i>Objective</i>			
To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space			✓
<i>Design Criteria</i>			
Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.			70% of living rooms do not receive a minimum of three hours sunlight. This departure from the design criteria is elaborated below in Section 5.5.2 .

Objectives and Design Criteria		Consistent
In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter.		
A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.		✓
4B Natural Ventilation		
Objective		
The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents		✓
Design Criteria		
At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.		The units do not achieve the ventilation requirements of the ADG. This departure from the design criteria is elaborated below in Section 5.5.3.
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.		✓
4C Ceiling Height		
Objective		
Ceiling height achieves sufficient natural ventilation and daylight access		
Design Criteria		
Measured from finished floor level to finished ceiling level, minimum ceiling heights are:		The units provide a ceiling height of 2.4m for non-habitable rooms and 2.6m for habitable rooms. This minor departure from the design criteria is elaborated below in Section 5.5.4.
Minimum ceiling height		
Habitable rooms	2.7m	
Non-habitable	2.4m	
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	
If located in mixed use areas	3.3m for ground and first floor to promote future flexibility of use	
These minimums do not preclude higher ceilings if desired.		
4D Apartment Size and Layout		
Objective		
The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity		✓
Design Criteria		
Apartments are required to have the following minimum internal areas:		✓

Objectives and Design Criteria		Consistent
Apartment Type	Minimum internal area	
Studio	35m ²	
1 bedroom	50m ²	
2 bedroom	70m ²	
3 bedroom	90m ²	
<p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>		
<p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>		✓
<p><i>Objective</i></p> <p>Environmental performance of the apartment is maximised</p>		
<p><i>Design Criteria</i></p> <p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p>		✓
<p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>		✓
<p><i>Objective</i></p> <p>Apartment layouts are designed to accommodate a variety of household activities and needs</p>		✓
<p><i>Design Criteria</i></p> <p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).</p>		✓
<p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p>		✓
<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <p>3.6m for studio and 1 bedroom apartments</p> <p>4m for 2 and 3 bedroom apartments</p>		✓
<p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.</p>		✓
<p>4E Private Open Space and Balconies</p>		
<p><i>Objectives</i></p> <p>Apartments provide appropriately sized private open space and balconies to enhance residential amenity</p>		✓
<p><i>Design Criteria</i></p> <p>All apartments are required to have primary balconies as follows:</p>		✓
Dwelling Type	Minimum Area	Minimum depth
Studio apartment	4m ²	-

Objectives and Design Criteria			Consistent
1 bedroom apartment	8m ²	2m	
2 bedroom apartment	10m ²	2m	
3+ bedroom apartment	12m ²	2.4m	
The minimum balcony depth to be counted as contributing to the balcony area is 1m.			
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.			✓
4F Common Circulation and Spaces			
<i>Objective</i> Common circulation spaces achieve good amenity and properly service the number of apartments			✓
<i>Design Criteria</i> The maximum number of apartments off a circulation core on a single level is eight.			✓
For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.			✓
4G Storage			
<i>Objective</i> Adequate, well designed storage is provided in each apartment			✓
<i>Design Criteria</i> In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:			✓
Dwelling Type		Minimum Area	
Studio apartment		4m ²	
1 bedroom apartment		6m ²	
2 bedroom apartment		8m ²	
3+ bedroom apartment		10m ²	
At least 50% of the required storage is to be located within the apartment.			

5.5.1 Communal and Public Open Space

The ADG design criteria for communal open space sets out that developments should provide a minimum 25% of the site as communal open space. The development provides 15%. Whilst there is a numeric departure from the design criteria, the communal open space remains consistent with the design objectives for the following reasons:

- Communal open space within the resort is well considered and designed to respond to a higher concentration of users. Spaces are distributed throughout the site and are permeable through their connection to key thoroughfares. Areas are large enough to cater to small and larger groups and have been strategically positioned to achieve good solar exposure.
- All communal open spaces within the Resort are rich in amenity and of a high quality (refer to **Figure 5** and **Figure 6**).
- All communal open spaces within the Resort significantly exceed minimum dimension requirements under the ADG.
- Communal open spaces within the Resort are collocated with deep soil in the form of raised garden beds and planter boxes. Deep soil landscaping provides a pleasant outlook for users, improves the visual privacy of the communal open space, encouraging use.
- Communal open space can be accessed from all major thoroughfares within the resort. Accessibility ramps within the Resort ensure equitable access to the communal open space.
- The primary communal open space within the centre of the Resort achieves the minimum 2 hours of direct sunlight between 9:00am and 3:00pm on 21 June.
- The resort is located in close proximity to numerous open spaces. A recreational park is located directly across Dianella Drive, and Casuarina Beach is located approximately 300m to the east.
- All communal open spaces have been orientated intentionally to enable use under shade, enabling outdoor use despite the strong summer conditions.

5.5.2 Solar and Daylight Access

The existing built form and design of the development makes units inconsistent with the solar access criteria under the ADG. This departure from the criteria is deemed acceptable on merit, and is commensurate of an architectural design aimed to manage the sub-tropical climate of Northern NSW.

Unit design has sought to balance appropriate solar access for internal building amenity, yet ensure development is not susceptible to direct solar penetration, a significant amenity issue for a region within the same climatic zone as Mackay in North Queensland.

The units subject to this modification are predominately provided with an east west aspect and are therefore subject to direct sunlight penetration during summer. The units have therefore utilised deliberate design methods such as deep eaves and cantilevered balconies which although reducing internal solar access, ensures direct solar penetration is minimised, improving internal comfort and thermal efficiency.

To increase the solar access to the units would result in a suboptimal amenity outcome for the sole purpose of compliance with standardised NSW wide guidelines, with little appreciation of design to suit local climatic variances. In this regard, a more site-specific merit consideration for the departure from the design criteria is appropriate.

Notwithstanding this, units are consistent with the solar access guidelines under the *Tweed Development Control Plan 2008* (Tweed DCP), demonstrating adherence to locally specific, more appropriate controls. Specifically:

- Living rooms of north facing units receive a minimum of 3 hours direct solar access. This maximises sunlight access to residents; and
- The use of awnings and eaves, which contributes to the design and performance of the building, and provides shading and weather protection.

Consistency with solar access controls within the Tweed DCP is further detailed in **Section 5.6** below.

5.5.3 Natural Ventilation

Not all habitable rooms or single aspect apartments proposed to be modified are naturally ventilated as per the design guidance for objective 4B-1 and 4B-3. This departure from the criteria is supportable as:

- All units are provided with significant balconies and large operable windows which facilitates good ventilation;
- The development contains large common breezeways which contribute to cross ventilation of units;
- Units have a depth ranging from 10 to 14m, ensuring suitable ventilation; and
- The site is in close proximity to Casuarina Beach, a high wind area providing sea breezes.

Further, the site is located within a climatic zone that experiences favourable conditions for natural ventilation throughout the year. Action Sustainability (refer to **Appendix H**) has undertaken an assessment of local weather and wind conditions over a ten year period to determine:

- Local wind conditions provide air movement throughout the year, almost all the time;
- Still conditions occur only 3% of the time, over the last decade, for all hours;
- Average wind speeds of 4.2 metres per second;
- Over the last decade, 67% of all weather data was within the temperature band of 17 to 26 degrees Celsius, identified as an appropriate temperature band for comfortable conditions.

This data demonstrates the locality of the site is provided with a high percentage of hours with wind. This provides the units with favourable conditions for natural ventilation. Differential air pressures across the resort are able to promote the movement of air through internal living zones.

Cross Ventilation Assessment

A Cross Ventilation Assessment was also undertaken by Action Sustainability to demonstrate the suitable ventilation conditions of the units although they depart the natural ventilation criteria of the ADG. A sample of four units were thermally modelled within three different scenarios. These included:

- All windows being closed all year;
- Windows open during standard times of occupancy; and
- All windows open all year.

The thermal modelling provided an estimate of ventilation rates possible within the units over a one-year period, and the air flow rate into and out of the units.

The results of the Cross Ventilation Assessment are as follows.

- Units have low air change rates when windows are closed. This is a desirable outcome as higher air change rates generate a greater need for mechanical heating and cooling.
- Units achieve adequate air change rates when windows are open at different points of the year.
- Air change rates within the units with the windows open throughout the year, exceed the minimum ventilation rates prescribed by Australian and American Standards.
- Even on the calmest part of the day, air change rates within the units remain above an air change rate of 5 when the windows are open. A rate of 5 and above, is considered desirable when measuring internal comfort.

The detailed methodology and summary of results for the Cross Ventilation Assessment is provided in the Sustainability Report prepared by Action Sustainability (refer to **Appendix H**).

5.5.4 Ceiling Heights

Units subject to this modification provide ceiling heights of 2.6m for habitable rooms as opposed to the minimum 2.7m recommended within the ADG. This minor variation of 0.1m does not generate any significant adverse impact to the residential amenity of the units. The solar access and ventilation potential of the units is not impacted. The perception of space is maintained through the open plan layout of the units and large balconies. Non-habitable ceiling heights adhere to the recommendations of the ADG and provides appropriate ceiling transitions and a height hierarchy within the units.

5.6 Development Control Plans

The proposed modification is consistent with the local provisions under the *Tweed Development Control Plan 2008* (Tweed DCP) as detailed below.

5.6.1 Car Parking

An assessment of the likely parking demand associated with the 22 units is detailed below. This has been carried out in accordance with Section A2 of the Tweed DCP. The DCP establishes average rates for particular land uses which should be considered when assessing likely parking impacts.

Under the DCP, the following rates apply:

- Serviced apartments:
 - 1 space per unit; plus
 - 1 space per 4 apartments for visitor spaces.
- Residential flat building:
 - 1 space per one bedroom unit¹; plus
 - 1 space per 4 units for visitor spaces.

¹ Studio apartments do not have a specified car parking rate under Section A2 of the Tweed DCP. Consultation with Tweed Shire Council has confirmed that one-bedroom car parking rates are to be applied to studio apartments.

Approved use under Tweed LEP 2000

The units were approved as tourist accommodation under Tweed LEP 2000, which was defined as:

“a building principally used for the accommodation of tourists but does not include a building elsewhere specifically defined in this Schedule.”

It is noted that “serviced apartments” was not a defined use in Tweed LEP 2000.

Current use under Tweed LEP 2014

The closest equivalent definition in Tweed LEP 2014 is tourist and visitor accommodation which is a group term that reads as follows:

“a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers' accommodation,*
- (b) bed and breakfast accommodation,*
- (c) farm stay accommodation,*
- (d) hotel or motel accommodation,*
- (e) serviced apartments,*** (emphases added)”

Serviced apartment is defined as:

“a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.”

Due to the nature of the Santai Resort, it is considered that the units have operated as closely aligned to a serviced apartments land use under the current Tweed LEP 2014. In this regard, they are self-contained, typically occupied for longer periods of time, serviced on demand or in between occupation and there is no room service or other typical hotel services available.

Serviced apartments under the DCP have the same visitor parking rates as residential flat buildings and thus no additional demand for visitor carparking would be generated. Therefore, the difference in parking demand is unchanged in the context of the development. It is not expected to give rise to any significant adverse impacts upon the surrounding street network.

Accordingly, for the 22 units, the existing serviced apartments use generates 22 spaces, one for each unit plus 5.5 spaces for visitors, equating to 27.5 spaces. The proposed residential flat building use also generates 27.5 spaces, therefore causing no additional parking demand from the proposed modification.

It is noted also that from the experience of the owner of the units which form this modification, Casuarina Corporation, there is ample street parking in the vicinity of the premises to accommodate potential additional visitors to the site.

5.6.2 Residential and Tourist Development Code

The existing Santai Resort is generally consistent with the objectives and controls under the Residential and Tourist Development Code (refer to **Table 6** below).

Table 6 - Consistency with the DCP residential and tourist development code

Control	Compliance
Design Control 3 – Site Configuration	
<p>Deep soil</p> <p>(a) Deep soil is to be provided to all new and existing development.</p> <p>(b) all development is to contain front and rear deep soil zones.</p> <p>(c) rear deep soil to have minimum width of 8m or 30% width of the site.</p> <p>(d) rear deep soil to have soft landscaping.</p>	<p>The existing development is consistent with deep soil requirements for residential flat buildings as:</p> <ul style="list-style-type: none"> • The site provides front and rear deep soil; • The site provides deep soil zones which exceed a minimum width of 8m; and • The site provides deep soil zones which are integrated with soft landscaping.
<p>External living and balcony areas</p> <p>(a) external living areas are best located adjacent to the internal living to increase the living space.</p> <p>(b) external living areas should be screened.</p> <p>(c) external living areas are to be no closer than 900mm from site boundary;</p> <p>(d) external living areas should stop water penetrating the dwelling.</p> <p>(e) external living areas to be north orientated where possible.</p>	<p>The existing development is consistent with the external living controls for residential flat buildings as:</p> <ul style="list-style-type: none"> • Units have external living areas and balconies which directly adjoins internal living spaces, and improves the perceived room depth; • Eaves and landscaping provides privacy to units. Vertical screening elements are also provided between units. • External living areas and balconies are inward facing and therefore are not within 900mm of any site boundary; • External living spaces and balconies are provided with eaves, ensuring rain penetration into units is minimised; • External living areas and balconies are large and well proportioned to enable outdoor furniture and dining; and • Numerous units are north facing and achieve good solar access.
Design Control 4 – Car Parking and Access	
<p>(a) Carparking is to be in accordance with Section A2.</p>	<p>An assessment of car parking rates under the existing controls is provided in Section 5.6.1 above.</p>
Design Control 5 - Building Footprint and Attics, Orientation and Separation	
<p>Building separation:</p> <p>(a) Three storey buildings require a 10m minimum separation between the wall containing primary windows/doors of living rooms (on any level of the building) to the wall of an adjacent building containing primary window/doors of living rooms.</p>	<p>The Resort is not within 10m of adjoining habitable interfaces. Units within the Resort are inward facing yet have a minimum separation distance of 20.6m.</p>
Design Control 7 – Building Amenity	
<p>Building orientation:</p>	<p>The architecture of the Resort deploys passive solar design principles in accordance with the DCP. Specifically, the Resort has an east/west orientation. Deep eaves and cantilevered balconies therefore ensure these facades are provided appropriate solar protection. This is considered an appropriate response to the local climatic conditions.</p>
<p>Sunlight access:</p> <p>(a) Living spaces are to be located predominantly to the north where the orientation of the allotment makes this possible.</p>	<p>Units are provided with appropriate sunlight access, appropriate to the local climatic conditions. Specifically:</p> <ul style="list-style-type: none"> • Numerous units are north facing and achieve a minimum of 3 hours of direct solar access;

Control	Compliance
<p>(c) Private open space of the subject dwelling is to receive at least two hours sunlight between 9am and 3pm on June 21.</p> <p>(d) Windows to north-facing habitable rooms of the subject dwelling are to receive at least 3 hours of sunlight between 9am and 3pm on 21 June over a portion of their surface.</p> <p>(e) sunlight to at least 50% of the principal area of private open space of adjacent properties is not reduced to less than 2 hours between 9am and 3pm on June 21</p>	<ul style="list-style-type: none"> Units which are not north facing are protected through deliberate design elements such as eaves to reduce direct solar penetration and improve internal amenity; and The existing development does not significantly shadow the principal area of adjoining private open spaces. The Resort does not directly adjoin any development on its northern, southern and western boundaries.

Design Control 8 – Internal Building Configuration

The units within the existing development are consistent with the objectives and controls for internal building configuration in respect to residential flat buildings. Specifically:

- Units are capable of accommodating a variety of furniture layouts;
- Units provide appropriate storage, commensurate to the size of the unit; and
- Kitchens are located no greater than 10m from a window.

Design Control 9 – External building element

Roofs, Dormers and Skylights

<p>a) Roof design is to relate to the desired built form by providing:</p> <ul style="list-style-type: none"> roof articulation; eaves; and appropriate roof form. 	<p>The existing roof design of the resort provides appropriate external building elements as:</p> <ul style="list-style-type: none"> The development provides a deeply overhang roof form and eaves to provide shading and weather protection, appropriate to the local climate; and Provides roof articulation which reduces direct solar penetration to walls and openings, improving building performance and residential amenity. <p>These elements are provided throughout the entire Santai Resort, ensuring a development with a consistent roof form which is attractive from the streetscape.</p>
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Design Control 10 – Building Performance

The building design of the Resort ensures units are able to optimise thermal performance and internal amenity, consistent with the energy efficiency objectives under the Tweed DCP. Specifically, the deliberate use of cantilevered balconies and eaves of units reduces direct solar penetration generated by an east/west building orientation. This reduces the necessity for mechanical cooling, reducing the buildings emissions and energy costs.

5.6.3 Energy Smart Homes Policy

Units are provided with deliberate design elements which ensures their consistency with the preferred outcomes relating to heat loading and shading within Section A9 of the Tweed DCP. Specifically:

- Units are provided with shading elements such as eaves and cantilevered balconies, which although generates outcomes inconsistent with design criteria and guidance in the ADG, assists in protecting windows and internal spaces from direct solar penetration. The building form has been designed to respond to the local climatic conditions of the region;

- These shading elements ensure, in particular for units with an east/west orientation, that windows are provided with the maximum possible shading in summer;
- Shading elements are external to the building, ensuring they integrate into the overall building design; and
- Units have an open plan layout, reducing barriers to air movement.

5.6.4 Contributions

The proposed modification seeks to provide residential accommodation. Precedence has shown the following contribution plans may be applicable to the units subject to this modification application.

- No. 4 – Tweed Road Contribution Plan;
- No. 11 – Tweed Shire Library Facilities;
- No. 12 – Bus Shelters;
- No. 13 – Eviron Cemetery;
- No. 18 – Council Administration Offices and Technical Support Facilities;
- No. 19 – Casuarina Beach/Kings Forest;
- No. 22 – Cycleways; and
- No. 26 – Shirewide Regional Open Space.

5.7 Justification of the Proposed Modification

5.7.1 History and Imposition of Condition G12

Condition G12 was imposed under the original consent (187-8-2004) and reads as follows:

Tourist Facilities

G12 Occupation Period

The tourist facility approved by this consent will not be occupied by any proprietor or occupier of the unit for longer than forty two (42) consecutive days or an aggregate one hundred and fifty (150) days in any twelve (12) month period. Such periods are to be calculated from the date of the first occupation of the tourist facility.

A modification to 187-8-2004 (MOD 115-7-2005) was made in 2005 pursuant to Section 96 of the EP&A Act which sought to amend Condition G12 (amongst other things) to read as follows:

*The **tourist facility approved by this consent is approved exclusively as a tourist accommodation as defined and allowed under Tweed LEP 2000** tourist facility approved by this consent will not be occupied by any proprietor or occupier of the unit for longer than forty two (42) consecutive days or an aggregate one hundred and fifty (150) days in any twelve (12) month period. Such periods are to be calculated from the date of the first occupation of the tourist facility.'*

Under the *Tweed Local Environmental Plan 2000*, the LEP in force at the time of consent, *Tourist Accommodation* was defined as:

*a building **principally** used for the accommodation of tourists but does not include a building elsewhere specifically defined in this Schedule*

(Emphasis added)

The operation of the tourist facility without a condition to restrict the period of occupation was not, at that time, supported by the Department. A *building principally used* for tourist accommodation was not considered to provide significant certainty; the application did not assess the proposal against SEPP 65 and the Residential Flat Building Code, and there was at that time a limited supply of tourist accommodation in the area. The modification was subsequently refused.

This modification application does seek to introduce a specific alternate use other than tourist accommodation to the 22 units. The permanent residential use however is considered suitable, without changing its existing character. Specifically:

- The permanent residential land use will not increase the population of the Resort.
- Permanent residents will improve safety through natural surveillance and permanent activation within the Resort. This is particularly important in maintaining the existing character and vibrancy of the Resort during periods of naturally low occupancy rates such as winter.
- The permanent residential land use will not alter the existing functional and operational capacity of the Resort. Demand for services and amenities within the Resort will be unchanged.
- Each unit is self-sufficient, provided with a high level of functionality which can sustain residential occupancy over the long term.

It is also noted that since the Santai Resort was built, new and modern accommodation has also been provided within the locality. The flexible use of the 22 units would not therefore lead to a shortage in supply of tourist accommodation in the locality.

In addition, and of most importance, significant time has passed since MOD 115-7-2005. This modification application is the result of a significantly different economic climate with new trends in temporary holiday occupancy and demand for permanent housing.

Specifically, the Resort is subject to below average and high seasonal occupancy rates, below market value. Comparable units within the area which are not restricted to holiday rentals, generate more significant sale prices.

Further, it is increasingly difficult to manage tenants overstaying the 42-day occupation period as there is a significant demand for long term or permanent accommodation. This has stemmed from fee growth and increasing provision of infrastructure and services from the growing Town Centre.

Sample data of three units since 2014 provided by Casuarina Corporation, details the recent decline in short-term occupancy of its units (refer to **Table 7**).

Table 7 - Short-term occupancy rates

Unit No.	Occupancy Rate	
	2014-2015	2016-2017
127	59.45%	53.15%
218	54.79%	53.70%
333	60.00%	51.78%

5.7.2 Tweed LEP Amendment

A Planning Proposal (PP_2015_Tweed_006_00) lodged by Tweed Shire Council to the Department in 2015, to amend the Tweed Local Environmental Plan 2014, has sought to recognise short-term rental accommodation as a land use definition and, enable existing residential dwellings to operate as a form of short-term rental accommodation as exempt development for a maximum of 62 days.

The Planning Proposal has been approved at Gateway and is currently undergoing implementation. This proposal, although relating to individual dwellings, demonstrates that:

- Seasonal tourism has seen existing development within Tweed migrate towards the flexible use of permanent residential and short-term tourist accommodation; and
- Council has recognised this trend and enabled its ongoing use through an appropriate regulatory framework.

The proposed modification is the result of seasonal tourism and subsequent irregular occupancy rates. It does not propose a combination of land uses inconsistent with current housing and seasonal occupancy trends, or those in which Council has not previously supported.

5.7.3 Precedents

Consent to facilitate the introduction of permanent residential accommodation within existing tourist accommodation facilities is not a matter of precedence in the region.

For example, in the LEC case of *The Owners SP76023 v Tweed Shire Council and anor* [2016] NSWLEC 1197, a conciliation conference, presided by Commission GT Brown, saw the deferred commencement of a flexible change of use application to permit permanent residential with existing short-term accommodation at the Peppers Bale Resort at 27-37 Bells Boulevard, Kingscliff.

The development application (DA14/0164) was refused by Tweed Shire Council on the grounds that it failed to address key provisions under Section 79C of the Environmental Planning and Assessment Act 1979, and in particular the provision of SEPP 65. The Court ordered the application to be amended and an assessment against SEPP 65 included.

The above-mentioned precedence demonstrates that:

- Existing tourism facilities, of a scale similar to the Santai Resort, has sought to compensate below average short-term occupancy rates with permanent residential accommodation; and
- Residential accommodation, provided that it can demonstrate good residential amenity, is a land use deemed appropriate for existing tourist accommodation facilities.

The Court Order and conditions for consent for *The Owners SP76023 v Tweed Shire Council and anor* [2016] NSWLEC 1197 is provided at **Appendix G**.

Permanent residential accommodation has also been introduced at the Mainwaring Apartments, approximately 1.5km south of the resort, as well as several beachfront properties behind the resort.

5.7.4 Sustainability

The Sustainability Report prepared by Action Sustainability (refer to **Appendix H**), has undertaken a general sustainability assessment of the Santai Resort. The benefits of the existing resort, from a sustainability perspective is detailed below.

Building Life Cycle

Buildings have a typical life span of 50 years. Approximately 25 years are attributed to the façade, and between 15 and 25 years for services and systems such as plumbing, electricity and air conditioning. As the Santai Resort was built in 2004, the building is only 14 years old. As such, the building maintains roughly 37 years of useful life based on typical building life expectancies.

Amenity

The Santai Resort is provided with the following attributes which demonstrates the local amenity and appropriateness of residential accommodation within the resort:

- Internal, tourist style amenity in the form of an onsite pool, spa, guest lounge and restaurant; and
- Close geographic proximity to Casuarina Beach (300m) and Casuarina Town Centre and Shopping Village (200m).

Building Form

- The building arrangement of the Santai Resort enables the majority of units to be deliberately arranged with an orientation which faces the central pool area, providing uninterrupted views to the resort style central communal open space;
- East west facing apartments are provided with deep eaves, ensuring internal spaces are protected from direct morning and afternoon solar penetration;
- Units adjacent party walls have reduced exposure to the external environment, reducing the need for heating and cooling; and
- Units, through deliberate design, are in close proximity to each other. This reduces energy consumption in relation to heating and cooling as units have less surface area exposed to the external environment.

Geographic Location

The site is located within a coastal area, benefitting from the coastal wind conditions generated by the variances in temperature between land and sea. Coastal wind conditions improve the ventilation available to units within the Resort.

Notwithstanding, the inward orientation of the Santai Resort ensures stronger breezes are mitigated to a level where occupants can retain windows in the open position.

5.7.5 Embodied Energy Assessment

An Embodied Energy Assessment (EEA) was undertaken to determine the potential energy and carbon savings associated with maintaining the existing building, in comparison to the demolition and construction of a new building to service the permanent residential land use proposed. Specifically, the EEA identified:

- The amount of carbon dioxide within the existing materials of the building to demonstrate the amount of energy used for their production; and
- The amount of emissions generated by the demolition and reconstruction of a building similar to the resort, including emissions arising from worksite offices, machinery and plant.

Overall, it was determined that the demolition and rebuild of a building similar to the Santai Resort would generate significantly higher emissions. The retention of the existing building would generate a saving of approximately 20,000 tonnes of carbon, equivalent to 29,000 flights from Sydney to London for a single passenger.

6.0 Conclusion

This S75W Modification Application seeks amendments to State Significant Development consent DA187-8-2004 for the Santai Resort Tourist Facility at 9-13 Dianella Drive, Casuarina. This modification is made pursuant to the transitional arrangements of Part 3A provided under Schedule 6A of the *Environmental Planning and Assessment Act 1979*.

The proposed modification relates to 22 out of 114 units within the Santai Resort, which currently operate as a form of short term (tourist) accommodation. A flexible change of use is proposed to enable the units to also operate as permanent residential accommodation.

The proposed use is permissible with consent under the R1 General Residential zone.

The modification does not propose any physical works, and therefore does not alter the high quality built form and or architectural design of the Santai Resort.

The proposed modification is considered acceptable for the following reasons:

- The Resort is of a very high quality, is well maintained and adheres to the design principles under SEPP 65 and meets the objectives in the *Apartment Design Guide*;
- Minor departures from the design criteria of the ADG are considered acceptable and appropriate and are commensurate of the site's existing built form and architectural design aimed to manage the sub-tropical climate of Northern NSW;
- The Resort is of a very high quality with a high level of amenity. The Resort is well suited to accommodate permanent residential accommodation; and
- The change of use modification responds to the increasing demand for unrestricted long-term residential accommodation within the Far North Coast of NSW, and improves the occupancy rate of units within the Resort.

The proposed modification does not give rise to any significant environmental impacts beyond those already dealt with during the assessment of DA187-8-2004. Given the positive outcomes resulting from the proposed modification, we have no hesitation in recommending that the modifications to DA187-8-2004 be approved.