

4.55(1A) MODIFICATION NO.6 OF MINISTERS APPROVAL FOR MP 07_0179 – TSC DA NO. 09/0830 –NO. 6.

To seek modification to a development consent being for a Part 3/Part 4 storey mixed use development entailing ground level commercial including supermarket and retail shops, upper level residential units, basement and surface car parking and landscaped areas.

Lots 184 – 187 & 191-194 DP 259164 and Lots 20-23 DP 31208, Tweed Coast Road and Hastings Road, Cabarita Beach/Bogangar (now known as Lot 1, DP 1185345, 39 Tweed Coast Road, Bogangar)

For:
Cabarita Beachside Pty Ltd

September 2020

Document Control Sheet

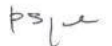
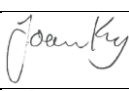

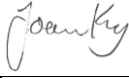


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1. Introduction

This section introduces the proposal and provides a general overview of the project.

1.1 Statutory Framework – Required Approvals

Ardill Payne & Partners has been commissioned by Cabarita Beachside Pty Ltd to prepare and lodge a Modification Report for an existing Part 3A Project Approval- (transitioned to State Significant development under the current EPA Act Legislation) issued by the Director - General comprising a mixed use development, with the NSW Department of Planning and Infrastructure.

The NSW Ministers Approval is sought for Modification No. 6 of MP07_0179 pursuant to Section 4.55(1A) of the Environmental Planning Act. The approved application (as described) comprises a part 3 and part 4 storey mixed use development including a 2310m² supermarket, 1106m² of retail specialty shops, shop top housing incorporating 40 residential apartments and combined parking for 204 vehicles situated on land described as Lots 184-187 & 191-194 DP 259164 and Lots 20-23 DP31208 (now consolidated and identified as Lot 1, DP 1185345).

1.2 Structure of this Report

This Planning Report contains the following:

Section 1	Provides a general introduction to the proposal.
Section 2	Describes the subject land and its local environmental context.
Section 3	Describes the development proposal in detail.
Section 4	Reviews the key environmental interactions/impacts and proposed management measures.
Section 5	Reviews the statutory and planning policy provisions applying to the project.
Section 6	Provides a summary and conclusions.

A number of appendices form part of this report being:

Appendix A	Locality plan
Appendix B	Copy of the Deposited Plan
Appendix C	Approved Major Project Plans
Appendix D	Modified Architectural plans including Landscaping Plans
Appendix E	BASIX Certificate
Appendix F	Architectural Statement

1.3 DA History

On 2 December 2009, the then Director General, as delegate for the then Minister for Planning granted Project Approval for the construction of a part 3 and part 4 storey mixed use development on the subject site under Part 3A of the EPA Act.

The project comprises the following development

- Ground level commercial floor space comprised of 2 310m² supermarket and 1 106m² of retail specialty shops
- 40 residential apartments (shop-top housing)
- Ground level public forecourt
- Pedestrian thoroughfare
- Site landscaping
- Basement and surface car parking comprised of 204 car parking spaces and loading facilities
- Three access points from Hastings Road
- Excavation works: and
- Signage

The project approval has been modified on three occasions as follows:

- 21 December 2011 - Modification 1 – Approved increase the size of the supermarket from 2 310m² to 2 479m² and decrease the area of specialty retail from 1 106m² to 913m² resulting in a 24m² net decrease in retail floor space on-site and changes as follows:

- allow for the staged construction of the project as follows
 - Stage 1 comprised the retail/supermarket component
 - Stage 2 comprised the shop top housing residential component (40 residential apartments)
- Relocate the pedestrian lane and incorporate a new traveller
- Relocate the residential lift and lobby
- Swap the location of the service loading bay access with the main access to the underground carpark on Hastings road
- Relocate the waste collection area to Hastings Road, adjacent to the open air carpark entrance
- Incorporate a new supermarket office level and new plant area within the approved mezzanine office level
- Amend the basement carpark flood freeboard requirement to comply with Tweed Shire Councils flood planning controls
- In conjunction with this modification, the approved Unit layout was altered late in the assessment process. This alteration reduced the number of Units from 40 to 38, as demonstrated in the approved plans. The issued schedule for Section 7.11 and Section 64 Contributions was not changed, despite the total number of Units being reduced by 2, or a total of 38 Units. Additionally, a number of conditions also refer to the provision of 40 dwellings.
- 8 December 2012 – Modification No. 2 – This application successfully applied to the Department of Planning and Infrastructure for an extension to the approved hours of operation. The hours of operation of the commercial premise are 7.30am and 9pm seven days per week for the retail uses, and 7am to 6pm Monday to Saturday for deliveries.
- 19 April 2014 (Lodged) -Modification No. 3 - Withdrawn
- 19 December 2014 - Modification No. 4 - Approval to modify the terms of Schedule 1 and Conditions A2 and B22(4) of the Project Approval to include Lots 1 and 2 in DP 772172, and Lots 188, 189 and 190 in DP 259164 within the approved project area. The inclusion of these additional lots within the project area was requested by Tweed Shire Council to finalise the dedication of the public laneway as required by Condition B22 of the Project Approval.
- 15 April 2015 – Modification No 5 – Amendment of Condition B22 (4) to correct a minor error in the wording of this condition.

1.4 Current Site Status

The lots identified within the subject development approval have been consolidated into a single land parcel following the construction of Stage 1, consisting of the retail and supermarket with associated car parking and ancillary aspects of the development. The subject site is now known as Lot 1 DP 1185345, 39 Tweed Coast Road, Bogangar.

The supermarket and retail component are operating onsite as approved. It is noted that all parking required for the overall development has been completed. This includes the 3 approved levels of car parking and on grade open parking area as proposed upon the approved site plans. This parking was approved to cater for the completed development, despite the residential component remaining unconstructed.

1.5 Overview of Statutory Framework

The Dept. of Planning and Infrastructure is the consent authority for the proposed development application under Section 4.16 of the *EP & A Act 1979*.

MP07_0179 did not comprise integrated development for the purposes of Section 4.46 of the *EP & A Act 1979*.

This application is made under the provisions of Section 4.55(1A) of the Act on the basis that:

- the modification involves minimal environmental impact, and
- the development to which the consent as modified relates is substantially the same development as that for which the consent was originally granted

2. Site Characteristics

This section describes the subject land and identifies the geographical context of the site and its relationship to the surrounding locality.

2.1 Property Description and Location

The subject site is centrally located between Tweed Coast Road and Hastings Road at Bogangar in the Tweed Shire Council local government area. The site is approximately 5 485m². The site is irregular in shape with two street frontages. The site is centrally located within the Cabarita/Bogangar business area and approximately 200m from Cabarita Beach. Tweed Coast Road is the main arterial road serving coastal settlements from the Tweed Heads district to the north. Hastings Road runs parallel with Tweed Coast Road and services the rear of this business district, linking residential properties with this commercial locality.



Locality Plan: Extract SIXMaps

Lots 190, 189, 188 included within Modification 4 are now known as Lots 2, 3, 4, DP 1185345. The subject site has been consolidated and is now known as Lot 1 DP 1185345. In conjunction with Modification 4, these three separate Lots were reconfigured to facilitate the lane dedication as required by the conditions of the original Project Approval.

As shown below, existing on the subject land is Stage 1 of the subject application, as approved, being the retail/supermarket component of the proposed development.

Tweed Coast Road is a sealed urban road with kerb and gutter for the full property frontage. Hastings Road is a sealed urban road with kerb and gutter for the full property frontage.

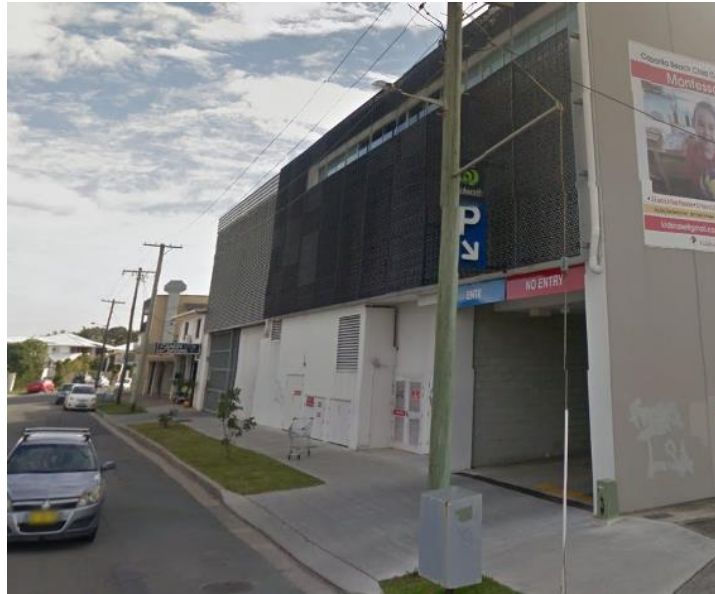
Pedestrian access to the completed Stage 1 is available via Tweed Coast Road. Vehicular access is provided by two crossings from Hastings Road and linked via an internal laneway. The site also has an approved loading dock off Hastings Road and a pedestrian pathway that provides a public link between Hastings Road with Tweed Coast Road.



Tweed Coast Road; Extract Google Maps



Hastings Road – Carpark – North: Extract Google Maps



Hastings Road – Undercover carpark - South Extract: Google Maps

An aerial photograph of the subject and adjoining land is provided at **Appendix A** with a copy of the deposited plan being provided at **Appendix B**.

2.1.1 Site Analysis

A detailed site analysis was provided in the original Statement of Environmental Effects prepared by Planit Consulting dated February 2009 which supported and informed MP09_0179 also known as DA09/0462 (Tweed Shire Council).

The information and relationship of this site analysis has not effectively changed since that time and provided detailed information in respect of the following, which remains pertinent to the site and to this Section 4.55 application:

- location
- topography
- visual context
- contamination
- stormwater
- adjoining and surrounding land uses
- access
- infrastructure provision
- water and sewerage
- electricity
- telecommunications

3. Description of Proposal

This section describes the proposed development and identifies specific environmental and development objectives that will be adopted in conjunction with the project.

3.1 Proposed Development

Consent is sought to modify the terms and conditions of MP07_0179 (known to TSC as DA09/0830) under the provisions of Section 4.55(1A) of the *EP & A Act 1979*.

Changes to the development will be limited to the second stage of the development as approved and as modified. **Stage 1 of the development has been completed and is operating as approved, including modifications. This modification refers to the residential component of the development directly above the operating commercial component.**

3.1.1 Summary of Proposes Changes/Amendments

- **Condition A1 - Stage 2** – This condition states the number of approved Units within Stage 2 of the approved development. It is requested that the condition is modified to reflect the correct number of units approved as provided by the stamped approved plans i.e. 38 Units rather than 40 residential units.
- **Condition A2** – This condition lists the approved plan set. It is requested the condition is modified to reflect the updated plan set for the uncompleted component of the development (Stage 2 – Residential component and Landscaping) as submitted with this application for Stage 2 of the development being the residential unit.
- **Condition B2**– This condition requires changes to Stage 2 of the project as detailed within Conditions B3 and B4. Given these changes have been undertaken as detailed within the submitted amended architectural set, this condition becomes redundant and can be deleted.
- **Condition B3** – This condition requires the proponent to submit a Design Verification Statement to the Certifying Authority. This statement has been provided. This condition also required Units 1-7, 13-27 and 33-40 to be reduced in overall length by 1000mm. It is requested that the second sentence of the condition is deleted as the changes to the plans have been made, despite the size of the units remaining as approved, to achieve the intended outcome in regards to design quality. Alternatively, the deletion of this condition may now be appropriate given the Design Verification Statement has been provided and design changes to the second stage of the development have been made in conjunction with this modification application.
- **Condition B4** – This condition requires the reduction in the Unit lengths of 1000mm as mentioned within Condition B3 above. It is requested that this condition be modified to remove specific amendment details i.e. reduction of the length of the Units by 1 000mm. Alternatively, the deletion of this condition may now be appropriate given the proposed

design changes to the second stage of the development have been made in conjunction with this modification application.

- **Condition B29** – This condition refers to Section 94 Contributions payable for the approved development. It is requested that the contribution schedule be modified to reflect the correct number of Units within Stage 2 being the uncompleted residential component of the development.
- **Condition B30** – This condition refers to Section 64 Monetary Contributions applicable to the development. It is requested that the schedule of contributions applicable to the development be reviewed to reflect the correct number of residential units. (i.e. 38 not 40)

3.1.2 Detailed Changes

Condition A1

- Existing Condition

A1A Staging

The development is to be constructed in two stages as indicated in the Section 75W application submitted on 12 October 2011 and as follows:

1) Stage 1 will comprise the whole of the car parking and commercial/retail components of the development including;

- a. supermarket and retail speciality shops;
- b. ground level public forecourt;
- c. pedestrian thoroughfare;
- d. site landscaping;
- e. basement and surface car parking for 204 vehicles, including interim use of future residential parking to be allocated to Stage 2;
- f. loading bay;
- g. three access points from Hastings Road;
- h. excavation works; and
- i. signage.

2) Stage 2 is to comprise the construction of the residential component of the development including;

- a. 40 upper level residential units; and
- b. allocation of basement residential parking for 56 vehicles (for residential uses) as constructed in Stage 1.

The proponent is to review on a yearly basis and report to the Council via the Certifying Authority the anticipated timeframe for the delivery of this residential stage (Stage 2) of the development. Such review should demonstrate that the residential stage will be delivered at the appropriate time with regard to the land use and urban design objectives of Section B19 of Councils Development Control Plan - Bogangar / Cabarita Beach Locality Plan.

- Proposed Condition

Amend Part 2) of the Condition only as follows:

2) Stage 2 is to comprise the construction of the residential component of the development including;

a. **38** Upper Level residential units

b. allocation of basement residential parking for 56 vehicles (for residential uses) as constructed in Stage 1

All other wording within this Condition to be retained

Condition A2

- Existing Condition

In Schedule 2, Part A, Condition A2, delete the schedule of approved drawings and replace with the following: include reference to the following additional "As Constructed" drawing shown in bold and underlined as follows:

Architectural (or Design) Drawings prepared by Stockwell			
Drawing No.	Revision	Name of Plan	Date
DA-11	C	Site Plan	27/07/09
DA-12	D	Basement Lower Plan	15/10/09
DA-13	H	Basement Mezzanine Plan	15/10/09
DA-14	G	Ground Level 1 Plan	15/10/09
DA-15	E	Level 2 Plan	27/07/09
DA-16	D	Level 3 Plan	27/07/09
DA-17	B	Roof Plan	27/07/09
DA-18	D	Unit Plans	27/07/09
DA-19	B	Tweed Coast Road Elevation	27/07/09
DA-20	B	Hastings Road Elevation	27/07/09
DA-21	D	Sections	27/07/09
DA-22	C	Sections	28/08/09

DA-25	D	Area Plan	27/07/09
Landscape Drawings prepared by Jeremy Ferrier			
Drawing No.	Revision	Name of Plan	Date
29013 SK01	A	Landscaped Concept	02/20/09
29013 SK02	A	Landscape Concept	02/20/09
29013 SK03	A	Elevations & Plant Palette	02/20/09
Survey Drawings prepared by B & P Surveys			
Drawing No.	Revision	Name of Plan	Date
15128B	C	Sheet 1	10/04/08
15128B	C	Sheet 2	10/04/08
As Constructed Drawings prepared by Cameron Chisolm & Nicol			
Drawing No.	Revision	Name of Plan	Date
0001	D	Site Plan	30/09/2014
1203	F	Lower Ground Floor Level Part B Floor Plan	30/09/2014

While this condition was replaced in conjunction with Modification No 1, the approved plans do not appear to be consistent with the plan schedule above.

It appears the approved plans have been prepared by BN Group Pty Ltd and the approved site, with the exception of the two plans prepared by Cameron Chisolm and Nicol are the applicable stamped current set consistent with Modification No. 4, as confirmed by the Construction Certificate issued by Brien Wilkins Consulting.

- **Proposed Condition**

Delete an Approved Plans schedule that references the residential component of the development and replace with the following schedule of conditions:

Drawing No	Revision	Name of Plan	Date
Residential Component			
DA-05	B	Level 1 Floor Plan	29.02.20
DA- 06	B	Level 2 Floor Plan	29.02.20
DA-07	B	Roof Plan	29.02.20
DA- 08	B	Typical Unit Floor Plans	29.02.20
DA-09	B	Elevations	29.02.20
DA-10	B	Sections	29.02.20

Landscape Concept			
29013 SK02	A	Landscape Concept	2009-02-20
29013 SK03	A	Elevations and Plant Palette	2009-02-20

Expanded Commentary regarding the requested modification of Conditions A1 and A2

Conditions A1 and A2 of the development consent MP07_0179 reference the approved development and plans. It is requested that the project description, as modified, be updated to correlate with the approved plans.

Specifically, it is requested that in conjunction with this modification, corrections are made to relevant conditions that reference the number of approved residential units. The original development prescribed the residential component of the proposal as containing 40 residential units. However, Modification No. 1 was subsequently lodged and approved proposing staging of the development and design changes. These design changes reduced the number of residential units proposed in conjunction with Stage 2 to a total of 38 Units, rather than 40.

This modification was approved by the Director-General on behalf of the Minister for Planning on 21 December 2011. The modified consent continues to refer to the approval of 40 residential units, despite the approved design changes and approve plans demonstrating a reduction in the number of units to 38. This correction will also trigger changes to the Section 7.11 and Section 64 Contributions applicable to Stage 2, given the original contribution rates were not amended to reflect the approved number of residential units.

Condition A2 of the modified development consent references the current approved plan set. **Appendix D** contains the proposed modified architectural plan set for the residential units approved above the existing commercial development as part of Stage 2 of the approved development. These amended plans continue to propose 38 residential units over 2 levels. The design of these Units has, however, been amended to reflect changes to the development as required and prescribed within Condition B2, B3 and B4 of the subject development consent.

Condition B2

- Existing Condition

B2 Design Modifications

The design of the project shall be amended as follows:

- (1) Amendments to the landscaped podium as required by condition B4.

Reason: to ensure the future residents and occupants of the project have an acceptable level of amenity.

Amended plans incorporating this design modification shall be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

- Proposed Condition

B2 – Delete

Condition B3

- Existing Condition

B3 Design Verification Statement – Residential Flat Buildings

Prior to the issue of a Construction Certificate, the proponent shall submit to the Certifying Authority a Design Verification Statement from a qualified designer, verifying that the plans and specifications achieve or improve the design quality of the development, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No. 65—Design Quality of Residential Flat Development*. In addition, a reduction in the overall length of the residential units 1-7, 13-27 and 33-40 by at least 1,000mm is required to assist in the improvement in the design quality.

- Proposed Condition

B3. Design Verification Statement – Residential Flat Buildings

Prior to the issue of a construction certificate the proponent shall submit to the certifying authority a Design verification Statement from a qualified designer, verifying that the plans and specifications achieve or improve the design quality of the development, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No. 65 – Design Quality of Residential Flat development*.

Condition B4

- Existing Condition

B4 Landscaped podium

In order to achieve an acceptable level of amenity for future residents and occupants of the project, the landscaped podium area on level 2 shall be enlarged by way of reducing the overall length of residential units 1-7, 13-27 and 33-40 by in excess of 1,000mm.

It should be noted that front setbacks from Hastings Road and Tweed Coast Road shall not be amended in order to comply with this condition.

- Proposed Condition

B4. Landscape Podium

In order to achieve an acceptable level of amenity for future residents and occupants of the project, the landscaped podium areas on Level 1 shall be amended.

It should be noted that front setbacks from Hastings Road and Tweed Coast Road shall not be amended in order to comply with this condition.

Expanded Commentary in Support of Proposed Modification of Conditions B2, B3 and B4

Conditions B2, B3 and B4 required a reduction in the length of the approved residential units.

The attached suite of architectural plans demonstrates changes to the approved Stage 2 to satisfy the intent of Conditions B3 and B4. The intent of these conditions is to ensure the approved units and associated landscaped areas were as consistent as possible with the relevant provisions of *SEPP 65 - Design Quality of Residential Flat Development* and the corresponding *Residential Flat Design Code* applicable at the time of assessment (now superseded by the Apartment Design Guide).

Condition B3 requires a Design Verification Statement confirming the Units are compliant with *SEPP 65 – Design Quality of Residential Flat Development*. This condition requires a reduction in the overall length of the residential units 1-7, 13-27 and 33-40 by at least 1000mm to assist in the improvement in design quality. The intent of this condition was to provide an increased separation between Units on the eastern and western side of the central landscape area on Level 1 to facilitate an increased penetration of natural light into the units and building separation for privacy between the two stories of units on Level 1 and 2. These design amendments have been provided within the modified architectural plan set. While the depth of the units has not decreased, the intent of the condition has been achieved through increased separation over the two levels to ensure suitable amenity levels will be enjoyed by residents of units on the eastern and western side of the central landscape podium. The amended plan set complies with the desired/conditioned separation distance between the two buildings.

Condition B4 also prompted these design changes to the approved residential component of the development. The condition required the landscape podium area on Level 2 to be increased in area to improve the amenity of future residents. The extent of changes to the development in response to Condition B4 are provided within a detailed assessment in a latter section of this report. The changes are however summarised as follows:

- Relocation of the western bank of Unit's towards Hastings Road the west to improve the amenity of the Units, specifically access to natural light and improved privacy
- Allocation of the western Landscape podium at level 1 to the respective Units as demonstrated on the amended plans (identified as courtyards) to improve the overall amenity of the development.

Currently, this landscape podium between Hasting Road and the western bank of units as approved is not accessible by any residents. This inaccessibility would limit the opportunities to maintain the area and would prohibit the enjoyment of the area as common open space or common landscaped space by any residents. The allocation of this podium space for private open space use (identified as courtyards on proposed Plan set) is logically considered to be a more practical use of the area with improved outcomes for all residents. The allocation of this space

would not have any detrimental impacts on the development nor prejudice the future residents in any way, given the eastern bank of units did not have access to this area as part of the original approval.

The development is located directly across from Cabarita beach. This public open space will continue to be available and is considered to be the primary attraction for residents within the approved development, rather than the landscaped area and balconies incorporated into the proposed design, as amended.

Condition B29

- Existing Condition

B29 Section 94 Monetary Contributions

- Prior to the endorsement of a Subdivision Certificate for each stage of the subdivision, the proponent must pay, in proportion to the additional lots created by that stage, the following contributions to Council pursuant to section 94 of the *Environmental Planning and Assessment Act 1979*:

(1) Amount of Contributions

Tweed Road Contribution Plan No. 4			
No. of Trips	\$ per trip		Sub-Total
447,333 Trips	\$868 + \$87		\$427,203
S94 Plan No. 5 Open Space (Casual)			
No. of ET	\$ per ET		Sub-Total
17,196	\$597 + \$27		\$10,730
S94 Plan No. 5 Open Space (Structured)			
No. of ET	\$ per ET		Sub-Total

15

	17,194	\$853 + \$31	\$11,754
S94 Plan No. 11 Shirewide Library Facilities:			
No. of ET	\$ per ET		Sub-Total
17,104	\$374		\$6,427
S94 Plan No. 12 Bus Shelters S94 Plan No. 12			
No. of ET	\$ per ET		Sub-Total
15,616	\$26		\$406
S94 Plan No. 13 Eviron Cemetery			
No. of ET	\$ per ET		Sub-Total
18,48	\$131 + \$0		\$2,421
S94 Plan No. 15 Community Facilities (Tweed Coast - South)			
No. of ET	\$ per ET		Sub-Total
31	\$584		\$18,104
S94 Plan No. 16 Emergency Facilities (Surf Lifesaving)			
No. of ET	\$ per ET		Sub-Total
17,2	\$200		\$3,440
S94 Plan No. 18 Extensions to Council Administration Offices & Technical Support Facilities			
No. of ET	\$ per ET		Sub-Total
18,7255	\$1995.8		\$37,391
S94 Plan No. 22 Cycleways			
No. of ET	\$ per ET		Sub-Total
17,136	\$352		\$6,032
S94 Plan No. 26 Regional Open Space (Casual)			
No. of ET	\$ per ET		Sub-Total
17,152	\$855		\$14,665
S94 Plan No. 26 Regional Open Space (Structured)			
No. of ET	\$ per ET		Sub-Total
17,144	\$2,327		\$39,694

2) Timing and Method of Payment

The contribution shall be paid in the form of cash or bank cheque, made out to Tweed Shire Council. For accounting purposes, the contribution may require separate payment for each of the categories above and you are advised to check with Council.

Evidence of the payment to Council, shall be submitted to the Certifying Authority prior to the issue of the Subdivision Certificate for each stage of the project.

3) Section 94 Plans

A copy of the Section 94 contribution plans may be inspected at Tweed Shire Council, Civic & Cultural Centre, Tumbulgum Road, Murwillumbah NSW 2484.

- Proposed Condition

No changes are requested to the wording of the condition, however it is requested that the applied amount of contributions or Equivalent Tenements are revised to reflect the approved number of Units i.e. 38 not 40.

Condition B30

- Existing Condition

B30 Section 64 Monetary Contributions

- 1) Contributions plans relevant to the subdivision include:
 - a) *Development Servicing Plan for Water Supply Services (July 2007)*
 - b) *Development Servicing Plan for Sewerage Services (July 2007)*
- 2) Prior to the endorsement of a Subdivision Certificate for each stage of the subdivision, the proponent must pay, in proportion to the additional lots created by that stage, the following contributions to Council pursuant to section 64 of the *Local Government Act 1993*.

Water Supply Services		Sewerage Services	
Calculation	Total	Calculation	Total
\$10,709 x 6.4952ET	\$69667.10	\$5,146 x 14.779ET	\$76062.73
TOTALS	\$69667.10		\$76062.73

- 3) These charges to remain fixed for a period of twelve (12) months from the date of this approval and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.
- 4) A copy of the section 64 contribution plans may be inspected at Tweed Shire Council, Civic & Cultural Centre, Tumbulgum Road, Murwillumbah NSW 2484.

- Proposed Condition

It is requested that the wording of this condition is retained, however the schedule is reviewed and amended as appropriate to reflect the approved number of residential units i.e. 38 not 40.

Within the issued consent, Clause 7.11 and Section 64 contributions applied to the development in accordance with Conditions B29 and B30 reflect the original proposal of 40 Residential Units rather than the approved 38 Units. An amended schedule of applicable contributions for Stage 2 are sought to correctly reflect the approved number of Residential Units i.e. 38 Units rather than 40. This discrepancy has been discussed with Tweed Council staff who are aware that a new contributions schedule will be required.

Minor Changes to the approved architectural plan set have been clouded in red within the attached plan set. These amendments to the approved design are in response to the amended residential component of the developments and its connectivity with the ground floor commercial premise. The amendments will improve the overall amenity for residents and occupants of the residential development, while not being discernable changes from a visual perspective.

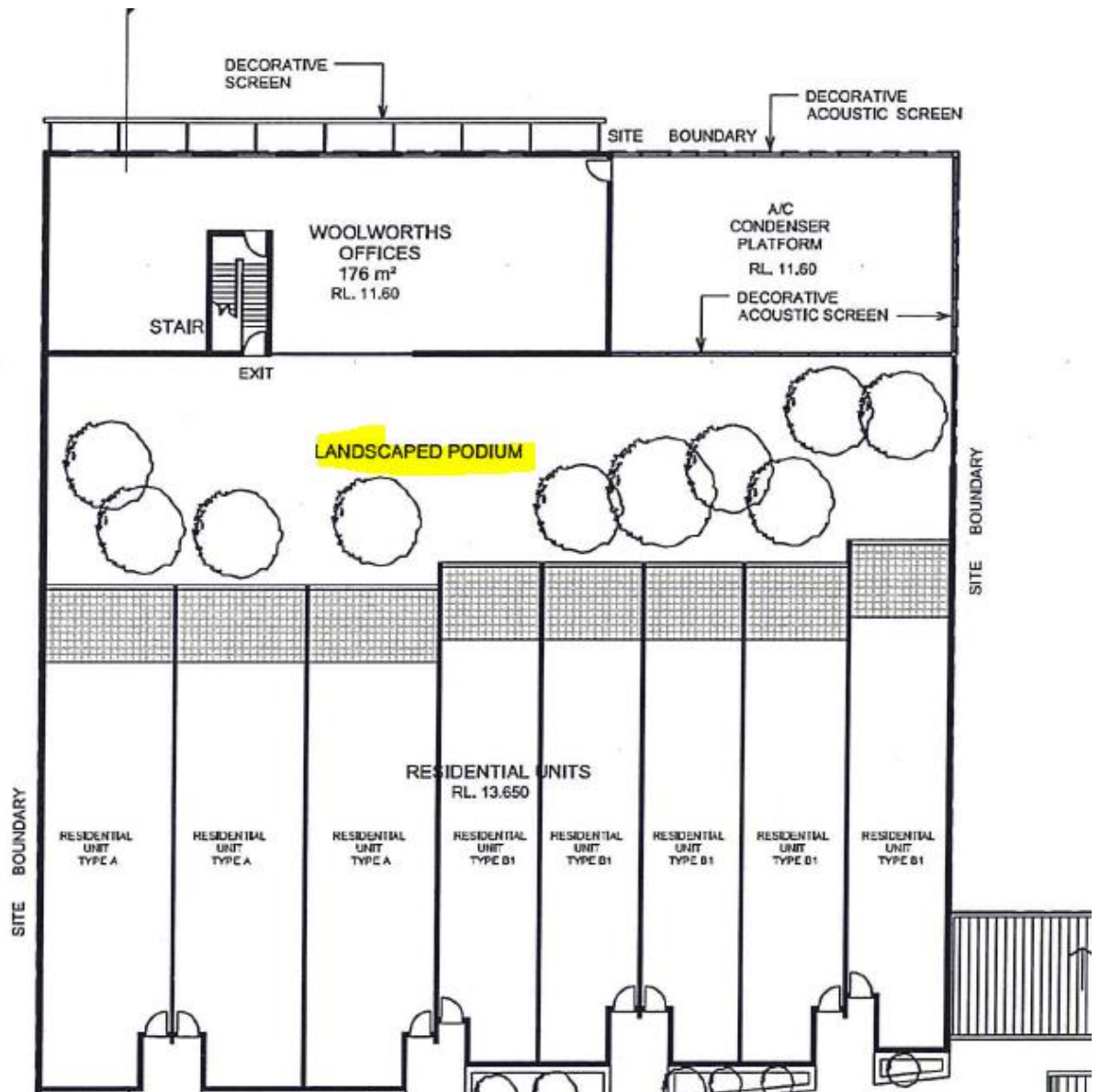
These amendments will improve the functionality of the development for residents and occupants and reflect modern design trends. These design changes are of a minor nature and will not alter the overall appearance of the development from adjacent properties or public open space. The changes will not increase the bulk and scale of the project nor will the changes impact the approved floor space ratio, building lines and setbacks.

The changes are summarised as follows;

First Floor

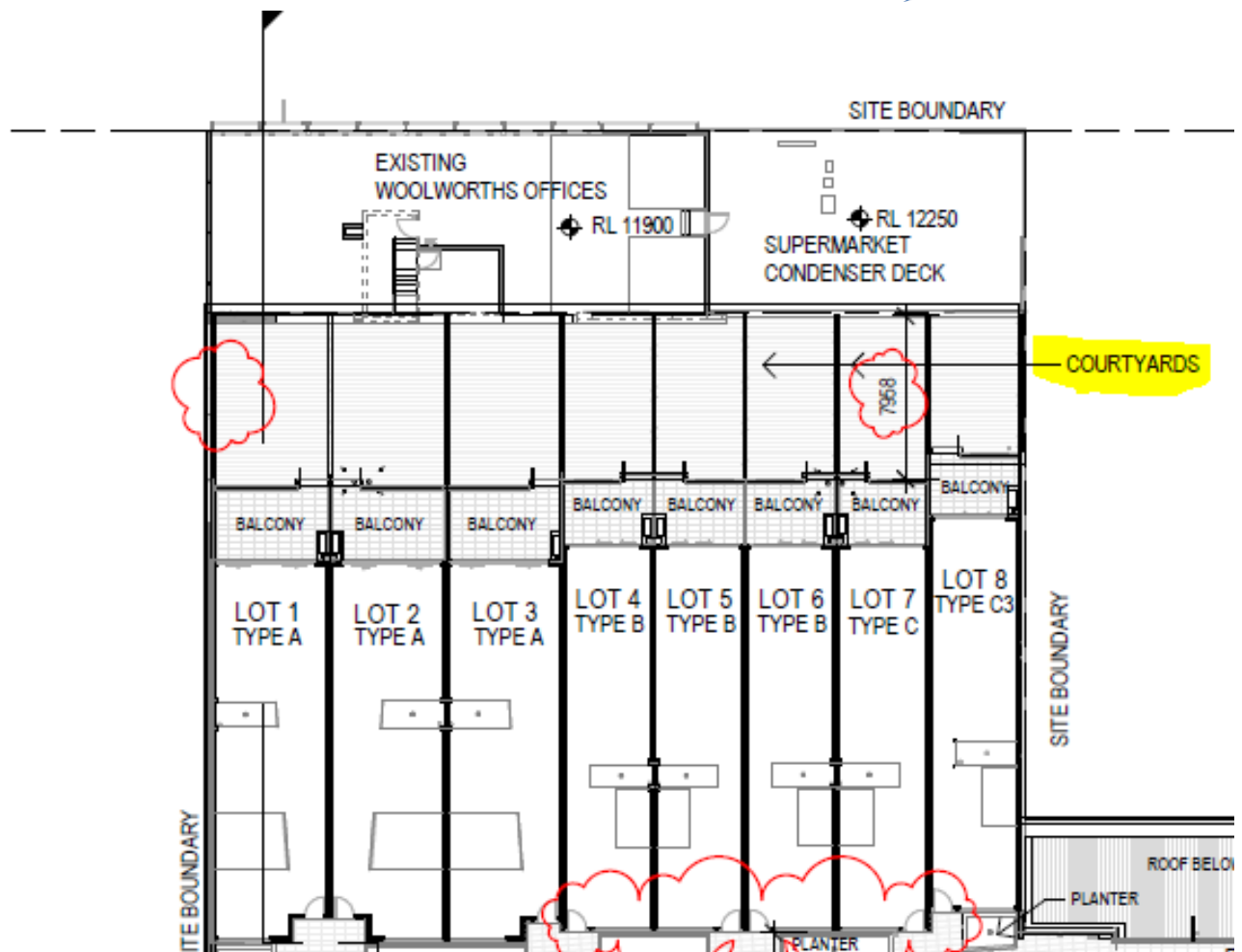
- Minor changes to screen exhaust behind Unit No's 16-19
- Minor changes to entries of Units No's 4-8
- Insertion of automatic doors
- Minor changes to services (i.e. Heat exhaust, stairs and lift)
- Increased Private Open Space areas behind units Nos 1-8

The original development, as approved included the provision of 192m² of landscaping to an inaccessible roof area upon Level 1. The inaccessibility of this landscaping area is not considered a feasible option for ongoing maintenance and is not considered a functional or reasonable component of the development. As an alternative, this area will be utilised by Units 1- 8 as private open space. Each Unit will be allocated additional areas of private open space, enabling these units to maintain these areas.



Landscape Podium as Approved

Extract Approved Plan Title; Level 1 Plan Stage 2 – Plan DWG No - 05 Revision B



Proposed Alteration to Level 1 – Courtyards Previously known as the Landscape Podium

Extract Plan Title; Level 1 Floor Plan DWG DA-05 Rev B

Second Floor

- Minor changes to the entries to Unit's No's 35 and 36
- Minor changes to screen exhaust behind Unit's No's 35-38
- Minor changes to entries of Unit No's 23-27
- Insertion of automatic doors
- Minor changes to services (i.e. Heat exhaust, stairs and lift)
- High Level windows to be incorporated into walk-way.

Roof

- Minor changes to skylights
- The form has been refined to provide a single pitched roof over each unit. It remains compatible within the original design intent, and causes no further impact on views for adjoining neighbours. The roof level has increased in some areas, though remains under

the approved maximum limit thereby remaining consistent with the height requirements along Tweed Coast and Hastings Roads. The street elevation to Tweed Coast Road remains similar to the original scheme, is articulated along its length with the inclusion of eaves, and is of compatible material.

It is noted that the approved plans set from Modification No. 1 for Stage 2 provide the following RLs as summarised in the following table:

Elevation	Approved RL m	Proposed RL m
<u>Tweed Coast Road Elevation</u>		
Maximum Building Height	21.250	21.085
Res 2 Floor Level	16.35	16.7
Res 1 Floor Level	13.65	13.65
<u>Hastings Road Elevation</u>		
Maximum Building Height	21.25	21.25
Res 2 Floor Level	16.35	16.7
Res 1 Floor Level	13.65	13.65
Overall Height	M	M
Tweed Coast Road Elevation	13.65m	13.65m
Hastings Road	17.65m (21.250 RL - 3.6m RL NGL)	17.485 (21.085 – 3.6m RL NGL)

No other changes to the development are proposed nor required.

4. Statutory and Policy Planning

This section of the report identifies and addresses the applicable environmental planning instruments (EPIs) and policy planning documents that must be considered by the consent authority in the consideration of this application.

4.1 Section 4.55 Considerations

Ardill Payne & Partners has prepared this application on behalf of the property owner, Cabarita Beachside Pty Ltd. The owner's consent to the making of this application is provided with the Section 4.55 application form. The modified development is considered to be consistent with the provisions of Clause 4.55(1A) for the following reasons;

Section 4.55(1A)(a) – As articulated in **Section 4** of this report, the proposed modification involves nil to minimal environmental impact as the proposed amendment results in minimal change to the development as originally approved. The modification is therefore considered to fall under the ambit of Section 4.55(1A) of the Act. Further, the changes are primarily to comply with the nominated conditions of consent and to correct errors in the consent, as modified.

Section 4.55(1A)(b) – The development to which the consent as modified relates is for all intents and purposes the same development as the development for which the consent was originally granted. The development is considered substantially the same as that approved for the following reasons:

- The modification application will not change that development to which approval was originally sought.
- The modification will continue to seek approval for Stage 2 of the development as approved (as Stage 1 is complete) being the construction of 38 residential units above the existing Stage 1.
- The approved floor space ratio of the approved residential units will not change.
- The height and approved building line and setbacks of the approved building will remain consistent with the development consent.
- The external appearance of the building will be as approved including the façade to Tweed Coast Road and Hastings Road.

Section 4.55(1A) (c) – The application is not likely required to be advertised in accordance with the Consent authority's policy and there is no advertising requirement under the Regulations.

Clause 120(1) of the *EP & A Regulation 2000* applies and provides that, as soon as practicable after receiving an application to modify a development consent, the consent authority must cause a copy of the application to be given to each concurrence authority and approval body to

which the application relates. No concurrence was sought nor required during the original application assessment.

Section 4.55(1A) (d) – The consent authority is required to consider any submissions if the application is advertised.

Section 4.55(3) – In determining this 4.55(1A), the consent authority is required to take into consideration such matters referred to in Section 4.15(1) as are of relevance to the proposed modified development – refer **Sections 4** and **5.2** of this report.

4.2 Environmental Planning Provisions

As is implicit and evidenced in the granting of consent to MP07_0179 (DA09/0083), the *“Part 3 Part 4 storey mixed use development entailing ground level commercial including supermarket and retail shops, upper level residential units, basement and surface car parking and landscaped areas”* is consistent with all relevant environmental planning instruments and other statutory provisions including the:

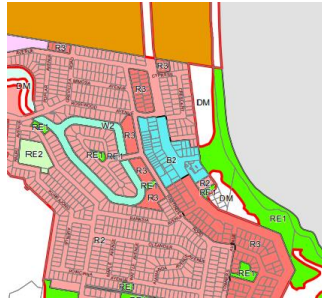
- TLEP 2014
- SEPP 55 – Remediation of Land
- SEPP (Coastal Management) 2018
- SEPP 65 – Design Quality of Residential Flat Buildings
- Tweed DCP 2008

The proposed modifications are not such that will have any impacts on, or actual or consequential changes to the approved and proposed modified development in the context of any of the above.

4.2.1 Tweed LEP 2014

The Tweed Local Environmental Plan 2014 (TLEP) came into effect on the 4th April 2014. It is noted the original application was assessed pursuant to the provisions of the TLEP 2000. The subject land is mapped under the TLEP 2014 as follows:

- Land Zoning Map – Sheet LZN_024 – B2 – Local Centre



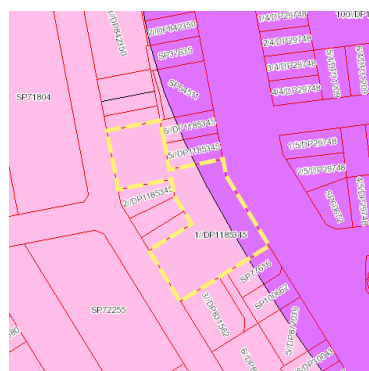
- Height of Buildings Map – Sheet HOB_024 – N2– 13.6m



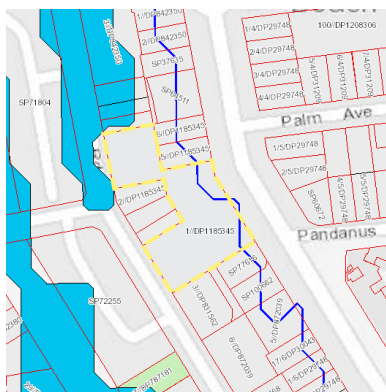
- Floor Space Ratio Map – FSR_024 – T – 2:1



- Acid Sulfate Soils Map – Sheet ASS_024 – Part Class 3 Part Class 4



- Flood Planning Land – Sheet FLD_024 – Level of Probable Maximum Flood



The objectives of the B2 zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide for tourism and residential opportunities that contribute to the vitality of the local centre.*

Stage 2 of the approved development is defined in the Dictionary to the TLEP 2014 as follows:

shop top housing means one or more dwellings located above ground floor retail premises or business premises.

Note. Shop top housing is a type of residential accommodation—see the definition of that term in this Dictionary

“residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following:

- attached dwellings,*
- boarding houses,*
- dual occupancies,*
- dwelling houses,*
- group homes,*
- hostels,*
- multi dwelling housing,*
- residential flat buildings,*
- rural workers’ dwellings,*
- secondary dwellings,*
- semi-detached dwellings,*
- seniors housing,*
- shop top housing,*

but does not include tourist and visitor accommodation or caravan parks.”

Shop top housing continues to be permissible with consent within the B2 zone. It is considered that the development remains consistent with the objectives of the zone for the following reasons:

- The development will contribute to the provision of housing to meet the needs of the community.
- The development will result in shop top housing to accommodate residents in an area within the central business district, public recreation areas and open space with a variety of good and services available in walking distance.

Clause 4.3 relates to building height and provides that the height of a building is not to exceed the height shown for the land on the Height of Buildings Map which in this case is 13.6m. As shown on the amended architectural plans at **Appendix D**, the amended plans do not impact the approved building height to RL 21.25m. This height includes the lift over-run and have been calculated from a detailed site survey for existing levels.

Clause 4.4 provides that the floor space ratio (FSR) of a building is not to exceed the FSR shown for the land on the Floor Space Ratio map which in this case is 2:1. The proposed development intends to provide units consistent with the approved development. The approved floor space ratio will therefore not change. The development is therefore compliant in this regard and no change to the approved FSR is proposed as a result of this modification.

Clause 7.1 relates to acid sulfate soils. The site is identified as part Class 3 and Part Class 4 ASS. It is noted that Stage 1 of the approved development has been constructed. This Stage involved all works at ground level. The proposed modifications are limited to Stage 2 of the development. Stage 2 involves the construction of residential units directly above the operational shopping centre. Disturbance of the ground below will be extremely limited and contained to areas previously disturbed in conjunction with Stage 1. Accordingly, it is concluded that the modified development will not increase any risk of potential ASS exposure.

Clause 7.2 relates to earthworks and provides that in deciding whether to grant consent for such or for development involving ancillary earthworks, the consent authority must consider certain heads of consideration. No earthworks are proposed nor necessary to facilitate Stage 2 of the approved development.

Clause 7.3 relates to flood planning. The site is mapped as being within the probable maximum flood area. However, Stage 1 of the development has been completed covering all proposed works at ground level. This modification is limited to Stage 2 of the development which is the upper floor residential components of the approved major project. Accordingly, flood planning levels are not applicable to Stage 2 nor the proposed minor modifications.

Clause 7.55 relates to stormwater management. Development must not be granted for residential development unless the consent authority is satisfied that the development is

- (a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- (b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- (c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact*

The approved development included stormwater management measures. The hard stand areas approved in conjunction with the development will not change as a result of this modification. The approved stormwater treatment required in conjunction with Condition B14 will not be compromised by the amended plans.

Clause 7.10 relates to essential services. The approved development will not change in regards to the provision of services.

Having regard to the above the proposed development is compliant with the relevant provisions of the TLEP 2014 and is consistent with other recent developments in the immediate and wider locality.

4.2.2 State Environmental Planning Policy 65 – Design Quality of Residential Apartment development

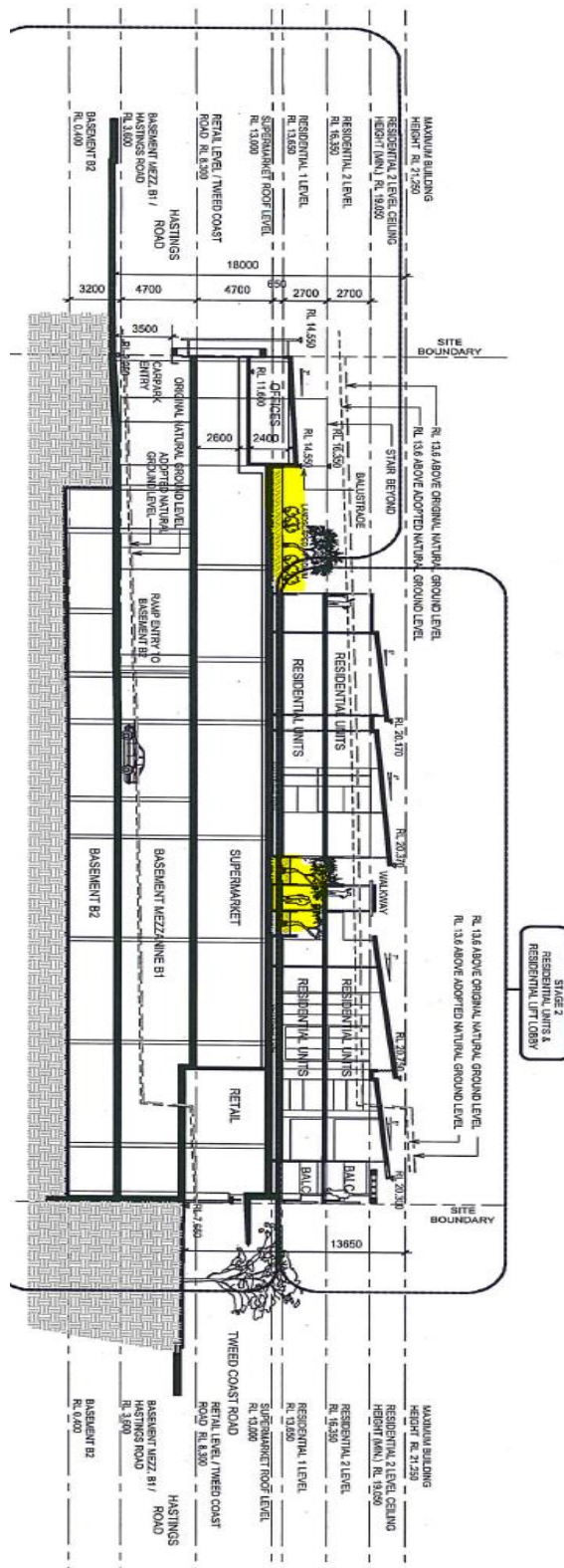
The approved development was generally compliant with this State Policy as provided within the extensive assessment that accompanied the original application. In regards to the modifications proposed, the following comments are made:

The single purposes of the proposed modification of the development is in response to Conditions B2, B3 and B4. These conditions relate to the building separation on Level 1 and 2 between the two rows of approved Units. The conditions required the central separation of the two rows of Units to be increased by an additional 2000mm through reducing the length of each Unit by 1000mm.

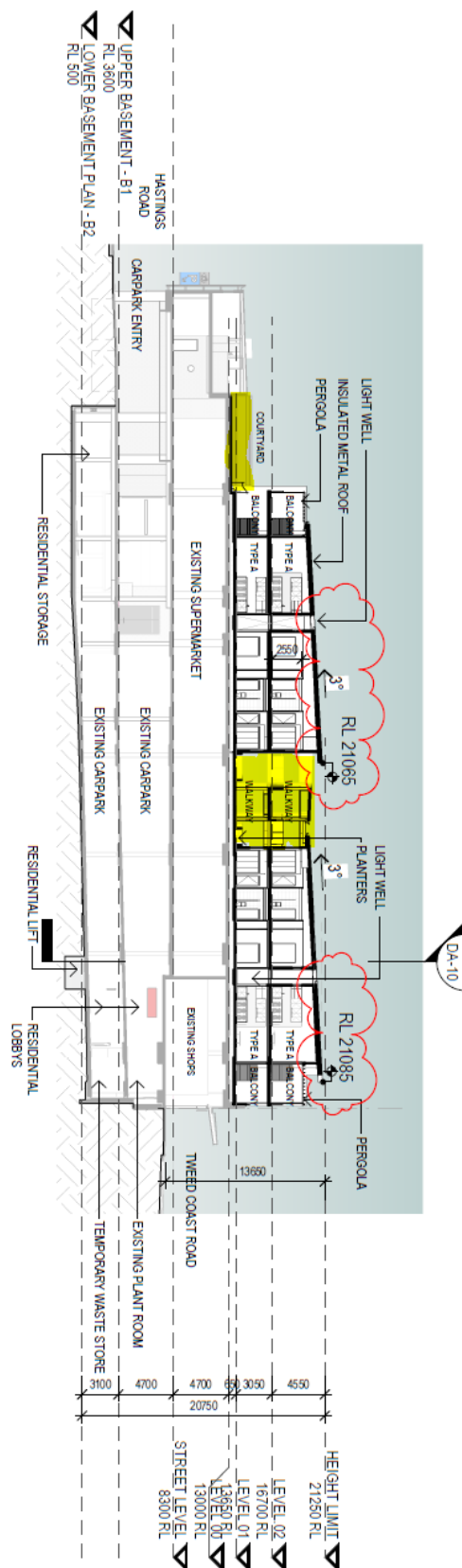
The amended design of the residential component of the development, or Stage 2 is such that rather than decreasing the length of the Units, the separation by a total of 2000mm between the two rows of Units has been achieved by relocating or shifting the western row of units by 2000mm to the west toward Hasting Road, over the inaccessible landscaped area at the rear of these Units. Accordingly, the separation between the western and eastern block of units has been increased by 2000mm, as required by conditions B2, B3, and B4.

The conditions of consent required an increased separation for improved landscaping areas between the two rows of Units at Level 1. This has been achieved by the increased separation between units by 2000mm on both levels as required by the conditions. It is noted that the RFDC did not nominate a minimum area for landscaping, rather the development consent conditions required a widening of the area by a total of 2000mm, which has been complied with.

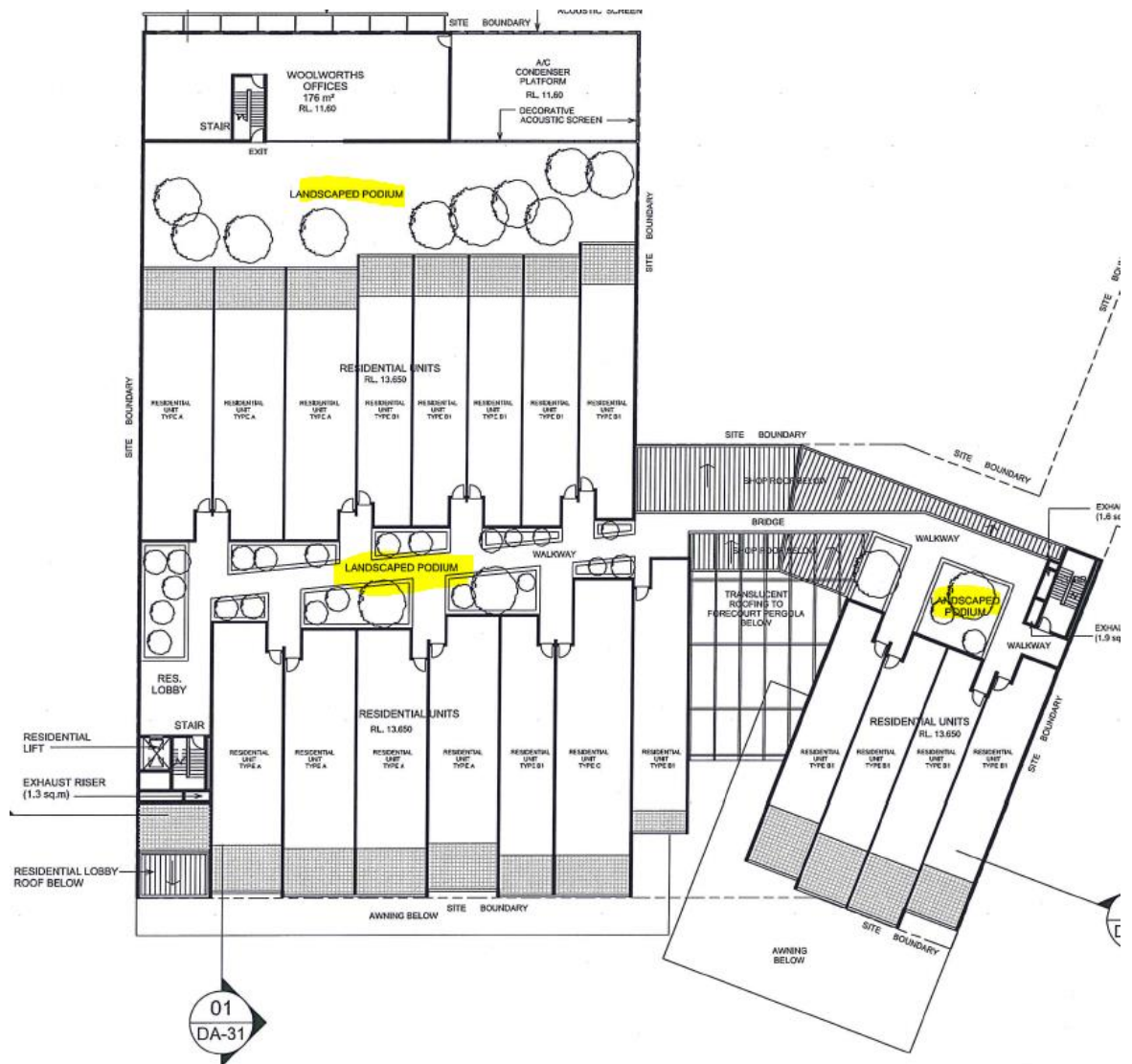
The table and highlighted extracts from the approved and proposed plans below demonstrate the increased separation between the eastern and western blocks with minimal reduction in the cumulative landscaped areas.



Extract Approved Plan Set- Approved Landscaped Podium Areas in yellow – Plan Title; Sections - Stage 2
– DWG DA-31 Rev A

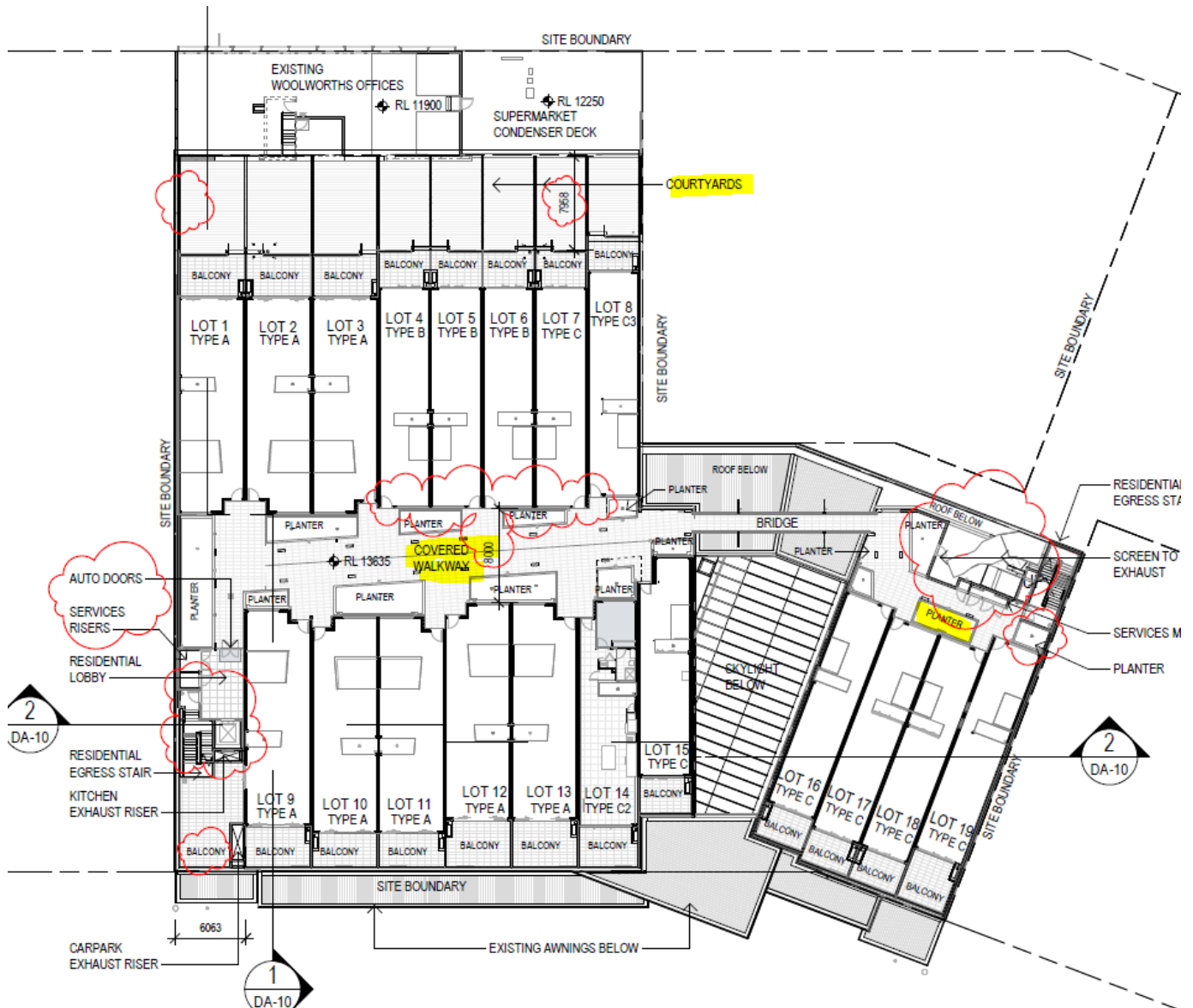


*Proposed Landscape Areas in yellow (previously known as Landscape podiums) – Plans
Extract – Plan Title; Sections - DWG No DA-10 Rev B*



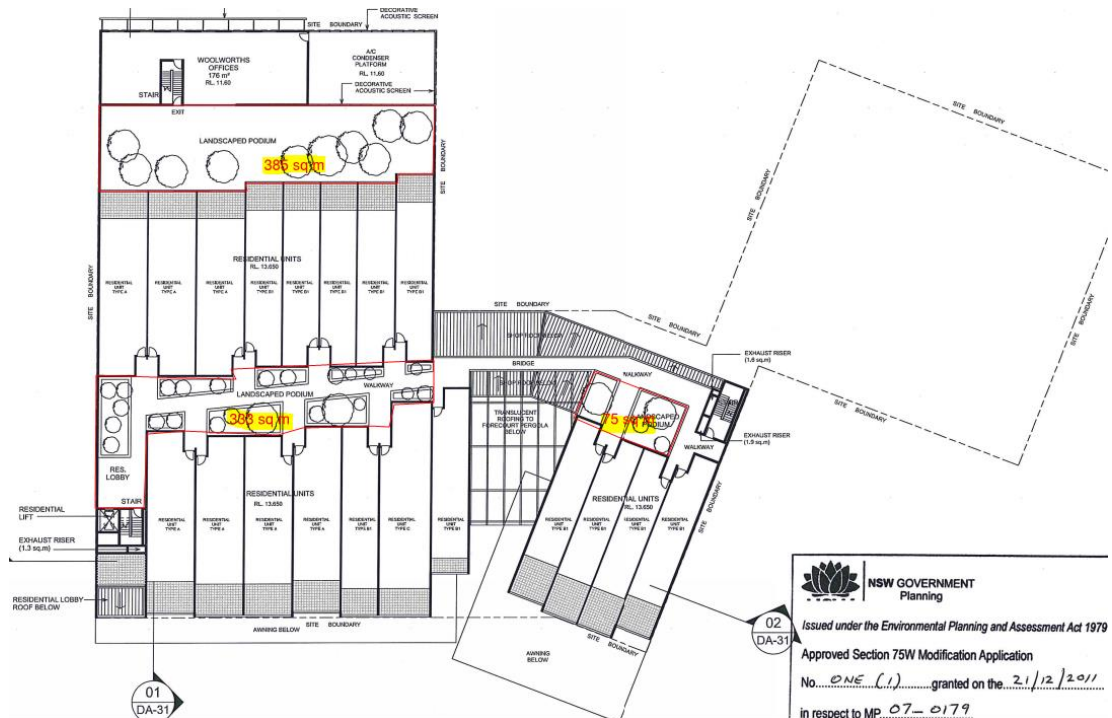
Landscape Podiums as Approved

Extract Approved Plan Title; Level 1 Plan – Stage 2 - DWG No - 05 Revision B



*Proposed Alteration to Level 1 – Courtyards Previously known as the Landscape Podium –
Landscape Podium renamed as covered walkway*

Extract Plan Title Level 1 Floor Plan DWG DA-05 Rev B



Existing Landscaped Podium Combined Areas as approved – 793m²

Extract Approved Plan Title; Level 1 Plan- Stage 2 - DWG No-05 Revision B



*Proposed Alteration to Level 1 – Courtyards Previously known as Landscape Podium –
Landscape Podium renamed as covered walkway combined Landscape Areas – 780m²*

Extract Plan Title; Level 1 Floor Plan- DWG DA-05 Rev B

Landscape Summary

Landscaped Areas	Existing m ²	Proposed m ²
Western Podium	385	336
Central Podium	333	348
Northern Area	75	75
Total	793	780

4.2.3 State Environmental Planning Policy – (Coastal Protection)

The development, as approved, was subject to the provisions of this SEPP. The minor design changes will have no impact on the coastal strip, the site being spatially separated by Tweed Coast Road and private lands to the east of this link road.

4.2.4 State Environmental Planning Policy 55 – Remediation of Land

The minor amendments to the approved residential accommodation (shop top housing) will not change the assessments and reports supplied to satisfy the provisions of this State Policy.

4.2.5 Tweed Development Control Plan

The current BSDCP came into effect on the 4th June 2008 and contains a number of provisions that are of relevance to the proposal, details of which are provided below. It is noted that the original proposal was assessed against the provisions of the TSC DCP 2007, given the development was determined prior to the coming into effect of this DCP.

4.2.5.1 Section A1 – Part A - Residential and Tourist Development Code -Preliminaries

4. Context and Site Analysis – The modified residential accommodation (shop top housing) will not be altered in regards to orientation, floor layouts or window locations. Therefore, the building will continue to be sympathetic to the streetscape, landform and adjoining dwellings.

The building has been designed to take advantage of the easterly aspect and significant views to the east. The two rows of residential units have been separated by a greater distance to improve the amenity of all residents.

4.1 Streetscape

The modifications promoted by the issued consent conditions will have no discernible change to the streetscape from Tweed Coast Road or Hastings Road.

4.2 Views and Vistas

- The amended building will not result in any loss of views by adjoining properties.
- The development will in no way diminish view corridors, views to significant landmarks or places of interest.

4.2.5.2 Section A1 - Part C - Residential and Tourist Development Code — Shop Top and Residential Flat Buildings

The development for the purposes of this Section of the DCP is identified as shop top housing.

The original development was not assessed against the provisions of Part C, as this approval was issued prior to the adoption of this DCP. The changes that impact relevant aspects of design have been explained within **Section 4.2.2**. Given the extent and nature of the changes summarised within Section 3.1, a full assessment against these provisions is not considered necessary.

4.2.5.3 Section A2 - Site Access and Residential Parking Code

The approved parking layout as approved and constructed will be retained. This parking was provided to accommodate 40 residential units and the commercial component of the development. The approved parking spaces will readily accommodate Stage 2 given the number of units have been reduced to 38.

4.2.5.4 Section A15 – Waste Minimisation and Management

A Waste Management Plan was included within the original application. The size of the residential units has not changed and the approved number of units reduced by 2 to 38. The approved waste management plan will not be impacted by the proposed modifications.

4.2.5.5 Section B9 – Tweed Coast Strategy

The development, as amended, is not considered contrary to any of the strategic actions contained within this Section.

4.2.5.6 Crime Risk Assessment

Safety and security measures proposed as part of the design and operation of the development were assessed by the original Director-Generals assessment. Stage 1 has been completed and the minor changes to Stage 2 as required by the conditions of development consent will not prejudice the ability of the development to:

- Enhance the safety of developments for all users; and
- Minimise the opportunities for crime to be committed.

5. Conclusion

This section of the report provides a detailed conclusion of the development proposal.

Development consent has been granted for under the terms and conditions of MP07_ 0179 DA09/083. The proposed modification involves minor changes to the approved residential flat building which primarily address errors in the development consent and secondarily undertakes minor design changes to improve the amenity of the proposal for future residents.

The development to which the consent as modified relates is substantially the same as that for which consent has been granted.

The proposed development has been subject to detailed assessment under the raft of applicable environmental planning instruments, DCPs and policies and having regard to all relevant environmental, social and economic considerations.

In conclusion and having regard to the particular circumstances of this case, it is respectfully requested that the Minister grants consent to this application.

6. Scope of Engagement

This report has been prepared by Ardill Payne & Partners (APP) at the request of Cabarita Beachside Pty Ltd for the purpose of supporting and informing a Development Application to the Minister for the Department of Planning and Environment, and is not to be used for any other purpose or by any other person or corporation.

This report has been prepared from the information provided to us and from other information obtained as a result of enquiries made by us. APP accepts no responsibility for any loss or damage suffered howsoever arising to any person or corporation who may use or rely on this document for a purpose other than that described above.

No part of this report may be reproduced, stored or transmitted in any form without the prior consent of APP.

APP declares that it does not have, nor expects to have, a beneficial interest in the subject project.

To avoid this advice being used inappropriately it is recommended that you consult with APP before conveying the information to another who may not fully understand the objectives of the report. This report is meant only for the subject site/project and should not be applied to any other.

7. Appendices

Appendix A	Locality plan
Appendix B	Deposited Plan
Appendix C	Approved Major Project Plans
Appendix D	Modified Architectural plans including Landscaping Plans
Appendix E	BASIX Certificate
Appendix F	Architectural Statement

Appendix A

Appendix B

Appendix B: Copy of Deposited Plan

Appendix C

Appendix C: Approved Major Project Plans

Appendix D

Appendix D: Modified Architectural plans including
Landscaping Plans

Appendix E

Appendix E: BASIX Certificate

Appendix F

Appendix F: Architectural Statement