



# Cabarita Beach Mixed Use Development Modification 6

---

Cabarita Beach Mixed Use Development Modification 6  
Assessment Report  
State Significant Development Modification Assessment  
(MP 07\_0179 MOD 6)

February 2021



Published by the NSW Department of Planning, Industry and Environment

[dpie.nsw.gov.au](http://dpie.nsw.gov.au)

Title: Cabarita Beach Mixed Use Development Modification 6

Subtitle: Development Assessment Report

Cover image: *Stockwell Design & Construction Perspectives 24.02.2009 – Major Project Planning Portal*

---

© State of New South Wales through Department of Planning, Industry and Environment 2021 You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Industry and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (February 2021) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Industry and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

# Glossary

Abbreviation	Definition
<b>AHD</b>	Australian Height Datum
<b>BCA</b>	Building Code of Australia
<b>CIV</b>	Capital Investment Value
<b>CPP</b>	Community Participation Plan
<b>Council</b>	Tweed Shire Council
<b>Crown Lands</b>	Crown Lands, DPIE
<b>AWE</b>	Department of Agriculture, Water and the Environment (formerly DoEE)
<b>Department</b>	Department of Planning, Industry and Environment
<b>DPI</b>	Department of Primary Industries, DPIE
<b>DRG</b>	Division of Resources & Geoscience, DPIE
<b>EESG</b>	Environment, Energy and Science Group, DPIE
<b>EIS</b>	Environmental Impact Statement
<b>EPA</b>	Environment Protection Authority
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	Environmental Planning and Assessment Regulation 2000
<b>EPBC Act</b>	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
<b>EPI</b>	Environmental Planning Instrument
<b>EPL</b>	Environment Protection Licence
<b>ESD</b>	Ecologically Sustainable Development
<b>FRNSW</b>	Fire and Rescue NSW
<b>Heritage</b>	Heritage NSW, Department of Premier and Cabinet
<b>LEP</b>	Local Environmental Plan
<b>Minister</b>	Minister for Planning and Public Spaces
<b>NPWS</b>	National Parks & Wildlife Service, DPIE

<b>NRAR</b>	Natural Resources Access Regulator, DPIE
<b>RMS</b>	Roads and Maritime Services, TfNSW
<b>SEARs</b>	Planning Secretary's Environmental Assessment Requirements
<b>Planning Secretary</b>	Secretary of the Department of Planning, Industry and Environment
<b>SEPP</b>	State Environmental Planning Policy
<b>SRD SEPP</b>	State Environmental Planning Policy (State and Regional Development) 2011
<b>SSD</b>	State Significant Development
<b>SSI</b>	State Significant Infrastructure
<b>TfNSW</b>	Transport for NSW

# Executive Summary

This proposal is for a modification of a transitioned Part 3A project approval to correct wording to reflect approved plans, update the monetary contributions and seek minor design changes. The approved development is being constructed in two stages. Stage 1 has been completed, and comprises a supermarket, ancillary retail premises and carparking.

The modification seeks approval to change conditions which reference the original 40 residential units rather than the now approved 38, update the plan set for Stage 2, delete conditions requiring Units 1-7, 13-27 and 33-40 be reduced in overall length by 1000mm, and update the monetary contributions to reflect the correct number of units. Minor design changes are also proposed.

The application was not required to be publicly exhibited, however the neighbours were notified for a period of two weeks, it was made publicly available on the Department's website and was referred to Tweed Shire Council for comment. Council made comments and one public submission was received.

Council raised concerns regarding the reallocation of the Level 1 landscape podium to private open space and the alteration to the roof profile. The public submission raised concerns that the proposal was not 'substantially the same development'.

Council's concerns have been reviewed and the Department is satisfied that the reallocation of the Level 1 landscape podium and minor alterations to the roof profile would not create significant environmental impacts including visual, privacy and noise impacts.

The Department recommends that the modification be approved, subject to the conditions in the attached draft Instrument of Determination.

# Contents

<b>1</b>	<b>Introduction .....</b>	<b>1</b>
1.1	Background .....	1
1.2	Approval history .....	3
<b>2</b>	<b>Proposed modification .....</b>	<b>5</b>
2.1	Applicant's Justification .....	6
<b>3</b>	<b>Statutory context .....</b>	<b>9</b>
3.1	Scope of modification .....	9
3.2	Consent authority .....	10
3.3	Environmental Planning Instruments .....	10
3.4	Part 3A transition to State significant development .....	10
<b>4</b>	<b>Engagement .....</b>	<b>12</b>
4.1	Department's engagement .....	12
4.2	Summary of Submissions .....	12
4.3	Key issues raised in submissions .....	12
4.4	Response to submissions .....	13
<b>5</b>	<b>Assessment .....</b>	<b>14</b>
5.1	Reallocation of Landscaped Open Space to Private Open Space .....	14
5.2	Changes to Reduction of Unit Lengths in Conditions B3 and B4 .....	15
5.3	Other issues .....	15
<b>6</b>	<b>Evaluation .....</b>	<b>18</b>
<b>7</b>	<b>Recommendation .....</b>	<b>19</b>
<b>8</b>	<b>Determination .....</b>	<b>20</b>
	<b>Appendices .....</b>	<b>21</b>
	Appendix A – Relevant Supporting Documentation .....	21
	Appendix B – Notice of Modification .....	21

# 1 Introduction

This report provides the NSW Department of Planning, Industry and Environment's (the Department's) assessment of an application to modify the State significant development (**SSD**) consent for the Cabarita Beach mixed use development at 39 Tweed Coast Road, Bogangar.

The modification application seeks approval for changes to conditions to reflect approved layout and plans, minor design changes and changes to contributions amounts to reflect the correct number of units.

The application was lodged on 25 November 2020 by Joanne Kay (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).

## 1.1 Background

The site is located in Cabarita Beach/Bogangar in the Tweed Shire local government area, between Tweed Coast Road and Hastings Road. The site is legally known as Lot 1 DP 1185345, has frontages to Hastings Road to the west and Tweed Coast Road to the east and a site area of 5,485 square metres (**Figures 1 and 2**). The Applicant operates a retail space and supermarket at the site as approved in Stage 1 of this development.

Cabarita Beach/Bogangar is a coastal village approximately 12 kilometres (km) south of the New South Wales/Queensland state border. The subject site is centrally located within the Cabarita/Bogangar business area and approximately 200 metres (m) from Cabarita Beach. Tweed Coast Road is the main arterial road servicing coastal settlements from the Tweed Heads district to the north.





**Figure 1 |** Regional Context Map (Source: Appendix A of Modification Report (2020) – Additional Locality Plan)



**Figure 2 |** Local Context Map (Source: Appendix A of Modification Report (2020) – Additional Locality Plan)



## 1.2 Approval history

On 2 December 2009, the then Director General, as delegate for the then Minister for Planning approved the development application under Part 3A of the EPA Act. The project comprises of the following development:

- Ground level commercial floor space comprised of 2310m<sup>2</sup> supermarket and 1106m<sup>2</sup> of retail specialty shops;
- 40 residential apartments (shop-top housing);
- A 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 development consent has been modified on four occasions (see **Table 1**).

**Table 1 | Summary of Modifications**

<b>Mod No.</b>	<b>Summary of Modifications</b>	<b>Approval Authority</b>	<b>Type</b>	<b>Approval Date</b>
<b>MOD 1</b>	Increased size of supermarket and decrease area of specialty retail space, allow staged development and modifications to approved unit layout to reduce number of units from 40 to 38.	Minister	Part 3A Mod	21 December 2011
<b>MOD 2</b>	Extension to the approved hours of operation of the commercial premise to 7.30am to 9pm 7 days a week for retail uses and 7am to 6pm Monday to Saturday for deliveries.	Planning Assessment Commission	Part 3A Mod	8 December 2012
<b>MOD 3</b>	Withdrawn	-	-	19 April 2014
<b>MOD 4</b>	Modification of 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 at the request of Tweed Shire Council to finalise dedication of the public laneway.	Minister	Part 3A Mod	19 December 2014
<b>MOD 5</b>	Amendment of Condition B22 (4) to correct a minor error in the wording of this condition.	Minister	Part 3A Mod	15 April 2015

## 2 Proposed modification

The application (MP07\_0179-Mod-6) originally sought approval to modify;

- Condition A1 to reflect the correct number of units;
- Condition A2 to reflect the updated plan set for Stage 2 of the development;
- Condition B2 by deleting the condition;
- Condition B3 to remove the specific amendment details requiring Units 1-7, 13-27 and 33-40 to be reduced in overall length by 1000mm;
- Condition B4 to remove the specific amendment details requiring Units 1-7, 13-27 and 33-40 to be reduced in overall length by 1000mm;
- Condition B29 to reflect the Section 94 Contributions (now Section 7.11 Contributions) calculated on the correct number of units;
- Condition B30 to reflect the Section 64 Monetary Contributions calculated on the correct number of units;
- Minor design changes including changes to exhausts and entries, insertion of automatic doors, changes to windows/skylights and the refining of the roof form to provide a single pitched roof over each unit; and
- Altering the Level 1 landscaped podium from inaccessible landscaped open space to private open space courtyards behind units 1-8.

In the Response to Submissions (RtS), the Applicant has not altered any of these proposed changes.

Details of the proposed modifications are as follows.

- 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. The Applicant provides that the proposed design modifications detailed within the submitted amended architectural set achieve the intended outcomes, therefore this condition becomes redundant and should be deleted.
- Condition B3 – This condition requires the Applicant 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. The Applicant provides that the second sentence of the condition should be 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 Applicant provides 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 by 1000mm as mentioned within Condition B3 above. The Applicant provides that this condition can be modified to remove specific amendment details i.e. reduction of the length of the Units by 1 000mm. Alternatively, the Applicant provides 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)

## 2.1 Applicant's Justification

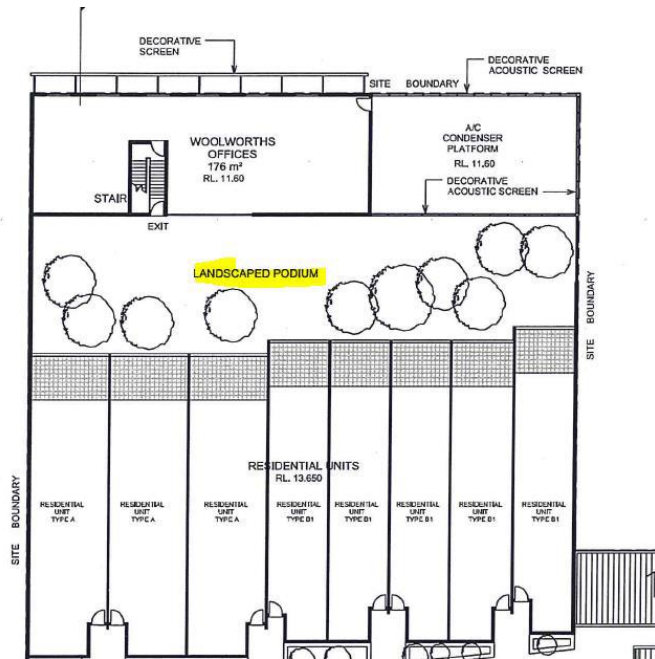
The Applicant's justification for the proposed modification is summarised below.

Conditions A1 and A2 require modification to correlate with the approved plans, to reflect the correct number of units. The reduction in unit number, 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 originally approved 40 units, despite the approved change to 38 units. This correction is also the trigger for the modifications to Conditions B29 and B30, the Section 7.11 and Section 64 Contributions applicable to Stage 2 of the development.

Conditions B2, B3 and B4 require a reduction in length of the approved residential units. The intent of these conditions was to ensure the approved units and landscaped areas were as consistent as possible with *SEPP 65 – Design Quality of Residential Flat Development* and the *Residential Flat Design Code* applicable at the time of assessment (now superseded by the Apartment Design Code). The intent of Condition B3 was to condition a reduction of 1000mm in length for residential units 1-7, 13-2 and 33-40 in order to improve separation between units on the eastern and western side of the Level 1 central landscaped area. These design modifications have been achieved through increased separation over the two levels by reducing the length of landscaped courtyards rather than the units themselves. The changes are summarised as follows:

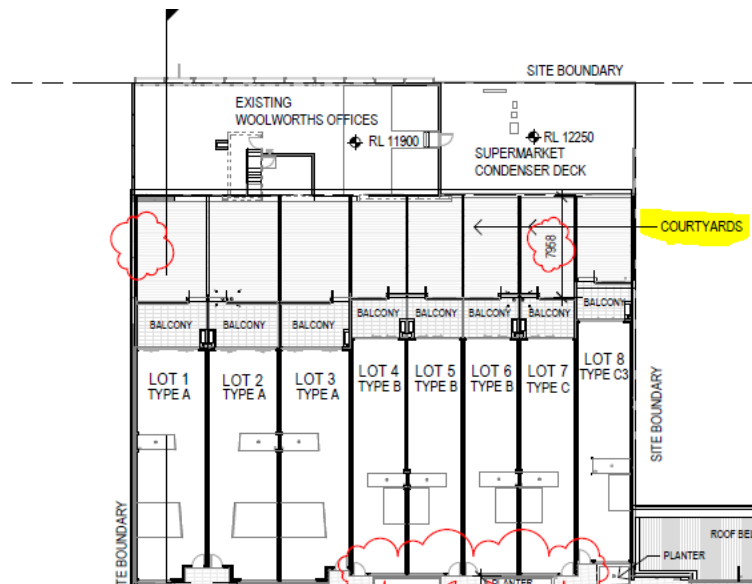
- Relocation of the western bank of unit's towards Hastings Road to the west to improve the amenity of the units, specifically access to natural light and improved privacy.
- Allocation of the western landscape podium at level 1 to the respective units as demonstrated on the amended plans (identified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

Further, the landscape podium between Hastings Road and the western bank of units as approved is not accessible by any residents, and therefore a design change to this use is sought. The reallocation of this landscaped open space to private open space is considered to be a more practical use of the area, with no significant impacts on the development or the surrounding environment. The development is located across from Cabarita Beach and therefore has accessible public open space available for residents within the surrounding area.



**Figure 3** Landscape Podium as Approved

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



**Figure 4** Proposed Alteration to Level 1 - Courtyards previously known as the Landscape Podium

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

Other design changes sought include;

#### **First Floor**

- Minor changes to screen exhaust behind unit No's 16-19
- Minor changes to entries of unit 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 unit No's 1-8

#### **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 walkway.

#### **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.



## 3 Statutory context

### 3.1 Scope of modification

Section 4.55(1A) of the EP&A Act outlines the matters that a consent authority must take into consideration when determining an application that seeks to modify an SSD consent and results in minor environmental impacts. The matters for consideration under section 4.55(1A) of the EP&A Act that apply to the modification of the project approval have been considered in Table 2.

**Table 2 | Section 4.55(1A) Evaluation**

Section 4.55(1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	Section 6 of this report provides an assessment of the impacts associated with the proposed changes. The Department is satisfied that the proposed modification will have minimal environmental impacts.
b) that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	The proposed modification seeks approval to make minor changes including the reallocation of landscaped open space to private courtyards and minor design changes. The overall use of the building remains as approved. On this basis, the Department is satisfied that the proposed modification results in development that is substantially the same development as originally approved.
c) the application has been notified in accordance with the regulations, and	The modification application has been notified in accordance with the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation). Details of the notification are provided in Section 5 of this report.
d) any submissions made concerning the proposed modification have been considered	The Department received two submissions on the proposal, including comments from Tweed Shire Council (Council) and one public submission in objection. The issues raised in the submissions are considered in Section 6 of this report.

The Department has reviewed the scope of the modification application and considers that the application can be characterised as a modification involving minimal environmental impacts as the proposal:

- would not significantly increase the environmental impacts of the project as approved;
- is substantially the same development as originally approved; and
- would not involve any further disturbance outside the already approved disturbance areas for the project.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.

### **3.2 Consent authority**

The Minister for Planning and Public Spaces is the consent authority for the application. However, the A/Executive Director, Regions, Industry and Key Sites, may determine the application under delegation, dated 9 March 2020, as:

- a political donation disclosure statement has not been made; and
- there are less than 50 public submissions objecting to the proposal.

### **3.3 Environmental Planning Instruments**

The following EPIs are relevant to the application:

- EP&A Act 1979 Section 4.55 (1A)
- EP&A Regulation 2000 Clause 120 (1)
- Tweed Local Environment Plan 2014 (TLEP)
- SEPP 55 – Remediation of Land
- SEPP (Coastal Management) 2018
- SEPP 65 – Design Quality of Residential Apartment Development

The Department conducted a comprehensive assessment of the project against the above-mentioned EPIs in its original assessment. The Department considers the modification does not result in any significant changes that would alter the considerations and conclusions made as part of the original assessment.

### **3.4 Part 3A transition to State significant development**

This project was originally approved under the former section 75J of the EP&A Act and was a transitional Part 3A project under Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (EP&A (ST&OP) Regulation).

Following amendments to the EP&A Act and the commencement of the associated EP&A (ST&OP) Regulation on 1 March 2018, the power to modify Part 3A project approvals under former section 75W is no longer available for modifications submitted after 1 March 2018. In order to modify a transitional Part 3A project approval, the Minister for Planning and Public Spaces can declare the development to be SSD by order under clause 6 of Schedule 2 of the EP&A (ST&OP) Regulation. If a declaration is made the project approval becomes a development consent which can be modified under Part 4 of the EP&A Act if it meets the relevant criteria.

On 8 October 2020 the Director of Regional Assessments (as delegate of the Minister for Planning and Public Spaces), made an order under clause 6 of Schedule 2 to the EP&A (ST&OP) Regulation declaring the development the subject of the project approval to be SSD. The order was published in the NSW Government Gazette on 16 October 2020 and took effect from that date.

The effect of this order is that:

- The project approval is taken to be a development consent under Part 4 of the EP&A Act for the carrying out of the development
- The modification request is taken to be an application to modify under section 4.55 of the EP&A Act.

## 4 Engagement

### 4.1 Department's engagement

Clause 117(3B) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) specifies that the notification requirements of the EP&A Regulation do not apply to section 4.55(1A) modifications with minimal environmental impact applications. Accordingly, the application was not required to be publicly exhibited, however the neighbours were notified for a period of two weeks, it was made publicly available on the Department's website and was referred to Tweed Shire Council for comment. Council made comments and one public submission was received.

### 4.2 Summary of Submissions

During the notification period, the Department received a total of two submissions on the proposal, of which both were unique submissions. Of the submissions received, one was from Council and one was from a member of the community. The public submission objected to the proposal and Council's submission provided comments only. The community member who made a submission owns property within 5km from the proposal. A summary of the submissions is provided in Table 3 below, and a link to the full copy of the submissions is provided in Appendix A.

**Table 3 | Summary of Council and Community Submissions**

Submitter	Number	Position
<b>Local Councils</b>		
Tweed Shire Council;	1	Comment
<b>Community Members</b>		
	1	Object
< 5 km	0	Support
<b>TOTAL</b>	<b>2</b>	

### 4.3 Key issues raised in submissions

The Department received one public submission in response to the exhibition of the modification request, being in objection and one providing comments from Tweed Shire Council.

Key concerns raised in the public submission included:

- Concern that the modified development is not substantially the same on the grounds that it is the creation of a new development and land use creating new environmental and other impacts.

- The reallocation of the Level 1 western landscape podium from inaccessible landscaped open space to private courtyards for units 1-8 creating increased amenity and privacy impacts for surrounding properties to the west.
- Removal of roof landscape screening to the rear of apartments facing Hastings Road contributing to a significant decline in visual and acoustic privacy and visual amenity for surrounding properties, specifically on Hastings Road.

Key concerns raised in Council's comments included:

- Not supporting the reallocation of the landscaped area on Level 1 adjacent to the Hastings Road frontage to private open space for units 1-8. Council indicated a preference for this area to be used as communal open space with access for all residents.
- Proposed changes to the roof profile, with the current proposal being more monotonous and contributing little to the landscape, particularly when viewed from Hastings Road.

Council was supportive of the other changes proposed as part of the modification.

#### **4.4 Response to submissions**

On 19<sup>th</sup> January 2021, the Applicant provided a Response to Submissions (RtS) to address the issues raised during the notification period (Appendix A). As part of the RtS, the Applicant made amendments to the application in response to concerns raised by the Department by:

- Providing additional plans and updated drawings detailing sightlines from neighbouring properties in Hastings Street demonstrating that neither the courtyards nor the units are visible from properties opposite.
- Provided two sections through a typical lightwell to demonstrate how the lightwells provide natural light to both the Level 1 and Level 2 units.
- Provided floor plans for Level 1 and Level 2 updating the term "Lot" to "Unit".

Additionally, the Applicant provided a supplementary RtS on 21<sup>st</sup> January 2021 to address the issues raised in public submissions by:

- Addressing the concerns regarding whether the development was 'substantially the same development'.

## 5 Assessment

In assessing the merits of the proposed modification, the Department has considered the:

- the modification and associated documents (Appendix A)
- the Environmental Assessment and conditions of approval for the original project (as modified)
- submissions received on the proposal and the Applicant's response to the submissions
- relevant environmental planning instruments, policies and guidelines
- requirements of the EP&A Act.

The Department considers the key assessment issues for the modification request are view impacts, privacy and noise. The Department's assessment of other issues is set out in Table 4.

### 5.1 Reallocation of Landscaped Open Space to Private Open Space

Public and Council submissions raised concerns about the potential impact of the proposed reallocation of landscaped open space to private open space for units 1-8 referred to as 'courtyards' on the properties on Hastings Road. The key concerns are visual enmity, noise and privacy impacts.

Council did not support this reallocation as it represents a missed opportunity for public open space and limited detail was provided in relation to the visual impact of the revised proposal when viewed from street level of Hastings Road. Council noted that it may be more appropriate to allow individual access from units 1-8 as proposed, but to retain the area as a single landscaped area which allows for access for other unit occupiers.

The Applicant has provided additional plans detailing sightlines from the neighbouring properties on Hastings Road. The plans demonstrate neither the courtyards nor the units are visible from the opposing properties. As the courtyards are not visible from surrounding properties, the Department is satisfied that utilising this area as a landscape buffer for visual amenity purposes is of minimal advantage, as it would provide no benefit to adjoining properties. Similarly, landscaping this podium will provide no benefit to privacy as there are no significant impacts in this regard.

The application was originally assessed against the Residential Flat Design Code (RFDC), where Part 02 – Site Design states *'where communal open space is difficult to accommodate on site, councils may need to consider the adequacy of public open space provision in the locality'*. As the site is located directly opposite Cabarita Beach as well as extensive public reserves along the coastline, it is considered that these public open spaces would be able to be utilised by the public.

The Apartment Design Guidelines (ADG) outline the design criteria for private open spaces for podium level apartments, with Part 4 stating that *'Apartments provide appropriately sized private open space and balconies to enhance residential amenity'*. Objective 4E-1 outlines that private open spaces should be provided for podium level apartments which are at least 15m<sup>2</sup> and 3 metres deep. The proposed courtyards, without the balcony is 7.958 metres deep and have an area significantly greater than the required 15m<sup>2</sup>.

The Department is satisfied that this proposed reallocation of space is appropriate in this case, as the space is not being used to provide any benefits to surrounding properties and will not cause



significant noise, privacy or visual amenity impacts as the space is not visible from adjoining properties.

## 5.2 Changes to Reduction of Unit Lengths in Conditions B3 and B4

These conditions refer to the reduction in length of units by 1000mm in order to achieve improvement in design quality and increase separation. The intent of these conditions was to ensure consistency with SEPP 65 – Design Quality of Residential Flat Development and the Residential Flat Design Code (now superseded by the Apartment Design Guide) by improving design quality. This increase in design quality was to increase the separation between units on either side of the central landscape podium on Level 1 in order to increase natural light penetration into the units and increase privacy.

The Applicant has provided modified architectural plans to demonstrate how the intent of these conditions has been met. However, the depth of the units has not been amended, instead the intended increase in two metres of separation has been achieved through the relocation of the western bank of units towards Hastings Road to the west by reducing the length of the landscape podium by two metres.

The intent of increasing access to light has been achieved through the relocation of the western bank towards the west and modifications to skylights, seen in the detailed plans provided by the Applicant in the RtS. Further, the reallocation of the Level 1 landscape podium to private open space will increase privacy and improve the overall amenity of the development.

The decrease in landscape podium (now courtyard) length is in line with the Apartment Design Guidelines which outline that ground floor apartments and podium levels should be provided with private terraces. Objective 4E-1 outlines that apartments on ground level or on a podium level's private open space must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m. The proposed courtyards, without the balcony is 7.958 metres deep and have an area significantly greater than the required 15m<sup>2</sup>.

The Department is satisfied that the original intent of Conditions B3 and B4 has been achieved through these design changes without reducing the overall length of units. Therefore, the requirement to reduce the units by 1000mm to achieve this intent can be deleted from these conditions.

## 5.3 Other issues

**Table 4 | Summary of Other Issues**

Issue	Findings	Recommendations
<b>Substantially the Same Development</b>	The public submission for this project refers to comparative tasks to assess if the development meets the 'minimal environmental impact' and 'substantially the	No additional conditions or changes to existing conditions are necessary.

same' provisions of Clause 4.55 (1A) of the Act.

The Applicant has outlined how most of the modifications sought are administrative changes, correcting minor errors or miscalculations. The other modifications sought will not alter the operation and use of Stage 1 of the development, will not generate increased noise levels, increased overshadowing or visual amenity impacts and will not exceed the approved building heights or footprints.

The Department is satisfied that the modified development is considered to meet the substantially the same test and will have minimal impact on the locality and broader region.

---

**Roof Profile**

Council commented on the proposed alteration of the roof profile.

The change in roof profile will not cause additional impacts on visual amenity or exceed maximum building heights. The increase in roof level in some areas remains under the approved maximum height limit requirements along Tweed Coast Road and Hastings Road.

The street profile of Tweed Coast Road will remain similar to the original profile, retaining the inclusion of eaves and remaining articulated.

Therefore, the Department is satisfied that the alteration of the roof profile will not create any significant impacts and is consistent with the intent of the original design.

No additional conditions or changes to existing conditions are necessary.

---

**Condition A1**

This condition refers to Stage 2 including 40 upper level residential units. Modification 1 of this development sought approval to reduce the number of units from 40 to 38.

Condition A1 is recommended to be amended to reflect the approved number of units.

---

<b>Condition A2 – Approved Plan Set</b>	<p>The applicant requests that 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. This condition should be updated to reflect the plans for Stage 2 as well as retaining approved plans for Stage 1 as part of the stamped plan set.</p>	<p>Condition A2 is recommended to be amended to reflect the updated plan set for Stage 2 of the development, whilst retaining the approved Stage 1 plans.</p>
<b>Minor Design Changes</b>	<p>The Tweed Coast Road elevation boundaries have been amended due to the existence of a parapet wall along the eastern edge of the building. These balconies are concealed behind the existing parapet wall and are therefore considered minor.</p> <p>Other minor design changes include changes to the entries of units, the inclusion of high-level windows, changes to skylights and the insertion of automatic doors.</p> <p>These minor design changes do not significantly impact the appearance or amenity of the development, and therefore the Department are satisfied with these design changes.</p>	<p>No additional conditions or changes to existing conditions are necessary.</p>
<b>Condition B2</b>	<p>This condition is no longer relevant as it refers to Condition B4 which is to be amended.</p>	<p>Condition B2 is recommended to be deleted.</p>
<b>Condition B29</b>	<p>The applied amount of contributions or Equivalent Tenements for Section 7.11 Monetary Contributions is required to be updated to reflect the approved number of units to 38 from 40.</p>	<p>Condition B29 is recommended to be amended to reflect the updated Section 7.11 Monetary Contributions provided by council.</p>
<b>Condition B30</b>	<p>The schedule for Section 64 Monetary Contributions requires reviewing and amending as appropriate to reflect the approved number of residential to 38 from 40.</p>	<p>Condition B30 is recommended to be amended to reflect the updated Section 64 Monetary Contributions provided by council.</p>

## 6 Evaluation

The Department has assessed the proposed modification and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposal is appropriate as:

- the proposal complies with statutory requirements of relevant environmental planning instruments;
- the proposal primarily seeks administrative changes to conditions to correct errors or update previously approved changes in the conditions; and
- the updated changes, including the proposed reallocation of the Level 1 landscape podium to private open space, will not create any significant environmental impacts.

The Department is therefore satisfied the modification should be approved, subject to conditions.

## 7 Recommendation

It is recommended that the Director, Regional Assessments, as delegate of the Minister for Planning:

- considers the findings and recommendations of this report;
- determines that the application (MP07\_0179 Mod 6) falls within the scope of section 4.55(1A) of the EP& A Act;
- accepts and adopts all the findings and recommendations in this report as the reasons for making the decision to grant approval to the application;
- modify the consent MP07\_0179; and
- signs the attached approval of the modification (Appendix B).

**Recommended by:**

A handwritten signature in black ink, appearing to read 'T. Sexton'.

**Tahlia Sexton**  
Planning Officer  
Regional Assessments

## 8 Determination

The recommendation is **Adopted** by:

A handwritten signature in blue ink, consisting of the letters 'K' and 'T' followed by a long horizontal stroke.

19/02/2021

**Keiran Thomas**

Director

Regional Assessments

as delegate of the Minister for Planning and Public Spaces.



# Appendices

## Appendix A – Relevant Supporting Documentation

The supporting documents and supporting information to this assessment report including:

- The Modification Report
- Submissions
- Response to Submissions

Can be found on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/project/40631>

## Appendix B – Notice of Modification

The recommended modification of the project approval can be found on the Department's website at:

<https://www.planningportal.nsw.gov.au/major-projects/project/40631>