

# **4.55(1) MODIFICATION NO.7 OF MINISTERS APPROVAL FOR MP 07\_0179 – TSC DA NO. 09/0830 –NO. 7.**

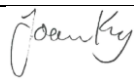
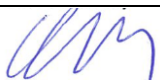
To seek modification to a development consent being for a Part 3/Part 4 storey mixed use development entailing ground level commercial including supermarket and retail shops, upper-level residential units, basement and surface car parking and landscaped areas.

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 11, DP 1273396, 39 Tweed Coast Road, Bogangar)

For:  
Cabarita Beachside Pty Ltd

June 2022

## 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. 7 of MP07\_0179 pursuant to Section 4.55(1) of the Environmental Planning Act. The approved application (as described) comprises a part 3 and part 4 storey mixed use development including a 2310m<sup>2</sup> supermarket, 1106m<sup>2</sup> of retail specialty shops, shop top housing, incorporating 38 residential apartments and combined parking for 204 vehicles, situated on land described as Lots 184-187 & 191-194 DP 259164 and Lots 20-23 DP 31208 (now consolidated and identified as Lot 11 DP 1273396).

### 1.2 Structure of this Report

This Planning Report contains the following:

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

A number of appendices form part of this report being:

<b>Appendix A</b>	Locality plan
<b>Appendix B</b>	Most recent approved modified consent

### 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 2310m<sup>2</sup> supermarket and 1106m<sup>2</sup> 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 2310m<sup>2</sup> to 2479m<sup>2</sup> and decrease the area of specialty retail from 1106m<sup>2</sup> to 913m<sup>2</sup> resulting in a 24m<sup>2</sup> 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.
  - 22 February 2021 – Modification No.6 approved design alterations and a reduction in unit numbers

## 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 11 DP 1273396, No. 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(1) of the Act on the basis that:

- the modification seeks to correct a miscalculation in terms of Section 64 and Section 7.11 contributions.



## 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 5485m<sup>2</sup>. 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.

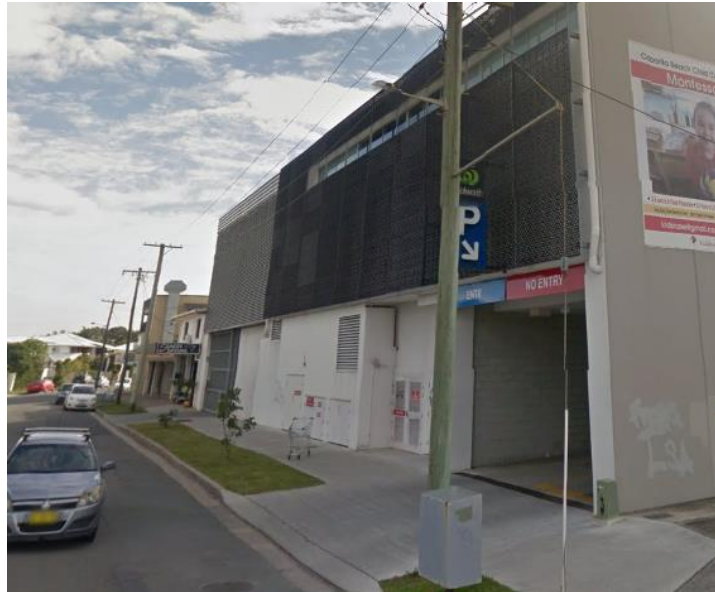
Pedestrian access to the completed Stage 1 is available via Tweed Coast Road. Vehicular access is provided by two crossings from Hastings Road and linked via an internal laneway. The site also has an approved loading dock off Hastings Road and a pedestrian pathway that provides a public link between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

### 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(1) of the *EP & A Act 1979*.

**The contribution amounts calculated by Council via a referral from the Department to Council, are considered to be incorrect and form a miscalculation.**

##### 3.1.1 Summary of Proposes Changes/Amendments

- **Condition B29** – This condition refers to Section 94 Contributions payable for the approved development.

It appears that Council has recalculated the Section 94 (now 7.11) contributions incorrectly as per the following:

##### **Tweed Road Contribution Plan No.4**

Previous condition provided for 446.33 trips and provided a base contribution amount of \$868.00 per trip plus indexing.

New condition provides for 469.97 trips (Stage 1 – 321.773 + Stage 2 – 148.2 = 469.97 trip) which is an increase of 23.64 trips. The condition cannot logically apply an increase in the number of trips as the approved development (as modified) has reduced in size by 2 dwellings. Hence the condition should incorporate a decrease in chargeable trips, rather than increase.

The base rate at the time of the original approval was \$868.00 per trip plus indexing, the new modified base rate is \$1145 per trip plus indexing. The base rate cannot change as the development is subject to the Section 7.11 plan applicable at the time of assessing the original DA. This figure is considered to be a miscalculation and should be reduced.

##### **S94 Plan No.5 Open Space (Casual)**

The previous adopted base rate was \$597 per ET plus indexation, the new modified base rate is \$502 plus indexation. It is considered that the new figure has been under charged as a base rate cannot change as we are subject to the Section 7.11 plan at the time of assessing the original DA. This figure is considered to be a miscalculation and should be increased.

#### **S94 Plan No.5 Open Space (Structured)**

The previous adopted base rate was \$653 per ET plus indexation, the new modified base rate is \$575 plus indexation. It is considered that the new figure has been over charged as a base rate cannot change as we are subject to the Section 7.11 plan at the time of assessing the original DA. This figure is considered to be a miscalculation and should be increased.

#### **S94 Plan No.11 Shire Wide Library Facilities**

The previous adopted base rate was \$374 per ET, the new modified base rate is \$792 per ET, plus indexation. It is considered that the new figure has been over charged as a base rate cannot change as we are subject to the Section 7.11 plan at the time of assessing the original DA. This figure is considered to be a miscalculation and should be decreased.

#### **S94 Plan No.12 Bus Shelters**

The previous adopted base rate was \$26 per ET, the new modified base rate is \$60 per ET, plus indexation. It is considered that the new figure has been over charged as a base rate cannot change as we are subject to the Section 7.11 plan at the time of assessing the original DA. This figure is considered to be a miscalculation and should be decreased.

#### **S94 Plan No.13 Environ Cemetery**

The previous adopted base rate was \$131 per ET plus indexation, the new modified base rate is \$101 plus indexation. It is considered that the new figure has been under charged as a base rate cannot change as we are subject to the Section 7.11 plan at the time of assessing the original DA. This figure is considered to be a miscalculation and should be increased.

#### **S94 Plan No.15 Community Facilities (Tweed Coast – South)**

The previous adopted base rate was \$584 per ET, the new modified base rate is \$1305.60 plus indexation. It is considered that the new figure has been over charged as a base rate cannot change as we are subject to the 7.11 plan at the time of assessing the original DA. This figure is considered to be a miscalculation and should be decreased.

#### **S94 Plan No.16 Emergency Facilities (Surf Lifesaving)**

The previous adopted base rate was \$200 per ET, the new modified base rate is \$113 plus indexation. It is considered that the new figure has been under charged as a base rate

cannot change as we are subject to the 7.11 plan at the time of assessing the original DA. This figure is considered to be a miscalculation and should be increased.

#### **S94 Plan No.18 Extensions to Council Administration Offices and Technical Support Facilities**

The previous adopted base rate was \$1996.80 per ET, the new modified base rate is \$1759.90 plus indexation. It is considered that the new figure has been under charged as a base rate cannot change as we are subject to the 7.11 plan at the time of assessing the original DA. This figure is considered to be a miscalculation and should be increased.

#### **S94 Plan No.22 Cycleways**

The previous adopted base rate was \$352 per ET, the new modified base rate is \$447 plus indexation. It is considered that the new figure has been over charged as a base rate cannot change as we are subject to the 7.11 plan at the time of assessing the original DA. This figure is considered to be a miscalculation and should be decreased.

#### **S94 Plan No.26 Regional Open Space (Casual)**

The previous adopted base rate was \$855 per ET, the new modified base rate is \$1031 plus indexation. It is considered that the new figure has been over charged as a base rate cannot change as we are subject to the 7.11 plan at the time of assessing the original DA. This figure is considered to be a miscalculation and should be decreased.

#### **S94 Plan No.26 Regional Open Space (Structured)**

The previous adopted base rate was \$2327 per ET, the new modified base rate is \$3619 plus indexation. It is considered that the new figure has been over charged as a base rate cannot change as we are subject to the 7.11 plan at the time of assessing the original DA. This figure is considered to be a miscalculation and should be decreased.

- **Condition B30** – This condition refers to Section 64 Monetary Contributions applicable to the development. The most recent approved amendment 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). It is acknowledged that a development is subject to the Section 64 plan at the date of paying the contribution, hence the proposal is subject to current water and sewer contribution amounts. This 4.55(1) relates to the ET's calculations not the amount charged per ET.

As can be seen from the recently modified condition B30 below, the previous applied ET's for water and sewer were:

- Water 6.4952 ET
- Sewer 14.779 ET

The above water and sewer ET's relate to the entire development (both stage 1 which is complete and stage 2 which is under construction).

The most recent approved modification resulted in a reduction in approved dwellings from 40 to 38, however the ET's relating to sewer increased and did not decrease. The ETs for sewer only marginally decreased despite the reduction in the number of Units and bedrooms. The most recent modified ET's are:

- Water 6.4510 ET
- Sewer 14.859 ET

**It is not clear to as how the ET numbers would increase given the subject modification approved a reduction in the number of dwellings from 40 to 38. It should also be noted that the adopted and relevant contributions plans have not changed since the date of approval being:**

- **Development Servicing Plan for Water Supply Services (July 2007)**
- **Development Servicing Plan for Sewerage Services (July 2007)**

#### 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
$\$10,700 \times 6.4952\text{ET}$	\$69557.10	$\$5,146 \times 14.779\text{ET}$	\$76052.73
<b>Totals</b>	<b>\$69557.10</b>		<b>\$76052.73</b>

	ET	Fee	Total
<b>Water Developer Charges</b>	<b>6.510</b>	<b>\$11,268</b>	<b>\$73,358.30</b>
<b>Sewer Developer Charges</b>	<b>14.859</b>	<b>\$7,288</b>	<b>\$108,292.40</b>



## 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(1) for the following reasons;

Section 4.55(1) – **Modifications involving minor error, misdescription or miscalculation** A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.

As detailed above in section 3 of this report, the Section 7.11 and 64 contributions are considered to contain a number of miscalculations, hence the proposed modification is considered to be entirely consistent with the provisions of section 4.55(1) of the E P and A Act 1979.



## 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 correct miscalculations in conditions B29 and B30.

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**

Most recent approved modified consent

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**Appendix A**

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**Appendix B**

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**Appendix B:** Most recent approved modified consent