



Casuarina Town Centre Modification 14

Casuarina Town Centre Project Approval Modification 14
State Significant Development Modification Assessment
(MP06_0258 MOD 14)

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Glossary

Abbreviation	Definition
CIV	Capital Investment Value
Council	Tweed Shire Council
Department	Department of Planning, Industry and Environment
EESG	Environment, Energy and Science Group, DPIE
EIS	Environmental Impact Statement
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
ESD	Ecologically Sustainable Development
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
RFS	Rural Fire Service
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development

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1. Introduction

This report provides the Department of Planning, Industry and Environment's assessment of a request to modify the project approval for the Casuarina Town Centre (MP 06_0258).

The request seeks to modify Condition B56 to correct an administrative error of referencing Lots 94 and 95 within the condition. The approved subdivision provides for the creation of up to 'Lot 93' within the approved plan of subdivision and as such Lots 94 and 95 do not exist on the stamped approved plans.

The request was lodged on 2 February 2021 by the Trust Company (Australia) Limited C/- Clarence Property Corporation (the Applicant) pursuant to section 4.55(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.1 Background

Casuarina Town Centre is a 26.2 hectare (ha) site, located approximately 15 kilometres (km) to the south of Tweed Heads and 4 km north of Cabarita Beach, in the Tweed Shire local government area (Figure 1). The site is legally defined as lot 15 DP 1198266 (previously known as Lot 223 DP 1048494, Lot 3 DP 1042119, Lot 144 DP 1030322 and Lots 10 & 13 DP 1014470).

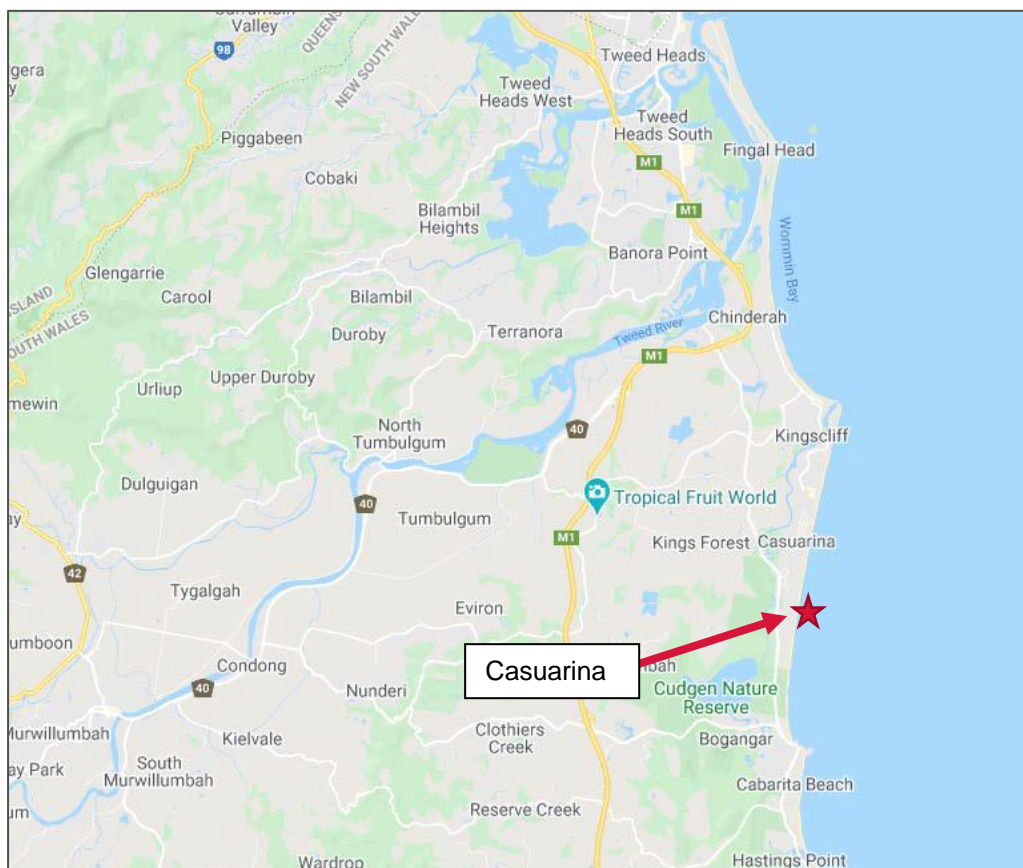


Figure 1 | Regional Context Map (Source: Nearmap 2020)



Figure 2 | Local Context Map (Source: Nearmap 2020)

Part of the site has been developed in accordance with the concept approval, including a retail centre, medium and low-density housing and associated infrastructure (**Figure 2**). This modification relates to the project approval known as Stage 1.

1.2 Approval history

A concept plan and concurrent project application were approved by the then Minister for Planning on 20 September 2009, under Part 3A of the EP&A Act.

The concept plan approved:

- subdivision into 61 lots, including low and medium density residential, retail, commercial and mixed-use lots
- a retail centre comprising a supermarket, restaurants and shops
- a hotel
- associated road network and car parking
- necessary services, landscaping and open space.

The concurrent project approval allowed:

- subdivision into 61 lots
- construction of a retail centre with a supermarket
- bulk earthworks and vegetation clearing
- construction of all roads and closure of Dianella Drive
- provision of infrastructure and services, and landscaping.

The concept plan and project approval have been modified on 12 occasions as outlined at **Table 1** below.

Table 1 | Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Type	Status
MOD 1	Amendments to the approved concept stormwater regime.	Department	75W	Approved on 17 June 2010
MOD 2	Amendments to the project staging to allow Stage 1 to be carried out in two sub-stages (Stage 1A and the balance of Stage 1).	Department	75W	Approved on 1 July 2011
MOD 3	Modification to project approval only. No change to concept plan.	Department	75W	Approved on 7 March 2012
MOD 4	Amendments to the concept staging, including allowing the varied sequencing of future stages. Delete the requirement to construct the beach access as part of the concept plan.	Department	75W	Approved on 24 April 2013
MOD 5	Modifications to project approval only. No change to concept plan.	Department	75W	Approved on 24 September 2013
MOD 6	Amendments to the number of approved lots. Amendments to the concept staging to create sub-stages 1B and 1C. Amendments to the land use of Lots 7, 8, 9, 14 & 15 from medium density residential to low density residential. The creation of new Lot 2A within commercial Lot 2. Amendments to the minimum lot size requirements to allow the construction of dwellings on lots below 450m ² in area.	Department	75W	Approved on 16 May 2014

MOD 7	Modifications to the retail centre, including a 1,000m ² increase of supermarket gross floor area (GFA), a 581 m ² increase of specialty retail GFA and a 12 m ² reduction of restaurant GFA and amended car parking arrangements.	Department	75W	Approved on 16 May 2014
MOD 8	Modification to project approval only. No change to concept plan.	Department	75W	Approved on 21 January 2015
MOD 9	Design revisions to the retail centre.	Department	75W	Approved on 15 June 2015
MOD 10	Replacement of a hotel and medium density allotments with low density residential development, increase maximum building height from 3 to 4 storeys.	Independent Planning Commission (Commission)	75W	Approved on 7 November 2018
MOD 11	Modification to project approval only. No change to concept plan.	Department	75W	Approved on 24 April 2017
MOD 12	Modification to project approval only. No change to concept plan.	Commission	75W	Withdrawn
MOD 13	Modification to Condition C8 to allow the occupation of lots in Stage 2 prior to completion of the Icon Building (a future mixed use building containing surf life saving facilities), by providing a temporary surf lifesaving storage facility.	Department	75W	Approved 30 July 2020

2. Proposed modification

The request seeks to modify Condition B56 to correct an administrative error of referencing Lots 94 and 95 within the condition. The approved subdivision provides for the creation of up to 'Lot 93' within the approved plan of subdivision and as such Lots 94 and 95 do not exist on the stamped approved plans.

The proposed modified wording of Condition B56 is amended by the insertion of the **bold and underlined** words and deletion of the ~~struck-out~~ words, as follows:

B56 Rural Fire Service Requirements

The Development is to comply with the following requirements:

- a) *At the issue of the subdivision certificate for proposed lots 85 to ~~95~~ **93** and the lot to be created from proposed lots 72 and 78 to 83 and in perpetuity the entire property of those lots shall be managed as an inner protection area as outlined in section 4.1.3 and Appendix 5 of Planning for Bushfire Protection 2006 and the NSW Rural Fire Service's document Standards for asset protection zones.*
- b) *Landscaping to the lots referred to above is to comply with the principles of Appendix 5 of Planning for Bushfire Protection 2006 and the NSW Rural Fire Services document Standards for asset protection zones.*
- c) *Public road access to the above lots shall comply with section 4.1.3 of Planning for Bushfire Protection 2006.*
- d) *Water, electricity and gas to the above lots comply with section 4.1.3 of Planning for Bushfire Protection 2006.*

Documentary evidence to demonstrate compliance with the above is required to be provided to the satisfaction of the certifying authority prior to the issue of a Construction Certificate.

3. Statutory context

3.1 Part 3A transition to State significant development

The project approval (MP 06_0258) was originally granted under Part 3A of the EP&A Act. This means the project satisfied the definition of a 'transitional Part 3A project' under clause 2(1) Schedule 2 to the Environmental Planning & Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (ST&OP Regulation), which came into effect on 1 March 2018.

Under the ST&OP Regulation, projects the subject of existing Part 3A approvals remain transitional Part 3A projects until they are transitioned to State significant development (SSD) (clause 3(1)-(2), Schedule 2). As of 1 March 2018, new proposals to modify existing Part 3A project approvals can only be determined once the project has been declared to be SSD by the Minister for Planning, and the relevant provisions to modify an SSD consent under Part 4 of the EP&A Act apply.

On 14 June 2019, an Order was published in the New South Wales Government Gazette transitioning the Part 3A project approval (MP 06_0258) to SSD.

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 and the modification request is taken to be an application to modify under section 4.55 of the EP&A Act. The application has been lodged under section 4.55(1) of the EP&A Act for a modification involving minor error, misdescription or miscalculation.

3.2 Modification of Approval

Section 4.55(1) of the EP&A Act requires the consent authority to be satisfied that the following matters are addressed in respect of all applications that seek modification approvals:

Table 2 | Matters for Consideration

Section 4.55(1) matters for consideration	Comment
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.	The application seeks to amend Condition B65 (Rural Fire Service Requirements) to reflect the correct lot references.
Subsections (1A), (2), (3), (5) and (6) and Part 8 do not apply to such a modification.	Noted.

3.3 Consent authority

The Minister for Planning and Public Spaces is the approval authority for the modification request. However, under the Minister's delegation dated 9 March 2020, the Director, Regional Assessments, may determine the application as:

- a political disclosure statement has not been received, and
- no submissions were received from the public objecting to the proposal.

3.4 Environmental Planning Instruments

The Department comprehensively assessed the project against the mandatory matters for consideration under section 4.15 of the EP&A Act as part of the original assessment of MP 06_0258. The Department considers this modification request does not alter its assessment of the proposal against these mandatory matters for consideration and the conclusions made as part of the original assessment.

The original project approval was assessed against the provisions of the following Environmental Planning Instruments (EPIs):

- State Environmental Planning Policy (Major Projects) 2005
- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)
- State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Buildings (SEPP 65)
- State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71)
- Tweed Local Environmental Plan 2000 (Tweed LEP 2000).

Given the minor nature of the proposed modifications, the Department is satisfied that the proposal remains acceptable having regard to the above EPIs.

4. Engagement

4.1 Site Designation

'The Trust Company (Australia) Limited C/- Clarence Property Corporation' are the current owners of the Casuarina Town Centre. The land the subject of Modification 14 formed part of the parent property described as Lot 223 DP 1048494, Lot 3 1042119, Lot 144 DP 1030322, Lots 10 and 13 DP 1014470 for the original Concept and Project Approval (MP06_0258). Since approval of the Major Project, the subject lands have been subdivided to create 82 new lots (inclusive of 2 lots created for infrastructure).

Accordingly, under the provisions of Clause 8F(e) of the ST&OP Regulation, the consent of the landowners of all the created residential lots within the Estate as developed under MP06_0258 is not deemed necessary and/or reasonable and the site has been designated by the Secretary.

The site was designated on 5 February 2021 by the Acting Executive Director, Key Sites and Regional Assessments, under delegation from the Secretary dated 26 September 2017, to be a project on land with multiple owners within the meaning of clause 49(5) of Division 1 of Part 6 of the *Environmental Planning and Assessment Regulation 2000* for the purposes only of the modification application MP06_0258 MOD 14 (Appendix B).

4.2 Notification

There is no requirement for notification for this type of minor modification. However, pursuant to Clause 49(2) of the EP&A Regulation, if the project is designated, the Applicant must either:

- Notify the landowners in writing before the modification application is made; or
- Publish an advertisement in a newspaper circulating in the area no later than 14 days after the application was made.

The Applicant placed an advertisement in the Tweed Valley Weekly on 4 February 2021.

5. Assessment

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

- the Modification Report and associated documents (**Appendix A**)
- the Environmental Assessment and conditions of the original approval and previous modifications
- relevant EPIs, policies and guidelines
- the requirements of the EP&A Act.

The Applicant has provided the approved stamped plans, which clearly demonstrate that Lots 94 and 95 do not exist within the development. Plans 13/054 Sheets 13 and 14 of the stamped plans dated 7 November 2018 show the Lot numbers and locations of the development up to Lots 93.

Further, a referral letter from the NSW Rural Fire Service (dated 30 August 2018) nominates the Inner Protection Area (IPA) relates to Lots 1-92 (note: an additional lot was added post this advice to extend to Lot 93).

The Department is therefore satisfied that the inclusions of Lots 94 and 95 within Condition B56 is in error and should be corrected.

6. Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department considers the proposal to be acceptable, subject to the recommended conditions, on the basis that it would:

- correct an administrative error within Condition B56; and
- support the issue of a Subdivision Certificate and Construction Certificate for the development.

The Department is satisfied that the modification can be approved, subject to the recommended conditions (**Appendix C**).

7. Recommendation

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

- considers the findings and recommendations of this report
- determines that the application MP 06_0258 MOD 14 falls within the scope of Section 4.55(1) of the EP&A Act
- accepts and adopts all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- modifies the project approval MP 06_0258
- signs the attached Modification of Project Approval (**Appendix C**).

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, appearing to read 'K T' followed by a horizontal line.

16/02/2021

Keiran Thomas

Director

Regional Assessments

as delegate of the Minister for Planning and Public Spaces.

Appendices

Appendix A – Modification Report

<https://www.planningportal.nsw.gov.au/major-projects/project/41116>

Appendix B – Site Designation Order

<https://www.planningportal.nsw.gov.au/major-projects/project/41116>

Appendix C – Modification of Project Approval

<https://www.planningportal.nsw.gov.au/major-projects/project/41116>