

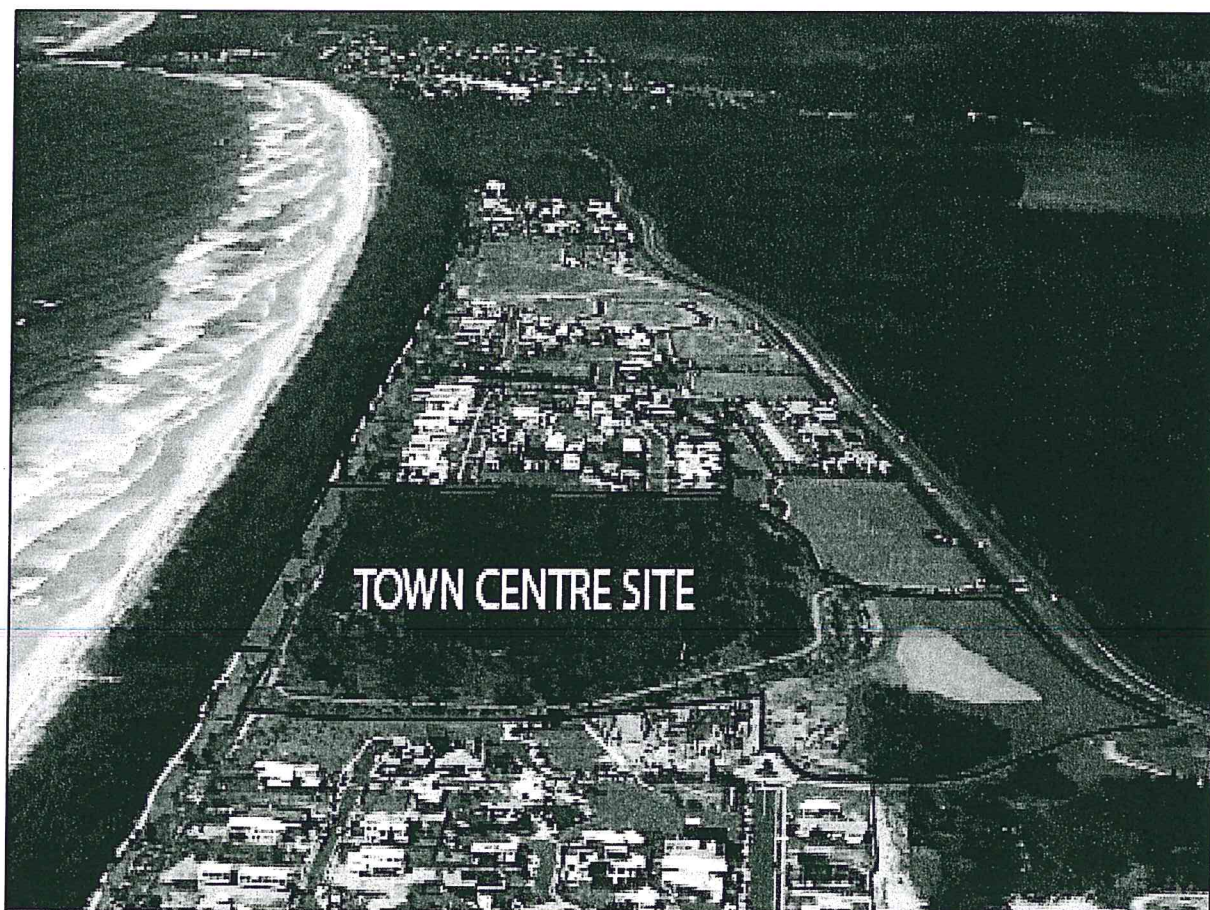
**Metropolitan and Regional Projects North, Development
Assessment & Systems Performance**

Director-General's Report

**Modification to Minister's Approval for a Mixed Use Subdivision at
Lot 144 DP 1030322, Lot 3 DP 1042119, Lot 13 DP 1014470, and Part
Lot 223 DP 1048494 – Tweed Coast Road, Casuarina Beach**

Major Project 06_0258 MOD 2

June 2011



1.0 BACKGROUND

This report is an assessment of a request to modify Major Project 06_0258 involving a mixed use subdivision at Tweed Coast Road, Casuarina Beach in the Tweed local government area, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (the Act).

On 20 September 2009, the then Minister for Planning approved the Concept Plan and concurrent Stage 1 Project Approval for a mixed use subdivision (the Casuarina Town Centre).

Concept Plan approval was granted for:

- The subdivision of land into 61 lots including low and medium density residential, retail, commercial and mixed use lots;
- Construction of a retail centre comprising a supermarket, restaurants and shops;
- Construction of a hotel;
- Construction of the associated road network and car parking;
- Construction of all necessary services; and,
- Landscaping and open space.

Stage 1 Project Approval was granted for:

- The subdivision of land into 61 lots;
- Construction of the supermarket anchored retail centre;
- Bulk earthworks and vegetation clearing;
- Construction of all roads;
- Closure of Dianella Drive;
- Provision of infrastructure and services; and,
- Landscaping.

On 17 June 2010, the then Acting Director – Regional Projects approved a modification to the proposal in order to allow for stormwater infiltration and landscaping works to be carried out on adjoining lots; filling of the existing drainage easement within the site; and the carrying out of works to facilitate the closure of the Dianella Drive and Tweed Coast Road intersection to be replaced with a cul-de-sac.

The subject site is located at Casuarina Beach, approximately 15km to the south of Tweed Heads and 4km north of Cabarita Beach. Low to medium density residential development adjoins the site to the north and south, including the Santai tourist accommodation resort on the northern boundary. The Casuarina Beach foreshore adjoins the site to the east, with Tweed Coast Road and the Cudgen Nature Reserve to the west.

The site is part of the master planned Casuarina precinct involving the integration of residential, tourist and commercial developments fronting the Casuarina Beach foreshore. The location of the subject site is depicted below in **Figure 1**. An illustration of the approved Concept Plan is provided at **Figure 2**.



Figure 1: Town Centre Site Location (source: Environmental Assessment)



Figure 2: Approved Town Centre Concept Plan (source: Preferred Project Report)

2.0 THE PROPOSED MODIFICATION

On 6 December 2010, BBC Consulting Planners (on behalf of the proponent – Kings Beach No.2 Pty Ltd) submitted to the Director-General a request for modification of Major Project 06_0258. A modification is proposed to the Concept Plan and Stage 1 Project Approval in order for Stage 1 to be carried out across two separate stages (Stage 1A and the balance of Stage 1).

3.0 ASSESSMENT PROCESS

The approval for Major Project 06_0258 was granted in accordance with Part 3A of the Act under Sections 75O and 75J. Section 75W of the Act provides for the modification of the Minister's approval.

Pursuant to Section 75W(3) of the Act, the approval of the Minister for Planning and Infrastructure has been sought by the proponent to modify the approval for the mixed use subdivision as outlined in the Proponent's modification report, included at **Appendix C**.

Section 75W(3) of the Act provides that the Director-General may notify the proponent of environmental assessment requirements (DGRs) with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister. Following an assessment of the modification request, it is considered that DGRs are not required.

Under Section 75W(4) of the Act, the Minister may modify the approval (with or without conditions) or disapprove the modification. The following report describes the Department's assessment of the requested modifications and supporting documentation as provided by the proponent, and recommends approval for the proposed modifications, with conditions.

Under the Instrument of Delegation dated 28 May 2011 from the Minister for Planning and Infrastructure to the Planning Assessment Commission (PAC), the PAC is the determining authority for Section 75(W) modification requests. However, the delegation also works in conjunction with the delegations given to senior Department staff under the Ministerial delegations issued on 25 January 2010. This allows the Director-General to determine a modification request under Section 75(W) where there are fewer than 25 public submissions in the nature of objections to the modification request. The delegation is not exercised where the local council has made an objection. Whilst the request was not formally exhibited, the Department received a submission from Tweed Shire Council raising no objections to the modification request (refer **Section 5.0**). The Director-General may therefore determine the modification request under delegated authority.

4.0 DESCRIPTION OF PROPOSED MODIFICATIONS

The then Minister for Planning approved the Concept Plan and concurrent Stage 1 Project Approval for the Casuarina Town Centre on 20 September 2009. The Proponent now seeks to modify the approved staging regime of the project by undertaking the approved Stage 1 works in two separate stages. These are to be referred to as 'Stage 1A' and 'the balance of Stage 1'.

Stage 1A involves the provision of services and infrastructure that are immediately required to service development. The balance of Stage 1 works will include all remaining works as originally approved as part of Stage 1 to be provided progressively, and only when such infrastructure and services are required. The proposed modification also seeks to:

- temporarily maintain the existing swale as an open drainage feature, and thus temporarily alter the approved drainage regime of the site;
- construct Road No. 5 and associated car parking to a temporary rural-type standard; and,

- modify the requirement to provide evidence of approval in gaining access through the adjoining crown reserve.

Those conditions requiring amendments as a result of the modification request are discussed in further detail under **Section 6.0**.

5.0 CONSULTATION

Under Section 75W of the Act, it is at the discretion of the Director-General as to whether a request for a modification of an approval is publicly exhibited. Due to the minor nature of the modification public exhibition was not undertaken. However, under Section 75X(2)(f) of the Act, the Director-General is to make publicly available requests for modifications of approvals given by the Minister. In accordance with Clause 8G of the *Environmental Planning and Assessment Regulation 2000*, the request for the modification was provided on the Department's website.

The modification request was also referred to Tweed Shire Council (Council), inviting any issues or requirements that Council may have. Council responded in a letter received by the Department on 22 February 2011, and advised that there were no objections to the proposed modification on the basis that the conditions of approval be amended to reflect the modified staging, particularly with regard to developer contributions. A copy of Council's correspondence is provided at **Appendix D**.

6.0 ASSESSMENT

The Casuarina Town Centre is an approved residential, commercial and tourist precinct to be constructed throughout four stages. Stage 1 was granted project approval by the then Minister for Planning on 20 September 2009. Stages 2 to 4 are subject to future approval. **Figure 3** below illustrates the approved staging layout, with the Stage 1 area outlined in red.

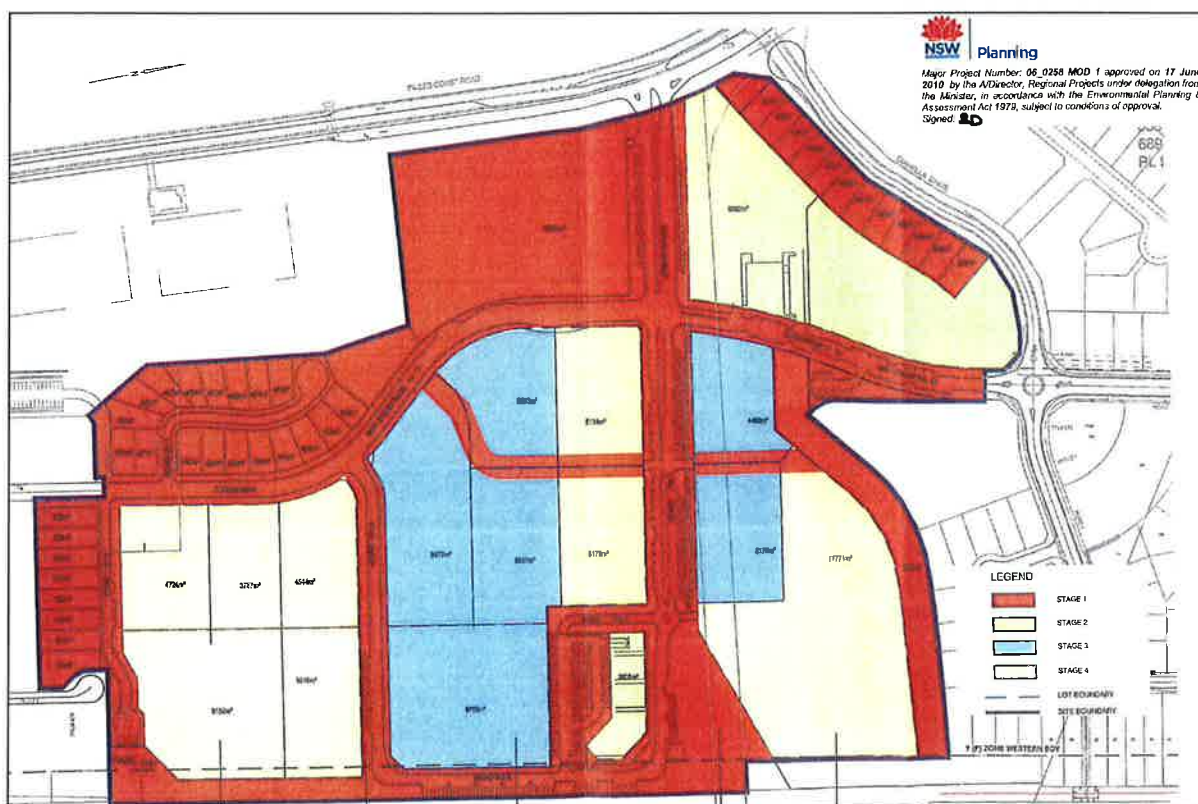


Figure 3: Approved Staging Layout – Stage 1 area in red (source: Approved Plans – 06_0258)

Changes to Stage 1 Works

As the approval now stands, all roads, infrastructure, civil services and landscaping across the entire town centre site are to be provided as part of the approved Stage 1 Project Approval. However, much of the central, eastern, and north-eastern parts of the site will not be developed further until such time that Stages 2 to 4 have been granted approval. As a result of the approved staging regime, the Proponent considers that;

- the section of the Boulevard Road (Road No. 1) east of the intersection with Casuarina Way will become largely underutilised until such time that the future stages are developed, which creates the likelihood of attracting anti-social behaviour such as hooning along this straight section of road;
- Road No. 5 (esplanade road) and the car park adjoining the icon building will only be utilised sparingly by those wanting to access Casuarina Beach; therefore substantial road and car parking infrastructure will need to be designed and constructed across parts of the site that are not identified for development until future Stages 2 to 4 are approved;
- there will be a significant cost to the public in order to maintain road and other infrastructure that has been built well before the infrastructure is actually required; and,
- there will be a significant cost to the public to provide and maintain landscaping across the site in areas that do not require this landscaping until future Stages 2 to 4 are developed.

The Proponent therefore requests to defer construction of various roadworks, infrastructure, civil works and services, and landscaping within areas of the site that are not earmarked for development until future Stages 2 to 4 are developed. It is therefore proposed that Stage 1 be carried out in two sub-stages, referred to as 'Stage 1A' and 'the balance of Stage 1'.

In particular, proposed Stage 1A works will involve:

- all bulk earthworks across the site;
- subdivision of land and civil works limited to Lots 1-3, 7-9, 14, and 19-56 only;
- civil works along the new Casuarina Way road connection;
- construction of the western section of the Boulevard Road, including a U-turn bay within the central landscaped median and a two-lane roundabout at the intersection of the Boulevard Road and Casuarina Way;
- Road No. 5 and Road No. 6 (with Road No. 5 constructed to a temporary rural standard);
- minor reconfiguration of the north-south drainage swale and maintaining the swale as an open drainage feature;
- 4 x 1,050mm culverts beneath Casuarina Way at the southern end of the reconfigured swale, discharging to the adjoining Lot 10;
- a 3.5m wide cycleway link to the existing cycleway at adjoining Lot 10;
- an interim cycleway link connecting from the existing east-west cycleway and running parallel to the relocated swale, ultimately connecting to the existing cycleway at adjoining Lot 10;
- a car park to be located at the northern end of Road No. 5 (not kerbed, rural-type construction), with a 1.5m wide interim pedestrian link to the existing cycleway running parallel to the eastern site boundary ; and,
- a pedestrian link from the eastern end of Road No. 6 to the existing cycleway running parallel to the site's eastern boundary.

Other than the interim Stage 1A works as listed above, the balance of Stage 1 works will be all remaining works carried out as originally approved, which includes the construction of the retail centre (consisting of a supermarket and retail stores) on Lot 1. **Figure 4** below identifies the proposed staging of the project application. **Figure 5** outlines the location of works to be undertaken as part of proposed Stage 1A, including Road No.5 and car parking area; the reconfigured drainage swale; pedestrian access links to the north-south beach cycleway; cycleway connections to existing infrastructure to the east and west of the site; and, the location of drainage culverts.

The Department considers that the proposed modification will not alter the approved form of the Casuarina Town Centre, but will instead result in a more logical sequence of providing the necessary infrastructure and services in accordance with the project staging. The proposal to construct approved Stage 1 in two separate sub-stages will see the eastern half of Boulevard road not constructed until such time that this section of road is actually required as part of future stages. This will subsequently reduce the potential for anti-social behaviour (such as hooning) as this stretch of road would otherwise become largely underutilised until such time that future stages are developed. Furthermore, public funds will not be required to maintain and upgrade road infrastructure, other public services, and landscaped areas that are not yet being utilised.

Council has advised that the Proponent's justification in requesting the modification is considered legitimate and is satisfied that all necessary public infrastructure will be available to service the ongoing staging of the development. Council subsequently supports the Proponent's rationale to provide infrastructure only when required and there were no objections raised in regards to the modification request. A copy of Council's correspondence is included at **Appendix D**.

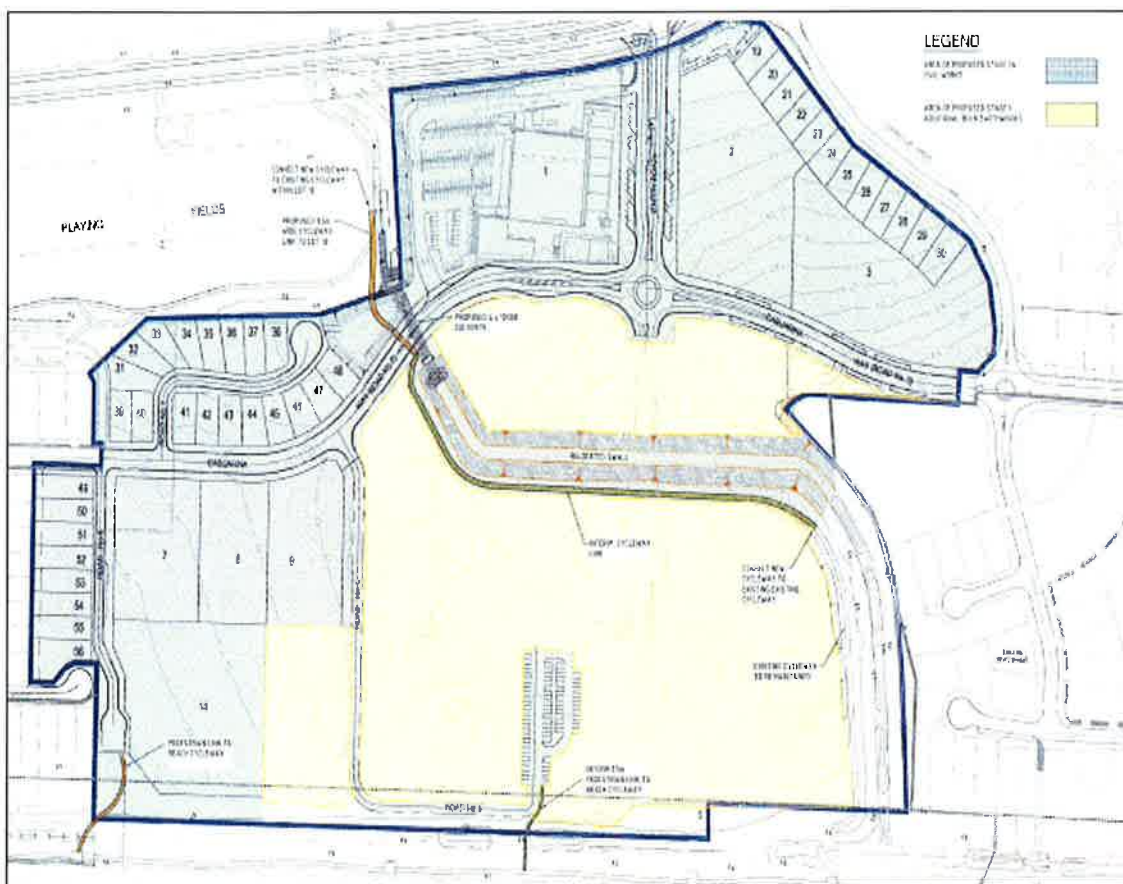


Figure 4: Proposed Project Staging Showing Stage 1A (shown in light blue) and the Balance of Stage 1 Works (shown in yellow) (source: Section 75W Modification Report)

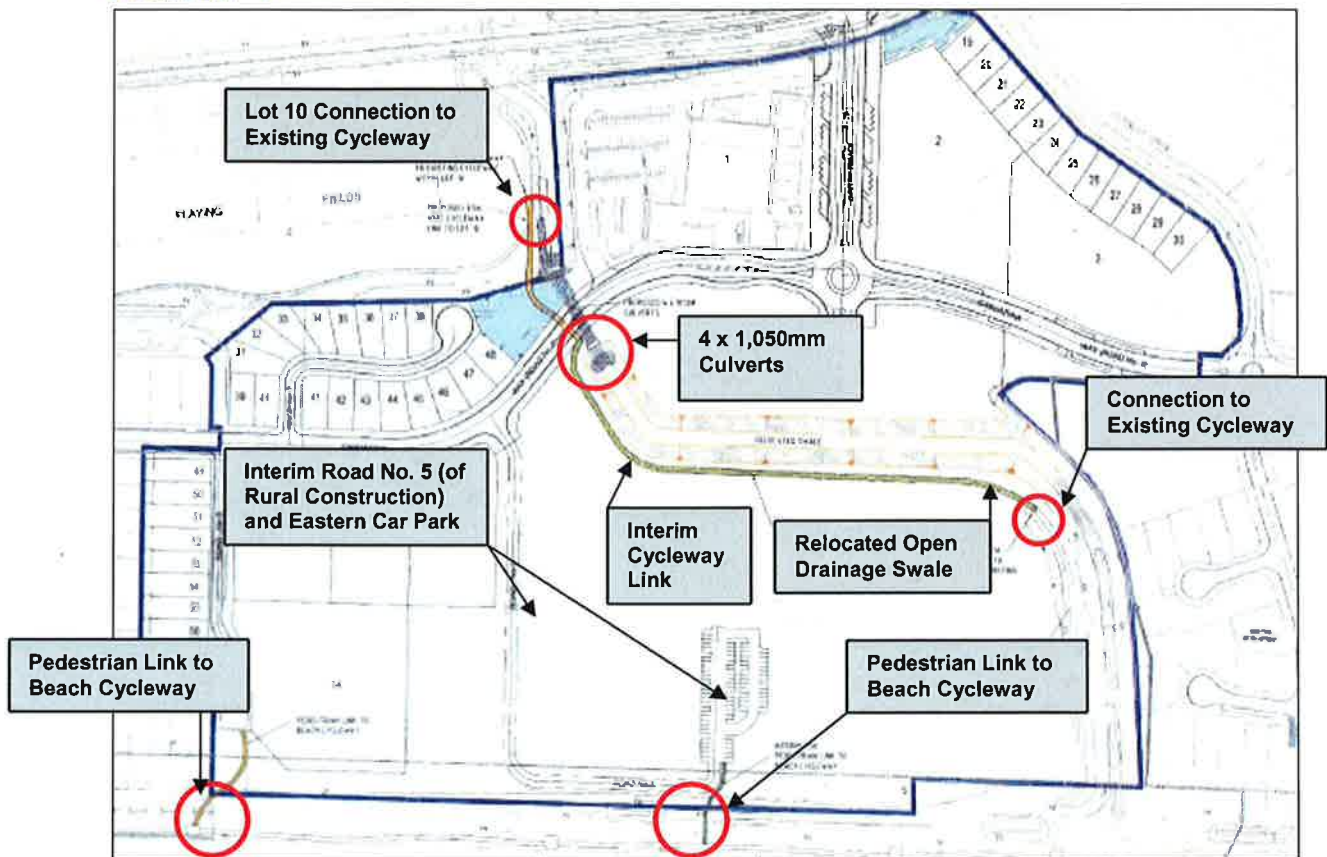


Figure 5: Proposed Works as part of Stage 1A (source: Section 75W Modification Report)

Drainage

The proposed minor relocation of the drainage swale and decision to maintain the swale as an open drainage feature until such time that Stages 2 to 4 are to be developed will result in a slightly modified stormwater drainage regime for the site. The approved stormwater regime consists of five sub-catchments across the site draining to three detention basins. The modified stormwater drainage regime is a temporary measure and consists of six sub-catchments draining to two detention basins as well as the open drainage swale. **Figure 6** below illustrates the catchment areas and drainage paths for the approved layout, which shows the north-south drainage swale replaced with three 1,200mm underground pipes which discharge to Lot 10 at the western boundary of the site. **Figure 7** illustrates the modified catchment areas and drainage paths as proposed under Stage 1A, with the drainage swale maintained as an open drainage feature and four 1,050mm culverts diverting drainage collected within the swale beneath Casuarina Way and discharging at Lot 10 adjoining the western site boundary.

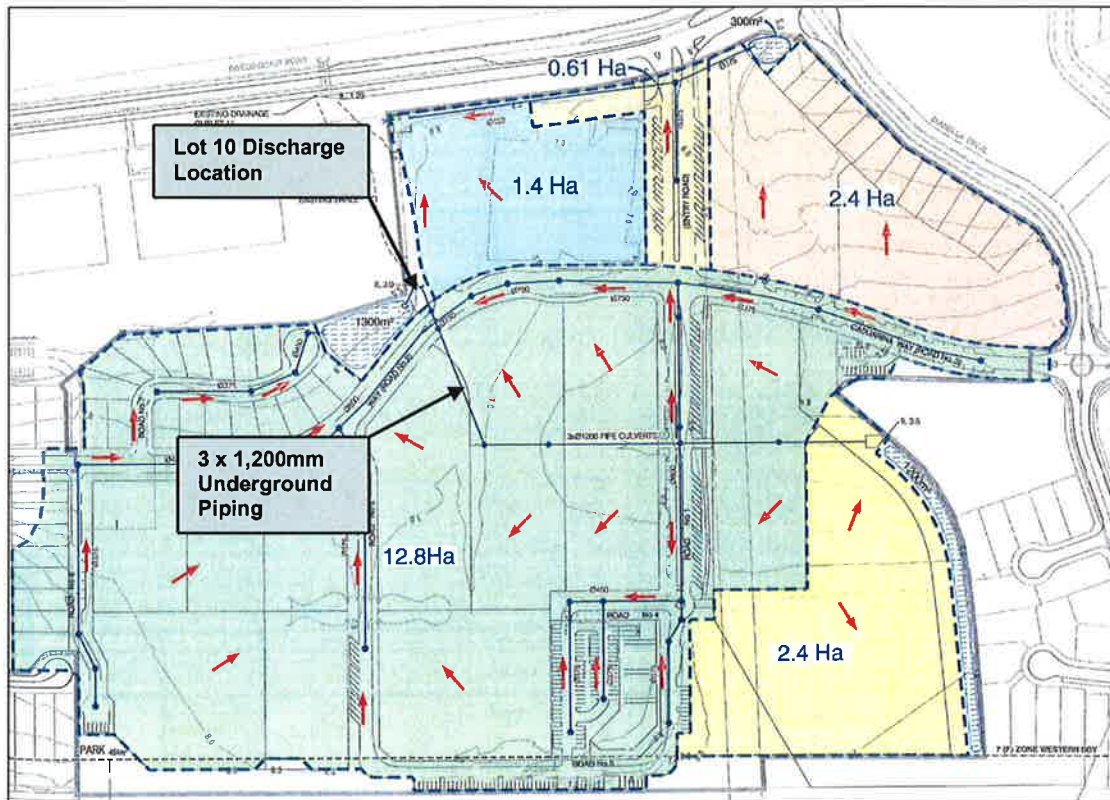


Figure 6: Catchment Areas and Drainage Paths as approved (source: Approved Plans – 06_0258)

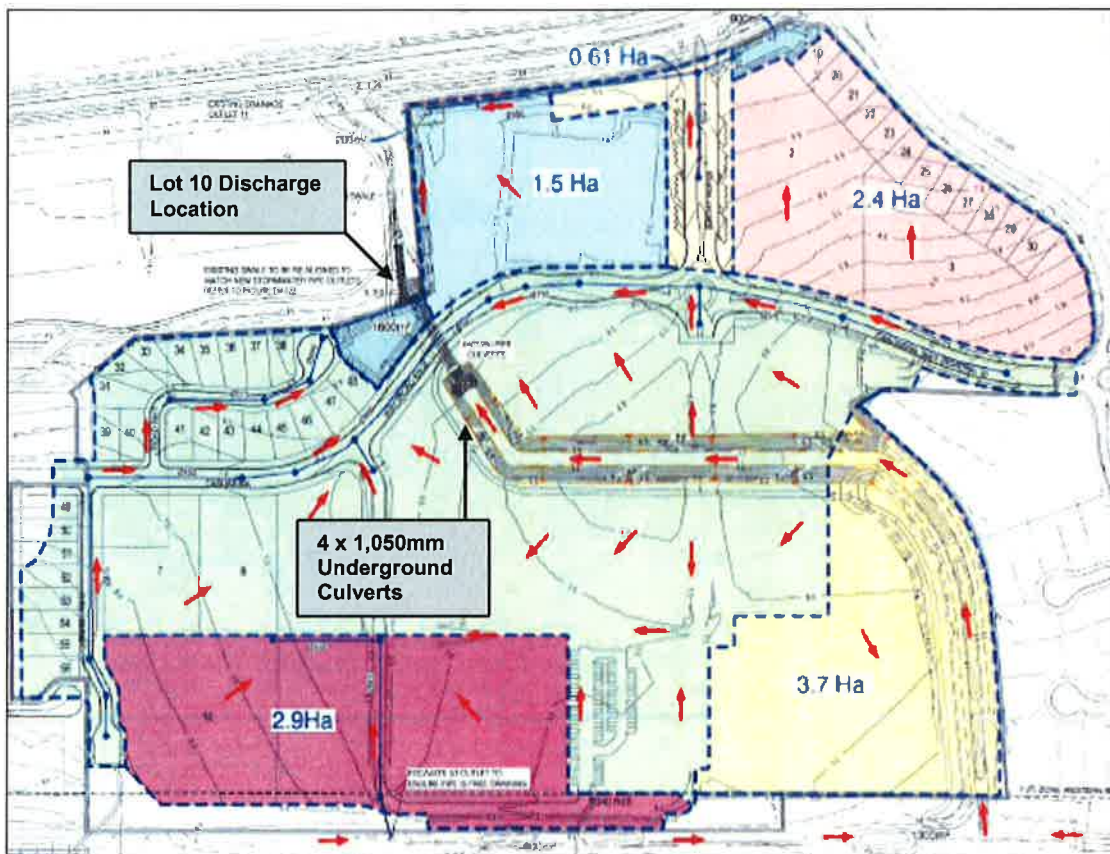


Figure 7: Catchment Areas and Drainage Paths as Proposed under Stage 1A (source: Section 75W Modification Report)

Maintaining the swale as an open drainage feature will see the swale continue to function, albeit temporarily, as an open space corridor and vegetated buffer to properties adjoining the northern site boundary. Given the stormwater drainage regime across the site will not be compromised by the proposed modification, the Department does not raise any concerns in regards to the relocation of the swale and decision to temporarily maintain the swale as an open drainage feature. Furthermore, Council's engineers raised no concerns in regards to stormwater management at the site.

Road works

As part of the Stage 1A roadworks, an interim road of rural-type construction (non-kerbed) is temporarily proposed for Road No. 5 which extends off the new Casuarina Way road link. The road traverses in an east-west direction before turning north-south and acting as an esplanade-type road and ultimately providing a connection to the eastern car park. **Figure 5** shows the location of Road No.5 and the eastern car park. Once the balance of Stage 1 works are complete, the interim road and car parking area will then become kerbed and constructed to the standard as originally approved. The Proponent's engineers (Cardno Qld Pty Ltd) met with Council to discuss the arrangement of a temporary rural-type construction of this road and car park, with Council raising no objections to the proposed arrangement. The construction of Road No.5 and the eastern car park are essential to provide access and car parking provisions for future residents and visitors wanting to access the Casuarina foreshore. The Department accepts the proponent's arguments to construct these roads to a temporary standard initially (which will still enable public access) with the final works completed in line with further development of the site.

Future Residential Density (Medium Density Residential and Mixed Use Lots)

Stages 2 to 4 of the development will be the subject of further development approval, and incorporate a range of medium density residential and mixed use residential lots. The Proponent's Preferred Project Report (PPR) identifies any future medium density residential and mixed use residential units be constructed at a size of 1 unit per 130m². It is noted that this is not stated as either a minimum or maximum requirement. Furthermore, it is not a development control or requirement expressed in the *Tweed Development Control Plan* (Tweed DCP). The Proponent seeks to modify the conditions of approval to essentially discount the reference of 1 unit per 130m² for future medium density residential and mixed use residential lots as outlined in row 6 of the table on pages 61 and 62 of the PPR. A copy of the table as presented in the PPR is provided at **Appendix E**.

Any future medium density residential and mixed use residential lots will be subject to floor space ratio controls as outlined in the Tweed DCP, specifically Part C – Residential Flat Buildings and Shop-Top Housing, Design Control 11 – Floor Space Ratio. The provisions of *State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development* (SEPP 65) also apply to any future applications as part of Stages 2 to 4, as required under Condition C1 of the Concept Plan approval. Part 2, clause 12 of SEPP 65 relates specifically to density of residential flat buildings. The provisions of SEPP 65 (Part 2, Principle 4) require appropriate densities that are sustainable and consistent with the existing density of an area; and respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality. In accordance with Condition C1, all future applications require a Design Verification Statement from a qualified designer, verifying that the plans and specifications achieve the design quality of the development, having regard to the design quality principles set out in Part 2 of SEPP 65.

Given Council's floor space ratio controls and SEPP 65 will be applicable to any future development of Stages 2 to 4; and the fact that Council did not raise any concern in regards the proposed amendment; the request to remove the density requirement outlined in row 6 of the table on pages 61 and 62 of the PPR is supported by the Department.

Casuarina Beach Access via Crown Reserve

As part of the modification request, the Proponent also seeks to amend Condition B5 – *Beach Access through Crown Reserve*. The condition stipulates that the Proponent is to provide evidence of approval from the Department of Lands (now referred to as the Department of Primary Industries (DPI)) regarding the provision of a proposed beach access to the east of the icon building which is located adjoining the eastern site boundary, prior to the issue of a Construction Certificate for Stage 1. This will potentially require the closure of one of the existing beach accesses through Crown Reserve 10081008, although this will be at the discretion of the DPI who administers the State's Crown Reserve System under the *Crown Lands Act 1989*. The Proponent therefore seeks to modify the wording of Condition B5 to instead *provide evidence of lodgement of an application* to the DPI, as opposed to *obtaining approval*. The modification is sought as the Proponent has advised the Department that despite its best endeavours, approval might not be granted from the DPI to provide access from the site to Casuarina Beach through the existing Crown Reserve.

The DPI's original submission on the project advised that there were to be no works undertaken within Crown Reserve 10081008 without obtaining prior approval. It is noted that Casuarina Beach is currently accessible from the site via existing formal accesses to the north-east and south-east; however this will require those parking along the esplanade road to travel approximately 200m north or south to access them. It is the Department's preferred outcome that a formal access point be provided close to the car parking area and esplanade road as per its original report, otherwise there is a risk that people will provide their own informal access path through the reserve.

The Proponent has not provided any evidence as part of the modification request that the DPI is unsupportive of an access point at this location. As such, it is pre-emptive to modify this condition and therefore, the request to modify Condition B5 to provide *evidence of lodgement of an application* to the DPI is not supported.

Condition B5 has, however, been modified to ensure the requirements of the condition are carried out prior to the issue of a Construction Certificate for Stage 1A and to refer to the DPI and not LPMA.

The Boulevard Road and Casuarina Way Intersection

As part of Condition B14 – *Intersection of Casuarina Way and The Boulevard*, the Proponent is required to provide a SIDRA assessment for a roundabout option at the intersection of Casuarina Way and The Boulevard Road so that it can be assessed for signal warrants in accordance with Roads and Traffic Authority guidelines. The Proponent subsequently provided the SIDRA assessment for a two-lane roundabout with the S75W documentation, which demonstrated that a two-lane roundabout will be sufficient in providing for projected traffic demand to the year 2028 and beyond – refer **Appendix C**. Whilst the SIDRA assessment is not a matter for consideration as part of this modification, the modified plans as part of Stage 1A now illustrate a two-lane roundabout located at the intersection of Casuarina Way and The Boulevard Road.

7.0 MODIFICATIONS TO CONDITIONS OF APPROVAL

The proposed modification will require amendments to the conditions of approval for both the Concept Plan and Stage 1 Project Approval. The modified conditions have been described below and are detailed in the modifying instruments for the Concept Plan (**Appendix A**) and the Stage 1 Project Approval (**Appendix B**).

Concept Plan Approval:

- Term A2 – *Staging*: modified to include reference to Stage 1 being undertaken in two separate stages, to be referred to as ‘Stage 1A’ and ‘the balance of Stage 1’.
- Term A3 – *Project in Accordance with the Plans*: updated to include reference to modified plans.
- Term A4 – *Project in Accordance with Documents*: updated to include reference to the latest modification request documentation; and, remove reference outlined in Row 6, Pages 61 and 62 of the PPR requiring a density of 1 unit per 130m² for future medium density residential and mixed use residential lots.
- Term B2 – *Cycleway*: modified wording as this will not be required until the balance of Stage 1 works.
- Term B3 – *Retail Centre*: modified wording as this will be required prior to the issue of a construction certificate for the retail centre.
- Term B4 – *Bus Stops*: modified wording as this will be required as part of Stage 1A works.
- Term B5 – *Beach Access through Crown Reserve*: modified wording as this will be required as part of Stage 1A works.

Stage 1 Project Approval:

Part A

- Condition A2 – *Project in Accordance with the Plans*: updated to include reference to modified plans.
- Condition A3 – *Project in Accordance with Documents*: updated to include reference to the latest modification request documentation; and, remove reference outlined in Row 6, Pages 61 and 62 of the PPR requiring a density of 1 unit per 130m² for future medium density residential and mixed use residential lots.

Part B

- Part B of the approval has been modified so that the conditions are contained within two subsections (Part B1 and Part B2). Part B1 contains all conditions that are required to be carried out prior to the issue of construction certificates for Stage 1A works and/or works associated with the retail centre. Part B2 contains all remaining conditions required to be carried out for the balance of Stage 1 works.
- A number of conditions are contained within both Parts B1 and B2. The reasoning for this duplication is that some conditions are required to be carried out both as part of Stage 1A works and the balance of Stage 1 works. The duplicated conditions include:
 - Condition B7 (Part B1) and B39 (Part B2) – *Pre-Construction Dilapidation Reports*
 - Condition B8 (Part B1) and B40 (Part B2) – *Grading of Fill*
 - Condition B10 (Part B1) and B41 (Part B2) – *Construction Management Plan*.
 - Condition B11 (Part B1) and B42 (Part B2) – *Traffic & Pedestrian Management Plan*.

- Condition B19 (Part B1) and B43 (Part B2) – *Carparking*
- Condition B22 (Part B1) and B45 (Part B2) – *Stormwater and Drainage Works Design*
- Condition B23 (Part B1) and B46 (Part B2) – *Stormwater and Drainage Works Design*
- Condition B28 (Part B1) and B48 (Part B2) – *Erosion and Sediment Control*
- Condition B29 (Part B1) and B49 (Part B2) – *Local Government Act Approval (section 68 approval)*
- Condition B30 (Part B1) and B44 (Part B2) – *Road Design*
- Condition B33 (Part B1) and B50 (Part B2) – *Retaining Walls*
- Condition B31 – *Landscaping Plan* has been removed as it is a redundant duplication of Condition B32 – *Landscape Plan*.
- Condition B36 – *Emergency Access* has been modified to amend a spelling error from the original approval.

The Proponent's Statement of Commitments for both the Concept Plan and Stage 1 Project Approval also require amendments to reflect the modified staging provision. The amendments to the Statement of Commitments are reflected in the modifying instrument.

8.0 PROPONENT'S COMMENTS ON CONDITIONS

The Proponent has been referred a copy of the conditions in draft format and has not raised any concerns with the wording of the modified conditions.

9.0 CONCLUSION

The proposed modification results in a favourable development outcome for the site as the construction of various roadworks, infrastructure, civil works, services, and landscaping will not be provided until such time that these components of the development are specifically required. This will result in a significant reduction in public costs required to maintain road and other public infrastructure that would otherwise have been constructed before the infrastructure is needed. The modifications to the approval sought do not affect the previous assessment against the applicable environmental planning instruments, or any other planning documents and policies specific to this site. As such the documents and policies have not been specifically mentioned in the report.

It is considered that the proposal, as modified, achieves the same objectives as assessed under the original approval, only with a more efficient infrastructure staging provision. The modifications do not alter the overall nature of the approved project, nor does it introduce any detrimental environmental, social or economic impacts upon the site or surrounding locality. The Department therefore recommends the modification application be approved, subject to conditions.

10.0 RECOMMENDATION

It is recommended that the Director-General, as delegate for the Minister for Planning and Infrastructure (under delegation issued on 25 January 2010), under Section 75W of the Act, approve the proposed modifications to the Concept Plan and Stage 1 Project Approval for 06_0258 MOD 2 as detailed in **Section 4** of this Report; and vary the conditions of approval as set out in the modifying instruments contained within **Appendix A** (Concept Plan) and **Appendix B** (Stage 1 Project Approval).

Prepared by:



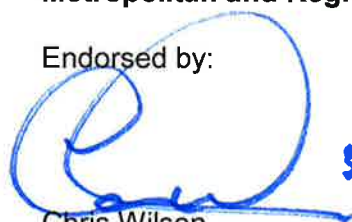
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