



Planning & Infrastructure

**MAJOR PROJECT ASSESSMENT:
Tourist Resort Development
'Lot 490'
Casuarina Way, South Kingscliff
(07_0089)**



Director-General's
Environmental Assessment Report
Section 75I of the
Environmental Planning and Assessment Act 1979

June 2012

ABBREVIATIONS

APZ	Asset Protection Zone
CIV	Capital Investment Value
CLD	means the Crown Lands Division as part of the Department of Primary Industries or its successor.
Department	Department of Planning & Infrastructure
DGRs	Director-General's Requirements
Director-General	Director-General of the Department of Planning
DMP	Dunal Management Plan
EA	Environmental Assessment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPI	Environmental Planning Instrument
IPA	Inner Protection Area
MD SEPP	<i>State Environmental Planning Policy (Major Development) 2005</i>
Minister	Minister for Planning and Infrastructure
PAC	Planning Assessment Commission
Part 3A	Part 3A of the <i>Environmental Planning and Assessment Act 1979</i>
PBP	<i>Planning for Bushfire Protection 2006</i>
PoM	Draft Lot 490 Plan of Management
PPR	Preferred Project Report
Proponent	Leighton Properties Pty Ltd
RMP	Riparian Management Plan
SoC	Statement of Commitments

Cover Image: Arial view of Lot 490 site looking south-east with indicative boundary outlined
(Source: Environmental Assessment)

© Crown copyright 2012
Published June 2012
NSW Department of Planning
www.planning.nsw.gov.au

Disclaimer:

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

EXECUTIVE SUMMARY

This is a report on a project application by Leighton Properties Pty Ltd to carry out a tourist resort development with associated community facilities and vegetation rehabilitation works on land commonly referred to as 'Lot 490' along Casuarina Way at South Kingscliff in the Tweed local government area.

The project as proposed involves the construction of 180 tourist units/bungalows and associated resort facilities including a conference centre, restaurant, bar, internal roads, swimming pool, access paths, retail premises and amenity buildings.

The proposed community facilities include an interpretive/multi-purpose space, a public amenities building including toilets, showers and change rooms, a children's playground, a public pontoon at Cudgen Creek, a tennis court, a half-basketball court, a cycleway, sport circuit training facility, walking trails and various picnic shelters. Formal access to the adjoining South Kingscliff beach is proposed via the creation of three new pathways along with public car parks at both the beach and river locations.

The estimated capital investment value of the project is \$105 million. The proposal is expected to create 100 full time equivalent construction jobs and 20 full time equivalent operational jobs.

The proposal is a transitional project under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The Environmental Assessment was exhibited between 21 April 2010 until 24 May 2010 (33 days). During this time the department received 49 submissions – nine (9) submissions from public authorities and 40 submissions from the general public and special interest groups. Of the 40 public submissions, 32 objected to the project, three (3) supported the project and five (5) did not object but raised concerns.

The proponent responded to the issues raised in submissions through its Preferred Project Report received in October 2011. The key issues considered in the department's assessment included:

- Impact on biodiversity
- Density of development and visual impact
- Bushfire protection
- Integrity of proposed tourist use
- Maintenance and management obligations
- Beach safety
- Traffic and access
- Infrastructure and developer contributions
- Coastal flooding, climate change, and coastal hazards
- Cultural heritage
- Hydrology
- Socio-economic impact

The department has recommended changes to the project to conserve threatened species habitat in perpetuity, along with reducing the intensity of development in order to mitigate cumulative environmental impacts. The changes result in the deletion of 53 units/bungalows or a 30% reduction, resulting in 127 units/bungalows in the resort.

The department has considered all relevant documents in accordance with the objects of the *Environmental Planning and Assessment Act 1979* and ecologically sustainable development. The department has assessed the merits of the project and is satisfied that the potential impacts of the proposed development have been addressed via the proponent's Statement of Commitments and the department's recommended conditions of approval, and can be suitably mitigated and/or managed to ensure a satisfactory level of environmental performance.

The project will provide environmental, social and economic benefits to the region. The department is satisfied that the site is suitable for the proposed development and is therefore in the public interest. All statutory requirements have been met and on these grounds the department recommends that the project be **approved**, subject to conditions.

1. BACKGROUND

The proponent proposes to construct a tourist resort and associated community facilities on Crown land described as Lots 1-2 DP1117599, part of Lot 500 DP727420 and part of Lot 489 DP47021 commonly referred to as 'Lot 490' at Casuarina Way, South Kingscliff. The project location is shown in **Figure 1**.

Figure 1: Project location



Lot 490 is located along Casuarina Way between the coastal settlements of Kingscliff to the immediate north and the residential communities of Salt and Casuarina to the south in the Tweed local government area. Refer to Figure 2 for the existing site layout.

Approximately 43.4 hectares in size, the site (as depicted in **Figure 2**) is bounded by the Cudgen Creek estuary which flows along its north-west boundaries. The site's eastern perimeter has frontage with the Pacific Ocean (South Kingscliff Beach) while the northern edge of the existing Salt development is located immediately adjacent to the south. Casuarina Way, a two way arterial road, bisects Lot 490 from north to south.

Figure 2: Surrounding site context (Source: Environmental Assessment)



The subject land is undeveloped and typical of east coast sand dune formations between open beach and estuary running parallel with the ocean. Topography across the site descends slightly south-east to north-east with elevation ranging from a high point of approximately 8m AHD to 1m AHD. Runoff drains north through the centre of the site into an existing wetland and through culverts located under Tweed Coast Way to discharge into Cudgen Creek and finally discharge into the Pacific Ocean.

Two wetland areas protected by State Environmental Planning Policy No. 14 – Coastal Wetlands being wetland numbers 43c and 43d, occur on the Cudgen Creek margins of the site. A small vegetated wetland also occurs in the middle of the site adjacent to Casuarina Way.

Historically, the site has been subject to sand mining. This occurred up to the early 1980s which has led to varying degrees of degradation of the existing native vegetation. The site's vegetation is generally sparse and degraded by numerous weed species planted as part of post-mining rehabilitation. Nonetheless, elements of littoral rainforest and coastal scrub dominated by Coast Banksia remain.

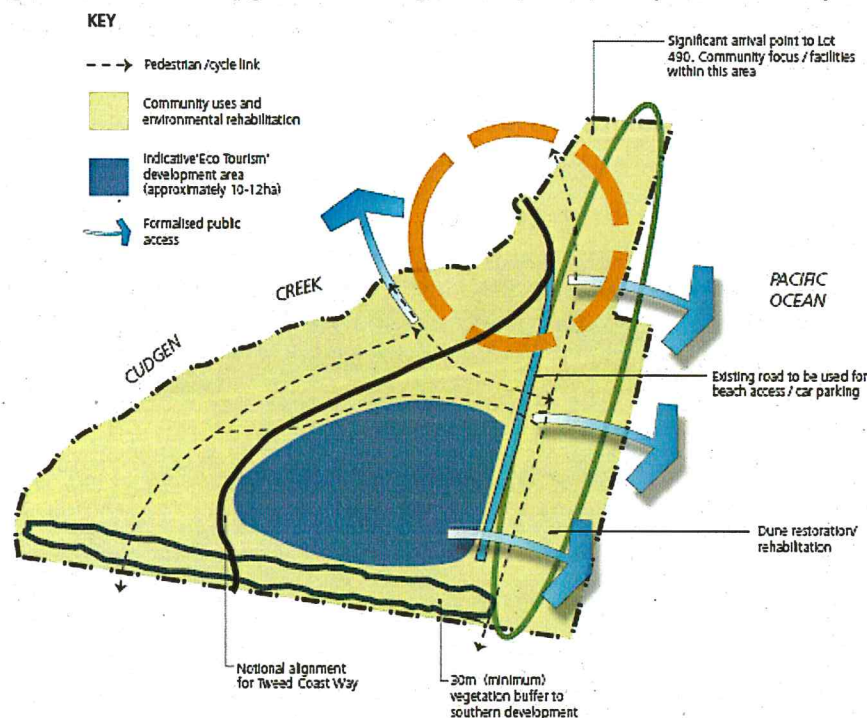
2. PROPOSED PROJECT

2.1 Relevant history

This project is the result of a Draft Lot 490 Plan of Management (PoM) prepared by the then Department of Lands & Department of State and Regional Development in 2005. This established a management framework intended to provide long-term guidance for all future decisions affecting the Lot 490 reserve.

The PoM envisaged a quality tourist development in a natural setting combining recreational opportunities and economic benefits for the local community whilst ensuring protection and enhancement of the site's environmental values. Future design and management principles for the site, as established under the PoM, are illustrated at **Figure 3**.

Figure 3: Future design and management principles (Source: PoM)



2.1 Project description

The project comprises the construction of a tourist resort within the centre of the site and the establishment of a range of new public facilities adjoining the beach and foreshore areas of the site. Essential elements of the project as lodged are described as follows:

Lot 1 DP 1117599 (Resort component – east of Casuarina Way)

- resort accommodation (180 units/bungalows)
- central resort facilities (including offices, conference facility, bistro/bar, restaurant, retail area and amenities)
- maintenance area (including maintenance building, staff building and staff car parking area)
- resort pool area (including a pool, barbeque area, children's play area and associated buildings)
- interpretive/multi-purpose space
- public car parking for the resort facilities
- pedestrian and cycle paths
- integrated landscaping and stormwater/drainage infrastructure

Lot 2 DP 1117599 (Riparian area – west of Casuarina Way)

- Cudgen Creek riparian zone rehabilitation and management
- public facilities including pedestrian/cycle paths, twelve (12) public carparks, bike racks, picnic shelters, pontoon access to Cudgen Creek and tennis court and half basketball court

Part Lot 489 DP 47021

- environmental rehabilitation works

Part Lot 500 DP 727420

- public car parking, pedestrian paths and cycleway network connection
- formalised public accesses to the beach
- public beachside amenities (toilets, showers, picnic shelters, children's playground, circuit training facilities, bike racks)
- dunal rehabilitation and management

Cudgen Creek

- pontoon access for non-motorised craft

Motor vehicle access

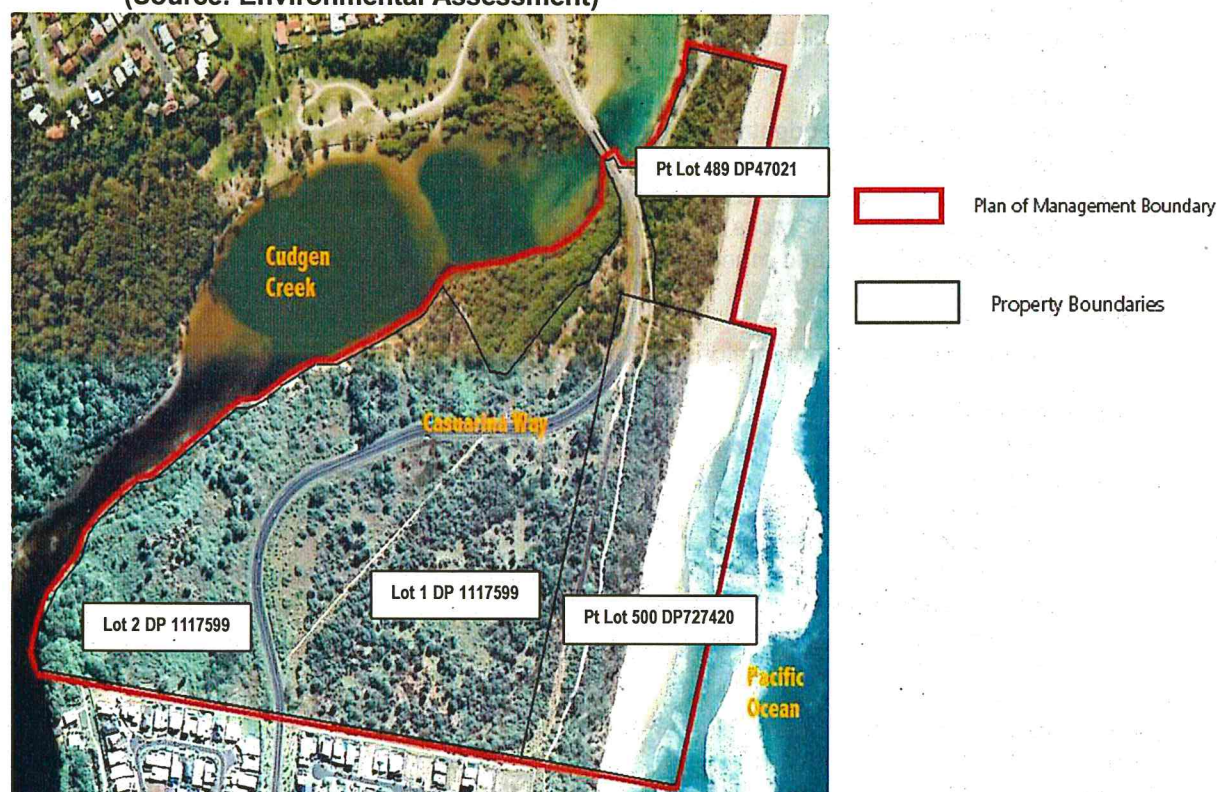
Access points are proposed as follows:

- primary access located on Casuarina Way at the north eastern boundary of Lot 490
- maintenance area access point which would be restricted to access for resort employee car parking and the maintenance area
- an access for the public parking facilities which support the recreational uses on the western side of Casuarina Way
- a formalised intersection and parking arrangement is proposed to the north of the primary resort access

The estimated capital investment value of the project is \$105 million (based on the capital investment value statement lodged with the EA in 2010). The proposal is expected to create 100 full time equivalent construction jobs and 20 full time equivalent operational jobs.

Table 1: Key project components

Tourist Resort	Units	Bedrooms	Bungalow/ Unit size (m ²)	Total Coverage (m ²)
Accommodation:				
• 2 Bedroom units	76	152	41.95	3188.2
• 2 Bedroom units accessible	8	16	90.55	362.2
• 2 Bedroom bungalow	34	68	134.8	4583.2
• 2 Bedroom bungalow accessible	4	8	152.5	610.8
• 3 Bedroom bungalow	44	132	88.3	3885.2
• Beachside bungalow	14	42	195.6	2738.4
Total unit pods & bungalows	180	418		15,368
Resort facilities	1		2180	2180
Interpretive/Multi-purpose space	1		150	150
Pool area	1		302	302
Maintenance area/ Staff amenities	1		515	515
Bedrooms per hectare				35.8
Total				18,515

Figure 4: Indicative site layout with Lot/DP numbers and plan of management boundary
(Source: Environmental Assessment)

The project layout is shown in **Figure 5**, over. The key components of the project are listed in **Table 1**.

Figure 5: Project layout

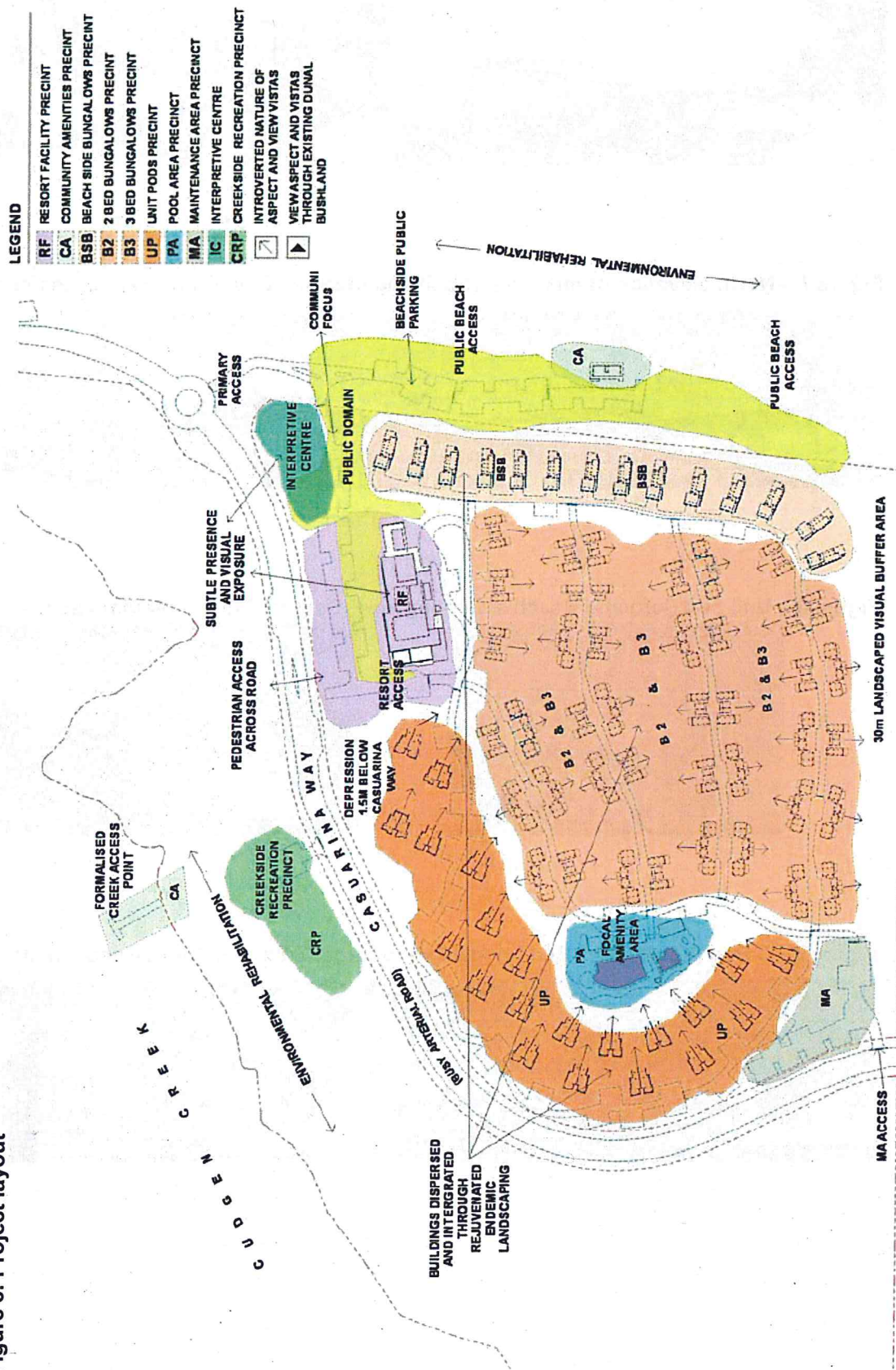


Figure 6 – Visual montage of 3 Bedroom bungalow (left) and Beachside bungalow dispersed with vegetation (Source: Environmental Assessment)



Figure 7 – North elevation of main resort building (Source: Environmental Assessment)

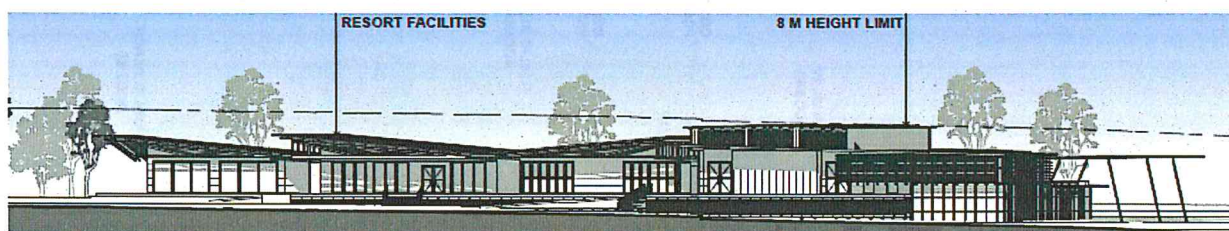


Figure 8 – Unit pod (left) and Beach side bungalow (Source: Environmental Assessment)

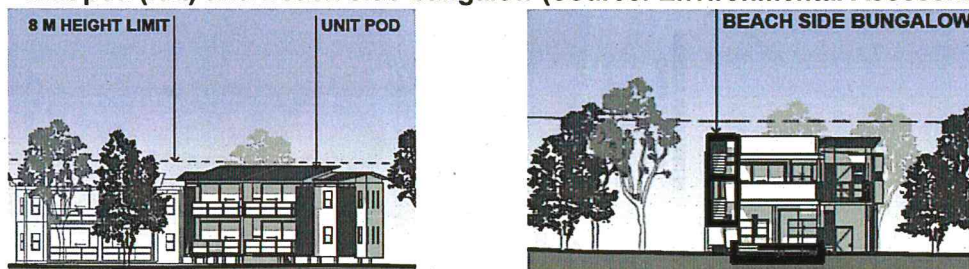


Figure 9 – 3 Bed (right) and 2 Bed bungalows (Source: Environmental Assessment)



Figure 10: Project location with proposed project layout (Source: Environmental Assessment)

2.2 Project need and justification

Development of the site facilitates the final environmental rehabilitation of a State significant coastal reserve degraded from historical sandmining activities. The project promotes the regeneration of an under-utilised Crown reserve by establishing a wide-ranging rehabilitation program aimed at restoring the site's original vegetation and providing public benefit facilities along the Cudgen Creek foreshore and the adjoining South Kingscliff Beach.

The project is consistent with the *Far North Coast Regional Strategy* which identifies an opportunity for tourist development that widens the Tweed-Kingscliff tourism sector without impacting on the coastal and hinterland assets of the Far North Coast. The proposal supports *NSW 2021* targets for increasing tourism and employment through forecast annual tourism expenditure for the Tweed economy.

The resort component of the development enables the generation of a sustainable revenue source to facilitate the site rehabilitation measures proposed, and provide an appropriate driver of economic development in the growing Tweed area. The project seeks to provide a benchmark for future tourist projects in the region by proposing a high quality development type that is sympathetic to the sensitive ecological and cultural attributes of the site.

3. STATUTORY CONTEXT

3.1 Major Project

The proposal is a major project under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) by virtue of it being development of a kind that was described in Schedules 1 and 2 of *State Environmental Planning Policy (Major Projects) 2005* namely Schedule 1 clause 17(a) – tourist facilities with a capital investment value of more than \$100 million; and Schedule 2 clause 1(1)(f)(i) – tourist facilities wholly or partly in a sensitive coastal location for any number of persons (as in force at the time). Therefore the Minister for Planning and Infrastructure is the approval authority.

Despite its repeal on 1 October 2011, Part 3A continues to apply to certain projects lodged before 8 April 2011 (described as transitional Part 3A projects), pursuant to Schedule 6A of the EP&A Act. The subject project application is a transitional project as Director-General's requirements for the project were issued on 14 August 2008.

The Environmental Assessment was exhibited between 21 April 2010 until 24 May 2010 (33 days). During this time the department received 49 submissions during the exhibition of the EA – 9 submissions from public authorities and 40 submissions from the general public and special interest groups. Of the 40 public submissions, 32 (82%) objected to the project, 3 (8%) provided support, and 5 (13%) did not object but raised concerns.

The proponent responded to the issues raised in submissions through its Preferred Project Report which was accepted on 28 October 2011.

On 14 September 2011, the Minister for Planning and Infrastructure delegated to the Planning Assessment Commission (PAC) his functions as an approval authority to determine project applications where the application has 25 or more submissions by way of objection from members of the public. There were 32 submissions in objection received. Consequently, the PAC, as delegate may approve or disapprove of the carrying out of the project under section 75J of the EP&A Act.

3.2 Permissibility

Under the *Tweed Local Environmental Plan 2000* (Tweed LEP) the majority of the site is zoned as 2(f) Tourism Zone with portions of the riparian creek edge being within the 7(a) Environmental Protection (Wetlands and Littoral Rainforests) Zone and part of Lot 500 DP1095234 within the 7(f) Environmental Protection (Coastal Lands) Zone. The proposal is consistent with the objectives of these zones and is therefore permissible subject to the Minister's approval.

3.3 Environmental Planning Instruments

Under sections 75I(2)(d) and 75I(2)(e) of the EP&A Act, the Director-General's report for a project is required to include a copy of, or reference to, the provisions of any State Environmental Planning Policy (SEPP) that substantially governs the carrying out of the project, and the provisions of any environmental planning instruments (EPI) that would (except for the application of Part 3A) substantially govern the carrying out of the project and that have been taken into consideration in the assessment of the project.

The department's consideration of relevant EPIs is provided in Appendix C. The department is satisfied that the proposal is generally consistent with the provisions of the relevant EPIs.

3.4 Objects of the EP&A Act

Decisions made under the EP&A Act must have regard to the objects of the Act, as set out in section 5 of the Act. The objects of the EP&A Act are:

- (a) to encourage:
 - (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land,
 - (iii) the protection, provision and co-ordination of communication and utility services,
 - (iv) the provision of land for public purposes,
 - (v) the provision and co-ordination of community services and facilities, and
 - (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
 - (vii) ecologically sustainable development, and
 - (viii) the provision and maintenance of affordable housing, and
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

The approval of this project will be consistent with the objects of the EP&A Act in that it will encourage:

- the promotion and coordinated development of land identified as suitable for a certain level of development by virtue of its predominant tourist zoning
- the provision of significant river foreshore and beach reserves for public purposes

- conservation of the natural environment both within and surrounding the site by means of undertaking rehabilitation works of riparian and dunal areas and vegetation protection measures to preserve threatened species habitat
- a positive contribution to the social and economic welfare of the Tweed by means of attracting tourists and providing opportunities for employment

The development as proposed is considered to be both economically and ecologically sustainable, and is in accordance with the relevant objects set out in section 5 of the EP&A Act.

3.5 Ecologically Sustainable Development

The EP&A Act adopts the definition of Ecologically Sustainable Development (ESD) found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- The precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation*
- Inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.*
- Conservation of biological diversity and ecological integrity.*
- Improved valuation and pricing of environmental resources.*

The department has considered the project in relation to the ESD principles. The Precautionary and Inter-generational Equity Principles have been applied in the decision making process via a thorough and rigorous assessment of the environmental impacts of the project. Whilst recommending that the proposal be approved, much of the site will be protected and rehabilitated.

The Biodiversity and Improved Valuation Principles have been applied through measures recommended by the department protecting endangered ecological communities and minimising impact on threatened species habitat to compensate for removal of some vegetation within other parts of the site.

3.6 Statement of Compliance

In accordance with section 75I of the EP&A Act, the department is satisfied that the Director-General's environmental assessment requirements have been complied with.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under section 75H(3) of the EP&A Act, the Director-General is required to make the environmental assessment (EA) of an application publicly available for at least 30 days. After accepting the EA, the department publicly exhibited it from 21 April 2010 until 24 May 2010 (33 days) on:

- the department's website and its Information Centre in Sydney
- Tweed Shire Council's Civic and Cultural Centre in Murwillumbah
- Kingscliff Library

The department also advertised the public exhibition in the *Tweed Link* and *Tweed Daily News* on 20 April 2010 and notified landholders and relevant State and local government authorities in writing.

The department received 49 submissions during the exhibition of the EA – nine (9) submissions from public authorities and 40 submissions from the general public and special interest groups.

A summary of the issues raised in submissions is provided below.

4.2 Public Authority Submissions

Nine (9) submissions were received from public authorities.

Tweed Shire Council

Council's response to the public exhibition identified a number of key site constraints and issues with the proposal, including:

- compliance issues associated with possible future use of tourist units for permanent residential accommodation
- implications of proposed dual key provisions on developer contributions
- visual presentation of external areas to street
- Casuarina Way design standard
- general traffic and access issues
- width and connectivity of proposed internal roads
- concern with maintenance area access to Casuarina Way
- lack of street lighting
- level of fill proposed to ensure flood immunity
- coastal erosion issues
- technical water and sewer requirements
- need for open space to be accessible to the general public
- public liability matters associated with members of the public using a privately leased area
- risk to life arising from the increased usage of nearby beaches
- concern raised with lack of provided surf lifesaving services in the area of proposed resort
- clarity sought regarding ownership, management and maintenance responsibilities for community facilities and restoration areas in perpetuity, and also the intended timeframes for resort leases
- issue with public amenities located on Lot 490 rather than Lot 500
- any further public parking required for beach access should be provided away from the immediate foreshore area and outside of Lot 500
- additional circuitous cycleways should not be included in the riparian restoration area
- location of infrastructure and facilities in Riparian and Dune Management areas
- performance indicators and compliance standards for proposed riparian and dune management plans
- the pontoon design and location is to be determined to reduce impact on marine vegetation
- removal of feeding habitat for the Common Blossom Bat
- removal of feeding habitat for the Glossy Black Cockatoo
- impact on SEPP 14 wetlands and EECs
- construction management impacts

Key issues from the above list are addressed in Section 5. In particular:

- Section 5.4, discusses a condition that will be recommended to ensure that the development operates as a tourist resort and not as a quasi residential use. Council has advised that it supports this approach
- Section 5.8 outlines the proposed development contributions, taking into account Council's submission that the calculations should be based on the dual-key configuration
- Traffic and access is addressed in Section 5.7. The department has imposed the Council's requested enhancements to Casuarina Way as a condition of approval (Condition B9)
- Impacts on threatened species habitat is discussed in Section 5.1. The removal of cabins and retention of coastal vegetation has been recommended to improve environmental impacts.

Crown Lands Division of Department of Primary Industries

The Crown Lands Division (CLD) submission raised a number of issues related to:

- accuracy and consistency of certain plans provided in the EA
- staging of development works
- impact of pets on ecological values of the subject site
- impact on Endangered Ecological Communities (EECs)
- status of site vegetation restoration outside core re-vegetation areas
- measures to manage ongoing control of Cane Toads within the site
- impact of development on the Loggerhead Turtle
- general landscaping issues
- pedestrian conflict with stormwater flows during periods of rainfall
- performance indicators and compliance standards for proposed riparian and dune management plans
- beach access via existing pathway

- uncertainties relating to legal points of discharge from the resort premises
- concern relating to private pathway and stormwater swale being located on Lot 500

As discussed above, Section 5.1 of this report, addresses impacts on threatened species habitats and Endangered Ecological Communities.

Office of Environment & Heritage

The Office of Environmental & Heritage (OEH) provided a submission on the proposal raising several issues and sought amendments to the proponent's Statement of Commitments (SoCs) in order to address the following:

- the need for further assessment of impact on Bush-Stone Curlew
- removal of feeding habitat for threatened species
- loss of mature Coast Banksia
- loss of Glossy Black Cockatoo feed species
- impact on EECs
- performance indicators and compliance standards for proposed riparian and dune management plans
- impact of flooding and coastal hazard lines on the development
- appropriateness of Aboriginal community consultation
- potential uncovering of Aboriginal sites
- mechanism to ensure continuity of Aboriginal protection zone

The proponent undertook additional surveys and further assessment of the Bush Stone Curlew. This issue and impacts on coastal vegetation and threatened species are addressed in Section 5.1. Flooding and coastal hazard issues are discussed in Section 5.9.

NSW Rural Fire Service

The Rural Fire Service (RFS) reviewed the EA and requested further information focusing on the following matters:

- insufficient bushfire protection measures in terms of asset protection zones and building construction to prevent building ignition
- non-compliance with safe refuge building requirements
- connectivity of southern fire trail with eastern side of site

The PPR addressed the above, and the proponent will be required to reduce the density of the development by way of Condition B2. The revised plan is to be referred to the RFS for endorsement, prior to submission to the department.

NSW Office of Water

The NSW Office of Water (NOW) raised the following issues through its submission:

- interaction between stormwater bio-retention basins and groundwater
- surface water and stormwater management

These aspects are discussed in Section 5.11.

Department of Primary Industries

Department of Primary Industries (DPI) provided comment on the proposal and identified a need for suitable performance indicators and compliance standards for the proposed riparian management plan. In this regard DPI supported the project subject to several appropriate conditions being placed on the approval to ensure these outcomes.

Housing NSW

Housing NSW reviewed the EA and raised issues concerning the origin of future workforce to service development, and the impact of the project on low cost rental housing in the locality.

Roads & Maritime Services

No issues raised.

Northern Rivers Catchment Management Authority

No issues raised.

Agency issues were resolved following consultation with the proponent, or were directly addressed via the proponent's Statement of Commitments or the department's recommended conditions of approval. Key issues are discussed in more detail in Section 5.

4.3 Public Submissions

40 submissions were received from the public. This included submissions from the following special interest groups:

- Salt Village Residents Association
- Tweed Monitor Community Group
- Ngarakwal / Ngandowal Aboriginal Corporation
- Salt Surf Life Saving Club

Of the 40 public submissions, 32 (82%) objected to the project, three (3) (8%) supported the project and five (5) (13%) did not object but raised concerns. The key issues raised in public submissions are listed in Table 2, below.

Table 2: Summary of issues raised in public submissions

Issue	Proportion of submissions (%)
Biodiversity	72% (28)
Traffic and access issues	61.5% (24)
Size and scale of development	54% (21)
Buffers	43.5% (17)
Bushfire	26% (10)
Socio-economic	26% (10)
Visual impact	26% (10)
Surf and beach safety	26% (10)
Parking	18% (7)
Development on Crown land	18% (7)
Crime and safety	18% (7)
Privacy	15% (6)
Property values	15% (6)
Noise	13% (5)
Flood risk	8% (3)
Developer contributions	5% (2)
Cultural	2.5% (1)

These issues were resolved following consultation with the proponent, or were directly addressed via the proponent's Statement of Commitments or the department's recommended conditions of approval. Key issues are discussed in detail in Section 5, below. The department has fully considered the issues raised in submissions in its assessment of the project.

4.4 Proponent's Response to Submissions

The proponent provided a response to the issues raised in submissions (see Appendix B). The response included a final Preferred Project Report (PPR) lodged in November 2011 which submitted an amended scheme proposing:

Changes to the Resort Component

- minor re-configuration of beachside bungalows in an attempt to avoid banksias in the north eastern portion of the site
- bungalows on the southern side of the internal access roads were recessed away from the road and re-oriented to achieve improved northerly aspect
- the maintenance area encroachment into the 30m southern landscape buffer removed
- bushfire access trail relocated west of the beachside bungalows
- pathway within the resort area from the southern beach access point has been relocated

- introduction of new landscape feature near resort main entry
- redesign of public car parking area to permit more landscaping
- a pedestrian path has been provided from the resort to the bus stop on the southern side of Casuarina Way

Changes in the Dune Management Area

- introduction of a fourth access pathway to service ten additional car parking spaces located to the north of the roundabout
- widening of the central beach access path to allow access by emergency vehicles and
- additional storage space is proposed as part of the community facilities building

Changes in the Riparian Management Area

- relocation of the basketball court, tennis court, public car parking area and the large picnic shelter to allow for retention of banksia area
- redesign of pedestrian pathway network

Changes to Casuarina Way Access

- the location of the driveway access to the maintenance area has been moved outside of the southern landscape buffer
- a pedestrian crossing is proposed to the north of the roundabout to connect the pedestrian pathways from the dune and riparian management areas

Consultation on PPR

The PPR was placed on the department's website and referred to agencies that raised key assessment issues.

- OEH reviewed the information provided and recommended an alternative development layout that re-locates the development to avoid all losses of mature Coast Banksia which is discussed further in Section 5 of this report
- Council responded by re-iterating that its raised issues remain unresolved
- The RFS advised that it did not accept the proposal as an eco-tourism development in accordance with the *Planning for Bushfire Protection 2006* guideline. Subsequently, the RFS recommended conditions of approval based on the requirements for a special fire protection purpose development which is discussed further in Section 5. 3 of this report

5. ASSESSMENT

The department considers the key environmental issues for the project to be:

- Impact on biodiversity
- Density of development and visual impact
- Bushfire protection
- Integrity of proposed tourist use
- Maintenance and management obligations
- Beach safety
- Traffic and access
- Infrastructure and developer contributions
- Coastal flooding, climate change and coastal hazards
- Cultural heritage
- Hydrology
- Socio-economic impact

5.1 Impact on biodiversity

Impact on threatened species

The following threatened species listed under the *Threatened Species Conservation Act 1995* (TSC Act) have been recorded on the site:

- | | | |
|-------------------------|-----------------------|---------------------------|
| • Pied oystercatcher | • Osprey | • Little bent-wing bat |
| • Black flying fox | • Common blossom bat | • Grey-headed flying fox |
| • Sooty oystercatcher | • Mangrove kingfisher | • Rose-crowned fruit dove |
| • Glossy black cockatoo | • Mangrove honeyeater | • White-eared monarch |

Notwithstanding the disturbed nature of the site and its consequent reduced habitat complexity, the forage value of pollen and nectar provided by mature Coast Banksia (*Banksia integrifolia*) trees has been recognised as a feeding source for the Black Flying Fox, Grey-headed Flying Fox and the Little Bent-wing Bat. **Figure 11** displays the clumps of significant vegetation recorded on the site.

The most significant loss of vegetation proposed will be for the construction of the resort component (i.e. unit and bungalows, central facilities, pool, utilities and interpretative centre). In order to make way for the resort, 3,898m² of vegetation mapped and described as "clumps of significant vegetation, consisting mainly of Banksias and Tuckeroos over 2m" (p.17. Ecological Assessment, 2010) is proposed for removal and an 'off-set' via re-vegetation replacing trees at a ratio of 2:1 is proposed.

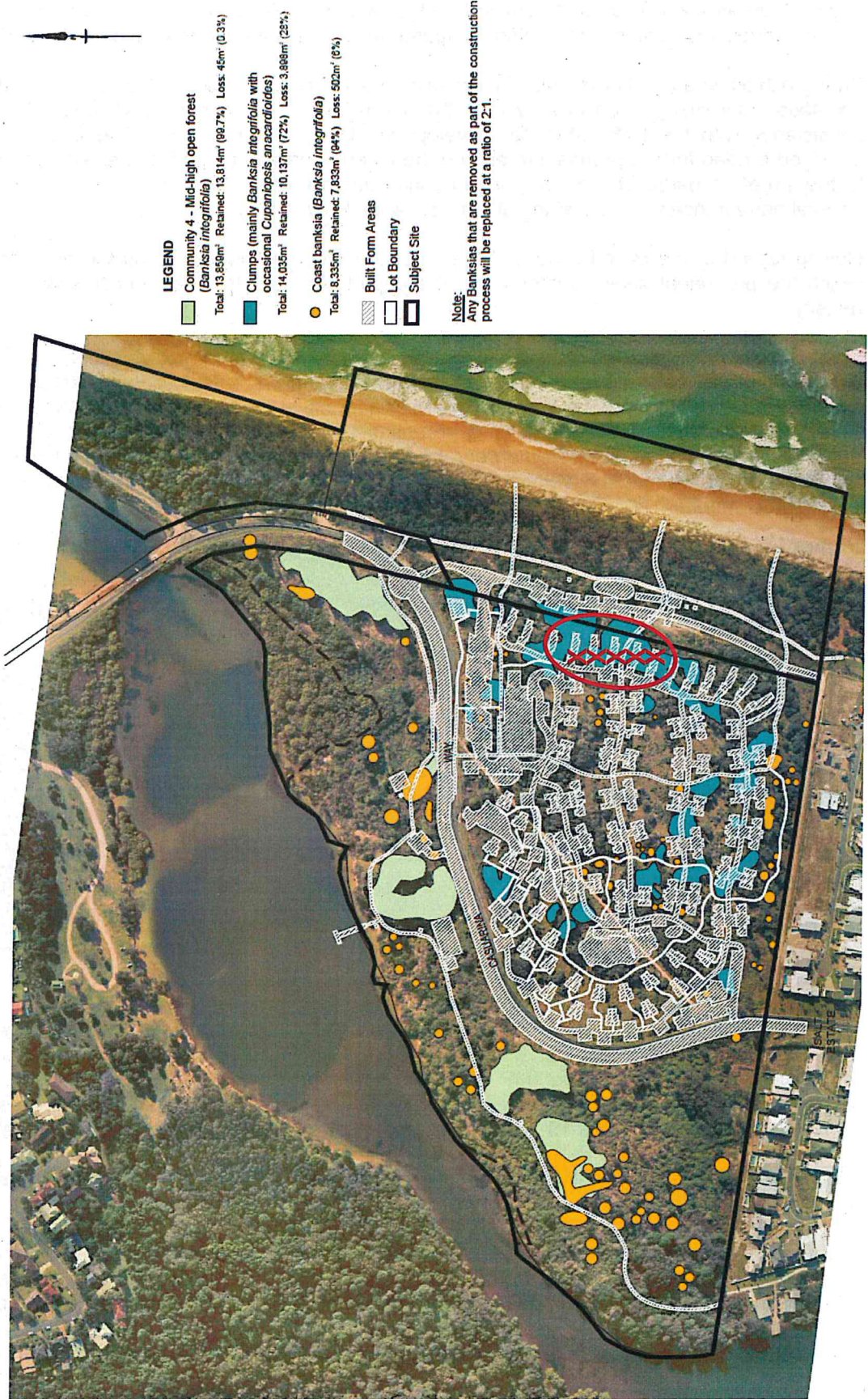
The Office of Environment & Heritage (OEH) raised concerns with uncertainties about vegetation losses and suitable offsetting of impacts on threatened species.

The department is not convinced that sufficient mitigation measures have been put in place to satisfactorily avoid or mitigate impacts to identified threatened species. While the proponent's commitment to re-vegetate a significant proportion of Coast Banksia vegetation is supported, this approach is overly reliant on uncertain information about the scale of losses and an optimistic assessment of the value of offsets, with limited regard given to the inherent issues with lag time in establishing trees mature enough to bear sufficient degree of replacement nectivorous foliage. In addition, there appears to be alternative sites for building in areas of more degraded vegetation, i.e. Community 5 to the west of the proposed beachside bungalows adjacent to the dunal area.

The department remains concerned with the scale of mature Banksia/Tuckeroo being removed, particularly on the eastern portion of the site. Given the overall size of the subject site and alternative areas available to locate buildings, the proposal is not supported in the form as outlined in the PPR. Subsequently, the department has recommended a condition of approval requiring the removal of five Beachside bungalows in order to retain further clumps of Banksia/Tuckeroo (see **Figure 11**).

In addition, the department recommends minor re-configuration of the layout to relocate the four unit pods proposed to be located near a Freshwater Wetlands Endangered Ecological Community (EEC). The wetland is approximately 1200m² and adjacent to Casuarina Way as shown in Figure 13 (page 19). The department has recommended a modification to the project requiring a five metre buffer around the Freshwater EEC as a condition of approval.

Figure 11: Resort layout superimposed with clumps of vegetation community (blue polygons) and 5 beachside bungalows to be deleted (Source: Preferred Project Report)



5.2 Density of development and visual impact

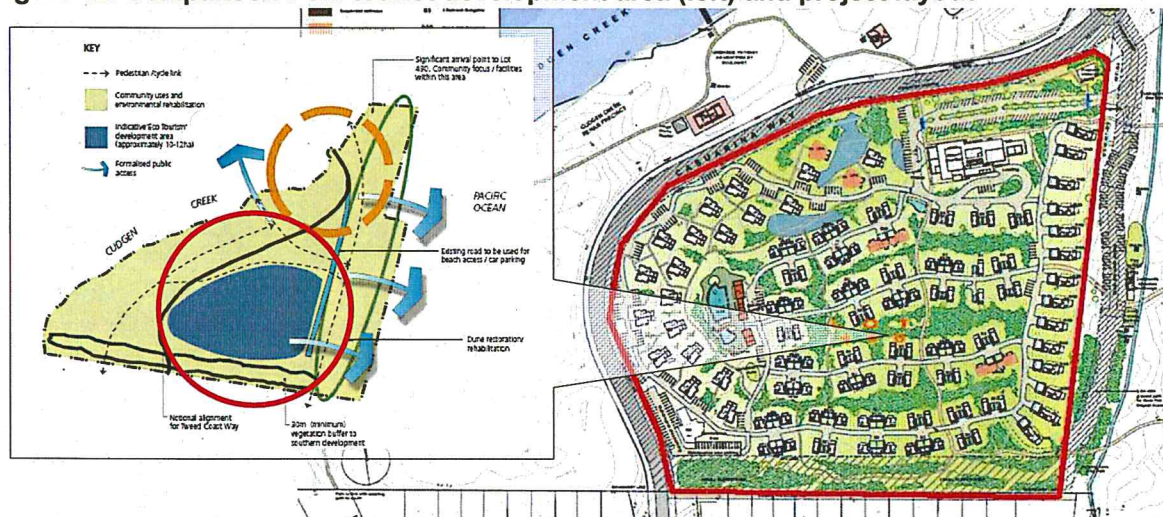
The resort component of the project has an area of 11.67 ha which will contain 180 units/bungalows (based on 2 bedrooms each). This equates to a density of approximately one unit/bungalow per 648m² of gross site area which is not dissimilar to a typical urban residential area on the North Coast. There are no controls to assist in determining an appropriate density for a tourist resort on this site.

During exhibition a number of public submissions raised concerns with the adequacy of the proposed vegetation screening measures within the landscape master plan and queried the project's consistency with the PoM intent for development in a natural setting. The council's submission identified a need for the proposal to ensure the external parameters of the development present well to the street, in particular, the proposed parking areas on the western end of the resort area, and general appearance when travelling along Casuarina Way.

Having regard to the overall extent of the resort development footprint and the number of buildings which the proponent seeks approval for, the department has residual concerns with the proposed density.

The Lot 490 PoM objectives envisage the future character and amenity of development to ... "provide a natural bushland setting that ameliorates the effects of urbanisation of the coastline" (p.10, PoM). Although the built form of the resort is considerably set back from Casuarina Way (approximately 25m), the project is heavily reliant on a proposed solid screen fence to shield the resort layout. In some places this fence has less than one metre set back from Casuarina Way. When compared to the PoM's indicative tourist development area (blue polygon in **Figure 12**) the development footprint of the resort component is considerably larger.

Figure 12: Comparison PoM tourist development area (left) and project layout



Based on 180 units/bungalows proposed within an 11.67 ha area, the project will have a density of approximately 36 bedrooms per hectare. In comparison to other similar tourist projects, the Links development near Wollongong (MP 06_0305) approved by the department in 2009, comprises a density of about 24 bedrooms per hectare. As another example, the 2006 Becton development at Byron Bay (departmental DA-10-2-2006) approval allowed between 14 and 28 bedrooms per hectare.

There is no doubt the project as proposed would result in an urbanised development and would change the visual amenity of the locality which the PoM aims to preserve.

To minimise the extent of this change, the department recommends that there be a reduction in the number of units/bungalows and a corresponding decrease in the development footprint to provide greater opportunity for spacing and landscaping between buildings to minimise visual impact.

In order to achieve a reduction in density, the department recommends modifications to the development as shown in **Figure 14** (over), being removal of 36 units, 6 x 2 bedroom bungalows, 6 x 3 bedroom bungalows, and 5 beachside bungalows. This equates to 53 units/bungalows or a 30 per cent reduction, resulting in **127 units/bungalows** in the resort. This will represent a density of

approximately 26 bedrooms per hectare. The department has nominated specific units/bungalows to be deleted from the proposal for the following reasons:

- Deletion of unit pods along the western perimeter of the development enables an increase in the width of the landscaped buffer between the road and the proposed solid fence screening of the resort, which will further reduce the visual impact experienced from the road and increase buffering to EECs
- Deletion of 5' beachside bungalows to preserve mature Banksia / Tuckeroo vegetation
- Deletion of bungalows within the resort to allow greater spacing and landscaping between bungalows, preserving visual amenity.

A condition of approval requiring the establishment of a 30 m landscaped visual buffer along Casuarina Way has also been recommended.

The recommended design changes also address the department's concerns about biodiversity impacts, and will result in the following additional benefits:

- it will facilitate a reduction in the development footprint and provide additional areas for preserving mature Banksia/Tuckeroo vegetation.
- it will provide greater ability to comply with APZ bushfire protection measures
- it will increase buffering EECs within the resort component
- there will be greater ability to accommodate more landscape plantings between Casuarina Way and the proposed solid fence screening of the tourist resort
- it will allow for greater spacing and landscaping between built form to reduce its visual impact and preserve the visual amenity of the locality
- it will ensure greater consistency with the Lot 490 PoM vision and objectives
- it will result in less hard stand area (e.g. rooftops) and more permeable area (soft landscaping) and increase rainwater infiltration leading to reduced risk of pollution of Cudgen Creek.

Figure 13: Vegetation communities with project layout superimposed (Source: Environmental Assessment)

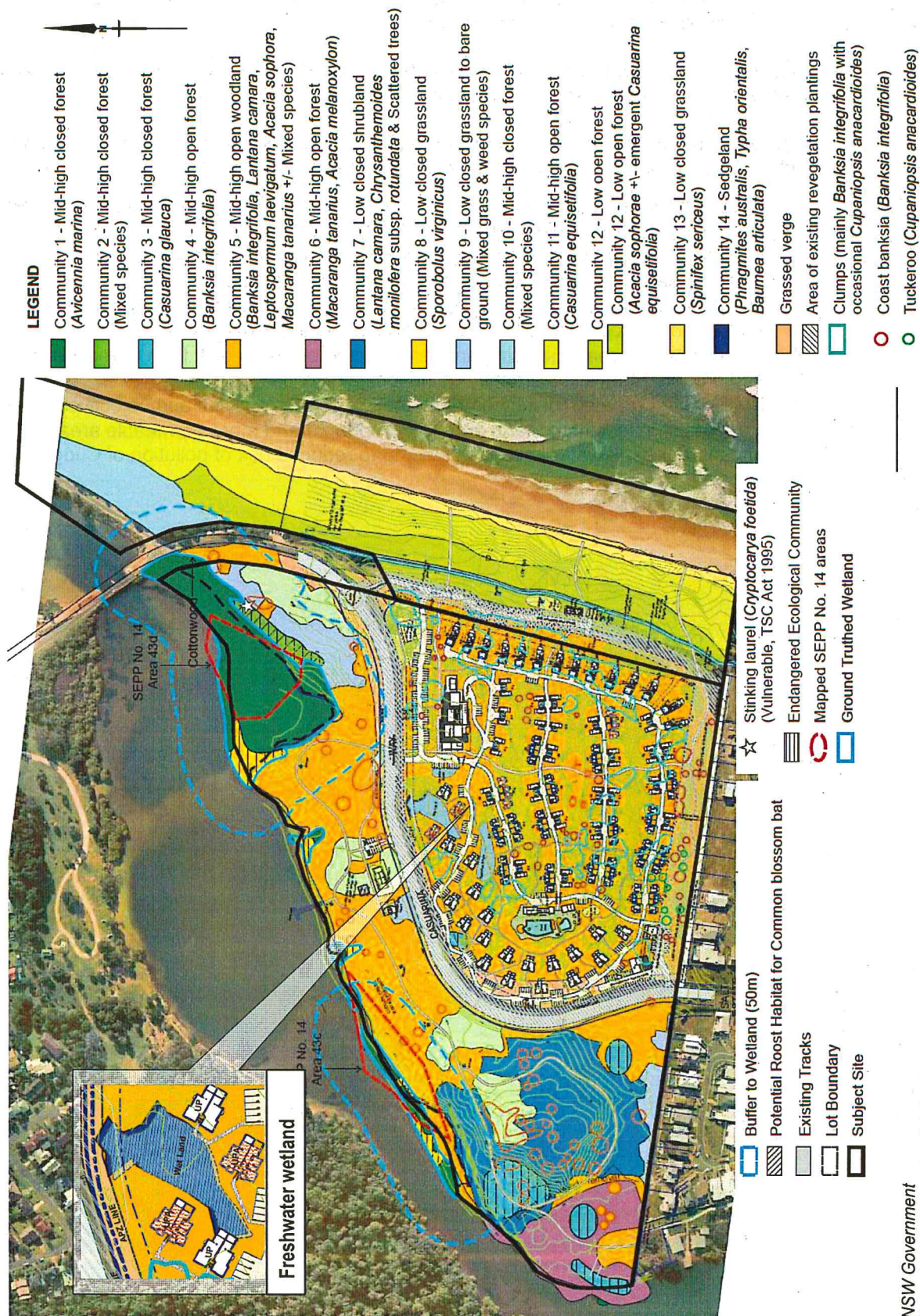
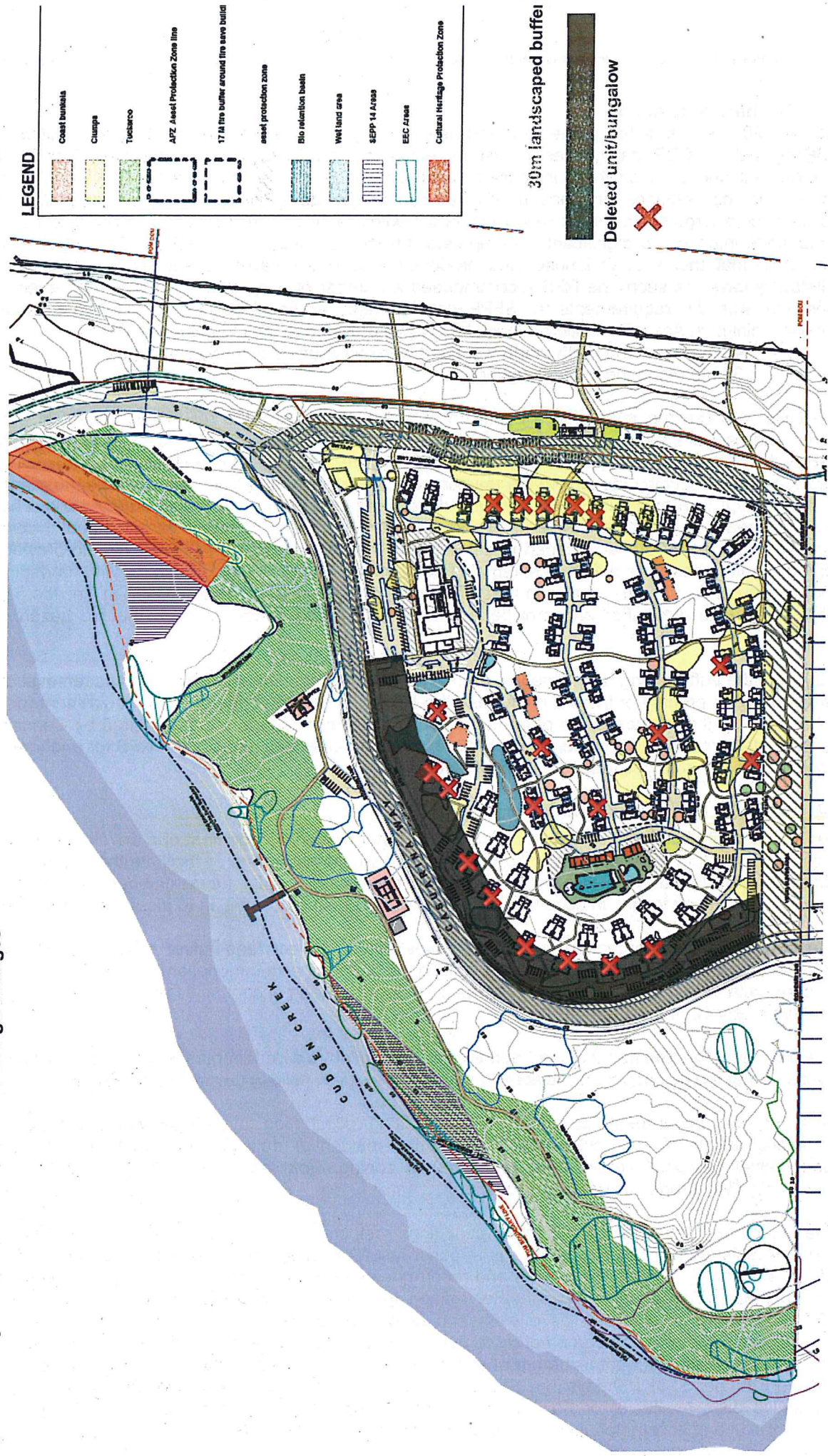


Figure 14: Project Plan with recommended design changes



5.3 Bushfire protection

The Lot 490 site is bushfire prone land and must comply with the *Planning for Bushfire Protection 2006* (PBP) guideline. PBP categorises tourist developments as Special Fire Protection Purpose (SFPP) development and as such there is more reliance on space around buildings for APZs and defensible space, and less reliance on construction standards. The development layout as originally proposed provides for a large-scale tourist resort dispersed within a heavily re-vegetated environment. While the proponent's intention to significantly re-vegetate the site is supported, the Rural Fire Service (RFS) is concerned that the level of landscaping proposed around the cabins poses a risk of ignition to the units/bungalows. As such, the RFS recommended a number of conditions to ensure the development is consistent with the requirements for SFPP developments as specified in PBP. The RFS requires the following minimum Asset Protection Zones (APZ) to be provided to the units/bungalows:

- 45 metres to the north, north-west and westerly aspects of the cabins, and
- 35 metres to the easterly aspect.

The RFS has also recommended a condition of approval requiring the resort component of the project (south and east of Casuarina Way) to be managed as an Inner Protection Area (IPA) in accordance with PBP and *Standards for Asset Protection Zones* (RFS 2005). This will have implications on the design of the resort layout, particularly the landscape master plan. The density and selection of plants must ensure fuel loads are kept to a minimum. To ensure the development meets the IPA requirement without having an adverse impact of the site's surrounding visual catchment, the department has included a condition of approval requiring a 30m landscaped visual buffer to the south-west of Casuarina Way to provide for site screening measures. This buffer must remain free of any fences, buildings, structures and hardstand areas. The deletion of 8 unit pods along the northern and western boundary, as discussed in Section 5.2 above, will contribute to the buffer and provide a greater defensible space between the fire hazard and the buildings.

Subject to the buffer being maintained as an IPA (i.e. bushfire fuel management such as removal of leaves, twigs, bark and pruning of trees and shrubs), the RFS supports the department's requirement for the 30m buffer. Prior to the re-submission of the amended plans to the department as required by Condition B1 of the project approval, the proponent must have referred the amended plans to the RFS for endorsement and incorporated any changes required, if any (Condition B3).

5.4 Integrity of proposed tourist use

Currently the site is subject to a restrictive covenant that prevents lodgement of a development application which would permit "development or construction that would encourage or facilitate the use of the land for permanent residential accommodation". However, the proposal is for future unit/bungalow owners to be able to be permitted to stay in accommodation without restricting occupation to a certain number of days.

The council has recommended the tourist status of the project (and future strata title allotments) be enforced by way of a condition of approval limiting the period of accommodation for tourists to no more than 42 consecutive days with an interval of at least 14 days between occupancies and not exceeding a total of 90 days in any 12 month period.

The proponent has claimed that the need to limit occupation to a certain number of days is unwarranted on the basis that the development is clearly intended to provide a holiday destination for tourists.

However, the department considers that permitting occupation by accommodation owners without restricting length of stay could result in a quasi-residential development. Such an arrangement is fundamentally inconsistent with the site's tourist zoning, PoM and covenant restrictions; imposed to specifically discourage permanent occupation.

The department has previously imposed conditions restricting the number of days of occupation on other similar coastal projects. One example is a tourist resort at Bayshore Drive in Byron Bay (DA 10-02-2006) where a restriction limited unit owners and resort guests to a maximum stay of no more than 90 days in a calendar year. This condition was further refined for the Links tourist development at Wollongong (MP 06_0305) where a restriction on owners and resort guests was limited to stays of no more than 42 consecutive days or in aggregate not more than 150 days in any given calendar year. Forty-two days or six (6) weeks equates to the total number of standard school/Christmas holidays available each calendar year. In theory the period of 150 days in a 12 month period would facilitate use for weekends (i.e. 104 days) with remaining days available for holiday or recreational use. In order to minimise the risk of permanent residential use of accommodation, the department recommends that the same restrictions be placed on this project.

5.5 Maintenance and management obligations

By way of background the proponent won the development rights to the subject site via a selective tender process undertaken by the Department of Lands in 2007. The proponent will have a long-term lease agreement, and is responsible for obtaining all necessary building and development approvals.

The proponent has indicated that as a condition of the development lease for the site, they are required to maintain and manage all built form and environmental elements of the resort premises for the duration of the lease. This obligation is understood to fall on the proponent during the construction and development phase with the responsibility being passed on to the purchasers and the resort's owners' corporation following the proposed sale of individual unit/bungalows.

In its submission, council (as the appointed corporate manager of the Tweed Coast Reserve Trust) sought clarification on future maintenance responsibilities and public liability matters for open space areas and community facilities outside of the main tourist resort. Given that the Crown Lands Division of the Department of Primary Industries (CLD) is currently responsible for the subject land, council has sought an assurance that the proposed embellishment of the site will not be an increased burden for council or the Trust.

The proponent has indicated that the ongoing operation and maintenance responsibilities of the development will be entrusted to a future resort operator, body corporate and individual unit/bungalow owners following practical completion of the development.

Based on the information provided with the proposal, the future operational structure for the development is considered to be representative of a strata or community title management scheme. The proponent has not sought project approval for such subdivision, despite proposing a development which requires ongoing maintenance of assets, landscape plantings and associated community facilities in perpetuity. As a result the department has recommended conditions of approval which prevent future occupation of the development until relevant legal arrangements for the resort's ongoing management have been approved and formalised.

5.6 Beach safety

The Lot 490 site adjoins a 400m stretch of unpatrolled beach extending north from the Salt Surf Life Saving Club (SSLSC). In its current undeveloped state, the site has no formal public access to the beach due to existing vegetation. However, the limited nature of existing beach access will change following the construction of up to four access points to the beach from the tourist resort.

A number of submissions received during exhibition raised issues with the safety risk presented to future guests of the tourist resort and general public by permitting increased usage of nearby beaches. SSLSC in particular raised concern with the additional risks and reliance on its organisation for surf life saving services. Council also raised concerns with additional pressures being placed on local surf life saving services in the area.

The Coastal Public Safety Risk Assessment (SLSA, 2010) provided with the PPR recommends a fringe (i.e. two lifeguards) seven day peak summer service that includes weekends and public holidays over the spring and autumn periods, including the Easter period.

Given the nature of the tourist development proposed and its location, there is no doubt that the project will result in increased usage of the adjacent beach. To discourage tourist visitors from using the beach for swimming (due to the danger), one option would be to delete the beachside car parking and beach access. However, from discussions with the council, this is not preferred, as the car park will not likely be used by persons staying in the resort (who will be able to walk) and the beach may be used for other recreational purposes, other than swimming. Therefore, the car parking and beach access will be retained. The proponent has committed that it will enter into an agreement with the Salt Surf life Saving club that an annual contribution will be made for a period of ten years, commencing in the first year of operation of the resort. The agreement is to be entered into 'prior resort occupation'. Ideally, this agreement should be embodied in a planning agreement. However, this has not occurred.

Although it is not made explicit in the Statement of Commitments, from other information supplied in the application and Response to Submissions, the proponent intends that the future owner's corporation for the development will enter into 'an agreement' with the Surf Club (once the development is subdivided, subject to separate approval). As the site has not been subdivided, it is uncertain how the proponent can bind the future owners corporation into such an agreement, and the statutory basis and therefore enforcement of the

agreement is unclear. The proponent needs to address the requirements of the report into beach safety and life saving services. It is therefore recommended that the proponent address the recommendations of the report, including those relating to beach signage and provision of surf life saving services, for the approval of the Director-General, prior to issue of the first construction certificate (see Condition A7.)

5.7 Traffic and access

Vehicle access and mobility

The primary vehicle access to the proposed development will be located on Casuarina Way at the site's north-eastern boundary. This intersection is proposed to be a roundabout arrangement and will provide vehicular access to the resort facilities and accommodation uses as well as the public beach car parking area. A road access point for the maintenance area is also proposed in the south-west corner of the site. **Figure 14** depicts the two vehicle access points for the site.

Figure 14: Site vehicle access points



In its response to exhibition of the EA, council indicated support for the proposed primary access and roundabout on Casuarina Way provided that the maintenance area is made inaccessible to general resort traffic.

The department is satisfied that the project layout with its 'boom gate' system restricts access to the resort's maintenance area by providing a barrier to the movement of non-employee traffic to the resort. To ensure proper management of vehicle access, the department has recommended conditions of approval requiring the boom gate system to restrict access to Casuarina Way for non-employee traffic as well as compliance with relevant Australian Standards.

Provision of parking

Based on the proposal as submitted, (180 units), 377 car spaces are proposed. However, in accordance with section A2 of the Tweed Development Control Plan (DCP) the proposal requires 402 car spaces (counting dual key units as two separate units). With a reduction of 53 units as recommended, including 42 dual key units/bungalows (127 units remaining), the car parking required is 308 spaces (counting dual key units as two separate units). The proponent has allocated the required staff parking spaces for the retail, restaurant, bar and interpretive centre within the maintenance area for employees, which includes 45 spaces. Notwithstanding, there is a surplus of 72 car parking spaces across the resort – 26 for the conference centre and 46 for the tourist accommodation.

The proponent's justification for proposed conference centre staff parking levels is largely based on its experience with another 198 unit tourist development with conference and restaurant facilities. On this basis the proponent considers that staff numbers of between 40 to 45 staff members is optimal. The

department has no objection to the additional conference centre parking on the basis that these spaces will be available for cross-utilisation by other uses associated with the resort facilities building. There is, however, no need for the additional tourist accommodation parking spaces, and the department considers that this area would be better utilised for additional landscaping and visual buffering within the development. A condition of approval requires the proponent to delete the 46 excess car spaces and replace this area with landscape plantings. **Table 3** sets out the parking provision and nominates parking areas for the development relevant to intended use identified in the DCP.

Table 3 – Parking Compliance with the Tweed DCP

Development Proposed	DCP Requirement (No of car spaces)	Required (spaces)	Provided (spaces)	Comment
As proposed¹: 180 units/bungalows OR 302 units/bungalows including 244 dual/key (based on 122 units being dual key)	1/1 unit/bungalow	180 OR 302 (dual key)	 253	Excess parking provided per unit, or shortfall if one space to be allocated per dual key unit.
Staff	1/1 staff	45	45	
As modified by conditions²: 127 units/bungalows OR 207 ³ units/bungalows including 160 dual/key (based on 80 units/bungalows being dual key)	1/1 unit/bungalow	127 OR 207 (dual key)	 253	Surplus of 46 spaces. Conditions of approval have allocated parking based on one space per dual key unit, not one per unit.
Staff	1/1 staff	45	45	
Retail Staff	4.4/100m ² x 75m ² 1/100m ² x 75m ²	3.3 = 3 0.75 = 1	3 *	*Staff spaces allocated within maintenance area
Restaurant Staff Service vehicle	1/7m ² x 156m ² 1/1 staff 1	22.28 = 22 * 1	22 * 1	*Staff spaces allocated within maintenance area
Bar Staff Service vehicle	1/7 x 100m ² 1/1 staff 1	14.28 = 14 * 1	14 * 1	*Staff spaces allocated within maintenance area
Conference centre Staff Bus	1/30 x 250m ² 0.5/1 staff 1/200 x 250m ²	8.3 = 8 * 1	34 * 1	Surplus of 26 spaces for conference centre
Interpretive/multi-purpose space Staff Service vehicle	2/100m ² x 150m 0.5 x 2	3 1 1	3 * 0	*Staff spaces allocated within maintenance area
TOTAL RESORT As proposed:		403⁵	377	
TOTAL RESORT As modified by conditions:		308⁶	377	Deletion of 46 spaces required by condition of approval
Plus Beach parking	300 per 1 km	120	60	See discussion below
Plus Riparian area		N/A	12	

Notes:

1. As proposed in EA

2. As proposed to be modified by Condition A1 = removal of 36 x 2 bedroom unit; 6 x 2 bedroom bungalows; 6 x 3 bedroom bungalows and 5 beachside bungalows

3. Based on development as modified being 48 x 2 bedroom units (dual key); 32 x 2 bedroom bungalows (dual key); 38 x 3 bedroom bungalows; 9 x beachside bungalows

4. For staff parking, the Tweed DCP states that figures for calculating parking "are generally based on satisfying peak customer demand" (p. 13).

5. Requirements for per unit are 281 spaces

6. Requirements for per unit are 83 spaces

According to Council's policy, there should also have been 120 car spaces allocated for beach access, when only 60 have been provided. The Council notes that not all spaces need to be located directly beachside. The proponent's response is that the Plan of Management states that limited parking is to be provided along Tweed Coast Way and car parking has been limited to minimise environmental and visual impacts, created by hardstand spaces. The department accepts this position, particularly in light of the concerns over beach safety.

5.8 Infrastructure and developer contributions

Works to Casuarina Way

Casuarina Way is a two lane council owned road currently finished with a rural standard of surface. In its submission, council made a request for Casuarina Way to be upgraded.

Based on the development as originally proposed, an additional 1,143 vehicles are forecast to use Casuarina Way when the development becomes operational. The department shares council's concerns in that the existing rural standard of road may not be adequate to service the development. Subsequently, the department supports council's requirements for Casuarina Way to be upgraded. This upgrade is to be carried out by the proponent prior to operation of the resort and conditions of approval have been recommended in this regard accordingly.

Upgrade and relocation of water main

It is proposed to provide internal reticulation for the development, connecting to an existing 225 mm diameter water main on Casuarina Way, located at the southern boundary of the site. Figure 15 shows the proposed water servicing for the development.

Although water services are available to the site, council has expressed a desire for the proponent to relocate and upgrade this water main within the Casuarina Way road reserve through this application. Council's justification for the upgrade is based on its DCP Part B9 which provides guidelines for water supply works associated with development.

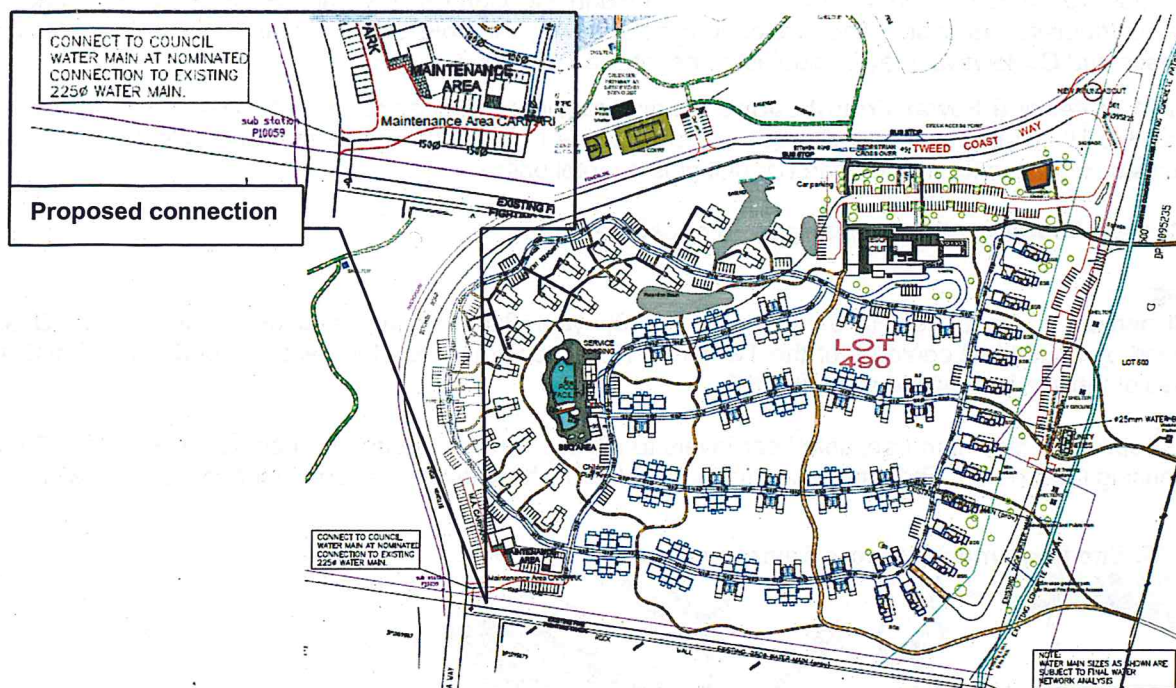
The existing 250 mm trunk main was constructed along the original alignment of the Coast Road, which was re-aligned to become Casuarina Way – but the relocation of the water main was not undertaken at that time.

From discussions with the council it is understood that the water main needs to be relocated to enable more effective maintenance and so as to ensure controlled drainage should the main fail. The council has provided evidence dating back from 2009 that the Department of Lands was aware of the need to relocate the main and has advised that the proponent had been advised of this requirement prior to lodgement of the application.

The council is of the view that the relocation of the main is a direct consequence of the development. The proponent does not agree that the main should be relocated at its cost, particularly as the site may be serviced for water without the main being relocated.

The department has relied on the advice from the council that it is appropriate that the works be undertaken as part of this development, and has conditioned for the relocation, at the proponent's expense. Council has agreed that any upgrade required to the main will be at Council's cost.

Figure 15: Proposed water servicing for development



Developer contributions

The proposed 2 bedroom units and 2 bedroom bungalows are to be equipped with a dual-key 'hotel style' option, allowing for two separate tenancies i.e. one bedroom each. Whilst the EA identified the total number of proposed accommodation buildings as 180, permitting the dual key accommodation layouts to be leased as separate 1 bedroom units (under a dual-key arrangement) would effectively mean that 122 of the proposed 2 bedroom units/bungalows can be rented out as 244 separate offerings. With the recommended reduction in units (by condition), the resultant yield is 127 units or 207 units if the 2 bedroom dual keyed units are treated as two units.

Council has recommended that developer contributions rates be based on the 2 bedroom dual-key units/bungalows being categorised as 2 separate units. Based on the recommended amendment to reduce unit numbers to (to 207 units), and advice from the Council, the contributions required are as set out in **Table 4**, below.

The proponent has disputed council's recommended contribution rates and requested that dual-key units be charged as one unit/bungalows regardless of council's adopted contributions plans. The department has accepted the Council's advice that the contributions should be applied based on dual key apartments functioning as two units. This is consistent with the approach taken by the Department for the Ramada Hotel in Ballina (DA 2003-05-234).

Table 4: Section 94 Development Contributions Required

(Based on proposal as amended by conditions)

S94 Plan No. 4 Tweed Road Contribution Plan	\$935,305
S94 Plan No. 5 Open Space (Casual)	\$67,221
S94 Plan No. 11 Shirewide Library Facilities	\$101,215
S94 Plan No. 15 Community Facilities (Shirewide)	\$169,331
S94 Plan No. 18 Extensions to Council Administration Offices & Technical Support Facilities	\$227,576.20
S94 Plan No. 22 Cycleways	\$57,637
S94 Plan No. 26 Regional Open Space (Casual)	\$133,165
Total	\$1,691,450.20

In its advice to the department, the Council has noted that 'works in kind may negate charges' under Plan 5 (Casual open space) and Plan 22 (Cycleways), although the Council has not identified the quantum of possible contribution reduction. The proposed condition (A5) will note that monetary payment for Casual Open Space and Cycleways, may be subject to negotiation with the Council.

Section 64 Water and Sewer Contributions are also required. This amounts to \$1,264,985.70 for water and \$859,870.70 for sewer. The charges have also been based on the rates applicable for dual key apartments being those for single bedroom unit plus a motel unit.

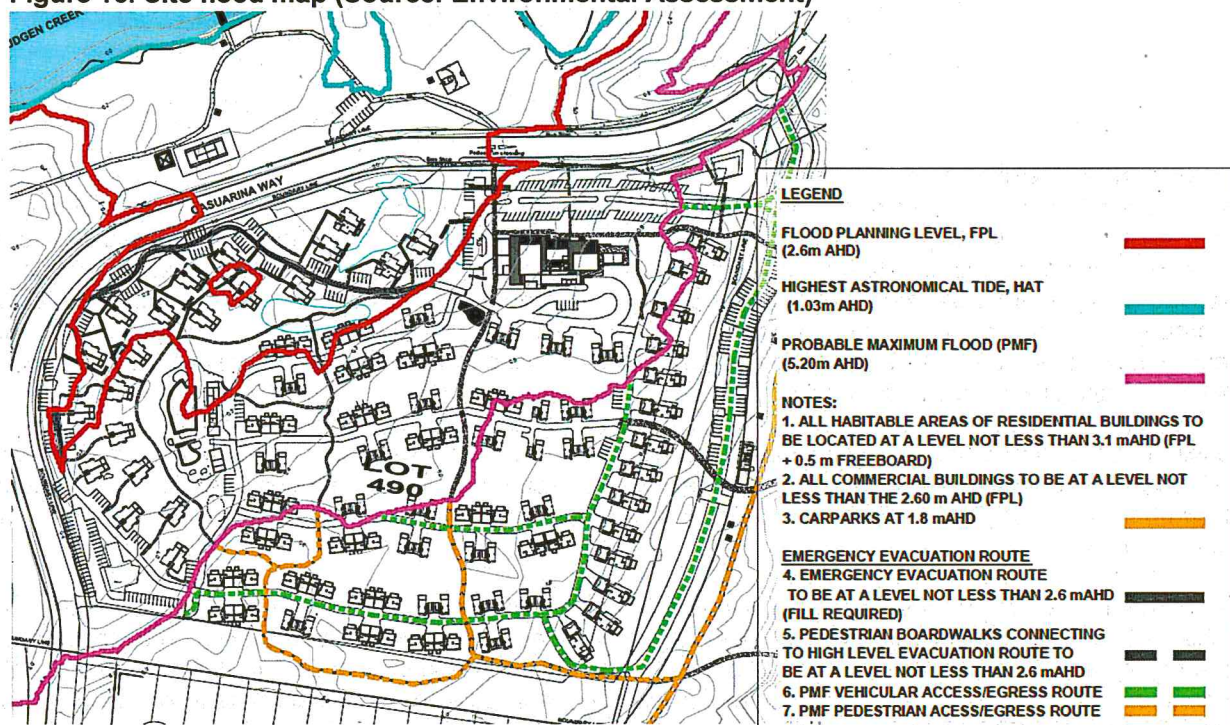
5.9 Coastal flooding, climate change and coastal erosion

Flooding

A small portion of the project is below the 1 in 100 year flood design level (FDL) of 2.6m AHD as determined by flood level contours of the Tweed DCP Section A3 – Development of Flood Liable Land. A flood map of the site is provided at **Figure 16**.

The DCP specifies minimum habitable floor levels to include a 0.5m freeboard in combination with a 2.6m flood planning level (FPL). Therefore, the minimum habitable floor level for accommodation is 3.1m AHD.

Figure 16: Site flood map (Source: Environmental Assessment)



A minor amount of filling to 2.6m AHD is proposed to provide an emergency evacuation route for the affected accommodation types up to the 1 in 100 year event. This evacuation route will grade up to land above the Probable Maximum Flood level for the site which is defined as 5.2m AHD.

Climate change is expected to have adverse impacts upon sea levels and rainfall intensities, both of which may have significant influence on flood behaviour in coastal areas. As previously mentioned, the 100 year flood event level for the site is 2.6 m AHD.

The department considers that the proposed FPL of 3.10m is sufficient given that its flood levels are derived from the Tweed-Byron Coastal Creeks Flood Study (2009) which takes into account the projected effects of climate change including a high level impact scenario (90cm rise in sea level by 2100 and 30% increase in rainfall intensity). The high level scenario results in a peak water level of 2.90m AHD which factors in an additional 0.40m rise in sea levels and a 30 percent increase in rainfall intensity. Therefore, the department accepts that the 3.10m AHD minimum FPL provides additional clearance to the high level impacts of climate change, including potential for sea level rise, increased storm severity and changes to the rainfall patterns. The proposed FPL is also supported by council. Subject to the inclusion of appropriate

conditions of approval, the flood prevention and evacuation measures proposed by the proponent are satisfactory.

Coastal hazard

A number of hazards are associated with development in the coastal zone which can place human life and property at risk. As mentioned earlier in this report the subject site is bound by the Cudgen Creek estuary to the north/west and adjoins South Kingscliff Beach in the east.

Council's updated 2010 coastal hazard lines show a 20m westward shift of both the 2050 and 2100 hazard bands (Figure 17). Figure 17 depicts proposed public use facilities including car parking, public amenities block, picnic shelters, playground and circuit training facilities and beach access as being subject to the 2100 hazard line.

Council has indicated a preference for public amenities proposed within the eastern area of the site to be re-located further west of Lot 500 DP727420 which could then be utilised for dune restoration only.

Due to the considerably elongated timeframe associated with the future hazard presented and non-essential nature of the public facilities proposed on Crown land (Lot 500), the department does not object to the encroachment into the 100 year hazard line provided that the balance of Lot 500 DP727420 is being utilised for dune rehabilitation. A condition of approval clarifying that the proponent (or landowner and successors in title) is responsible for repairing any damage to public facilities on the site caused by coastal erosion processes, has been recommended.

5.10 Cultural heritage

The Cultural Heritage Assessment (Everick, April 2010) submitted with the EA included consultation with relevant indigenous stakeholders and identified an area with a reasonable likelihood of containing significant cultural heritage as an undisturbed band of vegetation within the Riparian Management Plan (RMP). The Everick report concluded that the likelihood of Aboriginal cultural heritage being found in the disturbed areas of the site was low and made a series of recommendations which were largely adopted as Statement of Commitments by the proponent. One key Statement of Commitments includes establishing a designated cultural heritage protection zone within the RMP area.

OEH has advised that the relevant Aboriginal stakeholders are to be provided an opportunity to review the content of the designated cultural heritage protection zone prior to its finalisation. OEH recommended this process be documented and evidence provided to the department and OEH, upon request. The department supports this approach and has recommended conditions of approval to enforce OEH's requirements.

5.11 Hydrology

Groundwater

The subject site is located within the sensitive catchment of Cudgen Creek and Cudgen Lake, and the proper treatment of stormwater runoff is critical to ensure nutrients and sediment levels are adequately treated before entering the groundwater system.

In its submission responding to the EA, NOW raised concerns with potential impacts to groundwater arising from the bio-retention basins being located up to approximately 1.5m within the water table.

In the event that the treated surface water quality is shown to be of poorer quality than the groundwater within the immediate vicinity of the development, the proponent has committed to providing a hydrological barrier between the proposed bio-retention systems and the groundwater. In addition, the proponent has committed to engaging a suitability qualified engineer to undertake any necessary work relating to water quality testing, stormwater treatment modelling and hydrological barrier design work.

NOW has since indicated its support for the proposal subject to the updated commitments being enforced along with several additional requirements as conditions of approval. To ensure stormwater runoff does not contaminate groundwater, the department has recommended that NOW's requirements be enforced as conditions of approval.

Figure 17: Updated 2010 coastal hazard lines (Source: Preferred Project Report)

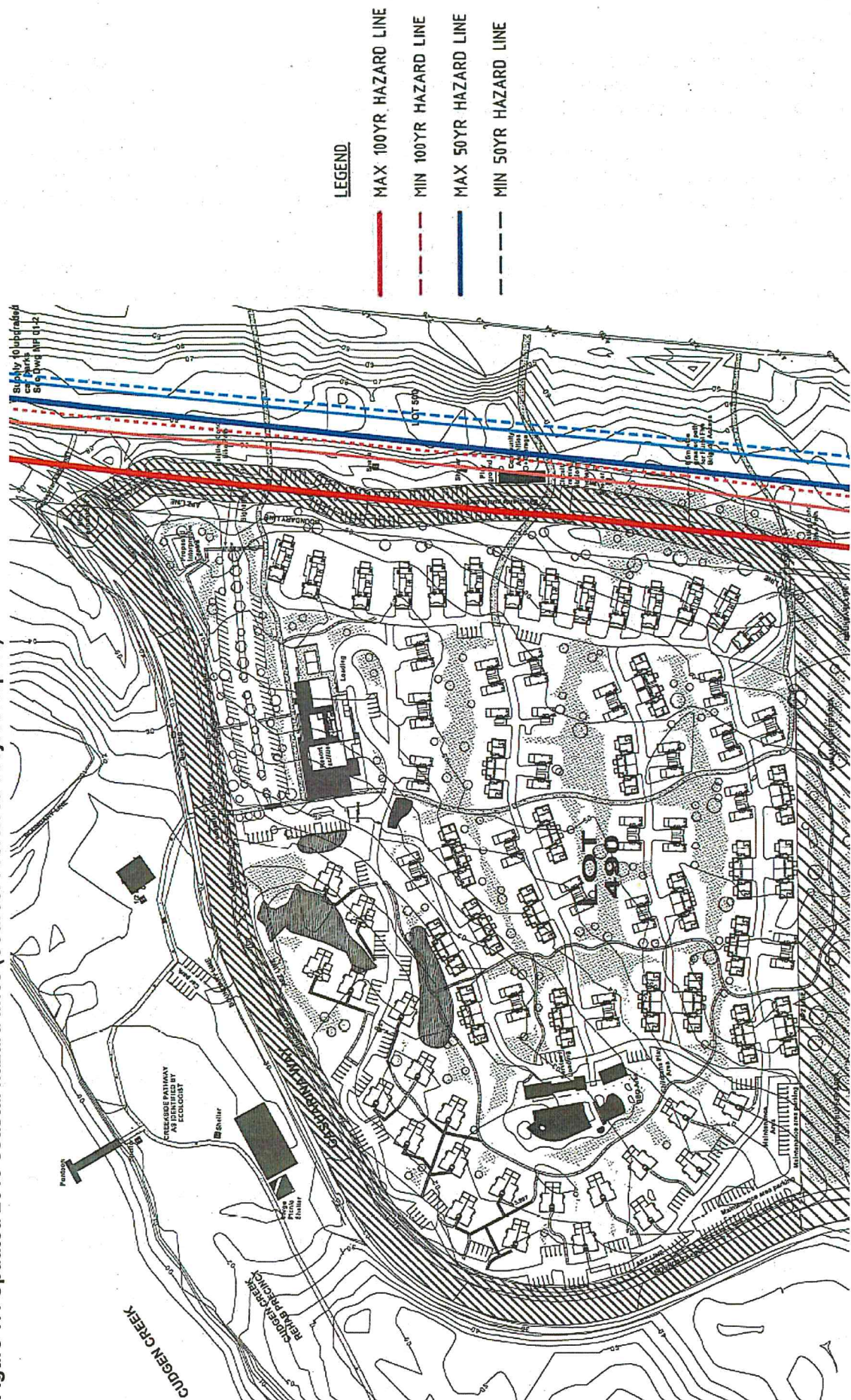


Figure 18: Stormwater concept plan (Source: Preferred Project Report)



Stormwater management

Stormwater flows through the existing site towards Cudgen Creek. The proposed primary legal point of discharge for the resort premises travels via the two existing culverts under Casuarina Way. Once through these culverts, the stormwater discharge flows along a drainage feature within the riparian area towards Cudgen Creek. **Figure 18** (page 30) depicts the proposed stormwater drainage system plan.

In its response to exhibition, NOW raised concerns with the potential for increased nutrients and sediment levels impacting on the surrounding sensitive catchment of Cudgen Creek and Cudgen Lake. CLD also identified a need for stormwater flows passing through the riparian area to avoid bicycle/pedestrian paths.

To aid in the protection of receiving water source quality, the department has recommended conditions of approval requiring all stormwater runoff to be adequately treated at its source and/ or diverted through the stormwater treatment process designed for the site, prior to the stormwater being discharged to surface water and groundwater sources. The design of stormwater treatment infrastructure is to be to the satisfaction of Council.

5.12 Socio-economic Impact

A number of public submissions raised concerns with regards to the economic impact of the proposed development on existing tourist accommodation available in the Tweed LGA.

According to the Socio-economic Impact Assessment (Conics, April 2009) supplied with the EA, the accommodation supply for the Tweed LGA has two main modes, namely: older established motels dominating the Tweed Heads local area, and more recent upper market resort developments located in the Kingscliff/Casuarina area. Compared to the established motel product, some of the later additions in the site's vicinity are significantly higher in density with over 300 short-stay units. The Conics study anticipates that through the provision of more quality accommodation options, the local tourism industry has an increasing opportunity to capitalise on recent infrastructure upgrades to the Gold Coast Airport and significant road infrastructure improvements. These combined factors are expected to positively increase broader area appeal over time and generate growth in destination appeal.

The Conics study further points out that although market dynamics cannot be anticipated, the proposed product style ranging from 1 bedroom hotel-style units to 3 bedroom bungalows will provide a variety of accommodation options for tourists across various price points. In addition, the proposed high quality resort is expected to help diversify the existing accommodation supply as the resort will primarily cater for the domestic South East Queensland drive market seeking a coastal retreat in quality accommodation within a natural bushland setting.

The *Far North Coast Strategy* identifies tourism as an important economic development and employment growth driver for the region and supports opportunities to widen the tourism sector to promote both traditional tourism as well as products that provide experiences derived from the region's natural, cultural and economic resources and attractions.

The department considers that, overall to be supportive of economic development in the Tweed Shire and consistent with desired planning outcomes.

6. RECOMMENDATION

The department has assessed the Environmental Assessment and subsequently submitted information and has considered the submissions received in response to the proposal.

The key issues raised by the proposal relate to: impact on biodiversity; extent of development and visual impact; bushfire protection; the integrity of proposed tourist use; maintenance and management obligations; beach safety; traffic and access; consideration of Infrastructure and developer contributions; coastal flooding, climate change and coastal hazards; cultural heritage; hydrology; and socio-economic impact.

Modifications to the project are recommended to conserve threatened species habitat in perpetuity, along with reducing the intensity of development in order to mitigate cumulative environmental impacts, namely:

- a reduction in the number of units/bungalows and a corresponding decrease in the development footprint to provide a better opportunity for spacing and landscaping between buildings to minimise visual impact
- a reduction in the development footprint to provide additional area for conserving mature Banksia/Tuckeroo which is a feeding source for Black flying fox, Grey-headed flying fox and Little bent-wing bat threatened species
- increased protection of an Endangered Ecological Community

In order to ensure that the development is consistent with the outcomes of the department's assessment, the department requires the proponent to submit amended architectural plans for approval by the Director General incorporating design modifications required by the recommended conditions of approval prior to issue of a construction certificate.

A number of conditions of approval are recommended which, in conjunction with the proponent's Statement of Commitments (SoCs), will ensure that all key issues are satisfactorily addressed and the project will have minimal impacts.

The proposal will provide the following public benefits:

- improvements to public access to Cudgen Creek public foreshore
- the regeneration of an under-utilised Crown reserve by establishing a wide-ranging rehabilitation program aimed at restoring the site's original vegetation and providing public benefit facilities including an interpretive/multi-purpose space, a public amenities building, a children's playground, a public pontoon at Cudgen Creek, a tennis court, a half-basketball court, a cycleway, sport circuit training facility, walking trails, parking and various picnic shelters
- increased tourism and employment opportunities
- protection of public, beach and visual amenity
- protection of Aboriginal cultural heritage

On these grounds, the department considers the site to be suitable for the project and in the public interest. Consequently, the department recommends that the project be approved, subject to the conditions of approval and the proponent's SoCs.



**Director
Metropolitan & Regional Projects North**



**Deputy Director-General
Development Assessment & Systems Performance**



**Executive Director
Major Projects Assessment**

15.6.12

APPENDIX A ENVIRONMENTAL ASSESSMENT

See the department's website at <http://majorprojects.planning.nsw.gov.au>

APPENDIX B PROPONENT'S PREFERRED PROJECT REPORT

See the department's website at <http://majorprojects.planning.nsw.gov.au>

APPENDIX C CONSIDERATION OF ENVIRONMENTAL PLANNING INSTRUMENTS

The proposal has been considered against the following State Environmental Planning Policies and Local Environmental Plan and is considered to be generally in compliance with the provisions contained within the following:

- **State Environmental Planning Policy (Infrastructure) 2007**

The Infrastructure SEPP aims to assist in effective infrastructure delivery. The project is captured by clause 104 of the SEPP, being development referred to in Schedule 3 – namely tourist facilities with capacity for more than 200 vehicles on site with access to any road. In accordance with the SEPP, the application was referred to the RTA (now RMS) on 15 April 2010. The RMS responded by way of letter dated 6 May 2010 raising no issues to the proposal.

- **State Environmental Planning Policy No. 14 – Coastal Wetlands**

The aim of SEPP 14 is to ensure that coastal wetlands are protected from clearing, draining, filling and levee construction and are preserved in the environmental and economic interests of the State. As the subject site contains a portion of SEPP 14 – Coastal Wetlands (No. 43c and No. 43d) along the site's Cudgen Creek boundary, the Department has considered the potential impacts of the proposal and ensured protection of the existing coastal wetlands.

- **State Environmental Planning Policy No. 44 – Koala Habitat Protection**

SEPP 44 aims to encourage proper conservation and management of natural vegetation areas that provide habitat for koalas, to ensure permanent free-living populations over their present range and to reverse the current trend of population decline. The SEPP applies to development in the Tweed Shire on land parcels of more than one hectare. In accordance with the SEPP, the subject land has not been identified as potential Koala Habitat and the department can therefore be satisfied that project will not have an adverse impact on koalas.

- **State Environmental Planning Policy No. 55 – Remediation of Land**

SEPP 55 aims to provide controls and guidelines for the remediation of contaminated land. It requires the consent authority to consider the potential for the site to be contaminated. In view of historical land uses associated with heavy mineral sand mining to be present on site in concentration, significant risk of harm to end users was found to be significant. Consequently, a radiation survey was conducted across western sectors of the site to complement previous investigations carried out. No radiological values were measured above site assessment criteria.

Based on those findings, the likelihood of persistent contamination resulting from historical mineral sands mining representing a significant risk of harm to end users is considered to be highly unlikely.

Notwithstanding the above, in the event of additional works being proposed within the south-western sector of the site, the proponent has committed to undertaking further investigations and this commitment has been reflected as a condition of approval.

- **State Environmental Planning Policy No. 71 – Coastal Protection**

SEPP 71 applies to land within the coastal zone as defined under the *Coastal Protection Act 1979*. It aims to protect and manage the natural, cultural, recreational and economic attributes of the NSW coast. SEPP 71 sets out matters for consideration (clause 8) by a consent authority when determining a Part 3A application. As well, the proposed tourist resort needs to be appropriate for the coastal location and suitably located. The provisions of SEPP 71 have been considered in the assessment of the proposal and the Department considers the proposal adequately addresses the provisions of the SEPP.

- **North Coast Regional Environmental Plan 1988 (Deemed SEPP)**

The North Coast Regional Environmental Plan 1988 (Deemed SEPP) provides a framework for policy preparation for the North Coast region and specifies objectives for the future planning and development of land throughout the NSW north coast. The proposal is generally consistent with

the provisions of the North Coast REP, in particular the objectives of Part 6 – Tourism and recreation, which aims to:

- (a) encourage tourism activity that will complement the existing natural and man-made features of the region and be of positive benefit to the region's economy; and,
- (b) encourage a range of tourism facilities in the region without degrading important environmental or agricultural features of the region.

- **Tweed Local Environmental Plan 2000**

The *Tweed Local Environmental Plan 2000* (Tweed LEP) sets the planning framework for development in Tweed Shire and establishes permissible forms of development and land use. Broadly the aim of the Tweed LEP is to encourage sustainable economic development that is compatible with the area's environmental and residential amenity qualities. The Tweed LEP also establishes the permissible forms of development and land use, pursuant to clause 11.

- Clause 2 – Aims, objectives, etc
- Clause 15 – Availability of Essential Services
- Clause 16 – Height of Buildings
- Clause 17 – Social Impact Assessment
- Clauses 22 and 23 – Designated Roads
- Clause 34 – Flooding
- Clause 35 – Acid Sulfate Soils
- Clause 36 – Coastal Erosion Outside Zone 7(f)
- Clause 44 – Archaeological Sites

The majority of the site is zoned 2(f) Tourism, with margins along Cudgen Creek zoned 7(a) Environmental Protection (Wetlands and Littoral Rainforest), and the site's eastern portion facing the beach zoned 7(f) Environmental Protection (Coastal Lands). A small component of the site also encroaches onto the unzoned Cudgen Creek.

All proposed developments are in zone 2(f) Tourism with the exception of the proposed public benefit works in zone 7(f) which are permissible with consent. No works are proposed within the 7(a) zone with the exception of the permissible creek access jetty. Environmental impacts will be mitigated through the implementation of riparian and dune rehabilitation plans for vegetation, threatened species, weeds and feral animals. Detailed environmental impact issues are addressed in Section 5.

OTHER PLANNING POLICIES

The Proposal has been considered against the following non-statutory documents and is considered to be generally in compliance with the provisions contained within these documents:

- **Far North Coast Regional Strategy**

The Far North Coast Regional Strategy will guide local planning in the six local government areas of Ballina, Byron, Kyogle, Lismore, Richmond Valley and Tweed, and inform decisions on service and infrastructure delivery. The 25 year strategy is based on a projected regional population increase of 60,400 by 2031. The Strategy identifies Kingscliff as a "Coastal Village". The project is consistent with the Strategy as follows:

- New buildings have been designed to maximise adaptability to meet changing Tweed demographic needs.
- The proposed resort and associated buildings have designed to respond to the subtropical climate of the Region utilising best practice in water and energy efficient design, and use of endemic landscaping and quality building materials.
- The new development reflects and enhances the natural, cultural, visual and built character and values of the local and regional landscape.
- The proposed tourist resort provides appropriate access to natural features such as the coastal foreshore and riparian area along Cudgen Creek in a manner that is consistent with the maintenance of the site's ecological values.
- The site's location on the edge of the Kingscliff settlement area incorporates open space areas accessible to the public, providing opportunities for recreation, nature conservation, social interaction, and for visual enhancement and amenity.

• **NSW Coastal Planning Guideline: Adapting to Sea Level Rise (2010)**

The Coastal Planning Guideline identifies coastal flooding risk areas and defines certain areas where it is either unsuitable for development, suitable for development, or requires a merit-based risk assessment of the proposal. Key principles in planning for sea level rise include minimising the exposure of the development to coastal risks, and the implementation of appropriate management and adaptation strategies during development assessment. A risk assessment of the proposal against the relevant planning criteria is provided in below.

Planning criterion	Proposal	Acceptable
Development avoids or minimises exposure to immediate coastal risks (within the immediate hazard area or floodway).	<p>A proportion of the project is below the current 100 year flood level. A condition of approval will ensure that the minimum habitable floor level is above the projected 2100 flood planning area for the locality (3.1m AHD). Adequate construction design will also be required in order to withstand increased flood flows and allow floodwaters to permeate appropriately through the site. This will be enforced by way of restrictive covenants on each title at strata subdivision stage.</p> <p>With regards to coastal hazards risk, some proposed public use facilities including car parking, public amenities block, picnic shelters, playground and circuit training facilities and beach access will be located seaward of the 2100 hazard line. However, given the non-critical and relatively minor nature of this public benefit infrastructure, the department considers that the 2100 incursion is acceptable provided that the balance of Lot 500 is being utilised for dune rehabilitation.</p>	Yes - subject to a condition on the approval
Development provides for the safety of residents, workers or other occupants on-site from risks associated with coastal processes.	A condition will require a covenant placed on the site requiring a minimum habitable floor level of 3.1m AHD and other flood mitigation measures to reduce the severity of risk. This will improve the safety of future residents on-site.	Yes - subject to a condition on the approval
Development does not adversely affect the safety of the public off-site from a change in coastal risks as a result of the development.	Given the proposed nature of earthworks (restricted to minimal filling for emergency evacuation route) and additional conditions requiring permeability of construction design, it is considered unlikely that there will be additional risk caused by the development to public safety off-site as a result of this development.	Yes
Infrastructure, services and utilities on site maintain their function and achieve their intended design performance.	Proportion of public amenity facilities affected by 100 year coastal hazard line. Due to considerable long time frame associated with this hazard band and non-essential nature of these facilities, the encroachment of the 100 year hazard line is considered to be acceptable in this instance.	Yes - subject to a condition on the approval
Development accommodates natural coastal processes including those associated with projected sea level rise.	The permeable design of the proposed development along with a finished floor level imposed of 3.1m AHD will ensure that natural coastal processes (including enhanced flooding as a result of climate change) will be accommodated.	Yes – subject to a condition on the approval

Coastal ecosystems are protected from development impacts.	The proposed development has adopted 50m buffers to protect SEPP 14 coastal wetlands on the site. Further, the proposed stormwater treatment devices and enhanced riparian area will provide a greater buffer to protect the water quality of the adjacent Cudgen Creek.	Yes
Existing public beach, foreshore or waterfront access and amenity is maintained.	Public accessways to the beach and along Cudgen Creek will be formalised via the proposed management plans and Landscape Concept Plan. An accessway will also be created through the main resort area.	Yes

• Coastal Policy 1997

Table 2 of the Coastal Policy identifies a number of strategic actions relevant to development control, including stormwater quality, coastal hazards, acid sulfate soils and design and locational principles. It is considered that the proposal adequately addresses each of these actions satisfactorily

• Coastal Design Guidelines

The NSW Coastal Design Guidelines aim to ensure that future developments and redevelopments are sensitive to the unique natural and urban settings of coastal places in NSW. The Guidelines provide an urban design focus for the coastal context. Kingscliff is identified as a coastal town in the Coastal Design Guidelines. The proposal is consistent with the desired future character of a coastal town as set out below:

Under the Guidelines the relationship of Kingscliff to the coast is protected and enhanced by:

- Preservation of visual links and views with the coast and clear relationship to the original landform, the foreshore and other unique natural features.
- Protection of significant natural areas for including ecological links between the coast and the hinterland as well as the surrounding coastal floodplain and wetlands.
- Providing access to foreshores whilst protecting the dunes and beach.
- Providing for the maintenance of significant areas of native vegetation and trees whilst managing for bush fire protection.

• Tweed Development Control Plan 2007

The Tweed Development Control Plan applies to all land within the Tweed Shire local government area. It provides more specific standards and requirements for permissible development.

The development controls which relate to the proposed concept plan are:

- Section A2 – Car Parking and Access requires certain car parking and access requirements for the proposal. Compliance with these requirements are discussed in more detail in Section 5 of this report.
- Section A3 – Development of Flood Liable Land contains detailed controls for development on flood liable land. Section A3 specifies minimum habitable floor levels to include a 0.5m freeboard in combination with the 2.6m design flood. Development on flood liable land is discussed in more detail in Section 5 of this report.
- Section A6 – Biting Midge & Mosquito Control aims to minimise and control the problem of biting midges and mosquito. The Proponent has supplied an appropriate Biting Midge and Mosquito Control Plan with the application.
- Section A13 – Socio-Economic Impact Assessment requires an assessment of development for a tourist facility >1,000m² GFA, or tourist accommodation. A Socio-Economic Impact Assessment has been included in the EA and is further discussed in Section 5. of this report.

APPENDIX D RECOMMENDED CONDITIONS OF APPROVAL
