

5. Statutory and Policy Planning

This section of the report identifies and addresses the applicable environmental planning instruments (EPIs) and policy planning documents that must be considered by the consent authority in the consideration of this application.

5.1 Section 75W considerations

APP has prepared this application on behalf of The Pines Lifestyle Resort Pty Ltd as Trustee for The Pines Lifestyle Resort Trust.

The proposal falls under the ambit of Section 75W of the *EP & A Act 1979* as detailed below.

Section 75W(1) confirms that Minister's approval means an approval to carry out a project under this Part (being Part 3A) and includes an approval of a concept plan and that a modification of approval means "*..changing the terms of a Minister's approval, including:*

- (a) revoking or varying a condition of the approval or imposing an additional condition of the approval, and*
- (b) changing the terms of any determination made by the Minister under Division 3 in connection with the approval."*

Section 75W(2) provides that the proponent may request the Minister to modify the Minister's approval for a project and that the Minister's approval is not required if the project as modified will be consistent with the existing approval under this Part.

Section 75W(3) provides that the request for the Minister's approval is to be lodged with the Director-General and that the DG may notify the proponent of environmental assessment requirements (EARs) with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister. Due to the minor nature of the modifications and the reduction in the number of sites, it is submitted that there is no need for the DG to provide EARs for the proposed modification.

Section 75W(4) provides that the Minister may modify the approval (with or without conditions) or disapprove of the modification.

Section 75W(5) and (6) relate to appeal rights.

Section 75W(7) provides that this section does not limit the circumstances in which the Minister may modify a determination made by the Minister under Division 3 in connection with the approval of a concept plan.

Clause 120(1) of the *EP & A Regulation 2000* provides that as soon as practicable after receiving an application to modify a development consent, the consent authority must cause a copy of the application to be given to each concurrence authority and approval body to which the application relates.

5.2 Environmental Planning Instruments

5.2.1 Local Environmental Plans (LEPs)

The subject land is mapped as “DM – Deferred Matter” under the Coffs Harbour Local Environmental Plan 2013 (CHLEP 2013) and therefore remains subject to the provisions of the Coffs Harbour LEP 2000 (CHLEP 2000).

The subject land is contained in the area to which Planning Proposal PP_2015_COFFS_004_00 applies, being “Planning Proposal – Deferred Areas from Coffs Harbour LEP 2013 – Hearnese Lake/Sandy Beach, Emerald Beach, Moonee Beach and Sapphire Beach areas.”

Council at its Ordinary Meeting of the 9th March 2017 resolved as follows with respect to the above Planning Proposal:

1. *Adopted Planning Proposal PP_2015_COFFS_004_00 for the Deferred Areas of Hearnese Lake/Sandy Beach, Emerald Beach, Moonee Beach and Sapphire Beach Areas: Version 3 – Post Exhibition (Attachment 1).*
2. *Request that NSW Planning and Environment exercise the functions of the Minister under Section 59 of the EP & A Act 1979 for the purposes of finalising this Planning Proposal.*
3. *Adopt Coffs Harbour Development Control Plan 2015 Chapters G6 and G13 (Attachment 2), which will come into force upon the amendment of CHLEP 2013 consistent with Planning Proposal PP_2015_COFFS_004_00.*
4. *Inform parties who made submissions to the exhibition and landowners in the Deferred Areas of Hearnese Lake/Sandy Beach, Emerald Beach, Moonee Beach and Sapphire Beach of Council’s resolutions.*

The subject land is currently zoned 2E – Residential Tourist Zone under the CHLEP 2000 and is proposed to be zoned part RE2 – Private Recreation Zone and part E2 – Environmental Conservation Zone under PP_2015_COFFS_004_00.

The aim and objectives of the **2E** zone under the CHLEP 2000 are:

- *to provide for tourist accommodation and recreational land uses*
- *to enable tourist development and other development that is compatible with the surrounding environment*
- *to provide for development that is within the environmental capacity of a high density residential environment and can be adequately serviced*

Consent exists under MP 08_0005 for an expansion of “The Pines” Caravan Park which was originally approved under DA 207/76 (as amended) as a caravan park, with **“camp or caravan site”** being an expressly permitted use in the 2E zone under the CHLEP 2000 and being defined in the Dictionary as follows:

“camp or caravan site means a site used for the purpose of:

- (a) *placing moveable dwellings for permanent accommodation or for the temporary accommodation of tourists, or*
- (b) *the erection, assembly or placement of cabins for the temporary accommodation of tourists.”*

The proposed modifications to the sites and road layout and the reduction in the number of sites will not change the existing and approved land use or its permissibility within the zone.

The objectives of the **RE2** zone under the CHLEP 2013 are:

- *To enable land to be used for private open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*

“Caravan parks” are expressly permitted in the RE2 zone under the CHLEP 2013 which are defined in the Dictionary as follows:

“caravan park means land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed.”

The proposed modifications to the site and road layout and the reduction in the number of sites will not change the approved land use or its permissibility within the possible future zone.

A small section of the property around the eastern and southern edges of the proposed RE2 zone is proposed to be zoned **E2**, the objectives of which are:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

Caravan parks are not permitted in the E2 zone. From the information available on Council's and the DP&E's website, it appears that the sites that are proposed to be changed are contained wholly in the RE2 zoned part of the site.

The proposed modifications will not change the use, type or character of the approved development and will remain consistent and compliant with the objectives of the existing 2E zone and the proposed RE2 zone and other relevant provisions of the CVLEP 2000 and 2013.

5.2.2 State Environmental Planning Policy No. 21 – Caravan Parks

The aim of SEPP 21 Policy is to encourage:

- (a) *the orderly and economic use and development of land used or intended to be used as a caravan park catering exclusively or predominantly for short-term residents (such as tourists) or for long-term residents, or catering for both, and*
- (b) *the proper management and development of land so used, for the purpose of promoting the social and economic welfare of the community, and*
- (c) *the provision of community facilities for land so used, and*
- (d) *the protection of the environment of, and in the vicinity of, land so used.*

Clause 8 of SEPP 21 provides that before granting consent to the use of land for the purposes of a caravan park, Council must determine:

- (a) *the number of sites (if any) within that land that the Council considers are suitable for long-term residence, within the meaning of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993, and*
- (b) *the number of sites (if any) within that land that the Council considers are not suitable for long-term residence, but are suitable for short-term residence, within the meaning of that Regulation.*

Subclause (3) provides that Council must not grant consent to the use of land for the purposes of a caravan park unless it imposes a condition specifying the maximum number of sites (if any) that may be used for long-term residence.

Clause 10 provides that consent may be granted under SEPP 21 subject to Council considering the following:

- (a) *whether, because of its location or character, the land concerned is particularly suitable for use as a caravan park for tourists or for long-term residence,*
- (b) *whether there is adequate provision for tourist accommodation in the locality of that land, and whether existing or potential tourist accommodation will be displaced by the use of site for long-term residence,*
- (c) *whether there is adequate low-cost housing, or land available for low-cost housing, in that locality,*
- (d) *whether necessary community facilities and services are available within the caravan park to which the development application relates or in that locality,*
- (e) *any relevant guidelines issued by the Director, and*
- (f) *the provisions of the Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993.*

The following comments are made in respect of the above:

- (a) the location and character of the park (as well as the operational experience) is such that the site is not particularly utilised by and/or suited for tourists – consent already exists for 53 new long-term sites which are being reduced to 47 long-term sites
- (b) there are a number of ideally situated caravan parks in Coffs Harbour and Woolgoolga which provide better locational characteristics for tourists – there will not be a consequential displacement of tourist accommodation

- (c) there are limited low cost housing opportunities in the immediate locality
- (d) a reasonable level of community facilities and services are and will be provided in the park to service residents and visitors
- (e) nil applicable
- (f) refer **Section 5.3** below

5.2.3 SEPP 71 – Coastal Protection

SEPP 71 applies to this proposal as the land is situated within the “coastal zone” (Clause 4). Parts of the site are classified as a “Sensitive Coastal Location” due them being within 100m of the river.

The proposed development is not a development to which Part 3 – Significant Coastal Development applies.

Clause 8 provides matters for consideration by a consent authority when it determines a development application to carry out development to which SEPP 71 applies. The following is a brief précis of these Clause 8 matters having regard to the proposed modifications:

- the proposed modifications to the site and road layout (including a reduction in the number of sites from 53 down to 47), are contained wholly within the existing approved development footprint
- there will actually be a marginal reduction in impacts on the natural and man-made environment from the reduced number of sites and future dwellings and reduced earthworks
- that part of the site subject of the proposed modifications is physically and spatially separated from the river (including existing approved “perimeter road”)
- the proposed modified development will not impair existing or future public access to the foreshore of any waterway or waterbody and will not change the relationship of the existing approved development in the context of such – there are expansive areas of publicly accessible foreshore in the local area
- the proposed modified development will not have any significant impacts upon flora and fauna or the scenic qualities of the locality and will not impact upon the environment of any coastal foreshore

5.2.4 Draft SEPP (Coastal Management) 2016

The subject land is situated in the coastal zone and is thus subject to the provisions of the Draft SEPP. The subject land is not mapped on the Local Government Coastal Hazard Map and thus Part 2, Division 2 does not apply.

The southern part of the subject land (adjacent to Double Crossing Creek) is mapped on the Coastal Wetlands and Littoral Rainforest Area Map as being “Proximity Area for Coastal Wetlands” and thus Division 1 of Part 2 applies. As per Clause 12, the proposed modified development:

- is physically and spatially removed from this mapped area (including by the alignment of the existing approved perimeter road)
- will not have any adverse impacts on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland
- will not have any significant adverse impact on the quantity and quality of surface and ground water flows to the adjacent coastal wetland – there is a reduction in the number of sites and there will be a consequential reduction in impervious areas/surfaces from a lesser number of dwellings

The southern part of the subject land (adjacent to Double Crossing Creek) is mapped on Coastal Environment Area Map and thus Division 3 of Part 2 applies. As per Clause 14, the proposed modified development:

- is physically and spatially removed from this mapped area and will not likely have any adverse impacts on the biophysical, hydrological (surface and groundwater) and ecological environment
- will not significantly impact on or be significantly impacted by geological and geomorphological coastal processes and features
- will not have any adverse impact on the water quality of the creek having regard to the cumulative impacts on the modified development on the marine estate
- will not have any adverse impacts on native vegetation and fauna and their habitats, undeveloped headlands and rock platforms
- will not adversely impact Aboriginal cultural heritage and places
- incorporates water sensitive design and is connected to a reticulated sewerage system
- will not have any impact on the use of the surf zone

The subject land is mapped on the Coastal Use Area Map and thus Division 4 of Part 2 applies. As per Clause 15, the area subject to the proposed modified development:

- is physically and spatially separated from any foreshore, beach, headland or rock platform
- will not result in any overshadowing, wind funneling or the loss of any views from any public places to the foreshore
- will not adversely impact the visual amenity and scenic qualities of the coast
- will not have any impacts on Aboriginal cultural heritage or places
- will not have any impacts on the use of the surf zone
- is reasonable having regard to the existing consent, its location, existing use, adjoining uses and strategic planning context

As per Clause 16, the proposed development will not cause increased risk of coastal hazards on the subject or any other land.

As per Clause 17, the proposed development is not subject to any coastal management program or coastal zone management plan.

5.3 Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005

Division 3 Caravan parks and camping grounds

Subdivision 1 Land and site requirements

83 Minimum size of caravan park or camping ground

- (1) *A caravan park must not have an area of less than one hectare or, if a lesser area is prescribed by a relevant environmental planning instrument, that lesser area.*
- (2) *There is no minimum size for a camping ground.*

Comment: The caravan park has an area well in excess of 1ha (approx. 8.5ha in size).

84 Community amenities

- (1) *Of the total land area of a caravan park or camping ground:*
 - (a) *at least 10 per cent, or*

- (b) *such lesser proportion (but not less than 6 per cent) as the approval for the caravan park or camping ground may allow, must be reserved for recreation or other communal activities.*
- (2) *In deciding whether to allow a lesser proportion, the council must have regard to the type and range of amenities to be provided and to such other matters as it considers relevant.*

Comment: The site is approx. 8.5ha in area and in the order of >30% of the site is available for recreation and other communal activities.

85 *Size of dwelling sites and camp sites*

- (1) *A long-term site must have an area of at least 80 square metres.*
- (2) *A short-term site must have an area of at least 65 square metres.*
- (3) *A camp site must have an area of at least:*
 - (a) *40 square metres, in the case of a camp site for which a separate parking space is provided within 30 metres of the camp site, or*
 - (b) *50 square metres, in any other case.*

Comment: The proposed modified sites have areas ranging between 234m² – 336m² which substantially exceed the minimum required 80m².

86 *Site identification*

- (1) *A dwelling site or camp site must be numbered or identified and its site boundaries clearly delineated.*
- (2) *The site identification must be conspicuous.*

Comment: All sites are/will be numbered.

Subdivision 2 – Setbacks

87 *Dwelling sites to have road frontage*

A dwelling site must have vehicular access to an access road.

Comment: All modified dwelling sites will have vehicle access to a constructed internal access road.

88 *Setbacks of community buildings*

- (1) A community building must not be located closer than 10 metres to the boundary of a caravan park or camping ground, or to the boundary of a dwelling site or camp site, unless the approval for the caravan park or camping ground so allows.*
- (2) The approval for a caravan park or camping ground must not allow a lesser distance than 10 metres unless the council is satisfied that the community building has been or will be properly screened, fenced, enclosed or otherwise treated.*
- (3) A community building must not in any case be located closer than 3 metres to the boundary of a caravan park or camping ground or 5 metres to the boundary of a dwelling site or camp site.*

Comment: The modified proposal does not involve changes to or seek consent for a community building.

89 *Setbacks of dwelling sites and camp sites from road frontages*

- (1) A dwelling site or camp site must not be located closer than 10 metres to a public road or 3 metres to any other boundary of the caravan park or camping ground unless the approval for the caravan park or camping ground so allows.*
- (2) The approval for a caravan park or camping ground must not allow a lesser distance unless the council is satisfied that the dwelling site or camp site has been or will be properly screened, fenced, enclosed or otherwise treated.*

Comment: The modified layout does not result in any sites being located closer to the road frontage or any other lot boundaries.

90 *Use of buffer zones*

Nothing in this Regulation prevents land within a buffer zone arising from the setbacks required by this Division from being used:

- (a) for community amenities, access roads, car parking spaces, footpaths or landscaping, or*
- (b) for any similar purpose allowed by the approval for the caravan park or camping ground.*

Comment: N/A – no change to existing approved footprint.

91 *Separation distances*

- (1) A moveable dwelling must not be installed closer to any other moveable dwelling than:*

- (a) 3 metres, if it is situated on a long-term site, or
 - (b) 2.5 metres, if it is situated on a short-term site or camp site.
- (2) This clause does not prohibit the installation of semi-detached relocatable homes on adjoining dwelling sites so long as they are separated by construction conforming to the fire safety and sound insulation provisions relating to class 1 buildings contained in Section 3.7.1 and 3.8.6 of Volume Two of the Building Code of Australia.
- (3) (Repealed)

Comment: The modified lots are sized and shaped so that compliant separation distances between moveable dwellings can be achieved.

Subdivision 3 – Roads

92 Entrance and exit roads

- (1) A road that forms an entrance to or exit from a caravan park or camping ground must be at least 7 metres wide.

Comment: N/A – no change to entrance road.

93 Forecourt

A caravan park must have a forecourt, measuring at least 4 metres by 20 metres, to accommodate incoming vehicles.

Comment: N/A – no change to forecourt area.

94 Width of roads

- (1) The width of an access road must be:
 - (a) at least 6 metres for a two-way access road, and
 - (b) at least 4 metres for a one-way access road.
- (2) The direction of travel for a one-way access road must be indicated by means of conspicuous signs.

Comment: The proposed modified internal roads will comply with the above.

95 Speed limits

The speed limit applicable to an access road:

- (a) *must not exceed 15 kilometres per hour, and*
- (b) *must be indicated by means of conspicuous signs.*

Comment: Speed limits are and will continue to be controlled via signage.

96 *Resident parking*

- (1) *A caravan park or camping ground must contain at least one resident parking space for each dwelling site or camp site.*
- (2) *The parking space for a dwelling site or camp site may be on-site (that is, forming part of the site) or off-site (that is, not forming part of the site).*
- (3) *An off-site space must be marked (for example, by means of line marking, marker pegs or similar means) to identify the particular dwelling site or camp site to which it relates.*
- (4) *An off-site parking space for a dwelling site or camp site must be situated in the location specified in the approval for the caravan park or camping ground.*
- (5) *Each off-site parking space is to have, at minimum, dimensions of:*
 - (a) *5.4 metres by 2.5 metres, in the case of angle parking, and*
 - (b) *6.1 metres by 2.5 metres, in any other case.*

Comment: Due to the large size and shape of the proposed sites, there is ample space for the provision of 1 x designated parking space on each site, with such spaces to comply with the above standards.

97 *Visitor parking*

- (1) *A caravan park or camping ground must contain no fewer visitor parking spaces than the following:*
 - (a) *one visitor parking space for each 10 (and any remaining fraction of 10) long-term sites in the caravan park or camping ground,*
 - (b) *one visitor parking space for each 20 (and any remaining fraction of 20) short-term sites in the caravan park or camping ground,*
 - (c) *one visitor parking space for each 40 (and any remaining fraction of 40) camp sites in the caravan park or camping ground.*
- (2) *The minimum number of visitor parking spaces to be provided is 4.*
- (3) *Each parking space is to have, at minimum, dimensions of:*
 - (a) *5.4 metres by 2.5 metres, in the case of angle parking, and*
 - (b) *6.1 metres by 2.5 metres, in any other case.*

- (4) *Visitor parking spaces must be clearly identified as such.*

Comment: Visitor parking areas/spaces exist on the site which are more than capable of servicing the visitor parking demands of the park. There are no changes visitor parking approved under MP 08_0005 with all such spaces to comply with the above standards.

98 Visitor parking for people with disabilities

- (1) *A caravan park or camping ground must contain at least one visitor parking space for people with disabilities.*
- (2) *A caravan park or camping ground that contains more than 100 sites must contain at least one visitor parking space for people with disabilities for each 100 sites or fraction of 100 sites.*
- (3) *Such parking is to be provided in accordance with AS/NZS 2890.1:2004 Parking facilities—Off street parking.*
- (4) *Visitor parking spaces for people with disabilities must be clearly identified as such.*
- (5) *Visitor parking spaces provided under this clause may be counted for the purposes of clause 97.*

Comment: The park contains existing disabled parking spaces.

99 Road surfaces

All access roads, including all passing and parking bays, must have an all-weather sealed or other surface finish specified in the approval for the caravan park or camping ground, and must be adapted to the topography to allow for adequate drainage and to eliminate excessive grades.

Comment: All access roads are all-weather sealed.

100 Lighting

All access roads must be adequately lit between sunset and sunrise.

Comment: All access roads currently are and new roads will be adequately lit between sunset and sunrise.

5.4 Coffs Harbour DCP 2015

The CHDCP 2015 applies to the subject land however, the nature of the proposed modification is considered to be such that there are no specific considerations or provisions that warrant assessment under the DCP due to the fact that:

- the proposal relates to existing approved sites – no net increase in the number of sites and no change in the use, character, footprint of the sites – actual reduction in the yield and density (6 less sites) within the same approved footprint
- the sites contain existing buildings/improvements – no change in built form, external appearance, height, streetscape, impervious areas/surfaces etc
- the subject land/existing sites are connected to and serviced by all necessary infrastructure services – all proposed modified sites will be connected to such – actual reduction in approved number of sites and thus reduction in quantum of loads imparted on such
- no change to existing site access to existing road and no change to the type or quantum of traffic generated at/by the site – actual reduction in traffic generated at/by the site due to 6 less sites
- no changes in the context of bushfire prone land and acid sulfate soils
- no changes to the relationship and siting of the sites and buildings in respect to the riparian vegetation and waterway
- no changes to approved vegetation removal proposed/required
- no impacts on the natural or man-made environment and no changes to the amenity or use of any adjoining land
- potential minor reduction in impacts on the natural and man-made environment from 6 less sites

6. Conclusion

This section of the report provides a detailed conclusion of the development proposal.

Consent is sought to modify the terms and conditions of MP 08_0005 under the provision of Section 75W of the *EP & A Act 1979*. The proposal involves modifications to the site and road layout and involves a reduction in the number of sites from 53 down to 47 at “The Pines” Woolgoolga on land described as Lot 106 DP 114462, No. 8 Hearnese Lake Road, Woolgoolga.

The proposed modified development is considered to be such that will have minimal environmental impacts and the modified development will be substantially the same development as that currently approved.

The proposed development is permissible with consent within the zone under the CHLEP 2000 and the proposed zoned under the CHLEP 2013 and generally complies with all other relevant planning controls.

The circumstances of the case and the public interest are such that the application warrants the grant of consent.

7. Scope of Engagement

This report has been prepared by Ardill Payne & Partners (APP) on behalf of The Pines Lifestyle Resort Pty Ltd for the purpose of lodging a Section 75W Application with the Director-General of the NSW Department of Planning & Environment and is not to be used for any other purpose or by any other person or corporation.

This report has been prepared from the information provided to us and from other information obtained as a result of enquiries made by us. APP accepts no responsibility for any loss or damage suffered howsoever arising to any person or corporation who may use or rely on this document for a purpose other than that described above.

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APP declares that it does not have, nor expects to have, a beneficial interest in the subject project.

To avoid this advice being used inappropriately it is recommended that you consult with APP before conveying the information to another who may not fully understand the objectives of the report. This report is meant only for the subject site/project and should not be applied to any other.

8. Appendices

Appendix A	Copy of project approval – MP 08_0005
Appendix B	Aerial photograph of subject and adjoining land
Appendix C	Plans of proposed modified development
Appendix D	Notice of physical commencement of works on-site