

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning and Infrastructure under delegation executed on 14 September 2011, I approve the section 75W modification of the concept plan approval referred to in Schedule 1, subject to the modified terms of approval outlined in Schedule 2:



Heather Warton
Director
Metropolitan and Regional Projects North

Sydney 24 April 2013

SCHEDULE 1

- Project Approval:** 06_0258 granted by the then Minister for Planning on 20 September 2009.
- Proponent:** Clarence Property Corporation Pty Ltd
- For the following:** Mixed use subdivision at Lot 223 DP 1048494; Lot 3 DP 1042119; Lot 144 DP 1030322 and Lots 10 and 13 DP 1014470 – Tweed Coast Road, South Kingscliff, Tweed local government area.
- Modification:** 06_0258 MOD 4 - Amendments involving:
- consolidation of medium density residential lots 7, 8, 9, 14 and 15 to form temporary lot 57 within Stage 1A and subsequent new conditions E23 to E42 under new Part E2;
 - new conditions B50 and E31 requiring evidence of approval and construction of the beach access prior to the issue of a construction certificate and subdivision certificate respectively; and
 - timing of payment of monetary contributions.

SCHEDULE 2

The project approval as described in Schedule 1 is modified as follows:

- (a) Following the words “purposes of drainage” and before the semicolon under clause (2) of Condition A1, insert the words as follows:

(for Stage 1A only, lots 7, 8, 9, 14 and 15 are temporarily consolidated to form medium density residential lot 57)

- (b) Delete Drawing No. DA41K Revision K under Condition A2.

- (c) Delete Drawing No. DA119 Revision B under Condition A2.

- (d) Insert four new rows following the final row of the table under Condition A2 as follows:

Drawings prepared by Newton Denny Chapelle (06_0258 MOD 4)			
		Concept Staging Plan	17/04/13
		Proposed Subdivision Staging Plan Stage 1A	13/03/13
		Proposed Subdivision Staging Plan Stage 1 (Balance)	15/04/13

- (e) Insert new clause (6) following clause (5) under Condition A3 as follows:

Section 75W Modification Request Documentation

- (6) *Section 75W Modification No. 4 Project Approval MP06_0258 (as Already Modified) for Casuarina Town Centre* prepared by Newton Denny Chapelle on behalf of Clarence Property, dated November 2012; and supplementary information supporting the modification request, prepared by Newton Denny Chappelle, dated 18 April 2013.

- (f) Insert new Condition B51 as follows:

B50 Evidence of Approval – Beach Access through Crown Reserve

The proponent is to obtain approval and any licences from the relevant agencies regarding the provision of the proposed beach access to the east of the icon building. Evidence of the approval for the construction of the beach access shall be provided to the Department prior to the issue of the first Construction Certificate for works within the balance of Stage 1.

Note:

- This may require the closure of one of the existing beach accesses.*
- This may require approval under the Crown Lands Act 1989.*
- Relevant agencies may include (but are not limited to) the Tweed Coast Reserve Trust and Crown Lands.*

- (g) Delete the heading titled "PART E–PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE" following Condition D20 and before Condition E1 and replace with the following:

PART E1–PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE FOR STAGE 1A

- (h) Delete the following words under Condition E1:

for each stage of the subdivision.

- (i) Delete the following words under Condition E2:

for each stage of the subdivision

- (j) Delete Condition E7 and replace with new Condition E7 as follows:

E7 Dilapidation Report

A second dilapidation report is to be prepared by a suitably qualified engineer at the completion of the works to ascertain if any structural damage has occurred to the adjoining and adjacent buildings, infrastructure and roads. The report is to be compared with the pre-construction dilapidation reports required under Conditions B7 and B39, with a recommended course of action to carry out repairs, if required. The report is to be submitted to the Principal Certifying Authority, prior to issue of the Subdivision Certificate.

- (k) Delete Condition E21 and replace with new Condition E21 as follows:

E21 Section 94 Monetary Contributions

Stage 1A Subdivision contributions

Plan	No. of ET/ Trips	\$ per ET/ Trips	Sub – TOTAL (\$)
Tweed Road Contribution Plan (CP No. 4, Version 5.1, January 2009)	266.5	1,146	305,409
TRCP Sector 7_4 LCA4- Casuarina	266.5	169	45,039
Street Trees (S94 Plan 11)	39	297	11,583
Libraries (S94 Plan 11)	39	816	31,829
Bus Shelters (S94 Plan 12)	39	62	2,418
Cemeteries (S94 Plan 13)	39	121	4,719
Community Facilities (S94 Plan 15)	39	1,352	52,728
Lifesaving (S94 Plan 16)	39	113	4,407
Council Admin (S94 Plan 18)	39	1,812.62	70,692.18

Regional Open Space (Casual-S94 Plan 26)	39	1,064	41,496
Regional Open Space (Structured-S94 Plan 26)	39	3,619	145,470
			715,785.18

STAGES 1 and 2 Retail and commercial contributions

Plan	No. of ET/ Trips	4 per ET/Trip	Sub- Total (\$)
Tweed Road Contribution Plan (Cp No. 4, Version 5.1, January 2009)	1143.9	1,146	1,310,909
TRCP Sector 7_4 LCA\$- Casuarina	1143.9	169	193,319
Street Trees (s94 Plan 6)		297	
Librarian (S94 Plan 11)		816	
Bus Shelters (S94 Plan 12)		62	
Cemeteries (S94 Plan 13)		121	
Community Facilities (S94 Plan 15)		1,352	
Lifesaving (S94 Plan 16)		113	
Council Admin (S94 Plan 18)		1,812.62	
Regional Open Space (Casual-S94 Plan 26)		1,064	
Regional Open Space (Structured-S94 Plan 26)		3,619	
			1,504,228

Stage 1A subdivision contributions are payable prior to the issue of a Subdivision Certificate. The Stage 1 retail and commercial contributions are payable prior to the issue of the Construction Certificate for the retail and commercial developments.

Note: Contribution Plan credits can be obtained from both Zone 6 Contributions (four laning of Tweed Coast Road) and Local Area Charge 4 (various traffic signals) under Contribution Plan No. 4. All other proposed roads and intersections are to be constructed at the developer's expense.

Timing and Method of Payment

The contribution shall be paid in the form of cash or bank cheque, made out to Tweed Shire Council. For accounting purposes, the contribution may require separate payment for each of the categories above and you are advised to check with Council.

Evidence of the payment to Council, shall be submitted to the Certifying Authority prior to the issue of the Subdivision Certificate.

These charges to remain fixed for a period of twelve (12) months from the date of this approval and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

Section 94 Plans

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

(l) Delete Condition E22 and replace with new Condition E22 as follows:

E22 Section 64 Monetary Contributions

A certificate of compliance under Sections 305, 306 and 307 of the *Water Management Act 2000* is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with Tweed Shire Council.

Pursuant to Clause 146 of the *Environmental Planning and Assessment Regulation 2000*, a Subdivision Certificate shall **NOT** be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Principal Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

The current charges applicable are:

STAGE 1A Subdivision contributions

Plan	No. of ET	\$ per ET	Sub-Total (\$)
Water South East	41	12,150	498,150
South Kingscliff Water Addition	41	182	11,562
Sewer Kingscliff	41	5,838	239,358
			749,070

STAGES 1 and 2 Retail and commercial contributions

Plan	No. of ET	\$ per ET	Sub-Total (\$)
Water South East	7.68	12,150	93,312
South Kingscliff Water Addition	7.68	282	2,166
Sewer Kingscliff	12.18	5,838	71,106.80
			166,584.80

Stage 1A subdivision contributions are payable prior to the issue of the Subdivision Certificate. The Stage 1 retail and commercial contributions are payable prior to the issue of the Construction Certificate for the retail and commercial developments.

(m) Insert new heading after Condition E22 as follows:

PART E2-PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE FOR THE BALANCE OF STAGE 1 (LOT 57)

(n) Insert new Condition E23 as follows:

E23 Part 4A Certificate

Prior to the registration of final subdivision plan in the Office of the Registrar-General, a Part 4A certificate shall be obtained under section 109D(1)(d) of the *Environmental Planning and Assessment Act 1979*.

The following information must accompany an application for a Subdivision Certificate:

- (1) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (2) all detail as tabled within Tweed Shire Council Development Control Plan, Part A5 - Subdivision Manual, CL 7.6 and Councils Application for Subdivision Certificate including the attached notes.

Note: The *Environmental Planning and Assessment Act 1979* (as amended) makes no provision for works under the *Water Supplies Authorities Act 1987* to be certified by an Accredited Certifier.

(o) Insert new Condition E24 as follows:

E24 Compliance Certificate

Prior to the application for a Subdivision Certificate a Compliance Certificate or Certificates shall be obtained from Council or an accredited certifier for the following:-

- a) Compliance Certificate - Roads
- b) Compliance Certificate - Water Reticulation
- c) Compliance Certificate - Sewerage Reticulation
- d) Compliance Certificate – Drainage

Note:

i) All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the project approval, the construction certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.

ii) The EP&A Act, 1979 (as amended) makes no provision for works under the *Water Management Act 2000* to be certified by an "accredited certifier".

(p) Insert new Condition E25 as follows:

E25 Defect Liability Bond

Prior to the issue of a Subdivision Certificate a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works (minimum as tabled in Council's fees and charges current at the time of payment) which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is

issued. It is the responsibility of the proponent to apply for refund following the remedying of any defects arising within the 6 month period.

Note: The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.

(q) Insert new Condition E26 as follows:

E26 Maintenance Bond

Prior to the issue of a Subdivision Certificate, a maintenance bond equal to 25% of the contract value of the footpath construction works shall be lodged for a period of 3 years or until 80% of the lots fronting paved footpaths are built on.

Alternatively, the developer may elect to pay a cash contribution to the value of the footpath construction works plus 25% in lieu of construction and Council will construct the footpath when the subdivision is substantially built out. The cost of these works shall be validated by a schedule of rates.

(r) Insert new Condition E27 as follows:

E27 Contamination

Upon completion of the remediation works on the site, the Proponent shall submit a detailed Site Audit Summary Report and Site Audit Statement and Validation Report to the Certifying Authority. The site audit must be prepared in accordance with the *Contaminated Land Management Act 1997* and completed by a site auditor accredited by the Environmental Protection Agency to issue site audit statements. The site audit must verify that the land is suitable for the proposed uses.

(s) Insert new Condition E28 as follows:

E28 Retaining Walls

All retaining walls are to be certified by a suitably qualified geotechnical/structural engineer. The certification is to be submitted with the Subdivision Certificate application and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound.

(t) Insert new Condition E29 as follows:

E29 Dilapidation Report

A dilapidation report is to be prepared by a suitably qualified engineer at the completion of the works to ascertain if any structural damage has occurred to the adjoining and adjacent buildings, infrastructure and roads. The report is to be compared to any previous dilapidation reports prepared for the site, and recommend a course of action to carry out repairs if required. The report is to be submitted to the Principal Certifying Authority, prior to issue of the Subdivision Certificate.

(u) Insert new Condition E30 as follows:

E30 Registration of Easements / Restrictions to Use / Right of Carriageway

- 1) The creation of easements for services, rights of carriageway and restrictions as to user are applicable under Section 88B of the *Conveyancing Act 1919*, including (but not limited to) the following:

- a) Easements for sewer, water supply and drainage over all public services/infrastructure on private property.
 - b) Drainage Easements are to be placed over all subsurface drains and interallotment drainage, benefiting and burdening the property owners. Maintenance of the subsurface drains is to be included in the 88B instrument.
 - c) Documentary easements for access must be created over the appropriate lots in the subdivision to provide for public access and access to lifts, lobbies, fire stairs, service areas, loading areas and car parking areas
- 2) Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.
 - 3) Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the *Community Land Development Act 1989*, *Strata Schemes Management Act 1996*, *Conveyancing Act 1919*, or other applicable legislation.
 - 4) In addition to the above certification, the following is to be included in the Section 88B Instrument to accompany the final plan of subdivision:
 - (a) A restriction as to user for each lot that has the benefit of a retaining wall that prevents any cut or fill greater than 0.3m in vertical height within a zone adjacent to the wall that is equal to the height of the wall.
 - (b) Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to maintain the wall in accordance with that standard.
 - (c) A restriction as to user for all lots requiring the infiltration of all stormwater runoff from roof, hardstand / carparking, and impermeable landscaping areas in storm events up to the 3 month ARI event (deemed to be 40% of the 1 year ARI event), assuming a maximum infiltration rate of 3m per day.
 - (d) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.
 - 5) The restriction is to be clearly marked on the plan of subdivision and Council is to be nominated as the sole party to vary, modify and/or extinguish the restriction.

(v) Insert new Condition E31 as follows:

E31 Evidence of Construction – Beach Access through Crown Reserve

Evidence of the construction of the beach access east of the icon building shall be provided to the Department prior to the issue of a Subdivision Certificate for any works within the balance of Stage 1.

(w) Insert new Condition E32 as follows:

E32 Electricity

Prior to the issue of a Subdivision Certificate the following is to be provided to the PCA:

- (1) The production of written evidence from the local electricity supply authority certifying that reticulation of underground electricity (residential and rural residential) has been completed; and
- (2) The reticulation is to include the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

(x) Insert new Condition E33 as follows:

E33 Water and Sewerage

Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to all lots within the subdivision in accordance with Tweed Shire Council's *Development Control Plan Part A5 - Subdivisions Manual*, Council's *Development Design and Construction Specifications* and the Construction Certificate.

Note: The *Environmental Planning and Assessment Act 1979* (as amended) makes no provision for works under the *Water Management Act 2000* to be certified by an Accredited Certifier.

(y) Insert new Condition E34 as follows:

E34 Utilities – Telephone and Electricity

The project is to be connected to all available services (water, electricity and telephone) prior to issue of the Subdivision Certificate. Such connections, and any extension of services required to the development, are to be carried out at full cost to the Proponent.

(z) Insert new Condition E35 as follows:

E35 Damage to Public Infrastructure

Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired in accordance with Councils adopted Design and Construction Specifications prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

(aa) Insert new Condition E36 as follows:

E36 Stormwater Gully Lintels

All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Council's adopted Design and Construction Specification.

(bb) Insert new Condition E37 as follows:

E37 *Asset Creation Form*

Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate.

(cc) Insert new Condition E38 as follows:

E38 *Works as Executed Plans*

Prior to the issue of a Subdivision Certificate, Works as Executed Plans shall be submitted in accordance with the provisions of Tweed Shire Council *Development Control Plan A5 - Subdivisions Manual* and Council's *Development Design and Construction Specification, D13 - Engineering Plans*.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer certifying that:

- (1) all drainage lines, sewer lines, services and structures are wholly contained within the relevant easement created by the subdivision;
- (2) the plans accurately reflect the Work as Executed.

Note: Where works are carried out by Council on behalf of the proponent it is the responsibility of the proponent to prepare and submit works-as-executed plans.

(dd) Insert new Condition E39 as follows:

E39 *Survey Marks*

Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Council within three months of registration of the Subdivision Certificate in accordance with the Survey Practices Regulation.

(ee) Insert new Condition E40 as follows:

E40 *CCTV Inspection*

Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of the stormwater pipes and sewerage system including joints and junctions will be required to demonstrate that the standard of the stormwater system is acceptable to Council.

Any defects identified by the inspection are to be repaired in accordance with Council's adopted Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the proponent.

(ff) Insert new Condition E41 as follows:

E41 Section 94 Monetary Contributions

BALANCE OF STAGE 1 Subdivision contributions

Plan	No. of ET/ Trips	4 per ET/Trip	Sub- Total (\$)
Tweed Road Contribution Plan (Cp No. 4, Version 5.1, January 2009)	78	1,146	89,388
TRCP Sector 7_4 LCA\$- Casuarina	78	169	13,182
Street Trees (s94 Plan 6)	12	297	3,564
Librarian (S94 Plan 11)	12	816	9,792
Bus Shelters (S94 Plan 12)	12	62	744
Cemeteries (S94 Plan 13)	12	121	1,452
Community Facilities (S94 Plan 15)	12	1,352	16,224
Lifesaving (S94 Plan 16)	12	113	1,356
Council Admin (S94 Plan 18)	12	1,812.62	21,751.44
Regional Open Space (Casual- S94 Plan 26)	12	1,064	12,768
Regional Open Space (Structured- S94 Plan 26)	12	3,619	44,760
			214,981.44

The balance of Stage 1 subdivision contributions are payable prior to the issue of the Subdivision Certificate.

Note: Contribution Plan credits can be obtained from both Zone 6 Contributions (four laning of Tweed Coast Road) and Local Area Charge 4 (various traffic signals) under Contribution Plan No. 4. All other proposed roads and intersections are to be constructed at the developer's expense.

Timing and Method of Payment

The contribution shall be paid in the form of cash or bank cheque, made out to Tweed Shire Council. For accounting purposes, the contribution may require separate payment for each of the categories above and you are advised to check with Council.

Evidence of the payment to Council, shall be submitted to the Certifying Authority prior to the issue of the Subdivision Certificate.

These charges to remain fixed for a period of twelve (12) months from the date of this approval and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

Section 94 Plans

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

(gg) Insert new Condition E42 as follows:

E42 Section 64 Monetary Contributions

A certificate of compliance under Sections 305, 306 and 307 of the *Water Management Act 2000* is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with Tweed Shire Council.

Pursuant to Clause 146 of the *Environmental Planning and Assessment Regulation 2000*, a Subdivision Certificate shall **NOT** be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Principal Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

The current charges applicable are:

BALANCE OF STAGE 1 Subdivision contributions

Plan	No. of ET	\$ per ET	Sub-Total (\$)
Water South East	13.4	12,150	162,810
South Kingscliff Water Addition	13.4	282	3,779
Sewer Kingscliff	12	5,838	70,056
			236,645

The balance of Stage 1 subdivision contributions are payable prior to the issue of the Subdivision Certificate for Stages 1A and the balance of Stage 1. The Stage 1 retail and commercial contributions are payable prior to the issue of the Construction Certificate for the retail and commercial developments.