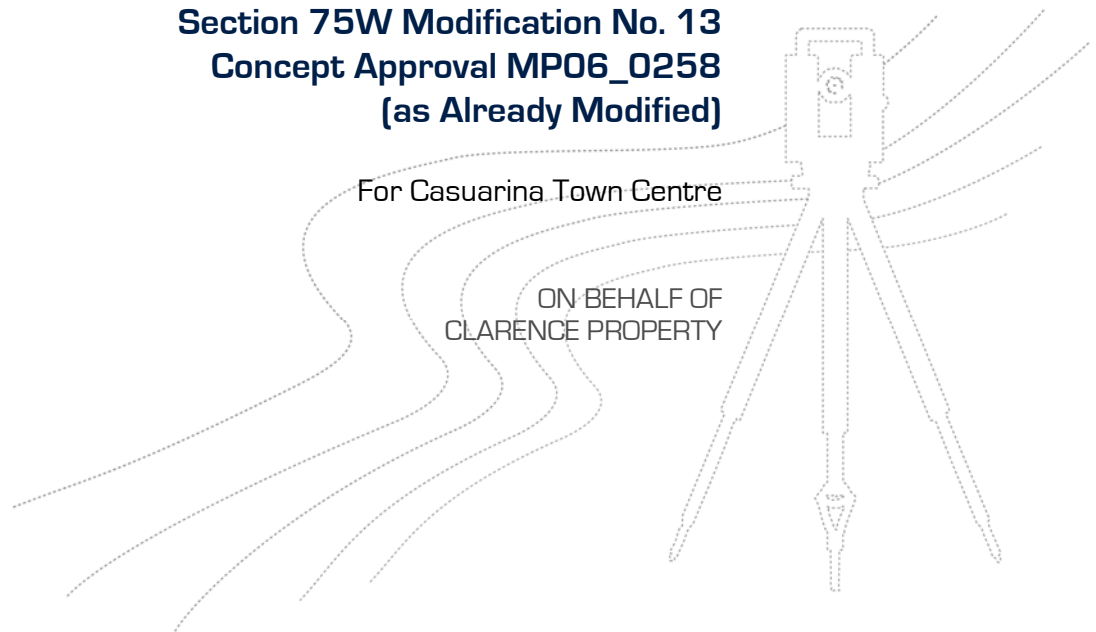


**Section 75W Modification No. 13  
Concept Approval MP06\_0258  
(as Already Modified)**

For Casuarina Town Centre

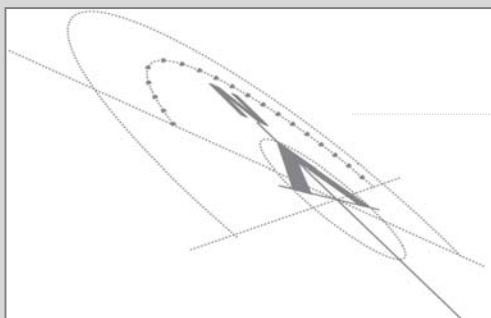
ON BEHALF OF  
CLARENCE PROPERTY



Our Ref: 13/054

Date: January 2020





# Document Control Sheet

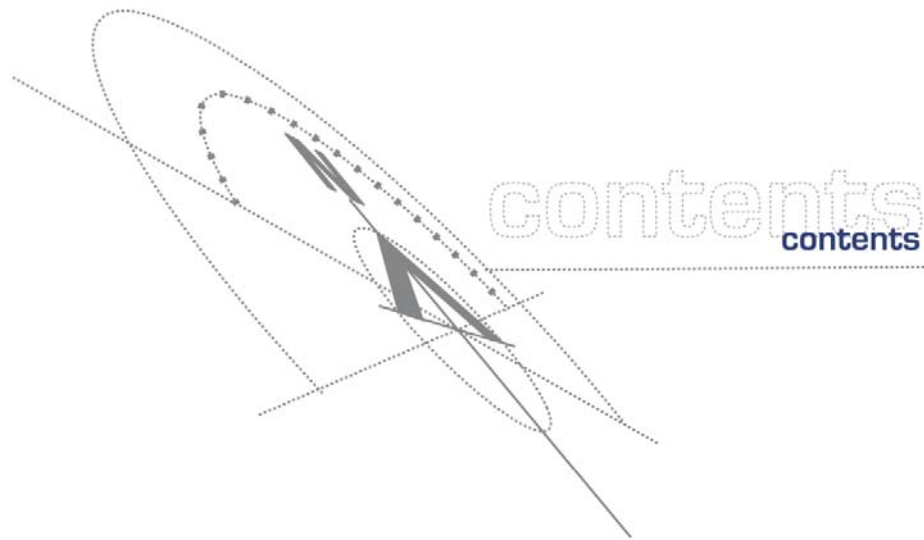
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## USAGE NOTE:

The plans to this document were prepared for the exclusive use of Clarence Property to accompany a Section 75W Application to Department of Planning and Infrastructure your approval for the development of land described herein and is not to be used for any other purpose or by any other person or corporation. Newton Denny Chapelle 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.

The maps, development plans and exhibits shown in this report are suitable only for the purposes of this report. No reliance should be placed on this information for any purpose other than for the purposes of this report. All dimensions, number, size and shape of lots/buildings as shown on plans in this document are subject to detailed engineering design plans and final survey and may vary subject to conditions of consent issued by Council.

The information contained in this report is based on independent research undertaken by Newton Denny Chapelle. To the best of our knowledge, it does not contain any false, misleading or incomplete information.



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Attachment 1 – Approved Concept Plans  
*Newton Denny Chapelle*

Attachment 2 – Australian Lifeguard Service Storage Facility Letter dated 12  
November 2019

# Executive Summary

## Section

# 1

## 1.1 Overview of Proposed Amendment

Newton Denny Chapelle ("NDC") has been instructed by Clarence Property ("Proponent") to submit a request to the Minister for Planning Infrastructure & Environment to further modify the Concept Approval (MP 06\_0258) for the Casuarina Town Centre, pursuant to the provisions of Section 75W of the Environmental Planning and Assessment Act 1979 ("the Act").

The primary purpose of this application is to amend Condition C8 of the Concept Plan which currently requires Clarence Property to provide construction of the Icon Building, including surf lifesaving facilities prior to any other building in Stage 2 being occupied. This application proposes to provide a temporary Australian Lifeguard Service (ALS) storage facility in advance of the construction of the Icon Building in order to facilitate the development and occupation of the buildings nominated for Stage 2.

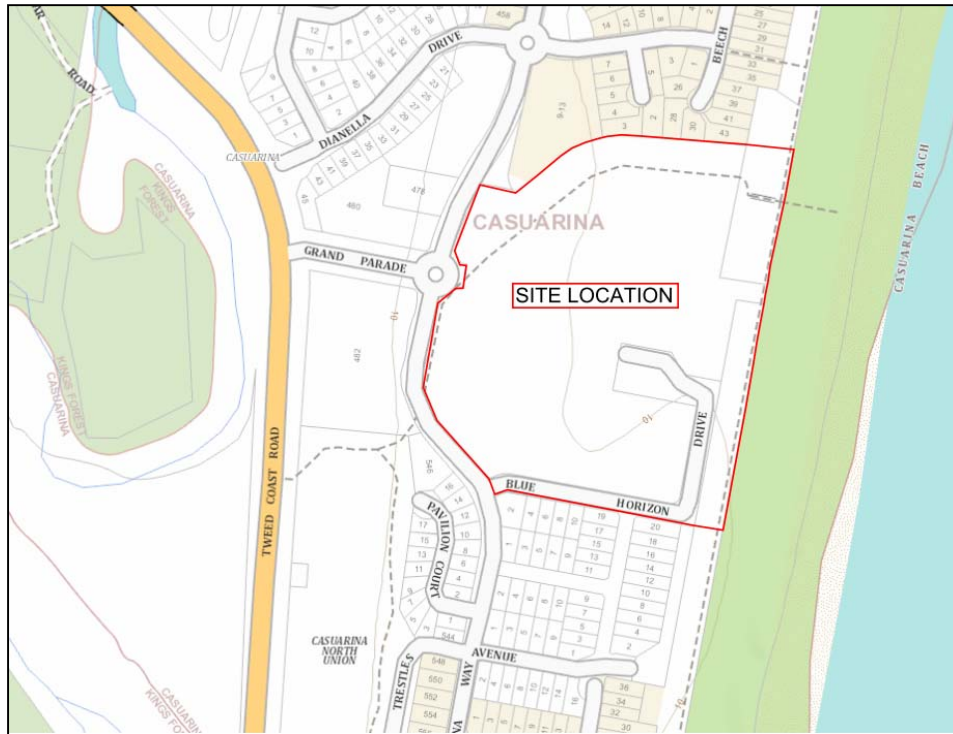
Clarence Property are proposing the placement of a temporary structure on the mixed use lot (consolidated lots 72, 78-83) adjoining the civic park and fronting Grand Parade. The structure would be connected to all essential infrastructure and vehicular access provided. This facility would ensure upon registration of the subdivision for the Town Centre that a facility may be provided for the use by ALS.

The provision of a facility for ALS on the designated key mixed use lot within the Casuarina Town Centre provides a clear public benefit through the early delivery of a surf lifesaving storage facility prior to all the residential lots being developed with housing, whilst addressing the current issues faced by the ALS in storing and accessing their equipment in the current location at the Casuarina Hockey grounds. The ability to permit the other sites in Stage 2 to be developed and occupied will also provide a key economic stimulus for the Casuarina Town Centre.

Importantly, this amendment does not seek to remove the requirement for Clarence Property pursuant to Condition C5 of the Concept Plan approval to provide surf lifesaving storage facilities for the ALS within the Icon Building. In this respect, the design specifications for the lifesaving facilities have been approved by ALS pursuant to the terms of Condition C5. The proposed amendment to Condition C8 ensures the delivery of the Icon Building and associated permanent lifesaving facilities.

Preliminary consultation with Tweed Shire Council has been undertaken prior to the lodgement of this Modification. Whilst Tweed Shire Council reserve the right to formally respond to the Department of Planning, Infrastructure & Environment, Council has raised no immediate objection to this proposed modification.

Tweed Shire Council will be the Principal Certifying Authority for civil works associated with this amendment



**Plate 1:** Site Locality

## 1.2 Project Background

### 1.2.1 Original Approvals

The Kings Beach Development Plan (which applies to the Casuarina Beach area) was approved by the NSW Land and Environment Court in December 1998. The consent (S96/135) approved the following:

- (1) The subdivision of the land into 14 lots.
- (2) The carrying out of “Stage 1” works.
- (3) The development of the management lots for the purposes of low-and-medium-density residential, retail, commercial and tourist development, together with associated and related uses and facilities generally in accordance with the Development Plan.

The consent required that the future development of the “Management Lots” (1-7) be subject to future Development Applications and provided population estimates for each of the lots.

Approval was subsequently granted on 20 September 2009 by the Minister for Planning to the Concept Plan and Project Application for the Casuarina Town Centre, Major Project 06\_0258 (refer **Plate 2**).

The Concept Plan approval was granted for:

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

Separately, Stage 1 Project Approval was granted for:

- The subdivision of land into 61 lots;
- Construction of a retail centre comprising 2500m<sup>2</sup> supermarket, 1160m<sup>2</sup> of retail
- shops/restaurants, office space and car parking;
- Bulk earthworks and vegetation clearing;
- Construction of all roads;
- Closure of Dianella Drive;
- Provision of infrastructure and services; and
- Landscaping.





**Plate 2:** Approved Casuarina Town Centre Concept Plan

### 1.2.2 Modified Approvals

A series of amendments have been lodged with the Department of Planning & Environment for the Casuarina Town Centre project. A summary of the previously determined amendments is provided below within **Table 1**.

**Table 1: Previous Modifications to MP06\_0258**

Modification Number	Determination Date	Modification Description
1	17 June 2010	<p>Approval was granted on 17 June 2010 to modifications to the Concept Plan and Project Approval (Modification 1, referred to herein as "the first modifications").</p> <p>The first modifications involved:</p> <ul style="list-style-type: none"> <li>• carrying out of stormwater infiltration works and landscaping within adjoining Lots 10 and 13;</li> <li>• filling of the existing drainage easement within the site and relinquishing the easement rights that benefitted Council in exchange for dedication of these areas to Council (once landscape works were complete); and</li> <li>• carrying out of works and landscaping to facilitate the construction of a cul-de-sac at the western end of Dianella Drive and subsequently closing the existing intersection of Dianella Drive and Tweed Coast Road.</li> </ul> <p>Essentially, the first modifications were the result of Tweed Shire Council granting the Proponent land owner's consent to undertake stormwater, sewerage and landscaping works on Council-owned land, such consent having previously been withheld during the original assessment of the Concept and Project Applications.</p>
2	1 July 2011	<p>Approval was granted on 1 July 2011 to further modifications to the Concept Plan and Project Approval (Modification 2). Modification 2 had the effect of allowing Stage 1 of the development to be carried out in two stages: Stage 1A and the 'balance of Stage 1. The modified plans and conditions reflected the staging.</p> <p>It is noted that the retail centre would be undertaken as part of the Stage 1A development, although the approvals as modified facilitate the issue of separate Construction Certificates for the retail centre and other Stage 1A works.</p>
3	7 March 2012	<p>Approval was granted on 7 March 2012 to further modifications to the Concept Plan and Project Approval (Modification 3). This modification related to the retail centre and had the effect of reducing the size of the centre.</p>
4	24 April 2013	<p>Modification 4 relates to modification to the staging of the subdivision, consolidation of lots 7, 8, 9, 14 &amp; 15 into a development lot, modification of Condition A2 to allow the sequencing for future stages to be varied with the written approval of the Department, insert of a new condition relating to the timing to obtain approval for the beach access and the amendment to the timing in which Section 94 and Section 64 Contributions are paid for the shopping centre.</p>
5	24 September 2013.	<p>Modification 5 approved an amendment to the location of a retaining wall on the south-eastern boundary of the Casuarina Town Centre site adjacent to the cul-de-sac of Road 6.</p>

6	16 May 2014	Modification to the Concept Plan and Stage 1 Project Application for the Casuarina Town Centre involving: <ul style="list-style-type: none"> <li>• The number of lots through the subdivision of Lots 7,8, 9, 14 &amp; 15 into 40 torrens title residential lots;</li> <li>• The introduction of additional sub-stages 1B and 1C;</li> <li>• An associated amendment to the concept plan staging</li> </ul>
7	18 June 2014	Approval was granted on 18 June 2014 to further modifications to the Concept Plan and Project Approval [Modification 7]. This modification related to the retail centre and allowed an increase in size with additional supermarket and specialty shop floor space. It also allowed the centre to be constructed in stages.
8	21 January 2015	Approval was granted on 21 January 2015 to permit design revisions to the retail centre and inclusion of new Condition B5B to permit the installation of a 12 m high illuminated pylon sign on the north-eastern corner of the site.
9	15 June 2016	Approval was granted on 15 June 2016 for further modifications to the design of the approved retail shopping centre and the installation of a 12m high illuminated pylon sign on the north-eastern corner of the site.
10	7 November 2018	<ul style="list-style-type: none"> <li>• Modification of the approved lot layout and increase in the number of single residential lots permitted on-site from 97 to 178 lots;</li> <li>• Change in the use of a hotel and some medium density residential lots to low density residential development;</li> <li>• Modifications to the road layout and on-street parking;</li> <li>• Modifications to open space, parks and pedestrian and cycleway linkages;</li> <li>• Revisions to the drainage concept including changes to the approved piping and filling of an existing drainage swale along the northern boundary and stormwater infrastructure within the adjoining Council reserve;</li> <li>• Changes to the approved staging including changes to timing for the provision of additional beach access; and</li> <li>• Administrative changes to the conditions of approval in response to the above changes.</li> </ul>
11	24 April 2017	Modification to the operating hours for the Coles Shopping Centre to 7.00am -9.00pm Monday to Sunday and inclusive of public Holidays.
12	To be determined	Modification 12 is currently under assessment and seeks to correct the oversight in not maintaining separate titles for lot 35 and lot 36 as part of Mod6 where amalgamation occurred of Lot 16 in DP1198266.

### 1.2.3 Construction Certificate

Tweed Shire Council acting as the Principal Certifying Authority (PCA) has issued several Construction Certificates associated with the subdivision of the Casuarina Town Centre. Key Construction Certificates associated with the subdivision of the land are outlined below.

A Construction Certificate (CC10/0208) has been issued by Tweed Shire Council for the completion of the Site Clearing & Sedimentation Controls on 29 July 2010.

A subsequent Construction Certificate CC12/0507 was issued by Tweed Shire Council on 7 February 2013 for a Casuarina Town Centre including 61 lot subdivision, road works, infrastructure works and landscaping [Department of Planning Application MP06 0258].

With the development of "The Pocket", Tweed Shire Council issued Construction Certificate 14/0328 for the development of 56 residential lots on 21 August 2014.

In more recent time, Tweed Shire Council issued Construction Certificate CC19/0241 for the approved Casuarina Town Centre bulk earthworks on 3 March 2019, whilst the balance of the civil works were approved under CC 18/0924 on 7 August 2019. July 2015. The registration provided for the creation of Deposited Plan 1208915.

## 1.3 Consistency with Concept and Project Approvals

The proposed modification is considered to be consistent with the Concept Plan Approval for MP06\_0258. The aforementioned approval is provided for the development of the town centre within Casuarina, comprising a mix of low and medium density lots, shop-top housing and public open space, drainage works and an integrated road network.

The current application seeks to bring forward the timing in which the surf lifesaving facility is provided for ALS within the town centre and to also thereby permit the occupation of buildings within Stage 2 prior to the Icon building being finalised.

The proposal will result in no changes to the ultimate lot yield and land use designations under the Concept Plan, external road or broader subdivision configuration for the town centre or the relationship of the land to surrounding uses.

Importantly, the consolidated building is to be located on land identified for a public building, hence no environmental impacts are generated as a result of the modification.

## 1.4 Documentation & Project Team

This report describes and justifies the requested further modifications to the Concept Approval and considers the relevant provisions of Schedule 2 under the Environmental Planning and Assessment (Savings, Transitional & Other Provisions) Regulation 2017.

Attachments included in the modification report contain:

Attachment 1 – Approved Concept Plans  
*Newton Denny Chapelle*

Attachment 2 – Australian Lifeguard Service Storage Facility Letter

## 1.5 Prelodgement Consultations

### Tweed Shire Council

Pre-lodgement consultations have occurred with Tweed Shire Council with respect to the proposed delivery of temporary lifeguard facilities until the development of the Icon Building and the associated ability to modify Condition C8 to permit Stage 2 to be decoupled from the requirement to complete the Icon Building.

Tweed Shire Council has identified the provision of ALS storage facility in a location other than the Icon building, on a temporary basis, is broadly supported. Council's support is however based on surety of development of the Icon Building to ensure the permanent ALS storage facility is provided.

In respect to the surety sought by Tweed Shire Council, reference is made to Section 2 of this report, where the proposed amendment is outlined to Condition C8. In this respect, the placement of a time restriction on the temporary use and a further restriction linking the mixed use development of consolidated lots 72-83 until such time as the Icon Building is completed for occupation. .

We submit Council's final response to the proposed modification will be provided to the Department through the formal referral process.

### Australian Lifeguard Service

The Australian Lifeguard Service (ALS) have been consulted in respect to the provision of a temporary structure and whether this would be beneficial to the ALS for the Casuarina area.

In letter dated 12 November 2019, ALS Northern NSW Lifeguard Coordinator has advised as follows.

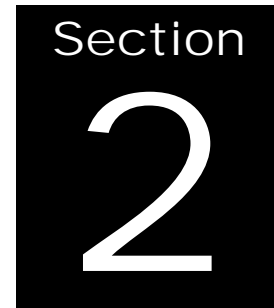
*ALS current needs for a facility to be available as soon as practical with clear benefits to ALS and the community. In this respect, the benefit to ALS if a temporary structure is provided within the Town Centre prior to the Icon building being developed is preferred. Ideally a temporary structure like a shipping container /modular building located in the immediate vicinity of where the ALS shed/ICON building will be located would benefit the ALS in the short term as we could move away from the hockey shed and into a location more accessible. It would also benefit the community as we could establish the new patrol location with the community prior to the ALS shed being built. The location is also more central and will encourage more beachgoers to swim between the flags.*

The ALS letter is provided within **Attachment 2** of this document.

## 1.6 Further Information

Should any additional information be required or clarification of any technical matter raised by this proposal or submissions made to same, please consult Mr Damian Chapelle on 02 6622 1011 or [dchapelle@newtondennychapelle.com.au](mailto:dchapelle@newtondennychapelle.com.au), prior to determination of the application.

# Proposed Amendment to Concept Plan



## 2.1 Description of Sought Amendments

The proposed modification will seek to amend the Concept Plan (MP 06\_0258) and specifically Condition C8 to permit the development and occupation of those lots in Stage 2 prior to the completion of the Icon Building.

The sought amendment is described in more detail below.

### 2.1.1 Overview

Under the current Concept Approval for the Casuarina Town Centre, Clarence Property is required to develop the Icon Building prior to the occupation of any other building within Stage 2. The buildings nominated within Stage 2 include the designated medium density (Lots 50 & 51) and mixed-use lots (Lots 47-49, 52, 72 & 78-83) which form the town centre frontage to Grand Parade and Casuarina Way.

Accordingly this application seeks to modify Condition C8 to therefore de-couple the requirement whereby no buildings in Stage 2 may be completed prior to the Icon Building pursuant to Condition C8 (see below).

*C8 Delivery of Icon Building and Lifesaving Facilities*

*Future applications for the development of any buildings in Stage 2 must demonstrate that construction of the Icon Building, including lifesaving facilities will be completed prior to the occupation of any other building within Stage 2.*

Condition C8 was included within the Concept Plan to ensure the community infrastructure for ALS was provided prior to Stage 2 thereby ensuring the ALS storage facility exists prior to the town centre being populated through the construction of the dwellings on the newly created residential lots being developed in Stage 1E. Accordingly, through the provision of an ALS facility on a mixed-use lot (consolidated lots 72-83), the community infrastructure will be provided prior to the completion of the Icon Building and prior to the development of housing on all residential lots created in Stage 1E. That is, the ALS will have access to a facility significantly ahead of schedule.

Clarence Property are in agreement to facilitate the placement of a temporary structure on the mixed use lot (consolidated lots 72-83) adjoining the civic park and fronting Grand Parade. The structure would be connected to all essential infrastructure and be provided with vehicular access & parking.

The provision of a facility for ALS on a prime mixed-use lot within the Town Centre provides a clear public benefit through the early delivery of a facility prior to the residential lots being developed with housing and associated increase in population. Furthermore, the facility will address the current issues faced by the ALS in storing and accessing their equipment at the Casuarina Hockey Club.

**Attachment 2** of this report contains a letter from ALS supporting the provision of a temporary facility as sought under this modification.

## 2.2 Requested Modification to Concept Approval

The conditions relevant to this S75W Application to amend the Concept Plan Approval for MP06\_0258 are described below in **Table 2**. The recommended modifications [red text] to the conditions and the reason for the amendment are also provided.



**Table 2: Proposed Amendments to MP06\_0258**

Existing Condition Reference	Proposed Amendment
<b>Concept Plan</b>	
<b>C8 Delivery of Icon Building and Lifesaving Facilities</b> Future applications for the development of any buildings in Stage 2 must demonstrate that construction of the Icon Building, including lifesaving facilities will be completed prior to the occupation of any other building within Stage 2.	<b>C8 Delivery of Icon Building and Lifesaving Facilities</b> Future applications for the development of any buildings in Stage 2 must demonstrate that construction of the Icon Building, including lifesaving facilities will be completed prior to the occupation of any other building within Stage 2 <b>or an alternative lifesaving facility is provided and operational prior to the occupation of any other building within Stage 2. The development of Lots 72 &amp; 78-83 for mixed use development may not occur until the Occupation Certificate for the Icon Building is issued.</b>

The sought amendment provides the ability to progress the development of the building in Stage 2 within the Casuarina Town Centre. Currently, the development of the Icon Building with associated surf lifesaving storage facility is required to be completed prior to the occupation of any building in Stage 2.

The Icon Building is also an integral component of the Town Centre. In this regard, the proponent requires the Icon Building to be constructed in a timely manner as the temporary ALS facility is located on a prime mixed use lot which has a significant capital value and tying up of the lot with the ALS temporary structure is not an ideal long term commercial outcome.

This approach does however provide for the other mixed use or medium density lots to progress through the DA/CC process and commence construction & subsequent occupation which provides a strong economic stimulus for new businesses and employment within the Town Centre whilst the Icon Building is also being developed.

With regard to the objective for Condition C8 being applied to the Concept plan approval, the current requirement whereby no other mixed use or medium density development in Stage 2 may be developed until the Icon Building is completed, was to ensure the community infrastructure for ALS was provided prior to Stage 2. This would guarantee the ALS facility exists prior to additional residents moving into the town centre in Stage 2. Accordingly, through the provision of an ALS facility on a mixed use lot (consolidated lots 72 & 78-83), as proposed under this modification the community infrastructure will

be provided prior to the Icon Building and the majority of residential lots being developed with housing in Stage 1E. Simply, ALS will have access to a facility significantly ahead of schedule as otherwise provided under the current Concept Plan approval.

Development Consent for the temporary ALS storage facility would be required through Tweed Shire Council. A consent would be sought for a maximum 5-year period or until the Icon Building has received the Occupation Certification, whichever occurs first. This timeframe coincides with the timing of the Icon Building as outlined below. In this regard, ALS would have a facility to service the community during this time in which the Icon Building is being constructed.

The project timelines are provided below for reference purposes.

1. Complete Subdivision Works (Stage 1A)	6 months
2. Subdivision Certificate and Plan Registration	6 months
3. Development Application (ICON Building)	12 months
4. Construction Certificate and award construction contract	3 months
5. Construct ICON Building	12 months
6. OC and Strata Plan Registration	3 months
<b>TOTAL</b>	<b>3 Years, 6 months</b>

Given the basis for the construction timeframes, scope exists to develop the Stage 2 lots in potentially a shorter timeframe.

A further restriction has been provided to the amended wording of Condition C8 to restrict any mixed-use development from occurring on Lots 72. 78-83 until such time as the Icon Building has secured the Occupation Certificate. In this regard, Clarence require the Icon Building constructed in a timely manner as the temporary ALS facility is located on a mixed use lot which has a significant capital value and tying up of the lot with the ALS temporary structure is not an ideal long term outcome.

## 2.3 Substantially the same development

The proposed modification provides for the commencement of the development & occupation of buildings on the Stage 2 lots, whilst importantly ensuring the community infrastructure associated with the surf lifesaving storage facility is provided within the Town Centre.

The transition from a temporary surf lifesaving facility to a permanent facility within the Icon Building maintains the key components of the Concept Plan through the provision a permanent facility for ALS.

Furthermore, the ability to permit the development of the buildings within Stage 2 does not impact the ultimate yield, infrastructure supply or suite of conditions which govern the development of these sites.

Overall, the development as modified by this proposal will be substantially the same development to that currently approved for development within the Casuarina Town Centre.

## 2.4 Consistency with approvals

The proposed modification will not impact the accessibility for existing and future residents of the Casuarina Area to a patrolled surf beach through the provision of a temporary surf lifesaving facility for ALS prior to the development of the Icon Building.

Importantly, this proposal provides for improved facilities to service the ALS when compared to the current arrangements and provides a location significantly closer to the beach access.

The proposed modified development does not trigger a suite of amendments to the approved development, hence illustrating the ability for the project to ensure its consistency with the existing Concept Plan approval.

To this end, the suite of conditions contained in the Concept Approval which govern the development, environmental management and community use will be able to be fully adhered with by the current modification. Accordingly, we submit the nature of the modified proposal results in a development substantially the same and consistent with the current Concept Plan.

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# Environmental Assessment

## Section

# 3

Section 3 provides an environmental assessment of the proposed modification against the range of planning controls applicable in the subject case.

## 3.1 Environmental Planning & Assessment Act

This application to modify Concept Approval 10-0084 is lodged in accordance with Section 75W of the EP&A Act 1979. Section 75W of the EP&A Act 1979 remains applicable under the transitional provisions identified in Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017:

### **‘3 Continuation of Part 3A—transitional Part 3A projects**

*(1) Part 3A of this Act (as in force immediately before the repeal of that Part and as modified under this Schedule after that repeal) continues to apply to and in respect of a transitional Part 3A project’*

*(2) For that purpose:*

*(a) any State environmental planning policy or other instrument made under or for the purposes of Part 3A, as in force on the repeal of that Part and as amended after that repeal, continues to apply to and in respect of a transitional Part 3A project,’*

Clause 3BA(2) and (5)(b)&(c) of the EP&A (Savings, Transitional & Other Provisions) Regulation 2017 confirms that a Concept Plan can be modified under Section 75W provided that it is of minimal environment impact or the project to which the Concept

Plan as modified relates is substantially the same as the project to which the Concept Plan currently relates.

**‘3BA Winding-up of transitional Part 3A modification provisions on cut-off date of 1 March 2018 and other provisions relating to modifications**

*(2) An approved project or a concept plan cannot be modified under section 75W on or after the cut-off date, except as provided by this clause.*

*(5) A concept plan may continue to be modified under section 75W pursuant to a request lodged on or after the cut-off date (whether or not the project is or has ceased to be a transitional Part 3A project), but only if the Minister is satisfied that:*

- (b) the proposed modification is of minimal environmental impact, or*
- (c) the project to which the concept plan as modified relates is substantially the same as the project to which the concept plan currently relates (including any modifications previously made under section 75W).’*

The proposed modification to the Concept Plan Approval is of minimal environmental impact and is substantially the same project to which the Concept Plan currently relates.

The proposed modification simply involves amending the Condition C8 to permit the development & occupation of the Stage 2 lots & providing the surf lifesaving storage facilities prior to the delivery of the Icon Building, thus ensuring the objective of Condition C8 is maintained in the short and long term. The proposed modification therefore does not represent any additional impact on the environment beyond that which was assessed for the original Concept Plan approval.

Clause 3(C)(1)&(2) confirms that Section 75W continues to apply for the purposes of the modification of a concept plan approved before or after the repeal of Part 3A.

**‘3C Modification of concept plans**

*(1) Section 75W continues to apply (subject to clause 3BA) for the purpose of the modification of a concept plan approved before or after the repeal of Part 3A, whether or not the project or any stage of the project is or was a transitional Part 3A project.*

*(2) This clause applies despite anything to the contrary in this Schedule (other than provisions relating to approval for the carrying out of a project or stage of a project that is given in connection with an approval to modify a concept plan).'*

Based on the above legislation, it is established that the proposal can be assessed as a Section 75W application. Section 75W of the EP&A Act 1979 is addressed further below.

### **75W Modification of Minister's approval**

In this section:

Minister's approval means an approval to carry out a project under this Part, and includes an approval of a Concept Plan.

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.*

*(2) The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.*

*(3) The request for the Minister's approval is to be lodged with the Director General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.*

*(4) The Minister may modify the approval (with or without conditions) or disapprove of the modification.*

*(5) The proponent of a project to which section 75K applies who is dissatisfied with the determination of a request under this section with respect to the project (or with the failure of the Minister to determine the request within 40 days after it is made) may, within the time prescribed by the regulations, appeal to the Court.*

*The Court may determine any such appeal.*

- (6) Subsection (5) does not apply to a request to modify:*
- (a) an approval granted by or as directed by the Court on appeal, or*
  - (b) a determination made by the Minister under Division 3 in connection with the approval of a concept plan.*
- (7) 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*

No provisions of Section 75W prohibit or restrict the proposed modification to the approval. It is considered that the proposed modification remains consistent with this section of the EP&A Act 1979.

## 3.2 Tweed Local Environmental Plan 2014 (TLEP)

### 3.2.1 Aims of the Plan

The particular aims of this Plan are as follows:

- (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,*
- (b) to encourage a sustainable local economy and small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed,*
- (c) to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, built environment, and cultural heritage,*
- (d) to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*
- (e) to promote building design which considers food security, water conservation, energy efficiency and waste reduction,*
- (f) to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
- (g) to conserve or enhance the biological diversity, scenic quality and geological and ecological integrity of Tweed,*
- (d) to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*



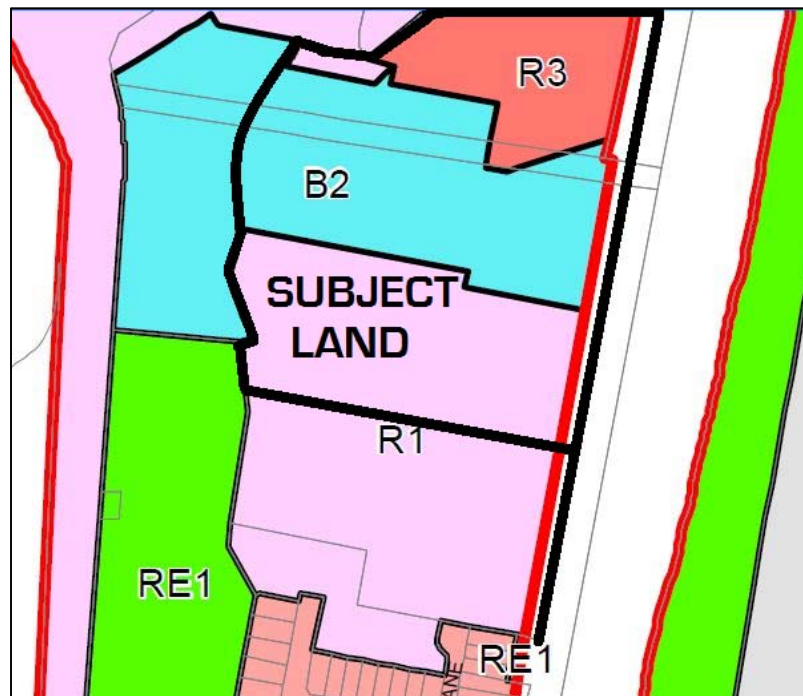
- (e) to conserve or enhance areas of defined high ecological value,*  
*(f) to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

**Comment:** The development of the Casuarina Town Centre as amended will assist with the accessibility of housing located in close proximity to a planned community centre. The development will also occur upon a purpose designated site consistent with the core elements (residential, commercial, retail, mixed land uses) approved within the original Concept Plan for the Casuarina Town Centre.

The proposed modification does not impact the developments consisting with the aims of the TELP.

### 3.2.2 Zoning & Permissibility

**Zone:** The land is zoned R1 – General Residential, R3 – Medium Density Residential and B2 – Local Centre pursuant to the provisions of the TLEP 2014. The eastern portion of the development area is mapped as “Deferred Matter” and as such is reliant on the provisions of the Tweed Local Environmental Plan 2000. **Plate 3** provides an extract of the zoning map applicable to the site under the TLEP 2014.



**Plate 3–** TLEP Land Zoning Map – Sheet LSZ\_024 Extract

**Land Use Definition:** The core land uses as approved within the Concept Plan for Casuarina Town Centre are listed below with the associated definitions from the Tweed Local Environmental Plan 2014.

***multi dwelling housing** means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.*

***residential flat building** means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.*

***shop top housing** means one or more dwellings located above ground floor retail premises or business premises.*

***mixed use development** means a building or place comprising 2 or more different land uses.*

***food and drink premises** means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:*

- (a) a restaurant or cafe,*
- (b) take away food and drink premises,*
- (c) a pub,*
- (d) a small bar.*

***retail premises** means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale),*

**Permissibility:** The subject site has the benefit of an approved Concept Plan issued by the NSW Department of Planning & Infrastructure (MP06\_0258 Casuarina Town Centre).

Accordingly, development consent under Part 4 of the Environmental Planning & Assessment Act 1979 will be required from Tweed Shire Council as the consent authority for the future development upon the lots created under the Concept Plan is able to proceed to determine the application based on the land use being consistent with the Concept Plan approval.

With specific regard to the provision of the surf lifesaving storage facility (emergency services facility), the Tweed Local Environmental Plan identifies lots 72 & 78-82 as being zoned B1 & R3 pursuant to the Tweed Local Environmental Plan 2014. The proposed land use is permissible with the consent of Tweed Shire Council.

### 3.2.3 General Provisions

#### Clause 4.1 – Minimum subdivision lot size

Pursuant to Clause 4.1, Lot Size Map – Sheet LSZ\_024 prescribes no minimum lot size for the subject land.



Plate 4: TLEP Minimum Lot Size Map – Sheet LSZ\_024 Extract

#### Clause 4.3 – Height of Buildings

The height of the temporary surf lifesaving storage building would be below the prescribed maximum building height given a single storey built form would be proposed. An extract from the applicable Height of Buildings Map is provided in **Plate 5**.

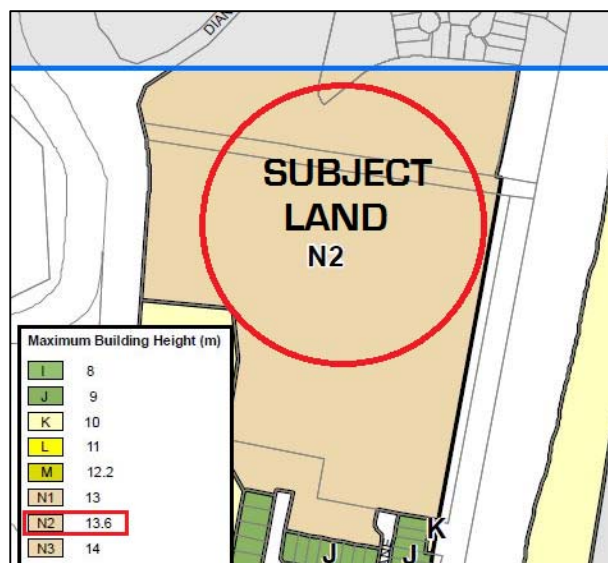
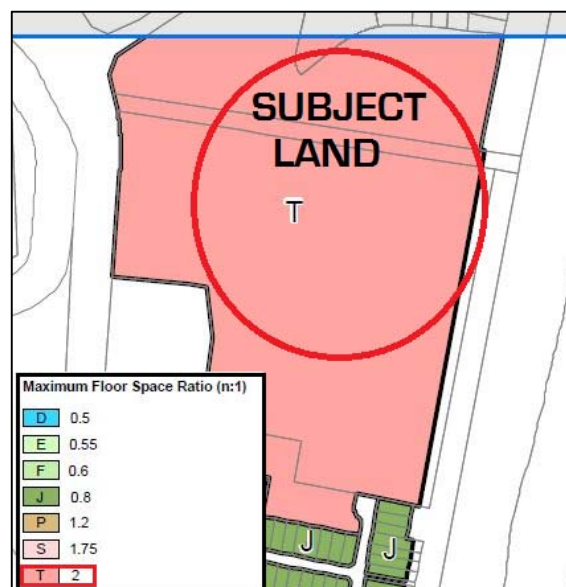


Plate 5– TLEP Height of Building Map – Sheet LSZ\_024 Extract

#### Clause 4.4 – Floor Space Ratio

The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown on the Floor Space Ratio Map FSR\_024 (see **Plate 6**). The *floor space ratio* of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area. In this instance the nominated FSR is 2:1.

Whilst the assessment of the temporary storage facility is subject to a separate development application process, given the area requirements provided by ALS (<100m<sup>2</sup>) and the size of the land (1,558m<sup>2</sup>), the storage facility will not exceed greater than the prescribed FSR under the TLEP 2014.



**Plate 6**– Floor Space Ratio Map.

#### Clause 7.1 – Acid Sulfate Soils

The subject site is mapped as containing Class 4 Acid Sulfate Soils (ASS). Pursuant to Clause 7.1 works more than 2 metres below the natural ground surface or works by which the water table is likely to be lowered more than 2 metres below the natural ground surface trigger the need to consent to carry out works.

In this case the land is approved to be filled, with minor works not exceeding below 2 metres of the existing ground to be undertaken in association with the building footings and drainage works for the ALS facility.

### **7.10 – Essential Services**

The proposed development is capable of being serviced with essential infrastructure, by virtue of the subject land being connected to all key infrastructure (water, sewer, electricity, communications).

## **3.3 State Environmental Planning Policies**

### **3.3.1 State Environmental Planning Policy No. 55 (SEPP55) – Remediation of Contaminated Land**

The issue of contamination for the entire Casuarina Town Centre has been assessed as part of Concept Approval MP06\_0258 and Project Approval MP06\_0258. An investigation undertaken by Cardno (*Radiation Validation and Remediation Report – May 2014*) has identified an area (Area 1) within the site that requires remediation. Cardno identifies previous sand mining activities as the likely source of the radioactive material.

Remediation works to the Town Centre will be undertaken pursuant with the existing conditions of the Project Approval MP06\_0258 in order to adhere to the requirements of SEPP 55 are addressed prior to the registration of the land in Stage 1E in which the temporary surf lifesaving storage facility would be developed.

### **3.3.2 State Environmental Planning Policy (Coastal Management) 2018**

The location of the proposed surf lifesaving storage facility is mapped as being within the ‘coastal environment area’ and ‘coastal use area’. The following comments are made with respect to the heads of consideration contained within Clauses 13 & 14 of the SEPP relating to the sought modification:

#### Clause 13

*(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*

*(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*

- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

**Comment:** The development is removed from foreshore areas and does not impact on existing or potential future access to such areas. The development site planned for the temporary surf lifesaving storage facility will comprise of a vacant mixed use allotment which has already been modified through the placement of fill over the existing property as part of the civil works for the subdivision of the Town Centre. Accordingly, no adverse impacts on heritage values are expected.

#### Clause 14

*(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*

*(a) has considered whether the proposed development is likely to cause an adverse impact on the following:*

*(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

**Comment:** The development is removed from foreshore areas and does not impact on existing access to the coastal pathway and beach access.

*(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*

**Comment:** The development is removed from foreshore areas and will not impact on views to such localities given the temporary facility will also be single storey in form.

*(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*

**Comment:** The modification provides for a temporary structure which will be designed to ensure it serves the purpose of the intended surf lifesaving storage, however recognises its temporary location within the Casuarina Town Centre. In this regard, whilst the design meets the operational requirements, the design will not result in any adverse impact on the visual amenity and scenic qualities.

*(iv) Aboriginal cultural heritage, practices and places,*

*(v) cultural and built environment heritage, and*

**Comment:** The development site comprises of a vacant mixed use allotment which has already been modified through the placement of fill over the existing property as part of the civil works for the subdivision of the Town Centre. Therefore, no adverse impacts on heritage values are expected or were identified in the assessment of the original concept plan approval.

*(b) is satisfied that:*

*(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*

*(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*

*(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*

*(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

**Comment:** The proposed development is located upon land included within the approved Concept Plan and Project approval for the Casuarina Town. The minor nature of works to facilitate the temporary surf lifesaving storage facility is such that no adverse impacts are envisaged.

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# Conclusion

## Section 4

This Section 75W report, prepared on behalf of Clarence Property describes the proposed modification to the development to provide for the early provision of surf lifesaving storage facility and the ability to provide for Stage 2 development to be occupied prior to the completion of the Icon Building within the Casuarina Town Centre.

Importantly, this modification does not amend the commitments to provide a permanent surf lifesaving facility through the delivery of the Icon Building. In this respect, the original intent of Condition C8 to provide the ALS facility for future residents will be achieved.

The sought amendments will deliver an improved public outcome through ALS having access to a facility significantly earlier than is currently approved.

The proposed modification does not give rise to any significant physical changes to the nature of the approved project and therefore no impacts other than those addressed in the original Environmental Assessment are likely to arise. Importantly preserves the core land uses within their location within the Casuarina Town Centre as approved by the Department of Planning, Environment & Infrastructure within Modification 10.

The proposed modification of the approval is considered to be in the public interest and therefore approval of the application is respectfully requested. The community will secure the benefit of having surf lifesaving facilities located in closer proximity to the town centre and thus the beach access pathway than the current storage location utilised by ALS.

Furthermore, the ability to provide for the development of the Stage 2 allotments will provide further economic stimulus through the ability to progress the development of these sites and the flow on effect for new business and employment in a manner which preserve the existing compliance and/or consistency with the original approval.

The proposed modification of this approval is considered to be sustainable and in the public interest and therefore approval of the application is respectfully sought.



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**DAMIAN CHAPELLE**  
Town Planner. BTP CPP

Date: 28<sup>th</sup> January 2020