

Casuarina Town Centre Concept Plan Modification 13

Modification to allow a temporary surf life saving facility
Section 75W Modification Assessment
(MP 06_0258 MOD 13)



Published by the NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

Title: Casuarina Town Centre Concept Plan Modification 13

Subtitle: Section 75W Modification Assessment

Cover image: Casuarina Beach Concept (Proponent's Response to Submissions – Mod 10)

© State of New South Wales through Department of Planning, Industry and Environment 2020. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Industry and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (July 2020) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Industry and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Glossary

Abbreviation	Definition
ALS	Australian Lifeguard Service
Council	Tweed Shire Council
Department	Department of Planning, Industry and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environnemental Planning Instrument
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SSD	State Significant Development

Contents

1	Introduction	1
1.1	Introduction.....	1
1.2	Background	1
1.3	Approval history.....	2
2	Proposed modification	5
3	Statutory context	6
3.1	Part 3A transition to State significant development	6
3.2	Consent authority	6
3.3	Environmental Planning Instruments	6
4	Engagement.....	8
4.1	Department’s engagement.....	8
5	Assessment	9
5.1	Delivery of Surf Life Saving Facilities and Icon Building	9
5.2	Other Issues	10
6	Evaluation.....	12
7	Recommendation.....	13
8	Determination.....	14
	Appendices	15
	Appendix A – Modification report.....	15
	Appendix B – Submissions	15
	Appendix C – Modification of Concept Approval	15

1 Introduction

1.1 Introduction

This report provides the Department of Planning, Industry and Environment's assessment of a request to modify the concept approval for the Casuarina Town Centre (MP 06_0258).

The request seeks to modify Condition C8 to allow the occupation of lots in Stage 2 prior to completion of the Icon Building (a future mixed use building containing surf life saving facilities), by providing a temporary surf lifesaving storage facility.

The modification request was lodged by Clarence Property Trust Corporation Limited (the Proponent) pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 Background

Casuarina Town Centre is a 26.2 hectare (ha) site, located approximately 15 kilometres (km) to the south of Tweed Heads and 4 km north of Cabarita Beach, in the Tweed Shire local government area (**Figure 1**).

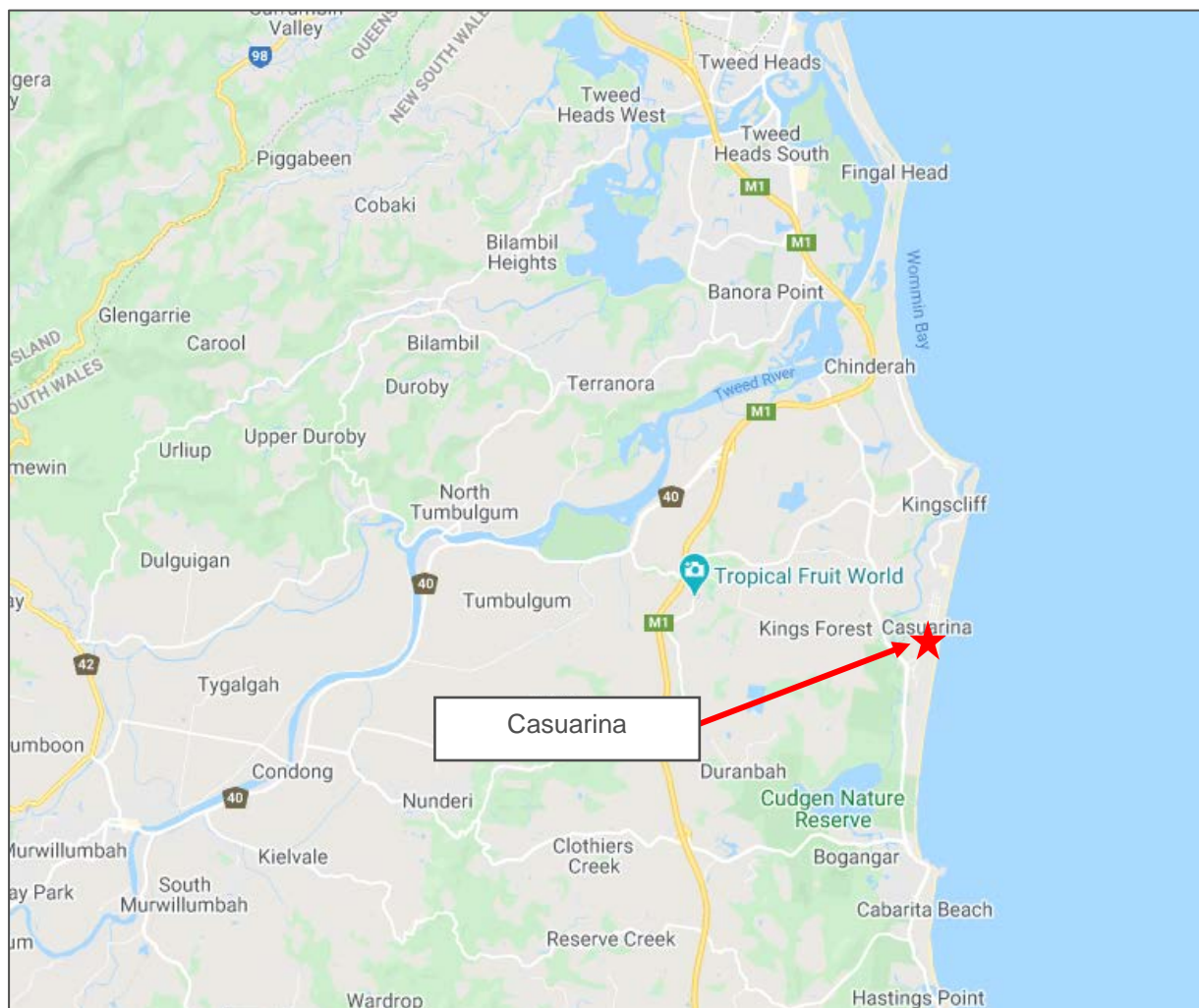


Figure 1 | Regional context map (Source: Nearmap 2020)

Part of the site has been developed in accordance with the concept approval, including a retail centre, medium and low-density housing and associated infrastructure (**Figure 2**). This modification relates to an undeveloped part of the site (other than a public carpark) known as Stage 2.

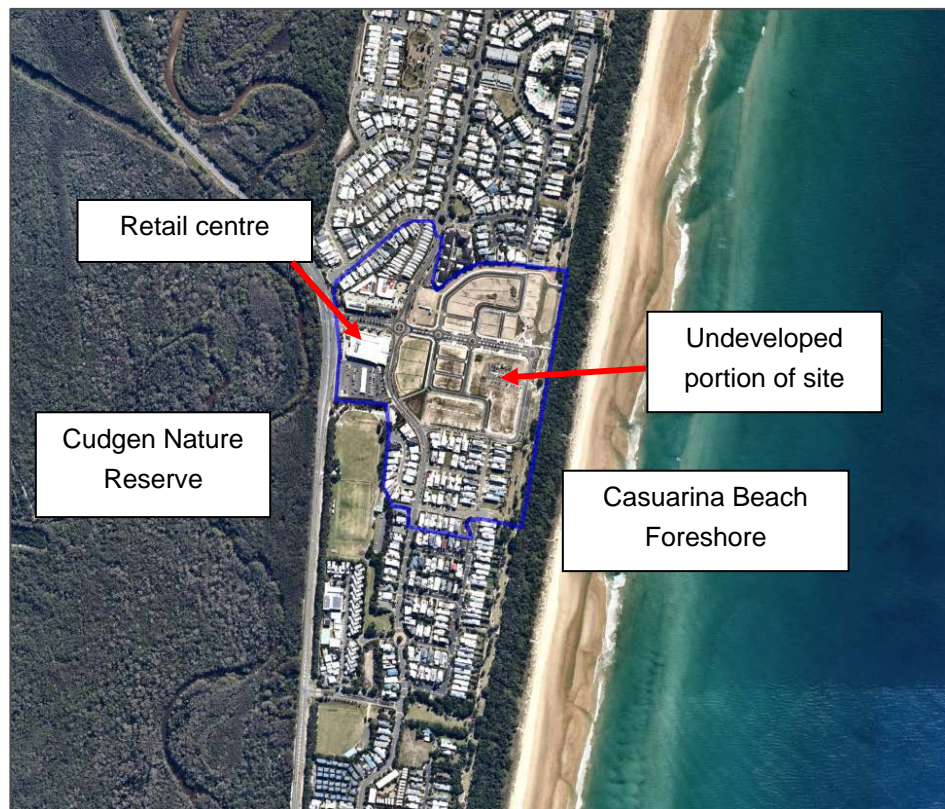


Figure 2 | Casuarina Town Centre site shown in blue (Source: Nearmap 2020)

Low to medium density residential buildings adjoin the northern and southern boundaries of the site (**Figure 2**). The Casuarina Beach foreshore is located to the east of the site, and Tweed Coast Road adjoins the western boundary of the site, with the Cudgen Nature Reserve located further to the west.

1.3 Approval history

A concept plan and concurrent project application were approved by the then Minister for Planning on 20 September 2009, under Part 3A of the EP&A Act.

The concept plan approved:

- subdivision into 61 lots, including low and medium density residential, retail, commercial and mixed-use lots
- a retail centre comprising a supermarket, restaurants and shops
- a hotel
- associated road network and car parking
- necessary services, landscaping and open space.

The concurrent project approval allowed:

- subdivision into 61 lots
- construction of a retail centre with a supermarket
- bulk earthworks and vegetation clearing
- construction of all roads and closure of Dianella Drive
- provision of infrastructure and services, and landscaping.

The concept plan and project approval have been modified on 11 occasions as outlined at **Table 1** below.

Table 1 | Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Type	Status
MOD 1	Amendments to the approved concept stormwater regime.	Department	75W	Approved on 17 June 2010
MOD 2	Amendments to the project staging to allow Stage 1 to be carried out in two sub-stages (Stage 1A and the balance of Stage 1).	Department	75W	Approved on 1 July 2011
MOD 3	Modification to project approval only. No change to concept plan.	Department	75W	Approved on 7 March 2012
MOD 4	Amendments to the concept staging, including allowing the varied sequencing of future stages. Delete the requirement to construct the beach access as part of the concept plan.	Department	75W	Approved on 24 April 2013
MOD 5	Modifications to project approval only. No change to concept plan.	Department	75W	Approved on 24 September 2013
MOD 6	Amendments to the number of approved lots. Amendments to the concept staging to create sub-stages 1B and 1C. Amendments to the land use of Lots 7, 8, 9, 14 & 15 from medium density residential to low density residential. The creation of new Lot 2A within commercial Lot 2. Amendments to the minimum lot size requirements to allow the construction of dwellings on lots below 450m ² in area.	Department	75W	Approved on 16 May 2014
MOD 7	Modifications to the retail centre, including a 1,000m ² increase of supermarket gross floor area (GFA), a 581 m ² increase of specialty retail GFA and a 12 m ² reduction of restaurant GFA and amended car parking arrangements.	Department	75W	Approved on 16 May 2014
MOD 8	Modification to project approval only. No change to concept plan.	Department	75W	Approved on 21 January 2015
MOD 9	Design revisions to the retail centre.	Department	75W	Approved on 15 June 2015
MOD 10	Replacement of a hotel and medium density allotments with low density residential development, increase maximum building height from 3 to 4 storeys.	Independent Planning Commission (Commision)	75W	Approved on 7 November 2018
MOD 11	Modification to project approval only. No change to concept plan.	Department	75W	Approved on 24 April 2017
MOD 12	Modification to project approval only. No change to concept plan.	Commision	75W	Withdrawn

Relevant to the proposed modification:

- Condition B6 of the concept approval (imposed under MOD 10) requires Lots 72 and 78-83 to be consolidated into a single medium density mixed use allotment to provide an active retail frontage to Grand Parade, consistent with the remainder of the street (**Figure 3**)
- Condition C5 of the concept approval requires future development applications (DAs) on Lot 17 (Icon Building) to include details of a surf lifesaving facility with written agreement from Surf Lifesaving Australia (SLA)
- Condition C8 of the concept approval (imposed under MOD 10) requires that future DAs within Stage 2 demonstrate that the Icon Building, including surf lifesaving facilities, will be constructed prior the occupation of any buildings within that stage.

The Icon Building is a future mixed-use building with a maximum height of three storeys on Lot 49 (previously identified as Lot 17) at the corner of Grand Parade (**Figure 2**).

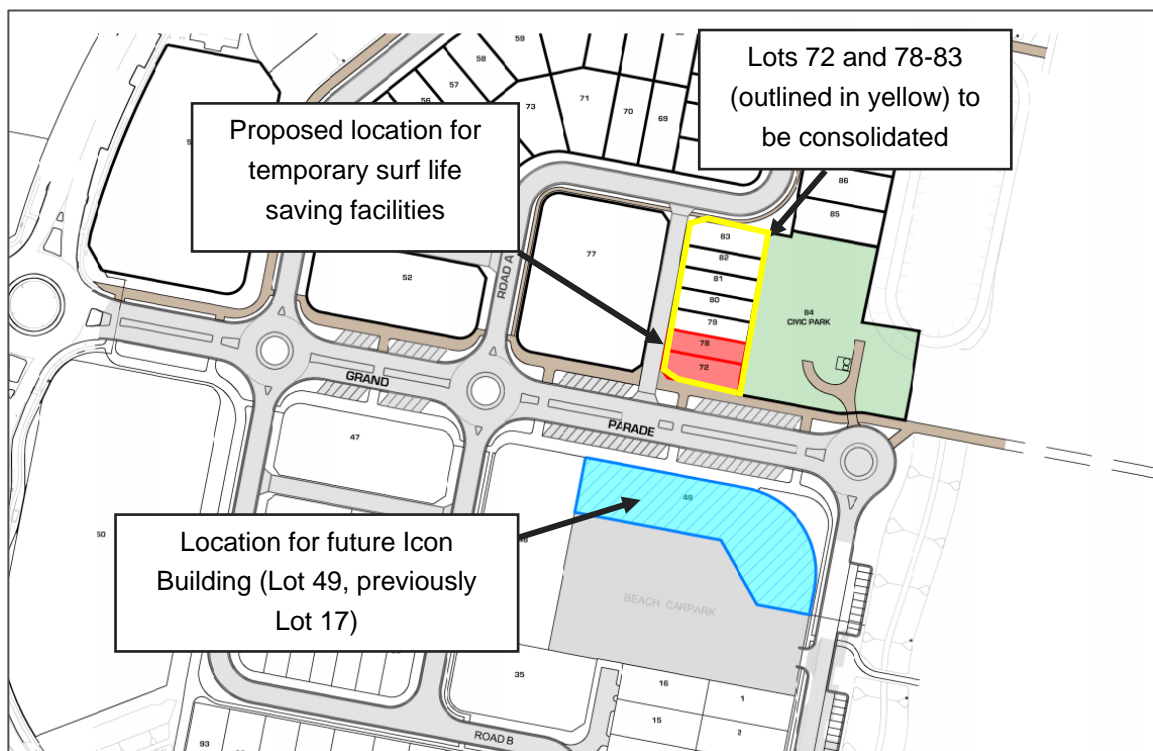


Figure 3 | Location of Icon Building and proposed temporary surf life saving facilities (Source: MOD 13 Application)

2 Proposed modification

The request seeks to modify Condition C8 to allow the occupation of lots in Stage 2 prior to completion of the Icon Building, by providing a temporary surf lifesaving storage facility.

The temporary surf lifesaving storage facility is proposed on part of a mixed use lot (consolidated lots 72 and 78-83) adjoining the civic park and fronting Grand Parade (**Figure 3**). To accommodate the temporary facility and ensure the timely delivery of the Icon Building, development on lots 72 and 78-83 will be restricted until the Occupation Certificate for the Icon Building has been issued.

Development consent for the temporary surf lifesaving storage facility is required from Council. The Proponent has advised that it will seek approval for the temporary facility for a maximum of 5 years, or until the Icon Building has received an Occupation Certificate, whichever occurs first.

The proposed modified wording of Condition C8 is as follows:

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 **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 & 78-83 for mixed use development may not occur until the Occupation Certificate for the Icon Building is issued.***

The modification is requested to allow the occupation of Stage 2 and provide economic stimulus for the Casuarina Town Centre. The Proponent contends that the temporary surf lifesaving facility provides a public benefit through the early delivery of the facility prior to the residential lots being developed for housing.

The Proponent also provided confirmation from the ALS that a shipping container structure or modular building will provide an appropriate temporary facility. Furthermore, the temporary facility will address current issues faced by the ALS in storing and accessing their equipment at the Casuarina Hockey Club. The Proponent also noted that all essential services, site access and parking would be provided.

3 Statutory context

3.1 Part 3A transition to State significant development

The concept plan was originally approved under Part 3A of the EP&A Act, which has been repealed. The power to modify concept plans approved under Part 3A of the EP&A Act under former section 75W of the EP&A Act is being wound up.

Clauses 3BA(5) of Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (ST&OP) Regulation) provides that an approved concept plan can only be modified under section 75W in response to a request lodged after 1 March 2018 if the Minister is satisfied that:

- a) *the proposed modification is to correct a minor error, misdescription or miscalculation, or*
- 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).*

This proposal was lodged on 27 March 2020 and seeks to modify Condition C8 to allow the occupation of lots in Stage 2 prior to completion of the Icon Building by providing a temporary surf life saving facility. The Department is satisfied that the proposal is within the scope of clause 3BA(5)(b) as it is of minimal environmental impact, as considered in Section 5.

3.2 Consent authority

The Minister for Planning and Public Spaces is the approval authority for the modification request. However, under the Minister's delegation dated 9 March 2020, the Director, Regional Assessments, may determine the application as:

- a political disclosure statement has not been received, and
- no unique submissions were received from the public objecting to the proposal.

3.3 Environmental Planning Instruments

The Department comprehensively assessed the project against the mandatory matters for consideration under section 4.15 of the EP&A Act as part of the original assessment (of MP 06_0258). The Department considers this modification request does not alter its assessment of the proposal against these mandatory matters for consideration and the conclusions made as part of the original assessment.

The original concept plan was assessed against the provisions of the following Environmental Planning Instruments (EPIs):

- State Environmental Planning Policy (Major Projects) 2005

- State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)
- State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Buildings (SEPP 65)
- State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71)
- Tweed Local Environmental Plan 2000 (Tweed LEP 2000).

The Department is satisfied that the proposed modification does not result in any significant changes that would alter the conclusions made as part of the original assessment.

As SEPP 71 and the Tweed LEP 2000 have been replaced, the Department has also considered the proposal against relevant provisions of more recent EPIs, including State Environmental Planning Policy (Coastal Management) 2018 (Coastal SEPP) and the Tweed Local Environmental Plan 2014 (at **Section 5.2**) and is satisfied that the proposal is consistent with any relevant provisions.

4 Engagement

4.1 Department's engagement

The Department notified the modification request for 14 days between 1 April 2020 and 15 April 2020. The request was made publicly available on the Department's website, notified to Tweed Shire Council (Council) and surrounding landowners and residents.

The Department received a submission from Council (**Appendix B**). No public submissions were received.

Council did not object to the proposal, noting:

- the provision of a short term surf life saving facility would satisfy the current needs of the local community
- the proposed wording of Condition C8 would ensure the timely delivery of the Icon Building, being prior to the mixed use development of consolidated lots 72 and 78-83.

5 Assessment

In assessing the merits of the proposed modification, the Department has considered:

- the Modification Report and associated documents (**Appendix A**)
- the Environmental Assessment and conditions of the original approval and previous modifications
- submissions received on the proposal
- relevant EPIs, policies and guidelines
- the requirements of the EP&A Act.

The Department considers the key issue associated with the proposal is the timing for the delivery of the surf life saving facility and the Icon Building. An assessment of other issues is provided at **Table 2**.

5.1 Delivery of Surf Life Saving Facilities and Icon Building

The proposal seeks to modify Condition C8 to allow the occupation of lots in Stage 2 prior to completion of the Icon Building, by providing a temporary surf life saving storage facility.

The Proponent seeks to amend the condition to accelerate the development of other mixed use and medium density lots within Stage 2. The Proponent contends that under the current approval, life saving facilities are not required and the development of other lots within Stage 2 is not permitted until Icon Building is completed, which is expected to take approximately 3.5 years.

The Proponent notes that the proposal provides the ALS with a temporary space significantly ahead of schedule, and has provided a letter from the ALS in support of the proposed temporary facilities.

Condition C8 was imposed as part of MOD 10 in response to amended staging, to ensure that life saving facilities are provided prior to the town centre being populated.

The Department considers the proposal maintains the intent of the condition by ensuring appropriate life saving facilities are provided prior to any development in Stage 2 and in conjunction with the growing population of the town centre. In addition, ALS support and Council do not object to the proposed modification.

As noted by Council, the Icon Building is an important feature of the town centre, and its timely completion together with the provision of a permanent lifesaving facility is important. It is therefore reasonable that development of Lots 72 and 78-83 (being a prime mixed-use lot with a significant capital value) does not take place until the Icon Building and permanent lifesaving facility is constructed.

The Department also notes that bringing forward some development in Stage 2 in advance of the Icon Building will not impact delivery of any other infrastructure. In addition, further development consent from Council is required for the temporary lifesaving facilities, at which stage a detailed assessment of the exact facilities being provided would be undertaken.

The Department therefore supports the proposed amendments to Condition C8, but subject to amendments to clarify: arrangements for the delivery of the permanent facility, the location of the

temporary lifesaving facilities on Lots 72 and 78-83 and that further approval is required for the temporary lifesaving facilities.

The recommended wording of Condition C8 is outlined 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. **Alternatively, a temporary lifesaving facility may be provided on consolidated Lots 72 & 78-83, but must be operational prior to the occupation of any other building within Stage 2. The development of consolidated Lots 72 & 78-83 for any purpose other than for the lifesaving facilities shall not occur until the Occupation Certificate for the Icon Building, including the permanent lifesaving facility, is issued.***

The further development consent of Council shall be obtained for the temporary life saving facilities prior to construction.

5.2 Other Issues

An assessment of all other issues is set out at **Table 2** below.

Table 2 | Assessment of key issues

Issue	Findings	Recommendations
Coastal SEPP	<p>The Department has considered the proposal against the Coastal SEPP.</p> <p>The Coastal SEPP identifies the site as located within the Coastal Environment Area and Coastal Use Area and therefore clauses 13 and 14 apply.</p> <p>A comprehensive assessment of the proposal was undertaken against Clauses 13 and 14 of the Coastal SEPP as part of MOD 10.</p> <p>The Department is satisfied the proposed modification would not cause any inconsistency with the previous assessment against the Coastal SEPP or result in any unreasonable impacts on the Coastal Environment or Use area, as it does not seek to alter the development footprint.</p>	No additional conditions or amendments to existing conditions necessary.

Permissibility

The Department notes the subject site is zoned B1 and R3 pursuant to the Tweed LEP 2014, and that an emergency service facility is permissible with consent in these zones.

No additional conditions or amendments to existing conditions necessary.

The Department is satisfied that a temporary life saving facility is permissible on the site and that further development consent will be required from Tweed Shire Council for the facility.

Administrative Changes

The Department notes that Condition C5 was imposed as part of the original concept approval to require details of the surf life saving facilities and written agreement from Surf Lifesaving Australia to accompany future applications for development on Lot 17 (the lot which the Icon Building was originally proposed on).

Administrative changes to update Condition C5 to reflect the correct lot number for the Icon Building.

Since the original approval, the lot numbering has been updated, and the Icon Building is now proposed to be located on Lot 49.

The Department therefore recommends Condition C5 be updated to reference the correct lot number.

6 Evaluation

The Department has assessed the proposed modification in accordance with the relevant requirements of the EP&A Act. The Department considers the proposal to be acceptable, subject to the recommended conditions, on the basis that it would:

- allow some development in Stage 2 prior to constructing the Icon Building and surf lifesaving facility
- provide temporary life saving storage facilities while the Icon Building is under construction
- maintain an appropriate restriction to ensure the Icon Building and permanent facility is delivered in a timely manner.

The Department is satisfied that the modification can be approved, subject to the recommended conditions (**Appendix C**).

7 Recommendation

It is recommended that the Director, Regional Assessments, as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **determines** that the application MP 06_0258 MOD 13 falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modifies** the concept approval MP 06_0258
- **signs** the attached Modification of Concept Approval (**Appendix C**).

Recommended by:



Emma Butcher
Planning Officer
Regional Assessments

Recommended by:



Silvio Falato
Team Leader
Regional Assessments

8 Determination

The recommendation is **Adopted** by:

A handwritten signature in black ink, appearing to read 'B. Roberts', with a long horizontal stroke extending to the right.

30 July 2020

Brendon Roberts

A/Director

Regional Assessments

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – Modification report

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10184

Appendix B – Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10184

Appendix C – Modification of Concept Approval

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10184