

Director-General's Report**Application to Modify the Minister's Approval for the a Mixed Use Subdivision at Tweed Coast Road, Casuarina Beach****Major Project 06_0258 MOD 1**

1.0 BACKGROUND

On 20 September 2009, the then Minister for Planning approved the Concept Plan and concurrent Stage 1 Project Approval for a mixed use subdivision (the Casuarina Town Centre).

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.

Stage 1 Project Approval was granted for:

- The subdivision of land in 61 lots;
- Construction of the supermarket anchored retail centre;
- Bulk earthworks and vegetation clearing;
- Construction of all roads;
- Closure of Dianella Drive;
- Provision of infrastructure and services; and,
- Landscaping.

The subject site is located at Casuarina Beach, approximately 15km to the south of Tweed Heads and 4km north of Cabarita Beach. Low to medium density residential development adjoins the site to the north and south, including the Santai tourist accommodation resort on the northern boundary. The Casuarina Beach foreshore adjoins the site to the east, with Tweed Coast Road and the Cudgen Nature Reserve to the west.

The site is part of the master planned Casuarina precinct involving the integration of residential, tourist and commercial developments fronting the Casuarina Beach foreshore. The location of the subject site is depicted below in **Figure 1** below. An illustration of the approved Concept Plan is provided at **Figure 2**.



Figure 1: Town Centre Site Location (source: Environmental Assessment)



Figure 2: Approved Town Centre Concept Plan (source: Environmental Assessment)

2.0 PROPOSED MODIFICATION

On 1 March 2010, Victor G Feros Town Planning Consultants (on behalf of the proponent – Kings Beach No.2 Pty Ltd) submitted to the Director-General a request for modification of Major Project 06_0258. The request to modify the proposal is a result of Tweed Shire Council (Council) granting the proponent land owner's consent to undertake stormwater, sewerage and landscaping works on Council owned land adjoining the site which had previously been withheld during the original assessment of the application. Specifically, the proposed modifications involve:

- Carrying out of stormwater infiltration works and landscaping within adjoining lots 10 and 13;
- Filling of the existing drainage easement within the site and relinquishing the easement rights currently benefiting Council in exchange for dedication of these areas to Council (once landscaping works are complete); and,
- Carrying out of works and landscaping to facilitate the construction of a cul-de-sac at the western end of Dianella Drive, subsequently closing the existing intersection of Dianella Drive and Tweed Coast Road.

In response to the above request, Council resolved on 17 November 2009 at its monthly Ordinary Council Meeting to formally provide the proponent with land owner's consent to carry out the required works. (refer **Appendix E** for a copy of the Ordinary Council Meeting minutes). The proposed modifications to the approved project are described in further detail below.

2.1 Modification of the On-Site Stormwater Drainage Management

The proponent seeks to undertake stormwater drainage works on adjoining lots 10 and 13; and to fill the existing drainage easement which runs through the development site. Due to Council's authorisation to undertake stormwater infiltration and drainage works within lots 10 and 13, the existing open drainage easement will no longer be required for stormwater drainage and infiltration purposes. This will instead allow for the creation of a 20m wide landscaped pedestrian/cycleway easement to be created along the existing easement route which extends from the Casuarina Beach foreshore to the approved Casuarina Way road network extension.

An alternative piped drainage solution (consisting of three pipes 900mm each in diameter laid along the former easement route) is now proposed to channel stormwater drainage from an infiltration basin at the eastern end (within Lot 13) through to an infiltration basin at the western end (within Lot 10), and replacing the need for the existing open easement channel. **Figure 3** below depicts the location of 20m wide easement. An assessment of the revised stormwater drainage system is discussed in **Section 6.0**.

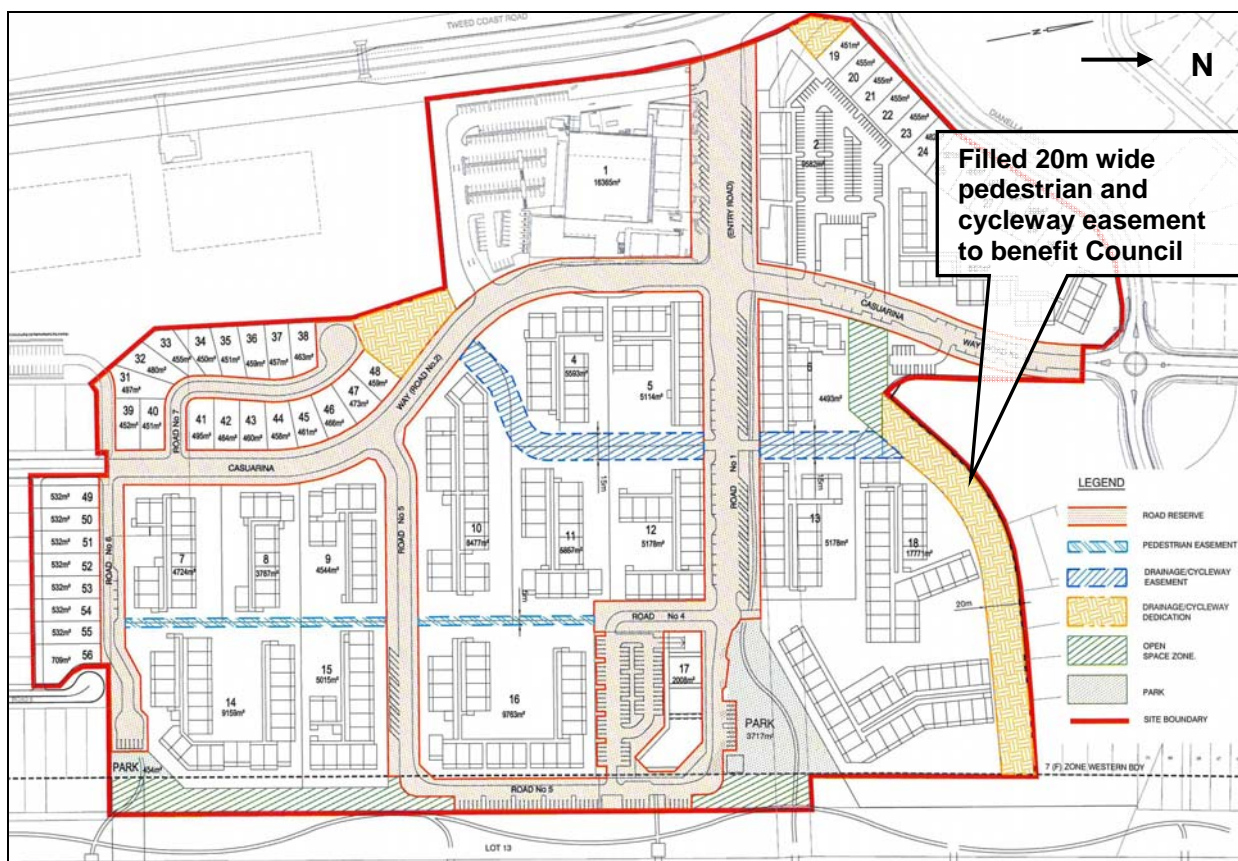


Figure 3: Easements throughout the Town Centre Site (source: Environmental Assessment)

2.2 Amendments to Conditions of Consent

In order to facilitate the proposed modification, the following conditions within the Concept Plan and Project Approval would need to be amended:

Concept Plan Approval

- Condition A3 – *Project in Accordance with Plans* – Updated to reflect revised design and survey drawings.
- Condition A4 – *Project in Accordance with Documents* – Updated to incorporate the Proponent's S75W report.

Project Approval

- Condition A2 – *Project in Accordance with Plans* – Updated to reflect revised engineering and landscaping drawings.
- Condition A3 – *Project in Accordance with Documents* – Updated to incorporate the Proponent's S75W report.
- Condition B16 – *Dianella Drive Closure* – This condition is to be deleted from the original consent as Council had not provided land owner's consent to undertake the required works at the time of determination. Council has since provided authorisation for these works and the condition is to be re-instated as part of the proposed modification.
- Condition B25(b) – *Stormwater Works for Retail Centre* – Amended to increase infiltration rates for sizing infiltration devices from 3m per day to 6m per day.
- Condition E8(4)(c) – *Registration of Easements / Restrictions to use / Right of carriageway* – Amended as the rights for the current 20m wide easement running in a north-south direction and benefiting Council are to be relinquished with this area of land to be dedicated to Council.

3.0 ASSESSMENT PROCESS

Under Section 75W(2) of the Act, a Proponent may request the Minister to modify the Minister's approval for a project.

Section 75W(3) of the Act provides that the Director-General may notify the proponent of environmental assessment requirements (DGRs). Following an assessment of the modification request, it is considered that DGRs are not required for this application.

The following report describes the Department's assessment of the requested modifications and supporting documentation as provided by the proponent. It is recommended the proposed modification be granted **approval**, subject to conditions.

4.0 CONSULTATION AND EXHIBITION

Under Section 75W of the Act, a request for a modification of an approval does not require public exhibition. However, under Section 75X(2)(f) of the Act, the Director-General is to make publicly available requests for modifications of approvals given by the Minister. In accordance with Clause 8G of the *Environmental Planning and Assessment Regulation 2000*, the request for the modification was placed on the Department's website.

4.1 Tweed Shire Council

The modification application was referred to Council for comment. Council advised that there were no objections to the proposed modification provided the proposed works were limited to:

- upgrading and landscaping works including stormwater infiltration in Lot 13 DP 1014470;
- realigned stormwater drainage from the town centre in Lot 10 DP1014470; and,
- stormwater, sewerage and landscaping works including the filling of the east/west swale that runs along the northern boundary of the proposed town centre site (including piping of the stormwater).

5.0 ASSESSMENT

Stormwater Drainage Works

The town centre site contains an existing drainage easement which extends from the Casuarina Beach foreshore in the east to an area of public open space in the west. The easement is 36m in width and 2m-3m in depth and provides a vegetated buffer between existing development on the northern side of the easement and the town centre site on the southern side. The easement is registered under Section 88B of the *Conveyancing Act 1919* and was constructed for the purposes of – drainage of stormwater; drainage of sewage; and, as a right of carriageway to the benefit of Council. It is noted that although the easement is registered to the benefit of Council, the land which makes up the easement itself is in ownership of the proponent.

The proposed modifications will see stormwater infiltration works carried out within adjoining lots 10 and 13, and the existing drainage easement filled to a surface level consistent with the current site topography. The Section 88B easement rights currently benefiting Council are to be relinquished. The proponent has agreed to upgrade the existing 3.5m wide pedestrian cycleway running alongside the easement, and landscape this area prior to dedicating the 20m wide corridor to Council. **Figure 4** below illustrates the proposed stormwater catchments across the site with the location of stormwater piping from lot 13 in the east to lot 10 in the west.

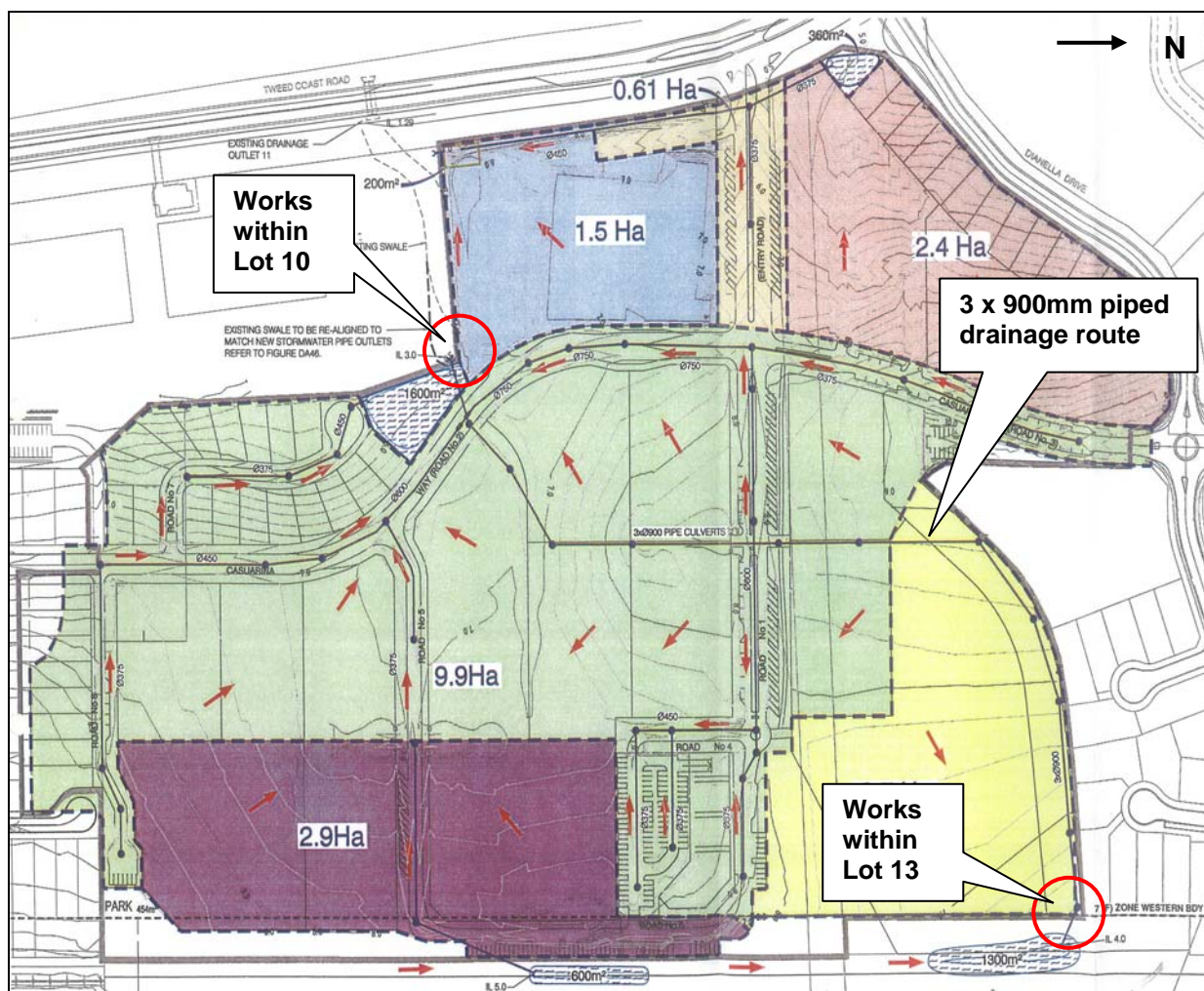


Figure 4: Proposed Stormwater Drainage Plan (source: S75W Report)

The Department does not raise any concerns with the revised stormwater management regime proposed for the site. It is noted that the revised concept continues to provide capacity to deal with a 1 in 100 year flooding event. The filling of the existing easement will create a 20m wide corridor of public open space and provide a landscaped connection for pedestrians and cyclists to commute between the Casuarina beach foreshore and the sporting fields located to the south west of the site. The Proponent is also providing a benefit to the community by agreeing to upgrade the existing pedestrian cycleway running alongside the easement and creating a connection to the Casuarina Beach foreshore cycleway network. **Figure 5** below illustrates a cross-section of the 20m wide dedication area to benefit Council.

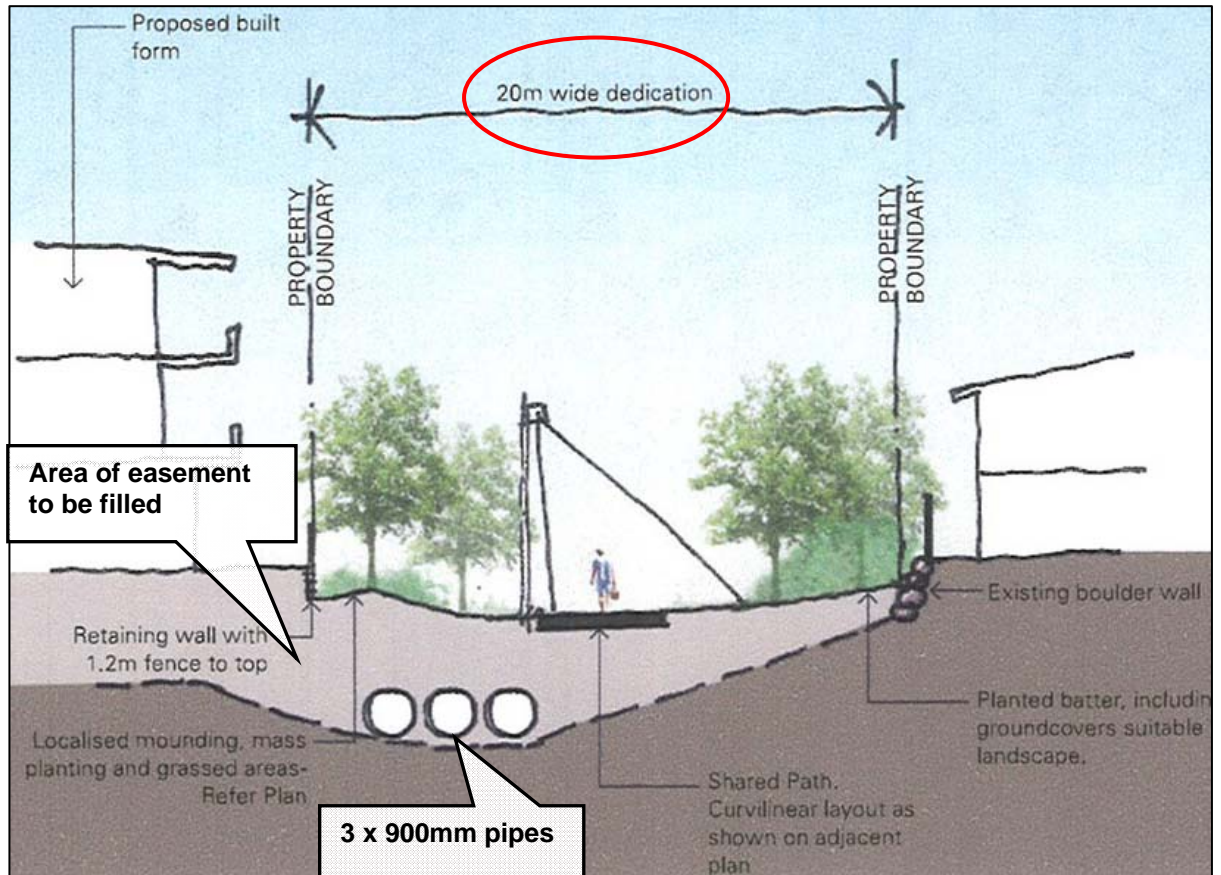


Figure 5: Pedestrian and Cycleway Easement Dedicated to Council (source: S75W Report)

Closure of Dianella Drive

Condition B16 requires the construction of a cul-de-sac to facilitate the closure of Dianella Drive. The cul-de-sac carriageway is to be located a minimum of 10 metres from the edge of the Tweed Coast Road carriageway and totally screened from view in the form of landscaping from Tweed Coast Road. At the time of determination, Council had not provided the Proponent with land owner's consent to undertake the works as required by condition B16. This subsequently deemed condition B16 invalid.

Council has since granted consent for the necessary works to be carried out, refer **Appendix F**. It is therefore proposed to delete condition B16 from the original consent and re-instate it as part of the proposed modification. It is noted, however, that approval from Council is still required under Section 138 of the *Roads Act 1993*.

The Department considers it necessary for Dianella Drive to be closed to traffic given a new intersection with The Boulevard and Tweed Coast Road approximately 80 metres to the south has been approved as part of Stage 1. Two intersections in such close proximity have the potential to detrimentally impact on the traffic flows of Tweed Coast Road. Dianella Drive will continue to service the adjacent residential catchment, with access via Casuarina Way. The Proponent is required to screen the cul-de-sac from view of Tweed Coast Road in the form of landscaping, and provide a permanent barrier to prevent vehicular access to Tweed Coast Road, as required by the conditions of approval. **Figure 6** below shows the location of Dianella Drive in context to the site with the location of the new Boulevard and Tweed Coast Road intersection.

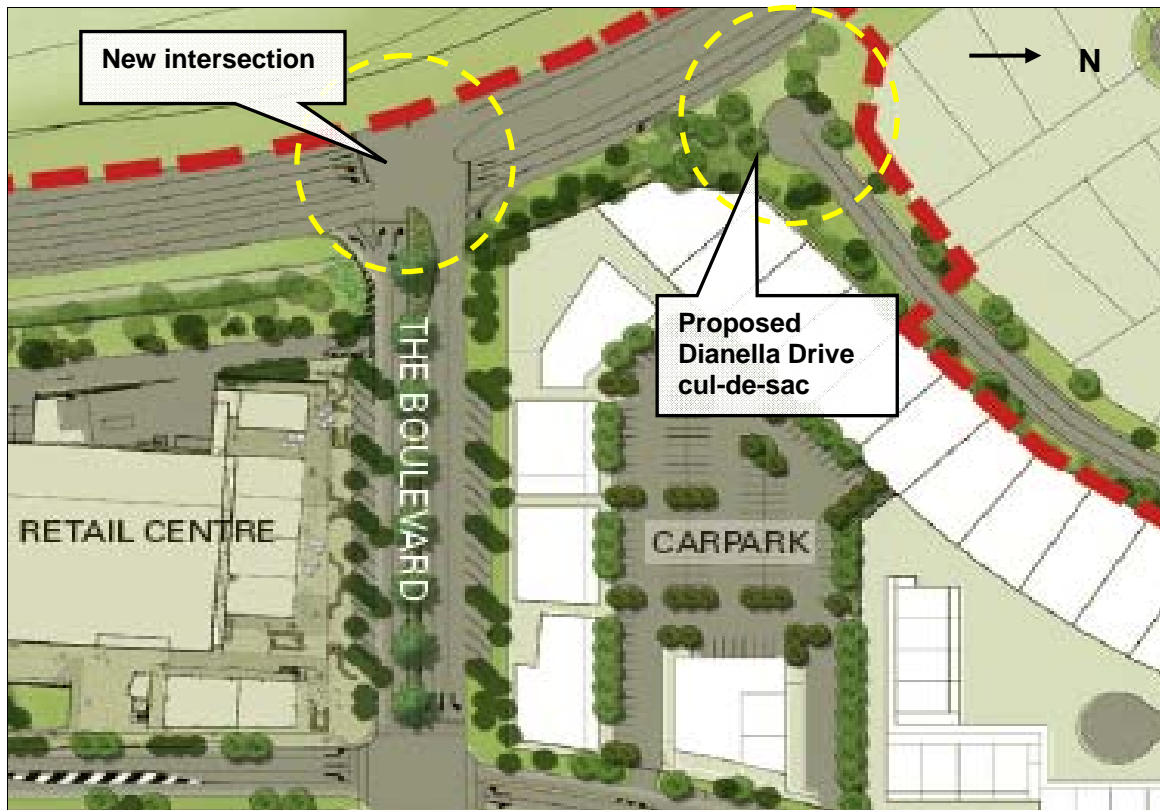


Figure 6: Closure of Dianella Drive and new intersection of The Boulevard and Tweed Coast Road (source: Preferred Project Report)

6.0 MODIFICATIONS TO CONDITIONS OF APPROVAL

The Department recommends that conditions of approval apply to the proposed modifications. These are included within **Appendix B** for modifications to conditions of the Concept Plan; and **Appendix C** for modifications to conditions of Stage 1 Project Approval.

7.0 PROPONENT'S COMMENTS ON CONDITIONS

The Proponent has not raised any concerns with the wording of the modified conditions.

8.0 CONCLUSION

The proposed modification will result in a more favourable development outcome for the site, and one which will more effectively deal with predicted stormwater drainage flows within the site. The proposed modifications do not alter the approved subdivision or land use arrangement of the town centre site.

It is considered that the proposal, as modified, achieves the same objectives as assessed under the original approval, only with a more efficient stormwater treatment and drainage regime. The modifications do not alter the overall nature of the approved project, nor does it introduce any detrimental environmental, social or economic impacts upon the site. The modification request is therefore recommended for approval.

RECOMMENDATION

It is recommended that the Acting Director, Regional Projects, as delegate for the Minister for Planning under delegation issued on 25 January 2010, approve under Section 75W if the Act the modifications to the Concept Plan and Stage 1 Project Approval as detailed in **Section 2** of this Report; and vary the conditions of approval as set out in **Appendix B** and **Appendix C**. A full version of the approval as modified (consolidated consent) is included at **Appendix H**.

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APPENDIX A

SECTION 75W REQUEST FOR MODIFICATION TO MAJOR PROJECT 06_0258

APPENDIX B

MODIFYING INSTRUMENT – CONCEPT PLAN

APPENDIX C

MODIFYING INSTRUMENT – STAGE 1 PROJECT APPLICATION

APPENDIX D

CORRESPONDENCE RECEIVED FROM COUNCIL – 9 JUNE 2010

APPENDIX E

MINUTES OF ORDINARY COUNCIL MEETING – TWEED SHIRE COUNCIL, 17 NOVEMBER 2009

APPENDIX F

LETTER FROM TWEED SHIRE COUNCIL, DATED 24 NOVEMBER 2009

APPENDIX G

MODIFIED PLANS

APPENDIX H

CONSOLIDATED INSTRUMENT – CONCEPT PLAN AND STAGE 1 PROJECT APPROVAL