



COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH-432 – DA22/0408.02
PROPOSAL	Section 4.55(2) modification to residential flat building (78 units) in 3 x 4 storey blocks and 1 x 2 storey block with a common basement (NRPP)
ADDRESS	Lot 46 DP 1264557; No. 6 Grand Parade CASUARINA
APPLICANT	Town Planning Alliance (NSW) Pty Ltd
OWNER	Azure Project 35 Pty Ltd
MOD LODGEMENT DATE	9 July 2025
ORIGINAL DA DETERMINATION DATE	19 March 2024
APPLICATION TYPE	Section 4.22(2) Modification Application
REGIONALLY SIGNIFICANT CRITERIA	The original application was determined pursuant to Section 2.19, Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: development that has a capital investment value of more than \$30 million. Given Council recommended refusal of the original application, the modification application is to be determined by the panel.
ESTIMATED DEVELOPMENT COST	\$64,454,864.00 (excluding GST)
CLAUSE 4.6 REQUESTS	N/A
LIST OF ALL RELEVANT PLANNING CONTROLS (S4.15(1)(A) OF EP&A ACT)	• <i>State Environmental Planning Policy (Planning Systems) 2021</i> • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> • <i>State Environmental Planning Policy (Housing) 2021</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> • <i>State Environmental Planning Policy (Sustainable Buildings) 2022 and State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i>

	• <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> • <i>Tweed Local Environmental Plan 2014 (TLEP 2014);</i> • <i>Tweed Development Control Plan 2008 (TDCP 2008).</i>
AGENCY REFERRALS	Essential Energy
TOTAL & UNIQUE SUBMISSIONS	Two submissions in total (One in support)
KEY ISSUES	Direct street access alignment to bedrooms Screening on Building D façade facing Casuarina Way Increased non-compliance with setback controls in TDCP Section B5 Size of planters on Structures non-compliant with ADG controls Timing of payment of S7.11 Developer Contributions Voids above basement wellness and fitness facilities
DOCUMENTS SUBMITTED FOR CONSIDERATION	Revised Modification Report Revised Architectural Plans – Parts 1-5 Revised Design Verification Statement Revised Environmental Noise Impact Assessment Revised Waste Management Plan Revised Traffic Engineering Report Revised Stormwater Management Plan BASIX Report Revised Landscape Concept Plan Revised Engineering Services Report Transformer Fire Risk Assessment and Addendum Wind Engineering Commentary Electrical Design Statement
PREVIOUS BRIEFINGS	NIL
RECOMMENDATION	Approval
SCHEDULED MEETING DATE	9 December 2025
PREPARED BY	Hayley Nilon – Development Assessment Planner
DATE OF REPORT	28 November 2025

EXECUTIVE SUMMARY

A modification application has been lodged pursuant to section 4.55(2) of the Environmental Planning and Assessment Act 1979 ('EP&A Act') and seeks consent for amendments to Development Consent DA22/0408 approved by the Northern Regional Planning Panel ('the Panel') on 19 March 2024. This consent approved the construction of a residential flat building comprising 78 residential apartments comprising of 3 x 4 storey buildings and 1 x 2 storey building with a common basement at 6 Grand parade Casuarina. A concept approval remains relevant to the site, which allows for permissibility and a height limit of four (4) storeys.



The original consent included a deferred commencement requirement in relation to Essential Energy. Council acknowledged the applicant had satisfied the deferred commencement condition on 14 May 2024. A prior s4.55(1) modification application was assessed by Council in relation to correcting condition errors. The s4.55(1) modification application was approved on 31 May 2024.

This application is referred to the Panel as the development is 'regionally significant development', pursuant to Section 2.19(1) and Clause 2 of Schedule 6 *State Environmental Planning Policy (Planning Systems) 2021* as it comprises development with an estimated development cost over \$30 million. The proposed modification is referred to the Panel for determination as Council recommended refusal of the original application.

This proposed modification seeks several design changes as well as modifications to a number of conditions which are detailed later in this report. Most notably, the proposed modifications seek the following key changes:

- Increase unit numbers from the approved 78 units to 96 units;
- Relocate deep soil zones to front Casuarina Way to allow for a simplified basement layout;
- Relocate communal wellness facilities to the basement (previously at Level 01); and
- Changes to the façade of Building D.

The proposed modification is considered to satisfy the substantially the same development test required by s4.55 (2)(a) of the EP&A Act.

The application maintains the relocation of the electrical substation and the modification application was referred to Essential Energy in accordance with Clause 2.48 of SEPP (Transport and Infrastructure) 2021 due to changes to the building footprint and screens. It is considered that safety concerns raised can be managed through imposition of additional conditions.

The application was placed on public exhibition from 30 July 2025 to 13 August 2025, with two submissions received, including one in support. The objecting submission raised issues relating to density, visual and environmental impact, traffic and safety and planning inconsistencies. These issues are considered further in this report.

The key issues associated with the proposal identified through the assessment of the modification application and which were raised in a request for further information issued to the applicant included:

1. Acoustic Impacts – A revised Noise Impact Assessment was requested which considered the increased vehicle movements in the basement from the additional units, and potential noise impacts from the communal wellness facilities being relocated to the basement.
2. BASIX Certificate – A revised BASIX Certificate was requested which relates to the proposed modified development.
3. Relocation of sewer infrastructure – The applicant proposed the sewer connection infrastructure be relocated further into the adjoining drainage reserve. Council as landowner is not supportive of such a change and has not provided owners consent.
4. Landscaping and Street Trees – The submitted Landscape Concept Plan identifies all existing street trees to be removed and replaced by another species (*Ficus obliqua*). Council is not supportive of mass street tree removal and does not support the use of *Ficus obliqua* as a street tree. A revised Site Survey Plan was requested which identifies street trees that must be removed to accommodate the proposed development. The submitted Landscape Concept Plan was reviewed however was not considered to satisfy the requirements of Condition 17 to have this condition removed, as requested by the applicant.
5. Developer contributions – Council does not support the applicants request to delay payment of developer contributions to 'Prior to issue of an Occupation Certificate' stage.
6. Prior to issue of Construction Certificate Conditions – Council is not supportive of applicants proposed changes to these conditions as they all should be satisfied prior to any works commencing on the site. Council has accepted that Conditions 32 – Lighting Design Plan and 36A – Clerestory Windows can be satisfied prior to construction occurring for the buildings. Condition 24 – s68 approvals is also recommended to be updated to remove the requirement for a s68 approval for erosion and sediment control works in line with Council's recent policy change. Further Condition 25 is recommended to be updated to correct a reference to the Development Design Specification D7 – Stormwater Quality which is no longer relevant.
7. Planning considerations – The proposed modification included additional departures from the controls in SEPP Housing, Apartment Design Guide ('ADG') and Tweed DCP Section A1 which must to be addressed:
 - Revised basement layout required to address accessibility, storage, pedestrian access, waste room sizes and bulk waste room;
 - Modified façade to Building D provides insufficient street activation;
 - Revised plans to address non-compliance in respect of:
 - minimum area and dimensions for master bedrooms;
 - minimum width of living rooms or combined living/dining rooms;
 - provision of laundries;
 - private open space for ground floor units;
 - minimum required storage for units;
 - direct street access alignment to private open space; and
 - planters on structures to be of sufficient size to accommodate proposed plantings.

The applicant provided revised plans and additional information which responds to the items listed above. The outstanding key issues are:

1. Timing of payment of S7.11 Developer Contributions
2. The application continues to seek variations with respect to:
 - screening to the façade of Building D facing Casuarina Way;
 - direct street access alignment to bedrooms; and
 - insufficient information to ensure planters on structures are of sufficient size to accommodate proposed plantings.

It is considered that these issues are either not sufficiently significant to warrant recommending refusal of the application, or can be managed through the imposition of conditions.

Following consideration of the matters for consideration under Section 4.55(2) and where relevant, Section 4.15(1) of the EP&A Act, the proposed modifications are considered to be worthy of support and the application is recommended for approval subject to amendments to conditions and the insertion of new conditions as detailed in **Attachment A**.

1. THE SITE AND LOCALITY

1.1 The Site

The site is a recently created vacant lot in the relatively new Casuarina Town Centre precinct. The site is 7,354m² and is approximately 120m long (N-S axis) and 65m wide (E-W axis). The site has road frontages on three sides being Casuarina Way (west), Grand Parade (north) and Habitat Drive (east). A drainage reserve abuts the site to the south.

The site has been cleared of vegetation by recent subdivision works and is relatively flat. The site has a slight fall of 2m across the site with an elevation of approximately 8.5m AHD at the northern end and 6.5m AHD at the southern end of the site.

The Casuarina shopping centre is located immediately to the west of the site on Casuarina Way. The site is located approximately 260m from the foreshore area of Casuarina Beach.

The site is mapped as possibly containing class 4 acid sulfate soils. The site is not mapped as being flood affected or as being bushfire prone.

The site is burdened by an easement for an Essential Energy electrical substation at the south-eastern corner. As part of the previous approval, this will be relocated to the south-western corner. A bus stop is located adjacent to the sites frontage on Casuarina Way.

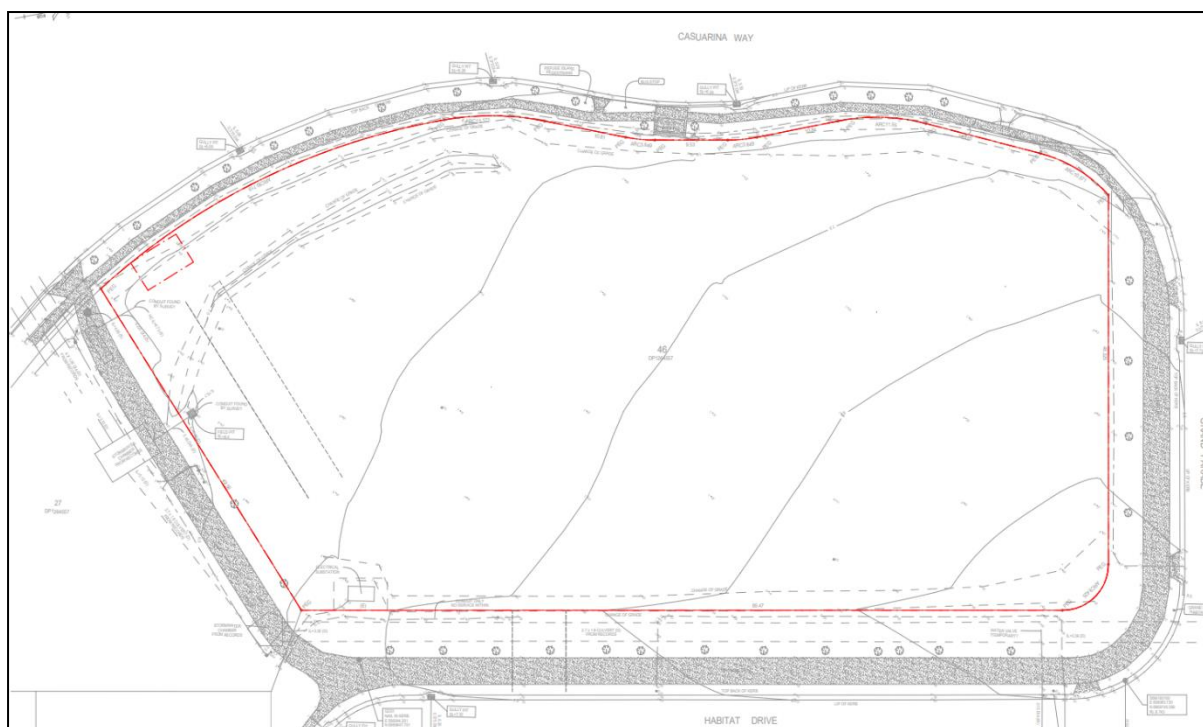


Figure 1 Extract from Existing Site Survey Plan indicating existing location of Electrical substation easement and proposed location outlined in red.



Figure 2 View to the southeast across the site from Grand Parade



Figure 3 View northeast across the site from Casuarina Way



Figure 4 View north across the site from the drainage reserve

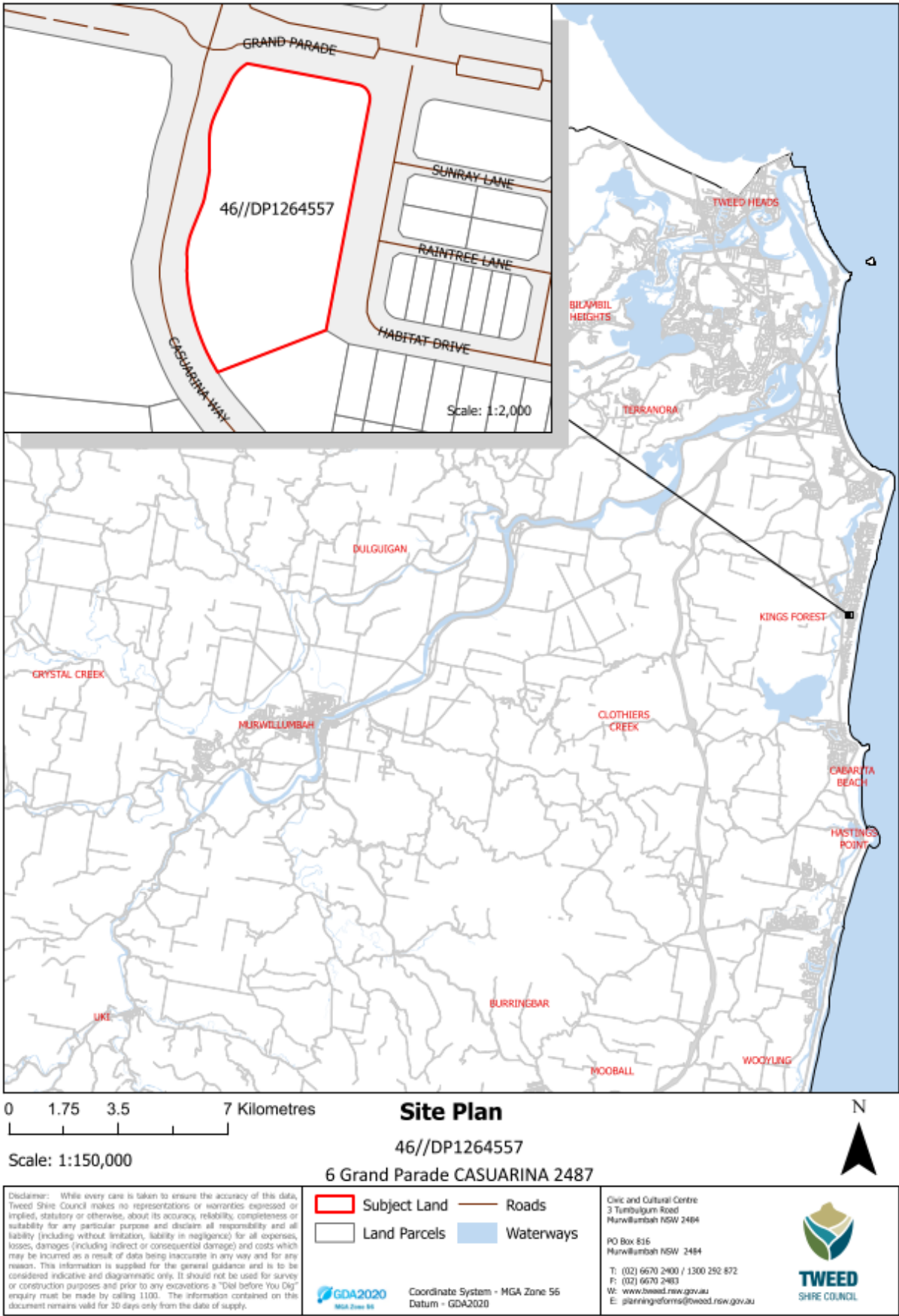
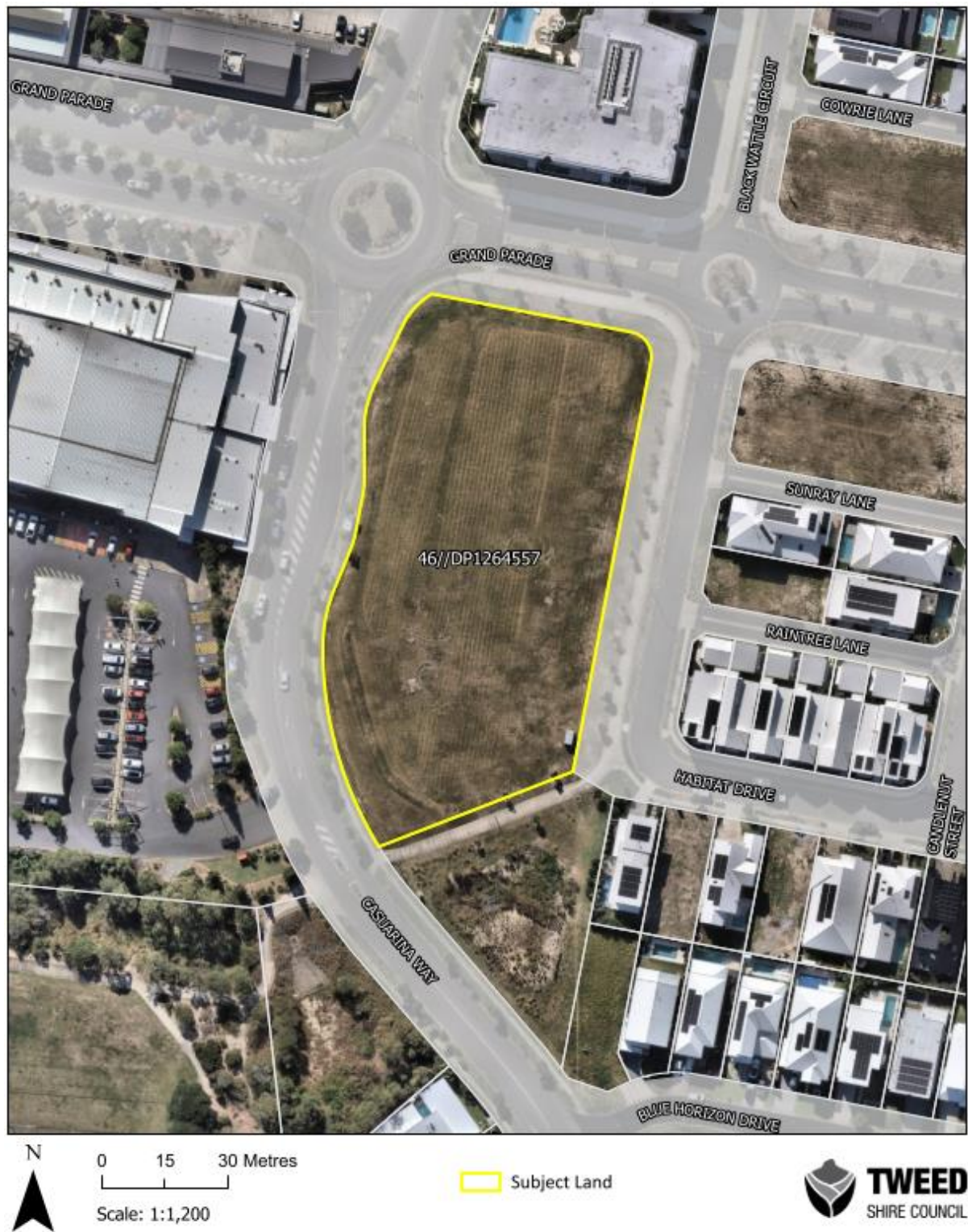


Figure 5 Context Plan and Site Plan of subject site (Source: Tweed Shire Council GIS Mapping)



GDA2020 MGA Zone 56 Coordinate System - MGA Zone 56 Datum - GDA2020	Current Imagery (2025) 46//DP1264557 6 Grand Parade CASUARINA 2487	© 2025 Imagery- Tweed Shire Council © Cadastre - Tweed Shire Council Boundaries shown should be considered approximate only.
Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representations or warranties expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaim all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "Dig before You Dig" enquiry must be made by calling 1300. The information contained on this document remains valid for 30 days only from the date of supply.		

Figure 6 Site Plan and current imagery (2025) of subject site (Source: Tweed Shire Council GIS Mapping)

1.2 The Locality

The site is within a recently completed mixed use and residential subdivision with lots being registered 26 February 2021. The site is within an area subject to concept approval MP06-0258 (Mod 10) for mixed use development, low and medium residential development.

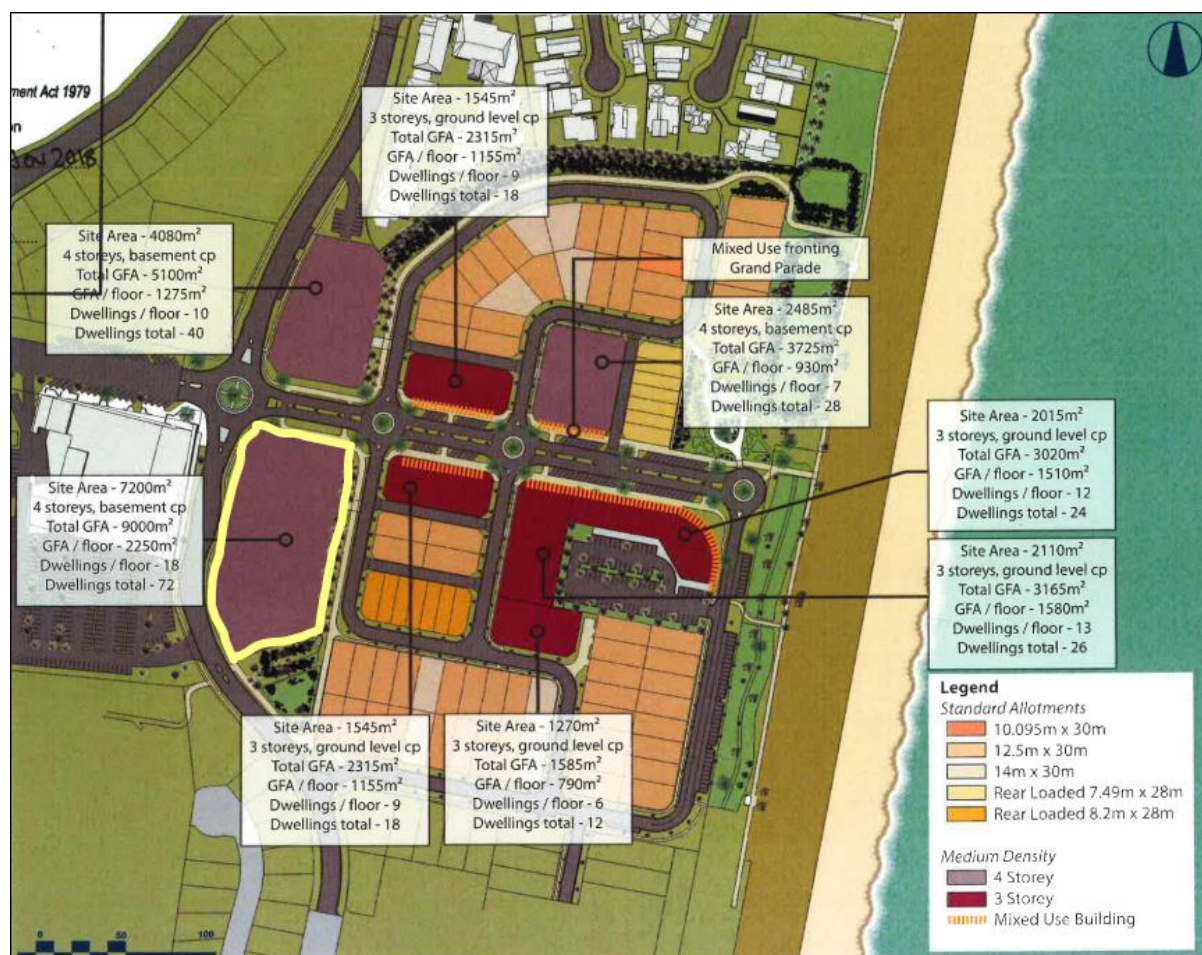


Figure 7 Extract from concept approval MP06-0258 Mod 10 (subject site highlighted)

Surrounding sites are currently being developed. A number of single dwelling lots (east) have completed construction.

Construction has also recently been completed at 1 Black Wattle Circuit (north) for a 4 storey residential flat building (47 units) with basement parking (DA21/0637), known as Pama (Figure 8).

Commercial development comprising of a shopping centre, restaurants, retail premises, offices, gym and a childcare centre are located immediately to the west and northwest of the site, as shown in Figures 8 and 9.

Development Consent has been issued for a three storey shop top housing development at No. 9 Grand Parade, however construction has not yet commenced (DA22/0108)(Figure 12).

Three lots within the locality (including the subject site) have been approved for four storey development and five lots have been approved for three storey development. The remaining

lots are standard low density lots and small lot housing lots with sizes ranging from 227m² to 524m².

The site is 165m from Tweed Coast Road which is a primary access route for the Tweed coast villages. Bus services are available along Casuarina Way. There are four primary schools and one high school within a 5km radius of the site.



Figure 8: Commercial development to the west of the site along Casuarina Way – Casuarina shopping centre



Figure 9: Commercial development to the north-west of the site along Casuarina Way – The Commons



Figure 10: Residential development to the north of the site – approved PAMA development at 1 Black Wattle Circuit



Figure 11: Residential development to the east and south of the site



Figure 12: Approved Development DA22/0108 - No 9 Grand Parade

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposed Modification

The proposed Section 4.55(2) modification seeks to amend DA22/0408, as amended by Development Consent DA22/0408.01. This consent was subject to a deferred commencement requirement in relation to Essential Energy being satisfied that the development is able to comply with any and all requirements as specific by Essential Energy. Council acknowledged the applicant had satisfied the deferred commencement condition on 14 May 2024.

The applicant is seeking to modify Development Consent DA22/0408.01 to capture the following key design improvements as outlined in the revised Modification Report dated 11 November 2025 as follows:

- Improve dwelling diversity to include a mix of one, two, three and four bedroom units, as well as three-bedroom terraces;
- Increase unit numbers from the approved 78 units to 96 units;
- A decrease in gross floor area as described by the applicant. However, assessment of the approved and proposed plans indicates the modification results in an increase in gross floor area by 544.41m²;
- No change to the number or placement of buildings on the site, with the layout continuing to provide four spaced buildings wrapping around the edges of the site and centred upon the communal open space courtyard. It is noted that the submitted plans indicate the building footprints are changing;
- Adjustment to floor levels and floor to ceiling heights to cater for complex services coordination;
- Adjustment to the building separation distances between all buildings;
- No change to setbacks to Grand Parade, Habitat Drive or drainage reserve and no change to minimum setback from Casuarina Way is noted by the applicant. However, assessment of the approved plans and proposed plans indicates that balconies maintain the same setback whilst the setback to the primary building line has decreased to Grand Parade, Habitat Drive and the drainage reserve.

- Setbacks and deep soil zones are increased along Casuarina Way;
- Change in the provision of compliant (6m x 6m) deep soil zones;
- Increase to communal open space areas;
- Basement design has been simplified, and deep soil zones have been relocated;
- Minor reconfiguration of basement layout including car parking, storage cages, bike storage, waste rooms, egress stairs and building services providing more efficient layout;
- Reduce in the number of car parking spaces from 174 spaces to 173 spaces and increase the number of bicycle parking spaces from 88 spaces to 108 spaces. Resident bicycle storage is consolidated in a single location. Visitor bike parking areas are relocated;
- Relocate communal wellness facilities to the basement (previously at Level 01) including fitness studio, yoga studio, sauna, steam room, hot and cold plunge pools and amenities with extensive skylight penetrations providing natural light;
- Removal of four storey atrium in Building C and improvements to internal planning and apartment layouts;
- Architectural expression and appearance of Buildings A, B and C remain consistent with the approval with slight design refinements to Building D to incorporate more contemporary coastal architectural elements;
- Crossover on Habitat Drive shifted 1.44m to the south;
- Booster assembly relocated from the northern side of the driveway to the southern side of the driveway on Habitat Drive;
- Northern communal pedestrian access from Habitat Drive relocated to between Buildings A and B (previously forward of Building B);
- Building A
 - Building footprint reduced along southern side and south west corner, and increased at the north east corner;
 - Reconfiguration of the lobby including introduction of managers office and toilet;
 - Reconfiguration to internal corridor, lift core, egress stairs and services;
 - Ground level terraces increased towards Habitat Drive and at the northern-eastern corner providing improved private open space outcomes; and
 - Apartment layouts reconfigured for improved apartment diversity.
- Building B
 - Building footprint increased to the north, south and west;
 - Reconfiguration to internal corridor, lift core, egress stairs and services;
 - Communal wellness facility relocated to the basement and replaced with 3 units (2 x 2 bed and 1 x 1 bed) with direct pedestrian access to Habitat Drive;
 - Mailboxes relocated to the southern side of the driveway (previously northern side); and
 - Apartment layouts reconfigured for improved apartment diversity.
- Building C
 - Building footprint reduced along northern side, and western side;
 - Ground level terraces increased towards Habitat Drive providing improved private open space outcomes;
 - Removal of internal atrium resulting in improved internal planning;
 - Reconfiguration to internal corridor, lift core, egress stairs and services; and
 - Apartment layouts reconfigured for improved apartment diversity.
- Building D
 - Building footprint increased to north and south and decreased at Level 01 to Casuarina Way, however blade walls maintained at same alignment as approved;
 - Apartment layouts reconfigured for improved dwelling diversity and increased from 5 townhouses to 6 townhouses;

- Realignment of direct pedestrian access to the street with additional access provided for sixth townhouse;
- Introduction of porched seating area with permeable pavers adjoining the front entry doors to Casuarina Way; and
- Removal of previous fencing forward of the townhouses with landscaping to be used to define the interface between the townhouse and street edge.

The applicant is seeking to amend the following conditions from Development Consent DA22/0408.01 as outlined in the revised Modification Report:

- **Condition 1A:** Update the table of approved plans to include the version and date of the architectural plans submitted as part of the modification application.
- **Condition 3:** Update reference to the amended Wind Engineering Commentary submitted as part of the modification application.
- **Condition 13:** Update car parking and bicycle parking numbers to align with the plans submitted as part of the modification application.
- **Condition 15A:** Adjustment to the section 7.11 contributions to reflect the revised apartment mix as submitted with the modification application.
- **Condition 17:** Amend the condition to update the reference to the version and date of the amended Landscape Concept Plan submitted with the modification application.
- **Condition 18, 31, 49, 50, 101 and 109:** Update the references to the amended Environmental Noise Assessment Report submitted with the modification application.
- **Condition 36A:** Update the reference to the ventilation diagram in the architectural plans and amended Wind Engineering Commentary submitted as part of the modification application.
- **Condition 112:** Update the condition to reference the amended Operational Waste Management Plan submitted as part of the modification application.

In addition to the above, the applicant also proposed minor changes to the timing of all 'Prior to Construction Certificate' conditions which Council are not supportive of. Following a request for further information which stated Council's position on the matter, the applicant and Council have agreed to change the wording of the following 'Prior to Construction Certificate' conditions:

- **Condition 32:** Lighting Design – Amend condition 32 relating to lighting design plan to prior to issue of a construction certificate "other than related to basement excavation"
- **Condition 36A:** Amended Plans – Amend condition 36A timing to prior to the issue of a construction certificate "for buildings"

Council also recommends changes to **Condition 24** to remove the requirement for a s68 approval for erosion and sediment control works (Council practice shift) and to **Condition 25** to correct a reference to the Development Design Specification D7 – Stormwater Quality which is no longer relevant.

The applicant further proposed that **Condition 15A** relating to the section 7.11 contributions be repositioned under the heading 'Prior to Occupation Certificate'. The applicant has stated that *"the principal certifying authority would not be able to issue an Occupation Certificate without evidence that the section 7.11 contributions have been paid which provides Council with certainty of payment while enabling the payment to be deferred to optimise cash flow during the critical construction phase"*, however such a change is not consistent with Council Policy. Council considers that the applicant is able to amend their Development Consent to stage the development if they would like to delay payment of their developer contributions.

The key development data is provided in **Table 1**.

Table 1: Key Development Data

Control	Previously approved	Proposal	Variation	Complies
No. of Units	78 Units	96 Units	Increase of 18 Units	-
Composition of Units	1 Bed x 0 2 Bed x 54 3 Bed x 20 4 Bed x 4	1 Bed x 22 2 Bed x 53 3 Bed x 20 4 Bed x 1	1 Bed + 22 2 Bed - 1 3 Bed nil 4 Bed - 3	-
No. of Buildings	4 Buildings (A, B, C & D)	4 Buildings (A, B, C & D)	NIL	-
No. of Units per Building	Building A – 34 Units Building B – 8 Units Building C – 31 Units Building D – 5 Units	Building A – 35 Units Building B – 24 Units Building C – 31 Units Building D – 6 Units	Building A + 1 Building B + 16 Building C nil Building D + 1	-
GFA	11,409.9m ² Building A – 4379.60m ² Building B – 1876.92m ² Building C – 4166.82m ² Building D – 932.52m ² Basement 4 additional parking spaces – 54.04m ²	11,954.31m ² Building A – 4191.31m ² Building B – 2422.87m ² Building C – 3903.8m ² Building D – 1075.6m ² Basement COS – 294.18m ² 5 additional parking spaces – 66.55m ²	Increase of 544.41m ² GFA Building A – 188.29m ² Building B + 545.95m ² Building C – 263.02m ² Building D + 143.08m ² Basement COS + 294.18m ² 5 additional parking spaces + 12.51m ²	-
Total FSR Max 2:1 (TLEP 2014)	1.55:1	1.626:1	+0.076	Yes
Clause 4.6 Requests	No	No	Nil	-
Max Height • 4 Storeys per concept approval • 13.6m per TLEP 2014	Max 4 storeys	Max 4 storeys	Maintains 4 storeys.	Yes
Deep Soil Zone • Design criteria:	537m ² or 7.3% of site with a	518m ² or 7.04% of site	Decrease by 19m ²	Yes

○ 6m min. dimension ○ 7% of site area (or 514.78m²) • Design guidance: ○ minimum 15% of the site where greater than 1,500m² (or 1,103.1m²) (ADG)	minimum dimension of 6m	with a minimum dimension of 6m		
Car Parking spaces • 1 per each 1 bed unit • 1.5 per each 2 bed unit • 2 per each 3 or more bed units • 1 space per 4 units for visitors (TDCP A2)	169.5 spaces required: • 129 Resident • 19.5 Visitor 174 spaces provided: • 154 Resident • 20 Visitor	167.5 spaces required: • 143.5 Resident • 24 Visitor 173 spaces provided: • 149 Resident • 24 Visitor	Overall decrease by 1 car space	Yes
Bicycle Parking spaces • Residents – 1 per unit • Visitors – 1 per 8 units (TDCP A2)	87.75 spaces required: • 78 Resident • 9.75 Visitor 88 spaces provided: • 78 Resident • 10 Visitor	108 spaces required: • 96 Resident • 12 Visitor 108 spaces provided: • 96 Resident • 12 Visitor	Overall increase by 20 bicycle parking spaces	Yes
Setbacks • Casuarina Way • Grand Parade	Minimum 3.1m to corner of wall Minimum 1.2m to balcony edge Minimum 0.9m to planter edge Minimum 4.5m to wall Minimum 3.0m to balcony edge Minimum 2.8m to planter edge	Minimum 3.1m to corner of wall Minimum 1.2m to balcony edge Minimum 0.9m to planter edge Minimum 3.1m to wall with setback of 4.2m predominantly achieved Minimum 3.0m to balcony edge	NIL Buildings A, B and C include balconies which have not changed. The setback to the primary building line has decreased whilst the outer edge of	NO – but is considered acceptable on balance

- Habitat Drive - Drainage reserve	Minimum 4.5m to wall Minimum 3m to ground floor terrace edge Minimum 3.0m to balcony edge Minimum 2.8m to planter edge Minimum 3.0m to wall Minimum 1.5m to balcony edge Minimum 1.3m to planter edge	Minimum 2.8m to planter edge Minimum 4.2m to wall Minimum 1.5m to ground floor terrace edge Minimum 3.0m to balcony edge Minimum 2.8m to planter edge Minimum 2.7m to wall Minimum 1.5m to balcony edge Minimum 1.3m to planter edge	balconies has not.	
Building separation 6m between hab & blank 9m between hab & non-hab 12m between hab & hab - Building A to Building B - Building B to Building C - Building C to Building D - Building A to Building D - Building B to Building D (across COS)	Level 01 - 11.3m Level 02-03 - 7.7m Level 04 - 7.7m Level 01 - 6.5m Level 02-03 - 6.5m Level 04 - 6.5m Level 01 - 7.4m Level 02 - 7.4m Level 01 - 7.4m Level 02 - 7.4m Level 01 - 27.6m Level 02 - 22.8m	Level 01-04 - 7.53m Stairs 6.7m (Levels 01-04) Level 01 - 7.53m Level 02-04 - 7.53m Stairs 6.7m (Levels 01-04) Level 01 - 7.2m Level 02 - 7.2m Level 01 - 7.2m Level 02 - 7.2m Level 01 - 28.2m	Level 01 - 3.77m Level 02-04 - 0.17m Level 01-4 + 1.03m Level 01-02 - 0.2m Level 01-02 - 0.2m Level 01 + 0.6m	NO – but is considered acceptable on balance

(ADG)		Level 02 – 21m	Level 02 – 1.8m	
Cross ventilation 60% of units (ADG)	41 of 78 Units or 52.6%	64 of 96 Units or 66.7%	-	Yes
Private Open Space (POS) Ground floor dwelling: • Min area 15m² • Min depth 3m First Floor + dwelling: • 1 Bed ○ Min area 8m² ○ Min depth 2m • 2 Bed ○ Min area 10m² ○ Min depth 2m • 3+ Bed ○ Min area 12m² ○ Min depth 2.4m (ADG)	Complies	A number of ground floor units fail to achieve the required min area, however on balance and considering the original approval, was found to be acceptable. Complies	-	NO – but is considered acceptable on balance
Communal Open Space (COS) • Minimum of 25% of site (ADG)	1947m ² or 26.2% Internal community facilities – 230m ²	2031m ² or 27.6% Internal community facilities – 293.5m ²	Increase by 84m ²	Yes

The series of images below provide a comparative study of the proposed modified elevations for the development vs approved elevations.

North Elevation



Figure 13 Proposed Street view Grand Parade



Figure 14 Approved Street view Grand Parade

South Elevation



Figure 15 Proposed Street view Drainage Reserve



Figure 16 Approved Street view Drainage Reserve

East Elevation



Figure 17 Proposed Street view Habitat Drive



Figure 18 Approved Street view Habitat Drive

West Elevation



Figure 19 Proposed Street view Casuarina Way



Figure 20 Approved Street view Casuarina Way

Basement layout

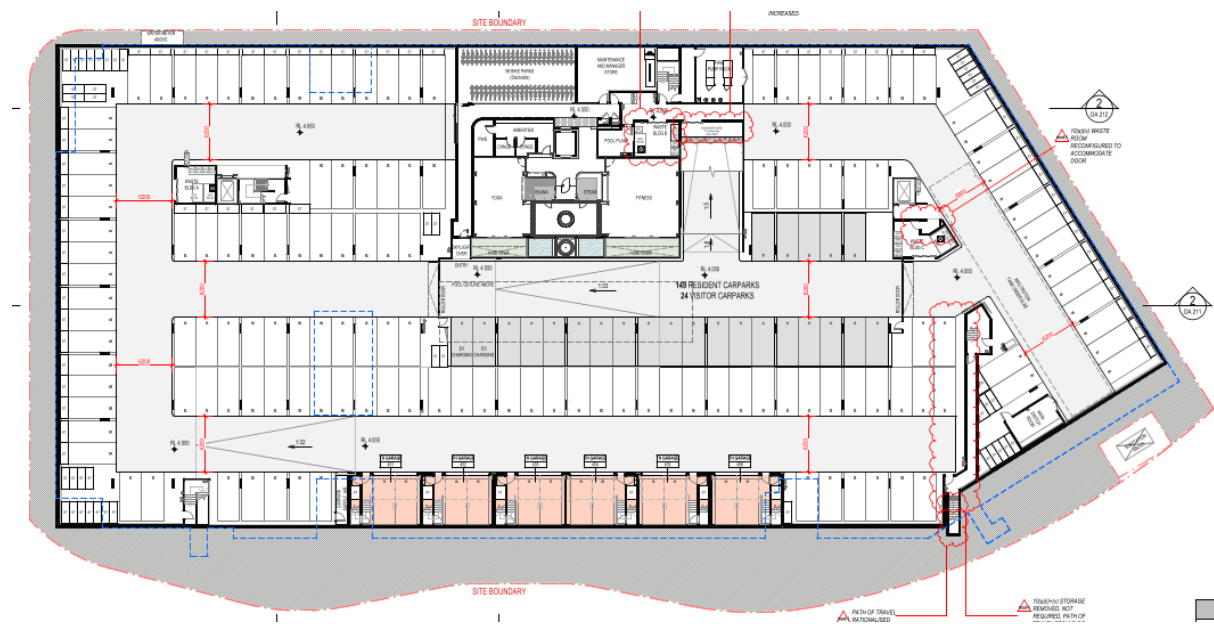


Figure 21 Proposed Basement floor plan



Figure 22 Approved Basement floor plan

Ground Floor layout



Figure 23 Proposed Ground floor plan

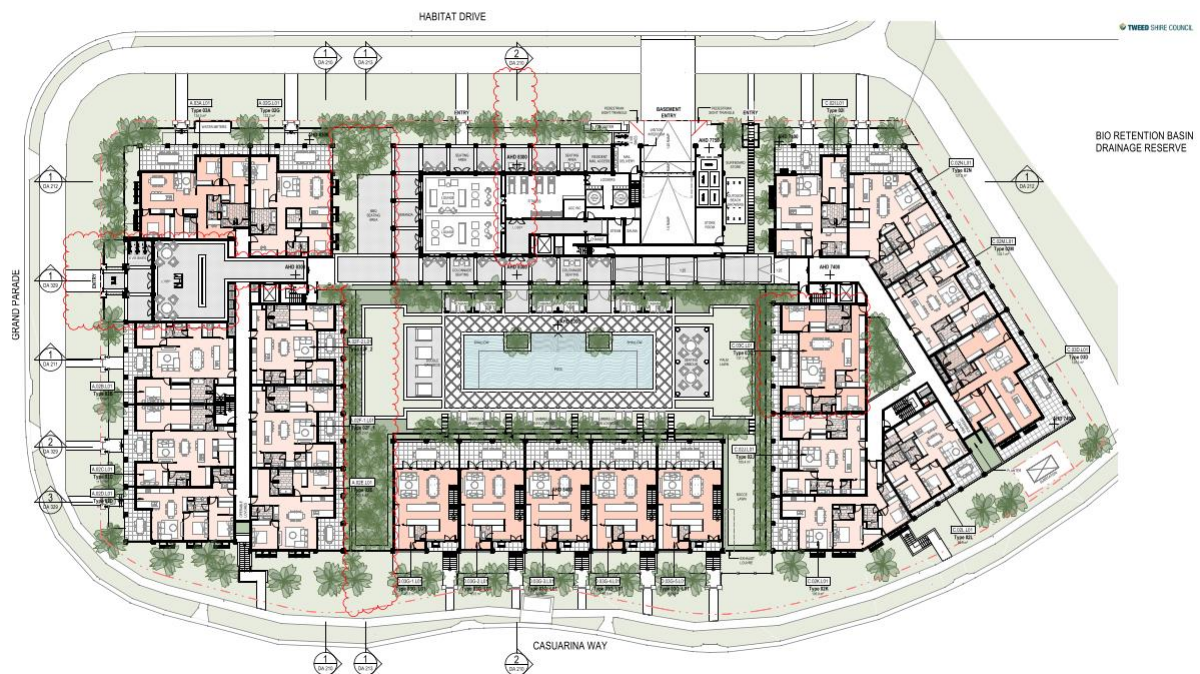


Figure 24 Approved Ground floor plan

2.2 Background

DA22/0408

Development Application DA22/0408 was lodged on 7 July 2022 seeking consent for the construction of a residential apartment development comprising of 3 x 4 storey buildings and 1 x 3 storey building consisting of 91 apartments with a common basement parking level for 198 car spaces. The application was advertised for a period of 14 days and received a total of nine submissions expressing concerns with the development.

The proposal was amended following a request for additional information issued by Council in March 2023. The amended proposal reduced the yield of the development to comprise 79 apartments and 175 car spaces.

The DA was originally reported to the Panel on the 23 October 2023. The assessment report for the proposal noted the proposal was inconsistent with various provisions of the planning controls including the following:

- *“Design quality principles of SEPP 65 including Principle 1 (Context and neighbourhood character), Principle 2 (built form and scale), Principle 4 (sustainability), Principle 5 (landscape), Principle 6 (amenity) and Principle 9 (aesthetics);*
- *Provisions of the ADG including*
 - ***Part 3E: Deep Soil Zones (DSZ)*** - *The proposal involves a DSZ comprising 328m² with a minimum dimension of 6m, which represents 4.46% of the site, a shortfall of 186.78m² of DSZ on the site in accordance with the requirements of the design criteria and a 775.1m² shortfall in the Design Guidance (sites >1,500sqm).*
 - ***Part 3F: Visual Privacy*** – *The required building separation is only achieved through blank walls and external fixed screening which compromises access to light, air and outlook from habitable rooms and private open space, reducing the amenity of the apartments. The communal open space and access paths are not adequately separated from private open space and habitable room windows.*
 - ***Part 3G: Pedestrian access and entries*** – *The access and entries to Building D are located above street level, resulting in stairs and retaining walls to the street.*
 - ***Part 4B: Natural Ventilation*** – *The proposal does not satisfy the design criteria in that only 51.8% of the proposed apartments are naturally cross ventilated, when a minimum is 60% is required.*
 - ***Part 4D: Apartment Layout*** - *The proposal involves various habitable rooms without windows, apartments with a window to a void area and apartments with room depths exceeding the maximum room depth of 8 metres.*
 - ***Part 4F: Common Circulation Space*** – *The proposal involves a number of living and bedroom windows which open directly onto common circulation spaces, including communal open spaces areas and void/circulation areas. - Part 4H: Acoustic Privacy* – *There are a number of proposed apartments which are proposed directly adjoining the communal open space and bedrooms directly adjoining the lift core.*

- **Part 4M: Facades** - *The proposed facades are unsatisfactory as the faux heritage stylistic appearance accentuates the bulk and scale and is inconsistent with existing development. The facades also lack a defined base, middle and top and changes in materials to modify the prominence of elements*
- **Part 4N: Roof Design** - *The proposed roof design adds significant bulk and scale to the development and is inconsistent with the prevailing character of the area which generally comprises sloping, lightweight metal roofs, particularly the roof of Building D which is of an excessive scale and encroaches into the front setback.*
- *Various controls of the TDCP 2008 in relation to building design, deep soil and impermeable area, streetscape and a lack of a bulk waste area and bicycle parking.”*

Consequently, the application was recommended for refusal.

At the meeting of 23 October 2023, the Panel agreed to defer the determination of the development application to allow for the provision and assessment of additional information and design refinement to address key issues identified in the assessment report. The Panel noted that the key issues warranting further attention and information were façade design, treatment of blank walls, deep soil zones, and natural light and ventilation to all habitable areas. The Record of Deferral also noted that a number of identified issues may be addressed by conditions. These included visual and acoustic privacy, Essential Energy requirements, bicycle parking, bulky waste management, EV charging and street planting.

The applicant submitted revised plans and additional information which satisfied the requests made by the Record of Deferral relating to the treatment of blank walls, natural light and ventilation, and deep soil zones. However, Council considered that the amendments did not satisfy the façade amendments request and again recommended the application for refusal. The following table summarises the changes which occurred to the development.

	Previous plans Dated 14/08/2023	Current plan Dated 15/12/2023
Yield	79 apartments	78 apartments
Gross floor area	10,851.1m ²	10,918.6m ²
FSR	1.48:1	1.48:1
Apartment Mix	2 beds – 55 (69.6%) 3 beds – 20 (25.3%) 4 beds – 4 (5.1%)	2 beds – 54 (69.2%) 3 beds – 20 (25.6%) 4 beds – 4 (5.1%)
Communal open space	1,947m² (26.2%) external comprising pool, seating areas, bocce lawn BBQ area, surfboard store and outdoor showers 210m² internal areas comprising lounge areas, fitness room with sauna, spa and amenities.	1,947m² (26.2%) no change to area however pathways have been removed in favour of additional lawn area and landscaping. 230m² internal area comprising lounge areas, fitness room with sauna, spa and amenities.
Deep soil zones (minimum dimension 6m)	4.46% (328m ²)	7.3% (537m ²)
Impermeable site area	84.63%	82.04%
Parking spaces	175	174
Bicycle spaces	44	88

The Panel ultimately decided to approve the development on 19 March 2024.

DA22/0408.01

A Section 4.55(1) modification application was lodged on 16 May 2024 to correct some errors on conditions on the original consent. The specific conditions affected were:

- Condition 1 – Approved Plans - An error was identified on the labels of two of the plans approved by condition 1. This related to a labelling error with the plans listed by the condition and no changes to the approved plans was proposed.
- Condition 15 – s7.11 Developer Contributions - The Excel contribution calculation sheet contained an error in the unit charge amount for TRCP Local Contribution Area – Casuarina when the contributions for the consent were generated. The Contributions Calculations Spreadsheet notes that this error was corrected on 9 April 2024.
- Conditions 24 and 27 – s68 application requirements - The same condition is repeated at condition 24 and 27. As such condition 27 is to be deleted.
- Condition 36 – amended plans for clerestory windows - Condition 36 erroneously referenced the incorrect date of the wind engineering advice and this was corrected.

DA22/0408.02

The proposed Section 4.55(2) modification was lodged on 9 July 2025. The applicant now seeks to modify Development Consent DA22/0408.01 to change unit diversity, amend a number of conditions (Conditions 1A, 3, 13, 15A, 17, 18, 31, 36A, 49, 50, 101, 109 and 112) and adjust the conditions to facilitate the staged issuing of part Construction Certificates for the project. Specific details are contained in Section 2 of this report.

The applicant amended the application plans on 27 August 2025. The assessment of the proposed modification and subsequent issuing of a request for further information is based on the amended plans.

A request for further information was issued by Council on 14 October 2025. **Table 2** outlines the RFI matters raised and the response received from the applicant.

Table 2: RFI matters

Matter	Information required	Information provided	Resolved
Noise Impact Assessment	A revised Noise Impact Assessment Report considering: • the increase in unit numbers and therefore vehicle movements; and • relocation of the communal wellness facility to the basement.	The acoustic report has been amended to confirm that the increase in number of units has been considered as part of the assessment. The acoustic report was also updated to consider potential internal noise impacts from the use of the	Yes

		wellness centre. The consultant has provided revised calculations and recommended acoustic isolation for any use involving weights and cardio to prevent impacts to residents above the facility.	
BASIX Certificate	A revised BASIX Certificate which relates to the proposed development.	Revised BASIX Certificate provided which relates to the proposed development.	Yes
Relocation of sewer connection infrastructure	Council as landowner of Lot 27 DP 1264557; 12 Habitat Drive does not support further encroachment of sewer infrastructure into this property.	The Sewer Connection Plan (Dwg No. C60) by ADG Consulting has been updated to show the sewer connection works in 12 Habitat Drive match those originally approved.	Yes
Landscaping and Street Trees	Council does not support the mass removal of existing street trees, nor the use of Ficus obliqua (small leaved fig) as an acceptable species for a street tree. Submission of an updated Site Survey Plan indicating the street trees which are required to be removed to facilitate development. Submitted Landscape Concept Plan prepared by LAUDink is not considered to satisfy Condition 17.	Condition 33 of the current approval requires the submission of a Streetscape Landscaping Plan to Council for approval as part of a s138 application. As such, it is proposed that the detail relating to street tree removal and replacement be provided with a future s138 application consistent with the current approval. Condition 17 of the current approval requires the submission of a detailed Plan of Landscaping for approval by Council.	Yes – Condition 33 and 17 maintained.

		As such, it is proposed that this detail be provided as part of a detailed Plan of Landscaping per Condition 17 of the current approval.	
Payment of s7.11 Developer Contributions	Council does not support the relocation of Condition 15A to allow payment of s7.11 contributions prior to issue of an Occupation Certificate.	Applicant still requests payment of s7.11 contributions 'Prior to issue of an Occupation Certificate'.	No Further discussed in the key issues section of this report.
Prior to issue of Construction Certificate Conditions	Council is not supportive of changes to any of these conditions with the exception of: - Condition 24 – remove the requirement for needing a s68 approval for erosion and sediment control works - Condition 25 – to correct a reference to the Development Design Specification D7 – Stormwater Quality which is no longer relevant. - Condition 32 – reword the beginning of the condition to <i>'Prior to the issue of a construction certificate other than related to basement excavation'</i> - Condition 36A - reword the beginning of the condition to <i>'Prior to the issue of a construction</i>	The prior to construction certificate conditions have been further reviewed by the Applicant and project certifier. Based on this review, the Applicant is comfortable with the currently approved conditioning framework for the 'Prior to Construction Certificate' conditions with the above changes noted by Council to Conditions 24, 32 and 36A.	Yes

	<i>certificate for buildings'</i>		
Basement layout	A revised basement layout addressing the following: • Unit storage areas located below Building C are inaccessible when vehicles are in the carpark. • The basement plan indicates an excessive amount of storage areas which does not accord to the number of units, nor with the number of units which are providing basement storage. • A separate basement storage and parking allocation plan should be provided to ensure sufficient storage is provided and is accessible to the relevant unit. • No pedestrian access between Building B lift and Building B Waste Storage area. • There is no clear pedestrian access between Building D and Building C waste room without crossing through carparking spaces. • Building B waste room is not of a sufficient size to accommodate the additional bins required whilst allowing for easy	The basement layout has been revised to address Council's comments, specifically: • All of the storage areas provided are appropriately accessible. • The storage areas in the basement have been reviewed and rationalised in response to Council's comments and complies with the ADG. • The provision of storage in the basement will ensure all apartments meet or exceed the minimum requirements of the ADG. The allocation of storage in the basement will occur as part of future strata subdivision. • The basement floor plan has been amended to provide pedestrian access between the Building B lift and waste storage area. The Operational Waste Management Plan has also been updated to include e-diverter chute hoppers for Building A, B and C that will enable residents to dispose of waste and recycling directly through the	Yes

	access and manoeuvrability. • The deletion of the bulk waste room in the basement is not supported. • The revised Waste Management Plan is not consistent with the application plans in respect of bin numbers and requires updating.	e-diverter chute hoppers on each level without the need to access the waste rooms in the basement. Residents of Building D (townhouses) will continue to dispose of their general and recycle refuse directly into the bins in the waste room located on the basement under Building C. • Clear pedestrian access is now provided between Building D and Building C waste room. • Building B waste room has been increased in size and is sufficiently sized to accommodate the required bins and bin tug. • The basement floor plan has been updated to accommodate a bulk waste room adjoining the Building B waste room. • The architectural plans have been updated to ensure bin numbers within the respective waste rooms are consistent with the Operational Waste Management Plan by Colliers.	
Façade of Building D	The modified façade of Building D facing Casuarina Way	A small front porch has been added along the Casuarina Way	Yes

	provides insufficient street activation and no opportunities for casual interaction. Fixed screening to western windows shuts down the elevation and adds to visual bulk.	frontage of Building D units which will assist to activate this frontage and improve passive surveillance over the street. Council considers that the changes for Building D relating to the inclusion of a front porch seating area and increased window size adjacent to the entry door has improved street activation. Further discussions were held between Council and the applicant in relation to the upper level screening where it was advised that Council would prefer moveable screens, however Council would not recommend refusal of the modification application on this basis.	
ADG compliance	Revised plans are required to demonstrate compliance with the ADG requirements for minimum area and dimensions for master bedrooms (Unit Type 2.9 – 4 units), minimum width of living rooms or combined living/dining rooms (Unit Types 1.1, 2.3 and 2.9 – 19 units) and laundries (Unit Types 1.1 and TH – 14 units). Building C - Unit Type 2.3 fails to provide the required private open space area for apartments at ground level. An increased	Revised Plans submitted indicate compliant minimum area and dimensions for master bedrooms, minimum widths of living rooms or combined living/dining rooms and laundries. Revised Plans submitted which indicate a compliant lounge room width which results in a	No

	balcony could be provided when apartment width identified above is addressed. Unit Type 2.4 fails to provide the required amount of storage. Direct street access to ground floor apartments specifically Unit Types 1.1, 2.1 and 2.3 located in the north-western corner of Building A should be realigned to POS areas. The Landscape Concept Plan fails to demonstrate that planters located above the basement are of a sufficient size to accommodate the plantings proposed, per Table 5 of ADG.	balcony size of 12.87m² for the ground floor unit. This is considered acceptable given that a number of ground floor POS were approved at less than 15m². Storage has been revised for all units and is compliant with ADG requirements. Plans have not been updated to address concerns relating to direct street access aligning to bedrooms. Whilst this is not ideal, it is not considered to create such a detrimental impact for residents as to form a reason for refusal. A revised Landscape Concept Plan has been submitted. However, this still fails to demonstrate planter sizes are appropriate to accommodate plantings. This is further discussed in the key issues section of this report.	
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This s4.55(2) modification application was lodged on **9 July 2025**. A chronology of the application since lodgement is outlined in **Table 3** below.

Table 3: Chronology of the application

Date	Event
17 July 2025	Modification application referred to external agencies
30 July 2025	Exhibition of the application
31 July 2025	Site visit conducted
21 August 2025	Applicant amended application
27 August 2025	Final set of amended application documents received

30 August 2025	Copy of submissions provided to the applicant
14 October 2025	Request for further information issued
11 November 2025	Response received from applicant
24 November 2025	Final referral comments on amended application received (internal and external)
25 November 2025	Draft conditions provided to applicant
28 November 2025	Draft report and conditions provided to NRPP
9 December 2025	Matter reported to NRPP for determination

3. STATUTORY CONSIDERATIONS

When determining a modification application, the consent authority must take into consideration the relevant matters outlined in Section 4.55 of the EP&A Act in relation to modification of consents provisions, Section 4.15(1) of the EP&A Act in relation to matters for consideration for applications and Part 5 of the EP&A Regulation 2021 in relation to information requirements and notification. These matters are considered below.

3.1 Section 4.55 of the EP&A Act

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed pursuant to Section 4.55(2) of the EP&A Act. The matters include the following:

For Section 4.55(2) applications:

- (a) *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) (s4.55(2)(a)), and*

Having regard to the ‘substantially the same’ test, some caselaw is relied upon to determine the nature in which a modification application is to be considered.

The proper approach to the application of s 4.55(2) of the EP&A Act is set out by Preston CJ in *Canterbury-Bankstown Council v Realize Architecture Pty Ltd* [2024] NSWLEC 31 at [26] and [27]:

“26 ... The test in s 4.55(2)(a) requires a simple comparison of the two developments, the development as modified and the development as originally approved: Arrage v Inner West Council [2019] NSWLEC 85 at [24]; Feldkirchen Pty Ltd v Development Implementation Pty Ltd (2022) 254 LGERA 114; [2022] NSWCA 227 at [112]. This comparison can involve “an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper context”: Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 298; [1999] NSWLEC 280 at [56]. But the comparison required by s 4.55(2)(a) remains a holistic one of the two developments being compared – the modified development and the originally

approved development. The opinion of satisfaction that s 4.55(2)(a) requires is that the two developments being compared are substantially the same development, not that either the quantitative features or the qualitative features of the two developments are substantially the same.

27 That is not to say that the decision-maker cannot, in comparing the two developments, assess the differences in the quantitative and qualitative features of the two developments. Such an assessment might be of assistance in undertaking the comparison between the two developments. But this assessment can not displace the test in s 4.55(2)(a): Feldkirchen Pty Ltd v Development Implementation Pty Ltd at [112].”

In order to consider the qualitative and quantitative elements of the development in the context of the original development, the following is summarised in Tables 4 and 5:

Table 4: Quantitative Assessment of the application

Quantitative Assessment			
Item	Existing Consent	Proposed Modification	Change
No. of Units	78 Units	96 Units	Increase of 18 Units
Unit Mix	1 Bed x 0 2 Bed x 54 3 Bed x 20 4 Bed x 4	1 Bed x 22 2 Bed x 53 3 Bed x 20 4 Bed x 1	1 Bed + 22 2 Bed -1 3 Bed nil 4 Bed - 3
No. of Buildings	4 Buildings (A, B, C & D)	4 Buildings (A, B, C & D)	No change
Height	Max 4 storeys	Max 4 storeys	Maintains 4 storeys.
GFA	11,409.9m ²	11,954.31m ²	Increase in 544.41m ² GFA
Building separation			
• Building A to Building B	Level 01 - 11.3m Level 02-04 - 7.7m	Level 01-04 – 7.53m Stairs 6.7m (Levels 01-04)	Level 01 – 3.77m Level 02-04 – 0.17m
• Building B to Building C	Level 01-04 – 6.5m	Level 01 – 7.53m Level 02-04 – 7.53m Stairs 6.7m (Levels 01-04)	Level 01-4 + 1.03m
• Building C to Building D	Level 01-02 – 7.4m	Level 01-02 – 7.2m	Level 01-02 – 0.2m
• Building A to Building D	Level 01-02 – 7.4m	Level 01-02 – 7.2m	Level 01-02 – 0.2m
• Building B to Building D (across COS)	Level 01 – 27.6m Level 02 – 22.8m	Level 01 – 28.2m Level 02 – 21m	Level 01 + 0.6m Level 02 – 1.8m

Deep Soil Zone	537m ² or 7.3% of site with a minimum dimension of 6m	518m ² or 7.04% of site with a minimum dimension of 6m	Decrease by 19m ²
Communal Open Space	1947m ² or 26.2% Internal community facilities – 230m ²	2031m ² or 27.6% Internal community facilities – 293.5m ²	Increase by 84m ²
Car Parking spaces	174 spaces	173 spaces	Decrease by 1 car space
Bicycle Parking spaces	88 spaces	108 spaces	Increase by 20 bicycle parking spaces
Setbacks			
• Casuarina Way	Minimum 3.1m to corner of wall Minimum 1.2m to balcony edge Minimum 0.9m to planter edge	Minimum 3.1m to corner of wall Minimum 1.2m to balcony edge Minimum 0.9m to planter edge	NIL
• Grand Parade	Minimum 4.5m to wall Minimum 3.0m to balcony edge Minimum 2.8m to planter edge	Minimum 3.1m to wall with setback of 4.2m predominantly achieved Minimum 3.0m to balcony edge Minimum 2.8m to planter edge	Buildings A, B and C include balconies which have not changed. The setback to the primary building line has decreased whilst the outer edge of balconies has not.
• Habitat Drive	Minimum 4.5m to wall Minimum 3m to ground floor terrace edge Minimum 3m to balcony edge Minimum 2.8m to planter edge	Minimum 4.2m to wall Minimum 1.5m to ground floor terrace edge Minimum 3m to balcony edge Minimum 2.8m to planter edge	
Drainage reserve	Minimum 3m to wall Minimum 1.5m to balcony edge Minimum 1.3m to planter edge	Minimum 2.7m to wall Minimum 1.5m to balcony edge Minimum 1.3m to planter edge	

The modification report prepared by Town Planning Alliance (NSW) Pty Ltd considers the quantitative analysis and contends the following points which Council is generally in agreement with:

- The modification proposes improvement to the dwelling diversity by introducing one-bedroom units and reducing the number of four-bedroom units. The increased yield has been achieved predominantly within the approved building envelope through more efficient layout and internal planning.
- The largest increase in yield has occurred in Building B (additional 16 units). This was achieved through moving the internal communal wellness facilities to the basement. Council agrees that internal community facilities are maintained through this modification, albeit at a lesser amenity quality for residents due to the basement location.
- The development continues to comprise of a medium density residential development offering a mix of dwelling types.
- The development site layout continues to include four buildings wrapped around the edges of the site centred upon a large communal open space courtyard featuring a swimming pool recreation area with landscaped communal open space spines between the buildings.
- The separation of the buildings on the site continues to present a consistent outcome with the approved development of four well-spaced buildings. The minor adjustments to building separation will not be visually perceptible particularly noting the landscape amenity between the buildings.
- The building lengths along the street frontages remain generally consistent with the original development approved.
- The building setbacks to the walls of the buildings has been reduced along Grand Parade, Habitat Drive and fronting the drainage reserve. However, the balconies maintain the approved setback distances and given the architectural detailing of the buildings with the heavy arches, such a change will not be noticeable from the public domain.
- Deep soil zones have been relocated to front Casuarina Way and allows for rationalisation of the basement. Podium planters above the basement continue to allow for landscaping.
- Vehicle access to the site continues to be via a single crossover from Habitat Drive positioned in a similar location to the current approval, with all car parking concealed within the basement level. The primary communal pedestrian entry point to the site is via Grand Parade through the main lobby with two additional communal pedestrian entries provided to Habitat Drive consistent with the original development approval.
- The supporting Traffic Report by Colliers find the modification will result in an increase in 11 vehicle trips per peak hour or approximately 1 additional peak hour vehicle every 6 minutes which is not considered a significant increase from the original development approved. The modification has resulted in the reduction of 1 space from the original development approval, however, complies with the Tweed DCP 2008 Section A2 ensuring suitable supply to cater for proposed yield and mix.

Further analysis of the Qualitative issues is contained below in Table 5.

Table 5: Assessment of Qualitative issues.

Qualitative issues	Comments
How is the appearance of the existing building to be changed when viewed from public places?	At street level the essence of the building and key development features is retained. The built form continues to be broken up into four buildings wrapped around the edges of the site centred upon a large

	communal open space area, with landscaping along the street edges and between the buildings. The bulk, scale and appearance of the development and the presentation of the development as viewed from the public domain is not materially different. The façade of Building D has been updated to achieve a more coastal aesthetic which Council was seeking in the original assessment. The streetscape continues to be activated by ground level apartments with terraces and direct street entries and upper level apartments with balconies overlooking the street. Whilst the building setbacks to the walls of the buildings has been reduced along Grand Parade, Habitat Drive and fronting the drainage reserve, the balconies maintain the approved setback distances and given the architectural detailing of the buildings with the heavy arches, such a change will not be noticeable from the public domain.
What is the extent, if any, of any proposed change to the use of the building?	There is no proposed change to the use of the building. The site will continue to be used for residential purposes.
To what extent, if any, are the existing access arrangements for the building proposed to be altered?	Vehicle access to the site continues to be via a single crossover from Habitat Drive positioned in a similar location to the original approval with all car parking concealed within the basement level. The primary communal pedestrian entry point to the site is via Grand Parade through the main lobby with two additional communal pedestrian entries provided to Habitat Drive consistent with the original development approval.
To what extent, if any, will the outlook from within the existing building be altered as a consequence of the proposed development?	No consequence as a result of the proposed modification as the central location of COS remains unchanged. All units either have a POS with views over the adjoining streets, drainage reserve or over the internal COS area. Solar access and ventilation have been assessed and remain consistent with the original approval.
To what extent are any existing non-compliance with numerical controls either increased or diminished by the proposal?	There are no numerical non-compliances with the Tweed LEP 2014. In respect of the Tweed DCP 2008 the following numerical non-compliances apply which are discussed in more detail in Section 3 of this report: - Section A1 Part C – the proposed modification maintains a similar extent of exceedance to impermeable site area as originally approved. - Section A1 Part C – due to basement layout changes, a variation is required to the numerical cut/fill setback control from property boundaries. Such a variation has been supported

	• Section A1 Part C – the proposed modification maintains a numerical variation in respect of the basement carparking level protruding above ground level as originally approved. • Section B5 - the proposed modification maintains a numerical variation in respect of setbacks as originally approved and such a variation has been supported.
To what extent will the present numerical degree of landscaping on the site be changed?	The proposed modification results in a small decrease to compliant (6m x 6m per ADG) Deep Soil Zones for the site. However the proposed dimensions and area remain compliant with the ADG.
To what extent will the existing floor space ratio be altered?	As per the Tweed LEP 2014, the site has an FSR of 2:1. The original approved development approved an FSR of 1.55:1 whilst the proposed modification results in a small increase to propose an FSR of 1.626:1. The increase in FSR will not be noticeable from the public domain.
To what extent will there be changes in the roof form?	The building height remains consistent with the development approval with Buildings A, B and C being 4 storeys and Building D being 3 storeys. While the floor to ceiling heights have been adjusted to cater for complex services coordination, the building height in meters remains consistent with the approved development. The applicant has provided Roof Plan Height Diagrams which are reproduced in Figures 25 and 26. The roof continues to provide a flat roof form for Buildings A, B and C and still provides for clerestory windows for ventilation to Level 4, which is consistent with the original approval. Building D continues to provide a simple hip roof form consistent with the original approval.
To what extent will there be alterations to car parking/garaging on the site and/or within the building?	Basement car parking has been reduced by 1 space however compliance is maintained with Tweed DCP Section A2 Parking controls. The proposed modification maintains a single vehicle access point from Habitat Drive. The supporting revised Traffic Report by Colliers states that the modification will result in an increase in 11 vehicle trips per peak hour or approximately 1 additional peak hour vehicle every 6 minutes which is not considered a significant increase from the original development approved.
To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?	The basement level generally remains consistent with the approved footprint; however, it has been setback further from Casuarina Way than originally approved to allow deep soil zones to be located in this area. The basement footprint has been increased at the north-eastern and north-western corners to provide a more uniform design and accords with the building footprint above. Basement excavation depth is similar to the approved development.

	Fill is proposed to be placed along the Casuarina Way frontage to cover the exposed basement level which will then be landscaped. This is considered to be an improved streetscape outcome when compared with the original development approval.
What relationship does the proportion of the retained bear to the proposed development?	The original development and proposed modified development will result in four residential buildings constructed above a shared basement with a central communal open space area. In consideration of the above points, the proposal is considered to be 'substantially the same' and ultimately the proposal does not generate any greater environmental impacts from those assessed in the original approved development under DA22/0408.

Council officers conclude that the proposed modification is 'substantially the same', as it is quantitatively and qualitatively the same development by virtue of the modified development fundamentally retaining the same characteristics and outcomes.

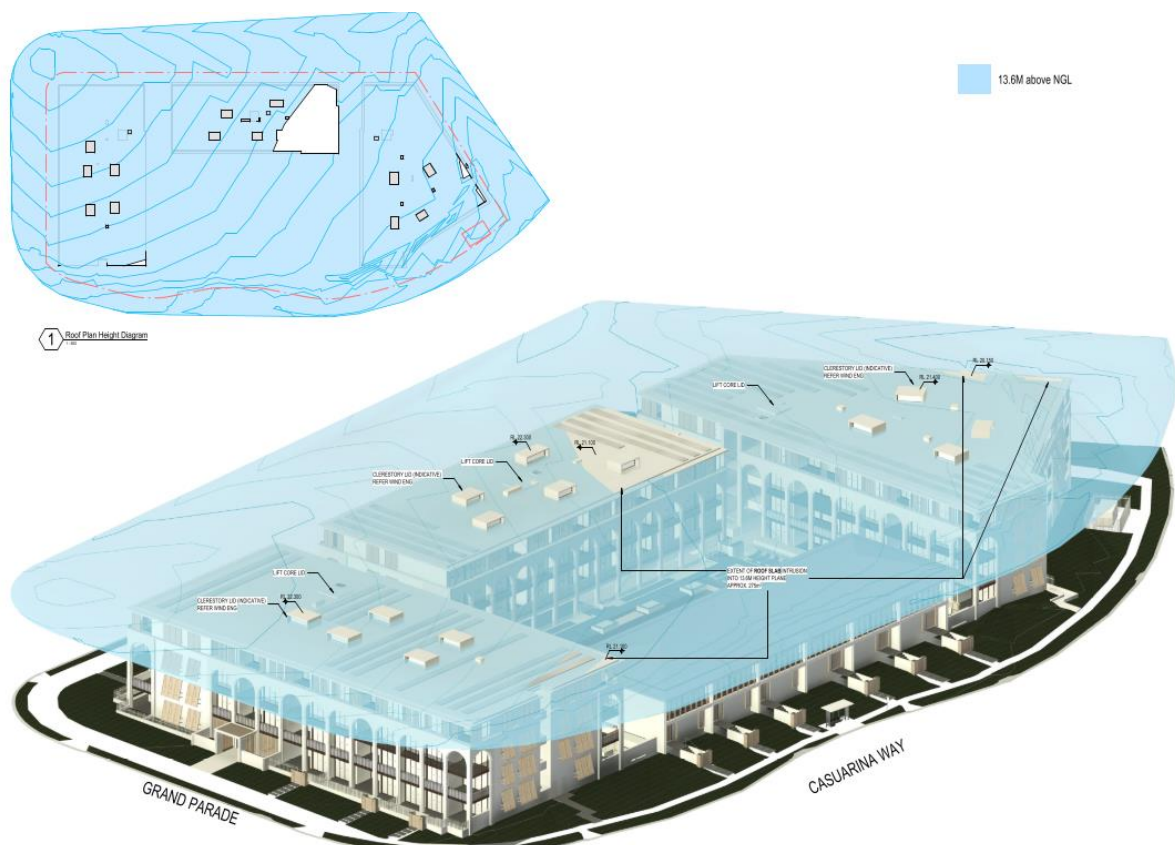


Figure 25: Proposed modification and building elements which exceed the 13.6m Tweed LEP 2014 height plane.

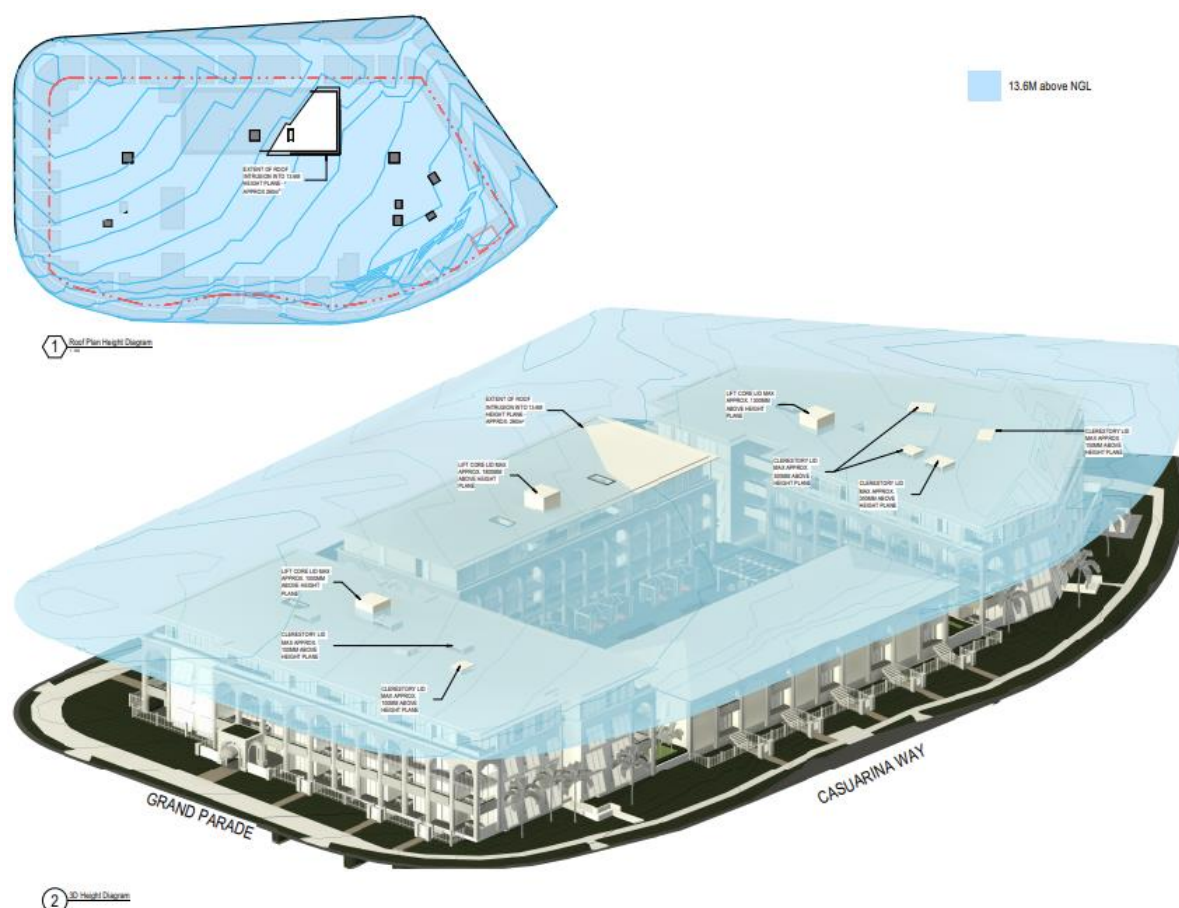


Figure 26: Approved development and building elements which exceed the 13.6m Tweed LEP 2014 height plane.

- (b) *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent (s4.55(2)(b)), and*

Essential Energy

The proposed modification maintains the originally approved relocation of the pad mounted substation from the south-eastern corner to the south-western corner of the site. Given the changes proposed to the building footprints and facades, the proposed modification was referred to Essential Energy pursuant to Clause 2.48 of SEPP (Transport and Infrastructure) 2021. It is considered that safety concerns raised can be managed through imposition of additional conditions. Refer to Section 3 of this Report for more details.

- (c) *it has notified the application in accordance with—*
- (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent (s4.55(2)(c)), and*

The s4.55 modification application was advertised in accordance with the Community Engagement and Participation Plan from 30 July 2025 until 13 August 2025.

- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be (Section 4.55(2)(d)).*

During the advertising period, two submissions were received. The issues raised in these submissions are considered in Section 4 of this report.

- (e) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified (Section 4.55(3)).*

The matters required to be considered include:

- Matters for consideration pursuant to Section 4.15(1) of the EP&A Act – these matters are considered below in Section 3.2 of this report; and
- Reasons given by the consent authority for the grant of the consent that is sought to be modified – outlined below.

Reasons for Grant of Consent

The Northern Regional Planning Panel granted consent to the original development in a notice of determination dated 19 March 2024. The reasons outlined in the Statement of reasons for this decision included the following:

- The Panel is satisfied that the design sufficiently addresses the design quality principles and the ADG pursuant to SEPP 65 (Design Quality of Residential Apartment Development).
- The Panel is satisfied that the Applicant has demonstrated the design meets the objectives and criteria of the ADG either by strict compliance with the design criteria specified, or on a performance basis. In addition, the Panel notes the design complies with the National Construction Code (NCC).
- The Applicant has responded positively to the Panels record of Deferral (31 October 2023) and refined key elements to the satisfaction of the Panel including:
 - Roof form and external facing façade design – Buildings A, B and C
 - Roof profile and materials of Building D
 - Treatment of blank walls proposed to satisfy building separation requirements of the ADG
 - Natural light and ventilation to habitable areas
 - Provision of deep soil zones
 - Improved provision of bicycle parking, bulky waste management

The proposed modification is considered to remain consistent with these reasons for the decision on this consent in that the proposed development continues to sufficiently address the planning controls and expectations for the site given the zoning and other planning controls for the site.

3.2 Section 4.15(1) of the EP&A Act

Section 4.15(1) of the EP&A Act contains matters which the consent authority must take into consideration in determining a development application and modification applications pursuant to Section 4.55(3), which are of relevance to the application.

These matters include the following, which are considered in detail below:

- (a) *the provisions of—*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

3.2.1 **Section 4.15(1)(a) - Provisions of Environmental Planning Instruments, Proposed Instruments, DCPs, Planning Agreements and the Regulations**

The relevant provisions under s4.15(1)(a) are considered below.

(a) **Environmental planning instruments (s4.15(1)(a)(i))**

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Biodiversity & Conservation) 2021*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Tweed Local Environmental Plan 2014*

A summary of the key matters for consideration arising from these EPIs and the Tweed DCP are outlined in **Table 6** and considered in more detail below.

Table 6: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Original DA Comply (Y/N)	Modified Proposal Comply (Y/N)
<i>State Environmental Planning Policy (Planning Systems) 2021</i>	Chapter 2: State and Regional Development Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as it has an estimated development cost of more than \$30 million. This aspect of the proposal remains unchanged as a result of the modification.	Yes	Yes
<i>State Environmental Planning Policy (Biodiversity & Conservation) 2021</i>	Chapter 4: Koala Habitat Protection 2021 Section 4.8(2) states that the Council's determination of the development application must be consistent with the approved koala plan of management that applies to the land. The proposed modification remains consistent with this Clause.	Yes	Yes
<i>State Environmental Planning Policy (Housing) 2021</i>	Chapter 4: Design of residential apartment development - Section 147 (1) - Matters for consideration – Design principles and the ADG - Clause 148(2) – non-discretionary development standards - Clause 149(2) – ADG prevails over development control plans Modified proposed adequately performs against all relevant Clauses with the exception of planting on structures which is discussed later in this report and in the key issues.	No - refer to below comments	No but can be managed through additional conditions
<i>SEPP (Resilience & Hazards) 2021</i>	Chapter 2: Coastal Management - Section 2.10(1) & (2) - Development on land within the coastal environment area - Section 2.11(1) - Development on land within the coastal use area - Section 2.12 - Development in coastal zone generally —development not to increase risk of coastal hazards. - Section 2.13 - Development in coastal zone generally - coastal management programs to be considered. - Section 2.14 - Other development controls not affected. - Section 2.15 - Hierarchy of development controls if overlapping	Yes	Yes

	Chapter 4: Remediation of Land Section 4.6 - Contamination and remediation have been considered and the proposed modification is satisfactory. Contamination and remediation have been addressed in the original DA. No changes to the site as a result of the proposed modification.		
<i>State Environmental Planning Policy (Sustainable Buildings) 2022 and State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i>	No compliance issues were identified in relation to the original application subject to imposition of conditions on any consent granted. A revised BASIX certificate was provided with the modification application and has been included with the revised set of proposed approved plans. Existing conditions of consent are still relevant to address BASIX requirements and will remain unchanged as a result of the proposal.	Yes	Yes
<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	Chapter 2: Infrastructure Section 2.48(2) (Determination of development applications—other development) – electricity transmission The proposed modification maintains the relocation of the pad mounted substation from the south-eastern to south-western side of the site. The modification application was referred to Essential Energy. Comments were returned on 24 July 2025 and 29 August 2025. It is considered that safety concerns raised can be managed through imposition of additional conditions.	Yes (EE)	Yes (EE)
Tweed LEP 2014	- Clause 2.2 & 2.3 – Zoning, permissibility, zone objectives - Clause 4.3(2) - Height - Clause 4.4(1) – Max FSR - Clause 5.10 – Heritage - Clause 5.21 – Flood Planning - Clause 7.1 – Acid sulphate soils - Clause 7.2 – Earthworks - Clause 7.6 – Stormwater Management - Clause 7.8 – Airspace Operations - Clause 7.10 – Essential Services	Yes N/A Yes Yes N/A Yes Yes Yes Yes Yes	
Tweed DCP	- Section A1: Residential and tourist development: - Part C (Shop top & Residential Flat Buildings)	No	No – however no significant additional non-

	○ Part B (Townhouses and Row Houses – relates to Building D only)		compliances were identified.
	• Section A2: Site Access and Parking	Yes	Yes
	• Section A15: Waste Minimisation and Management	Yes	Yes
	• Section B5: Casuarina Beach	Yes	Yes
	• Section B9: Tweed Coast Strategy	Yes	Yes

Consideration of the relevant SEPPs is outlined below.

State Environmental Planning Policy (Planning Systems) 2021

The proposal is regionally significant development pursuant to Section 2.19(1) (Chapter 2: State and Regional Development) as it satisfies the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP as the proposal is development that has a capital investment value of more than \$30 million. Accordingly, the Panel is the consent authority for the modification application.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

State Environmental Planning Policy (Biodiversity and Conservation) 2021 ('Biodiversity & Conservation SEPP') provides controls for various environmental issues, with Chapter 4 the only relevant chapter for the current application.

It is noted that Chapter 2 does not apply to the proposal as the site is not located in the non-rural areas of the State pursuant to Section 2.3(1)(a) of the Policy. Chapter 3 Koala habitat protection 2020 does not apply to the site as it is not located within the RU1, RU2 or RU3 zones.

Chapter 4 Koala habitat protection 2021 applies to the Tweed local government area which falls within the North Coast Koala Management area pursuant to Section 4.4(1) and Schedule 2. Pursuant to Section 4.8(1), the *Tweed Coast Comprehensive Koala Plan of Management* is an approved koala plan of management and accordingly, Section 4.8(2) is relevant to the current development application. The site is within the Southern Tweed Coast Koala Management Area ('KMA').

Section 4.8(2) states that the council's determination of the development application must be consistent with the approved koala plan of management that applies to the land. In this regard, the subject site does not contain any vegetation and therefore there are no preferred koala food trees located on the site. Further, the site is not located in a Koala activity precinct. Therefore, it is considered that there is no koala habitat on the site and the proposal is consistent with this Policy.

State Environmental Planning Policy (Housing) 2021

State Environmental Planning Policy (Housing) 2021 ('SEPP (Housing)') Chapter 4 Design of residential apartment development aims to improve the design quality of residential apartment development and applies to the proposal as it comprises a minimum of three (3) storeys and more than four (4) dwellings.

Pursuant to Section 147, the consent authority is to take into consideration the following when determining a modification application for residential development:

- the quality of the design of the development when evaluated in accordance with the design principles,
- the ADG, and
- the advice (if any) obtained from a design review panel.

In this case, while there is no design review panel for Tweed Shire Council, the urban design was considered by Council's Urban Designer and further discussions regarding the façade of Building D are considered in the key issues section of this report. The matters required to be considered in relation to the design principles and the ADG are considered below.

Section 149 states that certain requirements, standards or controls that are specified in a DCP have no effect if the ADG also specifies a requirement, standard or control in relation to the same matter, including:

- visual privacy
- solar and daylight access
- common circulation and spaces
- apartment size and layout
- ceiling heights
- private open space and balconies
- natural ventilation, and
- storage.

This is noted in the DCP assessment below.

Section 148 identifies development standards for particular matters in the ADG that if complied with, prevent the consent authority from requiring more onerous standards, relating to the following:

- Minimum amount of car parking as specified in Part 3J;
- Minimum internal area for apartments as specified in Part 4D; and
- Minimum ceiling heights specified in Part 4C.

In respect of the original approved development, Council's recommendation to the Panel was for refusal of the application as it was not considered to comply with the ADG or design quality principles of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development and Section B5 Casuarina Beach and Section A1 Part C Residential Flat Buildings of the Tweed DCP 2008.

The proposed modification provides acceptable compliance with the requirements for car parking, minimum internal area for apartments and ceiling heights similar to what was originally approved, as outlined in the ADG assessment in **Attachment C**.

Pursuant to Section 102(1) of the Regulations, a design verification is required to be submitted which explains how the development addresses the design principles and the objectives in Parts 3 and 4 of the ADG. A Design Statement has been provided with the amended plans dated November 2025 (Revision H) prepared by Conrad Gargett.

Design Principles

The design principles are contained in Schedule 9 of the SEPP (Housing) and are considered in **Table 7**. The proposal is considered to be consistent with the design principles. However, concerns are raised in respect of planter sizes in Principle 5 (landscape) which is further considered in the key issues section of this report where conditions of consent are recommended to address the issue.

Table 7: SEPP (Housing) Design Principles

Design Principle	Requirement	Proposal	Comply
Principle 1: Context and neighbourhood character	(1) Good design responds and contributes to its context, which is the key natural and built features of an area, their relationship and the character they create when combined and also includes social, economic, health and environmental conditions. (2) Responding to context involves identifying the desirable elements of an area's existing or future character. (3) Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. (4) Consideration of local context is important for all sites, including sites in the following areas— (a) established areas, (b) areas undergoing change, (c) areas identified for change.	The proposed modified design now incorporates modern and coastal architectural and fenestration details which address the majority of concerns previously raised by Council in 2023. The modified design is also considered to be in keeping with the character of the original approval, The proposed modification also includes a significant redesign of the façade of Building D facing Casuarina Way. The design changes provides for a modern coastal aesthetic. This façade improvement is now considered to have an active street frontage (seating and impervious paved area in the front garden added). Whilst Council would prefer for moveable screens on the upper level to further open this façade, it is acknowledged that it relates to western facing bedrooms and therefore would not recommend refusal of this application on this basis.	Yes
Principle 2: Built form and scale	(1) Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. (2) Good design also achieves an appropriate built form for a site and the building's purpose in terms of the following— (a) building alignments and proportions, (b) building type, (c) building articulation,	The proposed modified design is considered to be consistent with the scale, bulk and height of the original approval. The modified design provides a similar built form which incorporates enhanced modern and coastal architectural and fenestration details and additional density yield.	Yes

	(d) the manipulation of building elements. (3) Appropriate built form— (a) defines the public domain, and (b) contributes to the character of streetscapes and parks, including their views and vistas, and (c) provides internal amenity and outlook.	As mentioned above, the fixed screening on the upper level of Building D facing Casuarina Way closes down the elevation and the preference would be for moveable screening on this façade. However, Council acknowledges that this is on the western elevation and would not recommend refusal of this application on this basis.	
Principle Density	3: (1) Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. (2) Appropriate densities are consistent with the area's existing or projected population. (3) Appropriate densities are sustained by the following— (a) existing or proposed infrastructure, (b) public transport, (c) access to jobs, (d) community facilities, (e) the environment.	The proposed modified design provides an increase in density yield, which is supported, especially the inclusion of 1 bedroom units as it will provide additional housing and choice in Casuarina. The modified design continues to provide a similar level of amenity for residents as originally approved. Council notes that internal community facilities (wellbeing and fitness facilities) are still provided albeit at a lesser amenity level given its relocation to the basement. Communal open space provision on the ground floor has increased which is considered appropriate given the increase in unit numbers.	Yes
Principle Sustainability	4: (1) Good design combines positive environmental, social and economic outcomes. (2) Good sustainable design includes— (a) use of natural cross ventilation and sunlight for the amenity and liveability of residents, and	The modified proposal provides for compliant cross ventilation and deep soil zones. The retention of four separate buildings on the site allows for breezes to penetrate and traverse the site. The design continues to provide for similar solar	Yes

	(b) passive thermal design for ventilation, heating and cooling, which reduces reliance on technology and operation costs. (3) Good sustainable design also includes the following— (a) recycling and reuse of materials and waste, (b) use of sustainable materials, (c) deep soil zones for groundwater recharge and vegetation.	access outcomes as originally approved. There are no additional sustainability measures proposed beyond those required under BASIX and the original approval. A revised BASIX Certificate related to the proposed development has been provided.	
Principle 5: Landscape	(1) Good design recognises that landscape and buildings operate together as an integrated and sustainable system, resulting in development with good amenity. (2) A positive image and contextual fit of well designed development is achieved by contributing to the landscape character of the streetscape and neighbourhood. (3) Good landscape design enhances the development's environmental performance by retaining positive natural features that contribute to the following— (a) the local context, (b) co-ordinating water and soil management, (c) solar access, (d) micro-climate, (e) tree canopy, (f) habitat values, (g) preserving green networks. (4) Good landscape design optimises the following— (a) usability, (b) privacy and opportunities for social interaction, (c) equitable access, (d) respect for neighbours' amenity. (5) Good landscape design provides for practical establishment and long term management.	The modified proposal retains the originally approved concept of landscaping around the outside of the site, with a central courtyard and areas between buildings also landscaped. The proposed modification has sought to relocate and consolidate compliant deep soil zones (per the ADG) to the Casuarina Way frontage, which allows for a more standard basement design. The proposed landscape design does not provide sufficient sized planters to accommodate the size and density of plantings proposed in accordance with the requirements of Table 5 in the ADG. This is further discussed below and in the key issues section of this report.	No
Principle 6: Amenity	(1) Good design positively influences internal and external amenity for residents and neighbours. (2) Good amenity contributes to positive living environments and resident well-being. (3) Good amenity combines the following—	The proposed modification has been assessed against the original approval, ADG and Tweed DCP Section A1 and has been found to provide an acceptable level of internal	Yes

		(a) appropriate room dimensions and shapes, (b) access to sunlight, (c) natural ventilation, (d) outlook, (e) visual and acoustic privacy, (f) storage, (g) indoor and outdoor space, (h) efficient layouts and service areas, (i) ease of access for all age groups and degrees of mobility.	and external amenity for residents.	
Principle Safety	7:	(1) Good design optimises safety and security within the development and the public domain. (2) Good design provides for quality public and private spaces that are clearly defined and fit for the intended purpose. (3) Opportunities to maximise passive surveillance of public and communal areas promote safety. (4) A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.	No significant changes are proposed with respect to safety measures assessed in the original approval. Therefore the proposal is considered generally satisfactory in relation to safety.	Yes
Principle Housing diversity and social interaction	8:	(1) Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. (2) Well designed residential apartment development responds to social context by providing housing and facilities to suit the existing and future social mix. (3) Good design involves practical and flexible features, including— (a) different types of communal spaces for a broad range of people, and (b) opportunities for social interaction among residents.	The proposed housing diversity proposed is considered to be satisfactory. Communal open space predominantly consists of the swimming pool area, with universal access being provided to the pool deck. The development also provides communal indoor facilities such as fitness facilities. The development provides a variety of opportunities for social interaction amongst residents.	Yes
Principle Aesthetics	9:	(1) Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. (2) Good design uses a variety of materials, colours and textures. (3) The visual appearance of well designed residential apartment	The design of the development is generally consistent with the original approval with the inclusion of more modern and coastal design elements. The overall appearance of the modified design is considered to address the	Yes

	development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.	majority of concerns Council raised in 2023, and provide an enhanced design outcome for the Casuarina Town Centre.	
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The Apartment Design Guide

The ADG aims to achieve better design and planning for residential apartment development, by providing benchmarks for designing and assessing these developments. The relevant controls and principles of the ADG are considered in the context of the proposal in a detailed compliance table assessment in **Attachment C**.

The modified proposal is generally consistent with the original approved development and the ADG requirements except for the following inconsistency relating to planters as outlined below. This is further considered in the key issues section of this report.

Part 4: Designing the building

- **Part 4P: Planting on structures** – The revised Landscape Concept Plan dated 10 November 2025 submitted to support the modification application does not indicate planter dimensions which are consistent with Table 5 of the ADG, reproduced below. Whilst the planters provide an acceptable depth, the area is significantly below the recommended soil area dimensions for trees of all heights.

The original approval included planters between Buildings A-B and B-C which whilst not compliant with the Table 5 requirements, were of a greater width (3.2m-7.6m). The modified proposal has reduced the planter widths in this area (1.8-2.6m). The revised Landscape Concept Plan indicates that this area will contain the following tall palms which are underplanted with shrubs and groundcovers:

- *Howea forsteriana* (Kentia Palm) – 10-15m mature height; 5-6m mature width
- *Phoenix roebelenii* (Dwarf Date Palm) – 2-4m mature height; 2-4m mature width
- *Plumeria obtuse* (Evergreen Frangipani) – 8m mature height; 5m mature width

The planters proposed between Buildings C-D are of similar dimensions as originally approved. The planters proposed between Buildings A-D have been significantly reduced from the originally approved width of 5.3m to 0.7-1.1m. Whilst this is a significant reduction, they are similar to those between Buildings C-D and are therefore considered acceptable.

In respect of the planters within the swimming pool area, these are considered to be generally similar to those originally approved.

It is noted that Condition 17 requires submission of a detailed landscaping plan prior to issue of a Construction Certificate is being maintained, albeit with a revision to the reference to the Landscape Concept Plan. This detailed landscaping plan will clearly identify species and planting locations.

It is acknowledged that species may change through the detailed design phase in preparing the detailed landscaping plan and therefore it is recommended to add a requirement to Condition 17A that the detailed landscaping plan be supported by a statement from a suitably qualified registered Landscape Architect certifying that the planters are of a sufficient size to accommodate the plantings proposed.

Therefore, whilst Council is raising this as a key issue, it is considered that this can be resolved through conditions and therefore does not form a reason for refusal.

Table 5 Minimum soil standards for plant types and sizes

Plant type	Definition	Soil volume	Soil depth	Soil area
Large trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent
Medium trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent
Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent
Shrubs			500-600mm	
Ground cover			300-450mm	
Turf			200mm	

Note: The above has been calculated assuming fortnightly irrigation. Any sub-surface drainage requirements are in addition to the above minimum soil depths

Figure 27: Table 5 Minimum Soil standards for plant types and sizes from the ADG.

Accordingly, the proposal is considered to be satisfactory having regard to the SEPP Housing and ADG matters.

State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021 ('Resilience & Hazards SEPP') Chapter 2: Coastal Management and Chapter 4 Remediation of Land are relevant to the current application.

Chapter 2: Coastal Management

Chapter 2 aims to promote an integrated and coordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the *Coastal Management Act 2016*, including the management objectives for each coastal management area. The site is located within the Coastal Environment Area and Coastal Use area; however, is not indicated on the Coastal Wetlands and Littoral rainforest Map (or proximity areas) pursuant to Section 2.4. The relevant provisions of Part 2.2 of Chapter 2 are considered below.

(i) Section 2.10 - Development on land within the coastal environment area

Pursuant to Section 2.10(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* - The proposal does not require the removal of any vegetation on site or require any significant changes to the natural landform (outside of the basement footprint) and accordingly it is considered that there is unlikely to be any adverse impacts on the natural environment.

- (b) *coastal environmental values and natural coastal processes* - The proposal will not result in any adverse impacts on the coastal environment or processes given the proposed works have been designed within the urban footprint of residentially zoned land and will not impinge or obstruct any coastal areas.
- (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* - The proposal will not result in any impacts on the marine environment given the proposed construction management controls which will be undertaken and appropriate stormwater management proposed for the site. There are no coastal lakes in the vicinity of the site.
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms* - There will be no impacts on the marine or native vegetation as there is none of this vegetation proposed to be removed. There are no headlands in the vicinity of the site which will be affected and there are no rock platforms which will be affected by the proposal.
- (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* – The proposed development does not affect any existing public open space nor existing public access to the foreshore, beach, headland or rock platforms.
- (f) *Aboriginal cultural heritage, practices and places* - There is no known or predictive Aboriginal cultural heritage on the site.
- (g) *the use of the surf zone* - No impacts on the surf zone arise from the proposal.

Further, pursuant to Section 2.10(2), consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—

- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*
- (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

The proposal will result in minimal environmental impact given the proposed development has been sited to reduce impacts on the natural environment. The proposed construction management controls to be implemented during works as outlined on the accompanying plans will ensure minimal impacts during construction. It is considered that the proposal will avoid any adverse impact on the coastal environmental area.

(ii) Section 2.11 - Development on land within the coastal use area

Pursuant to Section 2.11(1)(a), development consent must not be granted to development on land that is within the coastal use area unless the consent authority 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* - The proposed development

does not affect any existing public open space nor existing public access to the foreshore, beach, headland or rock platforms.

- (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores* - There will no overshadowing, wind funnelling or loss of views from public places to the foreshore arising from the proposal given it is sufficiently setback from the foreshore.
- (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands* - There will be no adverse impacts to the visual amenity of the coast arising from the proposal as the works are consistent with other developments in the area and is consistent with the concept approval for the locality.
- (iv) *Aboriginal cultural heritage, practices and places* – There is no known or predictive Aboriginal cultural heritage on the site.
- (v) *cultural and built environment heritage* - There are no local heritage items on the site or adjoining the site.

Section 2.11(1)(b) requires that development consent must not be granted to development on land that is within the coastal use area unless the consent authority 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*

The proposal will result in minimal impacts to public areas and heritage areas as outlined above. The proposal will not result in overshadowing or adverse visual impacts to public places and will not obstruct public access to the foreshore since there is currently no public access to the foreshore from the subject site. Therefore, the proposal is considered to be development that has been designed, sited and will be managed to avoid adverse impacts referred to in Section 2.11(1)(a) of the Policy.

Section 2.11(1)(c) also requires that development consent must not be granted to development on land that is within the coastal use area unless the consent authority has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development. In this regard, it is considered that the bulk, scale and size of the proposal is generally compatible with existing development when viewed from the coast, and is consistent with the concept approval for the Casuarina Town Centre.

- (vi) Section 2.12 - Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. In this case, it is considered that the proposal will not increase the risk of coastal hazards on the land as it involves a new residential flat building in an urban area.

- (vii) Section 2.13 – Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land. The Tweed Shire has five (5) coastal management plans. The following plans do not apply to the subject site:

- Coastal Zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)
- Kingscliff – Dreamtime Coastal Zone Management Plan
- Tweed River Estuary Coastal Management Program

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. Given the location of the development is not on the coastal foreshore and is not located within the Coastal Erosion Hazard zone, it is considered that the proposal is consistent with the objectives of this plan.

Coastal Zone Management Plan Tweed Coast Estuaries 2013

This Management Plan applies to the estuaries of Cudgen, Cudgera and Mooball Creeks. The subject site is located within the Cudgen Creek Estuary Catchment. This plan notes that the major pressures acting upon the Cudgen Creek estuary include:

- Acid runoff from disturbed ASS in the catchment above Cudgen Lake;
- Entrance shoaling inhibits navigation for recreational boating;
- Major urban and tourist developments at Casuarina Beach and SALT at South Kingscliff and their effects on estuarine health;
- Potential future impacts and cumulative impacts of planned urban development in the catchment, including major development at Kings Forest;
- Bank erosion; and
- Soil erosion from intensive vegetable growing area of Cudgen plateau.

It also notes that these issues are likely to be exacerbated into the future as a result of population increase, climate change impacts and projected rises in mean sea level.

Acid sulfate soils were considered as part of the original development application assessment and was found to not be a constraint for the site, as it is unlikely that the soils contain acid sulfates that require treatment. The proposed modified development is considered consistent with the concept approval for the Casuarina Town Centre and original approved development. Accordingly the proposed modification is considered acceptable with regards to this plan.

(viii) Section 2.14 – Other development controls not affected

This Section states that, subject to section 2.5, for the avoidance of doubt, nothing in this Part, permits the carrying out of development that is prohibited development under another environmental planning instrument, or permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent. In this case, the proposal requires consent under the TLEP 2014, which is sought in this application.

(ix) Section 2.15 – Hierarchy of development controls if overlapping

This Section outlines the hierarchy of coastal management areas in the event that the site is located across multiple areas and the controls are inconsistent. In this case, the site is located within both the coastal environment area and the coastal use area. However, the controls are consistent and the proposal is acceptable having regard to these controls.

The proposal is consistent with Chapter 2 of the Resilience & Hazards SEPP.

Chapter 4: Remediation of Land

Section 4.6 of the Resilience & Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

The original application as well as the concept approval for the Casuarina Town Centre subdivision considered land contamination, and it was not considered a constraint for this site. Based on Council's contaminated land mapping and aerial imagery, no contaminating activities appear to have occurred on the site since the original approval was granted. Therefore, contamination is not considered a constraint for the proposed modification and has been satisfactorily addressed.

State Environmental Planning Policy (Sustainable Buildings) 2022 and State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Sustainable Buildings) 2022 commenced on 1 October 2023. Section 4.2 Savings and transitional provisions outline instances where this policy does not apply. In accordance with Section 4.2(1)(a), this policy does not apply to this application as the original development application was submitted on the NSW Planning Portal but was not determined before 1 October 2023. Therefore, the requirements of the *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* still apply.

No compliance issues were identified in relation to the original application subject to imposition of conditions on any consent granted. A revised BASIX Certificate No. 1312417M_09 dated 11 November 2025 was provided with the revised modified plans. The Certificate demonstrates the modified proposal satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP.

Existing conditions of consent are still relevant to address BASIX requirements and will remain unchanged as a result of the proposal.

The proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent.

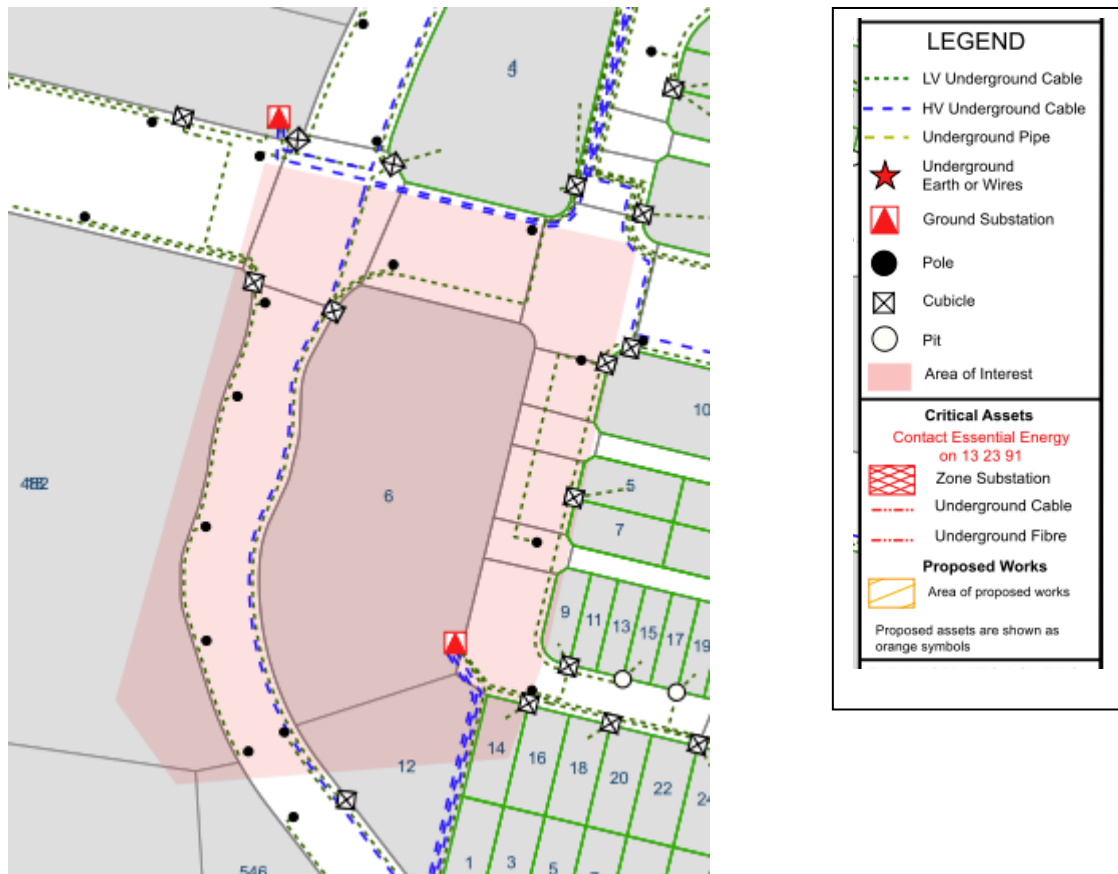
State Environmental Planning Policy (Transport and Infrastructure) 2021

State Environmental Planning Policy (Transport & Infrastructure) 2021 ('Transport & Infrastructure SEPP') Chapter 2 Infrastructure is relevant to the application. The relevant provisions are considered below.

- i. Section 2.48: Determination of development applications—other development - This section applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following:
 - (a) *the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*
 - (b) *development carried out—*
 - (i) *within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
 - (ii) *immediately adjacent to an electricity substation, or*

In this case, there is underground electrical infrastructure located along the northern, southern and western frontages of the site and there is a substation and an associated electricity easement on the site benefiting Essential Energy in the southeast corner of the site (**Figure 28**).

Therefore Section 2.48 requires consideration. The proposed modification maintains the original proposal to relocate the existing pad mount substation from its current location adjacent to Habitat Drive to the southern boundary of the site along Casuarina Way within the front landscaped area.



horizontally) is required to ensure that there is no safety risk (11KV UNDERGROUND NETWORK AT SUBSTATION 54-81964).

- It is also essential that all works comply with SafeWork clearance requirements. In this regard it is the responsibility of the person/s completing any works to understand their safety responsibilities. The applicant will need to submit a [Request for Safety Advice](#) if works cannot maintain the safe working clearances set out in the [Working Near Overhead Powerlines Code of Practice](#), or [CEOP8041 - Work Near Essential Energy's Underground Assets](#).

It was further noted with Essential Energy on 13 November 2025 that the awnings on Building C were within 2.8m of the substation boundary. Essential Energy responded advising that if the awnings are within 3m as previously advised, the applicant will need to seek approval from the encroachment team.

It is considered that by imposing additional conditions in respect of the above, safety concerns will be mitigated.

The proposed modification is therefore considered to meet the requirements of s2.48 of the SEPP Transport and Infrastructure.

Tweed Local Environmental Plan 2014

The relevant local environmental plan applying to the site is the *Tweed Local Environmental Plan 2014* ('TLEP 2014'). The aims of this plan are outlined in Clause 1.2 and include:

- 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,
- 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,
- to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,

The proposal is generally consistent with these aims.

Zoning and Permissibility (Part 2)

The site is located across two (2) zonings, with the northern portion of the site within the E1 Local Centre zone and the southern portion of the site within the R1 General Residential zone pursuant to Clause 2.2 of the TLEP 2014 (**Figure 29**).

According to the definitions contained in the Dictionary, the modified proposal continues to satisfy the definition of a *residential flat building* which is defined as *a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing*.

Pursuant to the Land Use Table in Clause 2.3 of the TLEP 2014, *residential flat buildings* are permissible in the R1 zone, however, are prohibited in the E1 zone as they are included in the definition of *residential accommodation* which is prohibited in the zone (Item 4). As outlined above, the proposal is permissible as it is consistent with the concept plan approval for the site.

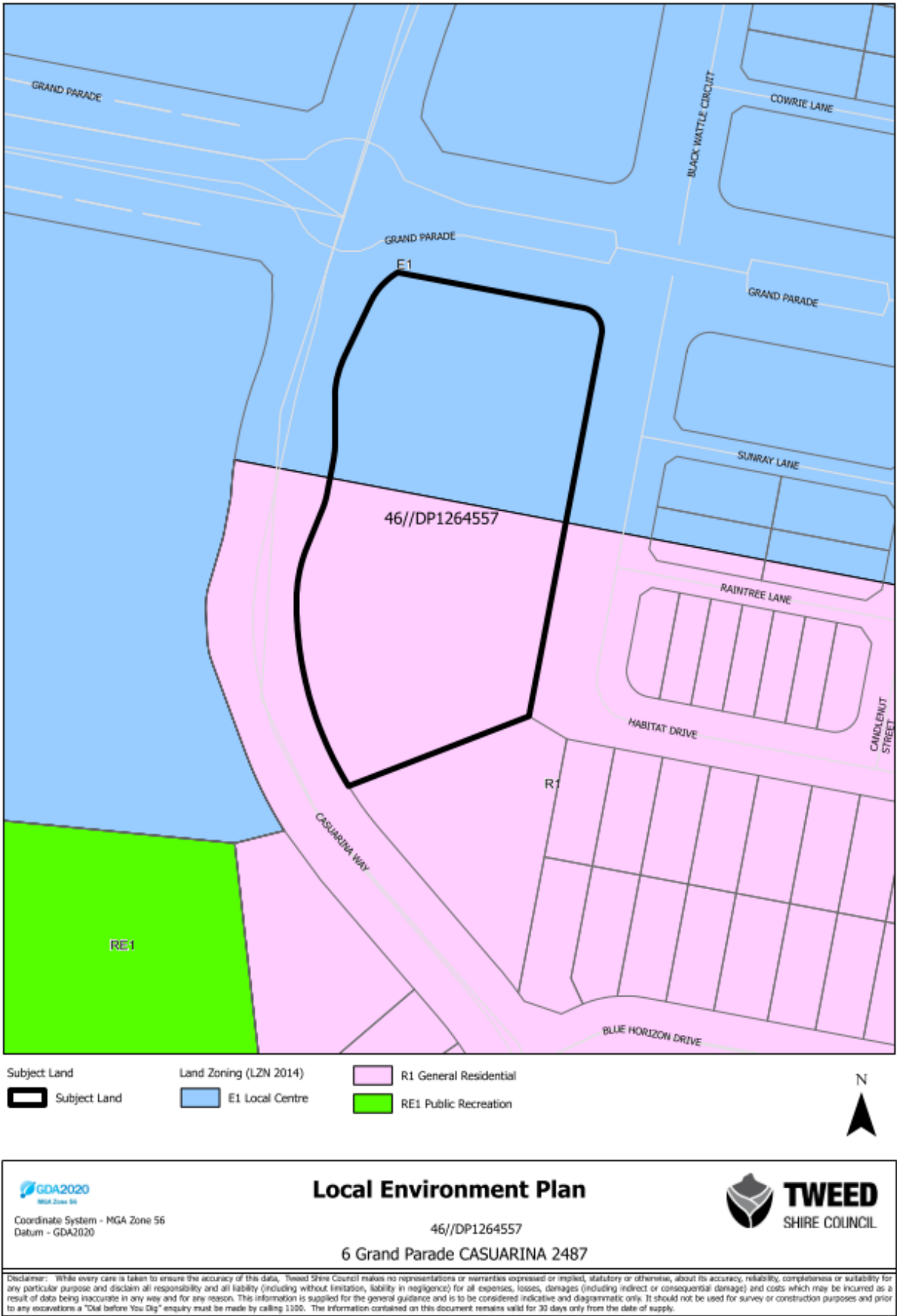


Figure 29: TLEP 2014 Zoning Map (Source: Tweed Shire Council GIS Mapping)

The zone objectives contained in the Land Use Table in Clause 2.3 state:

R1: General Residential Zone

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the provision of tourist accommodation and related facilities and services in association with residential development where it is unlikely to significantly impact on amenity or place demands on services beyond the level reasonably required for residential use.*

E1: Local Centre Zone

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To provide for tourism and residential opportunities that contribute to the vitality of the local centre.*
- *To encourage development that is of a scale consistent with surrounding neighbourhoods and that promotes a sense of place and focal points for the local community.*

The proposed modification maintains generally consistent with these zone objectives for the following reasons:

- the proposal provides for the housing needs of the community with a variety of housing types including 1, 2, 3 and 4 bedroom apartments; and
- the proposal provides for residential development which is consistent with other development in the vicinity of the site and is of a consistent scale with surrounding neighbouring development and envisaged future development in Casuarina Town Centre.

General Controls and Development Standards (Part 2, 4, 5 and 7)

The TLEP 2014 contains development standards, miscellaneous provisions and local provisions, which are relevant to the application and considered in **Table 8** below. The maximum building height for the site is 13.6m, however, as outlined in this report, the concept approval sets the maximum height of four (4) storeys and therefore the height of buildings development standard in Clause 4.3(1) of the LEP has no effect.

Table 8: Consideration of the LEP Controls

Control	Requirement	Originally approved	Proposed modification	Comply
Height of buildings (CI 4.3(2))	4 storeys (concept approval) 13.6 metres (LEP)	4 storeys	4 storeys	N/A Refer below
FSR (CI 4.4(2))	2:1 (14,708m ²)	1.55:1 (11,409.9m ²)	1.626:1 (11,954.31m ²)	Yes

Exception to development standards (CI 4.6(3))	Applicant must submit a Clause 4.6 variation request that satisfies Clause 4.6(3).	No	No	N/A
Heritage (CI 5.10)	Consider heritage items	There are no heritage items on the site or on neighbouring sites. The site is also not mapped as being a known or predictive Aboriginal Cultural Heritage site.		N/A
Bush fire hazard reduction (CI 5.11)	Bushfire hazard reduction work. Also consider if site is bushfire prone.	There is no bushfire hazard reduction work proposed. The site is also not mapped as being bushfire prone.		N/A
Flood planning (CI 5.21)	Land within the flood planning area	The land is not identified as being affected by the 1% AEP flood or the Probable Maximum Flood. The site is not within the flood planning area.		N/A
Acid sulphate soils (CI 7.1) (Class 4 land)	<i>Works more than 2 metres below the natural ground surface.</i> <i>Works by which the water table is likely to be lowered more than 2 metres below the natural ground surface.</i>	The original approval included works below the natural ground surface for the basement excavation. An <i>Acid Sulfate Soil Investigation Report</i> was provided with the application, which concluded that on the basis of the testing undertaken, all samples provided net acidity values below the ASSMAC defined action criteria. Therefore, soils disturbed on-site do not require treatment for acid sulfate potential. An ASSMP is not required as the preliminary investigation concluded that there were no ASS on the site.	The modified proposal maintains a similar excavation depth for the basement and therefore the original assessment comments relating to Acid Sulfate Soils are still applicable to this modified application.	Yes

Earthworks (CI 7.2(3))	Matters to be satisfied prior to granting consent.	The proposal involves earthworks and excavation for the proposed basement. The original application considered that there will be no adverse impacts on adjoining properties and the development will be carried out in accordance with best practice industry standards.	The modified proposal maintains a similar excavation depth for the basement and therefore the original assessment comments relating to earthworks are still applicable to this modified application.	Yes
Stormwater Management (CI 7.6(3))	Matters to be satisfied prior to granting consent.	The original application was supported by a Stormwater Management Plan prepared by ADG dated 16 August 2022. This was considered to be satisfactory subject to conditions imposed.	A revised Stormwater Management Plan was submitted. This is considered to be satisfactory subject to conditions already imposed.	Yes
Airspace operations (CI 7.8)	If the proposed development will penetrate the Limitation or Operations Surface, the consent authority must not grant development consent unless it has consulted with the relevant Commonwealth body.	The site is affected by the OLS for Gold Coast airport, being within the 149m AHD OLS zone. The proposal will not penetrate the limitation or operations surface.	A review of the OLS mapping indicates the applicable level for the site is 153m AHD. The proposed modification will not penetrate the limitation or operations surface.	Yes
Essential Services (CI 7.10)	Matters to be satisfied prior to granting consent – essential services are available or adequate arrangements have been made to make them available.	Adequate services are provided on the site.		Yes

Height (Clause 4.3(2))

Building height is defined in the TLEP 2014 as:

building height (or height of building) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The definition of a basement is also relevant to this proposal and is defined in the TLEP 2014 as:

basement means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).

The proposal involves four (4) buildings (or part thereof) which comprise differing heights arising from the minor changes in topography across the site. The height limit of the site is provided by the concept plan approval and consists of four (4) storeys, while the TLEP 2014 provides a height limit of 13.6 metres.

All of the buildings are consistent with the four (4) storey height limit under the concept approval and a Clause 4.6 variation request is not required. The only portion of the basement which is more than 1 metre out of the ground is for Building D which is otherwise only two (2) storeys above the ground thereby making it a three (3) storey building and under the height limit.

In relation to the 13.6 metre height limit under the TLEP 2014, for comparison purposes, a portion of each of the roofs, clerestory lids and lift core for modified Buildings A, B and C exceed the 13.6m building height limit as shown in Figures 25 and 26, which equates to 275m². This is a 15m² increase from originally approved where only the roof for Building B, clerestory lids and lift core exceeded the 13.6m building height limit. This is considered to be similar to originally approved.

The proposal is considered to be generally consistent with the LEP.

(b) Provisions of any Proposed Instruments (s4.15 (1)(a)(ii))

There are no draft SEPP's or LEP's that apply to the proposal.

(c) Provisions of any Development Control Plan (s4.15(1)(a)(iii))

The *Tweed Development Control Plan 2008* ('TDCP 2008') is relevant to this application, which came into effect on 30 April 2008. The following sections are relevant to the application:

- Section A1: Residential and tourist development – Part C (Shop top & Residential Flat Buildings) and Part B (Townhouses and Row Houses – relates to Building D only) and
- Section A2: Site Access and Parking
- Section A15: Waste Minimisation and Management
- Section B5: Casuarina Beach
- Section B9: Tweed Coast Strategy

It is noted that the site is not affected by Section A19: Biodiversity and Habitat Management as the application does not satisfy the criteria in Clause 3 of this Section. Similarly, Section A16 does not strictly apply as there are no trees on the site. While Section B9 applies to the site, it contains high level strategic parameters for the Tweed Coast broadly defined as from Chinderah to the North, the Pacific Ocean to the East, the Tweed Coast Motorway to the West and Cudgen Lake to the South. This Section of the DCP contains controls for the location of roads and centres and other strategic land uses and controls, with no directly applicable sections to the current application.

The relevant sections are considered below.

Section A1: Residential and tourist development –Part C (Shop top & Residential Flat Buildings) and Part B (Townhouses and Row Houses – relates to Building D only)

Part C - This Part provides the controls for residential flat buildings with Chapter 1 providing controls relating to building type and Chapter 2 providing the site and building controls under a number of design controls. These controls are summarised below, with a detailed compliance table in **Attachment D**.

- Chapter 1 – The proposal is generally consistent with these controls and with the variations given for the original development approval.
- Chapter 2 – This chapter contains the design controls which are considered below:
 - *Design Control 1: Public Domain Amenity* – The proposal is generally consistent with these controls and with the original development approved. The modified design is similar to the original approval in terms of the setting of the development on the site, size of buildings and general façade appearance. The applicant has enhanced the façade of Building D by including more modern and coastal elements as well as a front seating area which will activate the street frontage.
 - *Design Control 2: Site Configuration* – This section contains controls relating to deep soil zones, external living areas, balconies, communal open space, landscaping and planting on structures which are considered under the ADG. The proposed modification maintains the non-compliance with impermeable site area which was originally approved with an exceedance of 1811.85m² whilst the modified design provides a comparable exceedance of 1817.99m². An assessment of the topography, cut and fill controls found the proposal was acceptable with variations supported to cut and fill setback controls. An additional condition relating to the fill batters was imposed to ensure they are contained on the subject site and are stabilised.
 - *Design Control 3: Setbacks* – These matters are considered under the ADG assessment and Section B5 of the TDCP 2008.
 - *Design Control 4: Car Parking and Access* - These matters are also considered under the ADG assessment and Section A2 of the TDCP 2008. The proposed modification was considered acceptable in respect of the controls contained in this section with a variation maintained in respect of the basement carparking level protruding more than 1m above ground level.
 - *Design Control 5: Building Footprint and Attics, Orientation and Separation* – These matters are considered under the ADG assessment.

- *Design Control 6: Height* – The Major Projects concept approval and ADG prevails over these controls.
- *Design Control 7: Building Amenity* – Sunlight access, visual privacy and natural ventilation are considered under the ADG assessment. The proposed modification maintains acceptability in respect of acoustic privacy and view sharing.
- *Design Control 8: Internal Building Configuration* - These matters are considered under the ADG assessment. The use of the building is for permanent residential use, however as per the SEPP Housing, it also could be used for short term holiday letting which is compliant with this section.
- *Design Control 9: External Building Elements* - These matters are considered to be satisfactory having regard to the controls and the original approved development. The applicant responded to concerns raised providing additional street activation for Building D.
- *Design Control 10: Building Performance* – This is satisfactorily addressed through BASIX certification.
- *Design Control 11: Floor Space Ratio (FSR)* - This is considered in the LEP assessment.

Part B - This Part is similar to Part C and provides the controls for town houses and row houses with Chapter 1 providing controls relating to building type and Chapter 2 providing the site and building controls under a number of design controls. A brief assessment has been conducted against this part which is summarised below.

- Chapter 1 – The proposal is consistent with the originally approval development with the exception of an additional unit in Building D. The units exceed the minimum internal width control. The design maintains a ground level with habitable spaces and external living areas. Access to the front door is clearly identifiable and visible from Casuarina Way. Whilst Building D does not provide a mix of unit sizes and diversity, this is consistent with the originally approved development. The proposed modification is considered acceptable with respect of Chapter 1.
- Chapter 2 – This chapter contains the design controls which are considered below:
 - *Design Control 1: Public Domain Amenity* – The proposal is generally consistent with these controls and with the original development approval. The applicant has enhanced the façade of Building D by including more modern and coastal elements as well as a front seating area which will activate the street frontage.
 - *Design Control 2: Site Configuration* – This section contains controls relating to deep soil zones, external living areas, balconies, communal open space and landscaping which are considered under the ADG. As discussed above the proposed modification maintains the non-compliance with impermeable site area. The controls relating to topography, cut and fill are similar to Part C and therefore the same assessment comments, variation assessment and additional condition is applicable. Subdivision does not form part of this application.
 - *Design Control 3: Setbacks* – These matters are considered under the ADG assessment and Section B5 of the TDCP 2008.

- *Design Control 4: Car Parking and Access* - These matters are also considered under the ADG assessment and Section A2 of the TDCP 2008. As discussed above, a variation is maintained in respect of the basement carparking level protruding more than 1m above ground level.
- *Design Control 5: Building Footprint and Attics, Orientation and Separation* – These matters are considered under the ADG assessment.
- *Design Control 6: Height* – The Major Projects concept approval and ADG prevails over these controls.
- *Design Control 7: Building Amenity* – Sunlight access, visual privacy and natural ventilation are considered under the ADG assessment. The proposed modification maintains acceptability in respect of acoustic privacy and view sharing.
- *Design Control 8: External Building Elements* - These matters are considered to be satisfactory having regard to the controls and the original approved development. The applicant responded to concerns raised providing additional street activation for Building D.
- *Design Control 9: Building Performance* – This is satisfactorily addressed through BASIX certification.
- *Design Control 10: Floor Space Ratio (FSR)* - This is considered in the LEP assessment.

Section A2: Site Access and Parking

This section provides controls relating to car parking, pedestrian movement in and around sites and for the management of generated traffic volumes to ensure potential adverse impacts on the local road network are minimised. The original approval was for 78 units and 174 car parking spaces (154 Resident and 20 Visitor spaces) which was compliant with the Section A2 controls. The development was also approved with 88 bicycle parking spaces which were located in the basement and at the ground level of the buildings (78 Resident and 10 Visitor spaces) which was compliant with the Section A2 controls. The subject modification application is seeking approval to increase the number of units and change unit configuration.

The required car and bicycle parking for the modified proposal is contained in Clause A2.3 of Section A2 of the TDCP 2008, outlined in **Table 9**.

Table 9: Car Parking and Bicycle Parking required

Unit	No. of units proposed	Required	Provided	Complies
1 Bed (1 space)	22	22 spaces	149 spaces	Yes
2 Beds (1.5 spaces)	53	79.5 spaces		
3 beds (2 spaces)	20	40 spaces		
4 beds (2 spaces)	1	2 spaces		
Visitors (1/4)		24 spaces	24 spaces	Yes
Total spaces required	96	167.5 spaces	173 spaces	Yes (+5)

Bicycle spaces	Residential	96 spaces	96 spaces	Yes
	Visitor	12 spaces	12 spaces	Yes

The proposal is consistent with the requirements for car parking with the provision of 5 car spaces above the requirement which will account towards GFA (approx. 66.55m²), however FSR is still compliant. This is 1 less car space than originally approved. Bicycle parking has been increased to ensure compliance.

In considering a future strata subdivision, the DCP states that strata subdivision is permissible with either 1 or 2 residential parking spaces allocated to a unit, provided the average number of spaces allocated to 2 bedroom units across the whole residential portion of the development meets or exceeds 1.5 spaces. The proposed development is able to meet these requirements.

The proposed modification is considered to be acceptable with regards to this section of the Tweed DCP.

Section A15: Waste Minimisation and Management

This Section provides the controls for waste minimisation and management, which are considered below.

The original approval was for 78 units with a weekly waste generation rate of 6,240L and weekly recycling waste generation rate of 3,120L. This was to be managed through 5 x 2000L Waste bins and 9 x 360L Recycling bins, which complied with the requirements of Section A15. The ground floor was approved with a waste holding room sized to accommodate 5 x 2000L Waste Bins, adjacent to the driveway. The subject modification application is seeking approval to increase the number of units and change unit configuration.

The waste generation rates for the modified proposal and the required bins are outlined in **Table 10** pursuant to Clause 3.4.3 of Part B of Section A15. Concerns were raised with the applicant that the waste room below Building B was not of sufficient size to accommodate the required number of bins, however this has been revised and is now considered satisfactory.

Table 10: Consideration of Waste Generation Rates

Building/No. of units	Waste	Recycling	Waste Provided	Recycling Provided	Complies
	Rate (L)/unit/ week	Rate (L)/unit/week	Total /week (L)	Total /week (L)	
Bldg A – 35	80/week = 2,800L	40/week = 1,400L	4,000 (2 x 2,000L)	1,440 (4 x 360L)	Yes
Bldg B – 24	80/week = 1,920L	40/week = 960L	2,000 (1 x 2,000L)	1,080 (3 x 360L)	Yes
Bldg C – 31	80/week = 2,480L	40/week = 1,240L	4,000 (2 x 2,000L)	1,440 (4 x 360L)	Yes
Bldg D - 6	80/week = 480L	40/week = 240L			
TOTAL - 96	7,680L	3,840L	10,000L (5 x 2000L bins)	3,960L (11 x 360L bins)	Yes

Section A15 also nominates Greenwaste as 240L per fortnight; however, this is optional for large scale unit blocks. No greenwaste collection is proposed.

The proposed modification maintains the provision of waste chutes within Buildings A, B and C, with residents of Building D to use the waste area for Building C. Clear pedestrian access between these units and the waste room has been provided. The bin hold room on the ground floor adjacent to the driveway entry point is maintained and continues to provide sufficient space to accommodate 5 x 2000L waste bins prior to collection.

A condition was imposed that Council is not responsible for the transfer of bulk waste bins from private property to the kerbside (Condition 112). A condition was also imposed restricting the hours that bins can be relocated from the basement to the kerbside or ground level storage areas to reduce amenity impacts from noise (Condition 108). The modification application is not seeking to amend these conditions.

Section A15, Part D Clause 2.4(v) of the TDCP 2008 requires that for multi-storey developments that include ten or more dwellings, a dedicated room or caged area must be provided for the temporary storage of discarded bulky items which are awaiting removal. The storage area must be readily accessible to all residents and must be located close to the main waste storage room or area. Whilst the originally submitted modification plans removed the bulk waste room, in response to Council's concerns raised, the revised application plans include a bulk waste store room adjacent to the Building B Waste Room.

Section B5: Casuarina Beach

This Section of the DCP contains objectives and controls relating to urban design as well as the management of infrastructure provision and environmental matters. The relevant controls for the proposal are considered in **Table 11** and in the key issues section of this report.

Table 11: Consideration of Section B5 of the TDCP

Requirements	Proposal	Comply
B5.2: Urban Design		
B5.2.2 –Urban Design principles		
1. East/west open space and cycleway/footpath linkages shall be provided as shown on S94 Plan No 22 - Cycleways (Maps 8 and 9).	Nothing required on the site.	✓
2. (a) Minimum setback from the street front boundary to the wall of a dwelling is to be not less than six (6) metres.	Original development approved with the following minimum setbacks: 4.5m Grand Parade 4.5m Habitat Drive 3.1m Casuarina Way Proposed minimum setbacks are as follows: 3.1m Grand Parade 4.2m Habitat Drive 3.1m Casuarina Way This is further considered in the key issues section.	Key issues
(b) Minimum setback from the street front boundary to the wall of a single	Not proposed.	N/A

garage is to be not less than 5.4 metres and not less than 5 metres to the wall of a double garage.		
(c) Special design elements such as verandas, entrances and the like constructed of open design shall be setback a minimum of 3 metres from the front street boundary.	Main building entry and unit patio & balconies fall within the front setback areas. Original development approved with the following minimum setbacks: Grand Parade: • 3m – balcony edge • 2.8m – planter edge Habitat Drive • 3m – balcony edge • 2.8m – planter edge Casuarina Way • 1.2m – balcony edge • 0.9m – planter edge Proposed minimum setbacks are as follows: Grand Parade: • 3m – balcony edge • 2.8m – planter edge Habitat Drive • 1.5m – ground floor terrace edge • 3m – balcony edge • 2.8m – planter edge Casuarina Way • 1.2m – balcony edge • 0.9m – planter edge The reduced setback on the ground floor allows for increased private open space which is required under the ADG. This is considered acceptable on merit.	Acceptable on merit
(d) The minimum side boundary setback for any dwelling shall be not less than 900mm to the wall and not less than 675mm to the outer most projection of the eave.	Not proposed.	N/A
(e) The minimum setback from a secondary street boundary of a corner lot to the wall of a dwelling is to be not less than 3 metres.	The proposal is setback more than 3 metres from the secondary frontages of Habitat Drive and Casuarina Way.	Yes
(f) For beachfront lots, the rear building line is the boundary line between the 2(e) and 7(f) zones. No structures are permitted within the 7(f) zone.	Not relevant to the site.	N/A

(g) All fencing east of the 7(f) and 2(e) zone boundary shall be a maximum height of not more than 1.2 metres.	Not relevant to the site.	N/A
B5.3: Management of Infrastructure Provision		
Infrastructure requirements for the subdivision.	Having regard to infrastructure matters, the proposal is generally consistent with the approved concept plan for the site and Council's engineers do not object to the proposal. It is noted that the proposed change to the sewer line alignment is not supported.	Yes
B5.4: Management of Environmental Matters		
Controls for the management lot, koala feed trees, dedicated open space, provision of sewerage pumping stations, dune management plan and coastal works.	Having regard to environmental matters, the proposal is generally consistent with the approved concept plan for the site and the site is not affected by these matters. Council's engineers do not object to the proposal. It is noted that the proposed change to the sewer line alignment is not supported.	Yes

Developer Contributions

The proposed modification seeks to alter the composition of bedrooms in each unit as well as the number of units as compared to what was originally approved. Therefore, Condition 15A is recommended to be modified to reflect the revised amounts.

As mentioned previously, the applicant is seeking to require the payment of s7.11 Developer Contributions 'Prior to issue of an Occupation Certificate'. This is not in accordance with Council Policy. Council considers that the applicant is able to amend their Development Consent to stage the development if they would like to delay payment of developer contributions.

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- No 4 – Tweed Road Contribution Plan
- No 11 – Tweed Shire Library Facilities
- No 12 – Bus Shelters
- No 13 – Eviron Cemetery
- No 18 – Council Administration Offices & Technical Support Facilities
- No 19 – Casuarina Beach/Kings Forest
- No 22 – Cycleways
- No 26 – Shirewide Regional Open Space
- No 32 – Developer Contributions for Heavy Haulage

A breakdown of revised calculations is provided below:

Plan 4 TRCP

Trips 3.9 trips/unit x 96 units – 6.5 trip site credit = 367.9 Trips

Plan 11, 12, 13, 18, 19, 22 and 26

Proposed overall composition:

	1 Bed	2 Bed	3 Bed	4 Bed
Number of units	22	53	20	1
ET per unit	0.5417	0.7083	0.875	1
Total ET per unit type	11.917	37.5417	17.5	1
Total ET				67.9583
Less site credit				1
Chargeable ET				66.9583

Plan 32

Condition 35 is maintained in respect of Plan 32 and requiring payment prior to issue of a Construction Certificate.

Refer to **Attachment A**, recommending deleting Condition 15A and insert new condition 15B which contains developer contribution calculations which reflect the revised design and bedroom composition.

(d) Planning agreements under Section 7.4 of the EP&A Act (s4.15(1)(a)(iiia))

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) Provisions of Regulations (s4.15(1)(a)(iv))

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application. There are no matters listed which are relevant to the site or the proposed development.

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the 2021 EP&A Regulation are not relevant to the proposal.

3.2.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of the modifications to the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- **Context and setting** – The proposed modification maintains a similar façade to the originally approved development with the inclusion of modern and coastal architectural and fenestration details. The façade of Building D has also been redesigned to provide a more coastal aesthetic as originally requested by Council. It is considered that the proposed modification overall does not result in adverse impacts to the streetscape.
- **Access and traffic** – The proposed modification maintains the approved access point from Habitat Drive. The revised basement layout provides for the required amount of

car parking, with compliant number of bicycle parking accommodated in both the basement and ground floor levels. Whilst there is an increase in vehicle movements due to the increase in number of units, this is not considered to result in a significant negative impact to the capacity of road network nor on adjoining sites.

- Public Domain – The modified proposal generally maintains the pedestrian linkages as originally approved. The activation to the façade of Building D through the inclusion of a front seating area ensures a connection is maintained to the public domain.
- Utilities – The required utilities for the site are available in the vicinity and have been adequately demonstrated as outlined in this report.
- Flora and fauna impacts - There are no ecological impacts or on site tree removal proposed.
- Natural environment – Earthworks are proposed on the site however impacts to the natural environment have been minimised.
- Noise and vibration – An Acoustic Report has been provided which is considered satisfactory. The revised Acoustic Report also has due regard to the increase in unit numbers and relocation of the internal wellness and fitness facilities to the basement.
- Safety, security and crime prevention – The proposed modification is considered to maintain satisfactory compliance with the CPTED Principles as there is good surveillance of the entry areas from apartments and the basement provides clear sight lines.
- Social impact – The proposed modification provides additional housing choice and opportunities on the site. It is unlikely to result in any adverse social impacts in the area.

Accordingly, it is considered that the modified proposal will not result in any significant adverse impacts in the locality as outlined above.

3.2.3 Section 4.15(1)(c) - Suitability of the site

Having regard to the merit considerations of the proposed changes and the developments demonstrated positive performance against relevant development standards, the subject site remains suitable for the development.

3.2.4 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 4.3 of this report.

3.2.5 Section 4.15(1)(e) - Public interest

The proposed modification remains in the public interest for the reasons previously mentioned. The proposed modification increases the number of units however, maintains the same level of amenity for future residents and continues to be acceptable with respect to the public domain.

3.3 Part 5 of the 2021 EP&A Regulation

There are a number of matters required to be addressed in an application for modification of development consent pursuant to Division 1, 2 and 3 of Part 5 of the 2021 EP&A Regulation. These matters are considered in **Table 12** below.

Table 12: Consideration of the Requirements under the Regulation

Matter	Comment	Comply
Clause 100 Application for modification of development consent		
May be made by— (a) the owner of the land to which it relates, or (b) another person, with the consent of the owner of the land (CI 98(1))	The application has been made by the Town Planning Alliance (NSW) Pty Ltd on behalf of the landowner Azure Project 35 Pty Ltd. Owners consent was submitted with the modification application.	Y
NSW Aboriginal Land Council consent required for land owned by a Local Aboriginal Land Council (CI 98(6)).	The land is not owned by a Local Aboriginal Land Council and consent is not required.	N/A
Form approved by Planning Secretary and on portal (CI 99).	The application has been provided in accordance with the Regulation.	Y
Applicant details (CI 100(1)(a))	Provided on the NSW Planning Portal ('the Portal').	Y
Description of the development (CI 100(1)(b))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Address and title details (CI 100(1)(c))	Provided on the Portal and outlined in Section 1 of this Report.	Y
Description of the proposed modification (CI 100(1)(d))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Whether to correct a minor error, mis-description or miscalculation, or some other effect (CI 100(1)(e))	The proposed modification is to modify the original consent under Section 4.55(2) to allow for an increase in unit numbers and design enhancements and is not to correct a minor error, misdescription or miscalculation.	N/A
Description of the expected impacts of the modification (CI 100(1)(f))	There are unlikely to be any significant impacts resulting from the proposed modification. Any other impacts were considered in the original proposal, which was supported by the Planning Panel. Refer to key issues section (where required).	Y
Undertaking that modified development will remain substantially same as development originally approved (CI 100(1)(g))	The modified development will remain substantially the same development as that originally approved. Refer to Section 3.1 of this Report.	Y
If accompanied by a Biodiversity development assessment report, the	Proposal is not accompanied by a biodiversity development assessment report.	N/A

biodiversity credits information (CI 100(1)(h))		
Owner's consent (CI 100(1)(i))	Signed owners consent has been provided on the Portal.	Y
Whether the application is being made to the Court (under section 4.55) or to the consent authority (under section 4.56) (CI 100(1)(j)).	This Application is made to the consent authority pursuant to Section 4.55(2) of the EP&A Act.	N/A
BASIX Certificate (CI 100(3))	The proposed modification does involve BASIX development and an updated BASIX Certificate has been provided.	Y
Penrith Lakes Development Corporation (CI 101)	The proposed modification does not relate to Penrith Lakes Development Corporation.	N/A
Qualified designer statement for residential apartment development (CI 102)	The proposed modification does involve residential apartment development and a qualified designer statement has been provided.	Y
Mining and petroleum development consents (CI 103)	The proposed modification does not relate to mining and petroleum development consents.	N/A
Notification and exhibition requirements (CI 105-112)	Refer to Section 4.3 of this report.	Y
Notification of concurrence authorities and approval bodies (CI 109) (to be undertaken by Council)	The modification application has been referred to the relevant concurrence and approval bodies as outlined in Section 4.1 of this Report.	Y

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The modification application was referred to various agencies for referral as required by the EP&A Act and Clause 109 of the 2021 EP&A Regulation and outlined in **Table 13**.

Table 13: Concurrence and Referral Agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Environment, Energy & Science Group within DPIE	S7.12(2) - <i>Biodiversity Conservation Act 2016</i>	N/A	N/A

Referral/Consultation Agencies			
RFS	S4.14 – EP&A Act Development on bushfire prone land	N/A	N/A
Essential Energy	S2.48 of the SEPP (Transport and Infrastructure) 2021	Safety concerns raised can be managed through imposition of additional conditions.	Yes (Conditions)
Integrated Development (S 4.46 of the EP&A Act)			
RFS	S100B - <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	N/A	N/A
Transport for NSW	S138 - Roads Act 1993 for works in the road reserve.	N/A – Council is the roads authority for S138 applications	N/A
Heritage NSW	S58 of the Heritage Act 1977 for demolition or works etc to an item listed on State Heritage Register or with an interim heritage order.	N/A	N/A

4.2 Council Referrals

The modification application was referred to various Council officers for technical review as outlined in **Table 14**. The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

Table 14: Consideration of Council Referrals

Officer	Comments	Resolved
Stormwater and Flood Engineering	Council's Engineering Officer reviewed the revised Stormwater Management Plan and considered the proposed stormwater management arrangements remain acceptable. No additional conditions recommended.	Yes
Traffic	Council's Traffic Engineering Officer reviewed the proposal with respect to traffic impacts, parking and road safety. The proposed modification is considered to be acceptable and no additional conditions are recommended.	Yes

Building	No objections and no additional conditions recommended	Yes
Environmental Health	Council's Environmental Health Unit has reviewed the application with respect to contaminated land, groundwater, lighting, noise, pool safety and waste. Further clarification was required in relation to potential noise impacts resulting from an increase in unit numbers and therefore an increase in vehicle movements within the basement carpark, and assessment of noise from the communal wellness facility including basement gym and impact on residences above. Item included in request for further information letter. A revised Noise Impact Assessment report was provided that confirmed the increase in number of units was considered as part of the assessment. The report was also updated to consider potential internal noise impacts from the use of the wellness centre. The consultant has provided revised calculations and recommended acoustic isolation for any use involving weights and cardio to prevent impacts to residents above the facility.	Yes
Water and Wastewater	Council's Water and Wastewater Unit have reviewed the application with respect to adequate provision of water and wastewater services and any impact to Council's infrastructure. Concerns were raised in respect of the modified location of the connecting sewer line which impedes further into the adjoining drainage reserve. Item included in request for further information letter. The Sewer Connection Plan (Dwg No. C60) by ADG Consulting was updated to show the sewer connection works at 12 Habitat Drive match those originally approved.	Yes
Strategic planning and urban design	Council's Strategic Planning and Urban Design Unit have reviewed the application with respect to the built form and other urban design aspects of the development. It is considered that amendments to the plans are required to ensure compliance with the ADG and improve the western façade of Building D. Item included in request for further information letter. Whilst the revised plans provided increased compliance with the ADG and improved the street activation of Building D, moveable upper level screens would be preferred. However, this is not forming a reason for refusal.	RFI

Parks and Active communities	The application has been reviewed by Council's Parks and Active Communities Unit with regard to replacement of street trees. Mass removal of street trees is not supported by Council. Council also does not consider <i>Ficus obliqua</i> (small leaved fig) as an acceptable species for a street tree. Item included in request for further information letter. Condition 33 requires the submission of a Streetscape Landscaping Plan to Council for approval as part of a s138 application. As such, it is proposed that the detail relating to street tree removal and replacement be provided with a future s138 application consistent with the current approval.	Yes
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4.3 Notification and Community Consultation

The modification application was advertised in accordance with the Council's Community Engagement and Participation Plan from 30 July 2025 until 13 August 2025. The notification included the following:

- An advertisement in the local newspaper (Tweed Valley Weekly);
- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties (approximately 75 letters sent); and
- Notification on the Council's website.

The Council received a total of two unique submissions, comprising one objection and one submission in support of the proposal. The issues raised in these submissions are considered in **Table 15** and are contained in **Attachment E**.

The issues raised in the community submissions have been addressed in this report and in the recommended conditions of consent in **Attachment A**.

Table15: Community Submissions

Issue	Council Comments
High density living which is inconsistent with established low rise coastal village of Casuarina. This will: - Overwhelm local infrastructure, including roads, drainage and public spaces; - Erode sense of community by replacing open, low density streetscapes with large-scale apartment blocks; - Create long-term parking and traffic congestion, particularly during peak holiday periods;	The site was nominated as a medium density site with a 4 storey height limit under the Major Project Approval for Casuarina Town Centre. The modification is considered consistent with the expected density. Infrastructure has been designed to handle the density approved for the Casuarina Town Centre. The design of the development provides street activation to Grand Parade, Habitat

- Set a precedent for further high-density developments, fundamentally altering the areas identify.	Drive and drainage reserve. Further activation of Casuarina Way is noted and was included in the RFI. The applicant provided revised plans with an outdoor alfresco area facing Casuarina Way which is considered to sufficiently activate the street frontage. Further discussion regarding upper level screening is contained in the key issues section of this report. The modified proposal provides for the required number of resident and visitor parking spaces as required by the Tweed DCP Section A2 Parking and Site Access. Further development within the Casuarina Town Centre must be consistent with the Major Project Approval MP06_0258 which contains a mix of medium and low density lots.
Visual and environmental impact - Bulk and scale of buildings may result in overshadowing, loss of privacy, and reduced green space.	The proposal is considered to result in acceptable overshadowing impacts with the majority of overshadowing occurring on Lot 11 DP 1198266 (Casuarina Shopping Centre) and Lot 27 DP 1264557 (drainage reserve). The proposed modification is not considered to result in additional privacy and green space impacts from the original approval.
Traffic and safety - Increased vehicle movements could pose risks to pedestrians and cyclists, especially near schools and parks.	The road network is considered appropriate for the proposal.
Planning inconsistencies - The proposal appears to conflict with the Tweed LEP and DCP, particularly in terms of height, density and neighbourhood character.	The heights within the Major Project Approval MP06_0258 take precedence over the LEP height control. The proposed modification is consistent with the Major Project Approval and original approval in terms of height, density and character. Additional articulation is required for Building D which was raised in the RFI. This is further discussed in the key issues section of this report.

5. KEY ISSUES

The site is a new vacant site specifically approved for the development of medium density multi-dwelling housing under the Major Project Approval. Given that the site does not have any significant environmental constraints, it is considered that the development should be readily able to comply with objectives and controls under the ADG.

It is noted that the ADG strictly only applies to 90 of the 96 units within the development. The six units within Building D facing Casuarina Way are 2 level units with basement garage parking (terrace style housing).

Direct street access

The controls encourage direct street access to ground floor apartments. This is considered to have been satisfactorily provided. However, in relation to Building A and Unit Types 1.1, 2.1 and 2.3 located in the north-western corner, the pathway has been aligned to a bedroom, rather than the external living area. This was raised with the applicant that the access should be realigned to ensure privacy for residents. The revised plans submitted did not alter the direct street access proposed and the applicant advised that they prefer plantings in proximity to the private open space rather than the pathway. Whilst this is not ideal, it is not considered to create such a detrimental impact for residents as to form a reason for refusal.

Resolution: No further action required.

Screening on Building D façade facing Casuarina Way

The modified façade of Building D facing Casuarina Way provides fixed screening on the upper level which shuts down the elevation and adds to the visual bulk of the façade. It is considered that moveable screens would be preferred on the upper level to enhance the openness of the façade to Casuarina Way. However, it is acknowledged that this faces west, and the screens are related to bedrooms. Whilst moveable screens are preferred, this is not a reason to refuse the application.

Resolution: No further action required.

Building setbacks

It is noted that the walls of Buildings A, B and C are moving closer to Grand Parade, Habitat Drive and the drainage reserve. However, it is also noted that the balcony setbacks are maintained as originally approved. Given the bulky facades of the buildings due to the archways, the minor reduction in setbacks to the walls will not be perceptible from the public domain. Further, dense landscaping will be utilised along the boundary of the development to assist with screening. No concerns are raised by Council in respect of this matter.

Resolution: No further action required.

Planting on structures

With respect of Table 5 Minimum soil standards for plant types and sizes in the ADG, the revised Landscape Concept Plan dated 10 November 2025 fails to demonstrate that planters located above the basement are of a sufficient size to accommodate the plantings proposed. As discussed previously in this report, the planters provide an acceptable depth however, the area is significantly below the recommended soil area dimensions for trees of all heights per the ADG.

The original approval included planters between Buildings A-B and B-C which whilst not compliant with the Table 5 requirements, were of a greater width (3.2m-7.6m). The modified proposal has significantly reduced the planter widths in this area (1.8-2.6m). This is depicted

below in figures 30 and 31. The revised Landscape Concept Plan indicates that this area will contain the following tall palms which are underplanted with shrubs and groundcovers:

- *Howea forsteriana* (Kentia Palm) – 10-15m mature height; 5-6m mature width
- *Phoenix roebelenii* (Dwarf Date Palm) – 2-4m mature height; 2-4m mature width
- *Plumeria obtuse* (Evergreen Frangipani) – 8m mature height; 5m mature width

The planters proposed between Buildings C-D are of similar dimensions as originally approved, with narrow planters surrounded a lawn area. The planters proposed between Buildings A-D have been significantly reduced from the originally approved width of 5.3m to 0.7-1.1m. Whilst this is a significant reduction, they are similar to those between Buildings C-D and are therefore considered acceptable. In respect of the planters within the swimming pool area, these are considered to be generally similar to those originally approved.

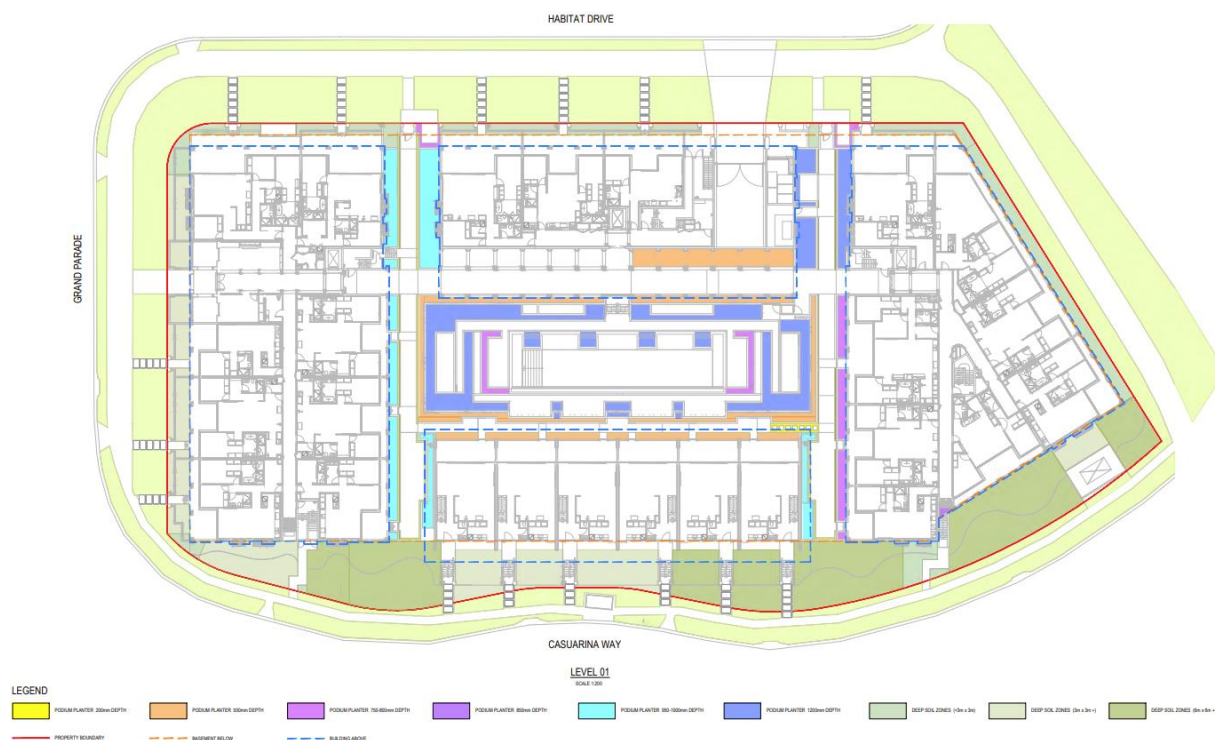


Figure 30 Proposed Landscape Concept Plan – Deep Soil Zones Structure Diagrams

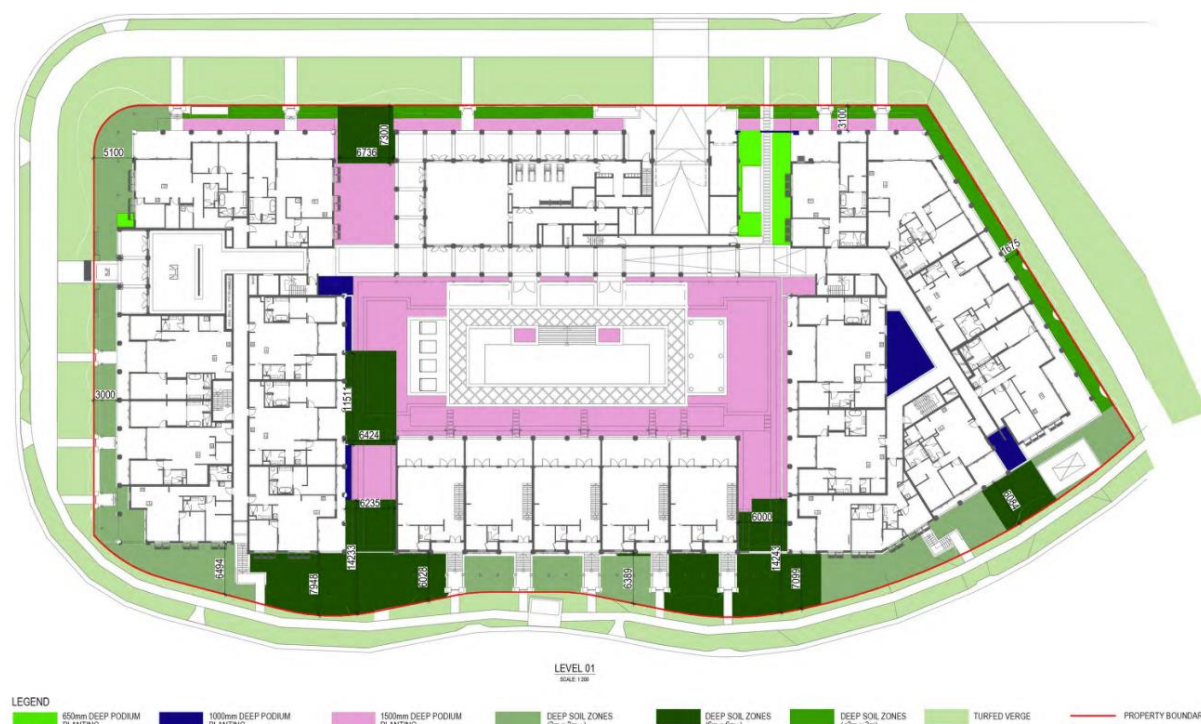


Figure 31 Approved Landscape Concept Plan – Deep Soil Zones Structure Diagrams

It is noted that Condition 17 which requires submission of a detailed landscaping plan prior to issue of a Construction Certificate is being maintained, albeit with a revision to the reference to the Landscape Concept Plan. This detailed landscaping plan will clearly identify species and planting locations.

It is acknowledged that species may change through the detailed design phase in preparing the detailed landscaping plan and therefore it is recommended to add a requirement to Condition 17A that the detailed landscaping plan be supported by a statement from a suitably qualified registered Landscape Architect certifying that the planters with smaller areas are of a sufficient size to accommodate the species that are proposed.

Whist Council is raising this as a key issue, it is considered that this can be resolved through conditions and therefore does not form a reason for refusal.

Resolution: Council considers that this can be resolved through recommended modified conditions of consent (Condition 17A).

Timing of payment of S7.11 Developer Contributions

Council does not support the relocation of Condition 15A in respect of S7.11 Developer Contributions to the 'Prior to issue of an Occupation Certificate' stage. This is not in accordance with Council's usual stance in relation to payment prior to issue of a Construction Certificate. The applicant has submitted the following response to this matter:

We acknowledge that Council's current policy is to require payment of section 7.11 contributions 'Prior to Construction Certificate'. However, it is recommended that Council consider deferral of the payment of section 7.11 contributions to 'Prior to Occupation Certificate' particularly for Regionally Significant Developments that deliver significant flow on benefits to the local economy and housing supply. The deferral of the payment of the section 7.11 contributions to 'Prior to Occupation Certificate' enables

cash flow to be optimised during the critical construction phase. The principal certifier authority would not be able to issue the first Occupation Certificate without evidence that the section 7.11 contributions have been paid which provides Council with appropriate certainty/security of payment. As contributions are indexed at the time of payment so there will be no loss to Council with the deferral of the payment.

Resolution: The issue has not been resolved and accordingly, Council recommends maintaining the requirement for payment of s7.11 Developer Contributions 'Prior to issue of a Construction Certificate'. It is open to the applicant to stage the development if they would like to defer payment of contributions.

Other matters

- The revised Architectural Plans do not provide sufficient detail as to how safety in respect of the basement voids will be achieved from ground level COS areas.

Resolution: This issue has been resolved through an additional recommended condition of consent (Condition 103.1).

6. CONCLUSION

This modification application has been considered in accordance with the requirements of the EP&A Act and the 2021 EP&A Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

It is considered that the key issues as outlined in Section 5 have either been resolved satisfactorily through recommended draft conditions at **Attachment A** or are not considered to be significantly detrimental as to warrant refusal of the application.

This modification application has been considered pursuant to Section 4.55(2) of the EP&A Act. The modification is considered to be substantially the same development as that approved and the impact of the proposal (as amended) is considered to be acceptable.

The proposal remains consistent with the zone objectives and the objectives of relevant clauses in both the SEPP Housing 2021 and TLEP 2014 in terms of height, bulk and scale.

The modified development remains well designed and provides additional housing stock and choice for the Casuarina area, especially with the inclusion of 1 bedroom units during the current housing crisis.

The application has been assessed by various internal and external stakeholders and following the amendment to the application, stakeholders raise no objection subject to conditions. Accordingly, it is recommended that the modified consent be granted subject to the modification of relevant conditions as detailed in **Attachment A**.

7. RECOMMENDATION

It is recommended:

- That the Modification Application DA No DA22/0408.02 for a residential flat building (96 units) in 3 x 4 storey blocks and 1 x 2 storey block with a common basement at Lot 46 DP 1264557; No. 6 Grand Parade Casuarina be APPROVED pursuant to

Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A; and

- Pursuant to Clause 118 of the *Environmental Planning and Assessment Regulation 2021*, a notice of determination is to be prepared by Council following the Panel's determination of this modification application.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Architectural Plans
- Attachment C: Detailed ADG Assessment
- Attachment D: Detailed Tweed DCP Section A1 Assessment
- Attachment E: Redacted Submissions
- Attachment F: Consolidated consent and stamped approved plans for DA22/0408.01