

Council Reference: DA10/0222.30 LN85548  
Your Reference: MP06\_0258-Mod-15



21 June 2024

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Attention: Ryan Lennox – [ryan.lennox@dpie.nsw.gov.au](mailto:ryan.lennox@dpie.nsw.gov.au)

Dear Sir

**Council Submission to Department of Planning Modification Application to Casuarina Town Centre Concept Plan Approval MP06\_0258 MOD 15 (Council reference DA10/0222.30) at Lot 51 DP 1264557; No. 10 Grand Parade CASUARINA**

**Assessment of Modifications Proposed as Part of this Application**

NSW Planning, Housing and Infrastructure notification documentation identifies that the following amendments are proposed through the MOD 15 application:

*The request seeks to change the approved use of the building from mixed use medium density residential to mixed use to facilitate specialist medical services and to increase the approved building height from three storeys to three storeys with a partial fourth storey for a rooftop terrace.*

These modifications are reviewed in detail below;

- ***Change the approved use of the building from mixed use medium density residential to mixed use to facilitate specialist medical services.***

Under the current approval, the site is to provide for mixed use medium density residential use, with commercial and retail uses along the entire frontage to Grand Parade and two levels of residential units above (total of 18 dwellings/units). Street activation is required to the Grand Parade frontage in accordance with condition C7 of the Concept Approval.

***Proposed Development***

The proposed development consists of a mixed use development which would be defined as follows;

- ***mixed use development*** means a building or place comprising 2 or more different land uses.
- ***medical centre*** means premises that are used for the purpose of providing health services (including preventative care, diagnosis, medical or surgical treatment, counselling or alternative therapies) to out-patients only, where such services are principally provided by health care professionals. It may include the ancillary provision of other health services.

**Note—**

Medical centres are a type of **health services facility**—see the definition of that term in this Dictionary.

- **health services facility** means a building or place used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons, and includes any of the following—
  - (a) a medical centre,
  - (b) community health service facilities,
  - (c) health consulting rooms,
  - (d) patient transport facilities, including helipads and ambulance facilities,
  - (e) hospital.

Note: the submitted documentation refers to development as a ‘health services facility’ and a ‘medical centre’. For clarity, confirmation should be obtained from the applicant confirming that the modification application proposes a medical centre use on this site.

- **food and drink premises** means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—
  - (a) a restaurant or cafe,
  - (b) take away food and drink premises,
  - (c) a pub,
  - (d) a small bar.

**Note—**

Food and drink premises are a type of **retail premises**—see the definition of that term in this Dictionary.

Through the assessment of this application, Council have received correspondence from local property owners concerned that the proposed modification will result in the creation of a medical specialist centre which is in direct conflict with Casuarina's vision which has been marketed as low to medium-density residential beachside living, with this proposal significantly altering the character of the community.

From a planning perspective, the subject site is zoned E1 – Local Centre under the Tweed LEP 2014. The objectives of this zone are;

- *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 development is permitted with consent in the E1 Local Centre zone and is considered to generally comply with the objectives of this zone by providing a range of uses that serve the needs of people who live in, work in or visit the area and encourage investment in development that generates employment opportunities and economic growth.

From this perspective, the proposed modification would be permissible and generally in accordance with Council’s LEP controls.

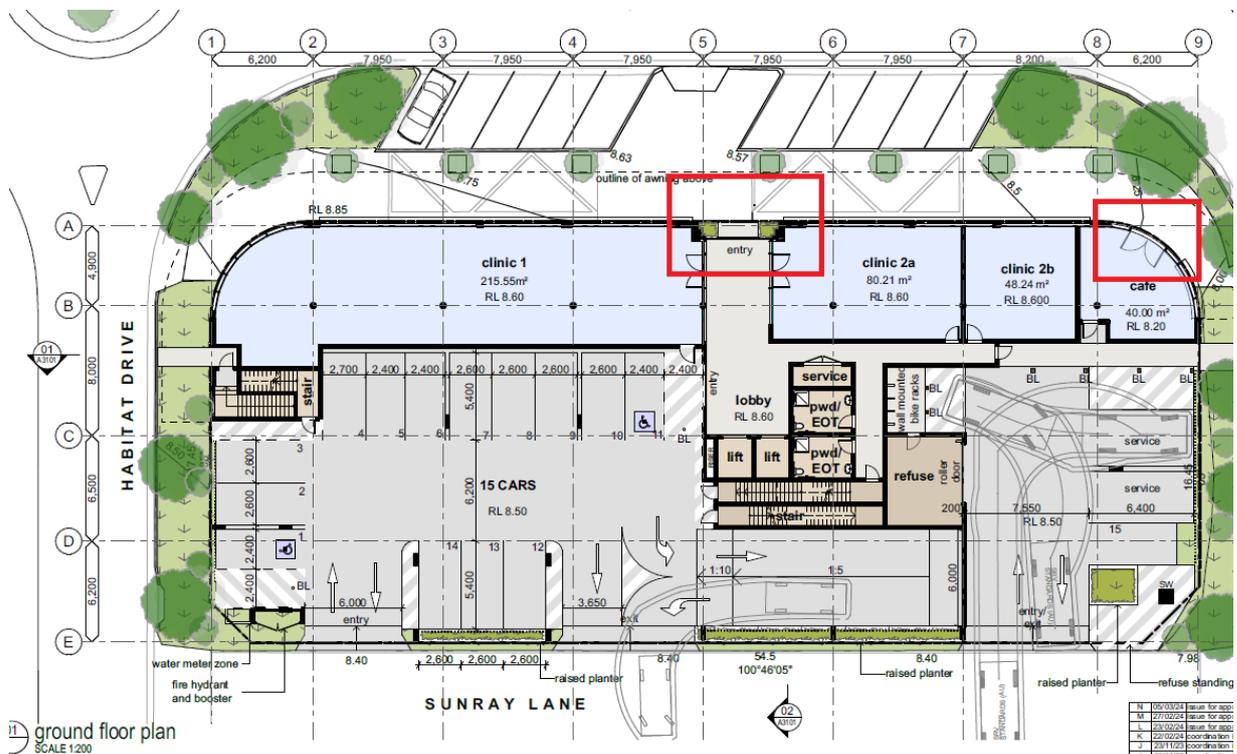
**Street Activation**

Condition No. C7 states the following with respect to street activation which is currently applicable to this site;

**‘C7 Street Activation**

*Future Applications for the development of buildings with a frontage to Grand Parade between Road B and the foreshore must incorporate ground floor retail and commercial uses along the entire frontage to Grand Parade.’*

The purpose of this condition is to ensure an active street frontage to Grand Parade and the submitted design is not considered to achieve this, with two pedestrian entrances to the entire street frontage, being one to the proposed café and one to the medical centre, as demonstrated below;



**Figure 1: Ground Floor Plan with Pedestrian Entrances Identified**

This is not considered to activate the street frontage and it is recommended that an updated development design proposal for this site should incorporate additional direct pedestrian access points to all ground level tenancies in order to achieve the intent of this condition. Some concern would also be raised with respect to whether medical suites to the ground floor would deliver the intended activated retail/commercial uses across this prominent street frontage.

Council’s Strategic Planning & Urban Design Unit have provided the following comment with respect to street activation;

*‘Residential accommodation contributes to vibrancy of the village centre. This particular block is right in the middle of this part of Grand Parade. Having*

*essentially a 'closed' elevation for a substantial proportion of this street frontage would be to the detriment of the desired active street edge.  
As a minimum some of the ground floor tenancies should be identified for more active uses with shop fronts which open onto the street. This should preferably be a combination of retail / food and beverage uses. The small 40sqm cafe located on the eastern corner is considered insufficient.'*

Based on the above, concerns remain with respect to the level of street activation associated with this modification.

### *Residential Density*

Under the current Major Project Approval, the specific Yield Estimate Plan identifies a total of 18 dwellings for this site, with these provided at a rate of 9 dwellings per floor. Given the proposed modification would result in no residential development on site, the proposal is considered to result in a reduction to the overall residential density within Casuarina Town Centre.

However, an Economic Analysis has been prepared by Bull & Bear Economics which has been submitted as part of this application. This identifies that, in part due to increased residential density provided at other sites within Casuarina Town Centre, the *'ultimate dwelling yield within the Casuarina Town Centre will be one less dwelling relative to the latest Concept Approval.'*

The proponent has also identified that there is difficulty in providing residential development for 18 units on site while also providing amenity to these dwellings. In particular, achieving minimum solar access to living rooms and areas of private open space is stated as being *'difficult for dwellings that are located on the southern side of any development on the site'* and *'simultaneously obtaining adequate ventilation and cross-ventilation to centrally located dwellings will also be difficult to achieve.'* It is noted that no concept unit drawings to substantiate this have been provided for review.

Irrespective of the overall housing provided within the Casuarina Town Centre area, this modification does result in a loss of 18 residential units which were identified for this particular site.

From a Council staff perspective, the provision of no residential development on this site raises concern. It is considered that a town centre site should have a higher residential density in close proximity to services such as the Casuarina retail area and Grand Parade town centre area in order to maintain the viability of commercial and retail services. Council's Strategic Planning and Urban Design has advised the following in this regard;

*'While there is a recognised need for additional health facilities within the area, this needs to also be balanced against the need for additional housing stock within the immediate area.*

*Residential accommodation contributes to vibrancy of the village centre. This particular block is right in the middle of this part of Grand Parade. Having essentially a 'closed' elevation for a substantial proportion of this street frontage would be to the detriment of the desired active street edge.'*

Tweed Shire Council would request that Department of Planning, Housing and Infrastructure assess this as a reduction to the density of the overall Casuarina Town

Centre development and consider its suitability from a holistic perspective regarding potential impacts on the Casuarina Town Centre Development.

### *Traffic, Parking & Access Comments*

The submitted plans indicates vehicular parking to two basement levels and the ground floor consisting of 101 car parking spaces as well a Small Rigid Vehicle (SRV) servicing. Access to the development is proposed to the rear (south) of the site, from Sunray Lane.

Council have received correspondence from local property owners objecting to the development on the basis of increased traffic generation and the inadequacy of existing road infrastructure to service the development.

Council's Traffic Engineer has reviewed this aspect of the development and provided the following comment with respect to the modification;

*'While the submitted traffic assessment does not comment on the proposed parking provision and its compliance with the relevant standards and council's parking requirements. It is estimated that it would generally meet the quantum parking requirements for the proposed use.'*

*Council's Development Design Specification D1 at Table D1.7 provides that Laneways, such as Sunray Lane, with an indicative road pavement width of 6m and an indicative street reserve width of 6m, would have an indicative maximum traffic volume capacity of 300 vehicle movements per day. The expected daily traffic generation of the proposed development would be in excess of 300 vehicles per day and therefore the Lane's capacity would be exceeded. Further assessment would be requirement to discuss these implications.'*

Based on this, concern would be raised with respect to the ability of Sunray Lane to adequately cater for traffic anticipated to be created as a result of this development. The submitted material does not demonstrate that the proposal is acceptable in this regard.

From a car parking perspective, Council's DCP Section A2 states that car parking must be provided in accordance with the rates prescribed below;

| Item | Development          | Comment   | Public Transport, Bus Stop Seating | Bicycle parking Rate (class)  | Delivery/ Service Vehicle parking | Resident Parking | Staff parking                  | Customer car parking   |
|------|----------------------|---|------------------------------------|---|-----------------------------------|------------------|--------------------------------|--|
| C26  | Restaurants or cafes | Internal dining area is to be defined. Footpath dining area to be considered in accordance with Councils Footpath Dining Policy |                                    | Employees: 1/50m <sup>2</sup> GFA (2).<br>Visitors: 2 (3)           | 1 HRV                             |                  | 1/staff at peak operating time | 3.5/100m <sup>2</sup> dining area                              |
| Item | Development          | Comment   | Public Transport, Bus Stop Seating | Bicycle parking Rate (class)  | Delivery/ Service Vehicle parking | Resident Parking | Staff parking                  | Customer car parking   |
| G4   | Medical centres      |   | 2/consulting room                  | Employee: 1/8 practitioners (2).<br>Visitors: 1/4 practitioners (3) | 1 /10 consulting rooms HRV        |                  | 1.6/consulting room            | 3.2/consulting room (GP),<br>1.6/consulting room (specialists) |

As identified above, 101 car parking spaces are identified on the submitted plans. The number of staff at peak operating time and the dining area for the café, as well as the overall dining area within the café would need to be established in order to calculate car parking generation.

With respect to the medical centre use, the submitted Traffic Assessment indicates that 30 specialist rooms are proposed. This would generate customer and staff parking at a rate of 3.2 (1.6 + 1.6) spaces per consulting room = 96 spaces total. The remaining spaces on site would be available to the café use.

With respect to service vehicles, DCP Section A2 indicates that a Heavy Rigid Vehicle (HRV) space required for café and HRV also required at rate of 1/10 consulting rooms. Any variation to this above should to be justified in a Traffic Impact Assessment.

### *Gross Floor Area (GFA)/ Floor Space Ratio (FSR)*

The major Project approval identifies a FSR of 1.5:1 for this site on the approved Density plan.

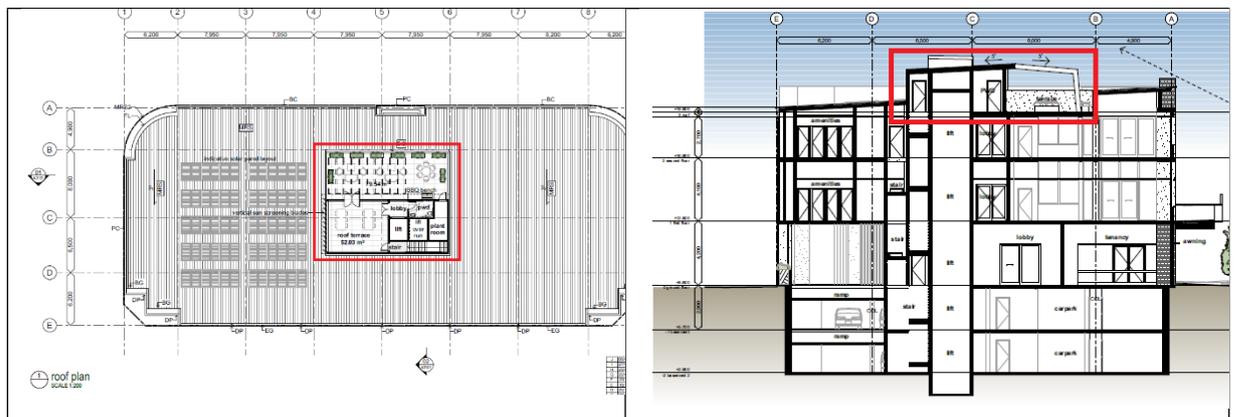
The submitted plans and particulars indicate that the development would have a total GFA of 3,089.97m<sup>2</sup>. Given the site has an overall area of 1545m<sup>2</sup> this would equate to a FSR of 1.999:1.

Under the Tweed LEP 2014, this site is identified as having an allowable FSR of 2:1 (Control T) which this development would comply with. Therefore, no concerns are raised with respect to the increased GFA associated with this proposal.

- ***Increase the approved building height from three storeys to three storeys with a partial fourth storey for a rooftop terrace.***

Under MP06\_0258 the approved documentation identifies a three storey building envelope for this site. The submitted plans indicate development to the roof terrace level which would partially constitute a fourth storey and the proposal would therefore be in contravention of the existing control, resulting in the modification request to allow this fourth storey element.

The extent of rooftop terrace/fourth storey component is identified in figure 2 below;



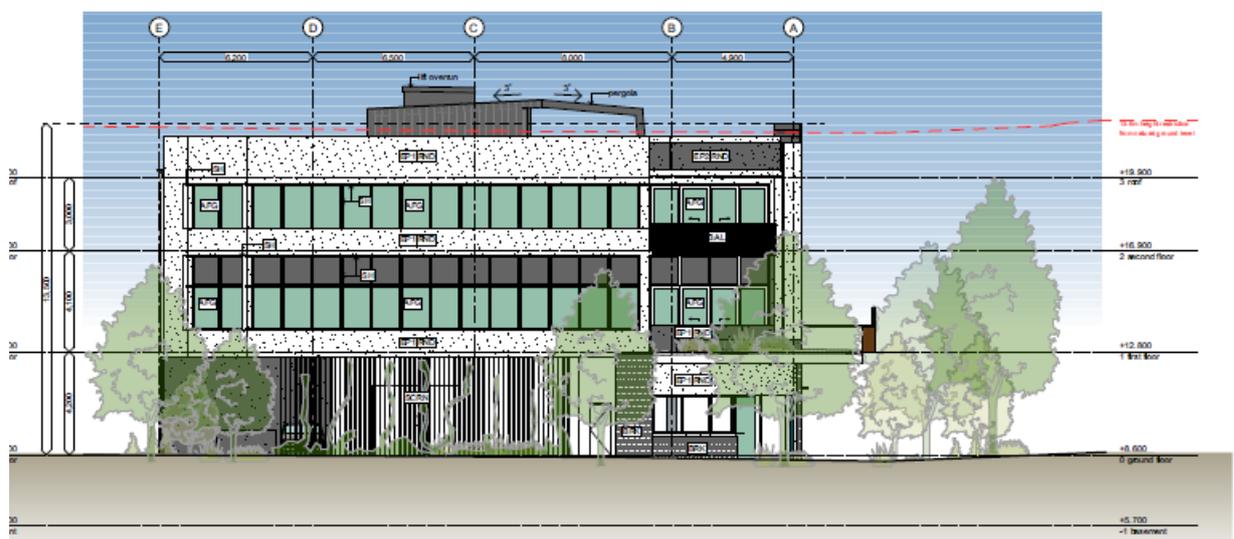
**Figure 2: Extent of Fourth Storey Proposed**

This aspect of the application has been reviewed by Council's Strategic Planning & Urban Design Unit who have provided the following comment with respect to the proposed building height increase;

*'While clearly exceeding the three-storey height limit (and 13.6m height typically associated with E1 Local Centre locations, it is recognised the roof top terrace would provide the occupants with a valuable area of outdoor space, and would largely be undetectable from the street edge given it is set in substantially from the building edges. Based on the submitted sunshade diagrams, the shadow from this roof top element would only fall across the roof of the level below and wouldn't further contribute to the overshadowing of the residential properties to the immediate south than would result from the proposed three-storey building. As such from a design perspective, no objection is raised to the roof top terrace and shade structure.'*

Through the assessment of this application, Council have received correspondence from local property owners concerned that the fourth storey element of the development would impact upon sunlight, privacy, lights shining into homes at night and overall increased occupancy of the site which in turn creates more traffic and noise etc.

Under Tweed Local Environmental Plan 2014 the subject site is currently subject to the 13.6m Building Height Control. This would typically enable a four storey development, however it is noted that the submitted plans identify that the proposal would also exceed this 13.6m height limit (maximum of approx. 15.4m proposed), as demonstrated in figures 3 and 4 below;



**01 east elevation**  
**Figure 3: Extent of Development Exceeding 13.6m (shown red dashed line)**



**Figure 4: Extent of Development Exceeding 13.6m (shown red dashed line)**

In order for Council staff to typically support a variation to building height to the Tweed LEP controls (i.e. an increase to the 13.6m building height for the site), a Clause 4.6 variation would be required for consideration of potential impacts arising from this. Given the extent of variation exhibited here (i.e. exceeding 10%), this would need to be endorsed by elected Council.

In absence of following this process, Council staff are not in a position to definitively support the building height demonstrated on the submitted material. However, there would be no 'in principle' objection to a four storey development on site which adheres to the 13.6m height control contained in Tweed LEP 2014.

Where a partial fourth storey component also exceeds the 13.6m building height control for the site it would be recommended that this aspect of the modification be assessed similar to a Clause 4.6 variation and the applicant should submit corresponding information in order for this to be justified.

Of note, the applicant has advised that the area which exceeds the allowable building height accounts for approximately 14% of the overall roof area and the fourth storey component is located a minimum of 5.4m from the nearest site boundary. Furthermore, it is noted that the subject site is located in a town centre location where increased development density and building heights would typically be anticipated.

Based on the above, from a staff perspective no concern is raised in principle to four storey development, however NSW Planning, Housing and Infrastructure should be satisfied that any exceedance of the 13.6m control is well founded through a process similar to a Clause 4.6 variation request, with any such variation being well founded and justified on merit.

It should be demonstrated that any such height increases associated with this development would not have any adverse impacts on surrounding properties by way of overshadowing or loss of privacy/overlooking.

The need for a 4<sup>th</sup> storey outdoor space associated with a mixed use medical facility needs further justification. Typically 4<sup>th</sup> storey pop up's are associated with residential use to improve "amenity". The proposed variation to both the 13.6m height limit and the dominant 3 storey character is questioned in association with a commercial/medical mixed use.

## Conclusion

In conclusion, the proposed development of a mixed use medical centre and café development at this location would be permitted with consent in the E1 Local Centre zone and is considered to generally comply with the objectives of this zone.

However, as detailed in this report concerns are raised with respect to the ability of Sunray Lane to cater for the anticipated traffic generated by the proposal. Sunray Lane would have an indicative maximum traffic volume capacity of 300 vehicle movements per day which is expected to be exceeded by the proposed development.

Further concerns are raised with respect to the removal of residential accommodation from this site which would impact upon the vibrancy of the village centre and the provision of a closed elevation for a substantial proportion of this sites street frontage would also impact upon the desired active street edge.

While no in principle objection is raised to the proposed fourth storey element and the rooftop terrace would be largely undetectable from the street given it is set in substantially from the building edges, it is noted that this also exceeds Councils 13.6m building height control by approximately 1.8m (13%). Typically, a Clause 4.6 variation would be required for consideration of potential impacts arising from such a variation and based on the extent of variation exhibited here (i.e. exceeding 10%), this would need to be endorsed by elected Council.

## Internal Council Staff Comments

As detailed elsewhere in this report, the Mod 15 application has been reviewed by Council's Strategic Planning & Urban Design, Water & Wastewater and Environmental Health Units as well as by Council's Infrastructure (Traffic) Engineer. The below comments have been provided with respect to this proposal:

### Strategic Planning & Urban Design Unit

- While clearly exceeding the three-storey height limit (and 13.6m height typically associated with R1 Local Centre locations, it is recognised the roof top terrace would provide the occupants with a valuable area of outdoor space, and would largely be undetectable from the street edge given it is set in substantially from the building edges. Based on the submitted sunshade diagrams, the shadow from this roof top element would only fall across the roof of the level below and wouldn't further contribute to the overshadowing of the residential properties to the immediate south than would result from the proposed three-storey building. As such from a design perspective, no objection is raised to the roof top terrace and shade structure.
- The building would benefit from a more pronounced roof line. Whilst some eaves are evident to the northern elevation, the other three elevations have a parapet style roof finish which does not provide a distinctive ground middle and top elevational and building form composition.

However, to improve the overall roof line and passive design of the building, it is recommended that an eave line be included which runs around the building. This will have the effect of providing some shadow and weather protection to the elevations below and positively contribute to the overall building form. Currently

the building appears stunted with no distinctive roofline which is incongruent with the prevailing and desired future architectural character of this part of Casuarina.

- A primarily commercial (Health Care) building is contrary to masterplan intent for a 'mixed use' building in this location.
- While there is a recognised need for additional health facilities within the area, this needs to also be balanced against the need for additional housing stock within the immediate area.
- Residential accommodation contributes to vibrancy of the village centre. This particular block is right in the middle of this part of Grand Parade. Having essentially a 'closed' elevation for a substantial proportion of this street frontage would be to the detriment of the desired active street edge.
- As a minimum some of the ground floor tenancies should be identified for more active uses with shop fronts which open onto the street. This should preferably be a combination of retail / food and beverage uses. The small 40sqm cafe located on the eastern corner is considered insufficient.
- A more detailed and specific break down of materials would be required. Large expanses are nominated as either rendered block work with EP1 and EP2 finish. There are also large portions of glazing that currently appears unshaded. This would result in substantial heat load.

### Water & Wastewater Unit

Reviewing the modification plans the only changes that impact the Water Unit is the change of use proposed within the development of 10 Grand Parade which can be covered under the future Development Application submitted to Council.

Since no physical works are proposed there is no impact to existing to existing water or sewer infrastructure no additional comments from W&WW is required.

### Environmental Health Unit

#### *Acid Sulfate Soils and Dewatering*

The subject site has been identified as Class 3 on the acid sulfate soil planning maps. The applicant shall address Clause 7.1 of the Tweed LEP 2014. Any acid sulfate soil investigation and management plan shall be prepared by a suitably qualified environmental consultant and address:

- National Acid Sulfate Soils Guidance: a synthesis (June 2018);
- NSW Acid Sulfate Soil Manual (1998); and
- Waste Classification Guidelines – Part 4: Acid Sulfate Soils (NSW EPA, 2014).

#### *Amenity*

The Development Application is to include a Construction Environmental Management Plan (CEMP). The CEMP is to address all potential impacts on amenity, and is to address the Interim Construction Noise Guideline (NSW DECC, 2009).

An acoustic report prepared by a suitably qualified acoustic consultant will be required to be submitted with the Development Application. The report shall identify and

assess noise associated with use and occupation of the subject site. This includes noise associated lifts, any air conditioning and mechanical ventilation systems, other plant and equipment, car parks, loading docks, pools, any outdoor and common outdoor areas, any waste chutes, waste storage and collections areas, commercial premises and outdoor dining areas. The report shall outline measures to minimise and mitigate potential noise impacts on surrounding occupiers of land. The report shall also consider potential noise impacts from the surrounding environment and land uses on sensitive receiver locations included in the proposed development, such as residences.

The Development Application is to address impact from any external lighting on surrounding properties.

### *Contamination*

The applicant shall address current and previous land uses with regards to potential contamination. All contaminated land reports submitted for Council review as of 1 July 2020 must be accompanied by a Contaminated Land Summary Table to ensure that key mandatory information is incorporated into consultant's reports (available at <https://www.tweed.nsw.gov.au/ContaminatedLand>).

It is noted that the subject site is identified as located within the Heavy Mineral Sands Mining Paths. Basement parking is proposed this will need to be addressed in the application.

### *Food Safety*

Any area to be used for the preparation and handling of food or drink for sale will need to comply with Food Act 2003, Food Safety Standards and relevant Australian Standards (AS 4674 and AS 1668.2) for construction and fit out.

It is recommended any Development Application include plans drawn to a scale of 1:50 detailing the following with regards to all food and drink related areas, to be provided to Council's Environmental Health Officers for review:

- Floor plan and sectional elevations in two directions;
- Layout of kitchens and bars showing all equipment;
- All internal finish details including benches and work surfaces, floors, wall, ceiling and lighting;
- Hydraulic design in particular method of disposal of trade waste;
- Details of the location and method of mechanical exhaust ventilation for the food premises that considers noise, odour, and AS1668 Pts 1 & 2. These are to include the location of the proposed exhaust system including location of discharge point/s on the plans; and
- Servery areas including counters etc.

Note - Separate Application for Approval of Food Premises will be required.

### *Waste*

#### *Waste/Fill*

The exportation or importation of waste (including fill or soil) from or to the site must be in accordance with the provisions of the Protection of the Environment Operations

Act 1997 and the NSW Environment Protection Authority “Waste Classification Guidelines”.

The importation of waste to the site is restricted to the following:

- a) Virgin excavated natural material (as defined in Schedule 1 of the Protection of the Environment Operations Act);
- b) Any other waste-derived material subject to a resource recovery exemption under Part 9 Clauses 91 and 92 of the Protection of the Environment Operations (Waste) Regulation 2014 that is permitted to be used as fill material.

The exportation of waste must be transported to a licensed waste facility or an approved site subject to a resource recovery order and exemption.

Any virgin excavated natural material or waste-derived fill material subject to a resource recovery exemption must be accompanied by documentation as to the material's compliance and must be provided to the Principal Certifying Authority or Council on request.

### *Fire Ant Management*

The importation of any of the following fire ant carrier material from invasive ant biosecurity zones must be in accordance with the current NSW Biosecurity orders available at [www.dpi.nsw.gov.au](http://www.dpi.nsw.gov.au) and meet the requirements of NSW Department of Primary Industries:

- organic mulch, compost, growing media, manure, soil and anything with soil on it, hay, chaff, or silage;
- potted plants;
- turf;
- agricultural equipment or earth-moving equipment;
- mining and quarrying materials;
- grass;
- vegetation and clippings; or
- other fire ant carrier material identified within the order.

Prior to the importation of each material type, the supplier must provide the receiver and the Principal Certifier or Council with the relevant form and/or certificate as identified within the order. All material shall meet the requirements of the relevant form/certificate.

It is an offence under the Biosecurity Act 2015 if this material comes from within 5 kilometres of a known invasive ant infested area (e.g. identified Fire Ant Biosecurity Zones in Queensland), or any other place at which the person knows, or ought reasonably to know, that an invasive ant has been detected, unless the carrier material has been managed and treated to reduce the risk and meets the certification requirements listed in the order.

### Council's Infrastructure (Traffic) Engineer

The applicant's estimated trip generation is based on the RTA guide for traffic generating developments, however they apply a discount rate as the site will be primarily Specialist Room with longer consultation times than a GP service and the

rooms are likely to be only 80% in use at any one time. This over 60% discount needs further justification to be reliable. The calculated net trip increase, (based on current use) will be 119 trips in the AM peak hour and 85 trips in the PM peak hour.

While the submitted traffic assessment does not comment on the proposed parking provision and its compliance with the relevant standards and council's parking requirements. It is estimated that it would generally meet the quantum parking requirements for the proposed use.

Council's Development Design Specification D1 at Table D1.7 provides that Laneways, such as Sunray Lane, with an indicative road pavement width of 6m and an indicative street reserve width of 6m, would have an indicative maximum traffic volume capacity of 300 vehicle movements per day. The expected daily traffic generation of the proposed development would be in excess of 300 vehicles per day and therefore the Lane's capacity would be exceeded. Further assessment would be requirement to discuss these implications.

### **Public Submissions**

Council has received comments/representations from local residents concerning this Mod 15 application. These are attached to this correspondence, and it is requested that NSW Planning, Housing and Infrastructure undertake full consideration of the matters raised in these objections.

For further information regarding this matter please contact David O'Connell on (02) 6670 2483.

Yours faithfully



Pooja Chugh (she/her)  
**Acting Team Leader Development Assessment**

Enc