



Planning Assessment Report

Application to Modify Development Consent

MOD 194-12-2005 modifying DA 12-1-2005

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application Modification number MOD 194-12-2005 modifying DA12-1-2005 under section 96(2) of the Act lodged on 21 December 2005.

The application seeks to modify the consent given to Development Application DA12-1-2005 therefore the Minister for Planning is the consent authority. The application was approved by the Minister on 28-7-2005.

The site is located at Lots 12 and 13, DP 579733, The Princess Highway, Kiama Heights.

The proposed modification is for minor building design alterations.

The application has been assessed in accordance with the statutory requirements of the Environmental Planning and Assessment Act.

It is recommended that the modification application be **approved**.

1.1 *Relevant approvals / modifications:*

- a) DA12-1-2005 approved on 28-7-2005 for subdivision by boundary adjustment and erection of a dwelling house, landscaping and on-site sewage and effluent disposal system.
- b) MOD 193-12-2005 approved on 11TH February 2006 for deletion of condition B1- copy of approved subdivision certificate required prior to issue of Construction Certificate.

2 THE PROPOSED MODIFICATIONS

The applicant is seeking to modify the approved development as follows:

- Building set out:- underground pool pump and pool equipment rooms are relocated to the pool store room to reduce excavation and the northern wing of the dwelling is reduced in length to increase the clearance of the existing fibre optic cables at the western end of the wing.
- Replanning of Service Areas and Plant Rooms:- the rainwater tank is relocated to provide an external hatch from the terrace over; the first aid station, utility and bathroom position are adjusted to maximize the farm storage area, the laundry is relocated to the service areas and crawl space is provided for future maintenance access to the service tunnels.
- Minor internal changes:- reconfiguration of the bathroom layouts in both the northern and southern wings, a new half stair flight is added to provide internal

access to the plant rooms, service area and laundry, the floor level of the family room and the living room is adjusted from RL 110.78 to RL 111.14 to accommodate maintenance access to the tank below (there is no increase to the roof or ceiling level as the floor to ceiling height has been reduced accordingly) and the guest toilet is moved from the northern wing replacing the laundry which is relocated to the service areas.

- Minor external changes:- the fireplace, roof cowl and chimney is removed and a retractable awning is added to the out door dining area for sun protection.

3 STATUTORY FRAMEWORK

Section 96(2) of the Environmental Planning and Assessment Act 1979 provides the consent authority may, on application being made by the applicant, modify the consent.

3.1 *Statement of permissibility*

The proposed dwelling is permissible under Clause 31(3)(b) of Kiama LEP 1986.

3.2 *Instrument of consent and other relevant planning instruments*

The EPIs applicable to the site are:

- SEPP71 - Coastal Protection;
- Illawarra Regional Environmental Plan No. 1 : Management of environmental and scenic quality, agricultural productivity and fragmentation of holdings.
- NSW Coastal Policy 1997 - Consideration of visual impact.
- Kiama LEP 1996 – Clauses 1,2 Aims and objectives, Clause 9 Objectives of 7(d) Zone, Clause 30 Subdivision in 7(d) Zone, Clause 31 Dwelling Houses in 7(d) Zone.
- Kiama DCP No. 35 - Rural Dwelling Design and Siting Guidelines
- Kiama DCP No. 31 - Landscape Guidelines
- Kiama DCP No.8 - Building height and amenity

Legislative context

Coastal Protection Act 1979. The development is consistent with the Act.

3.3 *Other statutory provisions*

The application is generally consistent with:

- Kiama DCP No. 18- Energy Smart Homes
- Kiama DCP No. 25- Planning for Less Waste.

4 CONSULTATION / PUBLIC EXHIBITION

Consultation did not occur in respect of the development due to the minor nature of the amendments proposed, however telephone discussions were held with Theresa Smyth of Kiama Council who raised no issues when the nature of the modifications were outlined and explained.

5 CONSIDERATION

5.1 Section 96

The application is considered to meet the prerequisites of Section 96(2) of the Act in that the proposed modifications are considered to be of minimal environmental impact, and that the development as modified is considered to be substantially the same development as that to which consent was originally granted.

5.2 Section 79C

The application and the likely impacts of the proposed development have been considered in accordance with Section 79C of the Act. The consideration was also given to relevant provisions of Kiama LEP 1996 and SEPP 71- Coastal Protection. It was considered that the proposed development complied with the statutory controls and the relevant aims and objectives. Approval was given on 28-7-2005.

The modification to the approved development as proposed are contained within the envelope of the original approved plans and will have no effect upon the conditions of consent. It is therefore proposed that the modified consent be subject to the amended plans only, no other conditions are necessary.

6 CONCLUSION

The Minister for Planning is consent authority for the proposed Section 96(2) modification. The application has been considered with regard to Section 96(2) of the Act.

The proposed development as modified is considered to be substantially the same development as that originally approved.

On balance, it is considered that the proposed development as modified is acceptable and should be approved.

7 RECOMMENDATION

It is recommended that the Deputy Director General, Office of Sustainable Development Assessments and Approvals as delegate of the Minister for Planning as described in the instrument of delegation dated 12 September 2005, pursuant to Sections 81 and 96(2) of the *Environmental Planning and Assessment Act, 1979* and clause 122 (2) of the *Environmental Planning and Assessment Regulations, 2000*:

- (A) **approve** the application subject to conditions (tagged “A”), and
- (B) authorise the Department to carry out notification of determination of the application to modify the consent.

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