



Office of Sustainable Development Assessment and Approvals, Urban Assessments

Planning Assessment Report

Application to Modify Development Consent

MOD 114-7-2005 modifying DA 187-8-2004

LOT 224 Dianella Drive, Casuarina Beach

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application (DA) Modification number MOD 114-7-2005 modifying DA 187-8-2004 pursuant to Section 96(1)(A) of the Environmental Planning and Assessment Act, 1979 (the Act).

This application for modification was lodged by Mr John Lea of Pacific Projects Group Pty Ltd on 8 July 2005. The application seeks to modify Development Application DA 187-8-2004 approved by the Minister on 28 April 2005.

The site is located at Lot 224 in DP 1048494, Dianella Drive, Casuarina Beach.

The Minister for Planning is consent authority for modifications to consents the Minister has granted. However the Minister on 12 September 2005 initiated new delegations in respect of certain development. This application fits within the delegations and therefore is able to be determined by the Director General of the Department and the Deputy Director General, Office of Sustainable Development Assessments and Approvals.

It is recommended that the modification application be approved with those conditions amended (refer **Tag A**).

1.1 Background

Development Application (DA) 187-8-2004 proposing tourist accommodation for 114 units with lobby/reception area, guest dining area, guest lounge, central recreation courtyard with pools and restaurant and conference room was approved by the Minister on 28 April 2005 subject to conditions of development consent (refer **Tag B**).

2 THE PROPOSED MODIFICATIONS

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

- Schedule 2, Condition A1 of the development consent in the following terms (deleted references shown in strikethrough and new words in bold and underlined):

*"114 unit ~~2~~ **3** storey tourist accommodation complex, with lobby/reception area, guest dining area, guest dining lounge, central recreation courtyard with pools and restaurant and conference room."*

No objection is raised to this proposed modification as the approved development is in fact a 3 storey building, comprising a basement level car park and 3 levels of accommodation above ground. Condition A2 of the development consent (refer **Tag B**) indicates as such as it refers to basement level, level 1, level 2 and level 3.

- Schedule 2, Condition B3 relating to S94 monetary contributions. The table at part 2 of the conditions is slightly incorrect in that it refers to 'LCA3-Koala Beach/Leisure Gardens'.

This reference is incorrect and should be amended to 'LCA4-Kings Beach'. It is noted the quantum of the contribution is correct.

No objection is raised to this proposed modification.

- Schedule 2, Condition B7 relating to the maximum number of car parking spaces approved (deleted references shown in strikethrough and new words in bold and underlined):

"The maximum number of car spaces to be provided for the development will comply with the table below. Details confirming the parking numbers will be submitted to the satisfaction of the PCA prior to the issue of a Construction Certificate for below ground works.

Car Parking Allocation	Number
Guest car parking spaces	110 <u>113</u>
Number of guest car spaces to be disabled spaces	5
Loading bay	1
Staff car parking spaces	3
Car wash bay	1

No objection is raised to the amendment of the condition as shown above as the quantum of car parking spaces shown on the approved architectural plans remains the same. The condition of consent now reflects and is consistent with the approved development. It is noted that in order to comply with the loading/unloading requirements of the original development consent, one of the car parking spaces (most likely space 115 as it is located adjacent to storage and garbage areas) will be converted to such.

- Schedule 2, Condition G5 relating to the hours of operation for the restaurant and conference centre. For further information in relation to this aspect of the proposal, refer to Section 5.3 of this report.

2.1 Additional modifications recommended

As a result of no objection being raised to Condition G5 (operating hours), a direct consequence is the need to alter Condition G6 relating to Noise Control – Licensed Premises. It is proposed to amend Condition G6 in the following manner (deleted words shown in strikethrough and new words bold and underlined):

*'The LA10 noise level emitted from the licensed premises will not exceed the background noise level in any Octave Band Centre Frequency (31.Hz – 8khz inclusive) by more than 5dB between 7.00am and ~~10.00pm~~ **12 midnight** and ~~10.00pm~~ **12 midnight** to 7.00am at the boundary of any affected residence.*

*Notwithstanding the requirements of this condition, the noise from the licensed premises will not be audible within any habitable room in any residential premises between the hours of ~~10.00pm~~ **12 midnight** and 7am.'*

3 STATUTORY FRAMEWORK

3.1 *Statement of permissibility*

The site is zoned 2(e) Residential Tourist pursuant to the provisions of Tweed Local Environmental Plan 2000 (LEP 2000). Pursuant to Clause 11, development for tourist accommodation is a permissible use within the zone.

3.2 *Instrument of consent*

The site is defined as a 'Tourist Facility' pursuant to the provisions of State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71) and was therefore State Significant Development at the time of lodgement of the original DA.

The Minister is the consent authority pursuant to Clause 10(1) of SEPP 71 that applied at the time and also for state significant development.

3.2.1 *Relevant planning instruments/guidelines/policies*

The environmental planning instruments, development control plans and policies applicable to the land to which this application for modification relates are as follows:

- SEPP 71;
- North Coast Regional Environmental Plan 1988 (REP 1988);
- LEP 2000;
- Tweed Development Control Plan No. 2 – Site Access and Car Parking (DCP 2);
- Tweed Development Control Plan No. 45 – Socio and Economic Impacts (DCP 45); and
- Tweed Development Control Plan No. 48 – Tweed Coast Building Heights (DCP 48).

4 CONSULTATION / PUBLIC EXHIBITION

Public consultation of the proposal was not considered necessary given the minor nature of the modifications. However, each of the previous objectors (2 in total) to the originally approved DA were notified of the application for modification on 20 October 2005 and had 14 days to provide a response.

One (1) submission was received (refer **Tag C**), which raised the following issues:

- The Department did not thoroughly assess the application prior to approval as it was under the impression the application was for a 2 storey development, as indicated in the condition of consent;
- The Department has not given due consideration to the effects/impacts of a 3 storey building;
- The proposed location of the loading bay (car space 115) raises amenity issues to adjacent residential properties to the east;
- Location of large restaurant and bar is considered to have negative impacts on surrounding land uses (noise and odour);
- An extension of trading hours for the restaurant and bar facilities is inconsistent with objectives of the 2(e) zone; and
- Applicant's information in relation assessment of impacts is insufficient (cumulative impacts, noise and live entertainment etc).

It is noted the majority of the issues raised above relate to the originally approved DA and therefore are not a relevant consideration to the determination of this application for modification. The issue of the restaurant hours of operation is discussed at Section 5.3 below.

The application was referred to the Tweed Shire Council on 20 October 2005. Council responded on 13 December 2005 (refer **Tag D**) and issues raised by Council (primarily the restaurant trading hours) are addressed at Section 5.3 of this report.

5 CONSIDERATION

5.1 Section 96

The application is considered to meet the prerequisites of Section 96 (1)(A) 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 (qualitatively and quantitatively) 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 is also given to relevant provisions of the planning instruments/guidelines/policies described at Section 3.2.1 of this report and it is considered the proposed modifications do not materially alter the approved development's compliance/consistency or otherwise with those planning instruments/guidelines/policies.

Relevant issues requiring further consideration are addressed below:

5.3 Hours of operation

Issue: Extend trading hours of restaurant from 7am to 10pm, 7 days including public holidays to 7am to 12 midnight 7 days including public holidays and restaurant design

Raised by: Public and Council

Consideration: The site is zoned Residential 2(e) Residential Tourist pursuant to the provisions of LEP 2000. This zone has a number of objectives (primary and secondary) which seek to encourage tourist development and other associated development that is unlikely to have a material impact on the existing residential amenity of the area or place demands on services beyond that level normally required.

The approved restaurant on the site is not open to the public and only caters for visitors/guests of the site. The demand for the services within the restaurant will vary between guests of the 114 unit development. It is considered the extension to the approved operating hours (only 2 hours a day) undermine the achievement in obtaining planning objectives for the Casuarina Beach area, a locality which the tourist accommodation and its related facilities underpins.

The building caters primarily for short term stays and has been structured/designed for the young and upwardly mobile person with a modern restaurant providing additional benefit for the guests. The restaurant is the meeting place for all guests (who will arrive on site at different times and also have different dining habits/preferences) within the building and therefore on this basis increased trading hours and flexibility in use is required. It is also noted that the restaurant is not expected to trade to midnight every night, only so when the demand is there for its use. However as demand for the use of the restaurant cannot be accurately predicted it is inappropriate to restrict trading hours during certain periods.

Issues were raised in respect of the orientation of the approved restaurant dining towards the neighbourhood residential premises and the kitchen area being in close proximity to adjoining residential premises. It is noted that the kitchen and all associated service areas are totally enclosed within the building and as such will not impact on neighbouring properties. The restaurant area itself is again internally located within the development with its only openings being oriented towards the entrance lobby and the internal landscaped courtyard. The restaurant is also setback from the closest kerb to Dianella Drive by approximately 20 metres, is indirectly (with

built elements in between) in excess of 40 metres from Casuarina Way to the west and has a 6 metre landscaped buffer to the eastern boundary where the nearest residential properties are located. It is noted there are no openings from the kitchen or the restaurant to the eastern boundary (refer approved DA 187-8-2004 ground floor plan at **Tag E**).

Council also requested that should the application be given favourable consideration, a trial period for 12 months for the trading hours should be recommended. However for the reasons outlined above, this request of Council in this instance is not supported.

In addition to the above, the Department recommends the amending of Condition G6 relating to noise control in the licensed premises so that it is consistent with the proposed extension of trading hours for the restaurant under amended Condition G5.

Resolution:

Accordingly it is considered the extension to the trading hours is unlikely to have any material impact on existing and future residential amenity levels and refusal of the application on the above grounds is not warranted.

6 CONCLUSION

The Minister for Planning is consent authority for modifications to consents he has granted.

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

The application has been considered with regard to the matters raised in section 79C of the Act. Due to the minor nature of the application for modification, the only people notified were the objectors (2) to the original development proposal and Council. All submissions received during the prescribed period have been considered.

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

7 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The applicant was sent draft conditions on 2 February 2006 (refer **Tag F**) and responded on 3 February 2006 (refer **Tag G**) raising no objections to the proposed modifications.

8 DELEGATION

Under the instrument of delegation dated 12 September 2005, the Minister has delegated to Director General of the Department of Planning and the Deputy Direction General, Office of Sustainable Development Assessments and Approvals, Department of Planning his functions under Section 96(1A) of the Act relating to modifying development consents.

9 RECOMMENDATION

It is recommended that the Deputy Director General, Office of Sustainable Development Assessments and Approvals as delegate for the Minister for Planning as described in the instrument of delegation dated 12 September 2005, pursuant to Sections 81 and 96(1A) 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 (refer Tag **A**), and
- (B) authorise the Department to carry out notification of determination of the application to modify the consent.

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