

DEPARTMENT OF PLANNING

Office of Sustainable Development Assessment and Approvals, Urban Assessments

Planning Assessment Report

Development Application DA 266-11-2004

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA 266-11-2004.

The application seeks consent for tourist accommodation incorporating 20 motel units, 4 serviced apartments, ground floor café and 1 managers unit with basement car parking for 32 cars.

The Minister for Planning is consent authority under Clause 10 of State Environmental Planning Policy No.71 – Coastal Protection.

It is recommended that the development application be determined by **granting consent**.

2 BACKGROUND

2.1 Site Context

The site is located at 11-13 Park Street, Evans Head in the Richmond Valley local government area. A location plan is at **Tag B**.

The development application was lodged with the Department on 29 October 2004 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The site has its primary frontage to Park Street (52 metres) and secondary frontage to Davis Lane (31 metres) and is adjacent to the Evans Head town centre. The site is vacant with no significant vegetation and has an area of 1855m². The site is flat with an irregular configuration. A site plan is at **Tag C**.

A site visit was conducted by Urban Assessments.

3 THE PROPOSED DEVELOPMENT

The proposed development seeks consent for a tourist development incorporating the following elements:

- 20 motel units;
- 4 serviced apartments;
- 1 managers unit;
- Ground level café; and
- Basement car parking for 32 cars.

Plans of the proposed development are at **Tag D**.

3.1 Amended Plans

On 27 July 2005 the applicant, submitted amended plans the application incorporating: -

- Amended ground floor plan showing on-site detention tanks for stormwater and effluent.

These amendments differ only in minor respects from the development application submitted and do not give rise to any additional impacts. Accordingly, these amendments were accepted as a replacement application in accordance with clauses 55 and 90 of the *Environmental Planning & Assessment Regulation 2000* (the Regulations). In accordance with clause 90 of the Regulations further notification of the application was not undertaken, and the applicant was advised of the acceptance of the amended plans (**Tag H**).

4 STATUTORY FRAMEWORK

4.1 Statement of permissibility

The site is zoned 2 (v) Village Zone under the provisions of the Richmond River Local Environmental Plan 1992 (LEP 1992). The zone objectives are outlined below:

- (a) to retain the essential character of rural and coastal villages,*
- (b) to provide for development of a full range of village activities that are compatible with the character and amenity of the village, and*
- (c) to set aside, by means of a development control plan, specific areas within this zone for varying uses and intensities of uses.*

The proposal satisfies the zone objectives and the Development control plan referred to in (c) is discussed in 4.4 below. The proposal is permissible with development consent.

Clause 28 of LEP 1992 is relevant to the proposal and is outlined below:

28 Height of buildings

The Council shall not grant consent to the erection of a building which has a height in excess of three storeys.

LEP 1992 does not have a definition of height or storeys, therefore the definition in State Environmental Planning Policy No.6 – Number of Storeys in a Building (SEPP No.6) has been used. Using the SEPP No.6 definition, that is drawing a vertical line through the building and counting all of the intersecting floors, the proposed building is 4 storeys in height. In this regard, the applicant has submitted a State Environmental Planning Policy No.1 Objection (SEPP No.1) which is at **Tag E**. The SEPP No.1 Objection is accepted and the intent of the control outlined clause 28 is not going to be compromised by varying the control in this instance. See also Section 6.2.2 regarding this issue.

The other relevant clause for this proposal is 30 of LEP 1992 which is outlined below:

30 Provision of services

- (1) The Council shall not consent to the carrying out of development on any land unless it is satisfied that adequate arrangements have been made for the provision of water, drainage, and the disposal of sewerage effluent.*
- (2) The Council may approve a development control plan in respect of standards for water, sewerage and drainage.*

Council have advised that an on-site effluent detention tank and delivery to the Sewage Transport System and Treatment Plant is required to satisfy the requirements of clause

30. The applicant was requested on 5 July 2005 to provide information on the size and location of the tank required by Council. This information was supplied on 29 July 2005 and subsequently referred to Council for comment on 2 August 2005. See Section 6.2.1 of this report for further discussion relating to this matter.

4.2 Instrument of consent and other relevant planning instruments

State Environmental Planning Policy No.71 – Coastal Protection (SEPP 71) applies to the application and the development is State Significant Development. The Minister is the consent authority for the development. The proposal is consistent with the provisions, aims and matters for consideration contained in SEPP 71 (see **Tag F**). North Coast Regional Environmental Plan applies to the site and an assessment against the provisions of the plan is at **Tag G**.

4.3 Legislative context

The development is also Integrated Development under Section 116 of the Water Act 1912. The development is State Significant Development by virtue of State Environmental Planning Policy No.71 – Coastal Protection.

4.4 Other statutory provisions

Richmond Valley Council's Development Control Plan No.10 – Evans Head (DCP 10) applies to the site. The proposal generally complies with the provisions of DCP 10, details of non-compliance are discussed in detail in Section 6 of this report.

5 CONSULTATION

5.1 Public consultation

The application was notified, in accordance with the Regulations and draft Urban Assessments Notification Policy including:

Notifications – landowners/occupiers	9 nearby and adjoining owners notified.
Newspaper advertisements	Advertised in Northern Star on 20 November 2004 and 27 November 2004.
Site notices	22 November 2004
Exhibition dates	Start: 22 November 2004. End: 21 December 2004.
Exhibition venues	<ul style="list-style-type: none">▪ Planning Information Centre, 23-33 Bridge Street Sydney▪ DIPNR North Coast, 49 Victoria Street, Grafton.▪ Richmond Valley Council, Cnr Walker and Graham Place, Casino.▪ Richmond Valley Council, Cnr Woodburn Street and School Lane, Evans Head

4 pro-forma public submissions and one individual submission were received regarding the Application. Issues raised in the submissions are addressed in Section 6 of this report.

5.2 Referrals

5.2.1 Integrated Approval Bodies

The application was integrated under Section 116 of the Water Act 1912 and the Department of Infrastructure, Planning and Natural Resources has issued general terms of approval for the development (these are included in the proposed conditions of consent). See also Section 5.3 below.

5.2.2 Council

The application was referred to the Richmond Valley Council on 12 November 2004. Council responded on 23 March 2005 and raised issues such as building height and the state of infrastructure services in Evans Head. Council engaged a planning consultant, Newton Denny Chapelle to carry out a detailed assessment of the proposal. As a result, Council suggest a number of conditions and these matters have been addressed in the Determination at **Tag A**. Issues raised by Council are discussed Section 6 of this report.

5.3 Internal consultations

The North Coast Regional Office of DIPNR has been consulted regarding the application and raised several issues by memo dated 26 May 2005, including the height of the proposal and the advised that they support the SEPP No.1 Objection in this instance. The overshadowing of the adjacent reserve was also raised and discussed and DIPNR advised that it was not considered to be significant and would not have an impact on the amenity and enjoyment of the open space.

The North Coast Region of DIPNR also commented on the proposal in their capacity as the integrated approval authority under the Water Act 1912. The general terms of approval issued by the office are included in the Determination at **Tag A**.

6 CONSIDERATION

6.1 The Environmental Planning & Assessment Act

6.1.1 Section 79C

The application and the likely impacts of the proposed development have been considered in accordance with Section 79C of the Act. Significant issues are discussed below in Section 6.2, and, where relevant, a detailed assessment is provided as noted in the table below.

The subject site is considered suitable for the proposed development. Submissions have been considered and issues raised in submissions are discussed in Section 6.2. On balance, the proposed development is considered to be in the public interest.

6.2 Issues

6.2.1 On-Site Effluent Detention

<i>Issue:</i>	The Evans Head Sewerage Treatment Plant (STP) requires augmentation and clause 30 of Council's LEP 1992 requires consideration of the adequacy of provision for water, drainage and disposal of sewerage effluent.
<i>Raised by:</i>	Council and public submission.
<i>Consideration:</i>	The Evans Head STP requires augmentation and upgrading and the public submission received raises concerns over impacts of effluent contaminating waterways in the Broadwater National Park. This is a longstanding issue and not unique to this proposal and has also been raised in relation to another development proposal in the locality (i.e. Iron Gates). Council is currently carrying out investigations

into the delivery network to the STP, however they have advised that upgrade works are unlikely to occur before 2007 due to funding constraints. In the interim, Council advised that an on-site sewerage detention system which stored effluent during peak periods and periods of heavy rain and released the effluent to the delivery network at off-peak periods would satisfy the requirements of Council's LEP 1992 and be a satisfactory solution until the upgrade works to the STP are carried out.

Resolution: The applicant supplied details of the proposed effluent detention tank on 27 July 2005. The tank is proposed to be located in the southern corner of the site adjacent to the existing sewer line (see plan at **Tag H**). Council have advised in their letter dated 13 October 2005 that the reticulation capacity report has not yet been finalised. A draft consent condition relating to sewerage was confirmed as appropriate to satisfy Council requirements on the 27 October 2005.

6.2.2 Exceedance of Height Control

Issue: The height of the development and exceedance of the height control for the site.

Raised by: Council and public submissions.

Consideration: Council's LEP restricts development on the subject site to 3 storeys, although it contains no definition of height. The DCP 10 contains a height definition which relates to storeys above natural ground surface. Similarly, the definition of 'storey' in DCP 10 does not include below ground areas. However, in the absence of a definition in the LEP, the definition contained in SEPP No.6 – No. of Storeys in a Building needs to be considered. The SEPP No.6 definition of height includes the basement in the number of storeys is calculated running a vertical line through the building and counting each floor it intersects. Using this definition, the building is 4 storeys due to the basement parking area. Therefore, the proposal requires a SEPP No.1 Objection to the height control standard of 3 storeys.

Note: Council have recently prepared Draft Amendment No 30 to the Richmond River Local Environmental Plan. This Draft Amendment aims to insert a definition of storey into the LEP. Under this draft amendment the proposal would comply with the height requirement of the LEP. This draft amendment had not been gazetted at the date of this report.

Resolution: The intent of Council was to allow development of 3 storeys above natural ground level as expressed in the definitions in DCP 10. In this regard, Council have raised no objection to the height of the development and have advised that, "*the proposed development is considered to be satisfactory with respect to bulk, scale and its articulation to primary street frontages*". The proposal, with a flat roofed form with the third storey setback, is less than 9 metres and sits comfortably in the context and the SEPP No.1 Objection to the height control is supported.

6.2.3 Building Design and Amenity

Issue: The density, height, setbacks and amenity impacts.

Raised by: Public submissions.

Consideration: A pro-forma submission was submitted dealing with these building design and related issues. DCP 10 provides the detailed assessment framework for this development and the proposal satisfies the DCP requirements except for the building height plane provision and the density provisions. The building slab at second floor level and the roof top sail structures project through the height plane. The extended or projecting slab at second floor level is an important part of the architecture of the building and reducing it would compromise the design intent. Similarly, the sail structures are an important design element and also provide weather protection for the top floor units. Some loss of morning winter sun will occur to buildings to the west of the site and loss of midday and afternoon sun for the existing dwelling to the south of the site, however neither the shade clothes nor the eaves are considered to be major contributors to the shadow profiles and their deletion would achieve little in this regard. The density non-compliance is 8.8% above in terms of site area requirements, however under exhibited changes to DCP 10 which reduce the site area requirements for motel units,

the proposal complies. The non-compliance is relatively minor and considered acceptable, particularly given the intended amendments to the controls.

Resolution: Building height is adequately discussed and resolved in Section 6.2.2 above. The departure from the density standard is considered acceptable given the quality of the design, the minor nature of the departure and the compliance with the intent of the height controls. The proposed balconies on the southern and western elevations are small and located off bedrooms, with living areas and primary outdoor areas focussed on the inner courtyard. This layout minimises loss of privacy and overlooking. A condition has been imposed requiring continuous screen planting along these boundaries to improve privacy and amenity.

6.2.4 Nature of the Use

Issue: The size of the units and their characteristics being more akin to residential units.

Raised by: Submissions.

Consideration: The submissions raise issue with the nature of the units proposed, being in their opinion, larger than your standard motel unit and serviced apartment. The motel units are generous in area and the serviced apartments all have generous terrace areas, however the development as applied for is as a tourist facility and the nature of the design and layout at the ground level supports this.

Resolution: Any use of the units for other than for the approved use would be a breach of the terms of the approval. In addition to this overriding constraint, a condition of consent has been included requiring annual certification to be supplied to the Council to the effect that the units had been used for short term accommodation in the preceding year.

6.2.5 Water Sensitive Design

Issue: The extent of paving and increased run-off.

Raised by: Council.

Consideration: DCP 10 contains a section on 'water sensitive design' and Council's independent assessment of the proposal raises this issue as an area where improvements to the design could be made, given the extent of paving and hard surfaces proposed.

Resolution: A condition of consent has been included (as part of the landscape plan requirement) requiring the use of permeable pavers in the ground level landscaping of the site. This will increase the permeability of the site and decrease run-off.

6.2.6 Car Parking and Loading Facilities

Issue: Use of Davis Lane as the point of vehicle access, loading facilities and parking provision.

Raised by: Public submissions.

Consideration: The submissions raise concern that Davis Lane is used as a local pedestrian route and that the car movements will have detrimental impact on this use. The use of Davis Lane for vehicle access is preferential to using Park Street as the means of access. The number of vehicle movements even at peak occupancy is likely to be low. The code requirement for the 4 serviced apartments is one space per apartment and 1 per 3 units for visitors. The 4 spaces provided for the serviced apartments are wide enough to accommodate 2 cars and therefore, provision for this use is in effect 8 spaces. A re-allocation of these 4 spaces to other uses to comply with DCP 10 is warranted. Loading is proposed via a layover facility in Davis Lane which is considered to be satisfactory for the scale of the development proposed. The overall parking number of 32 spaces complies with the uses and rates specified in DCP 10.

Resolution: The car parking and loading facilities are adequately designed and located and the overall level of provision is also appropriate for the use and complies with the provisions of DCP 10. The number of spaces allocated for the serviced apartments however, is excessive and should be reduced to comply and these spaces re-allocated to other approved uses. Conditions of consent require the spaces to be re-

allocated and expressly state that only 4 spaces are to be allocated to the serviced apartment use.

7 CONCLUSION

The Minister for Planning is the consent authority.

The application has been considered with regard to the matters raised in section 79C of the Act and the Department of Infrastructure, Planning and Natural Resources who were consulted and provided general terms of approval under the Integrated Development Provisions within the Act.

The application has been notified in accordance with the Regulations. All submissions received in the period prescribed by the Regulations have been considered.

On balance, it is considered that the proposed development is acceptable and should be determined by **granting** consent.

8 CONSULTATION WITH THE APPLICANT – DRAFT CONDITIONS

The applicant was asked to comment on the draft conditions of consent on 31 October 2005. The applicant expressed their agreement with the draft conditions in their letter dated 31 October 2005.

9 RECOMMENDATION

It is recommended that the Acting Deputy Director-General of the Office of Sustainable Development Assessments and Approvals, as delegate of the Minister for Planning as described by the Instrument of Delegation dated 12 September 2005 and pursuant to Section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and clause 10 of State Environmental Planning Policy No.71 – Coastal Protection:

- (A) grant **consent** to the application subject to conditions (**Tag A**), and
- (B) authorise the Department to carry out post-determination notification.

For Ministerial Endorsement
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Endorsed by

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