



Planning Assessment Report

Application to Modify Development Consent

MOD 178-11-2005 modifying DA 440-10-2003

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application Modification number MOD 178-11-2005 modifying DA 440-10-2003 under section 96(1A) of the Act lodged by Mr Malcolm Scott on 18/11/2005.

The application seeks to modify Development Application DA 440-10-2003 approved by the Minister Assisting the Minister for Infrastructure and Planning on 8 September 2004.

The site is located at 18-20 Bay Street, Byron Bay in the Byron Shire Council local government area. The application seeks consent for modifications to roof level, upper floor level, ground floor and basement floor level.

The Minister for Planning is consent authority for modifications to consent's the Minister has granted. Under the instrument of delegation dated 12 September 2005 and having regard to the Guidelines for Delegates, it is considered appropriate that the application be determined under delegation by Director, Urban Assessments or Deputy Director-General, Office of Sustainable Development Assessments and Approvals.

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

1.1 Relevant approvals / modifications:

The Minister Assisting the Minister for Infrastructure and Planning approved Development Application No. 440-10-2003 on 8 September 2004. The development was for the construction of a fourteen (14) room tourist facility (motel). The facility consisted of ten motel rooms on the ground floor and four serviced apartments on the first floor. Parking for 22 vehicles is provided in the basement, to be accessed via a security roller door from Fletcher Street. In addition, fourteen individual pools and private landscaped gardens, one for each unit, were also approved, including four rooftop garden terraces and pools located on level 3 of the building.

2 THE PROPOSED MODIFICATIONS

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

- Change roof colour from 'headland' red to 'wilderness' green;
- Reduce the size of the roof deck area for plant and equipment;
- Amend the design of load bearing beams supporting the pools on the roof from a cantilever system to a simple span;
- Amend the horizontal beam outside the pool balustrade to provide a service access walkway;
- Amend the shape and size of the roof top pools;

- Provide a shelter roofing structure over part of the stairways from Units 11&13 to the roof terrace and pool area.
- Provision of roof 'solar tubes'
- Provision of two ensuites and additional bedroom to Unit 14;
- Remove living room windows and changes to location and size of other windows of Unit 14;
- Remove southern balcony to Unit 11 and change the doors to windows;
- Change materials of mid level balcony edge from timber to non flammable canvas;
- Relocate stationary housing for sliding doors from the edge of the opening to a central position;
- Changes to the design of the bathroom balcony for Unit 11;
- Change material of roof awning above Fletcher Street to 'wilderness' green colour bond;
- Changes to the internal layout and partitions of Units 7, 8, 9, 10, 11, 12, 13, 14;
- Remove swimming pools in the courtyard areas of Units 2, 5, 7, 8, 9, 10;
- Relocate the 'house store' from ground floor to basement level;
- Changes to layout of plant and storage rooms;
- Modify doorway to carpark from roller shutter to panel lift, reduce the width of the driveway from 7m to 6m, provide a service entrance to the southern side of the vehicular entrance;
- Remove feature water pond and waterfall from the eastern wall and replace with curved feature wall;
- Changes to the Ground and First floor RL's

3 STATUTORY FRAMEWORK

3.1 *Statement of permissibility*

The site is zoned 7(f2) Urban Coastal Lands under the Byron LEP 1988. Part 2 of the LEP permits the proposed development with consent.

3.2 *Instrument of consent and other relevant planning instruments*

State Environmental Planning Policy No.71 – Coastal Protection – applies to the site and the Minister for Planning is the consent authority.

Additional state, regional and local controls that apply to the site are:

- State Environmental Planning Policy No.55 – Remediation of Contaminated Lands;
- The North Coast Regional Environmental Plan;
- s.138 of the *NSW Roads Act 1993* (integrated development);
- Byron Local Environmental Plan 1988;
- Byron Development Control Plan 2002.

4 CONSULTATION / PUBLIC EXHIBITION

The application was notified, in accordance with the Regulations.

Notifications – landowners/occupiers	Approximately 26 letters were sent to adjoining residents
Newspaper advertisements	NIL
Site notices	There were no notices placed on site.
Exhibition dates	Start: 24 February 2006. End: 10 March 2006.
Exhibition venues	▪ Planning Information Centre, 23-33 Bridge Street Sydney ▪ Byron Bay Library, Cnr Lawson and Fletcher Streets, Byron Bay

No submissions were received regarding the application.

5 CONSIDERATION

5.1 Section 96

The application is considered to meet the prerequisites of Section 96(1A) 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 is also given to relevant provisions of Byron Local Environmental Plan 1998 and Byron Development Control Plan 2002. It is considered that the proposed development complies with the statutory controls and the relevant aims and objectives.

Relevant issues arising from the proposed amendments to the approved development that require further consideration are addressed below:

5.3 Issues

5.3.1 Design and visual impact

<i>Issue:</i>	Potential for the proposed modifications to the exterior of the building to adversely affect the design and visual quality of the development.
<i>Raised by:</i>	Dept. of Planning
<i>Consideration:</i>	The proposed modifications, which could adversely impact the design and visual quality of the development, include the proposed skylights and the beam that protrudes from the roofline on the eastern elevation. The applicant has provided details of the skylights, which illustrate the size and dimensions. They are not considered to adversely impact the design or visual quality of the building. Additionally, while the protruding beam somewhat disrupts the symmetry of the building it is not considered of such significance to warrant refusal. Furthermore, it will not result in any unacceptable environmental impacts to surrounding properties.
<i>Resolution:</i>	The proposed modifications to the exterior of the building will not significantly effect the design of the building or its visual quality as it presents to the surrounding area.

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

The application has been notified in accordance with the Regulations. There were no submissions received following notification of the application.

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

Prepared by:

Endorsed by

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