

+ MODIFICATION (MOD 4) OF DEVELOPMENT CONSENT NO. 492-11-2003

MIXED USE COMMERCIAL, RETAIL & TOURIST ACCOMMODATION DEVELOPMENT

At Lot 24 DP 1080878 No. 30 Marine Parade, Kingscliff

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1.0 INTRODUCTION

Sea Kingscliff Properties Pty Ltd has instructed Darryl Anderson Consulting Pty Ltd to prepare this Section 75W Application to modify Development Consent No. 492-11-2003 relating to an approved Mixed Use Commercial, Retail and Tourist Accommodation development.

The proposed modification of the development consent relates to improved vehicular access and car parking arrangements on the site. In addition to improving access, the proposal will result in a net increase of available onsite car parking, while minimising disturbance on the adjoining property which the access is presently approved through.

The remainder of this report provides a description of the relevant statutory planning context, a description and justification of the proposed modification and provides a conclusion.

2.0 STATUTORY PLANNING CONTEXT

Schedule 6A, Clause 3 of the EP&A Act 1979 (as amended) relates to Continuation of Part 3A - transitional Part 3A provisions and states that Part 3A of this Act (as in force immediately before the repeal of that Part and as modified under this Schedule after that repeal) continues to apply to and in respect of, a transitional Part 3A project.

Clause 12 of Schedule 6A states:

"12 Continuing application of Part 3A to modifications of certain development consents

Section 75W of Part 3A continues to apply to modifications of the development consents referred to in clause 8J(8) of the Environmental Planning and Assessment Regulation 2000, and so applies whether an application for modification is made before or after the commencement of this clause."

Clause 8J(8) of the *Environmental Planning and Assessment Regulation 2000* states:

"(8) For the purposes only of modification, the following development consents are taken to be approvals under Part 3A of the Act and section 75W of the Act applies to any modification of such a consent:

- (a) a development consent granted by the Minister under section 100A or 101 of the Act,
- (b) a development consent granted by the Minister under *State Environmental Planning Policy No 34—Major Employment-Generating Industrial Development*,
- (c) a development consent granted by the Minister under Part 4 of the Act (relating to State significant development) before 1 August 2005 or under clause 89 of Schedule 6 to the Act,
- (d) a development consent granted by the Land and Environment Court, if the original consent authority was the Minister and the consent was of a kind referred to in paragraph (c).

The development consent, if so modified, does not become an approval under Part 3A of the Act."

Section 75W (as in force immediately before the repeal of that Part of the Act) applies to the lodgement and determination of an application to modify a Part 3A approval. Section 75W was in the following terms:

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"Modification of Minister's approval

75W

(1) In this section:

Minister's approval means an approval to carry out a project under this Part, and includes an approval of a concept plan.

Modification of approval means changing the terms of a Minister's approval, including:

- (a) revoking or varying a condition of the approval or imposing an additional condition of the approval, and
 - (b) changing the terms of any determination made by the Minister under Division 3 in connection with the approval.
- (2) The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.
- (3) The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.
- (4) The Minister may modify the approval (with or without conditions) or disapprove of the modification.
- (5) The proponent of a project to which Section 75K applies who is dissatisfied with the determination of a request under this section with respect to the project (or with the failure of the Minister to determine the request with 40 days after it is made) may, within the time prescribed by the regulations, appeal to the Court. The Court may determine any such appeal.
- (6) Subsection (5) does not apply to a request to modify:
- (a) an approval granted by or as directed by the Court on appeal, or
 - (b) a determination made by the Minister under Division 3 in connection with the approval of a concept plan.
- (7) This section does not limit the circumstances in which the Minister may modify a determination made by the Minister under Division 3 in connection with the approval of a concept plan."

There are no other regulations of relevance to a Modification Application.

3.0 PROPOSED MODIFICATION AND JUSTIFICATION

The proposed modification to the approved development will improve vehicular access arrangements to the site which were originally approved in 2005. The approved vehicular access is from Hungerford Lane, but through the adjoining development to the west (No. 32 Marine Parade). At that time the subject site and the adjoining property to the west were both owned by Pacific Projects Group Pty Ltd. That entity no longer owns the subject land and neither of the present owners of the affected properties wish to maintain the originally approved vehicular access arrangements.

The originally approved arrangements require the demolition of an existing wall and relocation of 2 existing car parking spaces from No. 32 Marine Parade to provide vehicular access from that existing building to the proposed building on No. 30 Marine Parade. The 2 car parking spaces from No. 32 Marine Parade are to be relocated and are included in the approved 8 car parking spaces in the proposed building on No. 30 Marine Parade.

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Apart from the obvious security and amenity issues associated with the existing approved arrangements, there will be ongoing legal and practical burdens associated with this arrangement for the respective Bodies Corporate to manage and maintain the access between the two buildings.

The current owners have designed a superior driveway access to the subject site, which will not require disturbance of the existing built form of the adjoining property to the west and will provide compliant independent access to the subject site, to and from the secondary frontage to Hungerford Lane.

The modified Application Plans are attached as **Annexure A**. A previous, similar design was provided with a Section 138 Approval from Tweed Shire Council. Tweed Shire Council has also indicated support for the current proposed modified vehicular access, during the assessment of a previous Section 96 Application.

The modified access arrangement also has the benefit of providing an additional car parking space on the subject site. This is achieved even though the overall number of car parking spaces within No. 30 Marine Parade will be reduced by 1 space (to a total of 7 spaces), since that number will not include the 2 spaces that were previously required to be relocated from the neighbouring property No. 32 Marine Parade.

The proposed modification can be given effect by the following further modified conditions.

Condition A1AA – Development Description

Delete Condition A1AA

Insert New Condition A1AAA

Development Consent is granted only to carrying out the development described in detail below:

- (1) Erection of a four(4) storey building;
- (2) Ground Floor comprises 286sqm of commercial/ retail, resident's entry and resident's store;
- (3) Four tourist accommodation units; two (2) three (3) bedroom units at Level 1, seven (7) car parking spaces and one (1) three (3) bedroom unit at Level 2 and one (1) three (3) bedroom unit at Level 3.

Condition A2AA – Development In accordance With Plans

Delete from the Table in this condition the following Drawings which refer to:

- Ground Floor Plan First Floor Plan
- Second Floor Plan
- Third Floor Plan
- Elevations
- Sections

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Insert within the Table:

Architectural (or Design) Drawings prepared by <i>The LADD Studio</i>				
Drawing No.	Revision	Name of Plan	Date	Rev. Date
532.06 Sheet 3	D	Second Floor Plan Third Floor Plan	Jan 2008	May 2014
532.06 Sheet 4	D	Elevation + Section	Jan 2008	May 2014
532.06 Sheet 5	D	Driveway Grades and Sections	Jan 2008	May 2014

Condition B8 – Number of Car Spaces

Delete Condition B8

Insert New Condition B8A

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

Car Parking Allocation	Number
Residential car parking spaces	6
Number of residential car parking spaces to be disabled spaces	1
Total residential car parking spaces	7

Condition F7 -

Delete Condition F7(1)(b) “the provision of a right of way over Lot 23 DP 1064172”.

4.0 CONCLUSION

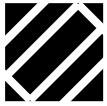
Modification of the conditions and terms of the approval as proposed is authorised by Section 75W of the Environmental Planning and Assessment Act.

The proposed modifications do not give rise to any unreasonable physical changes to the scale, nature or footprint of the approved development.

The proposed modification of the development is considered to be justified on the basis that the modifications will enable the development to proceed on a viable basis and provide independent vehicular access, increasing the availability of car parking and minimising impacts on the existing building to the west, through which access was originally approved.

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Modification of Development Consent 492-11-2003
Project No: SEA 13/157 – March 2015

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