



Huskisson Hotel

Section 4.55(1A)
Modification
Assessment
(MP07_0004 MOD 3)

March 2020

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Glossary

Abbreviation	Definition
Applicant	Kamsley Pty Ltd
Council	Shoalhaven City Council
Department	Department of Planning, Industry and Environment
DCP	Development Control Plan
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPI	Environmental Planning Instrument
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy



1. Background

1.1 Background

This report is an assessment of an application to modify the approval for additions and alterations to the Huskisson Hotel at 73-75 Owen Street, Huskisson (MP07_0004).

The application seeks to delete Condition F11 relating to the payment of a contribution towards car parking.

The application has been lodged by Kamsley Pty Limited (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 Subject site

The site is the Huskisson Hotel, located on a prominent headland at the mouth of Currambene Creek overlooking Jervis Bay between Callala Beach and Vincentia (**Figure 1**), in the Shoalhaven local government area. The hotel is a locally listed heritage item under the Shoalhaven Local Environmental Plan 2014 (LEP).



Figure 1 | Site location outlined in red

The surrounding land uses along Owen Street include a number of restaurants and cafes, with residential properties on the adjoining streets. Club Jervis Bay, with its forecourt car park, is located to the west of the site.

There is a public car park located immediately east of the site and on street parking is located on both sides of Owen Street.

1.3 Approval History

On 12 October 2010, the then Deputy Director-General, as delegate of the then Minister for Planning, granted project approval for development of the existing Huskisson Hotel site (MP07_004). The approval included:

- demolition of recent additions at the rear of the existing hotel
- alterations and additions to the existing hotel, including hotel foyer and kitchen, a new outdoor courtyard at ground level, use of the first floor as a day spa, and a function room with an adjoining terrace
- excavation for basement parking
- construction of a part four / part five storey courtyard style building at the rear of the existing hotel, providing 14 permanent residential apartments, 38 hotel rooms, a manager's residence, café/restaurant, reception area and outdoor swimming pool and terrace.

The approval has been modified twice, as summarised in **Table 1**:

Table 1 | Summary of Modifications

Ref.	Description of Modification	Status
MOD 1	Section 75W modification amending 35 conditions, mostly changing the required timing triggers and/or deletion and rewording of conditions.	Approved on 12 August 2011 by the Department
MOD 2	Section 75W modification to extend the rear of the hotel to create a function room, larger terraces for outdoor dining and a day spa.	Approved on 23 November 2011 by the Department

Relevant to the proposed modification, MOD 2 inserted Condition F11 requiring the payment of a contribution to Council for 14 car parking spaces, should construction of stages 2 and 3 of the development not be commenced within 5 years of the date of this modification approval.

This condition was inserted to address the potential undersupply of 14 car parking spaces on the site should Stages 2 and 3 of the development did not proceed.

Table 2 summarises how the car parking provision has been modified since the original approval. The Department notes that the existing land uses on the site (i.e. the hotel) benefits from a car parking 'credit' of 166 spaces. This parking credit was made available under the Council's now superseded

DGP 18 for proposals to develop sites on which there was existing development. The credit was calculated based on the existing floorspace of the hotel.

Table 2 | Summary of car parking provision

Ref.	Original approval	MOD 1	MOD 2
Required in Council DCP	176 (including 4 spaces due to loss of on street parking)	176 (including 4 spaces due to loss of on street parking)	192 (increase due to increase in area of function room, terraces, dining and spa)
Credit in Council DCP	95 (95 hotel + 0 for beer garden)	166 (95 spaces + 71 for beer garden)	166 (95 spaces + 71 for beer garden)
Approved	64 (in the basement)	12 (on ground level)	12 (on ground level and 9 allocated to hotel accommodation)
Difference	-17	+2	-14

1.4 Council development application

Council is currently assessing a development application (DA19/1354) for 130 customer seats in the garden area of the Huskisson Hotel (a beer garden), construction of toilet and storage area under the hotel deck and construction of a deck to increase the sports bar by 23.25m².



2. Proposed Modification

On 3 September 2019, the Applicant lodged an application (MP07_0004 MOD 3) under section 4.55(1A) of the EP&A Act seeking approval to delete Condition F11, as follows:

F11 Parking Contribution

~~A Section 94 contribution for 14 car parking spaces must be paid in accordance with the requirements of Shoalhaven City Council's Section 94 plan, should construction of stages 2 and 3 of the development not be commenced within 5 years of the date of this modification approval.~~

The 5 year commencement period has now lapsed, and the applicant contends that the 14 car parking spaces required by Condition F11 are no longer required. In support of the proposal the Applicant has submitted a detailed parking survey which concludes that there is no shortfall in parking based on observed demand for parking on site.



3. Statutory Context

3.1 Part 3A transition to State significant development

The project approval (MP07_004) was originally granted under Part 3A of the EP&A Act. This means the project satisfied the definition of a 'transitional Part 3A project' under clause 2(1) Schedule 2 to the Environmental Planning & Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (ST&OP Regulation), which came into effect on 1 March 2018.

Under the ST&OP Regulation, projects the subject of existing Part 3A approvals remain transitional Part 3A projects until they are transitioned to SSD (clause 3(1)-(2), Schedule 2). As of 1 March 2018, new proposals to modify existing Part 3A project approvals can only be determined once the project has been declared to be SSD by the Minister for Planning, and the relevant provisions to modify an SSD consent under Part 4 of the EP&A Act apply.

On 21 June 2019, an Order was published in the New South Wales Government Gazette transitioning the Part 3A project approval (MP07_0004) to SSD. The application has been lodged under section 4.55(1A) of the EP&A Act for a modification involving minimal environmental impact.

3.2 Scope of modifications

Section 4.55(1A) of the EP&A Act outlines the matters that a consent authority must take into consideration when determining an application that seeks to modify a development consent and results in minor environmental impacts. The matters for consideration under section 4.55(1A) of the EPA&A Act that apply to the modification are considered in **Table 4**.

Table 4 – Section 4.55 (1A) Modification involving minimal environmental impact

Section 4.55 (1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	Section 5 of this report provides an assessment of the impacts associated with the proposal. The Department is satisfied that the proposed modification will have minimal environmental impact.
b) that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	The proposed modification seeks to delete Condition F11 regarding the payment of a contribution for car parking on the site. The proposal would not change the overall character of the approved development being additions and alterations to the hotel. On this basis, the proposal would result in development that is substantially the same as the originally approved development.
c) the application has been notified in accordance with the regulations, and	The modification has been notified in accordance with the regulations. Details of the notification are provided in Section 4 of this report.
d) any submissions made concerning the proposed modification have been considered	The Department received two submissions on the proposal. The issues raised in the submissions have been considered in Section 5 of this report.

3.3 Environmental Planning Instruments (EPI)

The following EPIs are relevant to the application:

- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy No.55 – Remediation of Land
- SEPP 65- Design Quality of Residential Flat Development
- SEPP (Building Sustainability Index: BASIX) 2004.

The Department has considered the proposed modification against these above-mentioned EPIs in its original assessment and previous modification assessments. The Department considers the modification does not result in any significant changes that would alter the conclusions made as part of the original assessment.

The Department has also considered the proposed modification against the following EPI, which are considered relevant to the proposal:

State Environmental Planning Policy (Coastal Management) 2018 (Coastal SEPP)

The Coastal SEPP consolidates and replaces SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection).

The Coastal SEPP identified the site as located within the Coastal Environment Area and Coastal Use Area and therefore clauses 13 and 14 apply, respectively. The Department considers that the proposal is consistent with the Coastal SEPP as it does not seek to change the footprint of the development and would not have any additional coastal impacts beyond those already assessed and approved in the original assessment.

Shoalhaven Local Environmental Plan 2014 (SLEP 2014)

The SLEP 2014 replaces the Shoalhaven Local Environmental Plan 1985 (SLEP 1985), which was used to assess the original proposal. The majority of the site is zoned B4 Mixed Use under the SLEP 2014. The Department has considered the proposal against the SLEP 2014 and is satisfied that the proposal is consistent with the objectives of the B4 zone, noting the development will continue to operate as a pub offering food and drink and hotel accommodation, integrated amongst a mix of uses in an accessible location within Huskisson town centre.

Shoalhaven Development Control Plan 2014 (SDCP 2014)

Chapter G21 of the SDCP 2014 replaces Shoalhaven's Parking Development Control Plan No.18 which was used to assess the original proposal. Chapter G21 states that in relation to car parking for pubs, clubs and hotel developments, car parking is to be provided in accordance with the rates specified within the DCP, or alternatively car parking requirements may be determined by Council following the completion and submission of a parking impact and needs study by an independent suitably qualified professional. This application is accompanied by a comprehensive car parking survey and report prepared by a suitably qualified traffic consultant.

3.4 Consent authority

The Minister for Planning and Public Spaces is the approval authority for the application. However, the Executive Director, Regional, Industry and Key Sites, may determine the application under delegation as:

- the local council has not made an objection
- a political disclosure statement has not been made
- there are less than 25 public submissions in the nature of objections (being one public objection).



4. Engagement

4.1 Department's engagement

The Department notified the proposal between 1 November 2019 until 15 November 2019 (14 days). It was made publicly available on the Department's website and notified to Shoalhaven Council (Council).

The Department received a submission from Council and one public objection, as summarised below.

4.2 Council's Submission

Council initially objected to the proposal, making the following comments:

- the car parking credit calculations should be reviewed to ensure the required car parking spaces is provided on-site or a contribution is paid in lieu of any shortfall
- the traffic impact assessment (TIA) for the Council DA identifies a surplus of 19 car parking spaces and Council does not support the continued recalculation of car parking demand where the initial credits calculated (under Mod 1) do not form part of the reconsideration.

4.3 Public Submission

The one public submission objected to the proposal, and in particular the construction of the part four, part five storey courtyard style building at the rear of the existing hotel.

The Department notes that this building was approved under the original project approval (MP07_0004) and is therefore outside of the scope of the proposed modification.

4.4 Response to Submissions

On 20 December 2019, the Proponent provided a response to submissions (RtS). The RtS was provided to Shoalhaven Council for further comment.

The RtS provided the following additional information and justification for the proposal:

- further details on the 'existing use entitlement' for the 166 car parking credits and the history of this calculation with Council
- additional justification for the estimated peak patronage, including details of the use of each area of the hotel.

On 29 January 2020, Council confirmed in writing the withdrawal of its objection to the proposal.



5. Assessment

In assessing the merits of the proposed modification, the Department has considered the:

- Environmental Assessments for the project and conditions of the project approval, as modified
- modification application and associated documents
- submissions from the public and Council
- relevant EPIs, policies and guidelines
- requirements of the EP&A Act.

The proposal seeks to delete Condition F11, which was imposed under Mod 2 to require the payment of a section 94 contribution (now called a section 7.11 contribution) to Council for a shortfall of 14 car parking spaces on site, unless Stages 2 and 3 of the development commenced within 5 years of being approved. Stages 2 and 3 of the development have not been commenced within this time.

The Department notes that under Mod 2, the development was required to provide 192 car parking spaces in accordance with Council's DCP (**Table 2**). Given the car parking 'credit' of 166 spaces for existing uses on the site and the provision of 12 on-site parking spaces, there was a shortfall of 14 spaces. Condition F11 was therefore imposed to require a payment to Council for this shortfall.

The Applicant has submitted a TIA in support of the proposed modification. Based on a survey of parking demand from the hotel on one of its busiest nights (Easter Saturday 2019), the TIA estimates a peak parking demand from patrons, guests in the eight hotel rooms and hotel staff of 118 parking spaces.

The Applicant contends that the additional 14 spaces are no longer required, as the car parking credit of 166 spaces together with the 12 on-site parking spaces exceeds the estimated peak parking demand of 118 spaces. The Applicant also contends that the submission of a TIA prepared by a suitably qualified transport consultant addresses the requirements of the DCP in regard to car parking provision.

The Department notes the justification provided by the Applicant demonstrating that sufficient parking exists, either through the parking credit or on-site provision, to meet the demand from the development on a busy evening, being on the Easter Sunday of a long weekend in a popular tourism destination. As Council do not object to the proposal, and are best placed to comment on the application of its car parking credit system, local car parking provision and local contribution requirements, the Department supports the proposal.



6. Evaluation

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment supports the proposed modification and the deletion of Condition F11.



7. Recommendation

It is recommended that the Executive Director, Regional, Industry and Key Sites, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report
- **determines** that the application MP 07_0004 MOD 3 falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision
- **modifies** the consent MP07_0004
- **signs** the attached modification instrument (**Appendix B**).

Recommended by:

Silvio Falato

Team Leader

Regional Assessments

Recommended by:

Brendon Roberts

A/Director

Regional Assessments



8. Determination

The recommendation is: **Adopted by:**

Sargeant

13 March 2020

Anthea Sargeant

Executive Director, Regional, Industry and Key Sites



Appendices

Appendix A – List of Documents

<https://www.planningportal.nsw.gov.au/major-projects/project/16846>

Appendix B – Instrument of Modification

<https://www.planningportal.nsw.gov.au/major-projects/project/16846>