

Application to Modify – SECTION 75W

Major Projects Application 07_0056
Proposed Residential Flat Building

PROPOSED MODIFICATION TO DEVELOPMENT CONSENT 07_0056



At

Lot A & B in Deposited Plan 407809,
No.3-5 Tweed Terrace, Tweed Heads

October 2008

Proposed Application to Modify - DEVELOPMENT CONSENT 07_0056

Section

1.0 BRIEF / BACKGROUND/ INTRODUCTION

Planit Consulting P/L has been engaged by Duranbah Project Pty Ltd to prepare and submit an application to modify Development Consent Major Project Application 07_0056.

Development Consent was granted by the Minister on 16 June 2008 for a residential flat building consisting of twelve (12) dwellings within a six (6) storey building at Lots A & B DP407809, No. 3-5 Tweed Terrace, Tweed Heads. The amendments proposed are in relation to relatively minor alterations to the design of the building which reflect requirements of DA conditions, BCA and BASIX requirements and minor modifications associated with the refinements that generally occur during the construction certificate and tender processes.

Consent is sought to alter Condition A2 of 07_0056 to reflect the revised plans outlining the proposed changes. This condition relates to plan numbering and identification.

Consent is also sought to alter the Condition B15 – Car Parking to reflect that one parking space will be deleted from the basement to accommodate an area containing a hydrant tank.

The amendments proposed are of minimal environmental impact (no greater than that of the previous approval) and provide for substantially the same multi-dwelling development. Approval is sought to amend Conditions A2 and B15 of Development Consent 07_/0056.

A complete set of consent conditions as issued by Council are attached at Appendix B to this submission.

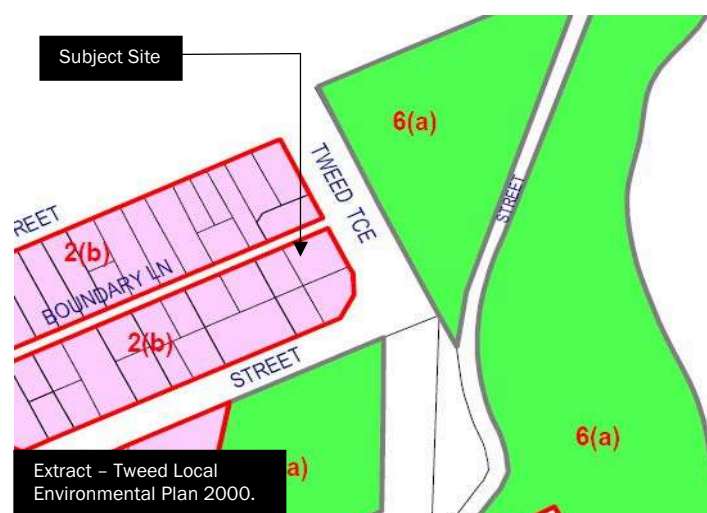
Please refer to the discussion below for greater detail in relation to the amendments being sought.

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2.0 SITE DESCRIPTION AND APPROVED PROPOSAL

2.1 The Site and Surrounds

The subject allotment is legally described as Lots A & B DP407809, No. 3-5 Tweed Terrace, Tweed Heads. An extract from the Tweed Local Environmental Plan 2000 is attached below.



The locality is a long established urban area within Tweed Heads. The property is located on the edge of a medium density area and is bounded by Tweed Terrace, Hill Street and Boundary Lane. The area contains a mixture of single dwellings, low rise multi-dwelling units and more recently multi-level residential flat buildings. Recent construction in the area reflects the medium density zoning of the Tweed LEP and the building heights provided for in the LEP.

The site has access to all necessary services including water, power,

sewer, telecommunications and stormwater.

The Approved Proposal

The approved proposal incorporates the erection of a Residential Flat Building on the subject site. As part of the application, a total of twelve (12) dwellings will be constructed, with a basement containing all required parking, including visitor parking. Each dwelling consists of generous living areas incorporating three (3) bedrooms.

Access to the site is to be provided via a driveway from Boundary Lane to the basement of the building. Twenty eight (28) parking bays were approved including three (3) visitor bays and one (1) wash bay.

For further details on the proposal as revised, Council's attention is drawn to the attached Design Plans prepared by Arkhefield and presented under Appendix A.

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3.0 PROPOSED MODIFICATIONS

The proposed modifications are submitted in accordance with the provisions of S.75W of the Environmental Planning & Assessment Act, 1979. In this regard, the proposed amendments are essentially of a relatively minor nature and will not result in any adverse environmental impacts.

The proposed modifications largely come as a result of refined compliance with the BCA, BASIX and relevant consent conditions. Some alterations have been proposed to improve the visual aesthetics of the building.

In regard to the basement it is noted that modifications proposed incorporate the general reconfiguration of the basement to provide for the addition of the required 24 bike racks (consent 07_0056), the addition of a hydrant tank (which deletes one parking space) to improve the water flow rate, the upgrading of the car wash bay in line with Council requirements, the addition of an electrical room and subsequent redesign of the stairwell four located in this area. All of these modifications within the basement relate to BCA and/or consent condition requirements. The deletion of one parking space still sees compliance with the number of bays required under Section A2 of the Tweed DCP as outlined in detail in Section 4.3 of this report.

The fencing and wall treatments on all elevations have been modified to some degree. The modifications use the same materials and finishes as those approved under consent 07_0056. The addition of the toilet to the communal pool area and this south east elevation generally, is proposed to create a more open wall with the addition of frameless glass to a length of previously solid wall. This will provide a greater openness between this recreational area of the building with the adjacent road verge areas and allow views to the south east over Duranbah Beach. It is considered that this openness mitigates any impacts the short length of solid wall the toilet on the boundary may have created through the provision of greater articulation on this length of the boundary, through the use of varying material types and the varying permeability levels of the fencing. The modifications to the walls and fencing on the remaining elevations are minor and do not detrimentally impact upon the visual amenity of surrounding properties but provide for increased levels of privacy to residents.

Window configurations are proposed to be modified and treatments in regard to glass and type of window are also proposed to be modified on some windows. These modifications are in keeping with the approved materials, finishes and aesthetic of the buildings appearance, are minor in nature and comply with BASIX requirements. Some material finishes are also proposed to be modified. The plywood cladding that is a feature of the elevations of the building is proposed to be added to areas and removed from others to better suit the shading of the building from light and dark colours as they appear visually. Some other very minor alterations to materials are proposed. These alterations are considered to improve the visual aesthetics of the building.



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Overall the proposed modifications are considered relatively minor and result in a building that is substantially the same as that approved under consent 07_0056. The following detail outlines proposed modifications to the relevant consent conditions as a result of this proposal.

The proposed Section 75W Application seeks consent to amend Condition A2 of the Development Consent 07_0056. The condition currently states:

A2 Project in Accordance with Plans

The project will be undertaken in accordance with the Environmental Assessment, Preferred Project Report and the following drawings:

Architectural (or Design) Drawings prepared by Arkhefield			
Drawing No.	Revision	Name of Plan	Date
200-B1	F	Basement Floor Plan	10/03/08
200-00	G	Ground Floor Plan	10/03/08
200-01	F	Level 1 to Level 5 Floor Plan	10/03/08
300-00	I	North East Elevation	10/03/08
300-01	I	North West Elevation South East Elevation	10/03/08
300-02	I	South West Elevation	10/03/08
400-00	E	Section A-A	10/03/08
400-01	G	Section B-B & Section C-C	10/03/08
-	-	Level 3 Floor Plan	-
650-01	A	Screen Detail	14/01/08
100-13	B	Reference Images - External	22/10/07
	-	Reference Images	-
100-15	C	Aerial Montage – Site Context	14/01/08
100-16	C	Perspective Image – south east	14/01/08
100-17	C	Perspective Image – northern	14/01/08
110-00	A	Demolition Plan	27/07/07
100-09	C	Shadow Studies – March	22-01-08
100-10	D	Shadow Studies – June	02-04-08
100-11	C	Shadow Studies – September	22-01-08
100-12	C	Shadow Studies – December	22-01-08

Statement of Landscape Intent prepared by <i>Planit Consulting</i>			
Drawing No.	Revision	Name of Plan	Date
Job no 9505 (Sheet 1 of 2)	001	Statement of Landscape Intent	October 2007
Job no 9505 (Sheet 2 of 2)	001	Statement of Landscape Intent	October 2007

except for:

- (1) any modifications which are 'Exempt and Complying Development' as identified in Tweed Shire Council's Development Control Plan and / or Tweed Local Environmental Plan 2000 or as may be necessary for the purpose of compliance with the BCA and any Australian Standards incorporated in the BCA;
- (2) otherwise provided by the conditions of this approval.

The condition is to be amended to include the following plans in A2 of the consent:

Drawing No.	Revision	Name of Plan	Date
200-B1	P	Basement	27/08/08
200-00	P	Ground Floor	27/08/08
200-01	P	Level 1 to level 5	27/08/08
210-00	P	Roof Plan	27/08/08
300-00	Q	Elevation: north east	27/08/08
300-01	Q	Elevations: north west & south east	27/08/08
300-02	Q	Elevation: south west	27/08/08
400-00	K	Section A-A	27/08/08
400-01	M	Section B-B & C-C	27/08/08
650-00	B	Screen Details	27/08/08

And to delete the following plan details as listed under Condition A2 of the consent:

Drawing No.	Revision	Name of Plan	Date
200-B1	F	Basement Floor Plan	10/03/08
200-00	G	Ground Floor Plan	10/03/08
200-01	F	Level 1 to Level 5 Floor Plan	10/03/08
300-00	I	North East Elevation	
300-01	I	North West Elevation South East Elevation	10/03/08
300-02	I	South West Elevation	10/03/08
400-00	E	Section A-A	10/03/08
400-01	G	Section B-B & C-C	10/03/08
650-01	A	Screen Detail	14/01/08

The plans to be included replace the plans to be deleted. This amendment simply reflects the alterations to the abovementioned plans that reflect what are considered to be minor alterations to the physical appearance of the building and alterations brought about by required conditions of consent, BCA and BASIX requirements and refining of detail that commonly occurs prior to the application for the construction certificate. Please refer to the Section 75W Schedule, presented in Appendix D, for a detailed listing of the proposed alterations.

Approval is also sought to amend Condition B 15. The condition currently states:

B15 Car Parking

- 1) The maximum number of car spaces to be provided for the project shall comply with the table below, including parking for the disabled (as required) in accordance with the Tweed Shire Council Development Control Plan Part A2 – Site Access and Parking Code.

Car parking allocation	Number
Residential Car parking spaces	25 (includes 8 tandem spaces)
Visitor Spaces	3
Car Wash Bay	1

- 2) The tandem car parks must be allocated to individual units only.
- 3) Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to and approved by the Certifying Authority prior to the issue of a construction certificate.
- 4) Visitor car parking spaces must be accessible at all times.

Condition B15 is to be amended so that the table within the condition reads as follows;

Car Parking Allocation	Number
Residential Car parking spaces	24 (includes 6 tandem spaces)
Visitor Spaces	3
Car Wash Bay	1

The condition has been imposed to ensure parking numbers are provided in accordance with approved plans and Tweed DCP Section A2. The proposed amendment reflects the deletion of one parking bay that was labelled parking bay 11 on the approved plans and was a part of a tandem parking bay. This bay has been replaced with a hydrant tank that is required as the water flow rate is too low (refer to plans presented in Appendix A). It should be noted that under the approval 07_0056 an extra parking bay additional to the Shire's requirements was provided. The required number of bays under the Tweed DCP is 27 bays including three visitor bays and one wash bay. The removal of one parking bay brings the total number of bays from 28 to 27 which is compliant with the Tweed DCP. For further detail concerning this, please refer to Section 4.3 of this report.

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4.0 STATUTORY / PLANNING IMPLICATIONS

The proposed modifications will not result in any new elements resulting in further assessment of any identified non compliances with either Council's Local Environmental Plan 2000 or relevant Development Control Plans. In particular the following comments are made in relation to the relevant provisions from these planning controls.

4.1 STATE ENVIRONMENTAL PLANNING POLICIES

SEPP 65 – Design Quality of Residential Flat Development

In response to the proposed modifications, an updated SEPP 65 Verification has been undertaken by Arkhefield and is presented in Appendix C of this report.

4.2 TWEED LOCAL ENVIRONMENTAL PLAN 2000

CLAUSE 8 ZONE OBJECTIVES

The subject land affected by the proposal is zoned 2(b) Medium Density Residential pursuant to the provisions of Tweed LEP 2000. Multi-dwelling (town housing) development such as that approved, is a permissible form of development within the zone. The objectives of the zones are as follows:

The 2(b) Medium Density Zone

Primary objective

- to provide for and encourage development for the purpose of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good urban design outcomes.

Secondary objectives

- to allow for non-residential development which supports the residential use of the locality.
- to allow for tourist accommodation that is compatible with the character of the surrounding locality.
- to discourage the under-utilisation of land for residential purposes, particularly close to the Tweed Heads sub-regional centre.

The approved development is substantially the same when considering the proposed alterations and is considered to clearly meet the primary and relevant secondary objectives of the zoning.

Clause 16 – Building Heights

The subject site possesses a statutory height limit of 50m AHD. The approved proposal is for a six storey building. The approved plans show a roof covering the plant equipment within the plant enclosure of the roof of the building. The modification requested involves the removal of the roof of the plant equipment as it protrudes greater than 49.8m.

Condition B9 (2) states that;

...(2) All additional structures such as lift overruns, vents, aerials and lightning rods must be contained within the maximum approved height of 49.8m AHD.

It is considered the proposal is in accord with the provisions of Clause 16 of TLEP 2000.

Clause 35 - Acid Sulfate Soils

No increased excavation depths are required to accommodate the proposed alterations and therefore no further acid sulphate soil investigations are required additional to that already undertaken and assessed under 07_0056.

4.3 Tweed Development Control Plan

Section B2 Tweed Heads

The proposed alterations and additions to the building, particularly externally, will not conflict with the underlying fundamental design principles outlined in Section B2.1 Residential Design. The proposed minor alterations to the external facade of the building are minimal, are complimentary to the existing approved materials and finishes and are considered to improve the appearance of the building as viewed from surrounding areas.

Section A2 Site Access and Parking Code

The parking requirements for the proposed development under Section A2 of the Tweed DCP remain the same at this point in time as when the proposal was assessed. Section A2 of the DCP requires two parking bays to be provided for each three bedroom dwelling and one on-site visitor bay per four dwellings. One wash bay was also approved under 07_0056. There are twelve (12) x three (3) bedroom units which will

require the provision of 24 parking bays and three (3) visitor bays. Therefore 27 parking bays plus a car wash bay are required. The approved plans show 28 parking bays plus a wash bay. Therefore, one additional bay was provided.

The alterations proposed see the deletion of one parking bay from a tandem parking bay previously approved. This reduces the number of parking bays to 26 plus a wash bay which meets the requirements of the DCP as outlined above. The proposed modifications are compliant with Section A2 of the DCP.

4.4 Section 75W of the Environmental Planning and Assessment Act 1979

It is submitted the proposed development is substantially the same development as that approved and satisfies the provisions of Section 75W of the Environmental Planning and Assessment Act 1979. The following features are noted in support of the proposal:

Threshold Requirements

Before the consent authority can modify the consent, it must be satisfied in relation to the threshold requirement that "the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted" (i.e. prior to any modifications).

In *Moto Projects (No. 2) Pty Ltd v North Sydney Council* (1999) Bignold J described the following test in determining the threshold question;

"The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is essentially or materially the same as the currently approved development.

The comparative task does not merely involve the comparison of the physical features or components of the development as currently approved and modified where the comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."

In the case of *Wolgan Action Group Incorporated - v - Lithgow City Council* (NSW Land and Environment Court 199, 2001, Talbot J) his Honour addressed the question of "substantially the same development" in respect of Section 96 of the Environmental Planning and Assessment Act and said,

" Even if the present applicant is correct in that there will be a significant increase in the environmental impact..... that does not necessarily preclude a conclusion that the development, to which the consent as modified relates, is substantially the same development as that already permitted. There may be some additional environmental impact but that is a matter to be considered as part of the deliberations on the merits."

In this case, Justice Talbot also interpreted the meanings of the words "substantially" and "modify" (in the context of Section 96). His Honour adopted meanings established in precedent cases. The word substantially was taken to mean "essentially or materially or having the same essence". The word modify was taken to mean "to alter without radical transformation".

Following on from the tests established in these cases and based on numerous Land and Environment Court decisions, it is apparent that the following key principles apply:

- The comparison is undertaken at a general level rather than between detail;
- The question is whether the development as a whole is essentially or materially similar to the original development;
- If the impacts of the modifications are minor, the modified development is more likely to be

- essentially or materially the same development;
- It is relevant to consider the magnitude of any physical changes to the development and any changes to the use of the land;
 - The extent of any impacts arising from the modifications are matters for consideration on the merits of the application;
 - The development as modified must be essentially or materially the same or have the same essence as the approved development and the variations must not radically transform or alter the approved development.

Having regard to the proposed amendments, and the key principles discussed above, it is submitted that the threshold question is satisfied on the basis that;

- The development remains a multi-dwelling residential flat building development;
- The approved building footprint remains the same.
- Open space areas on site remain the same.
- The visitor parking requirements and provision essentially remain the same.
- The setbacks to surrounding buildings remain the same.
- The proposed development is substantially the same development as approved by Council.

Although the above precedents used as examples relate to modifications under Section 96, similar principles would apply to modifications applied for under Section 75W. It is submitted Minister is able to assess and approve the application pursuant to the provisions of Section 75W of the Environmental Planning and Assessment Act, 1979.

4.5 Impacts upon the Environment

The proposed amendments to the approved plan will have no detrimental impact upon the built or natural environment or the amenity of the locality. The minor alterations and additions simply reflect requirements or the BCA, conditions of consent 07_0056 and minor general alterations common when refining a proposal prior to the submission of a construction certificate. It is submitted the amendments as proposed will not have an adverse impact upon the environment.

4.6 Suitability of the Site

The subject site is identified as suitable for medium density development and remains zoned as such, pursuant to Tweed Local Environmental Plan 2000. No constraints are evident in terms of services to the site or other hazards which have not already been identified and considered. It is submitted the proposed amendment has not affected the sites suitability for the proposed residential flat building development as amended.

4.7 Public Interest

The proposed amendments to the residential flat building of consent 07_0056 will not offend or compromise the public interest or prejudice the Tweed Shire Council's planning controls.

5.0 CONCLUSION

Having regard to the matters for consideration under S.79(c) and Section 75W of the Environmental Planning & Assessment Act, 1979, the proposed amendments are considered to warrant the support of the Minister. In this regard, the proposed development represents substantially the same development as that previously approved by the Minister, and no additional impacts (relative to the original proposal) are evident upon the built or natural environment.



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The Minister's support for the proposed amendments to the approved Major Projects application 07_0056 for a Residential Flat Building development is respectfully requested.

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