



## Director-General's Report

### Application to Modify the Minister's Approval for a 6 storey Residential Flat Building at 3 – 5 Tweed Terrace, Tweed Heads (Lots A & B DP 407809)

#### Major Project 07\_0056 MOD 1

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## 1 SUMMARY

This report is an assessment of a request to modify Major Project 07\_0056 for a residential flat building at 3 – 5 Tweed Terrace, Tweed Heads in the Tweed Shire local government area, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (the Act).

The Minister for Planning approved the Major Project for a 6 storey residential flat building on 16 June 2008. Project approval was granted for:

- A 6 storey residential flat building comprising 12 (3 bedroom) units;
- A single level basement car park comprising 29 car parking spaces (including 3 visitor spaces and 1 car wash bay);
- Two swimming pools and landscaping on the ground floor; and,
- Lift well and air-conditioning plant and equipment on the rooftop.

## 2 THE PROPOSED MODIFICATION

On 23 October 2008, Planit Consulting, on behalf of Duranbah Project Pty Ltd (the Proponent) submitted to the Director-General a request for modification of Major Project 07\_0056. The Proponent proposes to modify the following:

- Condition A2 – Project in Accordance with Plans – to reflect the revised plans outlining the proposed changes;
- Condition B15 – Car Parking – to reflect that one car parking space will be deleted from the basement to accommodate an area containing a hydrant tank;
- General reconfiguration of the basement car park to provide for the addition of 24 bike racks, the addition of a hydrant tank, upgrading of the car wash bay in line with Council's requirements, the addition of an electrical room and subsequent redesign of a stairwell located in this area;
- Modification to fencing and wall treatments on all elevations to improve visual amenity;
- Addition of a communal toilet to the communal pool area;
- Modification to window configurations and treatments in regard to glass and type of window;
- Location of plywood cladding feature materials.

The modifications primarily relate to refined compliance with the Building Code of Australia (BCA), BASIX and relevant conditions of approval (07\_0056). Other modifications are proposed to improve the overall aesthetics of the building.

### 3 ASSESSMENT PROCESS

The approval for Major Project 07\_0056 was granted in accordance with Part 3A of the Act Section 75J Clause (2).

Section 75W of the Act provides for the modification of the Minister's approval. Under Section 75W(2) of the Act, a Proponent may request the Minister to modify the Minister's approval for a project. This section also states that the Minister's approval is not required if the project as modified will be consistent with the existing approval under this Part.

It is concluded that some of the proposed modifications are not consistent with the Minister's approval and are therefore the subject of an application for modification.

Pursuant to Section 75W(3) of the Act, the approval of the Minister for Planning has been sought by the Proponent to modify the approval for the residential flat building as outlined in the amended modification request (**Tag A**).

Section 75W(3) of the Act provides that the Director-General may notify the Proponent of environmental assessment requirements (DGRs) with respect to the proposed modification that the Proponent must comply with before the matter will be considered by the Minister. Following an assessment of the modification request, it is considered that DGRs are not necessary.

Under Section 75W(4) of the Act, the Minister may modify the approval (with or without conditions) or disapprove the modification. The following report describes the Department's assessment of the requested modifications and supporting documentation as provided by the Proponent, and recommends **approving** the proposed modifications, with conditions.

### 4 DESCRIPTION OF PROPOSED MODIFICATIONS

The proposed modifications to the approved project are described in detail below.

#### **Basement**

The basement carpark has been reconfigured to provide for the addition of 24 bike spaces required by Condition B16 of the project approval, resulting in the deletion of a storage room. A hydrant tank has been added to the underside of the basement car park ramp to improve the water flow rate and to ensure compliance with Australian Standards, resulting in the loss of one car parking space. The number of tandem spaces has been reduced from 8 to 6 spaces.

An electrical room has been included in the south-western corner of the basement resulting in modifications to the design of the fire stairs for egress from the basement.

The grade of the basement entry ramp has been modified from 1:5 to 1:4 to ensure the maximum building height of 49.8m AHD is achieved, as per Condition B9 of the project approval.

#### **Ground Floor**

Heat pumps for air conditioners have been added along the south-western boundary adjacent to the pool deck and barbeque area to comply with BASIX requirements. The communal pool deck area, fire stairs to the basement, and transformer zone have been reconfigured to allow for a communal toilet adjacent to the pool in accordance with BCA requirements.

The bedroom, robe and ensuite in Unit 1 have been reconfigured to improve the overall design and private amenity within the unit.

#### **Level One to Level Five**

The refuse layout, foyer and entry to Units 3, 5, 7 9 and 11 have been amended to suit the fire egress strategy.

Window configurations and sunhood / awning orientation have been amended to achieve compliance with BASIX and improve the overall appearance of the building.

The building form in the north-western corner has been redesigned to suit Council setback requirements, including a minor reduction in the length of the north-western facing balcony.

## Roof

The plant enclosure on the roof has been removed to comply with Condition B9 of the project approval, which requires the height of the building to be no greater than 49.8m AHD.

## Elevations

A sunhood, awning and fire spandrel has been added to all levels to comply with the BCA. Treatments in regards to glass / glazing, type of window and window configurations have been modified to comply with BASIX and the BCA.

As a result of design development, the stone cladding that was to be applied to the external columns has been deleted in order to consolidate a more cohesive design aesthetic with the remainder of the façade materials. The cladding has been replaced with off form concrete (a concrete cast against formwork).

A timber screen added to the car park entry, in accordance with Condition B6 of the project approval, which requires treatment of the vehicular entry to improve the appearance of the building as viewed from the street.

A section of frameless glass has been incorporated into the private pool wall boundary fence along the south east elevation, replacing a length of previously solid wall. This will create a greater openness between this private recreational area with the adjacent road verge areas and allow views to the south east of Duranbah Beach.

## Timber Screen Detail

The design of the feature timber screen has been further developed and consolidated. This cladding is proposed to be added to some areas and removed from others to better suit the shading of the building in terms of light and dark colours and to generally improve the overall appearance of the building.

## Amendments to Conditions

As a result of the amended plans proposed by the Proponent, it is proposed to modify the following conditions of approval:

Condition A2 - Project in Accordance with Plans – Approval is sought to alter this condition to reflect the revised set of plans outlining the proposed modification. This condition relates to plan numbering and identification.

Condition B15 – Car Parking – Approval is sought to alter this condition to reflect that one parking space will be deleted from the basement car park to accommodate an area containing a hydrant tank, and that the number of tandem spaces will be reduced from 8 to 6 spaces.

The Department also proposes the following additional conditions of approval:

Condition E9A – Allocation of Car Parking – Approval is sought to add this condition to require the 3 sets of tandem car parking spaces to be placed on the same certificates of title upon registration of the strata plan prior to issue of an occupation certificate.

Condition E17 – Heat Pump Enclosure – Approval is sought to add this condition to require an enclosure to be constructed around the five heat pumps along the south-western boundary to mitigate against visual and noise impacts on adjoining properties.

## 5 CONSULTATION AND EXHIBITION

Under Section 75W of the Act, a request for a modification of an approval does not require public exhibition. However, under Section 75X(2)(f) of the Act, the Director-General is to make publicly available requests for modifications of approvals given by the Minister. In accordance with Clause 8G of the *Environmental Planning and Assessment Regulation 2000*, the request for the modification was placed on the Department's website.

## **Tweed Shire Council**

The modification application was referred to Tweed Shire Council on 29 October 2008. Council responded on 12 November 2008 and raised the following issues with the proposal.

- Amenity impacts of the heat pumps on the adjoining residents (noise etc);
- Clarification of the additional height proposed to the wall (around the communal toilet) and confirmation of the proposed external screen material of the wall;
- Clarification of the changes to materials and finishes;
- Justification for the additional height proposed to the fencing on the north-west elevation;
- Explanation of the amendments to the central feature screen on the front of the building; and,
- Identification of where the proposed stone cladding features are to be removed and what they will be replaced with.

The Department has assessed the impacts of the above proposed modifications and the relevant issues have been considered as following.

### **6.1 Car Parking**

Section A2 of Tweed Shire Councils Consolidated Development Control Plan – Site Access and Car Parking Code, requires the provision of 2 car parking spaces per 3 bedroom unit plus 1 space per 4 units for visitors. This equals a total of 24 spaces for residents and 3 visitor spaces. A bunded car wash bay has also been provided.

The proposal complies with the DCP requirements in terms of the number of spaces, however, 6 of the 24 spaces are tandem spaces. Notwithstanding, the approved project included 8 tandem spaces within the basement car park. Therefore, the modification reduces the number of tandem spaces, which is supported. Condition B15(2) requires that the tandem spaces are allocated to individual units only prior to issue of a construction certificate. However, to provide greater certainty that the tandem spaces are allocated to individual units only upon registration of the strata plan, the Department proposes an additional condition of approval, Condition E9A, to require the following car parking spaces to be placed on the same certificates of title upon registration of the strata plan, prior to issue of an occupation certificate:

- Space 8 and 9;
- Space 14 and 15; and,
- Space 16 and 17.

The Department and Council are satisfied with the proposed modifications to the basement car park.

### **6.2 Urban Design**

The majority of modifications proposed to the windows and external façade of the building relate to compliance with the BCA and/or the BASIX certificate. The modifications are in keeping with the approved materials, finishes and aesthetics as those approved by 07\_0056.

The modifications to the building façade in the north-western corner of the building create a minor increase in the setback to the rear boundary, which is supported. The Proponent has submitted a revised SEPP65 assessment and verification statement.

Overall it is considered that the proposed changes to the façade will improve the overall aesthetics and design of the building.

### **6.3 Building Line**

As a result of the new communal toilet adjacent to the communal pool area, the pool and pool deck have been reconfigured. The pool now abutts the south-eastern boundary fence, encroaching further into the 3 metre setback required by Council's Building Line Policy. The approved pool only encroached approximately 1.5 metres into the setback.

The Building Line Policy seeks to ensure attractive and reasonably landscaped streetscapes, safe and convenient circulation of pedestrians, appropriate parking of vehicles and controls the extent to which buildings overlook, overshadow and affect adjoining properties. In the case of corner allotments, the policy requires the minimum building line setbacks not less than six (6) metres to the primary frontage and three (3) metres to the secondary frontage.

It is considered that the encroachment of the pool into the setback is acceptable as the modifications do not increase the extent to which the building overlooks, overshadows or affects any adjoining properties. The reduced setback to the frontage will not impact on the streetscape given the open character of the streetscape and open space areas located on the opposite side of the street.

The proposed modifications do not compromise the intent of Council's Building Line Policy.

#### **6.4 Privacy**

The proposed changes to the pool location, pool deck and inclusion of the frameless glass pool fencing along the south-eastern elevation have the potential to impact on the privacy of the future residents.

The Section B2 of Council's Consolidated DCP and the NSW Residential Flat Design Code state that the provision of visual privacy is an important consideration for residential amenity in urban housing. The degree of privacy required in each part of a development depends on:

- the activities of each of the areas between which overlooking may occur;
- the times when people are using them and the frequency of occupation; and,
- the occupants' expectations of privacy and their ability to control overlooking by screening devices.

Furthermore, the Code states that the consideration of visual privacy requires an understanding of the adjacent context, site configuration, topography, the scale of the development and the layout of the apartments.

The pool will be located immediately adjacent to the Tweed Terrace road verge that runs along the south-eastern boundary of the site. There is currently no formalised footpath along Tweed Terrace on either side of the road. There is some pedestrian traffic along the eastern side of the road, but minimal along the western side adjacent to the site due to the restrictive width of the public road reserve along this stretch of road. The majority of pedestrian traffic occurs along the frontage of Duranbah Beach, which is at the base of the headland, some 50-100 metres away from the site. Due to the topography in this location and the lack of a formalised footpath along Tweed Terrace, very few passers-by would have a direct view of residents using the pool and the private open space area around the pool.

It is considered that the frameless glass fencing would improve the outlook and views for the residents of the new building without compromising their privacy and is considered to be an appropriate design modification in this location.

No other concerns over the proposed modifications were raised by the Department or Tweed Shire Council.

#### **6.4 Noise**

The five heat pumps along the south-western boundary have the potential to create noise impacts for the adjoining residents.

The location of the heat pumps has been assessed by the proponent's acoustic engineer. The proponent proposes to construct a lightweight acoustic partial enclosure to minimise noise transmission to an acceptable level to ensure that adjoining properties will not be negatively impacted upon. The structure will also provide visual screening of the pumps for the adjoining property.

The Department proposes an additional condition of approval that requires this structure to be constructed prior to release of an occupation certificate for the project.

## **6.5 Assessment Against Planning Controls**

The modifications sought have been assessed against the relevant planning controls and are considered to be consistent with the original assessment of the project.

It is therefore recommended that the proposed modifications be approved subject to conditions.

## **6 MODIFICATIONS TO CONDITIONS OF APPROVAL**

The Department recommends that conditions of approval apply to the proposed modifications. These are included at Tag "B".

## **7 PROPONENT'S COMMENTS ON CONDITIONS**

The Proponent has not raised any concerns with the wording of the conditions.

## **8 CONCLUSION**

The proposed modifications appear to be minor in detail and result in little or no amendments to the overall scale and appearance of the building as approved, other than the changes that relate to conditions of approval.

The modifications to the approval sought do not affect the previous assessment against the environmental planning instruments and other planning documents and policies, other than as assessed in this report. As such the documents and policies have not been specifically commented on in this report.

It is considered that the proposal, as modified, still achieves the same objectives as assessed for the originally approved development under Major Project 07\_0056 and does not alter the overall nature, need or justification of the approved project.

## **9 RECOMMENDATION**

It is recommended that the Executive Director, Major Project Assessments, as delegate for the Minister for Planning, under Section 75W of the Act, approve the modifications as detailed in Section 5 of this Report and vary the conditions of approval as set out in the attachment "A". A full version of the approval (as modified) is in attachment "B".

**Appendix A – Request for Modification to Major Project 07\_0056**