

Modification of Development Consent

Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning, I modify the consent referred to in Schedule 1, subject to the conditions in Schedule 2.

Anthony Witherdin
Director
Regional Assessments

Sydney *17 AUGUST* 2018

SCHEDULE 1

Development consent: DA 43-3-2005 granted by the then Minister for Planning on 9 December 2006

For the following: Mixed use multi-storey development

Applicant: Heran Property Group Pty Ltd

Consent Authority: Minister for Planning

The Land: 1 Bay Street, 4 Thomson Street, 13-19 Enid Street, Tweed Heads (Lots 2-7 DP 224382, Lots 1 – 2 Section 5 DP 759009, Lot 23 DP 776673)

Modification: DA 43-3-2005 MOD 6: the modification amends the staging of the development by dividing Stages 2 and 3 into two sub-stages, respectively.

SCHEDULE 2

The consent is modified as follows:

PART A – ADMINISTRATIVE CONDITIONS

(a) **Condition A1A** is deleted and replaced as follows:

A1A Staging

The development is to be constructed in three stages as indicated in the Section 75W Application submitted in July 2015 and as follows:

- 1) Stage 1A will comprise the construction of Enid Street tower (Building A) including;
 - a. 47 units over 8 levels commencing at Podium Level.
 - b. Stage 1a landscaping to the podium as per the application plan.
 - c. The southern swimming pool.
 - d. Car parking for 99 vehicles (including 10 tandem spaces).
 - e. 2 service vehicle loading spaces (SRV).
 - f. Entrance lobby to Building A.
 - g. New sub-station and service areas
 - h. Streetscaping on the Enid Street Frontage adjacent to Building A.
- 2) Stage 1B will comprise the construction of the following;
 - a. 4 units over 2 levels commencing at Podium Level.
 - b. Stage 1a landscaping to the podium as per the application plan.
 - c. The northern swimming pool.
 - d. Car parking for 6 vehicles.
 - e. Entrance lobby to Building B.
 - f. Streetscaping on the Enid Street Frontage adjacent to Building A.
- 3) Stage 2A will comprise the construction of construction of the Basement, Ground and Level 1 areas of the Bay Street Tower (Building B) including;
 - a. Car parking for 137 vehicles (including 24 tandem spaces).
 - b. The pedestrian entry to the podium from Bay Street.
- 4) Stage 2B will comprise the construction of the Bay Street Tower (Building B) including;
 - a. 3 Commercial Tenancies at Ground Level
 - b. 74 units over 14 levels commencing at Level 1.
 - c. Stage 2 landscaping to the podium as per the application plan.
 - d. Streetscaping on the Bay Street and Enid Street Frontages adjacent to Building B.
- 5) Stage 3A will comprise the construction of the Basement, Ground and Level 1 areas of the Thompson Street tower (Building C) including car parking for 110 vehicles (including 19 tandem spaces).
- 6) Stage 3B will comprise the construction of the Thompson Street tower (Building C) including 76 units over 15 levels commencing at Podium Level and a ground floor commercial tenancy.

Due to the arrangement of car parking spaces Stages 1A and 1B of the development are to be constructed in number order. Stages 2A and 3A and Stages 2B and 3B can be constructed simultaneously.

- (b) **Condition A2** is amended by the insertion of the **bold and underlined** words/numbers and deletion of ~~struck-out~~ words/numbers as follows:

A2 Development in Accordance with Plans

The development shall be in accordance with development application number DA 43-3- 2005 submitted by the Applicant on 8 March 2005 and revision B submitted 9 November 2006 including the Statement of Environmental Effects prepared by Planit Consulting Pty Ltd, dated November 2006 as amended by the Section 75W Modification submitted on 18 August 2015, Response to submissions dated 25 September 2015, supplementary information dated 23 October 2015, Section 75W Modification submitted on 22 September 2016, Response to submissions dated 9 November 2016, Section 75W Modification submitted on 9 August 2017, Response to submission dated 16 October 2017, addendum advice dated 15 November 2017, 29 November 2017, 11 December 2017, 12 December 2017 and 29 January 2018, **Section 4.55(1A) application dated 21 June 2018** and in accordance with the following:

Statement of Environmental Effects entitled Proposed Mixed-Use Multi-Storey Development at Lots 2 to 7 DP 224382, Lots 1 & 2 Section 5 DP 759009 and Lot 23 DP 776673, 13 – 19 Enid Street, 4 Thompson Street and 1 Bay Street, Tweed Heads prepared by DAC Consulting Pty Ltd, dated August 2015 and supplementary reports dated 22 September 2015 and 23 October 2015.			
Architectural Drawings prepared by Heran Building Group dated 10 June 2015			
Drawing No	Issue	Name of Plan	Date
01.00	<u>N Q</u>	Cover Sheet	17.02.18 <u>28.05.18</u>
01.01	<u>N Q</u>	Area Schedule	17.02.18 <u>28.05.18</u>
01.02	N	Site Analysis Plan	17.02.18
01.03	N	Site Context Section	17.02.18
02.02	<u>O Q</u>	Basement Level Plan	17.02.18 <u>28.05.18</u>
02.03	<u>P Q</u>	Ground Level Plan	17.02.18 <u>28.05.18</u>
02.04	<u>O Q</u>	Level 1 Plan	17.02.18 <u>28.05.18</u>
02.05	<u>O Q</u>	Level 2 Podium Plan	17.02.18 <u>28.05.18</u>
02.06	<u>N Q</u>	Level 3 Plan	17.02.18 <u>28.05.18</u>
02.07	<u>N Q</u>	Level 4 Plan	17.02.18 <u>28.05.18</u>
02.08	<u>N Q</u>	Level 5-9 Plan	17.02.18 <u>28.05.18</u>
02.09	<u>N Q</u>	Level 10-15 Plan	17.02.18 <u>28.05.18</u>
02.10	<u>N Q</u>	Level 16 Plan	17.02.18 <u>28.05.18</u>
02.11	<u>N Q</u>	Roof Plan	17.02.18 <u>28.05.18</u>
03.01	N	Street Elevation - East	17.02.18
03.02	N	Street Elevation - North	17.02.18
03.03	N	Street Elevation - West	17.02.18
03.04	N	Elevation South – Tower A	17.02.18
03.05	N	Elevation North – Tower A	17.02.18
03.06	N	Elevation South – Towers B & C	17.02.18
03.07	N	Elevation East – Tower C	17.02.18
03.08	N	Elevation West – Tower's A & B	17.02.18
04.01	<u>N Q</u>	Section A	17.02.18 <u>28.05.18</u>
04.02	<u>N Q</u>	Section B	17.02.18 <u>28.05.18</u>
04.03	<u>N Q</u>	Section C	17.02.18 <u>28.05.18</u>
04.04	<u>N Q</u>	Section D	17.02.18 <u>28.05.18</u>
Landscape Drawings and report prepared by Boyds Bay Planning dated 4 June 2015			
Traffic Report prepared by TTM dated 1 June 2015 (as amended)			

except for as otherwise provided by the conditions of this consent.

PART B – PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

- (c) **Condition B2** is amended by the insertion of the **bold and underlined** words/numbers and deletion of ~~struck-out~~ words/numbers as follows:

B2 Additional Details

In order to achieve the recommendations in the Wind Report prepared by Windtech Consultants dated 31 January 2005, all balustrades on the south and south-west facing balconies/terraces must have a minimum height of 1.2 metres and be constructed from an impermeable material.

Details of compliance with this condition shall be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate for Stages 1A, 1B, 2, **2A, 2B,** and ~~3~~ **3A and 3B.**

- (d) **Condition B4** is amended by the insertion of the **bold and underlined** words/numbers and deletion of ~~struck-out~~ words/numbers as follows:

B4 Reflectivity

- (1) The visible light reflectivity from building materials used on the facades of the buildings shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place.
- (2) All wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of the buildings with direct line of sight to the proposed building.
- (3) A report demonstrating compliance with these requirements is to be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for Stages 1A and 1B above ground works and Stages 1A, 1B, 2, **2A, 2B,** and ~~3~~ **3A and 3B.**

- (e) **Condition B9** is amended by the insertion of the **bold and underlined** words/numbers and deletion of ~~struck-out~~ words/numbers as follows:

B9 Disabled Access

- (5) In order to ensure that the proposed design of the pool deck and barbeque area complies with the relevant disability access requirements including use of suitable surface materials and access, the abovementioned report will make particular comment on the design of these areas. If this report concludes that the current design of these areas does not comply, amended plans showing compliance, along with a final access report prepared by the same access consultant, shall be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate for Stages 1A, 1B, 2, **2A, 2B,** and ~~3~~ **3A and 3B.**

- (f) **Condition B24** is amended by the insertion of the **bold and underlined** words/numbers as follows:

B24 Number of Car Spaces

The maximum number of car spaces to be provided for the development shall comply with the table below.

Car Parking Allocation		Stage 1A	Stage1B	Stage 2 <u>A</u>	Stage 3 <u>A</u>	Total
Resident Car Parking		60	6	96	91	253

Tandem spaces	10		24	19	53
Disabled	3	-	3	-	6
Residential Visitors	21	-	-	-	21
Car wash/ Residential	3	-	-	-	3
Loading Bay	2	-	-	-	2
Commercial	-	-	14	-	14
Totals	99	6	137	110	352

- (g) **Condition B28A** is amended by the insertion of the **bold and underlined** words/numbers as follow:

B28A Landscape Plan

A detailed plan of landscaping is to be submitted and approved by Council prior to the issue of a Construction Certificate for Stages 1A, 1B, **2B** and **3B** above ground works. The landscaping plans are to be in accordance with the approved Landscape Design and use suitable local native species in accordance with Council's coastal species list.

- (h) **Condition B32** is amended by the insertion of the **bold and underlined** words/numbers as follows:

B32 Council's DCP 39

All dwellings are to fully comply with Council's DCP 2008, Section A9- Energy Smart Homes Policy. The Applicant shall submit to the Certifying Authority a statement demonstrating compliance with the requirements of this condition prior to the issue of a Construction Certificate for Stages 1A, 1B, **2B** and **3B**.

- (i) **Condition B34** is amended by the insertion of the **bold and underlined** words/numbers as follows:

B34 Water Rating

All water fixtures installed within the premises are to have a AAA water rating or more. The Applicant shall submit to the Certifying Authority a statement demonstrating compliance with the requirements of this condition prior to the issue of a Construction Certificate for Stages 1A, 1B, **2B** and **3B** above ground works.

- (j) **Condition B33** is amended by the insertion of the **bold and underlined** words/numbers as follows:

B33 Energy Star Rating

All classes of appliances that are available with an energy label or a Minimum Energy Performance Standard to be installed within the premises are to have an energy star rating of 3 stars or more (excluding clothes dryers which are to have a rating of 2.5 stars or more). The Applicant shall submit to the Certifying Authority a statement demonstrating compliance with the requirements of this condition prior to the issue of a Construction Certificate for Stages 1A, 1B, **2B** and **3B** above ground works.

- (k) **Condition B35** is amended by the insertion of the **bold and underlined** words/numbers as follows:

B35 Water Rating

- (1) The Applicant shall submit to the Certifying Authority prior to the issue of a

Construction Certificate for Stages 1A, 1B, **2B** and **3B** above ground works, a plan and written statement identifying those units to have clothes drying lines installed that are:

- (a) not visible from the public domain, and
- (b) preferably on secondary balconies or secondary areas of main balconies.

- (l) **Condition B38** is amended by the insertion of the **bold and underlined** words/numbers as follows:

B38 Mechanical Ventilation

All mechanical ventilation systems shall be installed in accordance with Part F4.5 of the Building Code of Australia and shall comply with Australian Standards AS1668.2 and AS3666 *Microbial Control of Air Handling and Water Systems of Building*, to ensure adequate levels of health and amenity to the occupants of the building and to ensure environment protection. Details shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for Stages 1A, 1B, **2B** and **3B** above ground works.

- (m) **Condition B39** is amended by the insertion of the **bold and underlined** words/numbers as follows:

B39 Kitchen Exhaust

Details of the kitchen exhaust system are to be provided and approved prior to release of the Construction Certificate Stage 1 above ground works and Stages 1A, 1B, **2B** and **3B** if required. Such details are to include the location of discharge to the air, capture velocity, size and hood and angle of filters. The system shall comply with AS1668.2 - Ventilation Requirements.

- (n) **Condition B40** is amended by the insertion of the **bold and underlined** words/numbers as follows:

B40 Storage and Handling of Waste

The design and management of facilities for the storage and handling of waste must comply with the requirements of Council. Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate Stages 1A, 1B, **2B** and **3B** for above ground works.

- (o) Delete **Condition B41** and replace with the following new **Condition B41**:

B41 Monetary Contributions

Payment of local contributions pursuant to Section 7.11 of the Act must be paid consistently with the staging of development described in Condition A1A and prior to the issue of a Construction Certificate for that stage.

The Local contributions for each applicable stage are as follows:

Stage 1A – Paid
Stage 1B – Paid
Stage 2B – \$968,784.35
Stage 3B – \$976,413.15

Under clause 146 of the Environmental Planning and Assessment Regulation, 2000, a Construction Certificate shall not be issued by a Certifying Authority for a stage of the development unless this condition is complied with. This consent contains other conditions which must be complied with before a construction certificate may be issued for a particular

stage of the development. The Certifying Authority must also sight Council's Contribution Sheet signed by an authorised officer of Council.

If the contribution rate is adjusted between the date on which modification DA43-3-2005 MOD5 is approved and payment of the contribution, then the figure will be indexed and calculated according to the then current contribution rate. The applicant will be required to request in writing from Council, a recalculation of these amounts for each stage of the development in accordance with the rates applicable in Council's adopted Fees and Charges, prior to payment of the contributions. A copy of the Section 7.11 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street Tweed Heads.

Note: These rates are current as at July 2018.

- (p) Delete **Condition B42** and replace with the following new **Condition B42**:

B42 Water Management Act 2000

A Certificate of Compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations 2000, a Construction Certificate shall not be issued by a Certifying Authority unless all Section 64 Contributions applicable to the development stage have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Stage 1A - PAID

Stage 1B - PAID

Stage 2B

Water DSP4:	40.942 ET @ \$13,926 per ET	\$570,158.30
Sewer Banora:	61.338 ET @ \$6,690 per ET	\$410,351.20

Stage 3B

Water DSP4:	41.54 ET @ \$13,926 per ET	\$578,486.00
Sewer Banora:	62.22 ET @ \$6,690 per ET	\$416,251.80

If the contribution rate is adjusted between the date on which modification DA43-3-2005 MOD 6 is approved and payment of the charges, then the figure will be indexed and calculated according to the then current rate. The applicant will be required to request in writing from Council, a recalculation of these amounts for each stage of the development in accordance with the rates applicable in Council's adopted Fees and Charges, prior to payment.

Note: The Environmental Planning and Assessment Act 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an Accredited Certifier

- (q) **Condition B45** is amended by the insertion of the **bold and underlined** words/numbers as follows:

B45 Conditions for the Proposal

- (1) Prior to the issue of a Construction Certificate for Stages 1A, 1B, 2, **2A, 2B, and 3A and 3B**, the Applicant must obtain approval from Gold Coast Airport Limited (GCAL) for the proposed maximum RL height of 57.0m AHD.

PART C—PRIOR TO COMMENCEMENT OF WORKS

- (r) **Condition C2** is amended by the insertion of the **bold and underlined** words/numbers as follows:

C2 Structural Details

Prior to the commencement of construction, the Applicant shall submit to the satisfaction of the PCA structural drawings prepared and signed by a suitably qualified practising Structural Engineer that comply with:

- (4) drawings and specifications comprising the Construction Certificate for Stages 1A, 1B, 2, **2A, 2B, and 3A and 3B**,

End of modification