



Department of
Infrastructure, Planning and Natural Resources

Office of Sustainable Development Assessment and Approvals, Urban Assessments

Planning Assessment Report

Development Application DA 492-11-2003

1 SUMMARY

This report is an assessment of the proposed development the subject of Development Application number DA 492-11-2003. The development application was lodged with the Department on 25 November 2003 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The application seeks consent for the erection of a four (4) storey building with four (4) tourist units, ground floor retail space, parking, gymnasium and cinema.

The Minister for Infrastructure Planning and Natural Resources is consent authority under clause 10(2) of State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71).

Issues relating to the height of the development, provision of car parking, noise amplification and loss of view were raised during the assessment of the proposal. It is considered that these issues have now been satisfactorily resolved through the recommended consent conditions.

It is recommended that the development application be **granted consent**.

2 BACKGROUND

2.1 Site Context

The site is located at 30 Marine Parade, Kingscliff, lot 4 DP in the Tweed Shire local government area, within the Kingscliff town precinct. A site plan is at attachment B.

The development application was lodged with the Department on 25 November 2003 in accordance with the *Environmental Planning and Assessment Act, 1979* (the Act).

The total site area is 539.3sqm, rectangular in shape with a north-south aspect with a depth of 40.23m. The site had a single dwelling house which was demolished under a separate development application lodge with the Tweed Shire Council.

The site is bounded by the following:

North – 13.39m frontage onto Marine Parade;

South – 13.9m “frontage” onto Hungerford Lane;

East – 3 storey mixed use building;

West – a proposed 4 storey mixed use building.

A site visit was conducted of the site on 24 March 2004.

3 THE PROPOSED DEVELOPMENT

The proposed development seeks consent for:

- Erection of a four (4) storey building;
- Ground floor comprises 286sqm of commercial/retail with guest gym and lobby;
- Four tourist accommodation units; two (2) three (3) bedroom units at level 1, 8 space car parking and one (1) three (3) bedroom unit at level 2 and one (1) three (3) bedroom unit at level 3 with terrace and plunge pool.

A set of the plans and colour montages are at Attachment **C** and **C1**.

3.1 Amended Plans

On 6 September 2004 the applicant, submitted amended plans the application incorporating: -

- Internal reconfiguration of bedrooms, living rooms and internal courtyards to facilitate better solar access.

These amendments differ only in minor respects from the development application submitted and do not to give rise to any additional impacts. Accordingly, these amendments were accepted as a replacement application in accordance with clauses 55 and 90 of the *Environmental Planning & Assessment Regulation 2000* (the Regulations). In accordance with clause 90 of the Regulations further notification of the application was not undertaken, and the applicant was advised of the acceptance of the amended plans on 7 September 2004.

4 STATUTORY FRAMEWORK

4.1 Statement of permissibility

The subject land is zoned 3(b) General Business under the Tweed Shire LEP 2000. Mixed use retail/commercial & tourist accommodation is permitted within this zone.

4.2 Instrument of consent and other relevant planning instruments

The development application is identified as significant coastal development – specified development under Schedule 2 of SEPP71 as the development comprises tourist facilities and structures greater than 13 metres in height. As a result, the application is State Significant development pursuant to clause 10(1) of the Policy. Pursuant to clause 10(2) of SEPP 71, the Minister for Infrastructure and Planning is the consent authority for State Significant development.

The EPIs applicable to the site include:

SEPP1 – Development Standards;

SEPP71 – Coastal Protection;

North Coast Regional Environmental Plan 1988;

Tweed LEP 2000.

An assessment of the proposal against these provisions is at Attachment D.

4.3 Other statutory provisions

Additionally, the following local controls apply to the site:

- Tweed Development Control Plan 2;
- Tweed Development Control Plan 43;
- Tweed Development Control Plan 45;
- Tweed Development Control Plan 48 (Draft);
- North Coast Design Guidelines.

An assessment of the proposal against these provisions is at Attachment D.

4.4 Roads Act 1993

The development proposes "works" as defined by the Roads Act, 1993. Therefore, the proposal is integrated development under the Roads Act, 1993. Accordingly, a section 138 permit is required to be issued by Tweed Shire Council pursuant to section 138 of that Act. A condition requiring a Section 138 Permit be obtained from Council has been recommended.

5 CONSULTATION

5.1 Public consultation

The application was notified, in accordance with the Regulations:

Notifications landowners/occupiers	– Eight (8) notification letters were sent to nearby property owners/occupiers
Newspaper advertisements	Advertised in Tweed Daily News on 23 January 2004
Site notices	One (1) notice was placed on site
Exhibition dates	23 January – 5 February 2004
Exhibition venues	▪ Planning Information Centre, 20 Lee Street Sydney ▪ DIPNR – Nth Coast Regional office 49 Victoria Street, Grafton ▪ Tweed Shire Council Brett Street Tweed Heads

Nine (9) submissions were received regarding the Application. A summary of submissions is at Attachment E. Issues are considered in Section 6.2 of this report.

5.2 Referrals

5.2.1 Integrated Approval Bodies

The application is integrated under the Roads Act 1993 and the Tweed Shire Council has issued general terms of approval for the development (these are included in the proposed conditions of consent).

5.2.2 Council

Tweed Shire Council was consulted as an integrated approval body as the development was also integrated under the Roads Act, 1993. Accordingly, a Section 138 permit is required. The applicant has not sought the relevant permit at this stage and consequently, a condition of consent requiring the applicant to

obtain a Section 138 permit from Council prior to issue of the relevant Construction Certificate has been recommended. Council's submission is tagged F.

5.2.3 Natural Resource Commission (NRC)

The NRC was notified of the proposal on 20 January 2004. The NRC raised the issue of overshadowing but considered this a minor issue. The NRC's submission is tagged G.

5.3 Internal consultations

The Grafton Regional office has been consulted regarding the application and consider that all issues of concern had been adequately addressed within the SEE.

6 CONSIDERATION

6.1 The Environmental Planning & Assessment Act

6.1.1 Section 79C

The application and the likely impacts of the proposed development have been considered in accordance with s.79C of the Act. Significant issues are discussed below in Section 6.2 and a detailed assessment is provided in Compliance Table (tag F). On balance, the proposed development is considered to be in the public interest.

6.2 Issues

6.2.1 Natural Ground Level

Issue: Concern that fill on the site would hinder establishing ground level.
Raised by: DIPNR – Urban Assessment, Council, Local community
Consideration: The site has substantial amount of fill however, this is mainly situated at the southern end of the site. According to the Statement of Environmental Effects to establish the natural ground level sewerage plans approximately 30 years old were consulted along with consideration of the pavement, RL5.34.
Resolution: It is considered that once ground level at the Marine Parade entrance is established – RL 5.4 with a pavement RL5.34 – the impact of fill at the southern end of the site does not impact on establishing ground level or subsequent floor levels.

6.2.2 Height

Issue: The proposed development exceeds height limit as defined by Tweed Local Environmental Plan 2000 (TLEP 2000) and Clause 51 of North Coast REP.
Raised by: DIPNR – Urban Assessment, Council, Local community
Consideration: The land has a three storey height limit under TLEP 2000 above natural ground level. Due to the development's non-compliance with the current definition of height, an objection under State Environmental Planning Policy No. 1 – Development Standards (SEPP 1) has been lodged by the applicant.
Resolution: It is considered that the impact of the development's height in terms of visual impact will be minimal from Marine Parade as the fourth storey is setback 17m from the front and consists of the lift area and lobby. This structure will not be visible from the street or the foreshore. However it will be visible from the foreshore park. The development however, is consistent in height with the adjoining property.
The appropriate concurrences have been granted subject to conditions

6.2.3 Overshadowing

Issue: Clause 32B of the North Coast REP (NCREP) requires the consent authority

to refuse development applications which propose overshadowing of the foreshore at prescribed times of the day.

Raised by: DIPNR – Urban Assessment, Council, NRC, Local community

Consideration: Overshadowing of beaches is not permissible under SEPP71 and the NCREP. However, overshadowing during the summer months occurs on the foreshore park at 6:30pm on December 22. Overshadowing does not occur during winter months. The NRC is concerned that overshadowing will impact on ground cover and have an impact on dune stability. an objection under State Environmental Planning Policy No. 1 – Development Standards (SEPP 1) has been lodged by the applicant

Resolution: The overshadowing is considered minimal encroaching approximately 4m on an area with predominate tree cover adjacent to Marine Parade. Therefore it can be concluded that the overshadowing will not destabilise groundcover which is already shadowed by tree cover. This degree of overshadowing is considered acceptable with minimal environmental impact and impact on dune stability. The appropriate concurrences have been granted subject to conditions

6.2.4 Parking

Issue: Reduction in car parking space

Raised by: Council

Consideration: The proposed development shares driveway access with the adjoining property and as such 2 car parking spaces for the adjoining site are located on this site(part of a condition of the DA for the adjoining property). The total number of car parking spaces required for guests and retail staff and the adjoining property is 15. The site contains only 8 car spaces. The breakdown of car spaces is; 2 for the adjoining property, and 6 car parking spaces for this site. Included in this is 1 disabled space. This leaves a deficit of 7 car parking spaces.

Resolution: Council agreed to the reduction in car parking spaces, however, conditioned Section 94 contributions for each deficit car parking space.

6.2.5 Loss of View

Issue: Loss of view from adjoining properties

Raised by: Local community

Consideration: Adjoining properties to the south of the development currently enjoy panoramic views. The proposed development will reduce the horizon view, however views to the west and east will still be available.

Resolution: The loss of partial view can not be avoided and maintaining partial view and the incorporation of view sharing is a reasonable outcome.

A condition has been imposed to control outlets on the roof top with adequate screening to ensure no further loss of view in the future.

6.2.6 Increase in vehicle numbers

Issue: Increase in vehicles numbers in Hungerford Lane

Raised by: Local community

Consideration: The site is restricted to vehicular access via Hungerford Lane only. The adjoining property has been conditioned (by Council) to share access point into both sites thereby reducing access points along the Hungerford Lane.

Resolution: The development complies to planning instruments and restriction of conditions imposed on adjoining property development application.

6.2.7 Conversion of tourist to residential

Issue: Potential to convert the tourist units to residential units

Raised by: Local community

Consideration: The proposed development is for tourist accommodation above a retail/commercial premise which complies with the zoning – 3(b) General Business under the Tweed Shire LEP 2000. The development has been assessed as such i.e. SEPP65 and DCP 6 which relate to residential

dwelling were not applied.

Resolution: A condition has been applied which will prohibit length of occupancy to 42 consecutive days which will ensure units are for short term/tourist occupation.

6.2.8 Loss of privacy

Issue: Loss of privacy from units facing onto Hungerford Lane

Raised by: Local community

Consideration: The windows facing onto Hungerford Lane will not look directly into adjoining properties. It is also noted that the rooms onto Hungerford Lane are bedrooms and are not trafficable rooms. Metal louvres are affixed to the windows to afford further privacy

Resolution: Issues raised have been addressed by the applicant by the inclusion of window louvres.

6.2.9 Loss of property value

Issue: Loss of property value to adjoining properties

Raised by: Local community

Consideration: The proposed development complies with the zone and relevant instruments. It is situated on a boundary to residential zone.

Resolution: Issue noted

6.2.10 Setbacks

Issue: Setback of proposed development should comply with DCP 6

Raised by: Local community

Consideration: The proposed development is for tourist accommodation and retail/commercial premises and as such DCP 6 Multi-dwelling housing – does not apply to the site.

Resolution: Issue not relevant to this development

6.2.11 Roof structures

Issue: Pool and flue/exhaust on the rooftop

Raised by: Local community

Consideration: A small plunge pool is to be located at the front terrace of the 3rd storey unit not the roof top. It will not be visible from adjoining properties as the pool is located on the terrace fronting onto Marine Parade with the 3rd floor unit acting as a barrier to potential noise from the terrace area.

The issue of flues/exhaust on the roof has the potential to reduce views and be unsightly. However, Council requires flues to be roof vented.

Resolution: A condition has been imposed to control outlets on the roof top with adequate screening to ensure no further loss of view in the future.

6.2.12 Waste disposal

Issue: Storage and collection of waste for retail premises and tourist units

Raised by: DIPNR & Council

Consideration: The facility for the storage of waste is accessed via Hungerford Lane. Consultation with Council and the waste disposal contractor occurred prior to issue of DA approval. The issues of bin location for collection was not resolved with Council.

Resolution: A condition has been imposed to provide further details to Council and the waste disposal contractors regarding design and management of facilities for the storage and handling of waste.

6.2.13 Site suitability

Issue: Hungerford Lane is unsuitable for the proposed rear pedestrian access to the site.

Raised by: Local community

Consideration: DCP 43 (Kingscliff) requests that "new developments should address the lane with buildings fronts, low fences and some landscaping." As such the proposed development has incorporated rear lane pedestrian access from the

third floor unit.
Resolution: The proposed development conforms to the relevant DCP. Further embellishment to the pedestrian footpath has also been conditioned.

7 CONCLUSION

The Minister for Infrastructure and Planning is the consent authority.

The application has been considered with regard to the matters raised in section 79C of the Act and the Tweed Shire Council who were consulted and provided general terms of approval under the Integrated Development Provisions within the Act.

The application has been notified in accordance with the Regulations. All submissions received in the period prescribed by the Regulations have been considered.

On balance, it is considered that the proposed development is acceptable and should be approved.

8 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The applicant was asked to comment on the draft conditions of consent on 24 September 2004. The applicant responded on 2 October 2004 and requested changes to conditions where approval was required by consent authority to be amended to Principal Certifying Authority. As most of the conditions to be changed required approval from Council, the applicant decided any further delay to the process was not warranted and accepted the draft conditions of 24 September 2004.

9 RECOMMENDATION

It is recommended that the Minister for Infrastructure and Planning pursuant to section 80 (1) and 80A of the *Environmental Planning and Assessment Act, 1979* (as amended) and clause 10(2) of State Environmental Planning Policy No. 71 – Coastal Protection (SEPP71)

- (A) grant **consent** to the application subject to conditions (Tagged **A**), and
- (B) authorise the Department to carry out post-determination notification.

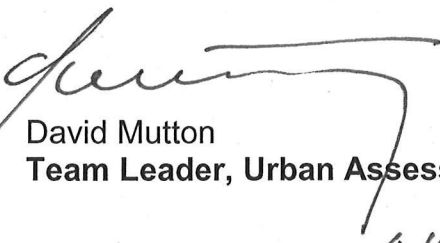
For Ministerial Approval

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