



Office of Sustainable Development Assessment and Approvals, Urban Assessments

## **Planning Assessment Report**

### **Application to Modify Development Consent**

#### **MOD 8-1-2006 modifying DA 492-11-2003**

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## **1 SUMMARY**

This report is an assessment of the proposed development the subject of Development Application Modification number MOD 8-1-2006 modifying DA 492-11-2003 under section 96(1A) of the Act lodged by Resort Corp Pty Ltd on 20-12-2005.

The application seeks to modify the consent given by the Minister to Development Application DA 492-11-2003 on 27<sup>th</sup> January, 2005. Accordingly the Minister for Planning is the consent authority.

The site is located at 30-32 Marine Parade, Kingscliff.

The proposed modification is for minor building design changes including external air conditioning vents and television aerial on the roof.

The application has been assessed in accordance with the statutory requirements of the Environmental Planning and Assessment Act.

It is recommended that the modification application be **approved** as discussed below and as reflected in the modified conditions of consent.

### **1.1 Relevant approvals / modifications:**

DA492-11-2003 was approved on 27<sup>th</sup> January 2005 for :

:

- (1) Erection of a four (4) storey building;
- (2) Ground floor comprises 286sqm of commercial/retail with guest gym and lobby;
- (3) 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.

## **2 THE PROPOSED MODIFICATIONS**

The applicant is seeking to modify the approved development (see plans tagged 'B') as follows:

- Provision of two tenancies in lieu of a single retail tenancy with centralised residential access to the Marine Parade frontage at ground level.
- Deletion of Guest Gym and reconfiguration of toilets, guest storage, plant room and lobby on ground floor.

- Reconfiguration of internal layout of units 101 and 102 on first floor including relocation of Guest Gym from ground floor and relocation of toilet, laundry and linen services areas.
- Relocation of stairs from adjoining the lift in the centre of the building to the southern Hungerford Lane frontage on the second floor.
- Minor internal amendments to Unit 301 on third floor.
- Location of air conditioning intake on the roof midway along the western boundary and amendments to screens to the Hungerford Lane elevation.
- Replacement of full height metal louvre screens on the second and third floors, Hungerford Lane elevation, with waist height terrace rails.
- Overall building height reduction [roof] from RL 18.400 to 18.300.
- Amendment to condition B7. The Applicant requests clarification that certification from “an appropriately qualified person “ means “an accredited Building Certifier”
- Amendment to condition B10 to replace reference to “the Director” with “Principal Certifying Authority”
- Amendment or deletion of condition B17. The applicant states that no Food Premises are proposed and therefore the condition is not relevant and any commercial tenancy will be the subject of a separate and future development application.
- Amendment to condition C3 to replace reference to the “the Director“ with “Principal Certifying Authority”.
- Amendment to condition D33 to include ‘air intake vents and television aerials’ as further items for exclusion and to be permitted to exceed RL 18.400. The air conditioning vents are located on the roof and the applicant requests that they be permitted as an amendment.

### **3 STATUTORY FRAMEWORK**

Section 96(1A) of the Environment Planning and Assessment Act 1979 provides that the consent authority may, on application being made by the applicant, modify the consent.

#### **3.1 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.

#### **3.2 *Instrument of consent and other relevant planning instruments***

Tweed LEP 2000 is the applicable local planning instrument

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.

The EPIs applicable to the site include:

SEPP1 – Development Standards;

SEPP71 – Coastal Protection;

North Coast Regional Environmental Plan 1988;

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.

A Section 79C assessment of the proposal against these provisions is at Tag 'D'.

### **3.1 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. Condition B19 requires a Section 138 Permit be obtained from Council.

## **4 CONSULTATION / PUBLIC EXHIBITION**

The application was referred to the Tweed Shire Council on 7<sup>th</sup> February, 2006. Council responded on 17<sup>th</sup> March, 2006. Issues raised by Council are discussed in Section 5 of this report. Council's full submission is at Tag 'C'.

## **5 CONSIDERATION**

### **5.1 Section 96**

The application is considered to meet the prerequisites of Section 96(1A) of the Act in that the proposed modifications are considered to be of minimal environmental impact, and that the development as modified is considered to be substantially the same development as that to which consent was originally granted.

### **5.2 Section 79C**

The application and the likely impacts of the proposed development have been considered in accordance with Section 79C of the Act. Consideration was also given to relevant provisions of Tweed LEP 2000. It was considered that the proposed development complied with the statutory controls and the relevant aims and objectives. Consent was granted on 27<sup>th</sup> January 2005.

Relevant issues requiring detailed consideration are addressed below:

## **6 ISSUES**

### **6.1.1 Loss of Privacy**

*Issue:*

The original consent required full height screens to be affixed to the bedroom windows fronting Hungerford Lane. The screens are no longer evident in the building elevations in the modification under consideration. The original consent report (6.2.8 - Loss of Privacy) addressed the issue of privacy which was raised by the local community.

*Raised by:*

Submissions from original application

*Consideration:* The current amendment proposes only waist height railings to the terraces (Plan DA 07, Revision B). As this was an original issue specifically raised and addressed it is not considered appropriate to approve the removal of the full height screens.

*Resolution:* The applicant was requested to reinstate the screens and supply amended building elevations. Amended building elevations to Hungerford Lane have been supplied indicating full height screens on bedroom windows to Hungerford Lane (Drawing No. DA-07 Revision C).

### 6.1.2 Height/Views:

*Issue:* Condition D33 specifically identifies a building height verification of RL 18.4 metres and permits a number of structures on the roof to exceed the height limit. The applicant requests that these exclusions now include "air intake vents, television aerials" (satellite dish).

*Raised by:* Submissions for original application

*Consideration:* The amended proposal indicates a maximum overall height reduction of a 100mm to RL 18.3.

The original consent report (6.2.2- Height and 6.2.5- Loss of Views) addressed these issues which were raised by a number of parties. This application proposes to locate an air intake, to supply air to the ground level air conditioner, on the western boundary in line with the Lift Over Run (Roof Plan DA 06-B). A duct is proposed up the western side of the building flush with the outer wall. At roof level a cover is provided which will project above the roof 500mm, will be 750mm wide as viewed from behind and 3000mm long along the side boundary.

In view of the items permitted above the overall height, the relatively minor impact of the air intake vents (see **Tag E**), and that views from adjoining properties to the south of the development can be obtained to the west and east, this variation is supported.

With regard to the television aerials no details of the location or scale/height are provided however this request is considered reasonable provided there is only one (1) aerial provided for the building.

Amendments to SEPP 4 in 2006 include the insertion of CI 17 which permits satellite dishes as exempt development if they comply with the stated constraints.

*Resolution:* The proposed air intake is considered acceptable in consideration of the minor visual impact and the modified condition limits the dimensions of the intake to a maximum of 500mm above the overall height.

Due to amendments to SEPP 4 in 2006 it is unnecessary to amend Condition 33 to include the satellite dish. The modified condition is to restrict the number of television aerials to one only.

### 6.1.3 Modification of Conditions

*Issue:* (a) **Condition A2** – a range of internal and external amendments are proposed to the consent plans as list in section 2 above.

(b) **Condition B7** - The applicant seeks clarification that compliance with Part D3 can be obtained from an accredited Building Certifier

(c) **Conditions B10** (External Materials, hours of work etc.) Application is made to amend this condition by deleting reference to the "Director" (Director, Urban Assessments) and inserting the Principal Certifying Authority (PCA).

(d) **Condition B17** - Design of Food Premises - Deletion or modification of this condition is requested as no food premises are proposed as part of this development application.

(e) **Condition C3** – (Construction Management Plan) Application is made to amend this condition by deleting reference to the "Director" (Director, Urban Assessments) and inserting the Principal Certifying Authority (PCA).

(f) **Condition D33** – See section 6.1.2 Height /Views above.

Raised by:

Department of Planning

Consideration:

(a) **Condition A2** - Further amended plans have been provided to comply with the Departments requirements to retain the external screens to Hungerford Lane.

(b) **Condition B7** - A Private Certifying Authority (PCA) must provide evidence to themselves of compliance with the Building Code of Australia. It is recommended that the condition be amended as follows:

*'Prior to the issue of a Construction Certificate for below ground works, the Certifying Authority shall ensure that access and facilities for people with disabilities shall be provided in accordance with Part D3 of the BCA's Access Policy.'*

(c) **Condition B10** refers to external finishes and colours which can have considerable local visual impact and as such should be submitted to the Director, Department of Planning, as the consent authority of the original application.

(d) **Condition B17** The application does not propose food premises and if this was proposed at a future date a further application for change of use would be required in that regard.

(e) **Condition C3** –The Construction Management Plan can have a significant impact on the amenity of the neighbourhood and as such should be submitted to the Director, Department of Planning, as the consent authority of the original application. The condition should also reflect Council's request (see letter of 25<sup>th</sup> July, 2005, **TAG C**) that the 'Construction Management Plan should be in accordance with Tweed Shire Council's policies.'

(f) **Condition D33** - See section 6.1.2 Height /Views above.

Resolution:

It is recommended that:

(a) Agreed. the drawing numbers be amended as shown in the modified conditions of consent.

(b) Agreed. Condition B7 be amended as above in the modified conditions of consent.

(c) Disagree with the proposal to amend Condition B10. Condition to remain unaltered.

(d) Agreed that the application does not incorporate food premises at this time. Condition B17 is recommended to be deleted.

(e) Disagree with proposal the Construction Management Plan be submitted to the Certifying Authority. Condition C3 is to be amended to incorporate

Council's request that it be in accordance with Tweed Shire Council's policies.

(f) Agreed. It is recommended that Condition D33 be amended as in the modified conditions of consent.

## CONCLUSION

The Minister for Planning is consent authority for modifications to consents he has granted.

The proposed development as modified is considered to be substantially the same development as that originally approved.

The application has been considered with regard to the matters raised in section 79C of the Act

The application has been notified to Tweed Shire Council. The submission received from Council have been considered.

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

## 7 CONSULTATION WITH APPLICANT – DRAFT CONDITIONS

The applicant was asked to comment on the draft conditions of consent on 15<sup>th</sup> May, 2006. The applicant responded on 16<sup>th</sup> May, 2006 and accepted the draft conditions.

## 8 DELEGATION INCLUDE THIS SECTION ONLY WHERE DELEGATED

Under the instrument of delegation dated 5<sup>th</sup> April, 2006 the Minister has delegated to the Director General of the Department of Planning and the Executive Director, Sustainable Development Assessments Division, his functions under Section 96(1A) of the Act relating to modifying development consents.

## 9 RECOMMENDATION

It is recommended that the Director General, pursuant to Sections 81 and 96(1A) of the *Environmental Planning and Assessment Act, 1979* and clause 122 (2) of the *Environmental Planning and Assessment Regulations, 2000*:

- (A) **approve** the application subject to conditions (tagged “A”), and
- (B) authorise the Department to carry out notification of determination of the application to modify the consent.

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