



Planning

ASSESSMENT REPORT

SECTION 96(1A) MODIFICATION DA 492-11-2003 MOD 2 FOR DA 492-11-2003 - LOT 4

SECTION 4 DP 172565 30 MARINE PARADE, KINGSCLIFF

1. SUMMARY

This report is an assessment of the proposed development the subject of Development Application Modification number DA 492-11-2003 MOD 2 modifying Development Application DA 492-11-2003 under section 96 (1A) of the Act lodged by Coastline Building Certification Group P/L on 26 October 2009.

The subject site is located at Lot 4 DP 172565 30 Marine Parade, Kingscliff.

Under the instrument of delegation dated 4 March 2009 it is considered appropriate that the application be determined under delegation by the Director, Regional Projects.

It is recommended that the modification application be **approved**.

2. BACKGROUND

On 27 January 2005, the Minister Assisting the Minister for Infrastructure and Planning, granted consent for development application DA 462-11-2003 for the erection of a four storey building incorporating:

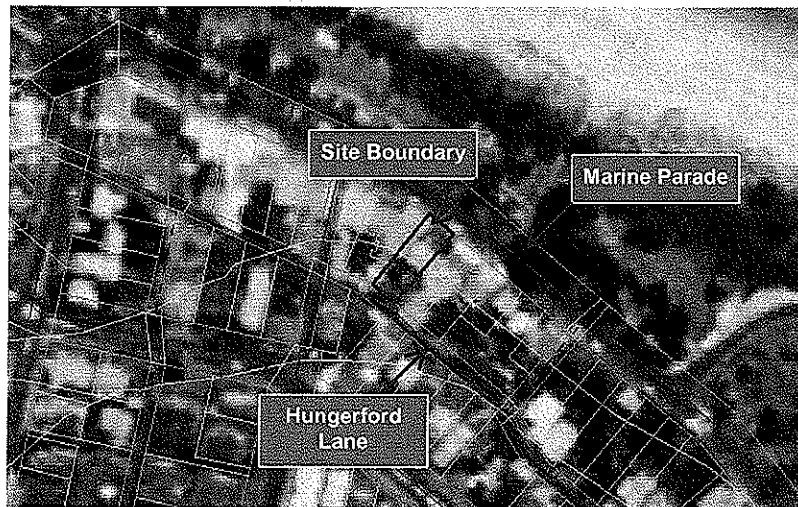
- 286sqm of commercial/retail space with guest gym and lobby on the ground floor;
- Four tourist accommodation units; two (2) three bedroom units at level 1, 8 space car parking and one (1) three bedroom unit at level 2 and one (1) three bedroom unit at level 3 with terrace and plunge pool.

DA 462-11-2003 has been modified on a previous occasion. On 20 June 2006, the Executive Director as Delegate of the Minister for Planning, approved a modification application MOD 8-1-2006 pursuant to section 96(1A) of the *Environmental Planning & Assessment Act 1979* (the Act) lodged by Resort Corp Pty Ltd (**Tag A**). The approval encompassed:

- 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 louver 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 conditions B7 Disabled Access, B17 Design of Food Premises, and D33 Building Height.

The subject site is 539.3 square metres and is located in the Kingscliff town precinct. The rectangular site has a frontage to Marine Parade in the north and is bound by Hungerford Lane to the south (**Figure 1**). To the east and west of the site are similar mix use buildings of three and four storeys respectively. The site is approximately 76 metres from the coast.

Figure 1 – Site location



3. PROPOSED MODIFICATION

On 26 October 2009, Coastline Building Certification Group P/L (on behalf of the applicant Resort Corp P/L) lodged a modification application pursuant to section 96 (1A) of the Act to change the internal layout of the ground and first floor plans (**Tag B**).

The proposed changes on the ground floor include:

- Removal of the residents store and plant room;
- Reposition the detention tank to the subfloor;
- Insertion of two new kitchen areas, a commercial waste area, and an optional commercial storeroom;
- Expansion of the disabled toilet to include partitioned female and male toilet blocks;
- Change the front entrances of the retail/commercial tenancies from two swing doors to bifold doors across the entire frontage; and
- Insertion of two new entrances at the rear of the retail/commercial tenancies.

On the first floor, the guest gym is proposed to be changed into a cinema room for the sole use of unit 102 by removing an existing wall. New walls will be inserted to prevent access from the lobby and unit 101.

4. STATUTORY CONSIDERATION

Consent Authority

On 4 March 2009, the Minister's powers and functions as a consent authority to modify development consents under Section 96(1A) of the Act were delegated to the Director, Regional Projects. Consequently, the Director may determine the application under delegated authority.

Matters for consideration

Under section 96(1A) of the Act, a consent authority may modify a development consent if it is satisfied that the proposed modification is of minimal environmental impact, and that the development to which the consent as modified relates is substantially the same development for which the consent was originally granted.

The Department has considered the proposed modification against the above criteria, and is satisfied that it will result in substantially the same development. As such, the application is supported and may be determined under section 96(1A) in accordance with the Act (**Appendix 1**).

Other Legislation

State Environmental Planning Policy 71 – Coastal Protection

The development application is identified as land that is within the coastal zone as defined by the State Environmental Planning Policy 71 Coastal Protection (SEPP 71).

Tweed Local Environmental Plan 2000

Tweed Shire Local Environmental Plan 2000 (the LEP) is the applicable local planning instrument. The subject site is zoned 3(b) General Business under the LEP, and permits for mix use retail/commercial and tourist accommodation.

5. CONSULTATION/ PUBLIC EXHIBITION

The Department is not required to publicly exhibit the proposed modification.

6. ASSESSMENT

The Department considers the key issues to be that of noise disturbance, and design and installation of the kitchen exhaust pipe.

Noise

The proposed modification creates two sources of noise disturbance. The proposed kitchen and the potential future use of the tenancies as restaurants or cafes pose noise disturbance to the residents of the upper floor tourist apartments. The proposed cinema can also cause noise amplification impact for the adjacent unit 101, the units above and the commercial tenancies on the ground floor.

It is important for the internal walls, in particular the common walls between units 101 and 102, and the floorings to be well insulated to minimise noise impacts. As part of the Conditions of Consent, condition G4 Operational Noise, G5 Operational Noise and G 6 Noise Control – Amplified Music relate to noise control post building occupation. These controls are considered to adequately address any noise impacts and disturbance as a result of the usage of the building.

Kitchen Exhaust Pipe

An internal kitchen exhaust pipe, located to the left of the lift, is proposed to be installed as part of the modification application. Gases emitted from the exhaust pipe have the potential to cause environmental pollution and nuisance to surrounding properties. The exhaust pipe also has the potential to reduce views and be unsightly.

The existing condition G14 Ventilation requires any cooking gases from commercial premises to be ducted and discharged above the roof in accordance with standards set out in AS 1668. Further, condition D33 Building Heights limits the height of the exhaust to be no more than 1.5 metres above the overall height of the building. As such, it is considered that these two conditions will mitigate the identified impacts from the exhaust.

Lastly, Condition B17 Design of Food Premises is to be inserted into the conditions of consent. This condition was deleted in the previous modification application as food premises were not proposed as part of the development application.

7. RECOMMENDATION

It is recommended that the Acting Director, Coastal Assessments, as delegate of the Minister:

- **Note** the information provided in this report; and
- **Approve** the modification to DA 462-11-2003, by signing the attached modifying instrument (Tag C).



Stuart Withington
A/Team Leader
Regional Projects



Alan Bright
A/Director
Regional Projects

APPENDIX 1

STATUTORY CONSIDERATION - SECTION 96(1A) OF THE ACT

Under section 96(1A) of the Act, a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

Provision	Comment
a) it is satisfied that the proposed modification is of minimal environmental impact.	Complies. The Department is satisfied that the proposed modification is of minimal environmental impact. The proposed modification will be in the same location and orientation. The proposal is only seeking internal modification and is not considered to result in any environmental impacts.
b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all).	Complies. The development to which the consent as modified relates to is substantially the same development.
c) it has notified the application in accordance with: i) the regulations, if the regulations so require, or ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent	N/A. The Department was not required to notify this application.
d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be. It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all).	Complies. No submissions were received, as the application was not exhibited.

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C(1) of the Act as are of relevance to the development the subject of the application:

Provision	Comment
a) the provisions of: i) any environmental planning instrument, and ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and; iii) any development control plan, and; iv) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and; v) the regulations (to the extent that the prescribe matters for the purpose of this paragraph: ▪ in the case of a development application for the carrying out of development in a local government area referred to in section 92 of the EP&A Regulation and on land to which the Government Coastal Policy applies, the provisions of that Policy, ▪ in the case of a development application for the demolition of a building, the provisions of AS 2601.	i) The following environmental planning instruments (EPIs) apply to the proposed modification: • <i>State Environmental Planning Policy No. 71 – Coastal Protection.</i> • <i>Tweed Local Environmental Plan 2000</i> The proposed modification is consistent with the provisions contained within the abovementioned EPIs. Refer to Section 4 for more detail. ii) There are no draft environmental planning instruments on public exhibition that apply to this application. iii) It is considered that the proposed modification satisfies the provisions and guidelines stipulated in the <i>Tweed Development Control Plan 2008</i> in particular Section A1 - Residential and Tourist Development Code. The entrance has been designed to be prominent and identifiable from the street. iv) The developer has not offered to enter into any planning or draft planning agreement under section 93F. v) The modification is consistent with the Coastal Policy and does not involve demolition of any buildings.

b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	The proposed modification is considered to have minimal impacts on the natural and built environment. It is also not considered to have an unfavourable social and economic impact on the locality.
c) the suitability of the site for the development	The site remains suitable for the proposed development.
d) any submissions made in accordance with this Act or the regulations	No submissions were received as the modification was not exhibited.
e) the public interest	The proposed modification is considered to be in the public interest.