

27 February 2019

Customer Service | 1300 292 872 | (02) 6670 2400

NSW Planning & Environment  
Attn: Lawren Drummond  
[lawren.drummond@planning.nsw.gov.au](mailto:lawren.drummond@planning.nsw.gov.au)

[tsc@tweed.nsw.gov.au](mailto:tsc@tweed.nsw.gov.au)  
[www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au)

Fax (02) 6670 2429  
PO Box 816  
Murwillumbah NSW 2484

Please address all communications  
to the General Manager

ABN: 90 178 732 496

Dear Sir/Madam

**187-8-2004 MOD 5 for an amendment to 114 tourist accommodation units, lobby/reception, guest dining area, guest lounge, central recreation courtyard with pools (DA187-8-2004) (MOD5) at Lot 224 DP 1048494; No. 9-13 Dianella Drive CASUARINA**

Council have reviewed the above modification application and provide the below comments for consideration of NSW Planning & Environment in their assessment of this application.

### **Tweed Shire Council Submission on DA 187-8-2004 Santai Resort MOD 5**

#### **Background**

On Thursday 24 January 2019, Council were advised that Ethos Urban Pty Ltd, on behalf of Casuarina Pty Ltd (the Proponent), has submitted a request to modify the development consent for Santai Resort (DA 187-8-2004) located at 9-13 Dianella Drive, Casuarina with NSW Planning & Environment.

This application is known formally as MOD 5 of DA187-8-2004 for the Santai Resort. (The Council reference for this application is DA04/1022.09).

The modification seeks a flexible change of use is proposed for 22 units (out of a total of 114 units) within the Santai Resort. The flexible change of use will seek to permit:

- The ongoing use of the units as a form of short-term (tourist) accommodation; and
- The use of the units as a form of permanent residential accommodation.

No physical works are proposed.

The MOD application is to be assessed by NSW Planning & Environment, however Tweed Shire Council has been invited to comment on the modification request and provide any recommended conditions.

#### **History**

On 14 September 2004, the then Minister for infrastructure and Planning granted Project Approval for a 114 unit tourist accommodation complex including a restaurant and conference room at 9-13 Dianella Drive, Casuarina.

The application has been subject to the following modification applications:

- In February 2006, 114-7-2005 (MOD 1) was approved by the Department under delegation to correct discrepancies in the building description; re-allocate on-site parking; and extend operating hours of the approved restaurant from 7.00 am to 10.00 pm to 7.00 am - to 12.00 midnight, seven days a week.
- In March 2006, proposed 115-7-2005 (MOD 2) was refused by the Department under delegation to delete the restriction on occupation periods of the units to enable long term accommodation at the tourist facility.
- In July 2006, 187-8-2004 (MOD 3) was approved by the Department under delegation to allow a manager's residence to be occupied permanently.
- In August 2015, 187-8-2004 (MOD 4) was approved by the Department under delegation to permit members of the public to use the approved restaurant located within the approved tourist facility.

### **Review of MOD 5 Submitted material** **Development Assessment and Compliance Unit Comments**

#### **Submission of Application as a Modification within 75W**

In initial correspondence between Council and NSW Planning & Environment, queries were raised with respect to the ability of an application which proposed a change of use to be undertaken as a modification and whether this could be done as a S75W.

At that time it was advised that ‘..Department is satisfied that proposed modification is within the scope of s 75W as it was lodged prior to the cut-off date (1 March 2018) and therefore doesn’t need to satisfy the three requirements under the *EP&A (Savings, Transitional and Other Provisions Regulation) 2017*.’

#### **Existing Development on site**

Section 3.3 of Modification Report outlines the ‘Existing Development’ on site as follows;

*Santai Resort occupies the entire site and is comprised of 3 storey buildings with 3 habitable floors above parking. The buildings are arranged around a central pool and alfresco area.*

*Specifically, the Santai Resort comprises:*

- *114 short term (tourist) accommodation units;*
- *Basement car park with capacity for 115 car spaces;*
- *3 on grade car parking spaces; and*
- **Ancillary** *tourist accommodation services in the form of conference rooms, restaurant and bar.*

Clarification is sought as to the current use of the restaurant and bar on site, given a previous MOD application was submitted and approved for the use of restaurant by members of the public.

## Apartment Design Guide

The submitted modification application identifies that there are a number of departures between the requirements of the Apartment Design Guide and the subject development. This includes variations with respect to communal open space, amount of sunlight received, ventilation requirements and ceiling heights. Council request that NSW planning & Environment undertake an assessment of these proposed variations and determine whether they represent an appropriate development form at this location.

### Development Control Plan (DCP) Section A2 – Site Access and Parking Code

#### *Existing Parking on site*

Under the original application, Council comments indicate that tourist accommodation development was required to provide car parking at the rate 1 space per unit plus of 0.5 spaces per staff member.

The proposal comprises a total of 114 units and the complex was considered likely to have no more than 6 employees on site at any one time. Therefore, the car parking requirement for the development was determined as 117 spaces.

A total of 118 car parking spaces were provided as part of the development, consisting of 115 in the basement and 3 spaces to the ground level (at entrance).

#### *Proposed Development*

Under DCP Section A2, this would be classified as Residential Flat Building and adequate vehicular parking would need to be provided as per the below table;

Item	Development	Comment	Public Transport, Bus Stop Seating	Bicycle parking Rate (min class)	Delivery/ Service Vehicle parking	Resident/ Visitor Parking	Staff parking	Customer car parking
A12	Residential flat buildings		1/15 units	Residents: 1/unit (1). Visitors: 1/8units (3)		1 per each 1 bedroom unit, 1.5 per 2 bedroom unit, and 2 spaces for 3 or more bedroom units. Plus 1 space per 4 units for visitor parking.		

The 114 tourist accommodation units were approved in the following format;  
**90 x studio apartments:** These are 1 bedroom units for the purpose of this plan.  
**24 x 1 & 2 bedroom apartments:** As these have the capacity for two beds to be located in each these are 2 bedroom units for the purpose of this plan.

The application now submitted proposes the flexible use of 22 apartments for residential use. These are configured as 20 studio apartments (therefore 20 x 1 bed) and 2 x 1 bedroom apartments (therefore 2 x 2 bed units).

Based on this, the following vehicular parking is required for the proposed development;

20 x studio apartments: 1 space per unit therefore 20 spaces required  
 2 x 1 bedroom apartments: 1.5 space per unit therefore 3 spaces required  
 Visitor parking: 1 space per 4 units therefore 5.5 spaces required

The proposed development is assessed as requiring **29 spaces** (rounded up from 28.5).

Under the existing approval, these units are considered to benefit from a credit of 22 spaces (1 per unit).

As such the subject MOD 5 application is considered to be deficient in terms of vehicular parking on site at a rate of **7 car parking spaces**.

Council have concerns with respect to the approval of any development on site which does not adequately address the parking requirements of DCP Section A2.

It is noted that Section '5.6.1 Car Parking' of the Modification Report provides a theoretical comparison between applicable parking rates for serviced apartments (if approved under current DCP Section A2 rates) and a residential flat building which submits that the existing serviced apartments would equate to 27.5 spaces on site, which is comparable to that required. Council requests that the actual location of any spaces relied upon under this application to be identified on updated plans as part of this application, as well as clarifying the present location of all parking provided with respect to the Santai development (tourist and restaurant uses).

This section of the Modification Report also outlines the following;

*It is noted also that from the experience of the owner of the units which form this modification, Casuarina Corporation, there is ample street parking in the vicinity of the premises to accommodate potential additional visitors to the site.*

For clarity, Council would also raise concerns with any inferred or relied upon use of public street parking to support the modification application.

Further to the above, it is noted that the submitted application (at Section 3.3) appears to identify that the restaurant and bar use is 'ancillary tourist accommodation'. It is requested that this be clarified given the previous Modification to enable the restaurant to be open to the public.

### **Section 7.11 Contributions**

Under the original application, Section 94 (now Section 7.11) contributions were applied to the 114 unit tourist accommodation development. It is noted that for the purposes of calculating these contributions, some of the plans required a 'per bed' or 'per bedroom' rate. On this basis it is noted that the 114 tourist accommodation units were approved in the following format;

**90 x studio apartments:** These were charged as 1 bedroom units.

**24 x 1 & 2 bedroom apartments:** as these apartments had the capacity for two beds to be located in each all were charged as 2 bedroom units.

Therefore the development as a whole is calculated as a 138 bedroom development (90 x 1 bed & 24 x 2 bed units).

The application now submitted proposes the flexible use of 22 apartments for residential use. These are configured as 20 studio apartments (therefore 20 x 1 bed) and 2 x 1 bedroom

apartments (therefore 2 x 2 bed units), resulting in a total of 24 bedrooms for the purpose of calculations.

Under the original application, Council calculated applicable Section 94 contributions as per the below table. This is considered to apply as a credit for the proposed modification where applicable;

### **'Proposed S.94 Contribution Calculation Schedule**

Section 94 contributions have been calculated at the following rates:

#### **Tourist Accommodation Units**

Contribution Plan No.	Equivalent Tenement (ET)	Monetary Contribution (\$)
CP4 - TRCP sector 7_4	2.48ET per unit (114x2.48 less 1 credit @ 6.5 = 276.22ET)	101,735
LCA3	2.48ET per unit (less credit = 276.22ET)	24,647
CP 5 Casual open space shire wide	0.38ET per bde (138) less 1ET credit = 51.44	8,590
CP16 - Emergency	0.33ET per unit (114x0.33 less credit @ 1ET = 36.62ET)	7,873
CP18 - Cncl Admin	\$238 per unit = 0.6902ET x 114 less credit @ 1ET = 77.6828ET	26,785.81
CP 19 Open space - casual only	\$245 per bed (138) = 0.3846ET less 1 credit = 52.0748ET	33,172
CP19 Cycleway	\$86.95 per bed (138) = 0.3847ET less 1ET credit = 52.0886	11,772
CP22 Shire wide cycleway	\$62 per bed (138) = 0.3875ET less 1 ET credit = 52.475ET	8,397
CP26 Regional casual open space	0.38ET per bed less 1ET credit = 51.44ET	11,368
Water	0.33ET per unit (114) = \$1,427	158,382
Sewer	0.33ET per unit (114) = \$1,152	127,804

#### **Restaurant - Ancillary to Tourist Accommodation Units**

Water	8ET per 1000m <sup>2</sup> @ 195m <sup>2</sup> = 1.56ET	6,747
Sewer	8ET per 1000m <sup>2</sup> @ 195m <sup>2</sup> = 1.56ET	5,444

In calculating s.94 contributions it is considered that the nexus for the road contributions for the restaurant and conference facilities does not exist. This is based solely on the exclusive use arrangements of the facilities to the guests of the tourist complex. In tendering that public

use of the facilities is not available the need for car parking over that generated by the tourist units does not exist. It would then follow that additional traffic demand over that of the tourist complex does neither exist, thus severing the nexus connection for collecting contributions for road provision and maintenance.'

It is noted that under MOD 4, approval was granted for the use of the restaurant by members of the public which also necessitated the payment of contributions. As the application presently under consideration only provides for a change of use to previously approved tourist apartments (and does not relate to the use of restaurant) it is considered that the original contributions are relevant to this application.

#### Calculation of contributions for MOD 5 proposal

Residential development at this area requires the payment of contributions under the following Section 7.11 Contribution Plans;

CP04 – Tweed Road Contribution Plan  
CP11 – Shirewide Library Facilities  
CP12 – Bus Shelters  
CP13 – Eviron Cemetery  
CP18 – Council Admin Offices and Technical Support Facilities  
CP19 – Casuarina Beach/Kings Forest  
CP22 – Cycleways  
CP26 – Shirewide/Regional Open Space

A calculation of the applicable contributions under each of these plans is provided below;

#### CP04 – Tweed Road Contribution Plan

##### Credit

Under original application charge of 2.48 trips (incorrectly referred to as ET in report) was applied per unit. This equates to an overall credit of 282.72 trips or 54.56 trips for the 22 units subject to this application.

##### Charge

Multi Dwelling housing charge at a rate of 3.9 trips per unit which for the proposed development would result in an overall charge of 85.8 trips (3.9 x 22 units).

The applicable TRCP contribution would be a charge of 85.8 (charge) – (54.56 credit)  
= **31.24 trips**

This is chargeable under Sector 7 Duranbah while there is also a charge under Local Area 4 Casuarina.

#### CP11 – Shirewide Library Facilities

##### Credit

A credit of 1 ET would be applicable to the site, however the application would need to demonstrate that this can be applied under this application.

##### Charge

20 x 1 bedroom units (1.3 persons) = 26 persons = 10.833 ET

2 x 2 bedroom units (1.7 persons) = 3.4 persons = 1.416 ET

= 1.416 + 10.833 = **12.249 ET**

#### CP12 - Bus Shelters

##### Credit

A credit of 1 ET would be applicable to the site, however the application would need to demonstrate that this can be applied under this application.

##### Charge

20 x 1 bedroom units (1.3 persons) = 26 persons = 10.833 ET

2 x 2 bedroom units (1.7 persons) = 3.4 persons = 1.416 ET

= 1.416 + 10.833 = **12.249 ET**

#### CP13 - Eviron Cemetery

##### Credit

A credit of 1 ET would be applicable to the site, however the application would need to demonstrate that this can be applied under this application.

##### Charge

20 x 1 bedroom units (1.3 persons) = 26 persons = 10.833 ET

2 x 2 bedroom units (1.7 persons) = 3.4 persons = 1.416 ET

= 1.416 + 10.833 = **12.249 ET**

#### CP18 - Council Admin Offices and Technical Support Facilities

##### Credit

A credit of 1 ET would be applicable to the site, however the application would need to demonstrate that this can be applied under this application.

##### Charge

20 x 1 bedroom units (1.3 persons) = 26 persons = 10.833 ET

2 x 2 bedroom units (1.7 persons) = 3.4 persons = 1.416 ET

= 1.416 + 10.833 = **12.249 ET**

#### CP19 - Casuarina Beach/Kings Forest

##### *Community Facilities*

##### Credit

A credit of 1 ET would be applicable to the site, however the application would need to demonstrate that this can be applied under this application.

##### Charge

20 x 1 bedroom units (1.3 persons) = 26 persons = 10.833 ET

2 x 2 bedroom units (1.7 persons) = 3.4 persons = 1.416 ET

$$= 1.416 + 10.833 = \underline{\mathbf{12.249\ ET}}$$

#### *Structured Open Space*

##### *Credit*

Under the original application the following contribution was applicable;

\$245 per bed (138) = 0.3846ET less 1 credit = 52.0748ET

A commensurate credit of 9.2304 ET (0.3846ET x 24 bedrooms) would apply.

##### *Charge*

20 x 1 bedroom units (1.3 persons) = 26 persons = 10.833 ET

2 x 2 bedroom units (1.7 persons) = 3.4 persons = 1.416 ET

$$= 1.416 + 10.833 = 12.249\ ET$$

$$12.249\ ET - 9.2304\ ET = \underline{\mathbf{3.0186\ ET}}$$

#### CP22 – Cycleways

##### *Credit*

Under the original application the following contribution was applicable;

\$62 per bed (138) = 0.3875ET less 1 ET credit = 52.475ET

A commensurate credit of 9.3 ET (0.3875ET x 24 bedrooms) would apply.

##### *Charge*

20 x 1 bedroom units (1.3 persons) = 26 persons = 10.833 ET

2 x 2 bedroom units (1.7 persons) = 3.4 persons = 1.416 ET

$$= 1.416 + 10.833 = 12.249\ ET$$

$$12.249\ ET - 9.3\ ET = \underline{\mathbf{2.949\ ET}}$$

#### CP26 - Shirewide/Regional Open Space

##### *Structured Open Space Levy*

##### *Credit*

No paid credit as Structured Open Space does not apply to tourist accommodation. A credit of 1 ET would be applicable to the site, however the application would need to demonstrate that this can be applied under this application.

##### *Charge*

20 x 1 bedroom units (1.3 persons) = 26 persons = 10.833 ET

2 x 2 bedroom units (1.7 persons) = 3.4 persons = 1.416 ET

$$= 1.416 + 10.833 = \underline{\mathbf{12.249\ ET}}$$

#### *Casual Open Space Levy*

##### *Credit*

Under the original application the following contribution was applicable;

0.38ET per bed less 1ET credit = 51.44ET

A commensurate credit of 9.12 ET (0.38ET x 24 bedrooms) would apply.



Charge

20 x 1 bedroom units (1.3 persons) = 26 persons = 10.833 ET

2 x 2 bedroom units (1.7 persons) = 3.4 persons = 1.416 ET

= 1.416 + 10.833 = 12.249 ET

12.249ET – 9.12ET = **3.129 ET**

#### **Recommended Conditions Provided**

In the event that NSW Planning & Environment approve the MOD 5 application as submitted it is requested that the below condition be applied to any amended approval issued;

- # A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council prior to the occupation of the building or issue of Interim or Final Occupation Certificate (whichever comes first), 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, an Occupation Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Certificate of Compliance" signed by an authorised officer of Council.

#### **BELOW IS ADVICE ONLY**

The Section 64 Contributions for this development at the date of this approval have been estimated as:

Water = NIL

Sewer = NIL

[PCC0265]

#### **# Section 7.11 Contributions**

Payment of the following contributions pursuant to Section 7.11 of the Act and the relevant Contribution Plan.

Prior to the occupation of the building or issue of any Interim or Final Occupation Certificate (whichever comes first), all Section 7.11 Contributions must have been paid in full and the Certifying Authority must have sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

**A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT.**

These charges include indexation provided for in the Section 7.11 Contribution Plan and will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current

version/edition of the relevant Section 7.11 Contribution Plan current at the time of the payment.

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.

« Tweed Road Contribution Plan:	
31.24 Trips @ \$1293 per Trips	\$40,393
(\$1,145 base rate + \$148 indexation)	
CP Plan No. 4	
Sector7_4	
LCA4 - Casuarina:	\$6248
31.24 trips at \$200 per trip	
(\$168.00 base rate + \$32.00 indexation)	
« Shirewide Library Facilities:	
12.249 ET @ \$933 per ET	\$11,428
(\$792 base rate + \$141 indexation)	
CP Plan No. 11	
« Bus Shelters:	
12.249 ET @ \$71 per ET	\$870
(\$60 base rate + \$11 indexation)	
CP Plan No. 12	
« Eviron Cemetery:	
12.249 ET @ \$135 per ET	\$1,654
(\$101 base rate + \$34 indexation)	
CP Plan No. 13	
« Extensions to Council Administration Offices	
& Technical Support Facilities	
12.249 ET @ \$2187.14 per ET	\$26,790.28

(\$1,759.90 base rate + \$427.24 indexation)

CP Plan No. 18

« Casuarina Beach/Kings Forest Community Facilities:

12.249 ET @ \$2489 per ET \$30,488

(\$2,153 base rate + \$336 indexation)

CP Plan No. 19

« Casuarina Beach/Kings Forest Open Space:

3.0186 ET @ \$1527 per ET \$4,609

(\$717 base rate + \$810 indexation)

CP Plan No. 19

« Cycleways:

2.949 ET @ \$526 per ET \$1,551

(\$447 base rate + \$79 indexation)

CP Plan No. 22

« Regional Open Space (Casual)

3.129 ET @ \$1215 per ET \$3,802

(\$1,031 base rate + \$184 indexation)

CP Plan No. 26

« Regional Open Space (Structured):

12.249 ET @ \$4264 per ET \$52,230

(\$3,619 base rate + \$645 indexation)

CP Plan No. 26

[POC0395]

It is requested that the matters raised in this submission be taken into consideration in NSW Planning & Environment assessment of the proposed MOD 5 application, and where appropriate clarification be provided on matters raised in this correspondence.

In the meantime if you have any queries in respect to this matter please contact David O'Connell of Council's Development Assessment Unit on (02) 6670 2661 who will be processing the application.

Yours faithfully

**Vince Connell**

Director Development Assessment and Compliance