



## Director-General's Report

### **Application to Modify the Minister's Approval for a Mixed Use Development at Lots 6-8 DP 23897, Lot A DP 397985, Lots 4A & 4B DP 398716, Lots 6, 11 & 12 Section 4A DP 758047, Lots 8 & 9 DP 251206, Lot 10 DP 244352, Lot 1 DP 499510 and Lot 1 DP 781715, 256-274 River Street, Ballina – Ballina Gateway Project**

### **Major Project 05\_0009 MOD 1**

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## **1 SUMMARY**

This report is an assessment of Modification number 1 which seeks to modify Major Project 05\_0009 for a mixed use development, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (the Act).

The Minister for Planning approved the Major Project for a mixed use development comprising tourist, residential and retail uses on 20 June 2007. The site is located at 256-274 River Street, Ballina, in the Ballina Shire Local Government Area.

MP 05-0009 granted approval to the project described below:

Staged mixed use commercial and residential development, including a 84 room hotel, 84 residential apartments (contained within 4 buildings), an amenities building and 1,200m<sup>2</sup> of retail floor space at ground level (including a café) as well as strata subdivision of the development.

## **2 THE PROPOSED MODIFICATION**

On 23 November 2007, Sundowner Developments (NSW) Pty Ltd (the Proponent) submitted to the Director-General a request for modification of Major Project 05-0009 to permit the following changes:

- Provision of a drive-through loading facility at ground level accessed from River Street and exiting to Kerr Street to address Condition B1 (1);
- Deletion of basement level 2 and extension of basement level 1 towards the river with a reduction in onsite parking provision from 265 spaces to 230 spaces;
- Amendment to the alignment and access provisions of the retail floor space within Building C;
- Amendments to the setback of the upper level of Building B to address Condition B1 (3);
- Provision of an on-street hotel pick-up/set-down zone in Kerr Street to address Condition B1(2);
- Changes in levels, width, quality and the number of through-site links provided from the streets to the river foreshore; and

- Alterations in the internal layout and access arrangements of the proposed hotel as a result of the changes to the parking layout and provision of the loading facility.

### **3 ASSESSMENT PROCESS**

The approval for Major Project 05-0009 was granted in accordance with Part 3A of the Act Section 75J Clause (2).

Section 75W of the Act provides for the modification of the Minister's approval. Under Section 75W(2) of the Act, a Proponent may request the Minister to modify the Minister's approval for a project. This section also states that the Minister's approval is not required if the project as modified will be consistent with the existing approval under this Part.

It is concluded that some of the proposed modifications are not consistent with the Minister's approval and are therefore the subject of an application for modification.

Pursuant to Section 75W(3) of the Act, the approval of the Minister for Planning has been sought by the Proponent to modify the approval for the mixed use development as outlined in the amended modification request (**Tag A**).

Section 75W(3) of the Act provides that the Director-General may notify the Proponent of environmental assessment requirements (EARs) with respect to the proposed modification that the Proponent must comply with before the matter will be considered by the Minister. Following an assessment of the modification request, it is considered that EARs are not necessary for the modification application.

Under Section 75W(4) of the Act, the Minister may modify the approval (with or without conditions) or disapprove the modification. The following report describes the Department's assessment of the requested modifications and supporting documentation as provided by the Proponent, and recommends approving the proposed modifications, with conditions.

### **4 DESCRIPTION OF PROPOSED MODIFICATIONS**

A Part 3A approval was issued for a staged mixed use development comprising an 84 room tourist hotel and 85 residential apartments distributed over 4 buildings, an amenities building with a pool and gym and approximately 1,201m<sup>2</sup> of ground floor retail space including a café building on the waterfront. The approved development was to be erected over an underground 2 storey basement car park.

In response to concerns and requests for additional information raised by the Department, Council and the RTA, the proponent submitted several amended plans and additional information in relation to accessibility, parking demand, acoustic impact of the loading area, design of the loading area, design of the thru site links and the appropriateness of the car parking layout.

The final amended set of proposed modifications to the approved project are described following:

#### **Basement 2**

- Deletion of basement level 2, loss of 138 spaces (including 7 accessible spaces);

## Basement 1

- Extension of basement level 1 towards the riverfront on the two portions of land either side of the two existing slipways.
- Increase in parking provision on this level from 127 spaces (including 3 accessible spaces) to 228 (including 15 accessible spaces and 1 courier bay). The change results in a net loss of 37 spaces, for which it is proposed to pay a s94 contribution to Council for 27.3 spaces. The difference between the spaces to be paid for and the reduction in parking from the approval to the modification relates to the conditions of approval and a reduction in the amount of retail floor space proposed, that result in a lower parking demand due to less floor space.
- There are also changes to the location of lifts/stairs/lobbies, residential storage areas, the bicycle storage area, plant and water tanks and the removal of the stores, housekeeping stores, garbage room and staff amenities areas for the hotel (see following amended basement plan).

## Ground

### Building A

- The hotel restaurant has been reduced in size and the bar relocated to within the restaurant, the kitchen has been relocated, the function room deleted, the manager's office has been deleted, a back office, hotel stores and staff amenity areas has been provided.
- Accessibility on this level has been altered significantly, with the removal of the internal ramp between the two levels of the restaurant (prohibiting access to the lower level for persons in a wheelchair), and relocating the accessible ramp to the hotel foyer from adjacent to the main entry stairs to some 11m north of the main entry stairs (see point "A" on following ground floor plan).
- The residential garbage holding room has been relocated and a hotel garbage room provided. It is noted that it is intended for the residential garbage holding room to be used by the retail users as well (see point "B" on following ground floor plan).

### Building B

- Provision of additional fire exit from car park and adjustment of terrace to apartment.
- Removal of ramp and relocation of stair access from public walkway.

### Building C

- Reduction in size of retail stores and removal of individual internal accessible ramps to be replaced by two external accessible ramps at either end of a colonnade along the front of River Street. Stairs running the full length of the retail frontage are proposed to provide access from the street level to the level of the shops (see point "C" on following ground floor plan).
- Relocation of fire egress stairs from car park and provision of garbage room.

### Buildings D

- Addition of acoustic screen wing wall extending from floor to ceiling to north-western side of terrace of north-western dwellings on each level to screen noise from onsite loading area.

### Building E

- Relocation of retail garbage room and switch room.

- Increase size of terrace to rear retail suite (see point "D" on ground floor plan).

#### Building F

- Provision of additional fire exit from car park.
- Removal of stairs from public walkway to building foyer.

#### Building G

- No change

#### Grounds/Foreshore Access

- Increase elevation of ground level between buildings E and F and between Buildings A and B, and to the east/west public pedestrian thru-site link between Buildings B and F, from RL 1.8 to RL 2.55 to allow sufficient head height in car park below (see point "E" on ground floor plan).
- Removal of garden between Buildings A, C and D and provision of a drive through loading facility along westernmost north/south thru site link and western portion of east/west thru site link (see point "F" on ground floor plan). The loading area is to be accessed from Kerr Street and exit to River Street to address Condition B1(1). This area is to be a shared zone, with added safety features to ensure pedestrians are aware of potential truck movements and drivers are aware of pedestrian use. The safety features include:
  - a distinctively different coloured pavement (though provided at the same level) for the loading bays and drive-through area,
  - bollards located at the entrance and exit and at other high pedestrian activity areas (exit to hotel, connection with east/west link and connection with courtyard between Buildings C and D), and
  - signage indicating shared zone, 5km/hr speed limit, pedestrian priority area and provision of tactile paving at connection with the above high pedestrian activity areas.
- The loading area is to be used by large trucks only, with small trucks and vans to use the courier bay and service area in the basement, and is to be used for a maximum of 2 vehicle deliveries/collections per day (includes garbage removal).
- Provision of a hotel drop off zone on the street in Kerr Street in accordance with Condition B1(2) (see point "G" on ground floor plan).
- The change in ground level closer to the river due to the extension of the partially underground car park results in the need to provide stair access between the east/west public pedestrian thru-site link and the north/south links to the foreshore and Building G (café) (see point "E" on ground floor plan). A set of stairs is proposed to be provided for part of the width of the east/west link between Buildings A and F and two ramps are proposed, one at each side of the east/west link.
- The substation has been relocated further to the south-west due to the necessity for it to be constructed at ground level and the altered arrangement of the car park (see point "H" on ground floor plan).

#### **First**

#### Building A

- Reduction in length of rear terraces to hotel suites A101-105 and provision of a terrace garden at the rear of the shortened terraces.

Buildings B, E, F

- No change.

Building C

- Relocation of lobby and stairwell.

Building D

- Provision of acoustic screen wing wall extending from floor to ceiling to the north-western side of the terrace of the north-western apartment (D-101) to provide screening from the loading area.

**Second**

Building A

- Relocation of lift lobby and subsequent changes to layout of hotel suites A201-202.

Buildings B, E, F

- No change.

Building C

- Relocation of lobby and stairwell.

Building D

- Provision of acoustic screen wing wall extending from floor to ceiling to the north-western side of the terrace of the north-western apartment (D-201) to provide screening from the loading area.

**Third**

Building A

- Relocation of lift lobby and subsequent changes to layout of hotel suites A301-302.

Buildings B, E, F

- No change.

Building C

- Relocation of lobby and stairwell.

Building D

- Provision of acoustic screen wing wall extending from floor to ceiling to the north-western side of the terrace of the north-western apartment (D-301) to provide screening from the loading area.

**Fourth**

Building A

- Relocation of lift lobby and subsequent changes to layout of hotel suites A401-402.

### Building B

- Provision of increased setback to the rear of the building from the river foreshore (minimum 24m) and from the west (minimum 10m), reducing the maximum FSR of Building B to 2,702m<sup>2</sup> in accordance with Condition B1(3).

### Building D

- Provision of acoustic screen wing wall extending from floor to ceiling to the north-western side of the terrace of the north-western apartment (D-401) to provide screening from the loading area.

### Building F

- No change.

### **Materials**

- The balustrades for the top floor terraces of Building B and F are to be altered to be framed glass.

### **Amendments to Conditions**

As a result of the amended plans proposed by the proponent, it is proposed to modify the following conditions of approval:

Condition A1 Description of development to be altered to include mention of a manager's apartment in the description of Building E and to change the description of the basement parking from two levels to one, comprising 288 car parking spaces as well as 1 service/loading bay and 1 car wash bay.

Condition A2 Amend list of approved plans in accordance with the amended plans submitted.

Condition B1 Deletion of condition as the loading area, pick-up/set-down area and the amendments to Building B are now provided on the amended plans.

Condition B18 The reference in B18(1)(c) to Condition B2 is erroneous and should be a reference to Condition A1(2)(b)(vii).

Condition B28 Deletion of the word "*full road width pavement*" and insertion of words "*road pavement widening*" and deletion of reference to roundabouts from Condition D28(1) is sought to remove ambiguity as it is necessary to widen the road and reconstruct paths and gutters only (to make the road full width, rather than to completely reseal the entire width of the road).

Similarly it is requested to amend Condition B28(4) to reference "*Road Pavement Widening*" rather than "*Full width reconstruction*" of Kerr Street, for the same reason as above.

Condition B30 To be modified to reference the amended number of parking spaces, with the condition to read "*255.3 spaces are to be provided, with 228 spaces provided on site and the remaining 27.3 spaces to be accommodated off site by payment of a section 94 contribution to Council of \$682,500*". An amended car parking allocation table is also proposed.

Condition B32 To be modified to delete reference to the approval of loading spaces by the Director Coastal Assessments and reference the amended plans showing the loading spaces.

Condition B39 The s94 contribution table is to be amended to include the contribution for 27.3 parking spaces, equating to \$682,500. It is sought to make the contribution payable prior to occupation rather than release of the Construction Certificate as is specified for the other contributions.

Condition D1 The reference in D1 to Condition B11 is erroneous and should be a reference to Condition B20.

Condition D9 Reference to protection of “*all street trees*” should be replaced with “*street trees, other than those affected by this development approval*”.

Condition E18 Reference to the drawing number needs to be modified due to the amended plans numbers being altered.

## 5 CONSULTATION AND EXHIBITION

Under Section 75W of the Act, a request for a modification of an approval does not require public exhibition. However, under Section 75X(2)(f) of the Act, the Director-General is to make publicly available requests for modifications of approvals given by the Minister. In accordance with Clause 8G of the *Environmental Planning and Assessment Regulation 2000*, the request for the modification was placed on the Department's website.

### Ballina Shire Council

The modification application was referred to Ballina Shire Council on 3 December 2007. Council responded on 21 January 2008 and raised the following issues with the proposal.

- Concerns with compliance of car park layout with Australian Standard;
- Width of driveway to Kerr Street should be reduced to 4.2m;
- Lack of delineation of servicing area for garbage collection and information of type of garbage receptacle to be collected;
- Clarification was sought as to how goods and materials would be transported from the loading area at the western side to the retail areas at the northern and eastern sides of the site;
- Lack of detail on adequacy of pedestrian access throughout the site and mitigating measures required as a result of drive-thru loading area;
- Amenity impacts on dwellings onsite due to location of loading area; and
- Loss of on-street parking due to development and redevelopment of intersection.

Council also indicated that the design of the pick-up/set-down zone in Kerr Street is appropriate subject to the zone being treated to ensure it is clearly distinguishable, with provision of coloured treatment of paving, lane marking and local area traffic management signs/devices.

Further, Council advised that an existing power pole would need to be relocated due to the location of the Kerr Street exit from the loading area and that this would need to occur at the cost of the developer.

A condition of approval of the modification is recommended requiring the treatment of the pick-up/set-down area to the satisfaction of Council, with details to be approved by Council prior to the release of the Construction Certificate for any above ground works.

With regard to the concern in relation to the power pole, a condition of approval (see new condition D22) of the modification is recommended requiring the proponent to pay for the cost of relocation of the pole to the appropriate authority's satisfaction.

The proponent lodged amended plans which were referred to Council on 3 March 2008. Council responded on 8 April 2008, providing the following comments:

- The applicant had miscalculated the parking shortfall on site as a result of the modified development and the shortfall is not 34 spaces, but 27.3 spaces. Council confirmed it would accept a monetary contribution for a shortfall of 27.3 spaces on the site, being \$682,500 (\$25,000 per space) based on the Ballina s. 94 Parking Contribution Plan.
- Council's previous concerns in relation to the servicing of the site and the on-street pick-up/set-down area have been satisfactorily resolved.
- The parking report indicating the shortfall of parking could be catered for by on-street parking (and as such not unacceptably impact on nearby residential properties) is accepted.
- Other matters raised have generally been satisfactorily addressed.

### **Roads and Traffic Authority**

The modification application was referred to the Roads and Traffic Authority (RTA) on 3 December 2007 and again on 3 March 2008 (amended plans), as the first notification appears not to have reached the RTA. The RTA responded on 9 April 2008 and advised as follows:

- RTA is proposing to replace the existing roundabout at the intersection of River and Kerr Streets with a set of traffic signals. The concept plan for the traffic signals will require the use of the kerbside lane immediately adjacent to the development as a through and left-turn lane, eliminating parking along that part of the frontage.
- The restricted height (2.3m) of the basement will encourage more use of the at grade facility than that suggested in the traffic report (ie 2 trucks a day).
- It would be desirable to reverse the flow of the loading area so it is accessed from Kerr Street so there is no possibility of queuing into River Street causing traffic disruption to the intersection.
- All driveways need to be designed to easily allow access for vehicles entering, including in the case of the loading area for large trucks.
- The narrow and stacked parking in the basement should not be used for public parking or servicing spaces. Spaces close to the entrance should be used for servicing.

In response to the concerns raised by the RTA, the proponent provided an amended submission and additional information. A meeting was held with the proponent on 15 May 2008 to discuss concerns with the amended plans and a final set of amended plans was lodged over several days with the final plans lodged on 3 June 2008, which are subject of this assessment report.

The final amended plans were not referred again to the RTA and Council as they generally were consistent with comments received by those bodies.



In response to the RTA's concerns the direction of the loading bay access has been reversed to provide ingress from Kerr Street and egress to River Street. The driveways are appropriately designed and the stacked parking spaces are allocated to residential users. Finally, the proposed courier bay is located adjoining the entrance to the car parking area.

## **6 CONSIDERATION**

The Department has assessed the impacts of the above proposed modifications and the relevant issues have been considered as following.

### **6.1 Impact on On-Street Parking/Appropriateness of Contribution**

The reduction in overall parking requirement on the site from 265 spaces to the identified 255.3 spaces (as recalculated by Council) is justified given the reduction in the size of the hotel and retail components on the site and hence the reduction in demand for parking.

Of the 255.3 spaces demanded onsite, the proponent is proposing the provision of only 228, leaving an onsite shortfall of parking of 27.3 spaces, for which it is proposed to pay a contribution to Council. Council has in place a s94 contribution plan that allows for payment for an average of 5% of total parking within the CBD, with an allowance for up to 20% of parking spaces within development sites along the River given difficulties with parking provision on those sites. The plan applies to an area including the subject site and applies to land zoned for business purposes when developed for non-residential purposes, with Council proposing to provide a centralised parking area within the town centre. The preferred locations for the parking area, which occur along either side of 3 blocks of Tamar Street, are within 200m-600m of the site. Council has indicated it is willing to take a contribution in this instance. The proponent is proposing payment for 10.7% of all parking onsite, and which satisfies the maximum percentage for payment. The site is to be developed not only for business purposes, but also for residential, though the spaces to be paid for are for business purposes.

The applicant has indicated that all of the spaces for which the contribution is to be paid would be spaces that would have been allocated to the retail uses on the site (including the café). The provision of parking for the hotel, apartments and visitors are to be provided for onsite, together with a reduced amount of retail parking (22 spaces inclusive of a courier bay).

Seven (7) retail suites, plus a café are proposed on the site and the 22 spaces provided would allow for tenant/staff parking for those uses, together with some customer spaces. It would be appropriate that at least 1 space be provided for each retail tenancy and that a minimum of 4 spaces be provided for the café (given the larger staff ratio of a café) and a condition of approval to this effect is recommended (see amended condition B30). Such a condition should ensure that the majority of staff parking (which is long term parking) is provided for onsite and as such staff are unlikely to cause a parking nuisance in nearby residential streets by parking in them.

Whilst the distance between the preferred parking area location and the site would discourage users to facilities like the café from parking there, such spaces may be used by persons carrying out general shopping and/or business in the area, where they are more likely to walk around a number of shops in different locations. As such, whilst not ideal, the payment of a contribution would assist to some extent to alleviate the parking shortage proposed onsite.

Further, the site makes provision for 17 visitor spaces, which are generally associated with the residential use on the site. As the user times of the shop and café will not consistently coincide with the user times for visiting the residential properties, it is appropriate that the visitor spaces be available for both visitors to the apartments and the café/retail premises on the site. This will assist in maximising the use of the spaces provided onsite and minimising the uptake of on-street parking. Further, the retail parking not allocated for staff parking should also be available on a shared basis for residential visitors to the site.

However, concerns were still raised by the Department that despite the payment of a contribution in lieu of parking, the lack of parking onsite would result in parking congestion in the streets, with potential impact upon nearby residential streets and resultant loss of residential amenity. Accordingly, a parking assessment was requested from the proponent.

The parking assessment was prepared by Newton Denny Chapelle and addressed the possible on-street parking demand impact within the immediate area due to the partial payment of a contribution for parking in lieu of full onsite provision and the distance to any facility provided by Council.

The study indicated that information obtained from the CBD Parking Performance Review 2003 shows that the on-street parking usage in the area is very low, with 16% peak occupancy and with an average stay of 22 minutes for the portion of River Street which fronts the site. A parking assessment for the portion of Kerr Street to the western boundary was not included in that assessment as it does not have time limited parking.

A desk top assessment was then carried out of the demand increase of an additional 34 cars (with the proposal seeking to pay a contribution for 33.3 cars), looking at the availability of parking on the River Street and the Kerr Street frontages only. Three scenarios were considered, including the existing situation, the developed situation with the current roundabout at the intersection of River Street and Kerr Street (Pacific Highway) and the future situation with development and traffic signals at the intersection.

Assumptions that have been made include that 95% of the street frontage parking would be occupied by users of the site (given the length of the site) and that the parking would be evenly distributed along River Street and Kerr Street given the pedestrian permeability through the site.

The existing situation provides for 38 on-street parking spaces with a demand for 6 spaces, providing a 16% occupancy rate.

The developed situation with the existing roundabout will provide 36 on-street parking spaces with a demand for 36 spaces, providing a 100% occupancy rate.

The developed situation with the future traffic lights will provide 22 on-street parking spaces with a demand for 35 spaces, providing a 160% occupancy rate.

Therefore the likely maximum on-street parking demand that would occur if all parking users provided for by the contribution were to use the street frontages of the site, could be adequately catered for in the developed situation with the existing traffic conditions at the intersection of River Street and Kerr Street (Pacific Highway).

Upon installation of traffic lights, a significant number of the spaces would be lost from the street network (14 spaces or 39%). This would result in any excess demand created in the vicinity of the site having to be catered for by parking on River Street to the intersection of Grant Street as well as along the street frontages.

Twenty-five (25) spaces exist on the remainder of River Street to Grant Street and the additional 13 spaces potentially demanded by the site could be catered for within the additional 25 spaces.

None of these calculations provide for any use of the Council parking spaces paid for by way of contribution or any dual use of the visitor spaces on the site. Accordingly, if these uses are taken into consideration, together with the recalculated shortfall of 27.3 spaces, rather than 33.3, it is unlikely that any overflow parking from the site would result in unacceptable amenity impacts on nearby residential properties or in an unacceptably congested parking situation for nearby and adjoining uses.

For these reasons it is considered reasonable to accept the s94 contribution in lieu of full provision of parking on the site, subject to the limiting of use of on-street parking to the greatest degree possible, by requiring multiple use of the visitor spaces onsite by visitors to both the residential and retail uses of the site. A condition to this effect is recommended (see amended condition B30).

## **6.2 Impact on Usability of Site-Thru Link**

Concern was raised with the original modification proposal in relation to the design of the drive-thru loading bay due to its impact on the usability of the public pedestrian thru-site link to the foreshore. The original design showed a clearly delineated "driveway" with loading area for a light and heavy rigid vehicle and with bollards between the curve of the driveway and the east/west public pedestrian thru-site link. Such a design gave priority to the loading dock use and reduced the amenity of the link, making it appear visually as a driveway rather than a pedestrian route, despite the proposed materials matching the materials of the east/west link.

In response to concerns raised, the current proposal makes provision for a courier bay and a service bay within the basement (one at the western and the other at the eastern sides of the basement), well located for easy access to the hotel and retail uses on the site, via lift lobbies A and E. Lobby E would also provide access to the retail spaces in Building C via the ramp at the north-eastern end of the colonnade to the retail spaces from the footpath.

The provision of these loading facilities for small trucks and vans allows for the thru-site link to be better designed with priority given to pedestrians. Truck movements are anticipated to be limited to large trucks, in the order of 2 deliveries or collections (including garbage) per day. Removable bollards are proposed to prevent unauthorised vehicle access to this area and the driveway and loading area are to be at the same grade as the pedestrian pathways, but have a visually distinct pavement treatment. The access has been reversed to enter from Kerr Street and the bollards are located to allow trucks to be fully on the site before stopping to operate them so as not to impede traffic flow on Kerr Street. Access to the area is proposed to be restricted to between 7am and 6pm daily.

Subject to strict control of access to this area and appropriate treatment, signage and tactile floor surfacing at danger points, the north/south public pedestrian thru-site link to the foreshore would maintain its approved level of amenity and the amendment to allow limited use for loading would be acceptable. A condition of consent is recommended requiring the keys for use of the removable bollards to be held by the management of the hotel, the onsite manager and be provided to the garbage removal services only.

The limitation of keys will assist in limiting the use as conditioned, with the onsite manager organising use of the loading area for the residential and retail users of the site. A condition of consent will also require the provision of signage indicating a reduced speed limit and that the area is a pedestrian zone allowing limited truck access and that reversing of trucks is not permitted. The truck movements are to be allowed only between 7am and 6pm Monday to Saturday and between 9am and 1pm on Sundays and Public Holidays.

### **6.3 Impact of Drive-Thru Loading Area on Intersection**

The amended design of the drive thru loading area to access off Kerr Street and egress to River Street has been recommended by the RTA and as such will not result in any trucks queuing in River Street and impacting upon traffic flow at the intersection. It is noted that this direction of movement will only work properly once the intersection is signalised due to the difficulty of the left turn out of the site and right turn at the roundabout manoeuvre.

In this regard the RTA has advised that the intersection works will occur within a year and as this component of the development is within the 2<sup>nd</sup> stage, a condition of consent will require that the intersection works be completed prior to the issue of an Occupation Certificate for the 2<sup>nd</sup> stage of the development.

### **6.4 Amenity Impacts of Drive-Thru Loading Area**

The department raised concerns in relation to the impact of the loading zone upon the amenity of the adjacent residential apartments within the site. In response a report by an acoustic consultant (Carter Rytenskild Group, dated 8 February 2008) was provided. The report indicates that the limited number of truck movements would assist to limit amenity impacts. It was recommended that a wing wall extending from floor to ceiling be provided on the north-western side of the north-western apartments in Building B to reduce impacts but that sound attenuation measures to be applied to the adjoining dwelling to provide for an appropriate level of attenuation (ie 45 dB(A)) was not necessary given the limited truck usage.

The sound attenuation measures would require an Rw rating of up to Rw 39, which could be achieved by such works as double glazing windows and twin glass sliding doors. The acoustic report indicates that not providing the sound attenuation is appropriate only on the basis that truck movement be strictly limited to 2 movements a day and be limited to between 7am and 6pm and that such limitations are critical.

It is considered impossible to ensure that truck movements are limited to 2 a day, given changes in the use of the site overtime may result in changes to the use patterns of the trucks onsite and as such a condition is difficult for Council to enforce. Accordingly, it is recommended that the attenuation measures for the buildings (ie doors and windows) also be provided, as retro-fitting such measures at a later date would be very expensive, should noise become an unacceptable issue.

### **6.5 Accessibility**

Concerns were raised by the Department that the modifications resulted in significant reductions in the accessibility of the development, particularly in relation to the loss of accessible parking spaces, loss of accessibility to the cafe and loss of accessibility to the hotel and restaurant.

In this regard, the original modification deleted the accessible toilet from the hotel/restaurant use, deleted the connecting ramp between the two restaurant levels, reduced the number of accessible parking spaces and relocated the commencement of the entry ramp to the hotel from adjoining the main entrance to 11m from the main entrance.

In response to the concerns raised, an accessibility report was lodged, prepared by Morris Goding Accessibility Consulting, dated 29 January 2008, with further comments submitted via email dated 22 May 2008.

**Hotel/Restaurant** The amended modification reinstated the accessible toilet between the hotel lobby and restaurant, providing an appropriate level of accessibility for hotel patrons and restaurant users (upper level of restaurant only).

The access reports indicates that with the provision of appropriate way finding signage, the modified access ramp (which now is provided with level areas for resting) is compliant. Whilst it is not considered that the design is best practice for a new building (being more appropriate for use for retro-fitting access to existing buildings), the access point is near the access to the restaurant and as such can be used for access to both the hotel and restaurant. Therefore the ramp is considered adequate.

The 22 May 2008 comments indicated the need for an appropriate system of way finding signage from the entry ramp to the restaurant and that the use of signage will mitigate possible complaints under the DDA. However, it was also indicated that the use of signage would not be a full defence against the equity and dignified principles of the DDA and that full compliance would involve wheelchair access from the pedestrian entrance and between the upper and lower level restaurant areas.

Whilst the amendments do not equate to best practice for a new development, the accessibility is considered adequate subject to a condition of consent requiring the provision of a ramp or wheelchair lift being provided within the restaurant to allow access between the two levels.

**Retail** The accessibility to the retail components was originally modified by removing the individual entry ramps to each retail suite fronting River Street and replacing them with a single ramp at the western end of a colonnade that is to be elevated above the level of River Street and accessed by stairs for its whole length. Whilst the provision of a single entry ramp is generally acceptable, it was impractical and inconvenient in this case and the final version of the amended plans provides for a ramp at each end.

The retail suite in Building E at the rear has an accessible main entry and is appropriately designed, also providing an accessible entry to its terrace. The retail suite fronting River Street in Building E does not have an accessible entry from River Street, but rather proposes an accessible entry from the publicly accessible walkway to the east. Again, this is not the best practice design for accessibility, however given it requires only an additional travel distance of approximately 15m, it is acceptable subject to appropriate signage provision.

**Apartments** All apartment buildings are provided with an accessible path of travel from the street to the foyers. All apartments are accessible from the foyers to the entry of the apartments by way of lifts.

However in order to provide all accessible parking spaces allocated to adaptable apartments in reasonable proximity to the lifts of the buildings in which they are located, it was necessary to reallocate the location of adaptable apartments throughout the site. Originally all adaptable apartments were located within Building D, with 14 apartments provided, now additional apartments are provided in Buildings C, B and F, giving a total of 18 adaptable apartments, with 9 accessible spaces provided.

As it is considered that 9 adaptable apartments is a reasonable number for provision on the site and as accessible paths of travel are provided for 2 such apartments in Building B, 1 in Building F, 1 in Building C and 5 in Building D, the oversupply of adaptable apartments in Building D simply allows better initial choice for disabled persons who initially buy into Building D.

In order to ensure that the accessible parking spaces are only allocated to an adaptable apartment, a condition to this effect is recommended (see amended condition B30).

**Café** The café is provided with an accessible toilet facility and has accessible ramps located at the northern and southern ends of the publicly accessible areas, providing an appropriate level of accessibility from those areas. However, the accessible path of travel from both the street and the accessible parking spaces in the basement to the café was originally convoluted and unacceptably long.

The final amended plans provides for an appropriate path of travel from both the basement and the street to the café.

**Car Parking** Appropriate accessible parking has been provided for the adaptable units, as has been discussed previously. The accessible retail space is well located for access to the lobby of Building E, which then allows access to all buildings and facilities on the site. The accessible visitor space is less well located, being distant from all lift lobbies, however its central location is acceptable given its requirement to service visitors to all buildings.

## 6.6 Suitability of Car Park Layout

Concern was raised by Council in relation to the compliance of the basement parking layout with the relevant Australian Standards. In response to this concern a report was prepared by a traffic engineer (Newton Denny Chapelle, dated February 2008).

The report indicates that the relevant standard (AS2890.1 is a guideline and should not be slavishly applied, however, the key principles of the standards should be met. The report indicates that in order to achieve maximum use of the basement space some departures of from the standards as follows have been proposed:

- Small car spaces are used in several locations (total of 7 spaces) adjacent to fixed objects such as stairwells, ramps and walls. Further, during final design further need for small spaces may arise after finalising the design for essential servicing, but that they should be kept to a maximum of 12 (5% of parking).
- The south-eastern corner of the basement is to have a blind aisle length in excess of the recommended 6 spaces depth, however it is indicated in the report that this is acceptable as the spaces are for private usage and not a public car park.
- Stacked spaces (7 stacked spaces) are used in the south-eastern corner of the basement and in relation to hotel staff parking (2 stacked spaces). The standard does not provide guidance in relation to stacked spaces, however it is indicated

in the report that use of stacked spaces is reasonable when used by the same occupant as manoeuvring can be easily organised.

The above justifications are considered to be reasonable and the variations are therefore supporting in this instance.

### **6.7 Impact of Additional Vehicular Crossing on Pedestrian Safety**

Concern was raised by the Department in relation to the impact of the additional vehicular crossings upon pedestrian safety on the footpaths, in particular in relation to River Street.

In response a report was prepared by a traffic engineer (Newton Denny Chapelle, dated February 2008) which indicated that the access points were designed in accordance with AS2890.1 Figure 3.3 which specified minimum sight lines for pedestrian safety. It was also noted in the report that on-street power poles would need to be located. It is appropriate that conditions of consent require the relocation of the poles at the cost of the proponent and the design of the entry/exit driveways in accordance with AS2890.1 (2004) Parking Facilities Part 1 – Off Street Car Parking Figure 3.3.

### **6.8 Garbage Removal**

Council raised concerns as to how garbage would be removed from the site. The amended modification plans provide a residential garbage storage area next to the loading area at ground level and subject to the placement of garbage in this area being managed this is appropriate. The hotel garbage store is located adjacent to the ground level loading area and this is acceptable. Garbage for the retail uses is also to use the residential garbage storage area but is to be collected on different days. A condition to this effect is recommended (see new conditions F12 and F13).

### **6.9 Other Modifications Sought**

The amendments to the description, plans, corrections to erroneous wording in conditions and s94 contributions are supported. The changes to the references from "full road width" to "road widening for the full width" are supported, given Council's indication that this was the intent of the conditions.

The deletion of conditions requiring amendments to the plans is acceptable, where the amendments have been satisfactorily provided (ie. in relation to the setbacks of Building B, the change in balustrade material, the provision of the set-down/pick-up area and the provision of the onsite loading areas).

Finally, the change in reference to the protection of street trees, to those not affected by the proposed vehicle crossings is also supported.

No other concerns over the proposed modifications were raised by the Department or Ballina Shire Council.

### **6.9 Assessment Against Planning Controls**

The modifications sought have been assessed against the relevant planning controls and are considered to be consistent with the original assessment of the project.

It is therefore recommended that the proposed modifications be approved subject to conditions.

## **7 MODIFICATIONS TO CONDITIONS OF APPROVAL**

The Department recommends that conditions of approval apply to the proposed modifications. These are included at Tag "B".

## **8 PROPONENT'S COMMENTS ON CONDITIONS**

The proponent was sent a copy of the proposed draft conditions of approval of the modification on 4 June 2008 and responded on 7 June 2008 indicating that they concur with the wording of the conditions.

## **9 CONCLUSION**

The proposed modifications appear to be minor in detail and result in little or no amendments to the overall scale and appearance of the building as approved, other than the changes that relate to conditions of consent.

The modifications to the approval sought do not affect the previous assessment against the environmental planning instruments and other planning documents and policies, other than as assessed in this report. As such the documents and policies have not been specifically commented on in this report.

It is considered that the proposal, as modified, still achieves the same objectives as assessed for the originally approved development under Major Project 05\_0050 and does not alter the overall nature, need or justification of the approved project.

## **10 RECOMMENDATION**

It is recommended that the Minister for Planning, under Section 75W of the Act, approve the modifications as detailed in Section 5 of this Report and vary the conditions of approval as set out in the attachment "A". A full version of the approval (as modified) is in attachment "B".



**Appendix A – Request for Modification to  
Major Project 05\_0009 for project  
description**