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Planning and Development Consultants

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24 October 2014
Ref: 140481.1L

Department of Planning & Environment
23-33 Bridge Street
Sydney NSW 2000

Attention: Ms Kate Macdonald

Dear Madam,

Re: Modification to Major Project Application 05_0010 – Tathra Motel, 8-12 Bega Street, Tathra

We have been retained by Mr Barrie Frost of Tathra Hotel Pty Ltd to seek to modify the above approval to extend the date upon which the consent would expire until 1 October 2016 in accordance with Schedule 6A Transitional arrangements – repeal of Part 3A of the Environmental Planning and Assessment Act, 1979.

The modification sought is to condition A6 which states as follows.

A6 Lapsing of Approval

The project approval will lapse 5 years after the approval date in Part A of Schedule 1 of this approval unless specified actions has (sic) been undertaken in accordance with Section 75Y of the Act.

There is confusion regarding the date of commencement of the approval. We attach a copy of the letter and Project Approval Notice for your information. The letter states the Project Approval operates from the date of the letter which is 18 December 2009. The Project Approval Notice is however dated 23 November 2009. The reason we raise this is to ensure that the matter is dealt before 23 November 2014 so that the extension can be granted if there is an issue with the validity of the letter which is dated 18 December 2009.

The reason for the extension of the lapsing period is that the project has been unable to commence due to commercial arrangements which our client entered into which have not been honoured. A detailed summary is provided below with respect to our client's difficult circumstances.

Approval of this project was notified by letter from Alan Bright, A/Director, Regional Projects, dated 18 December, 2009, received by our client on 22 December, 2009.

During 2010 our client commenced enquiries to have documentation prepared to meet the conditions of the planning approval to enable the issue of a construction certificate with the expectation of submitting the project to tender and perhaps commencement of construction during 2011 or at the latest 2012.

However, during 2010 our client was approached by one Robert Osborne with a very good offer to purchase their house, hotel, and motel with the DA for \$4,750,000.

Because the offer was a very good one our client decided to sell to Osborne, the company was PS Holdings, in October, 2010. The contract entered into on the 7 December, 2010 was on a put & call basis with a lease in conjunction. One of the conditions of the contract was that the purchaser proceed with the development of the site.

During the terms of the contract, PS Holdings Pty. Ltd, was experiencing some financial problems in another area and our client allowed the transfer of the site to be continued by another Osborne company, Tathra Coast Developments Pty. Ltd and Tathra Coast Hotel Pty Ltd, the Lessee, under similar conditions to the original contract. This put & call option was signed on 12 December, 2013.

The purchaser called the option to purchase and signed the contract on 25 February, 2014 to settle within 42 days of that date. The settlement did not occur and by deed of agreement on two occasions our client extended the date of settlement, firstly to 26 May, 2014 then 12 September, 2014. When the purchaser did not settle on 12 September, 2014 our client terminated the contract and took possession of the property.

Our client's first concern was to rectify damage to the property, replace missing inventory items, endeavour to resurrect the business and to extend the expiry date for the motel development. When our client approached the original Structural Engineer, Will Van Lewin and our Architect David Hilliard to prepare documentation to enable the issue of a construction certificate both had retired. As a result our client has been in discussion with alternate consultants.

During the rather lengthy legal process described above our client granted extension of the settlement period based on fraudulent information provided by Osborne and staff. Our client had the purchaser provide a guarantee of \$1,500,000 Osborne personally together with his companies and especially Patonga Beach Holdings Pty Ltd, the majority owner of the Patonga Beach Hotel. This hotel sold for \$8,300,000, however, our client received none of our guaranteed \$1,500,000 because of the devious method the loan on Patonga was structured as was the sale price of the two components of the contract.

Now that our client has been returned to control of the hotel-motel it is their desire to improve the investment and the amenities of Tathra with the provision of the approved motel, however, they need time to reorganise and refinance as their expenditure on rectification will be approximately \$250,000 and replacement of missing inventory items \$100,000.

Over \$100,000 is owing in rent and reimbursements. Further because of the depleted business they have inherited the value of the business has been reduced by approximately

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\$2,000,000. Because of this situation they cannot proceed with construction of the motel at this stage.

Should you require any further information or need to discuss any aspect of the matter, please do not hesitate to contact us. We look forward to your assistance in having this modification granted based on the above.

Yours faithfully,
DESIGN COLLABORATIVE PTY LTD

A handwritten signature in dark ink, appearing to be 'J Lidis', written over a horizontal line.

J Lidis
Director

