

Minutes for this meeting will be confirmed at the Planning, Environment & Development Committee Meeting to be held in the Council Chambers, Council Administration Building, on 17 March 2005 commencing 5pm.



COFFS HARBOUR CITY COUNCIL
ORDINARY MEETING
(CITY BUSINESS UNITS COMMITTEE)
COUNCIL CHAMBERS
COUNCIL ADMINISTRATION BUILDING
COFF AND CASTLE STREETS, COFFS HARBOUR
3 MARCH 2005
Commencing at 5.00pm

Contents

ITEM	DESCRIPTION	PAGE
CITY BUSINESS UNITS DEPARTMENT REPORTS		
B5	COFFS HARBOUR COMMUNITY VILLAGE GRANT	1
PLANNING & ENVIRONMENT DEPARTMENT REPORTS		
PED3	DEPARTMENT OF INFRASTRUCTURE PLANNING & NATURAL RESOURCES - DRAFT MASTER PLAN - PACIFIC BAY RESORT - CONSERVATION MANAGEMENT WORKS, TOURIST RESIDENTIAL, RECREATIONAL FACILITIES & SUBDIVISION, LOT 4, DP1052296, PACIFIC HIGHWAY, COFFS HARBOUR	4
PED4	SECTION 96(2) - APPLICATION TO MODIFY DEVELOPMENT CONSENT 68/85 - LOT 4, DP1052296, STAGE 1 OF PACIFIC BAY RESORT	11



COFFS HARBOUR CITY COUNCIL
ORDINARY MEETING
(CITY BUSINESS UNITS COMMITTEE)
3 MARCH 2005

Mayor and Councillors

CITY BUSINESS UNITS DEPARTMENT REPORTS

B5 COFFS HARBOUR COMMUNITY VILLAGE GRANT

Purpose:

Seeking authority to execute a Home and Community Care Service Non-Recurrent funding Grant for the Coffs Harbour Community Village under the Common Seal of Council.

Description of Item:

Council is in receipt of formal advice from the Department of Ageing, Disability and Homecare Service that the Minister has approved additional non-recurrent funding, in respect of the Coffs Harbour Community village, under the Home and Community Care (HACC) Program. The amount of the subject grant is \$50,000.

The grant of this funding is the result of an application made by the Department of Ageing Disability and Home Care's local Support & Development Officer at the time.

The application was made in line with requests being made by the various tenants at the Village for additional funds to be spent on making sure the existing buildings were upgraded to meet current OH&S requirements/standards, as well as assist in areas of maintenance and repair of buildings.

In order to secure release of the funds from the Department, Council is required to sign, under the Common Seal, the formal Acceptance of Funding Variation forms associated with the grant.

Sustainability Assessment:

- **Environment**

There are no environmental issues related to this item.

cont'd

B5 Coffs Harbour Community Village Grant (cont'd)

- **Social**

This grant will provide additional funds for the Coffs Harbour Community Village for expenditure on maintenance and OH&S improvement items. This will result in an improved facility for clients and tenants of the village as well as the community generally. The grant will also generate additional employment opportunity for businesses contracted to undertake any of the required works.

- **Economic**

Broader Economic Implications

As indicated, the grant funds will be expended on works requiring local labour and input. As such it will provide benefit to the local community.

Management Plan Implications

As the grant funding does not require any financial commitment from Council there will be no adverse impact on Council's Management Plan.

Consultation:

Consultation has occurred with the various tenants at the Coffs Harbour Community Village. Expenditure of the funds will only be carried out in consultation and liaison with the Village's Tenant Committee.

Issues:

The \$50,000 grant funding being provided by the Department of Ageing, Disability and Home Care, through its HACC Service Re-Development Non-Recurrent Funding program will assist the Community Village in ensuring it is able to meet current OH&S standards for both the tenants and the clients of the various service providers operating from the facility.

This will greatly assist Council in being able to provide a safe working and user environment within the Village, without having to find funding from within Council's own Management Plan. As indicated previously, this grant does not require any fund matching by Council and therefore it will not adversely impact on the Management Plan.

The grant funding will enable improvement works to be carried out at the Village, as well as allow maintenance work with OH&S implications to be completed, thus saving Council the need to provide additional funding to address such issues at some time in the future.

Implementation Date / Priority:

The documentation will be executed and returned to the Department immediately following Council's approval.

cont'd

B5 Coffs Harbour Community Village Grant (cont'd)

Recommendation:

That the documentation associated with the Department of Ageing, Disability and Home Care \$50,000 grant through its HACC Service Re-Development Non-Recurrent Funding for Coffs Harbour Community Village be executed under the Common Seal of Council.

PC Littler
Director City Business Units

PLANNING ENVIRONMENT & DEVELOPMENT DEPARTMENT REPORTS

PED3 DEPARTMENT OF INFRASTRUCTURE PLANNING & NATURAL RESOURCES - DRAFT MASTER PLAN - PACIFIC BAY RESORT - CONSERVATION MANAGEMENT WORKS, TOURIST RESIDENTIAL, RECREATIONAL FACILITIES & SUBDIVISION, LOT 4, DP1052296, PACIFIC HIGHWAY, COFFS HARBOUR

Purpose:

This report recommends that Council give conditional support to the Draft Master Plan for conservation management works, the development of tourist residential and recreational facilities and strata subdivision at the Pacific Bay Resort.

A copy of the Draft Master Plan is available in the Councillors' room.

Process:

State Environmental Planning Policy No. 71 – Coastal Protection – requires that a consent authority must not grant consent for certain types of land subdivision unless the Minister has adopted a master plan for land to which the development applies. The subject proposal requires the preparation of a master plan. The draft master plan has been publicly notified and advertised by the Department of Infrastructure, Planning and Natural Resources (DIPNR).

The Site and Existing Development:

The site is bounded by Bay Drive to the south, the rear of properties facing Breakers Way to the north, the Pacific Highway to the west and the Coffs Coast Regional Park at Charlesworth Bay to the east. The site has an area of approximately 35 hectares.

The site comprises the substantial Pacific Bay Resort, including conference facilities, restaurants and bars, reception area, tennis courts, swimming pools, golf course and extensive landscape areas and water features. The site also contains tourist residential accommodation in buildings having a height of up to eight storeys. These buildings include 83 studios, 83 x 1 bedroom units, 5 x 2 bedroom units and 17 x 3 bedroom units. These units are strata titled and are available for holiday letting; however nine of these units are permanently occupied.

Development consent exists for an additional two tourist residential apartment blocks, to be developed generally north of the existing tower blocks. This consent allows for 85 units in these unbuilt blocks. The developer proposes modification of the 1985 development consent for these two blocks. This component of the development is subject to separate report and consideration by Council.

Description of Item:

The draft master plan (DMP) document includes a comprehensive site analysis that considers topography and orientation, soils and land capability, acid sulfate soils, contaminants, flooding, flora and fauna assessment, bushfire, heritage/archaeology, services and hydraulics, acoustics, access and parking, landscape and streetscape character of the site and visual analysis.

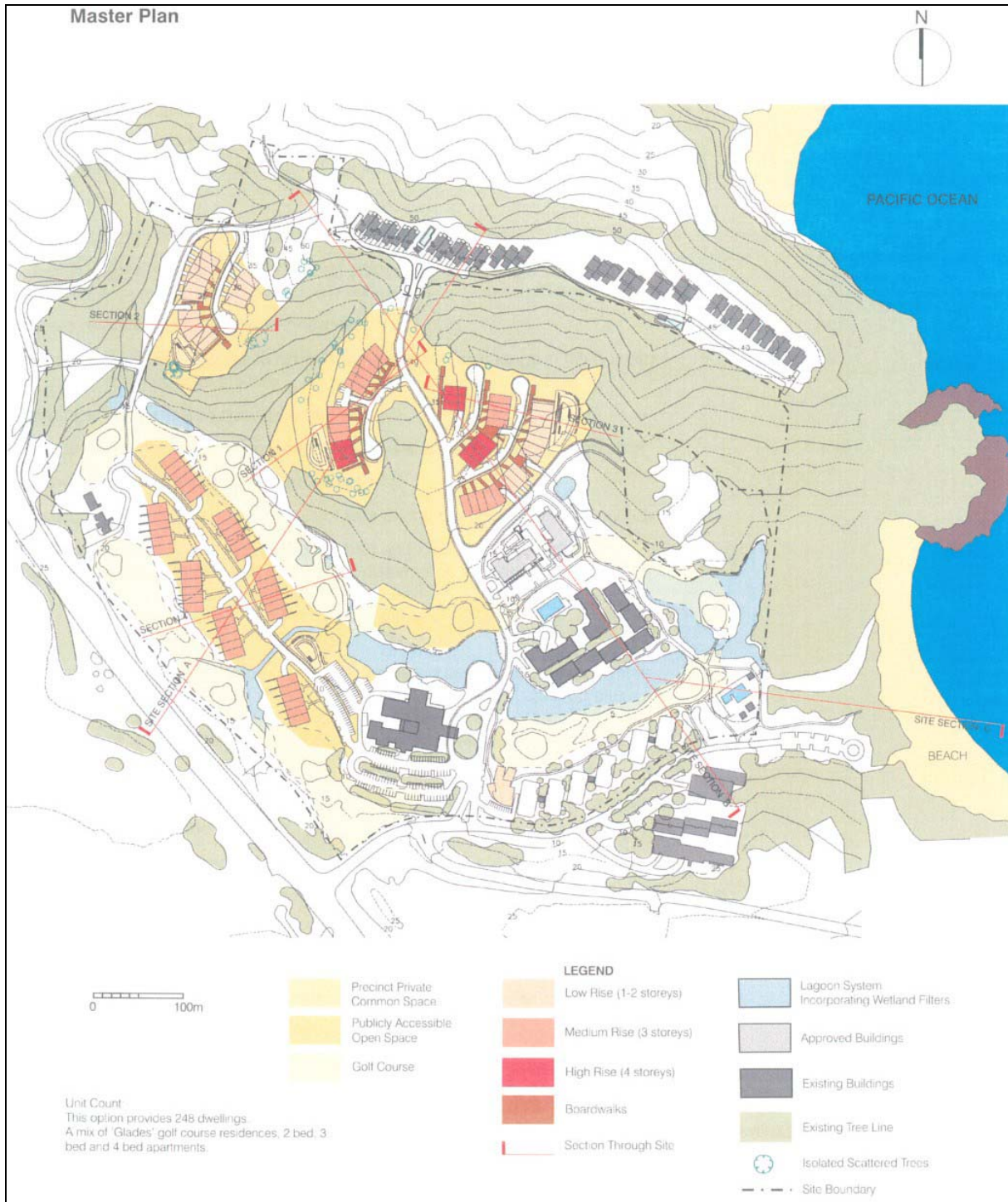
The DMP addresses coastal issues, locality character, surrounding land uses, social and economic issues, traffic and public transport including pedestrian and bicycle transport facilities.

cont'd

Ped3 Department Of Infrastructure Planning & Natural Resources - Draft Master Plan - Pacific Bay Resort - Conservation Management Works, Tourist Residential, Recreational Facilities & Subdivision, Lot 4, Dp1052296, Pacific Highway, Coffs Harbour (cont'd)

Further, the DMP has considered planning controls and policies, both statutory and non-statutory to evolve the proposal.

The above comprehensive analysis of site opportunities, constraints and controls has been utilized to define the development concept (i.e. the Master Plan).



cont'd

Ped3 Department Of Infrastructure Planning & Natural Resources - Draft Master Plan - Pacific Bay Resort - Conservation Management Works, Tourist Residential, Recreational Facilities & Subdivision, Lot 4, Dp1052296, Pacific Highway, Coffs Harbour (cont'd)

The DMP provides for the conservation of existing vegetation on the site and the enhancement of certain areas.

It provides for the development of four new residential areas and the completion of the existing approved development on the site (the two northern tower blocks subject to separate application (and separate report to Council)) under the provisions of Section 96(2) of the Environmental Planning and Assessment Act 1979. It also proposes the development of a restaurant and general store at the entry to the site off Bay Drive.

The new residential areas will be around the golf course adjacent to the Highway, and in three Hillside locations to the north of the existing resort development.

There will be a total of 248 new dwellings under the DMP in buildings up to three storeys with four buildings in the Hillside area up to four storeys.

The dwellings are confined to the Residential Tourist 2E zoned land. Access and services to the residential buildings will cross the Open Space 6C Private Recreation zone. The restaurant and general store will be located in the 6C zone.

In terms of architectural character the DMP describes the design concept as *“linking into the resort and the greater surrounds”* and *“residences with a lushly vegetated landscape”*. Each of the four precincts will have a distinct character. New dwellings will be a mix of two storey townhouses and 3-4 storey apartments. The dwellings *“will have an open feel with wide outdoor rooms and balconies.... The buildings will generally have pitched roofs to fit into the landscape and minimise bulk”*.

The development has been designed on an organic branching road structure, creating quiet cul-de-sacs, terminating in bushland. Communal pool and amenity facilities are proposed for each cluster of dwellings.

Proposed dwelling rooflines will remain below existing tree lines. The golf course contains blocks of three storey apartments with semi-basement car parking. The hillside sites contain a mix of two storey townhouses closest to the existing bushland and 3-4 storey apartments along the existing north-south road with semi-basement car parking.

The dwellings are proposed to be strata subdivided.

The development will be staged.

Sustainability Assessment:

- **Environment**

The project has been designed sensitively and will complement the existing resort, infrastructure and the natural environment. The development preserves existing vegetation and it is proposed to enhance this important attribute of the site. The proposal incorporates water sensitive urban design principles, provides for bushfire protection and energy conservation measures.

cont'd

Ped3 Department Of Infrastructure Planning & Natural Resources - Draft Master Plan - Pacific Bay Resort - Conservation Management Works, Tourist Residential, Recreational Facilities & Subdivision, Lot 4, Dp1052296, Pacific Highway, Coffs Harbour (cont'd)

- **Social**

The development is unlikely to result in significant adverse social impacts. The proposed general store on Bay Drive is a sensible inclusion for this development and will service the broader residential locality. The development will incorporate bicycle track networks and will link the regional network (to be constructed), provide walkways, formalised beach access and will facilitate public transport (bus access) to the site. The site is in close proximity to shopping and business services in the City Centre. The developer has consulted with the local community as part of the DMP preparation.

- **Economic**

The development will result in positive economic outcomes from construction and on-going operation of this significant and substantial project. The development efficiently utilizes existing on-site infrastructure (services, access, roads, stormwater systems).

Consultation:

Council's City Parks, City Services and Environmental Services Sections have reviewed the DMP.

There is no requirement for Council to liaise with external agencies on State Environmental Planning Policy (SEPP) No. 71 Draft Master Plans, nor is there a requirement for Council to consult with the community on these proposals. This is undertaken by DIPNR.

It is relevant to confirm that extensive consultation between the developer and his consultants with Council's professional staff occurred in the formative stages of the DMP and that this process has facilitated a site responsive and environmentally sensitive proposal.

Statutory Requirements:

Responsibility for the statutory assessment of the application lies with DIPNR. Matters for consideration under relevant planning instruments including the NSW Coastal Policy and SEPP No. 71 – Coastal Protection will be evaluated by DIPNR.

The site is zoned 2E Residential Tourist, 6C Open Space Private Recreation, 7A Environmental Protection Habitat and Catchment and 7B Environmental Protection Scenic Buffer. The proposed development (multi-unit housing, subdivision, restaurant and general store) is permissible with consent in the respective zones.

Issues:

- **Compliance with Residential Tourist Lands Development Control Plan (DCP):**

- **Density:**

The site area for dwelling density calculation is nominated as that area of the existing 2E zoned area minus the site of the existing and approved development. This site area is 99,337m² which with 248 dwellings provides a conforming density of one dwelling per 400m² of site area. This calculation arrangement for density is supported.

cont'd

Ped3 Department Of Infrastructure Planning & Natural Resources - Draft Master Plan - Pacific Bay Resort - Conservation Management Works, Tourist Residential, Recreational Facilities & Subdivision, Lot 4, Dp1052296, Pacific Highway, Coffs Harbour (cont'd)

- Setbacks:

The proposal satisfies the setback requirements of this plan.

- Height:

The DCP limits the height of development in the Charlesworth Bay precinct to 7.5m (measured to eave). The proposal exceeds this control (the development proposes three and four storey buildings). This height variation to the DCP is considered acceptable having regard to visual impact, building design, building site placement, precinct locations and retention of conservation areas that are located within the 2E zone.

- Other DCP Controls:

The DMP satisfies other relevant DCP provisions for the Korora and Diggers Beach precinct including Character Statement and Building Design.

• Restaurant and General Store:

A restaurant and general store (also described in the DMP as a café/shop) is proposed to be developed at the entry to the resort on Bay Drive (east side). 20 car parking spaces are proposed to be positioned adjacent to this building. Only concept plans of this building's footprint accompany the DMP. Issues including building design, accessibility, adequate car parking, hours of operation and Coffs Harbour City LEP 2000 restrictions of limiting the general store floor area to 50m² are relevant to this component of the DMP.

• Traffic, Transport, Pedestrian & Bicycle:

Traffic studies that accompany the DMP confirm that the existing Highway T -intersection with Bay Drive and the resort T-intersection with Bay Drive will perform satisfactorily following development. A Construction Traffic Management Plan should form part of any consent issued for the project.

The proposal should provide for bus access and internal circulation, bicycle routes and construction of a portion of the Regional Bikeway to the frontage of the site. Footpath connections to existing footpaths at Korora and Diggers beach are also considered important infrastructure requirements for the development, together with improvements to the Coastal Walk in the area of the Resort.

• Vegetation and Dunal Management:

A vegetation management plan should be prepared for the sensitive environmental areas of the site. A dunal management plan should be prepared for that area of the Coffs Coast Regional Park (Charlesworth Bay beach front) to address the additional formal beach access, environmental weed control and other dunal management issues.

• Waste Management:

Future development application(s) for the development should be accompanied by a comprehensive waste management plan to minimise waste to landfill and maximize recycling/composting. Internal road systems need to be designed and constructed to cater for waste servicing vehicles.

cont'd

Ped3 Department Of Infrastructure Planning & Natural Resources - Draft Master Plan - Pacific Bay Resort - Conservation Management Works, Tourist Residential, Recreational Facilities & Subdivision, Lot 4, Dp1052296, Pacific Highway, Coffs Harbour (cont'd)

- **Public Access to Cycleways and Conservation Areas:**

The DMP provides that *“conservation areas will be accessible to the public within the management requirements of the area.....”* Further, part of the future Regional Bikeway is proposed to be constructed on the Resort site. The developer should liaise with Council to determine legality of public access arrangements to these proposed public access areas.

- **Use:**

The DMP provides that the new development will be able to be purchased, and used by tourists to the area. It also states that the overall development will increase the permanent residential population on the site *“to enable there to be a balance between the existing resort development and the future residential development”*. The proposal should address the potential for minimising conflict between permanent residents and tourists. This may be via controls under the proposed strata subdivision (e.g. restricting certain buildings and/or precincts to tourism use).

Management Plan Implications:

Nil

Summary:

The DMP provides for the completion of development on this site. The proposal is to develop dwellings primarily to be used for permanent accommodation. A restaurant and general store is proposed at the entry to the site. This facility will provide local service needs to the locality (in addition to servicing the resort site).

The DMP has included a comprehensive consultation process, site analysis and evaluation of development of options. It has resulted in a plan that locates future development in an environmentally responsive manner that is compatible with existing resort infrastructure and development.

It is recommended that Council support the DMP in principle and request that the Minister take into account the “issues” section of this report in the determination of the Master Plan.

cont'd

Ped3 Department Of Infrastructure Planning & Natural Resources - Draft Master Plan - Pacific Bay Resort - Conservation Management Works, Tourist Residential, Recreational Facilities & Subdivision, Lot 4, Dp1052296, Pacific Highway, Coffs Harbour (cont'd)

Recommendation:

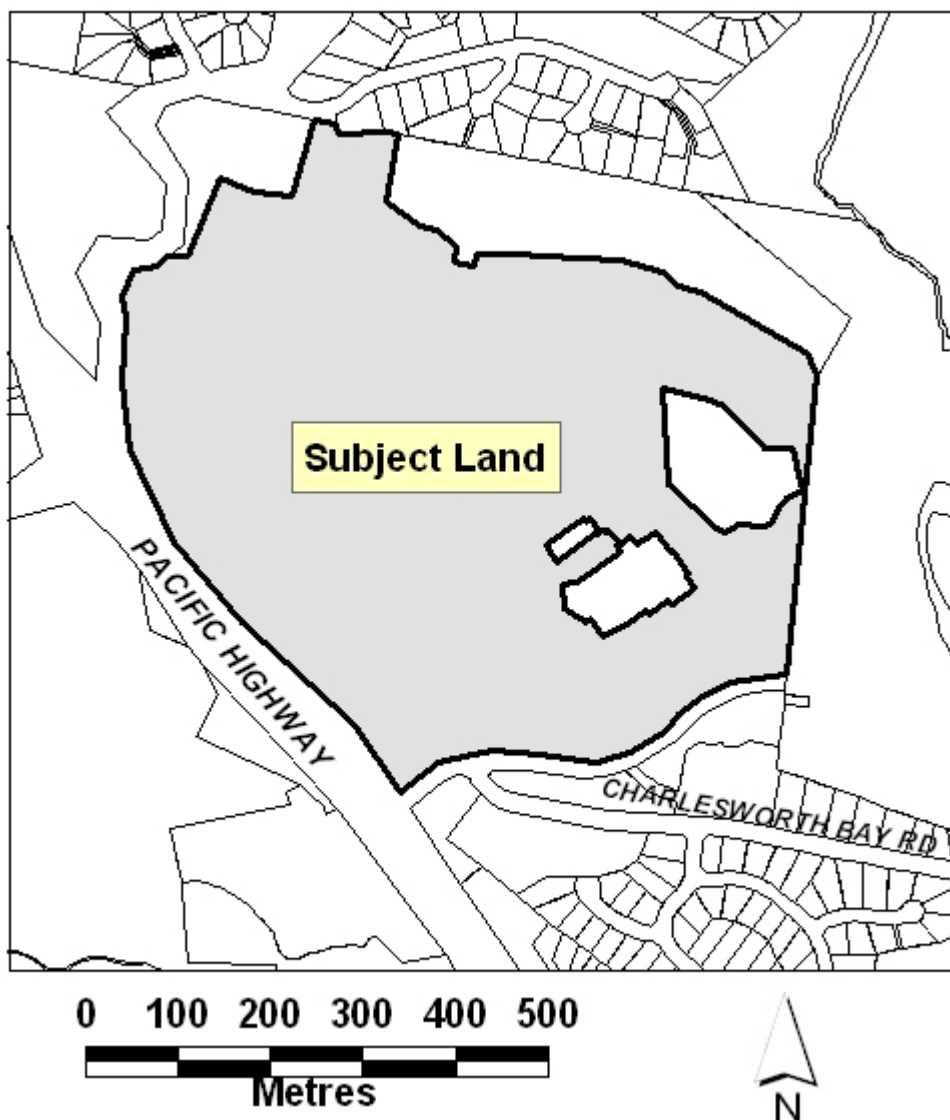
That the Department of Infrastructure, Planning and Natural Resources be advised that Council supports the Draft Master Plan for Lot 4, DP1052296, Pacific Highway, Coffs Harbour, Pacific Bay Resort for conservation management works, tourist residential development, recreational facilities and subdivision subject to the master plan adequately addressing those matters raised in the “issues” section of the report comprising:

- (a) Compliance with the relevant provisions of the Residential Tourist Lands Development Control Plan (concession acknowledged in relation to the height of buildings).**
- (b) Restaurant and general store development.**
- (c) Traffic, transport, pedestrian and bicycle facilities.**
- (d) Vegetation and Dunal Management.**
- (e) Waste Management.**
- (f) Public access to cycleways and conservation areas.**
- (g) Use.**

PED4 SECTION 96(2) - APPLICATION TO MODIFY DEVELOPMENT CONSENT 68/85 - LOT 4, DP1052296, STAGE 1 OF PACIFIC BAY RESORT

Purpose:

The purpose of this report is to advise Council on an application under Section 96(2) of the Environmental Planning and Assessment Act to modify Development Consent 68/85 issued on 4 March 1985 for Stage 1 of the Pacific Bay Resort Complex. The site is located at Resort Drive, Korora and is also subject to a Master Planning Proposal currently under consideration through a separate assessment process. This report supports the proposed modification and recommends approval of the application subject to upgraded and additional conditions.



cont'd

Ped4 Section 96(2) - Application To Modify Development Consent 68/85 - Lot 4, Dp1052296, Stage 1 Of Pacific Bay Resort (cont'd)

Description of Item:

▪ **The Existing Approval**

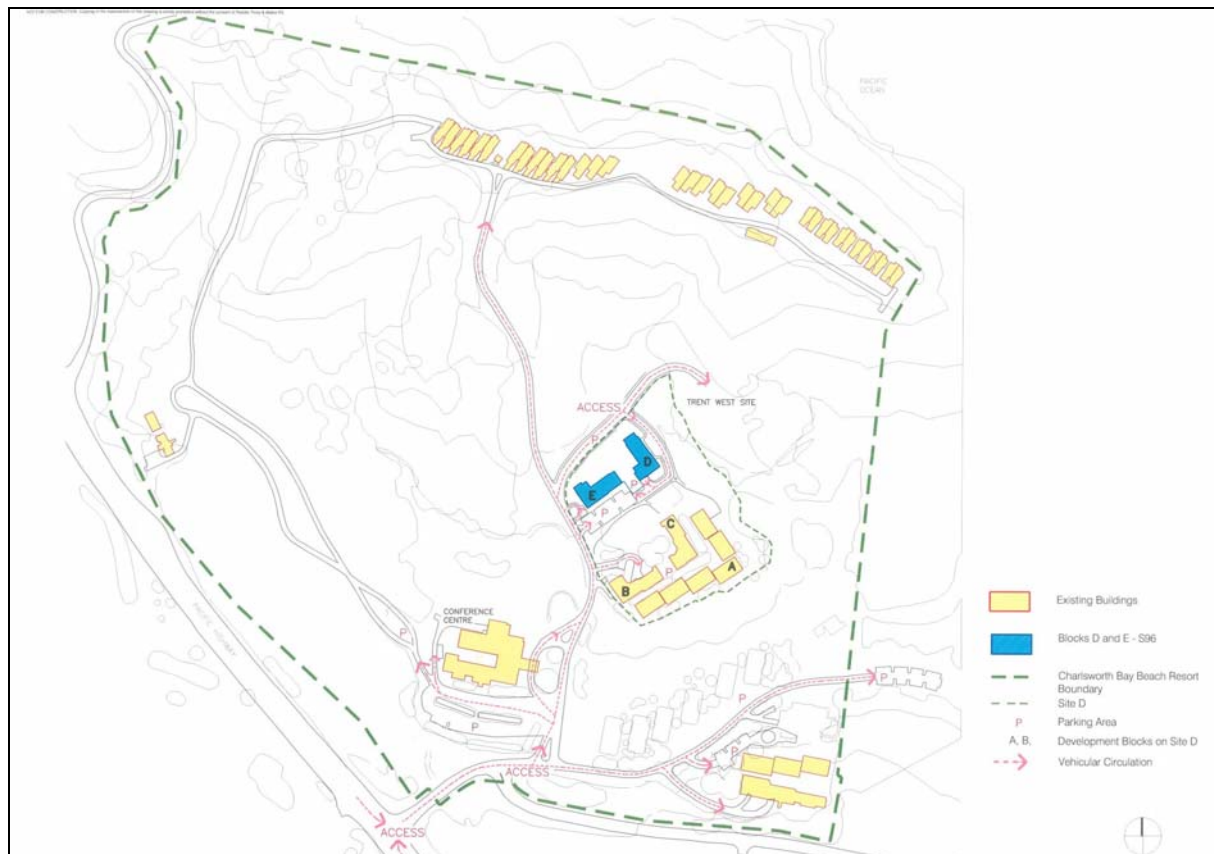
On 4 March 1985, Council issued Consent No. 68/85 in relation to Development Application 478/84 relating to Stage 1 of an overall master plan for the Pacific Bay Resort Complex.

Consent 68/85 approved of Stage 1 of the Pacific Bay tourist development. Stage 1 of the development involved a village centre, beach club, 231 residential units, nine hole golf course, sports and activities complex. The lack of information relating to the original approval suggests that Development Consent 68/85 would be at best considered to be an approval based on a conceptual layout of these facilities.

Following the approval of the development application, two separate modifications were made to the approved plans in 1985 and 1989, including the re-positioning of most of the buildings on the site as well as the relocation of the internal road system. Building approval was issued on 25 January 1988, however the approved building plans have not been able to be located.

Much information regarding the original Development Application (DA) as well as Building Application (BA) approvals on this site was either damaged or lost during the flood of 1996.

To date, 146 units, the associated facilities and a golf course have been constructed. The applicant has stated that of the original application which related to 15.14 ha of land, approximately 2.77 ha remains undeveloped.



cont'd

Ped4 Section 96(2) - Application To Modify Development Consent 68/85 - Lot 4, Dp1052296, Stage 1 Of Pacific Bay Resort (cont'd)

▪ **The Section 96(2) Application**

This application proposes a further amendment to Consent No. 68/85 to amend the layout of buildings D and E which are the two unbuilt nine storey residential unit buildings associated with Stage 1 of the resort complex.

The proposed changes relate only to the design of, and access to buildings D and E. The approved land use remains the same (in the case of buildings D and E, the consent includes the land use as being a residential flat building).

The proposed changes to buildings D and E are as follows:

- Floor to floor levels increased from 2.6m to 2.95m.
- The number of floors in each building reduced by 1 as a result of the change in the floor-to-floor levels.
- The location and footprint of the two buildings has been altered from the originally approved location.
- The number of units has been reduced from 90 to 60, whereby the number of bedrooms has dropped from 170 to 165.
- The gross floor area of the buildings has been reduced by 25 sqm to 11475 sqm.
- Car parking provided over one basement level under block D to replace car parking formerly in a common parking area under blocks A, B, C and D.
- The addition of 31 car parking spaces.
- Location of car and driveway access to basement car parking has changed.
- Location of pedestrian access to each building has changed.
- Changes to ground floor levels.
- Internal planning and layout changes.
- Changes to the elevations of the buildings.
- Pitched roofs re-designed.

The applicant states that the changes to the development have been brought about because of the following considerations:

- The need to provide adequate floor to ceiling heights in units to comply with current occupant expectations.
- The need to implement the principles of ESD such as through ventilation and sun access to units and open space areas.
- The need to update the appearance of the buildings.
- The need to provide adequate and accessible car parking for the units and to comply with Council's current Car Parking Development Control Plan (DCP).
- The need to provide units of a size and layout currently considered acceptable in this type of development.
- The need to ensure that the development and the units are accessible.

Legal Considerations for Assessment of the Section 96(2) Application

The Section 96 proposal was referred to MBT Lawyers requesting legal advice on the procedure relating to the assessment of the application including:

cont'd

Ped4 Section 96(2) - Application To Modify Development Consent 68/85 - Lot 4, Dp1052296, Stage 1 Of Pacific Bay Resort (cont'd)

1. Appropriate legislative requirements and/or considerations, including legislation relevant to the assessment of this application, relevant State Environmental Planning Policies etc.
2. Appropriate advertising and notification requirements for this Section 96 application.
3. External agencies required to be consulted in a concurrence/advice role.

Responses to these questions indicated:

1. The determination of the present application will not involve the issue of a new consent. It will amount to a change in the 1985 consent and the law relevantly applicable in 1985 is the relevant law to be considered. The local Planning Instrument that was in force at the time of the determination of the Development Application in 1985 was Coffs Harbour Shire Council Interim Development Order No. 80 as amended (IDO 80). Therefore the only environmental planning instrument that falls for consideration under Section 79C(1)(a) is IDO 80. None of State Environmental Planning Policies (SEPP) 55, 65 and 71 or North Coast Regional Environmental Plan fall for consideration under Section 79C(1)(a) as none of them apply to this modification application. That does not mean that they are irrelevant. They are matters of "public interest" and fall for consideration under Section 79C(1)(e), and therefore have been considered in the overall assessment of the application.
2. Council was not required to advertise this development by Clause 10(1) of IDO 80. Council adopted a Residential Flat Code on 26 June 1973. The Code was amended on 6 May 1982 and remained in force when the subject Development Application was determined. There is nothing in the Code which would require the Development Application to be notified. Council's DCP regarding notification also does not specifically require a modification application to be notified. Council has however advertised and notified this application to modify due to the significant public interest the project is likely to create. One submission has been received.
3. Given the above, no external referral agencies are specifically relevant to this application.

Is the Proposal Substantially the Same Development?

With regard to an application lodged under Section 96(2) of The Act, the consent authority (Council) must be satisfied that the development as amended must be *substantially the same development* as that approved in the original application. Furthermore, a modification must be assessed against the original approval rather than any subsequently approved modifications.

In order to determine whether the current proposal is *substantially the same development*, Council needs to consider the following:

- *Has the position of the buildings on the site changed significantly since the original consent was granted?*

Assessing officer response – since Development Consent was granted on 4 March 1985 the position of buildings D and E has changed on two separate occasions. This latest application must be assessed against the originally approved location of the buildings. Given the overall size and topography of the site, the proposed change to the location of the buildings is considered to be relatively minor. The subject buildings continue to provide the northern termination of Stage 1 of the development, with their orientation with respect to surrounding buildings to be similar to that originally approved. The highest point of both the buildings continues to fall below the ridgelines of the surrounding landscape.

cont'd

Ped4 Section 96(2) - Application To Modify Development Consent 68/85 - Lot 4, Dp1052296, Stage 1 Of Pacific Bay Resort (cont'd)

- *Is the proposed building envelope significantly different from that originally approved?*

Assessing officer response – the proposed building envelopes are similar in scale to those originally approved. While the height is slightly lessened due to the reduction of one floor from each building, the overall building bulk remains similar. Again when compared to the overall development, the changes are considered to be minor.

- *Have the elevations of the building changed significantly?*

Assessing officer response – Changes have been made to the external appearance of the building when compared to the original approved conceptual building design. The applicant states that *“the strong horizontal line (of the building design) has been maintained. Further the proportions of masonry to glass are similar to that in the approved application.”*

While these observations are not disputed, other aspects such as the removal of the pitched roofs do somewhat change the appearance of the buildings. However again when considered in context to the overall development, this is considered to be a relatively minor change.

The applicant states that the elevational principles used in the proposed design are consistent with those of the existing building, most notably in the following areas:

- *“A pattern of inset shaded balconies,*
- *A pattern of horizontal spandrels,*
- *A principle pattern of vertical forms set against horizontal elements,*
- *A secondary pattern of vertical glazing bands,*
- *A consistency in the balance of masonry and glass elements,*
- *A consistency in the material palette, and in*
- *The use of light colours.*

Additional elevational treatments and a palette of finely detailed and highly textured materials such as louvered panels, natural materials, glass balustrades, steel handrails etc, have been introduced to break up the mass of the new building and to visually reduce their bulk. This also aids in creating a link between the existing buildings and the lower scaled, more refined future buildings on the remainder of the site. The louvered elements are introduced as a response to the orientation, producing a building better suited to its climate.”

The changes to the design of the *“originally approved but not yet constructed”* buildings D and E do not alter the fact that the overall proposal is considered to be *substantially the same development*. With regard to compatibility with the existing buildings, the above points made by the applicant are not disputed and the existing and yet to be constructed buildings could exist in harmony together.

- *Is the land use the same as that approved?*

Assessing officer response – Perusal of the original development application file reveals that the residential aspects of the resort complex were described in various ways. However the Planning Report to Council dated 28 February 1985 references *“residential flat buildings”*. Further, the consent states that the nature of the development is *“tourist development 231 residential units”*. These facts imply that the development at the time was approved as a residential flat building.

cont'd

Ped4 Section 96(2) - Application To Modify Development Consent 68/85 - Lot 4, Dp1052296, Stage 1 Of Pacific Bay Resort (cont'd)

The current application to modify proposes no changes to this aspect of the development.

▪ *Is the change in the number of dwellings significant?*

Assessing officer response – While the number of dwellings approved originally was 85 (45 in building D and 40 in building E) dwellings, it is now proposed to reduce the number of dwellings to 60. However, while the number of units has been reduced the number of bedrooms has reduced from 170 to 165. This represents a relatively small change to the number of persons inhabiting the building, and therefore traffic movements generated by the development. Therefore the change in the number of dwellings is not considered significant.

▪ *Is the change in the car parking arrangement significant?*

Assessing officer response – This proposal includes an additional 31 car parking spaces on top of what was originally approved in 1985, with a total of 106 car parking spaces to serve 60 units. Whilst this is in closer conformity to DCP requirements than that originally approved, it still includes a shortfall of 14 spaces. As Council's City Services Department have stated – due to the distance, overflow car parking onto Council's street system is unlikely. There is also the existence of an open-air car park located between the existing buildings and those proposed in this application. Given that the originally approved proposal included a much greater car-parking shortfall, this revised proposal is considered acceptable.

Verbal discussions and advice from representatives of MBT concur with the applicant's view that the changes proposed in the current application do constitute a modification to the original approval under Section 96 of The Act, in that the proposal is substantially the same development. It is considered that this is the appropriate view for Council to take.

Public Notification and Advertising

As mentioned above, Council was not technically required to advertise or notify this development. Council has however advertised and notified this application to modify due to the significant public interest the project is likely to create. While interest in the project by potentially affected landowners as well as the general public was reflected in a number of telephone and counter enquiries regarding the nature of the proposed changes, only one submission has been received.

Submissions Received

One submission has been received for this proposal. The author requests within the submission:

“ensure that approval of the development application will enable management of the existing strata titles to conform with the requirements of the Strata Schemes Management Act 1996, effective 30 April 2005.”

PLANNING COMMENT:

While this is a reasonable request, it does not directly relate to this Section 96 application, and therefore cannot be considered as part of this approval process.

cont'd

Ped4 Section 96(2) - Application To Modify Development Consent 68/85 - Lot 4, Dp1052296, Stage 1 Of Pacific Bay Resort (cont'd)

Further, the author requests:

“that the management of Bay Drive, a public road, be the responsibility of Coffs Harbour City Council as it leads to a Regional Park and that flora and fauna on the development site adjacent to Crown Land on the foreshores of Pacific Bay, part of the regional park, receive adequate protection in addition to fire protection of any new building.”

PLANNING COMMENT:

Bay Drive is a public road, which is therefore administered and maintained by Council. No change to this situation is planned. Flora and fauna will not be affected by this proposal, as the Council's Environmental Services Branch have confirmed this comment.

Sustainability Assessment:

- **Environment**

Given the existence of an approval to construct the two towers, the proposed modification will not have any significant adverse impacts upon the environment.

Various branches of Council have provided comments regarding the proposal and appropriate conditions of approval have been applied where necessary.

- **Social**

One submission from surrounding residents has been received, however the grounds for objection are not considered relevant to warrant refusal of the application from a Town Planning perspective. The submission details have been addressed above.

No other significant social issues are raised by this proposal to amend an existing development approval.

- **Economic**

The application involves no significant economic issues. The development would result in employment involved with the construction of the buildings as well as the maintenance and continued operation of the resort complex.

Broader Economic Implications

There are no broader economic implications associated with the development.

Management Plan Implications

There are no financial implications in relation to Council's Management Plan.

cont'd

Ped4 Section 96(2) - Application To Modify Development Consent 68/85 - Lot 4, Dp1052296, Stage 1 Of Pacific Bay Resort (cont'd)

Consultation:

The application was notified and advertised in January 2005 with one submission being received. The submission does not necessarily object to the development, and the issues raised have been addressed previously in this report.

Internal comments on the application have also been received from the following Council Departments:

- City Services,
- Building,
- City Parks, and
- Environmental Services.

The recommendations of relevant Council departments have been incorporated in the recommendation.

The applicant has been advised of additional and revised conditions intended to be imposed on the approval. The applicant has indicated acceptance of the said conditions.

Related Policy and / or Precedents:

A policy relating to the consideration of Section 96 modification applications does not exist. For reasons stated earlier in this report, it is not considered that the approval of this application would set a precedent in this regard.

Statutory Requirements:

Section 79C of the Environmental Planning and Assessment Act 1979 sets out the matters to be considered in the determination of a development application. The consideration of matters is limited in so far as they must be of relevance to the development being considered. A report setting out consideration of the development in terms of section 79C is appended to this report (Appendix A).

Issues:

As mentioned earlier in this report the basic issue regarding this application to modify an existing approval is whether the proposed changes can be considered to be *substantially the same development proposal*. This report has already addressed this issue, and the conclusion that has been drawn is that the changes proposed in this application are considered to still be substantially the same as that approved in 1985. It is for this reason that the application is recommended for approval subject to revised and additional conditions as attached in Appendix B.

Implementation Date / Priority:

If Council chooses to adopt the recommendation contained herein and approve the application, the implementation date could be applied immediately following the Council decision.

cont'd

Ped4 Section 96(2) - Application To Modify Development Consent 68/85 - Lot 4, Dp1052296, Stage 1 Of Pacific Bay Resort (cont'd)

Recommendation:

That the Section 96(2) – Application to Modify Development Consent 68/85 for Stage 1 of Pacific Bay Resort on Lot 4, DP1052296, be approved subject to revised and additional conditions as appended to the report (Appendix B).

G A Vereker
Director of Planning Environment and Development

Section 79C Evaluation

Development Application No. 1483/03

(a) the provisions of:

(i) any environmental planning instrument, and

- **Environmental Planning and Assessment Act 1979**

This application to modify does not contravene any sections or requirements under this Act.

- **North Coast Regional Plan 2000**

This Plan does not apply to this particular application to modify as it was brought into effect after the date of consideration of the original Development Application 478/84.

- **Coffs Harbour Shire Council Interim Development Order No. 80 as amended (IDO 80).**

The local Planning Instrument that was in force at the time of the determination of the Development Application in 1985 was IDO 80. Therefore this is the only environmental planning instrument that falls for consideration under Section 79C(1)(a).

This Section 96(2) application conforms with the requirements of IDO 80.

(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, and**

No draft EPI's apply to this proposal.

(iii) **any development control plan, and**

No development control plans are relevant with regard to the statutory assessment of this application to modify for reasons stated earlier in this report. However, as also mentioned earlier the requirements of relevant DCPs such as off street car parking are relevant public interest matters and should form part of the overall assessment. Compliance in this regard has been mentioned earlier in this report.

(iv) **the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,**

MBT have provided the following information in regard to the relevance of the regulations with this particular issue:

“Clause 23 of the Environmental Planning and Assessment (Savings and Transitional) Regulation 1998 provides:

23. Revocation and modification of development consents

(1) The provisions of the amended EP&A Act 1979 and the amended EP&A Regulation 1994 apply to and in respect of the modification and revocation of a development consent granted and in force under the unamended EP&A Act 1979 (including a development consent arising under Division 1) in the same way as they apply to and in respect of a development consent granted and in force under the amended EP&A Act 1979.

(2) For the purposes of applying the amended EP&A Regulation 1994 to the modification of a development consent referred to in subclause (1), clause 72A of that Regulation is taken to apply to an application under section 96 (2) of the amended EP&A Act 1979 to modify a development consent if the original development application for the consent was notified or advertised:

(a) under section 84 of the unamended EP&A Act 1979, or

(b) under a provision of an environmental planning instrument referred to in section 30 (4) of the unamended EP&A Act 1979

The Interpretation Act 1987 relevantly provides:

68. References to amended Acts and instruments

(1) In any Act or instrument, a reference to some other Act or instrument extends to the other Act or instrument, as in force for the time being.

(2) Subsection (1) applies to a reference to an Act or instrument:

(a) whether or not the reference includes a reference to subsequent amendments of the Act or instrument, and

(b) whether or not the reference is to a mode of citation that includes 2 calendar years.

(3) Notwithstanding subsection (1), in any Act or instrument:

(a) a reference to an Act that has been repealed and re-enacted, with or without modification, extends to the re-enacted Act, as in force for the time being, and

(b) a reference to an instrument that has been repealed and re-made, with or without modification, extends to the re-made instrument, as in force for the time being, and a reference to a provision of the repealed Act or instrument extends to the corresponding provision of the re-enacted Act or the re-made instrument, as the case may be.

The Environmental Planning and Assessment Regulation 1994 was repealed by the Environmental Planning and Assessment Regulation 2000. Because of the operation of s. 68 of the Interpretation Act 1987 the reference in Clause 23 of the Environmental Planning and Assessment (Savings and Transitional) Regulation 1998 to clause 72A of the Environmental Planning and Assessment Regulation 1994 is now read as a reference to the corresponding provisions of the Environmental Planning and Assessment Regulation 2000, viz clauses 118 and 119.”

Section 96 of the EP&A Act relevantly provides:

96. Modification of consents—generally

(2) Other modifications

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:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

(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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

(3) 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) as are of relevance to the development the subject of the application.

(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

S. 96(4) is very significant in the present instance. The determination of the present application by way of approval, conditionally or unconditionally, will not be a grant of a new consent. It will amount to a change in the 1985 consent and the law relevantly applicable in 1985 is the relevant law.

Clause 118 of the Environmental Planning and Assessment Regulation 2000 does not apply to this application but clause 119 does apply. The relevant provisions are:

119. Public participation—application under sections 96 (2) and 96AA for modification of other development consents

(1) This clause applies to an application under section 96 (2) of the Act to which clause 118 does not apply or under section 96AA (1) of the Act to which clauses 117 and 118 do not apply.

(2) An application to which this clause applies must be notified or advertised for a period not exceeding 14 days but otherwise in the same manner as the original development application was notified or advertised.

(3) However, if the application is made to a council that has provided in a development control plan for the notification or advertising of such an application (or has provided that such an application is not required to be notified or advertised), the application is to be notified or advertised in accordance with the development control plan.

(6) During the period referred to in subclause (2) or, if a development control plan provides for a period for notification or advertising of an application, during that period, any person may inspect the application and any accompanying information and make extracts from or copies of them.

The local Planning Instrument that was in force at the time of the determination of the Development Application in 1985 was Coffs Harbour Shire Council Interim Development Order No. 80 as amended (IDO 80).

IDO 80 relevantly provided:

10.(1) The Council shall, before determining an application for its consent to carry out development on any land within Zone No. 2(a), 2(b1), 2(b2), 2(b3) or 2(c) for the purpose of a home industry, a hospital or a place of public worship give notice of the receipt of the application in a newspaper circulating in the locality in which the development the subject of the application is proposed to be carried out.

12(4) The Council shall in respect of an application under this order for its consent to the carrying out of development for the purposes of a residential flat building, take into consideration any code for the erection of residential flat buildings adopted by resolution of the Council.

The Local Environmental Plan for Charlesworth Bay land was gazetted on 16 March 1984. That Plan, which amended IDO 80, applied to the subject land and the land was affected by a number of Zones - 2(d5) Residential D5, 5(a) Special Uses 'A', 6(b) Open Space - Recreation, 6(c) Open Space - Recreation Private, 6(d) Open Space Landscaping Private and 7(a) Rural Environmental Protection - Wetlands.

Council was not required to advertise this development by Clause 10(1) of IDO 80.

Council adopted a Residential Flat Code on 26 June 1973. The Code was amended on 6th May 1982 and remained in force when the subject Development Application was determined. There is nothing in the Code which would require the Development Application to be notified.

Council's DCP regarding notification does not require the modification application to be notified."

Therefore, Council had no obligation to notify the Development Application and it has no obligation to notify the application for modification - see clause 119 above.

(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,

As mentioned above in the sustainability assessment, this proposal to modify the existing approval is not likely to introduce any new environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) the suitability of the site for the development,

Stage 1 of the Pacific Bay Master Plan has previously been approved with many of the facilities already constructed. With regard to the remaining facilities to be constructed as part of Stage 1 of the resort development, the proposal has been approved and is therefore considered suitable for the site.

(d) any submissions made in accordance with this Act or the regulations,

The issues raised by the single submission on this amended proposal have been discussed previously in this report.

(e) the public interest

The amended proposal is not considered contrary to the public interest. As mentioned earlier in this report, the only environmental planning instrument that falls for consideration under Section 79C(1)(a) is IDO 80. None of SEPPs 55, 65 and 71 or North Coast Regional Environmental Plan fall for consideration under Section 79C(1)(a) as none of them apply to this modification application. However that does not mean they are irrelevant. Issues raised by these instruments are matters of "public interest" and fall for consideration under Section 79C(1)(e). In line with this approach the issues raised by these instruments have been taken into consideration during the assessment of this application. This has also been the approach taken by the consultants in support of the modification application.

**Development Consent No. 68/85
Schedule of Amended Conditions**

THE DEVELOPMENT CONSENT IS AMENDED BY:

The replacement of conditions 6 and 7 with the following conditions:

Additional Details / Applications:

- (6) Submission of an application for Construction Certificate complying in all respects with the provisions of the Environmental Planning and Assessment Act, Local Government Act and the Building Code of Australia. Work on any building shall not commence until the Construction Certificate has been issued and Council has been notified of the Principal Certifying Authority.

Occupation Certificate:

- (7) The building/s is/are not to be occupied or used unless a relevant **Occupation Certificate** has been issued.

The following conditions are also considered to be relevant to the approval of this Section 96 application to modify the Development Consent, and are therefore to be added to Development Consent 68/85:

Signage:

1. A sign indicating the name, address and telephone number of the Principal Certifying Authority, and the name and telephone number of the principal contractor (if any) must be erected in a prominent position on the site and maintained until the building work has been completed. The sign must also state that unauthorised entry to the site is prohibited. The signage must be erected prior to commencement of work.

Energy Efficiency:

2. **Prior to the issue of a Construction Certificate**, certification from an accredited consultant* is to be provided to Council to the effect that the development is to achieve a 3.5 star NatHERS (Nation Wide Housing Energy Rating Scheme) rating or better.

* = a consultant who is accredited by the NSW House Energy Rating Management Body.

Commencement of works:

3. No building or site works are to commence unless a relevant Construction Certificate has been issued.

Additional Details or Applications:

4. A separate application is to be made to Council by the licensed plumber and drainer **prior to the commencement of any sanitary plumbing and drainage work on site.**

5. Access and facilities for disabled persons being provided in accordance with the Building Code of Australia provisions. Details are to be submitted **prior to issue of the Construction Certificate**. The developer's attention is drawn to the provisions of the Disability Discrimination Act 1992.

Construction and Delivery Hours – Noise:

6. Construction works and materials delivery are to be limited to the following hours:

Monday to Friday	7:00am to 6:00 pm
Saturday	7:00am to 1:00 pm (if audible from adjoining residential properties - 8:00 am to 1:00 pm).

No construction work or deliveries are to take place on **Sundays** or **Public Holidays**.

Compliance with Building Code of Australia

7. All building work must be carried out in accordance with the requirements of the Building Code of Australia.

Construction of Swimming Pool Area:

8. The immediate surrounds of the pool are to be completely enclosed with an approved type fence and gates complying with the Swimming Pools Act 1992.
9. All wastewater is to be connected to Council's sewer main via a suitable 100mm diameter gully trap. A minimum air gap of 100mm is to be provided between the discharge outlet and the gully grate.
10. A resuscitation chart is to be permanently fixed and displayed in a prominent position within the pool surrounds area prior to occupation inspection.

Use of Swimming Pool Area:

11. Fences, gates, walls, etc. enclosing the general swimming pool area are to be maintained in good repair and condition at all times.

Sediment and Erosion Control

8. Submission **prior to issue of the Construction Certificate** of a Sediment and Erosion Control Plan to be approved by Council. These controls are to be implemented during all development construction works and be maintained throughout the maintenance period.

The Sediment and Erosion Control Plan is to incorporate the recommendations of Section 6.6 of the Engineering Report prepared by GHD and dated October 2004.

Acoustic Assessment

9. In accordance with Section 6.8.1 of the Engineering Report prepared by GHD and dated October 2004, selected the recommended measures are to be undertaken during design and construction of the proposed residential units. A detailed acoustic report is to be undertaken prior to the issue of the Construction Certificate and shall include attenuation measures, where necessary, as outlined below:

- Use of building materials that insulate or absorb sound. Such materials include heavy non-porous materials such as brick, concrete, timber, glass, rock wool and fibreglass batts of a thermal or acoustical grade;
- Provide double surface and cavity walls;
- Provide double glazed or thickened glass to affected windows;
- Locating noise insensitive areas such as the kitchen, storage areas and laundry towards the noise source and double glazing all windows, particularly those facing noise sources; and
- Using construction techniques that pay particular attention to sealing air gaps around doors and windows.

Bushfire Safety

10. All recommendations contained in the Bushfire Risk Management Report prepared by Bushfire Safe Services dated 13 October 2004 are to be implemented during the design, construction and ongoing operation of the resort facility.

Water Sensitive Urban Design

11. Submission **prior to issue of the Construction Certificate** of a Water Sensitive Urban Design Implementation Plan to be approved by Council.

The Water Sensitive Urban Design Implementation Plan is to incorporate the recommendations of Section 6.5.1, 6.5.2 and 6.5.3 of the Engineering Report prepared by GHD and dated October 2004.

Stormwater Drainage

12. Submission **prior to issue of the Construction Certificate** of a Stormwater Drainage Plan to be approved by Council.

The Stormwater Drainage Plan is to incorporate the recommendations of Section 6.6.5.4 and 6.5.5 of the Engineering Report prepared by GHD and dated October 2004.