

## Modification of Minister's Approval

### Section 75W of the *Environmental Planning & Assessment Act 1979*

I, the Director-General of the Department of Planning in accordance with the Instrument of Delegation issued by the Minister for Planning on 4 March 2009, and pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979*, determine to approve of the modification of the approval referred to in Schedule 1, in the manner set out in Schedule 2.



Sam Haddad, Director-General  
As delegate for the Minister for Planning

Sydney, 11<sup>th</sup> November 2009

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#### SCHEDULE 1

- Concept approval:** Granted by the Minister for Planning on 9 May 2007.
- In respect of:** Major Project 06\_0148 made by Sapphire Beach Development Pty Ltd for land located at the former Pelican Beach Resort site at 740-742 Pacific Highway, Sapphire Beach, Coffs Harbour LGA.
- For the following:** A concept plan allowing for a mix of tourist and residential development, subdivision of the site into 26 community title lots, approximately 122 dwellings with 338 bedrooms, 270 car parks, open space, access roads, re-vegetation, and a specific approvals regime.
- Modification:** Modification of the concept approval to allow for:
- the removal of the tourist use component of the site and residential flat buildings;
  - residential subdivision of land into 40 lots;
  - a reduction in the number of dwelling units from approximately 122 to 39 detached dwellings;
  - a change to the staging of the development and specified approvals regime.
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## **SCHEDULE 2**

The previous concept approval is modified as follows:

### **Preceding Schedule 1 of the previous approval (the approvals regime):**

1. Delete bullet point (b), Paragraph 1 and replace with:
  - (b) Under Section 75P(1)(b) that future development for Stages 2 and 3 be subject to Part 4 of the Act;
2. Delete bullet point (c), Paragraph 1 and replace with:
  - (c) Under Section 75P(1)(a) that future development for Stage 1 be subject to Part 3A of the Act;
3. Delete Paragraph 2 and replace with:

This approval is subject to Schedule 1, the Terms of Approval listed in Schedule 2, and the Statement of Commitments in Schedule 3.

### **Schedule 1 of the previous approval:**

4. Delete Part A – Table and replace with:

<b>Application made by:</b>	Sapphire Beach Development Pty Ltd
<b>Application made to:</b>	Minister for Planning
<b>Major Project Application:</b>	MP 06_0148
<b>On land comprising:</b>	740-742 Pacific Highway, Sapphire Beach Lots 100 & 101 DP 629555 and Lot 2 DP 800836
<b>Local Government Area</b>	Coffs Harbour LGA
<b>Approval in summary for:</b>	Concept plan for residential development consisting of 39 detached dwellings, access roads, conservation areas, open space and a modified approval regime.
<b>Capital Investment Value:</b>	\$2.17 million
<b>Type of development:</b>	Concept Approval under Part 3A of the Act
<b>Determination made on:</b>	
<b>Determination:</b>	Concept approval is granted subject to the modifications in the attached Schedule 2.
<b>Date approval will lapse:</b>	5 years from the date of determination unless works have physically commenced on Stage 1 of the development.

5. Under Part C - Definitions, delete the following definitions as they are no longer relevant:

### ***CPI, Height and Gross Floor Area (GFA)***

6. Delete the definition for Environmental Assessment and replace with:

**Environmental Assessment** means the Environmental Assessment prepared by Janet Thomson Planning Consultant on behalf of Sapphire Beach Development Pty Ltd and dated June 2009.

**Schedule 2:**

7. Delete Conditions A1, A2, A3 and A4 and replace with:

**A1 Development Description**

Concept approval is granted only to carrying out the development described in detail below:

A residential development comprising subdivision of land into 40 lots. The development includes:

- (1) Communal open space of approximately 9,433m<sup>2</sup>;
- (2) Subdivision of the site into 40 lots in a community title scheme, comprising 39 residential lots and 1 community title lot;
- (3) A maximum number of 190 car parking spaces;
- (4) Access roads; and
- (5) Revegetation and rehabilitation works.

**A2 Staging**

The development is to be constructed in three stages, as follows:

- (1) Stage 1 will comprise demolition of the existing buildings, the commencement of dune rehabilitation works, and general site preparation including removal of:
  - The 114 room hotel building which includes the restaurant and conference centre and all back of house facilities;
  - The former Seafood Mamas Restaurant at the entrance to the site;
  - All ancillary buildings associated with the hotel;
  - The swimming pool & spa and ancillary buildings;
  - The tennis & volleyball courts;
  - All redundant services either above or below ground;
  - All bitumen, concrete car parks and footpaths; and
  - Any vegetation outside the dune area and Environmental Protection 7A Habitat and Catchment Zone not marked for reuse or transplanting

Note: No earthworks are proposed as part of this application. However, clean brick, rubble and concrete construction materials will be retained for fill on the site.

- (2) Stage 2 will comprise subdivision of the site including earthworks and stormwater management, all services and roads, and rehabilitation of the 7A zoned vegetation
- (3) Stage 3 will comprise the erection of dwellings on individual lots.

**A3 Development in Accordance with Documentation**

- (1) The following documentation (including any appendices therein) is approved as part of the Concept Plan:
  - a. **Sapphire Environmental Assessment Report (Volumes 1, 3 and 4)**, prepared by Janet Thomson Planning Consultant on behalf of Sapphire Beach Development Pty Ltd and dated June 2009;
- (2) The following Preferred Project Report including a revised Statement of Commitments is approved:

- a. **Preferred Project Report and Statement of Commitments (Volumes 1 and 2)**, prepared by Janet Thomson Planning Consultant on behalf of Sapphire Beach Development Pty Ltd and dated September 2009;
- (3) The revised Statement of Commitments included as Schedule 3 to this Instrument is approved.
- (4) In the event of any inconsistencies:
  - a. The revised Statement of Commitments in Schedule 3 of this Instrument prevails to the extent of any inconsistency in the plans and documentation identified in (1) and (2) above.

#### **A4 Development in Accordance with Plans**

- (1) The development will be undertaken in accordance with the following plans:

Landscape Drawing prepared by <i>Jackie Amos Landscape Architect</i> dated October 2009	
Drawing No.	Name of Plan
SK01A	Concept Plan

Note: it is the intention that the above Plan overrides anything that may be contradicted by information within the following plans:

- (2) The development will be undertaken generally in accordance with the following plans:

Architectural (or Design) Drawings prepared by <i>Cox Richardson</i> dated September 2009	
Drawing No.	Name of Plan
SK02	Open Space and Circulation
SK03	Stormwater Management
SK04A	Landscape Cross Sections
SK04B	Landscape Cross Sections
SK04C	Landscape Cross Sections
SK05	Building Envelope Sections
SK06	Subdivision Plans
SK07	Site Survey Plan
SK07A	Site Survey Plan
SK07B	Site Survey Plan
SK07C	Site Survey Plan
SK07D	Site Survey Plan
SK08	Site Analysis
SK09	Site Context
SK10	Excavation and Fill Diagram
SK11	Pacific Highway View 1
SK12	Pacific Highway View 2
SK13	Beach View 1
SK14	Beach View 2
SK15	Subdivision and Aerial

8. Insert new Condition A5A as follows:

**A5A Dune System Rehabilitation and Management**

- (1) The coastal dune system fronting the site shall be rehabilitated, and maintained in a healthy state.

Note: it is the intention of this condition to ensure the capacity of the dune system to absorb erosion is maintained by virtue of establishing a healthy, well nourished, and well vegetated dune system.

- (2) All dune rehabilitation shall be undertaken as part of Stage 1 works, and shall be undertaken in accordance with:
- (a) the Dune Management Plan prepared by Bushfiresafe (Aust) and dated September 2009 (Appendix 3 of the Preferred Project Report), and
  - (b) the Vegetation Management Plan prepared by Bushfiresafe (Aust) and dated September 2009 (Appendix 2 of the Preferred Project Report).
- (3) Notwithstanding the above, all physical works or activities undertaken on the dune system as part of the concept approval shall be completed in accordance with the document entitled *Coastal Dune Management: A Manual of Coastal Dune Management and Rehabilitation Techniques* by the NSW Department of Land Water and Conservation 2001, or any subsequent version thereof. This includes (but is not limited to) signage, fencing, construction and maintenance of beach accessways, and vegetation management.
- (4) Dune rehabilitation works (as described in A5A(1), A5A(2) and A5A(3) above) shall be undertaken in consultation with suitable persons holding appropriate professional qualifications and/or experience in bush regeneration practices, and who are members of the Australian Association of Bush Regenerators (AABR). The local dunecare/coastcare/landcare group shall also be consulted.
- (5) A report on the effectiveness of the Dune Management Plan and the Vegetation Management Plan in establishing a healthy dune system, shall be submitted to both the Coffs Harbour City Council and the Department of Planning three years following commencement of dune rehabilitation works. In addition, this report shall include actions to improve management of the dune system, and identify future funding arrangements.

9. Insert new Condition A5B as follows:

**A5B Community Management Statement**

The information required by Clause 41 of the *Community Management Statement* (prepared by Swaab Attorneys, and dated September 2009) shall be provided by an appropriately qualified person.

10. Delete Condition A6 and replace with the following:

**A6 Determination of Future Applications**

The determination of future applications for development is to be generally consistent with the terms of approval of Concept Plan MP 06\_0148 (as modified) as described in Part A of Schedule 1, subject to the recommended modifications and conditions of approval set out in Parts A, B and C of Schedule 2, and the Statement of Commitments in Schedule 3.

11. Delete Conditions B1, B2 and B3 and replace with the following:

**B1     *Sea Rise Protection Zone – Trigger Point***

The concept plan is modified such that:

- (1) The actions identified in the Community Management Statement in regard to the Climate Change - Sea Rise Protection Zone (Clause 41) shall be undertaken when either of the following triggers occurs:
  - (a) Significant coastal erosion resulting from a storm event (or other natural hazard) and occurring within 20m of the eastern-most boundary of any of Lots 1-14 (inclusive); or
  - (b) Mean Sea Level (as recorded from the nearest appropriate Mean Sea Level record) reaches 0.6m above the benchmark. The benchmark shall be defined as being Mean Sea Level being that determined on 1 July 2010; whichever is the sooner.

Note: it is the intention of this condition to ensure that an appropriate benchmark is defined and used as the basis for any adaptive management approaches that may need to be undertaken. This benchmark replaces the benchmark included in the Community Management Statement.

12. Delete Condition C1 and replace with:

**100 Year Coastal Hazard Planning Line**

Prior to the commencement of works on site, a registered surveyor must determine the location of the 100 year coastal hazard planning line (as per Willing and Partners, *Map 1 Campbells Beach Hazard Lines*, September 1999) on the subject site. All buildings must be constructed landward of this line.

13. Delete Condition C3.

14. Delete Condition C5.

15. Delete Condition C6 and replace with the following:

**C6     *Stormwater Management Plan***

Detailed designs of the upgrading of the stormwater system must be submitted to Council with the Stage 2 development application for the subject site.

16. Insert new conditions C7A, C7B, C7C, C7D and C7E as follows:

**C7A     *Aboriginal Heritage***

All reasonable efforts must be made to avoid impacts to Aboriginal cultural heritage values at all stages of site development works. If impacts are unavoidable, mitigation measures are to be negotiated with the Coffs Harbour and District Local Aboriginal Land Council and the Department of Environment, Climate Change and Water (DECCW).

**C7B     *Archaeological Findings***

Should any future works associated with the site uncover anything which may be interpreted as Aboriginal in origin, work in the vicinity of the find should cease immediately. Temporary fencing must be erected around the site and the material must be identified by an independent and appropriately qualified archaeologist. The DECCW, and the Coffs Harbour

and District Local Aboriginal Land Council must be notified as soon as possible. These groups will advise on the most appropriate course of action to follow. Works must not resume at the location without the prior written consent of the Department of Environment, Climate Change and Water, and the Coffs Harbour and District Local Aboriginal Land Council.

### ***C7C Finding of Human Remains***

If human remains are located during the project, all works must halt in the vicinity of the find must cease immediately in order to prevent any further impact on the find. The NSW Police, the Coffs Harbour and District Local Aboriginal Land Council, and DECCW are to be notified as soon as possible. If the remains are found to be of Aboriginal origin and the NSW Police consider the site not an investigation site for criminal activities, then works shall not recommence in the vicinity of the find until written consent is granted from the DECCW and the Coffs Harbour and District Local Aboriginal Land Council. In the event that a criminal investigation ensues, works shall not recommence in the vicinity of the find until written consent is granted from the NSW Police.

### ***C7D Aboriginal Heritage Information Management System (AHIMS)***

The proponent will provide an updated site card to the DECCW for inclusion in the AHIMS upon completion of Stage 2 works on the site.

### ***C7E Aboriginal Cultural Heritage Management Plan***

The proponent must develop an Aboriginal Cultural Heritage Management Plan (ACHMP) for the project area prior to any sub-surface works occurring, in order to specify the policies and actions required to mitigate and manage the potential impacts of the Proposal on Aboriginal cultural heritage. The ACHMP should clearly focus on avoiding impacts to Aboriginal cultural heritage values wherever feasible during the development works. Where impacts cannot be avoided, the Proponent shall develop proposals that reduce the extent and severity of impacts using reasonable and feasible measures. The ACHMP shall be developed and implemented in consultation with all of the local Aboriginal stakeholders and DECCW. The ACHMP must include, but not be limited to:

- Procedures for ongoing Aboriginal consultation and involvement;
- Management of any recorded sites within the investigation area;
- details of any proposed conservation areas including long term management strategies for Aboriginal sites and objects;
- Identification and management of previously unrecorded sites (excluding human remains); and
- A program of monitoring.

The effectiveness of the ACHMP is to be reviewed biannually and shall determine whether policies have been adhered to, actions have been implemented and whether any changes to the ACHMP are required.

17. Delete Condition C8.

18. Delete Condition C9.

19. Insert new Condition C11 as follows:

## **C11 Design Guidelines**

Final Design Guidelines are to be submitted to, and approved by, Council as part of the Stage 2 subdivision application.

### **Schedule 3 of the previous approval:**

20. Delete the title page for Schedule 3 and replace with the following text:

**MP 06\_0148**

**“SAPPHIRE” RESIDENTIAL DEVELOPMENT**

**740-742 PACIFIC HIGHWAY, SAPPHIRE BEACH, COFFS HARBOUR**

### **STATEMENT OF COMMITMENTS**

(Source: Preferred Project Report)

21. Insert the following text to form Schedule 3:

#### **THE PROPONENT’S REVISED STATEMENT OF COMMITMENTS**

(Sourced from: the *Sapphire Report, Preferred Project Report and Statement of Commitments: Vol. 1 Modification to Concept Plan*, September 2009)

The project will have the following parameters:

- There will be 40 lots of which 39 will be residential lots
- There will be 39 dwellings to a maximum height of 3 storeys (2 storey limit for the Beachfront lots)

#### **Part A - Statutory Requirements:**

(a) All approvals, licences and permits required by legislation will be obtained and kept current as required.

(b) The proposal will generally comply with the planning controls which relate to the site except as set out in this EAR.

#### **Part B - Consultation:**

Consultation will continue throughout the development process with Coffs Harbour City Council, relevant Government departments, and the community as necessary.

#### **Part C - Site Security:**

To prevent the unauthorised entry of people into the construction site(s) and prevent damage to the environment, security for the construction site(s) will include:

- Lockable security gates
- A security fence around the perimeter
- Security lighting on site and
- Controlled access to the site through the site control office, visitor reception area and site management personnel

#### **Part D - General Development Design Requirements:**

##### **1. Design**



- a. The design philosophy of the project shall be generally within the parameters as set out by Cox and Partners in the DRAFT *Design Guidelines* (submitted as Appendix 8 of the Environmental Assessment) .
- b. A detailed final set of Design Guidelines will be prepared to accompany the subdivision application for the site. These will be prepared for adoption by the Community Association prior to the construction of the first dwelling on the site.
- c. The Design Guidelines will be adopted and referred to in the Community Management Statement and a restrictive covenant will be included as a section 88B Instrument (under the *Conveyancing Act 1919*) on the individual titles of each allotment noting the design Guidelines requirement.
- d. Architectural input will be continued in the development of the proposals for the site to ensure that high standards of design excellence are achieved. A Design Panel including an architect, will be appointed by the Community Association to oversee the design of the individual dwellings prior to their construction on the site
- e. It will be an objective of the design process, included in the final Design Guidelines, to provide a safe and secure environment within the development

## 2. Vegetation Management

- a. The *Vegetation Management Plan* prepared by Bushfiresafe (Aust) will be adopted in relation to the future of the site prior to the commencement of construction
- b. Prior to the adoption of the *Vegetation Management Plan*; Coffs Harbour City Council, relevant Government Authorities and the community will be consulted
- c. The *Vegetation Management Plan* provides for the rehabilitation of the dune area and the area zoned 7A Environment Protection
- d. The *Vegetation Management Plan* provides for public access through the site and to the beach area

## 3. Bushfire Protection

- a. The Bushfire Risk Plan of Management will be adopted for the proposal to address the ongoing maintenance of the open space and landscaped areas on the site prior to the subdivision of the site
- b. All future home owners will be encouraged by the Community Management to prepare A Bushfire Home Evacuation Plan
- c. The Design Guidelines will provide that all roofing to be used on the site will be gutterless or will have leafless guttering

## 4. Landscape

- a. Landscaping of the site will be carried out in accordance with the Landscape Management Plan prepared by Jackie Amos Landscape Architect set out in this EAR prior to the construction of the dwellings on the site
- b. A Landscape Architect will be retained to oversee the project and planting of the landscaped areas on the site. The Landscape Architect will ensure that all landscaping is carried out in accordance with the Landscape Management Plan.

## 5. Coastal Issues

- a. The stormwater system for the site will be designed to ensure that there is no substantial increase in run-off to the Solitary Islands Marine Park once the project of is completed and will be installed prior to the construction of dwellings on the site
- b. All buildings behind the dune will have a minimum floor level of 7.5mAHD. This will provide 0.5m freeboard above the 7.0m AHD inundation level recommended by Geomarine (1998) and Coffs Harbour City Council. This will be achieved by partially filling the low lying area to a height of 6.5m AHD to 7.0mAHD where the buildings are to be sited. Any fill will be constructed prior to the construction of dwellings on the site
- c. All buildings will be landward of the 100 year Hazard Line as noted on the Willings and Partners (1999) drawing of the Campbell's Beach Hazard Lines provided by Coffs Harbour City Council

- d. All buildings immediately behind the dune (The Beachfront Houses) will have specially constructed foundations built to withstand a storm surge or tidal inundation. These design requirements will be implemented by the Community Management and via the s88B instrument for the subdivision of the site.
- e. Detailed plans will be prepared in consultation with Coffs Harbour Council of the cut and fill to be undertaken on the site. The cut and fill will be designed to ensure that there are no adverse impacts on the dune area or on neighbouring properties. Along the southern boundary to the Beachfront Close Community Plan, the fill will be battered from the fill height of 7.0mAHD to the existing ground level of the neighbouring properties as shown in the site sections. These plans will form part of the application for the subdivision of the site.
- f. As part of the subdivision of the site, a Sea Rise Protection Zone will be proclaimed within the community property seaward of the beachfront lots but landward of the dunes in the vicinity of the 50 year hazard line to allow for the future construction of a range of amelioration measures to combat the effects of possible sea level rise. The Sea Rise Protection Zone will be managed through By-Law 41 of the Community Management Statement.
- g. Prior to commencement of civil works associated with subdivision, a registered surveyor must determine the location of the 100 year hazard planning line (as per Willing and Partners, Map 1 Campbells Beach Hazard Lines, September 1999) on the subject site.

#### 6. Integrated Water Cycle Management

- a. A Water Management Plan which adopts the principles of Water Saving Urban Design will be prepared for the site prior to the commencement of any construction which will address the following issues:
  - Detailed design of the stormwater management system
  - Detailed design and landscaping of the bioretention system
  - Detailed Implementation of water saving measures for the site
  - Plans for the maintenance of water quality on the site
- b. A Sediment and Erosion Control Plan will be developed for the stormwater system for the site prior to the commencement of construction on the site

#### 7. Traffic and Access

- a. All parking proposals and the design of parking areas on the site will comply with the Coffs Harbour City Council Planning Controls
- b. The proponent will continue to liaise with the RTA in relation to the upgrade of the Pacific Highway by the RTA
- c. The proponent will continue discussions with the RTA in relation to the operation of the intersection with the Pacific Highway and possible changes to the operation of the intersection and traffic management arrangements for the site
- d. Prior to the commencement of any construction, the proponent will develop a Traffic Management Plan for the site which provides for the ongoing operation of the project in accordance with the requirements of the RTA
- e. The proponent will liaise with the RTA and Coffs Harbour City Council in relation to the provision of a Bus Stop and Shelter on the Pacific Highway and pedestrian access to it.

#### 8. Heritage

- a. A watching brief will be maintained during excavation of the site for any Aboriginal relics or signs of items of cultural heritage
- b. The procedures proposed by Davies Heritage Consultants P/L, in their report Archaeological Assessment of Indigenous Values will be adopted should any Aboriginal relics or items of cultural significance be discovered, including an Indigenous Cultural Heritage Induction programme for all workers on the site.

#### 9. Acoustics

- a. Prior to the commencement of construction of the individual dwellings an Acoustic Model will be prepared for the site to determine the measures to be implemented in the design of the dwellings to achieve satisfactory acoustic levels. These design requirements will be included in the Design Guidelines for the site.
- b. Acoustic levels will not exceed levels specified in Environmental Criteria for Road Traffic Noise (DEC June 1999) and Noise Guide for Local Government (DEC 2004)

10. Environmental Management

- a. A Waste Management Plan will be submitted to Coffs Harbour City Council for approval prior to the commencement of building works.
- b. Once the site has been subdivided, individual geotechnical studies will be carried out before the registration of the lots to assess the geotechnical risks to the lots.

11. Construction

- a. Prior to the commencement of construction works (including the construction works for the subdivision of the site), the Site Management Plan will be adopted covering the following:
  - Traffic access to the site during construction
  - Demolition of the existing buildings on the site and a programme for the recycling of materials from them
  - Plan for the disposal of waste from the site
  - Acoustic and vibration management plan
  - Plans for the protection of vegetation on the site during construction
  - Visual aspects of construction activities
  - Handling and disposal of hazardous materials
  - Measures to avoid adverse impacts on aboriginal heritage
  - Stormwater drainage control

12. Social and Community

- a. Prior to the commencement of any construction, the proponent will submit for approval appropriate s94 contributions for the proposed project to Coffs Harbour City Council

13. Monitoring/Auditing and Reporting

- a. An Annual Environmental Management Report will be prepared for the period from the date of commencement of construction to practical completion and registration of the subdivision by the LPI detailing the proponent's performance in relation to these commitments
- b. The site manager will maintain a daily log book identifying the location, contractor and description of all demolition, earthworks, construction and environmental management activities undertaken. The logbook is to be made available to Coffs Harbour City Council upon request with a summary of the logbook included in the annual report to Council
- c. Communication protocol between the Site Manager and contractors is to be established to ensure compliance with these commitments.

