

Handed in to Council on
17 January 2013.



Date: 11th December 2012

Our Ref: # 01785

To the Councillors
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

RE: Development Application DA12/0170 for Alterations and Additions to Motel (Staged) – The Hideaway, Cabarita Beach

Dear Councillor,

We refer to the above application and note that this will be heard at the Council meeting dated 13th December 2012.

In this regard, we act for the owners of the Motel and advise that we have a number of conditions of relevance that we would like the Council to consider amending given their potential impact upon the progression of the proposal at all. In other words, the conditions nominated below are of a nature that precludes the continuation of the proposal (an important investment in the Tweed Shire).

By way of background (both since the Motels inception and throughout the current DA), the following is of relevance:-

- a. The motel has been in operation since 1961 and has been a central recreational / function and employment generator in the Cabarita community since that date. In that time the Motel has been owned by only five parties and has been the scene of many weddings and important family holidays, many of which are related to repeat visits on an annual basis for families from Brisbane and beyond. Some of these families have utilised the Motel for the purposes of family weddings given its world class setting and spacious grounds.
- b. The new owners (the proponents of the proposed works) own and operate a number of entertainment venues in Brisbane, inclusive of function centres, golf clubhouses and dining. Importantly, their intention for this project (as evidenced by the relatively small increase in density and the large increase in space afforded each unit) is to provide for a high end family destination. The addition of a restaurant for guests is consistent with most Motels across Australia (if not the world) and is not an indication of a nightclub destination or similar. We note in this regard that there were six objections to the proposal, most of which were of the misguided belief that The Hideaway (the name is not changing) was proposed to be transformed to a nightclub style venue. This is patently untrue.
- c. In contrast to the **six (6)** objections, a significant number of supporting signatures were received (see attached). The signatures of support total **266** persons.
- d. The proposal represents an important addition to tourist accommodation the Shire, at a time when most facilities are attempting to pull back on the number of tourist units due primarily to their lack of viability. In this instance however, The Hideaway has a long established repeat clientele, some of which include small corporate groups, business training groups, artist getaways amongst others. The conditions of consent specifically seek to restrict these activities for some reason, presumably due to potential impacts upon adjoining residents (all of which purchased well after the existence and operation of a Motel next door). Importantly, functions, ancillary to the nature of the existing operations have long been an important part of the business.

- e. The application for the proposal included detailed acoustic modelling, which in actual fact, when combined with the proposed built form (where all external walls facing adjacent residents are fully enclosed), highlights the fact that the proposal has no discernible impacts (subject to some operating hour restrictions) on adjoining residents.

In summary, and as highlighted in respect of the individual conditions of concern below, the proponents are seeking Council's assistance in respect of the following key points:-

- Removing the restriction on the use of the Multi Purpose area (condition No.15 states to be used as a games room and storage only);
- Removing the restriction on any type of function, unless done so by separate development application (refer condition no.9). In this regard, we are at a loss as to how this fairly relates to the operation of any Motel anywhere else in the shire (or in Australia for that matter), where small family functions (typically comprising guests), small business meetings (Chambers of Commerce, Business & Progress Associations, Support Groups, Family Functions etc etc) are regularly and routinely undertaken on the basis that they are ancillary to the use of the site as a Motel. Surely, Council is not suggesting that any of these types of functions require development approval and if they are, will Council be pursuing all other motels in the area to seek development consents for any small functions in order to ensure a level playing field?;
- Clarifying / correcting conditions of consent relating to payment of contributions (which appear excessively high in any event – equating to over **\$25,500.00** per new motel room!) in a staged manner as was requested. Clarifying / correcting conditions of consent relating to the staging of the proposal. In this regard, the project description highlights that the proposal is staged, however contributions and construction conditions make no reference to this staging;
- Clarifying conditions (Condition Nos.37 and 105) relating to Coastal Erosion. In this regard, Condition No.37 requires the proposed restaurant area to be dismantlable as it is in a Coastal Erosion area (this is agreed), however Condition No.105 then requires the consent to be abandoned. Condition No.105 needs to be clarified such that abandonment need only occur when the erosion line comes within 20m of any habitable areas and not any areas, which are otherwise covered by conditions that demand relocation in any event. What this clarification will ensure is that the body of the Motel (being a permanent structure) is not abandoned nor demolished if the coastal erosion comes within 40m of the main building;
- Clarifying condition No.50 so that it highlights the need for Fire Safety upgrades only where the BCA requires it. The existing condition requires the existing building to be upgraded to comply with the current version of the Building Code of Australia (BCA). The existing building is quite old and no existing building can be totally upgraded to comply with the current version of the BCA, without a total gutting and major overhaul. For example, the current version of the BCA refers to items such as energy efficiency requirements of lighting, hot water, mechanical services, hydraulics, thermal comfort, acoustic and fire separation, corrosion resistance of materials.

To comply with condition 50 of the consent, as currently worded, would require a complete rebuild of the existing structure. This is impractical and we are sure that this is not the Council's intention. We would assume that Council would just require that the fire services outlined in part E of the BCA be upgraded.

- We also note should Council be concerned with respect to Acoustic impacts (despite the impact assessment proving all potential impacts have been addressed and not acoustic issues have been raised by Council), we note that Condition No.113 provides for back up in the event that legitimate noise complaints are received in any event. This seems to be a logical and fair compromise, rather than restricting any potential use and then still imposing the backup condition anyway; and
- Ensuring that the proposed operating hours are in accord with the recommendations of the CRG Acoustical Consultants (ref: crgref12008a report dated 10 April 2012).

Attachment A – Conditions of Consent

Condition No.9.

The facilities hereby approved within the motel building (such as restaurant/dining area, lounge room and outdoor food and beverage service area) are to be used by guests of the motel only, with the exception of ancillary functions and events consistent with the use of the premises as a Motel and linked to guests residing on site.

Condition No.11

This development consent approves the construction of alterations and additions to the existing motel only to be used by guests and staff of the motel only and other ancillary activities. (i.e. persons using the premises for overnight accommodation within the motel). This application does not approve the use of the facilities hereby approved for functions, parties or the like or for catering to the general public.

Condition No.12.

The use of the motel for members of the general public or for functions, parties or the like is permitted on an ancillary basis to the primary function of the premises as a Motel will require an additional development approval.

~~Condition No.15~~

~~The 'multipurpose space' as shown on Ground Floor Plan, DA107 Revision B shall be used as a storage area and games room for the guests of the motel only.~~

Condition No.37

The proponent is to prepare a report, to the satisfaction of the Principal Certifying Authority, prior to the issue of the Construction Certificate, detailing how the outdoor food and beverage area is to be dismantled and removed from the site if the erosion escarpment comes within 20 metres of the building. Agreed

Condition No.50

Where required by the BCA, the fire services within the existing building are to be upgraded to comply with the Building Code of Australia and all building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

Condition No.69

A concrete footpath 1.2 metres wide and 100 millimeters thick is to be constructed on a compacted base along the entire Tweed Coast Road frontage of the site to Cypress Crescent in accordance with Councils Development Design and Construction Specifications and Standard Drawing SD013.

Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork and sub grade to be inspected.



Condition No.105

As the development subject of this consent has been identified as being within one or more of the Coastal Hazard Zones as described in Tweed Development Control Plan B25 this consent is subject to the owner of the subject land **PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE** creating a positive covenant under section 88E of the (Conveyancing Act, 1919) on the following terms:

- (i) *The registered proprietor of the subject land acknowledges that the subject land is within a Coastal Hazard Zone as described in Tweed Development Control Plan B25 or any other subsequent iteration of that planning instrument.*
- (ii) *The registered proprietor also acknowledges that any development within the subject land must comply with the terms set out herein as follows:*

 - a. *In the event that the erosion escarpment comes within 20 metres of any (Change to Habitable Components only as outdoor dining area is sacrificial – see condition No.37 below – avoid double up and inconsistency with Condition No.37) building/s on the subject land then the use of any building/s shall cease and the registered proprietor of the subject land shall remove any or all buildings to a location on the subject land that is further than 20 metres from the erosion escarpment where possible, or off site where not possible. In the event that relocation is not possible, then any affected building shall be demolished.*
 - b. *The registered proprietor of the subject land shall bear all costs in relation to the relocation or demolition of any or all buildings located on the subject land.*
 - c. *The terms "Coastal Hazard Zones", "erosion escarpment" and any other references of this covenant are to be read as having the meaning in accordance with their definitions in the Tweed Development Control Plan B25".*

Condition No.111

Hours of operation of the business are restricted to the following hours **and in accord with the recommendations of the CRG Acoustical Consultants (ref: crgref12008a report dated 10 April 2012):**

- * Dining areas, not including BBQ or Outdoor Bar and Dining Areas, 7am - 10pm Sunday to Thursday **and Public Holidays**, 7am - 12am Friday and Saturday **and Public Holidays**;
- * Outdoor facilities, including Pool, BBQ and Bar and Outdoor Dining Areas, 7am to 10pm ~~9pm~~ Monday to Sunday.

Condition No.113

Upon receipt of a noise complaint that Council deems to be reasonable, the operator/owner is to submit to Council a Noise Impact Study (NIS) carried out by a suitably qualified and practicing acoustic consultant. The NIS is to be submitted to the satisfaction of the General Manager or his delegate. It is to include recommendations for noise attenuation. The operator/owner is to implement the recommendations of the NIS within a timeframe specified by Council's authorised officer. **Agreed, however this condition points out the overly restrictive nature of earlier conditions.**

Condition No.118

Amplified music or sound is only to be undertaken in accord with the recommendations of the CRG Acoustical Consultants (ref: crgref12008a report dated 10 April 2012) in indoor areas which have doors, windows or other openings that can be closed to reduce or prevent noise emissions from the buildings.