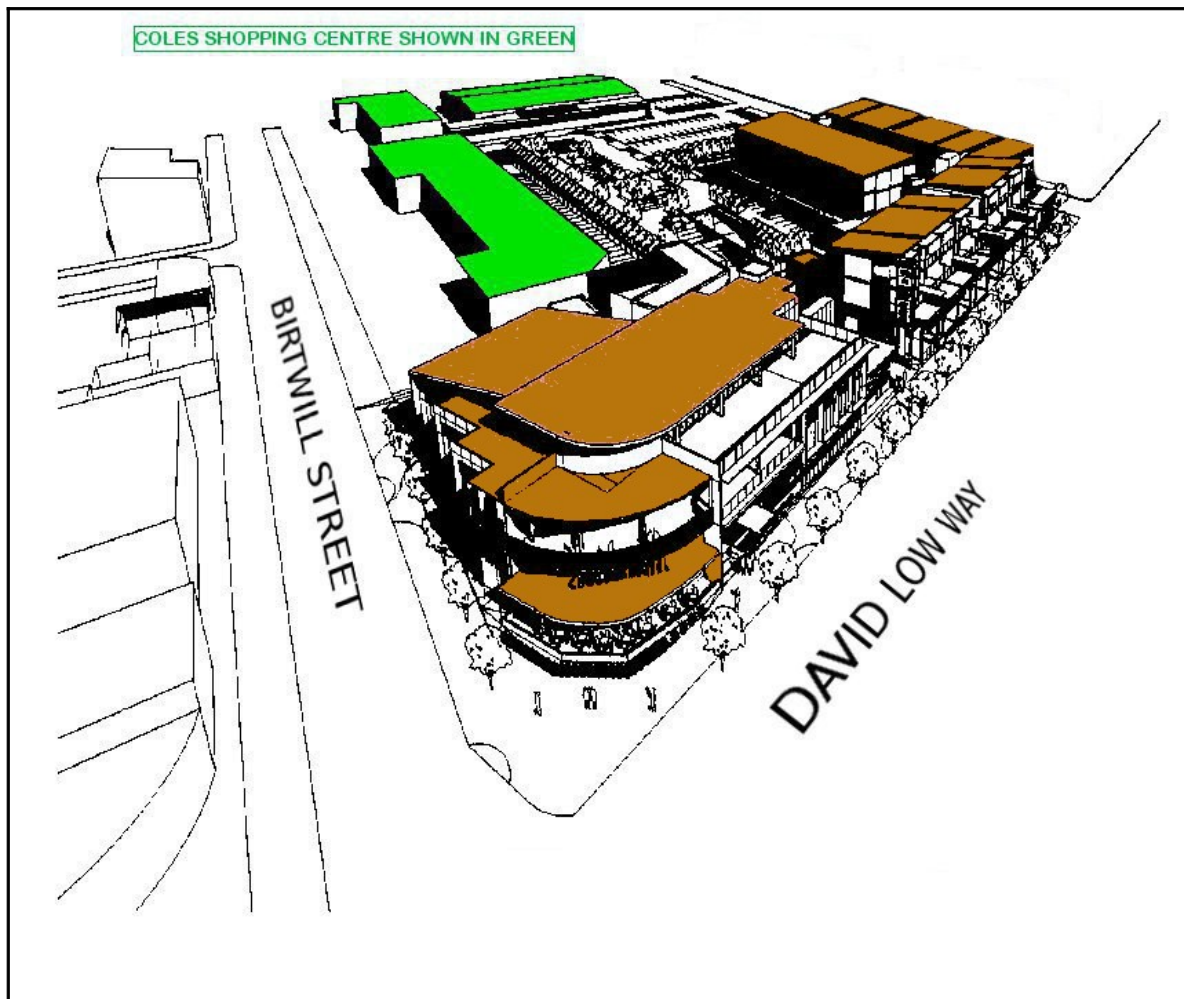


SUBMISSION TO THE SUNSHINE COAST COUNCIL

MCU10/2001 REDEVELOPMENT OF COOLUM HOTEL SITE



A SUBMISSION BY



DEVELOPMENT
PO BOX 1076
COOLUM BEACH QLD 4573

WATCH INC

21 November 2011

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21 November 2011

The Chief Executive Officer
Sunshine Coast Council
PO Box 76
NAMBOUR QLD 4560

Dear Sir,

NOTICE OF SUBMISSION
MCU10/2001 - DEVELOPMENT PERMIT FOR A MATERIAL CHANGE OF USE
(HOTEL, SHOPS AND MOTEL)
1 & 3 MARGARET ST AND 2 BIRTWILL ST, COOLUM BEACH

ALH Group Pty Ltd (the Applicant) has submitted an application MCU10/2001 (the Application) to redevelop the Coolum Hotel site (the subject site) at Coolum Beach by constructing a hotel, shops and motel units. Development Watch acknowledges that appropriate redevelopment of the subject site is warranted. However, the Application raises a number of significant issues that must be satisfactorily addressed to achieve compliance with the applicable planning scheme, Maroochy Plan 2000 (MP2000). In fact, Development Watch believes the Application's conflicts with certain aspects of MP2000 are not resolvable. This submission contends therefore that Council should refuse the Application.

CONFLICT WITH THE PLANNING SCHEME

Development Watch accepts that, under certain circumstances, Council may approve an application that conflicts with MP2000. Any departure from the planning scheme must of course be justified by the applicant demonstrating to Council that there are sufficient grounds for that departure. The Sustainable Planning Act (SPA) requires that Council's decision on an impact assessable application must not "*conflict with [the planning scheme], unless ... there are sufficient grounds to justify the decision, despite the conflict.*"¹ "Grounds" are defined as "*matters of public interest*" but do not include "*the personal circumstances of an applicant, owner or interested party.*"²

¹ *Sustainable Planning Act 2009* (SPA), s326(1)(b).

² SPA Schedule 3, Dictionary.

If Council does resolve to approve the application despite the conflict with MP2000, then it must publish in its Decision Notice *"the reasons for the decision, including a statement of the sufficient grounds ..."*³

COOLUM'S PERMITTED LAND USE

A comprehensive understanding of the permitted land use at the subject site is necessary if the Application is to be properly assessed. Council's Corporate Plan defines as a priority:

*"Develop and implement strategies to retain the unique character of our centres, villages and towns"*⁴

It is to this end that MP2000 defines a Retail and Commercial Centres Hierarchy for the region. In this hierarchy, the subject site is in an area designated a 'Village Centre'⁵. In addition, the subject site is in the 'Coolum Village Centre' precinct of Planning Area 11.⁶ However, because Coolum Beach is also a 'Major Tourist Node'⁷, it is required to *"... provide the level of service or perform the role of a Local centre."*⁸

These lower-order centres (Village and Local) in the Centres Hierarchy have defined limits on the permitted size of commercial premises. In Local Centres, these premises are limited to a gross floor area (GFA) of 1,000 square metres⁹. This limit ensures that the role of higher-order centres is not compromised and that the scale of the lower-order centres is preserved.

A permitted use must also advance the community's vision for Coolum. MP2000 contains the following vision statements that were endorsed by the Coolum community:

*"The township will have a compact village centre and will provide only a limited range of goods and services to meet the immediate needs of residents and visitors to the locality."*¹⁰

and

³ See SPA s335(1)(n).

⁴ *Corporate Plan 2009-2014*, Sunshine Coast Regional Council, adopted 14 May 2009, Item 7.1.2, page 13

⁵ MP2000, Vol 2, Section 4.4.1 (23), page 21, states "The existing David Low Way based facilities at Coolum are the Village centre."

⁶ MP2000, Vol 3, Map, Planning Area No.11, Coolum Beach

⁷ MP2000, Vol 2, Strategic Plan Map 2.1

⁸ MP2000, Vol 2, Section 4.3.5, page 20

⁹ MP2000, Vol 2, Section 4.3.4, page 19. See also MP2000, Vol 4, Section 5, page 269, which states at Acceptable Measure A1.1, *"Any premises used for commercial purposes and having a gross floor area of over 1000m² are located only in a Town Centre Core or Town Centre Frame precinct."*

¹⁰ MP2000, vol 3, Section 3.11.2 (1), page 199

*"Within this Planning Area, the scale of retail and commercial activities will be limited to serving the immediate catchment area of Coolum and will not serve a district or higher order function."*¹¹

and

*"The residents of Coolum have indicated they are prepared to forgo the provision of higher order and larger scale retail and commercial services in order to maintain local character and identity. Infill development within the Village Centre ~~but only~~ is to be compatible with the small scale function of the centre and contributes to the casual beachside atmosphere of the locality."*¹²

The Application, as it stands, conflicts with these requirements.

SPECIFIC COMMENTS

BULK LIQUOR STORE

The Applicant proposes a "Dan Murphy's" bulk liquor store on the site, in addition to a drive-through bottle shop.. Development Watch believes its function and size precludes it from complying with MP2000.

FUNCTION

MP2000 states:

*"Approval is only likely to be granted to development of retail, commercial and service uses which are to be located on a specific site (in a Centre Precinct or site specifically identified) and **which offer a service only to local communities** (other than in the Key Regional Centre of Maroochydore) **and are consistent with the intent for, and desired character of the Planning Area and Precinct in which it is to be situated.**"*¹³ (emphasis added);

and also identifies as a concern:

*"excessive development of Local centres that provide services beyond convenience shopping levels and compete with higher order centres;"*¹⁴

A bulk liquor store of the size proposed (1,294m² GFA) will obviously have a catchment area well beyond Coolum. We believe it would draw customers from as far afield as Pacific Paradise, Yandina and Marcus Beach. The siting of such a facility at Coolum Beach is contrary to the vision for the town, as described above:

¹¹ MP2000, vol 3, Section 3.11.3 (1) (a), page 200

¹² MP2000, vol 3, Section 3.11.2 (2) (a), page 199

¹³ MP2000, Vol 2, Section 3.5.6 para1, page 14.

¹⁴ MP2000, Vol 2, Section 4.2, page 18.

This vision of limiting the size of retail and commercial activities in Coolum has been tested in court. In dismissing an appeal against Council's refusal of an application for a Bunnings store in Coolum Beach, Judge Dodds DCJ stated:

*"It may be concluded from the evidence that what is proposed, together with that already approved, would be accessed by persons from across a wide area. Consumers' choice no doubt would be enlarged. That, however, is a long way from showing existing facilities of the type proposed are inadequately provided for."*¹⁵

Despite proposing a retail outlet that is in obvious conflict with MP2000, the Applicant has not provided any argument that there are sufficient grounds to justify the siting of this higher-order facility in Coolum Beach. Such justification is particularly relevant given there are three existing liquor outlets outside the subject site and a drive-through liquor outlet is part of the proposal. Additionally, there are two similar bulk liquor outlets owned by the Applicant within a 15-20 minute drive from Coolum.

Council should refuse the Application as no sufficient grounds have been demonstrated to justify a departure from these MP2000 requirements .

SIZE

As mentioned earlier, MP2000 requires that commercial uses do not exceed 1,000m² GFA. The proposed bulk liquor store exceeds that limit by 29%. As would be expected, Council's Information Request required the Applicant to:

*"Provide additional justification for the commercial uses exceeding the maximum GFA requirement of the Code."*¹⁶

The applicant's response¹⁷ can be summarized as follows:

- Council didn't object to the size at the pre-lodgement meeting;
- "... the proposal is of a type and scale consistent with the desired character of the Precinct ..."; and
- The Dan Murphy's business model requires a store of this size.

Development Watch submits these are not sufficient grounds to justify a store size that is in conflict with MP2000. None of the three reasons provided is valid because:

- the fact that Council did not mention the size requirement in the pre-lodgement meeting is irrelevant and does not absolve the applicant from meeting it;
- it is clear that the proposal, despite the Applicant's statement, is not "of a type and scale consistent with the desired character of the precinct"; and

¹⁵ *Coolum Properties Pty Ltd v Maroochy Shire Council and Ors* [2007] QPEC 013, paragraph 57

¹⁶ *Information Request*, Sunshine Coast Council, 20 August 2011, Information Required No.16

¹⁷ *Response to Information Request*, Place Design Group, 26 September 2011, Appendix 1, Item 16

- arguing that the Applicant's business model requires such a size is also an irrelevant consideration.

AVAILABILITY OF ALCOHOL

If Council approves the proposed bulk liquor outlet, it would give implicit agreement to increasing the availability of discount-priced alcohol in Coolum. The Sustainable Planning Act (SPA) requires Council to advance the purpose of SPA; namely, to seek to achieve ecological sustainability. In doing so, Council must take in to account the "... *social wellbeing of people and communities.*"¹⁸ Therefore, before making its decision, Council must make an assessment of whether or not this would be detrimental to, or detract from, the amenity of the area. It must also ensure a decision to approve would not be conducive to, nor encourage, the misuse or abuse of alcohol.

We note that the Shoalhaven City Council, on 17 May 2011, refused a development application for a Dan Murphy's bulk liquor outlet in Nowra, NSW. The Notice of Determination (see Attachment A to this submission) gave the reasons for refusal as:

- The proposed development will have an unacceptable social impact.
- The proposed development is of a form and character that is contrary to the objectives of the Shoalhaven Local Environmental Plan 1985.
- The proposed development is not in the public interest.

TAVERN

The Applicant proposes to replace the existing hotel on the site with a new tavern. Development Watch applauds such a move and agrees that the associated entertainment and function rooms would provided needed facilities for Coolum. However, the scale of what is proposed is far in excess of that allowed by MP2000.

SIZE

The Tavern GFA, excluding the attached drive-through bottle shop, is 1399m², which is 40% greater than allowed by MP2000 for the subject site. Although the Applicant would have been aware that the proposed size was outside acceptable limits, it did not provide any argument in justification.

Council should refuse the Application as no sufficient grounds have been demonstrated to justify a departure from this MP2000 requirement .

LAYOUT

¹⁸ Sustainable Planning Act 2009, (SPA), s.8(c)

Development Watch concedes that poker machines are an integral part of ALH hotels and taverns. Nevertheless, we believe that steps should be taken to ensure that they do minimum harm to the community. A large portion of the proposed tavern floor area is set aside as a gaming room that is closely integrated with the bar and bistro. We suggest a more socially responsible approach would be to alter the layout to ensure the glitz of the gaming area was not visible from any other part of the tavern.

Coolum is a family oriented holiday and residential town. The proposed layout should therefore be family, rather than gambling, oriented.

ARCHITECTURAL MERIT

Council's Corporate Plan defines as a strategy:

*"Encourage developers to use place making techniques and embrace high quality urban design in the provision of parks, open spaces and local facilities"*¹⁹

In its Information Request, Council provided this encouragement to the Applicant by making the following recommendation:

*Given [the] above noted shortfall in parking numbers, a loss of GFA is recommended. [That would] provide both additional landscaping (communal open space) and a reduced building bulk and further reduce parking demand (such reduction needs to be considered in conjunction with the urban design matters).*²⁰

The Applicant, in its response, declined to make any concessions to its design that would provide adequate landscaping and communal open space or that would reduce building bulk.

LANDSCAPING/OPEN SPACE

The applicant concedes, in its Response to Information Request, that it has provided landscaping and open space that falls around 500m² short of MP2000 requirements²¹. In trying to justify the acceptability of this shortfall, it argues²² that 'borrowing' public open space from Lions Park on the other side of David Low Way is an acceptable solution. It is difficult to comprehend how the Applicant could have the temerity to suggest its own open space obligations could be met by any part of existing public open space.

We are also disappointed that most of the landscaping is merely trees planted in the car park to provide shade for vehicles.

¹⁹ Corporate Plan, Item 7.3.1, page 13

²⁰ Information Request, penultimate paragraph, page 2 [This quote has been edited by the author of this submission to make it readable]

²¹ See Response to Information Request, Appendix 2, Drawing No. 0903-DA-0.01, Table

²² See Response to Information Request, Appendix 1, Item 8

Development Watch is concerned that the open space area of 3288m² declared by the Applicant has been overstated. We ask Council to determine the legitimacy of including the roofed beer garden and roofed private outdoor dining areas in the total. The absence of a wall or two should not turn a room into open space. We also doubt that the north forecourt, which has two floors of motel units on top, could be considered as open space in the sense intended by MP2000.

Council, in its Information Request, expressed concern about the inadequate landscaping and open space proposed in the Application. It said:

Further, the Coolum Village Master Plan identifies a 'forecourt opportunity' on this site. An area of landscaped communal open space will be sought adjacent to the David Low Frontage of the site, ideally located close to a pedestrian link and with adjoining shops/uses designed to address such open space.

The Applicant, In its response, did not address this Council requirement. We submit that the Applicant's unwillingness to provide the required amount of landscaping and open space gives Council adequate reason to refuse the Application.

BULK/MASS

The building design makes no concessions to the beachside location of the site and would be more appropriate for an inner-city redevelopment. MP2000 contains many guidelines that have been ignored in this Application. For example:

*The visual character of the building is important if it is to be reflective of the Sunshine Coast and respect the immediate amenity in which it is to be located.*²³

and

*Buildings are to respect the street level scale of adjoining premises.*²⁴

The proposal is three storeys in its entirety and certainly does not "*respect the street level scale of adjoining premises*". The adjacent site is the Coles Coolum Village shopping centre and is one storey throughout.

MP2000 also cautions:

*Council in assessing applications will have regard to the visual character of a development to ensure that the character of the particular Planning Area, the immediate amenity and the historical and cultural character of the area in which it is located, has been considered.*²⁵

²³ MP2000, Vol 2, Section 4.4.6, page 25

²⁴ MP2000, Vol 2, Section 4.4.5 (2), page 24

²⁵ MP2000, Vol 2, Section 12.5.4, page 60

Guidelines of more direct relevance to this proposal are contained in MP2000's design intent for Coolum Beach:

" New premises in the Village Centre will reflect the relaxed character and seaside location of the area. In particular, the following design elements will be incorporated:

- *active street frontages which create a comfortable, attractive and interesting pedestrian environment and include features such as landscaping, outdoor dining areas and awnings;*
- *a building form, scale and character which successfully integrates with surrounding premises and the informal, low-key seaside character of the area. Setbacks should be consistent with adjacent buildings and awnings, paving and landscape themes should be designed to integrate effectively with works already completed in accordance with the Coolum Master Plan;*
- *modern interpretations of traditional beach house design which provide high quality but informal and relaxed commercial environments."*²⁶

The architectural style of the proposed development does not take any cues from these guidelines. Its design is more appropriate to an inner-city redevelopment and certainly doesn't successfully integrate with *"the informal, low-key character of the area."*

Council should refuse the Application as no sufficient grounds have been demonstrated to justify a departure from these MP2000 requirements .

ECONOMIC IMPACT

Development Watch is most disappointed that Council did not require an economic impact assessment of the proposal. The Applicant proposes a bulk liquor outlet and motel units that are part of national networks. They will compete with locally owned and operated businesses. The aggressive marketing practices of Dan Murphy's is likely to result in the closure of all independent liquor outlets in Coolum. For this reason alone, Council's decision on the Application should be informed by knowledge of its effect on both job and payroll numbers.

We believe the Application, if approved, will have an adverse effect on the Coolum economy and consequently on the Coolum community. This is because local businesses distribute a much larger share of their sales revenue back into the local economy, while nation-wide chains transfer most of their income out of the community and back to corporate headquarters or to distant suppliers.

²⁶ MP2000, vol 3, Section 3.11.3 (2) (b), page 200

The added economic benefit of local businesses to a community has been quantified in several studies²⁷. One study²⁸ found that spending \$100 at one of the neighbourhood's independent businesses created \$68 in additional local economic activity, while spending \$100 at a chain produced only \$43 worth of local impact. The difference was due to four factors:

- **Local Payroll** - The locally owned businesses spent a larger share of their revenue on local labour (29 vs. 23 percent), because they carried out all management functions on-site, rather than at corporate headquarters.
- **Purchasing** - The local retailers spent more than twice as much buying goods and services from other local businesses. They banked locally; hired local accountants, lawyers and other professionals; advertised in local media; and sourced inventory from local firms.
- **Profits** - Because their owners live in the area, a larger portion of the local retailers' profits stayed within the local economy.
- **Charitable giving** - The local retailers donated more on average to local charities and community organizations than the chains did.

MP2000's Strategic Plan includes a requirement to *"support small business enterprises ..."*²⁹. It also flags as a key issue *"economic and community advantages in recognising and supporting the Retail and Commercial Centres Hierarchy, particularly with respect to ... local centres which do not compromise higher order centres"*³⁰. To comply with these provisions, we submit Council must refuse the Application.

TRAFFIC

The vehicular entrance and exit at Birtwill Street is adjacent to the exit from the Coles property. This is most likely to cause considerable conflict between the users of each access. The layout is also likely to increase risk to pedestrians in the vicinity. We suggest a shared entrance/exit with Coles and an internal roundabout (if necessary) be negotiated between the subject site and Coles to minimize this conflict.

There is no internal vehicular access between ALH and Coles sites. As many customers are likely to want to park their vehicle close to the Coles supermarket and to the bulk liquor store, this will increase traffic in Birtwill and Margaret Streets. We suggest appropriate internal vehicular access between the two sites be required so as to minimize congestion in the streets.

²⁷ See, for example, *Does Local Firm Ownership Matter?* Economic Development Quarterly, August 2011, pp 277-281. See also *The Economic Impact of Locally Owned Businesses vs. Chains: A Case Study in Midcoast Maine*, Institute for Local Self-Reliance, September 2003, viewed at <http://www.newrules.org/retail/midcoaststudy.pdf> on 2 November 2011

²⁸ *The Andersonville Study of Retail Economics*, October 2004, viewed at <http://www.civiceconomics.com/Andersonville/AndersonvilleStudy.pdf> on 2 November 2011. The findings of this study are summarized in *Locally Owned vs. Chain: The Local Premium*, a fact sheet from <http://www.bigboxtoolkit.com/> that is the basis for much of this section.

²⁹ MP2000, Vol 2, Section 2.4 (2)(g)

³⁰ MP2000. Vol 2, Section 4.2, page 18

NO SUFFICIENT GROUNDS TO JUSTIFY APPROVAL

The Applicant has not provided any justification of the need for a bulk liquor outlet, additional accommodation units and additional retail space in Coolum. Nor has it provided any other valid argument that would give Council sufficient grounds for deciding in favour of the application despite the obvious conflicts with the Planning Scheme.

There are no matters of public interest involved in this application that would justify approval, merely the commercial interest of the landowner.

CONCLUSION

In brief, Development Watch submits that Council must refuse the Application because it conflicts with many aspects of MP2000. In particular:

- it is not compatible with MP2000's vision for Coolum Beach;
- it lacks sufficient architectural merit to achieve compliance with the Planning Scheme's requirements;
- the floor area of both the bulk liquor store and the tavern are far in excess of that permitted;
- the land set aside for landscaping and open space is inadequate;
- it would, if approved, adversely affect the economic viability of established businesses in Coolum, with a consequent reduction in economic benefit to the community; and
- there are no sufficient grounds to enable the approval of the Application as there is no matter of public interest that would justify relaxation of the planning requirements of Maroochy Plan 2000.

Yours faithfully,



Project Officer MCU10/2001

Development Watch Inc

Attachment A - Notice of Determination

Ordinary Meeting 17 May 2011 - Item 6

Attachment A

NOTICE TO APPLICANT OF DETERMINATION OF DEVELOPMENT APPLICATION

BY REFUSAL

**Environmental Planning and Assessment Act, 1979
DA09/2325**

TO:

Martin Morris & Jones Pty Ltd
PO Box 1167
WOLLONGONG NSW 2500

being the applicant(s) for **DA09/2325** relating to:

Lot 1 DP 657491 (Kalandar Street), Lot 2 DP 212440 (Kalandar Street) and Lot 1 DP 32473, (Hollands Road), Nowra

REFUSED USE AND/OR DEVELOPMENT:

Demolition of an existing motel building, construction of a new building (to contain a Dan Murphy's Retail Outlet), erection of associated signage and consolidation of existing lots.

DETERMINATION DATE:

REFUSAL DATE:

Pursuant to the Section 81 of the Act, notice is hereby given that the above application has been determined by **REFUSAL** for the following reasons:

1. Pursuant to Section 79C(1)(b) Environmental Planning and Assessment Act, 1979 the proposed development will have an unacceptable social impact; and
2. Pursuant to Section 79C(1)(a)(i) Environmental Planning and Assessment Act, 1979 the proposed development is of a form and character that is contrary to the objectives of the Shoalhaven Local Environmental Plan 1985.
3. Pursuant to Section 79C(1)(e) Environmental Planning and Assessment Act, 1979 the proposed development is not in the public interest .

RIGHTS OF REVIEW AND APPEAL

Development Determination under Environmental Planning and Assessment Act, 1979

*Under section 96AB of the Environmental Planning and Assessment Act, 1979 an applicant may request the council to review its determination except where it relates to a Complying Development Certificate, Designated Development, Integrated Development or deemed refusal. The request was made **within six (6) months** of the date of the receipt of the determination, with a prescribed fee of 50% of the original DA fee.*

*Section 97AA of the Environmental Planning and Assessment Act, 1979 confers on an applicant who is dissatisfied with the determination of a consent authority in relation to this modification a right of appeal to the Land and Environmental Court which must be exercised within **six (6) months** of the date of this notice.*

PRIVACY NOTIFICATION

Personal information contained on this Development Consent Modification and any associated documents will be published on Council's website as required by the Government Information (Public Access) (GIPA) Act 2009.

SIGNED on behalf of Shoalhaven City Council:

Signature

**Name Robert Russell
Development Manager
Development & Environmental Services Group**