



Sunshine Coast
COUNCIL

DETAILED ASSESSMENT REPORT

DEVELOPMENT SERVICES

APPLICATION FOR MINOR CHANGE TO DEVELOPMENT APPROVAL

APPLICATION SUMMARY	
Applicant:	Pacific Diamond 88 Pty Ltd
Consultant:	Project Urban Pty Ltd
Owners:	Robyn Elizabeth Byrnes; Dorothy Graham; Richard Charles Kinzbrunner; Joy Ada Findlay; Mark Shelton Hayes and David Seaton Hayes
Proposal:	Minor Change to Development Permit for Material Change of Use for Multiple Dwelling Units (73 units) and Shop (corner store)
Properly Made Date:	8 April 2020
Decision Due Date:	31 July 2020
Number of Properly Made Submissions:	<p>The original application was code assessable, therefore there was no formal public notification period. However, a total of 84 community comments were received from local residents detailing various concerns with the proposed development. These concerns are summarised in the original assessment report.</p> <p>A total of 16 community comments were received for the subject change application.</p>
PROPERTY DETAILS	
Division:	4
Street Address:	2 and 6 Talinga Street, 84 and 85 Pacific Boulevard and 61 and 63 Iluka Avenue, BUDDINA
RP Description:	Lot 1 RP 201319; Lot 280 B 92911; Lot 281 B 92911; Lot 282 B 92911; Lot 310 B 92911; Lot 311 B 92911
Land Area:	3806.1m ²
Existing Use of Land:	5 x single dwelling houses
STATUTORY DETAILS	
Planning Scheme:	Sunshine Coast Planning Scheme (29 June 2018)

Strategic Framework Land Use Category:	Not applicable to code assessment
Local Plan Area:	Kawana Waters local plan area
Zone:	High density residential zone
Consistent/Inconsistent Use:	Consistent
Assessment Type:	Code
State Referral Agencies:	There are no state referrals applicable to this application.
Referred Internal Specialists for original application:	<ul style="list-style-type: none"> • Principal Architect, Development Services Branch, Customer Engagement and Planning Services Group • Principal Development Engineer, Development Services Branch, Customer Engagement and Planning Services Group • Principal Development Engineer (Hydraulics), Development Services Branch, Customer Engagement and Planning Services Group • Landscape Officer, Development Services Branch, Customer Engagement and Planning Services Group • Environment Officer, Development Services Branch, Customer Engagement and Planning Services Group • Conservation Officer (Wildlife Management/TurtleCare), Liveability and Natural Assets Group • Coordinator, Planning Scheme and Projects, Strategic Planning, Customer Engagement and Planning Services Group
Referred Internal Specialists for Changes to the Development Approval:	<ul style="list-style-type: none"> • Environment Officer, Development Services Branch, Customer Engagement and Planning Services Group • Conservation Officer (Wildlife Management/TurtleCare), Liveability and Natural Assets Group

PROPOSAL:

The applicant seeks to make a Minor Change to existing approval MCU18/0190 for a Development Permit for Material Change of Use for Multiple Dwelling Units (73 units) and Shop (Corner Store).

The original approval MCU18/0190 was issued on 2 May 2019 and took effect on 11 October 2019 following the issue of a Negotiated Decision Notice. Construction on the development has not yet commenced.

The approval is for a residential apartment building located across six sites in close proximity to Buddina Beach. The development contains two levels of basement carparking (188 cars) with dual access from both Iluka Avenue (primary access) and Talinga Street. The building would be 21 metres high.

The submitted Minor Change to the Development Approval application proposes to:

- Update Conditions 54, 63, 69, 70 and 73 which relate to the management of lighting and sky glow, particularly in relation to the potential impacts of lighting on marine turtles, as outlined below:
 - Condition 54 relates to the use of landscaping as a barrier to light emission;
 - Condition 63 relates to the certification of all lighting devices used throughout the development to meet the conditions of the overall development approval;
 - Condition 69 relates to the requirement for the development to, at all times, maintain or reduce the sky glow values that existed on the site pre development;
 - Condition 70 relates to specific building design and construction requirements (including use of window tinting and opaque blinds) to maintain or reduce sky glow levels and minimise light emission from the development; and
 - Condition 73 relates to rehabilitation commitments in the adjoining Buddina Foreshore Reserve.
- The applicant also proposes inclusion of a new Condition 70A. This condition provides additional detail for inclusion into the Community Management Statement such that users and visitors to the development are better informed about their ongoing responsibilities with respect to the management of lighting at the site.

Revised versions of 54, 63, 69, 70 and 73 (plus the new condition 70A) have been provided by the applicant, in consultation with their lighting and ecology experts. There is no change proposed to any of the other conditions which relate to lighting, and all conditions would continue to operate as a suite to ensure that post development sky glow levels do not exceed pre development sky glow levels, and that all lighting would be managed to minimise light spill onto the turtle nesting area at adjoining Buddina Beach.

The applicant intends that the revised versions of Conditions 54, 63, 69, 70 and 73 would replace the existing set and consider that as a whole, the revised conditions would be more robust and enforceable than the current set.

The minor change application seeks only to update the conditions referenced above. There are no other changes proposed to the development approval.

BACKGROUND:

The existing approval MCU18/0190 was issued on 2 May 2019. The applicant suspended their appeal period and subsequently made representations to the development

conditions. A Negotiated Decision Notice was then issued on 12 September 2019. The approval took effect on 11 October 2019.

The approval is currently the subject of an Originating Application to the Planning & Environment Court seeking a declaration from the Court that Council's Negotiated Decision Notice approving a development application for a code assessable Material Change of Use for Multiple Dwelling Units (73 units) and Shop is invalid and of no legal effect.

The application for a Minor Change to the Development Approval is independent of the appeal proceedings and must be assessed on its merits in accordance with the *Planning Act 2016*.

SITE DETAILS:

Site Features and Location

SITE AND LOCALITY DESCRIPTION	
Land Area:	3806.1m ²
Existing Use of Land:	Residential dwelling houses
Road Frontage:	<ul style="list-style-type: none"> • Approximately 64m to Pacific Boulevard • Approximately 60m to Talinga Street • Approximately 64m to Iluka Avenue
Significant Site Features:	The site contains residential dwelling houses and slopes away from Pacific Boulevard.
Topography:	The site slopes significantly down from Pacific Boulevard to Iluka Avenue at the rear.
Surrounding Land Uses:	Predominantly single dwelling houses. Buddina State School is immediately to the west of the subject site. Pacific Boulevard and Buddina beach are immediately to the east of the site.

The location of the subject site in relation to its surrounds is shown below in Figures 1 and 2:

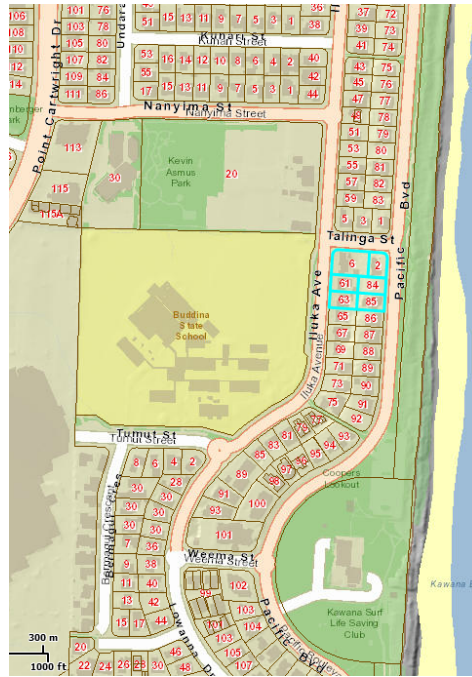


Figure 1: Street map location plan showing context of site



Figure 2: Site aerial (highlighted in blue)

The approved plans are shown below from Figures 3 to 15:



Figure 3: Site Plan

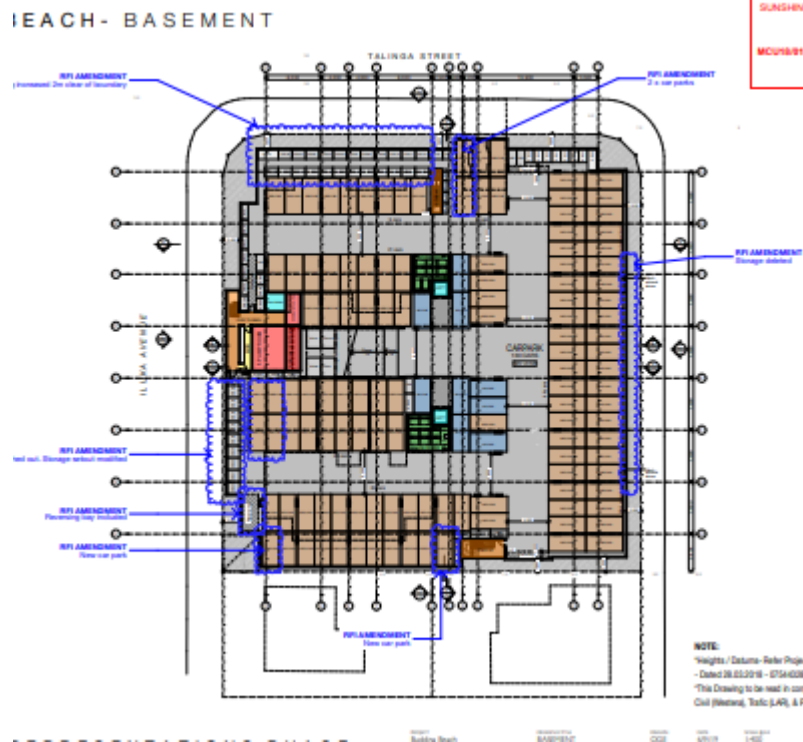


Figure 4: Basement Plan (access from Pacific Boulevard)

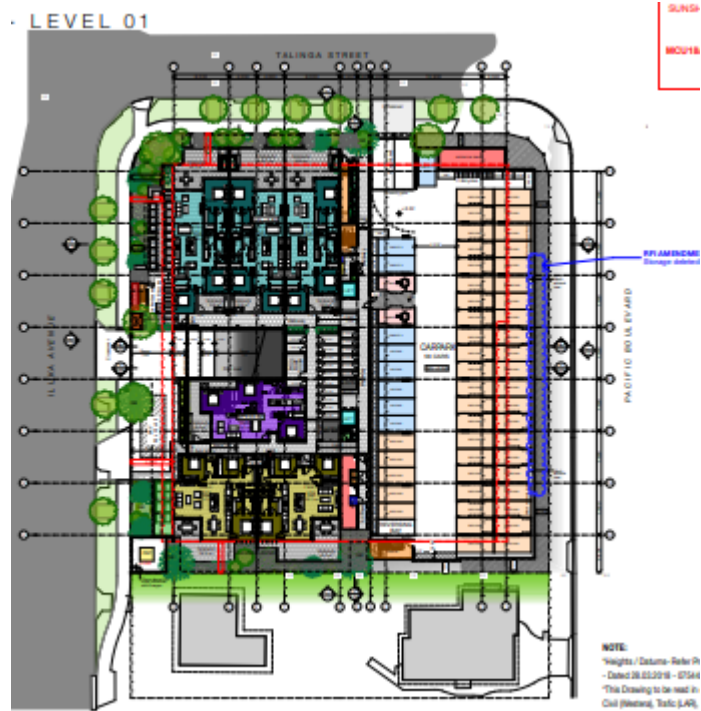


Figure 5:: Level 1 (Ground) Floor Plan (showing second basement with access from Talinga Street)



Figure 6: Level 2 Plan

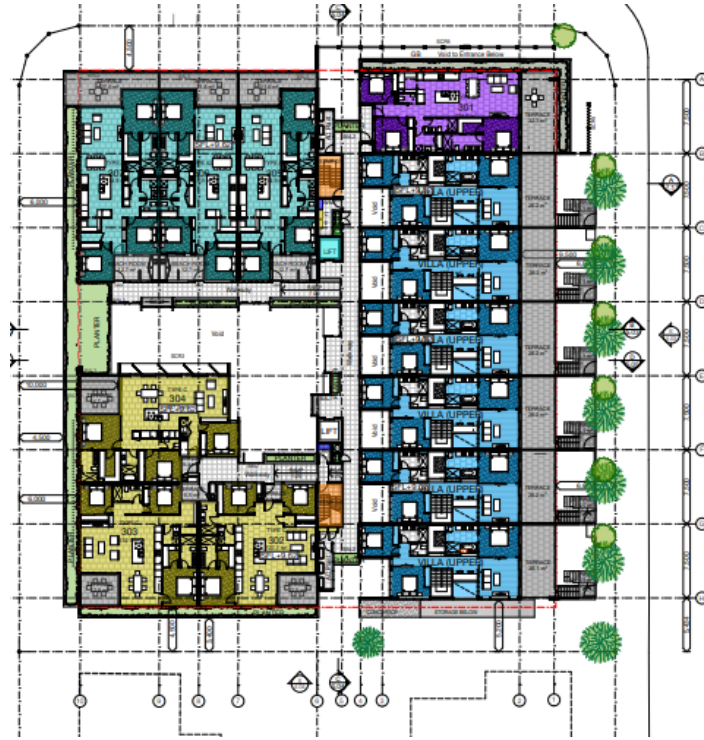


Figure 7: Level 3 Plan

LEVEL 04-06 (TYPICAL)

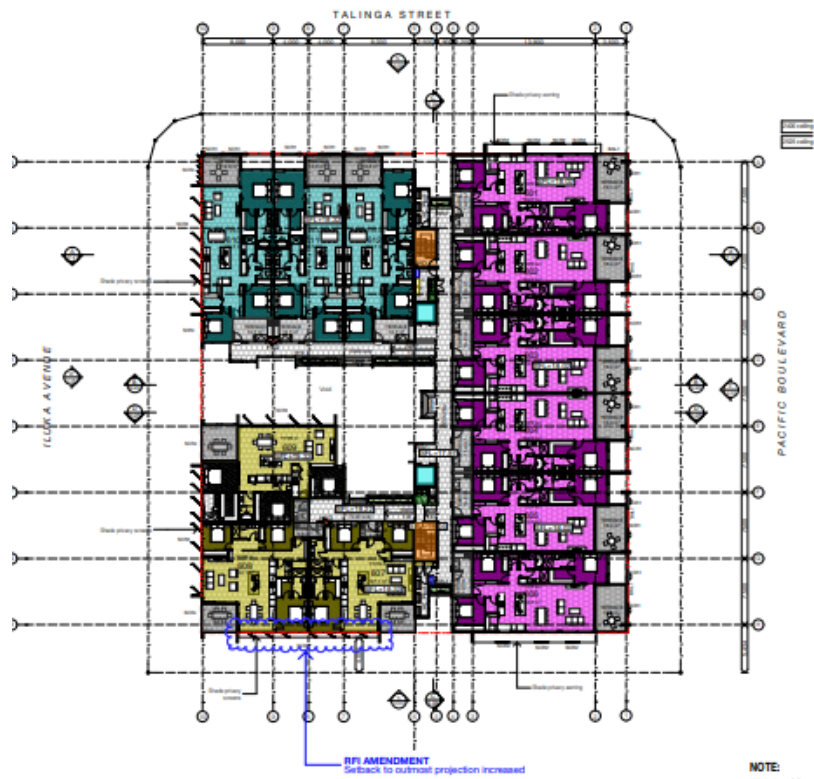


Figure 8: Level 4-6 Plan

NOTE:
*As-built / Refer

LEVEL 07 (PENTHOUSE)

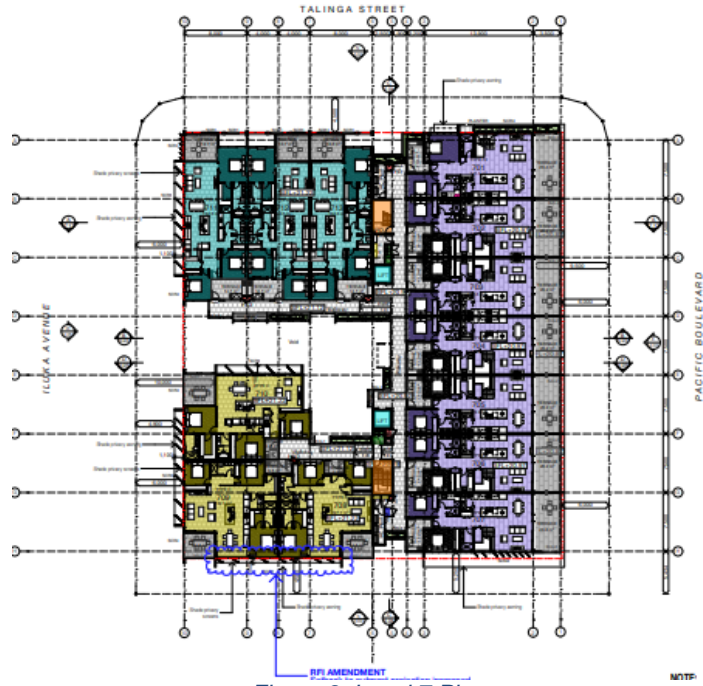


Figure 9: Level 7 Plan

LEVEL 08 (MEZZANINE)

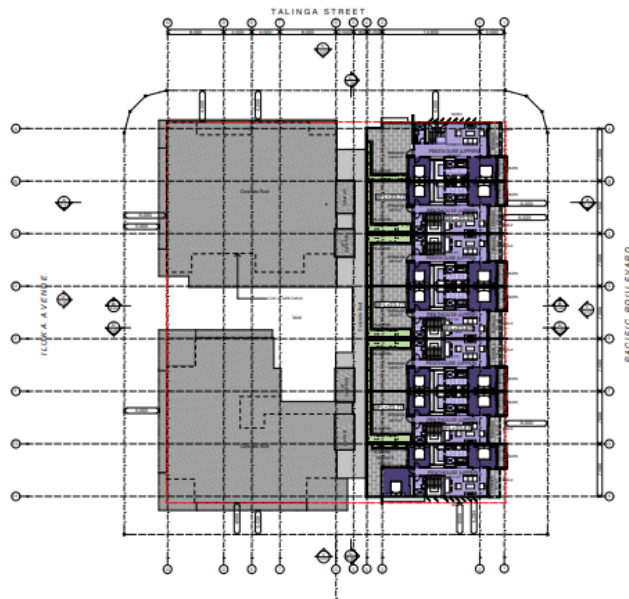


Figure 10: Level 8 Plan

ROOF

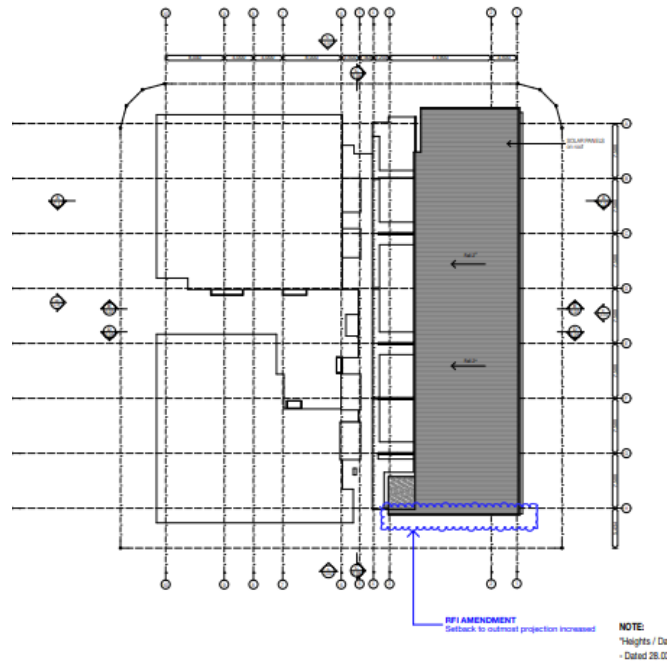


Figure 11: Roof Plan



Figure 12: North elevation



Figure 133: East Elevation



Figure 14: South Elevation

MATERIALS & COLOUR LEGEND



Figure 15: West Elevation

STATUTORY PROCESS:

The applicant has made an application for a Minor Change to a Development Approval under s78 and s81 of the *Planning Act 2016*. A request to make this minor change can only be made in circumstances where that change meets the definition of a 'minor change' in the Act.

The proposed change to the development approval requested by the applicant is determined to constitute a minor change on grounds that:

- The change would not result in a substantially different development because the changes relate only to the conditions about the management of lighting and sky glow, and specifically seek to refine and clarify the current condition set. The Development Assessment Rules provide a number of criteria (listed below) for when a change may be considered to result in a substantially different development:
 - (a) Involves a new use; or
 - (b) Results in the application applying to a new parcel of land; or
 - (c) Dramatically changes the built form in terms of scale, bulk and appearance; or
 - (d) Changes the ability of the development to operate as intended; or
 - (e) Removes a component that is integral to the operation of the development; or
 - (f) Significantly impacts on traffic flow and the transport network, such as increasing traffic to the site; or
 - (g) Introduces new impacts or increases the severity of known impacts; or
 - (h) Removes an incentive or offset component that would have balanced a negative impact of the development; or
 - (i) Impacts on infrastructure provisions.

The proposal does not meet the above criteria.

- The change would not cause the approval to include prohibited development.
- The change would not cause referral to a referral agency, nor referral to extra referral agencies.

- The original application did not require public notification and the change would not cause the development to require public notification.
- In the context of the overall approval, the proposed changes are not considered to be essential, material, or important given they relate to clarifying and strengthening the requirements for certain conditions, and maintain all integral parts of the original condition set.

On this basis, the applicant has followed lawful process in making a request under s78 and s81 of the *Planning Act 2016*.

ASSESSMENT:

The *Planning Act 2016* requires the Minor Change to a Development Approval to be assessed against the assessment matters that applied when the original application was made, but may have regard to the matters that now apply.

The following Planning Scheme provisions applied to the original application:

PLANNING SCHEME DETAILS for Original Application	
Planning Scheme:	Sunshine Coast Planning Scheme (29 June 2018)
Strategic Framework Land Use Category	Not applicable to code assessment
Local Plan Area:	<i>Kawana Waters local area plan</i>
Zone:	<i>High density residential zone</i>
Consistent/Inconsistent Use:	Consistent
Assessment Benchmarks:	<ul style="list-style-type: none"> • <i>High density residential zone code</i> • <i>Multi-unit residential uses code</i> • <i>Business uses and centre design code</i> • <i>Kawana waters local area plan</i> • <i>Acid sulphate soils overlay code</i> • <i>Airport environs overlay code</i> • <i>Coastal protection overlay code</i> • <i>Height of buildings and structures overlay code (21m)</i> • <i>Landslide hazard and steep land overlay code</i> • <i>Landscape code</i> • <i>Nuisance code</i> • <i>Safety and security code</i> • <i>Stormwater management code</i> • <i>Sustainable design code</i> • <i>Transport and parking code</i> • <i>Waste management code</i> • <i>Works, services and infrastructure code</i>

The same Assessment Benchmarks are applicable for the changed application, and the application remains consistent with all applicable benchmarks.

An assessment of each of the proposed changes is provided below. To assist in assessing the specific changes proposed, Council sought review of the applicant's proposed conditions by an external independent lighting expert. The assessment from the lighting expert is contained in the relevant sections below. Where Council officers did not agree with the applicant's proposed changes, amended wording has been recommended to ensure the intent of the original conditions remains intact.

Condition 54 – Landscaping Works

Condition 54 currently reads as follows:

54. The development site must be landscaped. The works must be undertaken in accordance with an Operational Works approval and the Sunshine Coast Council landscape materials palette for the specific area and must include in particular:

- (a) Deleted*
- (b) Landscaping strips to road frontages generally in accordance with the Approved Plans, exclusive of the access driveway, generally uncompromised by infrastructure items;*
- (c) provision of trees within the landscape frontage strips at an average of 6 metre centres;*
- (d) vegetated screening of retaining walls and courtyards addressing the road frontage designed such they that will be screened at maturity;*
- (e) provision of feature trees within the development site at the corners of Pacific Boulevard and Talinga Street and Talinga Street and Iluka Avenue;*
- (f) landscaping along side / rear boundary interface with Lot 309 B92911 and Lot 283 B92911 comprising of shrubs at 1 to 1.5m centres, and where space is available, columnar trees at 6m centres;*
- (g) vegetated screening to the side/s of any electrical transformers and in front of bin storage areas and the like from the road frontage;*
- (h) provision of one (1) street tree within the road reserve for every six (6)m of road frontage (Pacific Boulevard, Talinga Street, and Iluka Avenue);*
- (i) control of all weeds species listed in the following standards and legislation:*
 - (i) declared plants under the Land Protection (Pest and Stock Route Management) Act 2002 and sub-ordinate Regulation 2003*
 - (ii) Sunshine Coast Local Government Area Pest Management Plan 2012-2016.*

Applicant's Request

The applicant has provided an amended condition which replaces (i) above with text requiring vegetated screening to minimise light spill onto the beach. The current text at (i) in relation to weed control would be relocated to the revised Condition 73 which deals with rehabilitation of the foreshore reserve in front of the development site.

The applicant's proposed condition is shown below:

54. The development site must be landscaped. The works must be undertaken in accordance with an Operational Works approval and the Sunshine Coast Council landscape materials palette for the specific area and must include in particular:

- (a) Deleted
- (b) Landscaping strips to road frontages generally in accordance with the Approved Plans, exclusive of the access driveway, generally uncompromised by infrastructure items;
- (c) provision of trees within the landscape frontage strips at an average of 6 metre centres;
- (d) vegetated screening of retaining walls and courtyards addressing the road frontage designed such they that will be screened at maturity;
- (e) provision of feature trees within the development site at the corners of Pacific Boulevard and Talinga Street and Talinga Street and Iluka Avenue;
- (f) landscaping along side / rear boundary interface with Lot 309 B92911 and Lot 283 B92911 comprising of shrubs at 1 to 1.5m centres, and where space is available, columnar trees at 6m centres;
- (g) vegetated screening to the side/s of any electrical transformers and in front of bin storage areas and the like from the road frontage;
- (h) provision of one (1) street tree within the road reserve for every six (6)m of road frontage (Pacific Boulevard, Talinga Street, and Iluka Avenue);
- ~~(i) control of all weeds species listed in the following standards and legislation:

 - ~~(i) declared plants under the Land Protection (Pest and Stock Route Management) Act 2002 and sub-ordinate Regulation 2003~~
 - ~~(ii) Sunshine Coast Local Government Area Pest Management Plan 2012-2016.~~~~
 - (i) Vegetation screening to minimise light spill onto the beach and to the sky, where possible.**

The following justification has been provided by the applicant:

“This amendment is proposed in combination with the proposed removal of Condition 70(s). It is considered that the requirement for vegetated screening to minimise light spill onto the beach, where possible, is better dealt with under Condition 54, to allow planting details to be resolved through a subsequent operational works application. It is noted that conditions 70(g) and (k) will already prevent light from being directed upwards or onto the beach. Condition 69 also ensures that there will be no increase in sky glow in any event”.

Assessment of Request

Agree in part.

Council officers, as well as Council’s external independent lighting expert have agreed that it is appropriate to consolidate the requirements for landscaping and vegetated screening within the overarching landscaping condition, with the management of weeds being more appropriately dealt with by Condition 73 which relates to the ongoing management of the Buddina Foreshore Reserve.

The proposed changes are generally logical and maintain the requirements of the existing condition set.

Notably, Council officers do not agree with the inclusion of the wording ‘where possible’ as the inclusion of these words introduces a level of uncertainty which does not exist in the existing condition wording (under Condition 70(s)) which currently reads as follows:

- (s) *visual screening through vegetation screens must be applied to all lighting towards the coastline and sky.*

Recommendation

It is recommended that Condition 54 be amended as follows:

54. The development site must be landscaped. The works must be undertaken in accordance with an Operational Works approval and the Sunshine Coast Council landscape materials palette for the specific area and must include in particular:
- (a) Deleted
 - (b) Landscaping strips to road frontages generally in accordance with the Approved Plans, exclusive of the access driveway, generally uncompromised by infrastructure items;
 - (c) provision of trees within the landscape frontage strips at an average of 6 metre centres;
 - (d) vegetated screening of retaining walls and courtyards addressing the road frontage designed such they that will be screened at maturity;
 - (e) provision of feature trees within the development site at the corners of Pacific Boulevard and Talinga Street and Talinga Street and Iluka Avenue;
 - (f) landscaping along side / rear boundary interface with Lot 309 B92911 and Lot 283 B92911 comprising of shrubs at 1 to 1.5m centres, and where space is available, columnar trees at 6m centres;
 - (g) vegetated screening to the side/s of any electrical transformers and in front of bin storage areas and the like from the road frontage;
 - (h) provision of one (1) street tree within the road reserve for every six (6)m of road frontage (Pacific Boulevard, Talinga Street, and Iluka Avenue);
 - ~~(i) control of all weeds species listed in the following standards and legislation:~~
 - ~~(i) declared plants under the Land Protection (Pest and Stock Route Management) Act 2002 and sub-ordinate Regulation 2003~~
 - ~~(ii) Sunshine Coast Local Government Area Pest Management Plan 2012-2016.~~
 - (i) Vegetation screening to minimise light spill onto the beach and to the sky.**

Condition 63 – Lighting Devices

Condition 63 currently reads as follows:

63. Certification must be submitted to council from a qualified person that all lighting devices comply with the requirements of this development approval.*

**(Refer to Advisory Note)*

Applicant's Request

The applicant has proposed an amended condition which contains additional wording in relation to the undertaking of follow up actions if there are lighting issues once the use is operating. The revised wording also clarifies when the initial lighting certification is to be provided.

The applicant's proposed condition is shown below:

- 63. Prior to commencement of the use**, certification must be submitted to council from a qualified person* that all lighting devices comply with the requirements of this development approval.

Following commencement of the use, where complaints (other than frivolous or vexatious complaints) are made to Council about lighting impacts from the approved use, Council may require the site management entity to:

- (i) undertake additional testing**
- (ii) where necessary, undertake amelioration measures to ensure that the development complies with the conditions of this development approval**
- (iii) submit certification from a qualified person* that the development complies with the conditions of this development approval.**

No more than one (1) test will be required per annum.

**(Refer to Advisory Note)*

The following justification has been provided for the proposed change:

"This amendment improves clarity in relation to the certification requirements. It also sets a clear framework and protocols around any need for further testing and certification once the use is operating".

Assessment of Request

Agree in part.

Council officers, and Council's external independent lighting expert generally agree that the proposed changes to the condition improve the clarity and enforceability of the condition through clarifying when the certification needs to occur, and providing a procedure for the management and resolution of complaints in relation to lighting impacts arising from the use.

The proposed addition to the condition to specify the requirement to undertake additional testing and amelioration in response to complaints is an improvement and strengthening of the original condition. However, it would be reasonable for council to take into account the nature of any complaint and previous testing results, corrective actions and compliance history in assessing the need for further actions. This would be a more appropriate test for determining responsive action than simply whether the complaints made are 'frivolous or vexatious'.

It is also considered necessary to add additional wording to the end of Condition 63(i) to clarify that, in the event of complaints which council deem to require action, additional testing will be required by the developer, until the testing confirms compliance with the conditions of the development approval. Further, the limitation on not more than 1 test per year as proposed by the applicant is not accepted as this could mean that Council is unable to require additional testing to rectify any lighting issues if the one test per annum has already been undertaken.

Recommendation

It is recommended that Condition 63 be amended as shown below:

- 63. Prior to commencement of the use, Certification must be submitted to council from a qualified person* that all lighting devices comply with the requirements of this development approval.**

Following commencement of the use, and having regard to the nature of any complaint made to Council about lighting impacts from the approved use, as well as previous testing results, corrective actions and compliance history, Council may require the site management entity to:

- (i) undertake additional testing (until the results of testing achieve confirmation of compliance with the conditions of this development approval)**
- (ii) where necessary, undertake amelioration measures to ensure that the development complies with the conditions of this development approval**
- (iii) submit certification from a qualified person* that the development complies with the conditions of this development approval.**

**(Refer to Advisory Note)*

Condition 69 – Turtle Lighting

Condition 69 currently reads as follows:

69. At all times, the development must demonstrate that they maintain the existing established sky glow values under identical conditions (i.e. clear sky). The developer is to engage a consultant to prepare a pre and post construction Artificial Light at Night Survey to determine changes to light emissions from the development to the adjacent turtle nesting beach generally in accordance with the methodology and equipment described in Sunshine Coast Council and Moreton Bay Council's Benchmark Artificial Light at Night Survey 2017.

- (a) the pre-construction Light Survey is to be undertaken prior to any site works commencing on site.*
- (b) the post-construction Light Survey is to be undertaken by the Developer on completion of the development*
- (c) the Light Surveys are to be submitted to Council officers for their review and assessment. Should the post construction 'as built' audit identify that correctional actions are required, these are to be undertaken by the Developer.*

**(Refer to Advisory Note)*

Applicant's Request

The applicant has proposed an amended condition which is shown below:

- 69. Prior to the commencement of the use, and as required thereafter, At all times, ~~the development~~ it must be demonstrated that they development maintains the**

existing established sky glow values under identical conditions (i.e. clear sky) at the adjacent turtle nesting grounds.

To achieve this, the developer is to must engage an appropriately qualified consultant to prepare undertake a pre and post construction development Artificial Light at Night (ALAN) surveys to determine describe any changes in direct light spill and/or sky glow at the adjacent turtle nesting grounds, attributable to the development; and engage a suitably qualified ecologist to interpret the results of the surveys to light emissions from the development to the adjacent turtle nesting beach generally in accordance with the methodology and equipment used must be generally as described in Sunshine Coast Council and Moreton Bay Council's Benchmark Artificial Light at Night Survey 2017. ALAN survey results are to be submitted to Council for review.

The post-development ALAN survey must be completed, with a report confirming the outcomes provided to Council, prior to any residential occupation of the development.

Should the post-construction survey identify an increase in either direct light spill or sky-glow that is attributable to the development, corrective actions are to be undertaken by the Developer.

Where complaints (other than frivolous or vexatious complaints) are made to Council identifying a specific change or concern in relation to light emission levels associated with the development, Council may require the site management entity to:

- (i) submit an Artificial Light At Night (ALAN) survey prepared by a qualified person***
- (ii) where necessary, undertake further amelioration measures; and**
- (iii) once undertaken, obtain certification from a suitably qualified person that the measures will be sufficient to ensure compliance with this condition.**

No more than one (1) ALAN survey will be required per annum.

- ~~(a) the pre construction Light Survey is to be undertaken prior to any site works commencing on site.~~
 - ~~(b) the post construction Light Survey is to be undertaken by the Developer on completion of the development~~
 - ~~(c) the Light Surveys are to be submitted to Council officers for their review and assessment. Should the post construction 'as built' audit identify that correctional actions are required, these are to be undertaken by the Developer.~~
- *(Refer to Advisory Note)*

The following justification for the amendments is provided:

"This amendment improves clarity in regards to the purpose of this condition – which is to maintain the existing established sky glow values at the adjacent turtle nesting grounds post-development. The amendment also improves clarity in relation to the survey requirements. The amendment also establishes an improved framework and protocols around any need for further ALAN surveys and certification once the use is operating".

Assessment of Request

Agree in part.

As a whole, Council officers, and Council's external independent lighting expert generally agree that the proposed changes to the condition improve the clarity and enforceability of the condition through clarifying how the Artificial Light At Night (ALAN) surveys are to be conducted and by whom. For example, the qualification that the survey must be conducted based on at least 99% of all lights in the development being illuminated gives new confidence about the rigour and integrity of the required survey testing. Introduction of a complaints management procedure is also a beneficial inclusion which does not exist in the current condition.

Some modification to the applicant's proposed wording is recommended to align the condition more closely to the original wording of the condition.

Recommendation

It is recommended that Condition 69 be amended as shown below:

69. At all times, the development must ~~demonstrate that they~~ maintain **or reduce** the ~~existing established~~ sky glow values that existed at the adjacent turtle nesting grounds prior to any light being emitted by the development. ~~under identical conditions (i.e. clear sky).~~

To achieve this, prior to commencement of the use, ~~The~~ developer must ~~is to~~ engage an appropriately qualified lighting consultant* to ~~prepare a~~ undertake pre and post construction development Artificial Light at Night (ALAN) ~~S~~surveys under identical equivalent conditions (i.e.: clear sky at time of survey) to describe any ~~determine~~ changes in ~~to~~ light emissions spill and/or sky glow at ~~from the development to the adjacent turtle nesting beach~~ grounds, attributable to the development; and engage a suitably qualified ecologist, and, in consultation with an appropriately qualified lighting consultant* to interpret the results of the surveys and confirm compliance with this condition, including identification of any required rectification measures. ~~generally in accordance with the m~~Methodology and equipment used must be generally as described in Sunshine Coast Council and Moreton Bay Council's Benchmark Artificial Light at Night Survey 2017. ALAN survey results are to be submitted to Council for review.

The post-development ALAN survey must be conducted based on illumination of at least 99% of all lights in the development that may be illuminated following 8pm during the turtle nesting season from 1 October to 31 May, having regard to the lighting control measures required under these conditions. For example, ALAN survey should be conducted with sensor/timer-activated lights illuminated, but with any lights that are required by these conditions to be turned off after 8pm not illuminated. This may require an override of lighting control systems to provide an artificial "worst-case scenario".

The post-development ALAN survey must be completed, with a report confirming the outcomes provided to Council, prior to any residential occupation of the development.

Should the post-construction survey identify an increase in either direct light spill or sky-glow that is attributable to the development, corrective actions are to be undertaken by the Developer.

Having regard to the nature of any complaint made to Council identifying a specific change or concern in relation to light emission levels associated with the development, as well as previous testing results, corrective actions and compliance history, Council may require the site management entity to:

- (i) submit an Artificial Light At Night (ALAN) survey prepared by a qualified person*, and additional surveys as necessary until the results of the surveys achieve confirmation of compliance with the conditions of this development approval;
- (ii) where necessary, undertake further amelioration measures; and
- (iii) submit certification from a qualified person* that the development complies with the conditions of this development approval.

- ~~(a) the pre-construction Light Survey is to be undertaken prior to any site works commencing on site.~~
 - ~~(b) the post-construction Light Survey is to be undertaken by the Developer on completion of the development~~
 - ~~(c) the Light Surveys are to be submitted to Council officers for their review and assessment. Should the post construction 'as built' audit identify that correctional actions are required, these are to be undertaken by the Developer.~~
- ~~*(Refer to Advisory Note)~~

Condition 70 – Turtle Lighting

Condition 70 currently reads as follows:

- 70. Internal and external lighting and signage must be positioned and operated to minimise disruption to adjacent turtle breeding grounds. All lighting must be managed to reduce sky glow and light spill onto the beach: reduced intensity, long wavelength lights; shielded, low to the ground, directed onto areas of interest, low reflectance building surfaces and paint, tinted windows. Details as follows:*
- (a) all windows facing the beach must have 15% visible light transmittance window tinting.*
 - (b) all windows facing the beach must be fitted with opaque blinds where not already screened by opaque external screens or opaque fixed louvres under Condition 31 of this development approval.*
 - (c) indoor and outdoor paint/surfaces/fixtures must be matte and dark in colour and have a maximum reflectance value of 30%.*
 - (d) all outdoor lights must have a maximum of 2700 K correlated colour temperature (CCT). All indoor lights must have a maximum of 3000 K CCT. All*

- lighting (interior and exterior) must avoid the use of halogen, metal halide, or fluorescent lights.*
- (e) *amber LED (590-610 nm) or low pressure sodium lighting must be used as a standard. Warm white is to be used only where colour rendition is required. LED lights must not contain short wavelength blue light and supplier should be asked to provide spectral power curve of requested LEDs to prove the absence of short wavelengths.*
 - (f) *the number and wattage of lights must be minimised.*
 - (g) *all lights must be recessed into structures and roof, and directed away from the turtle nesting habitat.*
 - (h) *no lighting is permitted on the roof of the building.*
 - (i) *all outdoor lights, including balcony lights, must be turned off when not in use between 8:00 pm and sunrise during turtle nesting and hatching season (October – May).*
 - (j) *external feature lighting to the building must be positioned below 10 metres in height and turned off between 8.00 pm and sunrise during turtle nesting and hatching season (October – May).*
 - (k) *no upward lights or vertical illumination of the building, vegetation or other structures using lighting that shines into the sky to be used during the nesting and hatching season (October – May).*
 - (l) *where lighting is required for safety purposes (including all corridors above ground level, stairwells, entry points etc.), the lighting of these areas must be activated by proximity sensors or motion detectors with an associated deactivation of the lighting after no more than 10 minutes during turtle nesting and hatching season (October – May). For lighting in other areas, timers, proximity or motion activated light sensors must be used wherever possible.*
 - (m) *smart lighting technology (including dimming control) must be incorporated in all storeys above the 1st storey in order to allow the body corporate and residents the ability to reduce light emissions during critical turtle breeding periods (October – May).*
 - (n) *no decorative outdoor lighting is to be fitted to the buildings, open space or recreation areas (e.g. Fairy/Christmas lights) during nesting and hatching season (October – May).*
 - (o) *pool lighting must be switched off after 8:00 pm during nesting and hatching season (October – May).*
 - (p) *any external signage on the eastern (seaward) side of the development must not be illuminated during nesting and hatching season (October – May).*
 - (q) *any lighting in recreation areas within the development must be switched off and operate on proximity sensors after 8:00 pm during nesting and hatching season (October – May).*
 - (r) *all lighting within the development (interior and exterior) must be shielded by a minimum of 30 cm vertical shielding.*
 - (s) *visual screening through vegetation screens must be applied to all lighting towards the coastline and sky.*
 - (t) *reflective materials must be used to delineate pathways, and embedded lighting must be used wherever possible. If lights are used they are to be amber in colour, max. 2700 K CCT, as low as possible, intermittent flashing only, facing away from the beach and to be fitted with 30 cm vertical shades to contain light spill.*

Applicant's Request

The applicant has made edits to the existing condition, seeking to provide additional clarity on the various requirements to assist with enforceability. In particular, the conditions requiring window tinting and use of automated opaque blinds have been clarified and strengthened, to remove the reliance on occupier compliance. Blinds are now required to be automated, and configured to automatically be closed after 8pm from 1 October to 31 May. Outdoor lighting is also proposed to be activated by proximity sensors year round (which was not required by the initial condition set).

The proposed amended condition is shown below:

70. ~~Internal~~ **Indoor** and ~~external~~ **outdoor** lighting and signage must be **designed, installed**, positioned and **at all times** operated to minimise ~~disruption~~ **the impact on the** ~~to~~ adjacent turtle ~~breeding~~ **nesting** grounds. All lighting must be managed to ~~reduce~~ **minimise** sky glow and light spill onto the beach, **including by: the use of** reduced intensity, long wavelength lights; **outdoor lights which are fitted with shielded; outdoor lighting which is located** low to the ground, and directed onto areas of interest; **use of** low reflectance building surfaces and paint; and tinted windows. ~~Details as follows:~~ **Specific design requirements for site lighting controls include:**
- (a) all windows facing the beach must **be tinted with non-reflective tinting, or utilise smart glass technology, to achieve a minimum of** ~~have~~ 15% visible light transmittance window tinting.
 - (b) all windows facing the beach must be fitted with **automatic** opaque blinds. ~~where not already screened by opaque external screens or opaque fixed louvres under Condition 31 of this development approval.~~ **Between 8:00pm and sunrise during turtle nesting and hatching season (1 October – 31 May), the automated blinds must be configured to be closed automatically.**
 - (c) indoor and outdoor paint/surfaces/fixtures must be matte and dark in colour and have a maximum reflectance value of 30%.
 - (d) all outdoor lights must have a maximum of 2700 K correlated colour temperature (CCT). All indoor lights must have a maximum of 3000 K CCT. All lighting (interior and exterior) must avoid the use of halogen, metal halide, or fluorescent lights.
 - (e) amber LED (590-610 nm) or low-pressure sodium lighting must be used as a standard **for all outdoor public and communal area lighting**. Warm white is to be used only where colour rendition is required. LED lights must not contain short wavelength blue light. ~~and~~ **When any LED lights are purchased, or otherwise obtained for use in the development, the lights must not be used unless the supplier should be asked to provide has provided in writing spectral power curve details of requested LEDs to prove confirm** the absence of short wavelengths.
 - (f) ~~the number and wattage of lights must be minimised.~~ **to the level necessary to comply with the applicable standards in AS/NZS 1158 (outdoor areas) and AS/NZS 1680 (indoor areas).**
 - (g) all **outdoor lights where mounted on a building**, must be recessed into the structures and/or roof, **or where it cannot be recessed, fitted with appropriate shields** and directed away from the ~~turtle nesting habitat~~ **beach and to avoid direct illumination of the beach, ocean and sky at night.**
 - (h) no lighting is permitted on the roof of the building.

- (i) ~~all outdoor lights, including balcony lights, must be turned off when not in use between 8:00 pm and sunrise during turtle nesting and hatching season (October – May).~~
- (j) ~~external~~ **Outdoor** feature lighting to the building must be positioned below 10 metres in height and turned off between 8.00 pm and sunrise during turtle nesting and hatching season (**1 October – 31 May**).
- (k) no upward lights or vertical illumination of the building, vegetation or other structures using lighting that shines into the sky to be used during the nesting and hatching season (**1 October – 31 May**).
- (l) ~~where lighting is required for safety purposes (including all corridors above ground level, stairwells, entry points etc.), the lighting~~ **All outdoor lighting** of these areas must be activated by proximity sensors or motion detectors with an associated deactivation of the lighting after no more than 10 minutes. ~~during turtle nesting and hatching season (October – May). For lighting in other areas, timers, proximity or motion activated light sensors must be used wherever possible.~~
- (m) smart lighting technology (including dimming control) must be incorporated ~~in~~ **for all indoor and outdoor lighting in** all storeys above the 1st storey ~~in order to allow the body corporate and residents the ability to reduce light emissions during critical turtle breeding periods (1 October – 31 May).~~
- (n) no decorative outdoor lighting ~~is to be fitted to the buildings, open space or recreation areas (e.g. Fairy/Christmas lights)~~ **is to be used** during nesting and hatching season (**1 October – 31 May**).
- (o) pool lighting must be switched off after 8:00 pm during nesting and hatching season (**1 October – 31 May**).
- (p) any external signage on the eastern (seaward) side of the development must not be illuminated during nesting and hatching season (**1 October – 31 May**).
- (q) any lighting in recreation areas within the development must be switched off and operate on proximity sensors after 8:00 pm during nesting and hatching season (**1 October – 31 May**).
- (r) all lighting within the development (interior and exterior) must be shielded by a minimum of 30 cm vertical shielding.
- (s) ~~visual screening through vegetation screens must be applied to all lighting towards the coastline and sky.~~
- (t) reflective materials must be used to delineate pathways, and embedded lighting must be used wherever possible. If lights are used they are to be amber in colour, max. 2700 K CCT, as low as possible, intermittent flashing only, facing away from the beach and to be fitted with 30 cm vertical shades to contain light spill.

Assessment of Request

Agree in part.

The intent of the applicant's proposed changes above is generally supported, particularly in its focus on automation to reduce reliance on human behaviour. Some notable inclusions in the above condition are the automation of the opaque blinds, and the use of motion sensing lighting in all outdoor lighting (including balcony lighting). The applicant has also committed to the use of motion sensing lighting year round (i.e.: not just in turtle nesting/hatching season). These proposed changes introduce new, more rigorous requirements and are considered by Council officers to be a considerable improvement to the original conditions.

Non-consequential changes have also been proposed to the conditions to replace the word 'external' with 'outdoor' where relevant, and clarify the precise dates for turtle nesting and hatching season (1 October to 31 May).

It is considered though, that further improvements can be made to the conditions to ensure they remain robust and continue to work together as a package in line with the intent of the original condition set. The notable changes between the two condition sets are summarised below:

- (a) the applicant's proposed version inadvertently uses the word 'minimum' to describe the required degree of window tinting required by Condition 70(a). The word 'minimum' has been changed to 'maximum' as the condition seeks to provide that not more than 15% of internal light passes through into the external environment. Therefore, 'maximum' is the correct terminology.
- (b) The applicant's proposed version maintains the reference to 'windows' facing the beach in Condition 70(a) despite advising that the interpretation of 'windows' in the context of this condition was interpreted to be all external glass. Council's revised version replaces 'windows' with 'glazing (including windows and doors)'. Council officers' recommended version also expands the 'facing the beach' qualifier to require window tinting for the north, south and east elevations where lighting emissions from indoors may have the potential to contribute to sky glow.
- (c) The applicant's proposed version maintains the reference to 'windows' in Condition 70(b) despite also advising that the interpretation of 'windows' in the context of this condition was interpreted to be all external glass. Council's officers' recommended version replaces 'windows' with 'windows and doors within the units on the north, south and eastern elevations'.
- (d) The applicant's version seeks to include lighting standards in Condition 70(f) however council's lighting expert considers that the included standards are not specifically relevant in this case (applying more to standard lighting requirements for commercial developments etc) and has recommended use of a nuisance based Australian Standard '*Control of the obtrusive effects of outdoor lighting*' as a more relevant standard, given the context of the condition set.

As such, Council's recommended condition modifications are shown below.

70. ~~Internal~~ **Indoor** and ~~external~~ **outdoor** lighting and signage must be **designed, installed, positioned and at all times managed and** operated to minimise ~~disruption~~ **light spill and maintain or reduce the existing established sky glow levels at the** ~~to~~ adjacent turtle ~~breeding~~ **nesting** grounds. ~~All lighting must be managed to reduce sky glow and light spill onto the beach, including by: the use of reduced intensity, long wavelength lights; outdoor lights which are fitted with shielded;~~ **outdoor lighting which is located** low to the ground, **and directed only** onto **specific** areas of interest; **use of** low reflectance building surfaces and paint; **and** tinted windows. ~~Details as follows:~~ **Specific design requirements for site lighting controls include:**

- (a) ~~all windows~~ **glazing (including windows and doors) on the north, south and eastern elevations** ~~facing the beach~~ **must be tinted with non-reflective tinting, or utilise smart glass technology, to** ~~have achieve a maximum~~ 15% visible light transmittance ~~window tinting~~.

- (b) all windows **and doors within all units on the north, south and eastern elevations** facing the beach must be fitted with **automatic** opaque blinds where not already screened by opaque external screens or opaque fixed louvres under Condition 31 of this development approval. **The automated blinds must be configured to be closed automatically, and must remain closed, between 8:00 pm and sunrise during turtle nesting and hatching season (1 October – 31 May).**
- (c) indoor and outdoor paint/surfaces/fixtures must be matte and dark in colour and have a maximum reflectance value of 30%.
- (d) all outdoor lights must have a maximum of 2700 K correlated colour temperature (CCT). All indoor lights must have a maximum of 3000 K CCT. All lighting (interior and exterior) must avoid the use of halogen, metal halide, or fluorescent lights.
- (e) amber LED (590-610 nm) or low pressure sodium lighting must be used as a standard. Warm white is to be used only where colour rendition is required. LED lights must not contain short wavelength blue light and supplier should be asked to provide spectral power curve of requested LEDs to prove the absence of short wavelengths.
- (f) the number and wattage of lights must be minimised **and achieve compliance with AS4282: 2019 (Control of the obtrusive effects of outdoor lighting).**
- (g) all **outdoor lights (including balcony lighting) where mounted on a building**, must be recessed into structures and/or roof/ceiling, or where it **cannot be recessed, fitted with appropriate shields**, and directed away from the **beach, and to avoid direct illumination of the beach, ocean and sky at night.** ~~turtle nesting habitat.~~
- (h) no lighting is permitted on the roof of the building.
- (i) ~~all outdoor lights, including balcony lights, must be turned off when not in use between 8:00 pm and sunrise during turtle nesting and hatching season (October – May).~~ external **Outdoor** feature lighting to the building must be positioned below 10 metres in height and turned off between 8.00 pm and sunrise during turtle nesting and hatching season **(1 October – 31 May).**
- (j) no upward lights or vertical illumination of the building, vegetation or other structures using lighting that shines into the sky **is to be used during the nesting and hatching season (1 October – 31 May).**
- (k) ~~where lighting is required for safety purposes (including all corridors above ground level, stairwells, entry points etc.),~~ **All outdoor lighting (including balcony lighting) and indoor common area lighting (including all corridors above ground level, stairwells, entry points etc)** ~~the lighting of these areas~~ must be activated by proximity sensors or motion detectors with an associated deactivation of the lighting after no more than 10 minutes ~~during turtle nesting and hatching season (October – May).~~ For lighting in other areas, ~~timers, proximity or motion activated light sensors must be used wherever possible.~~
- (l) smart lighting technology (including dimming control) must be incorporated **for all indoor and outdoor lighting** in all storeys above the 1st storey ~~in order to allow the body corporate and residents the ability to reduce light emissions during critical turtle breeding periods (1 October – 31 May).~~
- (m) no decorative outdoor lighting ~~is to be fitted to the buildings, open space or recreation areas (e.g. Fairy/Christmas lights)~~ **is to be used** during nesting and hatching season **(1 October – 31 May).**
- (n) pool lighting must be switched off after 8:00 pm during nesting and hatching season **(1 October – 31 May).**

- (o) any external signage on the eastern (seaward) side of the development must not be illuminated during nesting and hatching season **(1 October – 31 May)**.
- (p) any lighting in recreation areas within the development must be switched off and operate on proximity sensors after 8:00 pm during nesting and hatching season **(1 October – 31 May)**.
- (q) all lighting within the development (~~interior~~ **indoor** and **outdoor exterior**) must be shielded by a minimum of **300mm** ~~em~~ vertical shielding.
- (r) ~~visual screening through vegetation screens must be applied to all lighting towards the coastline and sky.~~ reflective materials must be used to delineate pathways, and embedded lighting must be used wherever possible. If lights are used they are to be amber in colour, max. 2700 K CCT, as low as possible, intermittent flashing only, facing away from the beach and to be fitted with **300mm** ~~em~~ vertical shades to contain light spill.

Recommendation

It is recommended that Condition 70 be amended as per Council's recommended wording above.

New Condition 70A – Additional requirements for Community Management Statement

The applicant proposes the addition of a new Condition 70A (to sit consequential to Condition 70 within the suite of development conditions). The proposed condition, which does not exist in any form in the current approval, would provide greater protections to the whole condition set, through requiring additional matters to be listed within the Community Management Statement.

The applicant's justification for the inclusion of the condition is provided below:

“Under s.73 of the Planning Act 2016 (Qld), owners and occupiers are automatically bound by the conditions of any development approval. This condition replicates and expands on that requirement, by imposing a cascading chain of responsibility, including supervisory responsibility, on occupiers, owners and the body corporate – including a requirement for Condition 70 to be reflected in the body corporate's by-laws (and for those bylaws to be enforced). This improves the enforceability of the suite of conditions, by ensuring that there are multiple levels of responsibility”.

The applicant's proposed condition is provided below:

- 70A In addition to the requirements of conditions 24, 25 and 72:**
- (a) **the by-laws of the proposed Community Management Statement must require:**
 - (i) **the occupiers of each unit to comply with, and ensure that all visitors comply with, condition 70 in relation to their unit;**
 - (ii) **the owner of each unit (where not the occupier) to ensure that all occupiers of and visitors to their unit comply with condition 70 in relation to their unit; and**

- (iii) all occupiers and their visitors to not do anything in outdoor areas or common property that results in a contravention of condition 70; and
- (b) the occupiers of each unit must comply with, and ensure that all visitors comply with, condition 70 in relation to their unit;
- (c) the owner of each unit (where not the occupier) must comply with and ensure that all occupiers of and visitors to their unit comply with condition 70 in relation to their unit;
- (d) all occupiers must not do, and must ensure that their visitors do not do, anything in outdoor areas or common property that results in a contravention of condition 70;
- (e) any body corporate for the subject site must:
 - (i) comply with condition 70 in relation to the common property; and
 - (ii) ensure that owners, occupiers and visitors do not do anything that results in a contravention of condition 70.

Assessment of Request

Agree.

The additional protections afforded by Condition 70A work to strengthen the overall condition set by providing additional requirements for reflection in the Community Management Statement which do not exist in the current set of conditions.

Recommendation

It is recommended that new Condition 70A be added as per the applicant's wording above.

Condition 73 – Land Rehabilitation

Condition 73 currently reads as follows:

73. The land area located east of the development (Buddina Foreshore Reserve) identified on the Referenced Revegetation Area Plan must be rehabilitated and revegetated in accordance with an Operational Works approval and must include the removal of all weeds species listed in the following standards and legislation:

- (a) *invasive plants listed in the Biosecurity Act 2014*
- (b) *Sunshine Coast Local Government Area Pest Management Plan 2012-2016.*

Applicant's Request

The applicant has provided an amended condition which includes an additional point about utilising locally occurring native species within the rehabilitation plantings, as well as changing the layout of the condition by relocating the initial statement about the removal of weed species to dot point (a).

The applicant's proposed condition is provided below:

73. The land area located east of the development (Buddina Foreshore Reserve) identified on the Referenced Revegetation Area Plan must be rehabilitated and

revegetated in accordance with an Operational Works approval and must include the removal of all weed species listed in the following standards and legislation:

- (a) **The removal of all weed species listed in the following standards and legislation:**
 - i. invasive plants listed in the Biosecurity Act 2014
 - ii. **Sunshine Coast Local Government Area Pest Management Plan 2012-2016.**
- (b) ~~Sunshine Coast Local Government Area Pest Management Plan 2012-2016~~
The planting of locally occurring native species to achieve optimal community structure and densities.

Assessment of Request

Agree.

The proposed amendments to Condition 73 to clarify the wording and include an additional statement about the use of locally endemic species in the rehabilitation works are supported.

Recommendation

It is recommended that Condition 73 be amended as per the applicant's wording above.

Advice Note 23:

Advice Note 23 describes who a 'qualified person' is for the purposes of certifying lighting devices.

The advice note currently reads as follows:

- 23. For the purpose of certifying lighting devices for the development, a qualified person is considered to be either:*
- (a) a Registered Professional Engineer of Queensland (RPEQ);*
 - (b) an environmental or electrical design consultant with a minimum of three (3) years current experience in the field of outdoor lighting.*

Applicant's Request

The applicant has not specifically requested to change Advice Note 23, but in the course of the assessment, it has been considered necessary to further define the required qualifications and experience required for a 'qualified person' given the specialised nature of the interpretation and certification of conditions required in this approval.

Assessment of Request

It is considered appropriate that Advice Note 23 is updated as per the below wording:

23. For the purpose of certifying lighting devices for the development, a qualified person is considered to be either:
- (a) ~~a Registered Professional Engineer of Queensland (RPEQ);~~ **a tertiary qualified professional engineer (RPEQ) with a minimum five (5) years**

current experience in the field of lighting design and the ecological effects of light.

- (b) ~~an environmental or electrical design consultant with a minimum of three (3) years current experience in the field of outdoor lighting.~~

Recommendation

It is recommended that Advice Note 23 be amended as per Council officers' recommended wording above.

CONSULTATION:

Referral Agencies

There were no referral agencies for the original or the changed application.

Properly Made Submissions to Original Application

The original application was code assessable, therefore there was no formal public notification period. However, a total of 84 community comments were received from local residents detailing various concerns with the proposed development. These concerns primarily related to the design and density of the development (including its height and traffic generation), and the potential impacts of the development on the behaviour of marine turtles.

Approximately 16 residents' concerns were also raised for this application for a Minor Change to the Development Approval. These concerns were generally in relation to whether the proposal constitutes a minor change for the purposes of the *Planning Act 2016*, and whether the proposed condition changes 'water down' or reduce the effectiveness of the initial condition set.

For the reasons outlined in this report, Council officers are satisfied that the proposal constitutes a minor change for the purposes of the *Planning Act 2016*, and that Council's proposed condition changes improve the existing condition set, through making the conditions clearer, reducing the reliance on human behaviour and in many cases, strengthening the requirements of the conditions (for example, by requiring window tinting and automated opaque blinds to the north, south and eastern elevations).

Infrastructure Charges

Council's Transport & Infrastructure Policy Branch have been notified of the proposed changes and advise that the changes would have no implications to the infrastructure charges that were levied at the time of the original approval.

CONCLUSION:

The application has been processed under the *Planning Act 2016* and assessed against the *Sunshine Coast Planning Scheme 2014* and all relevant council policies.

The proposed changes to the existing development sufficiently comply with the Planning Scheme provisions that applied at the time the original application was made and having regard to the Planning Scheme provisions that apply now.

The proposed changes do not raise any significant issues that cannot be addressed by the proposed new and modified conditions.

Overall, the condition changes detailed within this report are considered suitable for approval because they:

- maintain the intent of the original condition set;
- in some cases, provide additional requirements to those provided in the original condition set;
- provide greater clarity of the conditions;
- provide greater enforceability of the conditions; and
- replace conditions requiring behavioural compliance with measures such as automation to aid in enforceability.

The amended changes of the approval are therefore considered to be an improvement to the current conditions.

The application for a Minor Change to the Development Approval is therefore recommended for approval.