



Tweed Shire Council

# EXTRAORDINARY BUSINESS PAPER AGENDA

Date

Dear Minute Book

**NOTICE IS GIVEN** that an Extraordinary Meeting of Council will be held at the Council Chamber, Murwillumbah Civic and Cultural Centre on Wednesday 22 October 2003, commencing at **TIME**.

Submitted,

A handwritten signature in black ink, appearing to read "J Griffin".

**Dr J Griffin**  
General Manager

## AGENDA

1. Prayer
2. Apologies
3. Reports through General Manager  
Reports from Director Development Services

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## ITEMS FOR CONSIDERATION OF COUNCIL:

ITEM	PRECIS	PAGE
	<b>REPORTS FROM DIRECTOR DEVELOPMENT SERVICES</b>	<b>5</b>
<b>1</b>	<b>[DS] Seaside City - Local Environmental Study and Draft Local Environmental Plan</b>	<b>7</b>
<b>2</b>	<b>[DS] Development Application DA03/1221 for the Demolition of Existing Structures, Erection of New Building Comprising 57 Tourist Accommodation Apartments, Ground Floor Commercial Area and Car Parking at Lot 1 DP 247808, Pandanus Parade, Cabarita Beach</b>	<b>11</b>

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## **REPORTS FROM DIRECTOR DEVELOPMENT SERVICES**

### **MATTERS FOR CONSIDERATION UNDER SECTION 79(C)(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

The following are the matters Council is required to take into consideration under Section 90 of the Environmental Planning and Assessment Act 1979 in assessing a development application.

#### **MATTERS FOR CONSIDERATION**

1. In determining a development application, a consent authority shall take into consideration such of the following matters as are of relevance to the development the subject of that development application:
  - (a) the provisions of
    - (i) any environmental planning instrument; and
    - (ii) any draft environmental planning instrument that is or has been placed on exhibition and details of which have been notified to the consent authority, and
    - (iii) any development control plan, and
    - (iv) any matters prescribed by the regulations,that apply to the land to which the development application relates,
  - (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts of the locality,
  - (c) the suitability of the site for the development,
  - (d) any submissions made in accordance with this Act or the regulations,
  - (e) the public interest.

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**1 [DS] Seaside City - Local Environmental Study and Draft Local Environmental Plan**

**ORIGIN:**

**Director**

**FILE NO: GT1/LEP/2000/3 Pt9**

**SUMMARY OF REPORT:**

Current Council resolutions require the seeking of new expressions of interest from planning consultants to complete the Local Environmental Study and draft Local Environmental Plan in accordance with the recommendations of the Department of Local Government Investigation Report. This approach has been reaffirmed as appropriate by the Department of Infrastructure, Planning and Natural Resources and the Department of Local Government. Richtech Pty Ltd as the predominant landowner (approximately 85% of the lots in the subdivision) have been urging for a decision that no Local Environmental Study be undertaken and that the Company be predominantly responsible for the preparation of the preparation of a Masterplan in association with an amendment to Tweed Local Environmental Plan 2000 that seeks to establish a proportionate entitlement for residential development within the 2(f) Tourism zone for the land - a similar site specific range of provisions that apply to the "SALT" development.

Richtech Pty Ltd have advised that they are no longer prepared to fund the completion of the Local Environmental Study and draft Local Environmental Plan.

**RECOMMENDATION:**

That: -

1. The Mayor convene a meeting of all landowners at Seaside City and any associated legal and planning representatives who they wish to also attend - together with relevant State Government agencies - to explain the historical position, status and process towards the completion of the planning and development of Seaside City.
2. Council proceed to seek expressions of interest from three (3) consultants to complete the Local Environmental Study and draft Local Environmental Plan for Seaside City and request the General Manager to establish mechanisms for reimbursement for the associated cost on a proportionate basis amongst all landowners at Seaside City.

**REPORT:**

**BACKGROUND:**

Current Council resolutions require the seeking of expressions of interest from planning consultants to complete the Local Environmental Study and draft Local Environmental Plan for Seaside City. This approach has been reaffirmed during recent discussions and correspondence from the Department of Infrastructure, Planning and Natural Resources and Department of Local Government (see Annexure 1).

During recent discussions representatives of Richtech Pty Ltd have sought an alternative approach of applying for an amendment to Tweed Local Environmental Plan 2000 for Seaside City similar to that which applies to the SALT development, i.e. enabling a proportionate entitlement for residential subdivision and development within the 2(f) Tourism zoning. In the Company's submission this would be supported by the initiation and management of the preparation of a Masterplan for Seaside City managed by Richtech Pty Ltd. Richtech Pty Ltd have also advised that the Company is no longer prepared to fund the completion of the Local Environmental Study and draft Local Environmental Plan. There are also significant concerns expressed about delays and the way forward. The Director of Development Services essentially responded to the Richtech submissions and negotiations in his letter of 9 September 2003 that is Annexure 2 to this report - that position essentially being: -

1. The completion of a new independent Local Environmental Study and draft Local Environmental Plan as recommended in the Department of Local Government Investigation Report through the seeking of expressions of interest from three (3) planning consultants.
2. That Local Environmental Study to give emphasis to an economic evaluation of the public costs and benefits of part or all of the Seaside City land becoming residential development as distinct from tourism development and particularly in terms of employment generation.
3. Advising that Richtech has the entitlement to engage its own economist to evaluate this economic justification and submit it to Council and for consideration by the independent consultant as part of the Local Environmental Study process.
4. That there is a second additional stage of the Local Environmental Plan that would be highly beneficial in achieving good outcomes at Seaside City and to clarify positions for Richtech Pty Ltd and all of the other landowners - that being the preparation of a Masterplan by the independent consultant as an integral part of the Local Environmental Study. The preparation of the Masterplan would be based extensive engagement of Richtech Pty Ltd and other landowners as well as State Government agencies. Benefits of the preparation of the Masterplan are summarised as being: -



- a. Independent facilitation, planning and design of a Masterplan for a multi-ownership subdivision with very significant financial and equity issues amongst the range of landowners.
- b. The integration of the Local Environmental Study, draft Local Environmental Plan, subdivision master planning, infrastructure planning and funding outcomes instead of a sequential and potentially longer process.
- c. The resultant opportunity to submit the Masterplan to the Minister of Infrastructure, Planning and Natural Resources for potential waiver in the event of their being a residential component under SEPP71.

The letters of submission from Richtech Pty Ltd are Annexures 3, 4 and 5 to this report.

**OPTIONS:**

Council should accept the view that an Local Environmental Study and Draft Local Environmental Plan is required whether or not the proposal is to rezone the land from 2(f) Tourism to 2(e) Residential/Tourist or to seek a Tweed Local Environmental Plan 2000 amendment to retain the 2(f) Tourism zone but with a proposed component of residential subdivision and development entitlement. There is an option whether to seek to negotiate again with Richtech Pty Ltd and/or other landowners to fund the Local Environmental Study/Draft Local Environmental Plan upfront or whether Council fund the Study initially. \$20,000 has been provided in the 2003/2004 budget on the basis of prior advice from Richtech Pty Ltd that they would be funding the Study to the extent of \$50,000. The intent therefore is for Council to fund the Local Environmental Study/Draft Local Environmental Plan, Draft Development Control Plan and Draft Developer Contributions Plan together with the Masterplan and establish mechanisms for reimbursement subsequently by landowners on a basis proportionate to area of land holding at Seaside City.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The intent is for Council to fund the Study upfront and find mechanisms for subsequent reimbursement and the initial outlay is estimated to be approximately \$100,000.

**POLICY IMPLICATIONS:**

The planning for Seaside City clearly has major policy implications relating to Council's planning for the Tweed Coast and the NSW Coastal Policy.

**CONCLUSION:**

The recommendation is therefore that the Local Environmental Study and draft Local Environmental Plan now be extended to engage independent planning consultants to also prepare a Masterplan for the lands development, including infrastructure, provision and funding mechanisms, draft Development Control Plan and draft Section 94

developer contributions plan. This is strongly recommended as achieving the best outcome for all landowners in the most expeditious timeframe.

**UNDER SEPARATE COVER:**

1. Letter from Department of Infrastructure, Planning and Natural Resources dated 30 September 2003 (DW 955036)
  2. Letter from Director Development Services to Richtech Pty Ltd dated 9 September 2003 (DW 947455)
  3. Letter from Richtech Pty Ltd dated 1 September 2003 (DW 945442)
  4. Letter from Richtech Pty Ltd dated 2 September 2003 (DW 945457)
  5. Letter from Richtech Pty Ltd dated 3 September 2003 (DW 946389)
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**2 [DS] Development Application DA03/1221 for the Demolition of Existing Structures, Erection of New Building Comprising 57 Tourist Accommodation Apartments, Ground Floor Commercial Area and Car Parking at Lot 1 DP 247808, Pandanus Parade, Cabarita Beach**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA03/1221**

**SUMMARY OF REPORT:**

The purpose of this report is to advise Council of the issues regarding the tourist accommodation and commercial proposal. The Minister for Infrastructure, Planning and Natural Resources is the consent authority for the development. Council has been requested to provide comments regarding the proposal. The matters identified in the report should be referred to PlanningNSW for information and for consideration when assessing the application. It is concluded that the application should be supported subject to resolution of the issues raised in this report.

**RECOMMENDATION:**

That Council delegates to the General Manager to forward a submission to the Minister for Infrastructure Planning and Natural Resources and the Director-General of PlanningNSW based on the section of this report headed "Draft Submission on Key Issues and additional information to be forwarded to the Minister for Infrastructure, Planning and Natural Resources and the Director-General of PlanningNSW", with the request that consideration be given to the matters raised in assessing and determining the application.

## **REPORT:**

**Applicant:** Resort Corp Cabarita Pty Ltd  
**Owner:** Almoni Pty Ltd  
**Location:** Lot 1 DP 247808 Pandanus Parade, Cabarita Beach  
**Zoning:** 3(b) General Business  
**Cost:** \$18.75 Million

## **BACKGROUND:**

### **Existing Development**

The Cabarita Hotel/Motel currently exists on the site consisting of 36 motel units, bottle shop restaurant and public bar. In March 1985 consent was issued for 51 motel units and additions and alterations to the hotel. The 1985 consent permits a four storey building to be constructed on the site. Only 3 storeys of the motel have been constructed. The fourth storey may be constructed in accordance with the consent.

### **Previous Development Consent**

In June 2002 a development consent was issued for redevelopment of the site. The proposal consists of demolition of the existing building and construction of a three storey building comprising a hotel, restaurant, bottle shop, shops, conference/gym facility and 61 tourist accommodation units. This consent has not been acted upon.

### **Current Proposal**

The current proposal consists of a building with a limited four-storey component with car parking, commercial tenancies, day spa, and three levels of tourist accommodation units. The units have two and three bedrooms. Pools and outdoor amenities are proposed in the central area of the building.

It should be noted that the proposal originally included a tavern however this has been deleted from the development and the floor space has been redesignated as commercial.

The consent authority for the application is the Minister for Infrastructure Planning and Natural Resources as the application is listed as significant coastal development under the provisions of SEPP-71 and is therefore classified as state significant development.

**Draft Submission on key issues and additional information to be forwarded to the Minister for Infrastructure, Planning and Natural Resources and the Director-General of PlanningNSW (as shown in italics).**

*Key Issues*

*Height and Scale of the Proposed Building*

*The proposed site is in area that has a three storey height limit. The development contains a limited fourth storey component. A SEPP-1 objection has been lodged with PlanningNSW to support the variation.*

*The natural ground line is difficult to determine given the site is disturbed. The proponents have estimated the natural ground line for the purposes of determining the height of the building.*

*The height has been measured from the estimated natural ground level which results in a small part of the building consisting of four storeys. Whilst the building will have a fourth storey the building is predominately three storeys.*

*The variation is considered minor having regard to the estimated natural ground level.*

*PlanningNSW need to be satisfied with the method used to determine the original natural ground level. It is considered that a reasonable attempt has been made to determine the natural ground level.*

*Draft Tweed LEP No.46 was exhibited between 16 April and 14 May 2003 and detailed an amendment to the definition of a storey to reflect the finished ground level rather than the natural ground level in addition to incorporating any space in excess of 4.5 metres to be categorised as a storey.*

*The implications of the draft plan on the proposed building have not been detailed in the application. It is likely that under the draft provisions that a larger area of the building would be considered to be four storeys given that excavations are proposed.*

*Council resolved on 21 May 2003 to defer the decision to proceed with the draft LEP. It is intended to report the matter to the 5 November Council meeting.*

*At the time of writing the making of the draft plan was neither certain or imminent and therefore determining weight cannot be given to the draft plan. The consent authority is required to consider the status of the plan at the time of determination.*

*Draft DCP No. 48 Tweed Coast Building Heights proposes that three storey development measures 11 metres in height when measured from finished ground level to the underside of the eaves.*

*Adoption of the draft DCP was deferred to seek public submissions. The draft DCP will be reported to Council in the near future.*

*The proposed development is 12.5 metres when measured in this area of this building. The proponents submit that the topography of the site and the quality of the proposal warrants a variation. The draft DCP could be complied with, however, the draft DCP does not have any statutory weight.*

*The most important issue that arises is that the development application proposes development to the eastern boundary of the site and hence there will be three storey built form on land currently occupied by the outdoor eating area to the hotel and the swimming pool. This has related and increased visual effects on the immediate coastal foreshore and from parts of the beach. The applicants have made submissions that show that the visual impact of the building from the beach is somewhat mitigated by the dunal profile.*

### **Ground Floor Use**

*The 3(b) zone permits tourist accommodation if it is not located at street level. The applicants argue that the tourist units are not located at street level on the basis that the site does not front a street on the eastern and southern sides. The units on the western and northern side are located above street level and therefore comply with the LEP.*

*Whilst this interpretation is debateable it can be contrasted with other terminology used in the 3(b) zoning table which prohibits multi-dwelling housing unless it is located above non-residential ground floor level development.*

*The differing terminology enables an interpretation such as that put forward by the proponent.*

*It is considered that the interpretation is acceptable given that commercial uses along the main street frontage of the site which enables consistency with the objectives of the zone.*

### **Overshadowing**

*The proposed building will cast shadows over adjoining public and private property. Overshadowing of the adjacent reserve to the east of the site and the dwelling to the south of the site are the most affected properties.*

*The basis of the proponent's argument is that the existing building currently casts shadow over the reserve and dwelling.*

*The North Coast REP restricts overshadowing of beaches and adjacent open space to after 3.00 pm mid winter and after 7.00pm mid summer. The proposal will overshadow the reserve prior to these times.*

*The proponents have prepared plans which compare the shadow cast by the existing building and the proposed building. Whilst the shadow is a marginally different shape the net differential impact between the existing and the proposed is not significant.*

*Any building in this location will overshadow the reserve at various times. It is considered that the shadow cast by the proposed building will not substantially detract from the recreational value of the reserve or the beach and not exacerbate the overshadowing impact caused by the existing building.*

*Any building in this location will overshadow the reserve at various times. PlanningNSW needs to be satisfied that the level of shadow cast by the proposed building will not substantially detract from the recreational value of the reserve or the beach.*

*Council's multi-dwelling housing DCP requires that the principal area of ground level private open space for adjoining dwellings is not to be reduced to less than two hours between 9.00am and 3.00pm on June 21.*

*Partial overshadowing of the adjoining dwelling will occur during mid winter. PlanningNSW need to be satisfied that the level of overshadowing will not substantially reduce the amenity of the adjoining dwelling. Overshadowing currently occurs via the existing building and vegetation.*

*It should be noted that the proponents have attempted to deal with the overshadowing of the adjoining private property through some alterations to the design of the building on the southern elevation.*

### **Hotel**

*The proposal does not include retention of a public bar. The hotel has been deleted due to possible conflict with the proposed accommodation use and for economic reasons.*

*It is considered that the existing hotel is a key social and recreational facility for residents and visitors to Bogangar. The proponents advise that they have purchased the hotel licence and intend to develop a new hotel in Bogangar. There is no guarantee that this will occur.*

*Whilst a socio-economic report was prepared it was undertaken on the basis that a tavern was part of the proposal. PlanningNSW should undertake a thorough social impact assessment of the closure of the hotel.*

### **Works within the Road Reserve**

*The application has not been lodged as an integrated development for the purposes of section 138 of the Roads Act. Whilst works within the road reserve will be required the proponents are not seeking approval for such works at this stage. Consequently Council is not able to undertake a thorough assessment of the issues relating to access, pedestrian movement, on-street parking and traffic.*

*It is considered that this approach is an unsatisfactory way to deal with a significant application. The proponents advise that they are aware that there is a possibility that the future works within the road reserve may not be approved by Council which has*

*implications for the development. If the subsequent section 138 application to Council is unsuccessful this is likely to render the development consent inoperable.*

*It is considered that the application should be dealt with as an integrated development (i.e. Section 138 of the Roads Act) and be referred to Council in the statutory manner prior to determination.*

*The application was considered by Council's Traffic Committee on 18 September 2003. The Committee considers that the plans lacked detail and it could not be determined where the car park access was located in terms of the road network or how delivery vehicles would service the site. Details should be provided of exactly how the development is to be serviced in terms of delivery vehicles given that DCP No. 2 and Australian Standards require on site loading facilities. The Committee also noted that the application appeared similar to the existing approval and concluded the intersection would be satisfactory.*

### **Tweed Coast Reserves Trust**

*The proponents have had discussions with the Tweed Coast Reserve Trust regarding works within the adjacent Reserve. The Reserve is required for ground anchor installations. The Trust has granted approval for use of the Reserve subject to conditions if the development is approved. The conditions are as follows: -*

- 1. Submission of suitable advice from the proponents insurers that their insurance policy contains appropriate extension provisions to cover loss or damage to persons or property involved during the construction process, and*
- 2. Payment of \$10,000 to the Trust for granting of this approval, and*
- 3. Lodgement of an unconditional bond with the Trust, actionable at the Trusts sole discretion in the sum of \$25,000, and payable to the Trust in the event that the ground anchors are not completely removed from the Reserve for any reason. This may be actioned by the Trust 3 months after completion of construction or 12 months after the installation of the anchors or that Resort Corp Cabarita Pty Ltd lodges a non-refundable payment of \$25,000 to the Trust if it is not intended to remove the anchors.*
- 4. Submission of a project management plan under the Occupational Health & Safety Act to cover any risk on Council Reserve.*

### **Conclusions**

*Hence, the key issues surround the height and visual prominence of the proposed building and consequent overshadowing and the loss of the social and recreational value of the hotel component. The proposal is for tourist accommodation and this is reasonable substantiated and hence will have a range of economic benefits to the locality. The overshadowing impacts that have important implications relative to the North Coast Regional Environmental Plan have been demonstrated as not being*



*significantly more than those of the existing building. Balancing all of the social, economic and environmental issues, the Council gives an expression of support for the proposal subject to complete resolution of the issues raised within this letter.*

#### Submissions

There have been 32 submissions lodged with PlanningNSW regarding the proposal. Three of the submissions support the proposal with the rest raise objections. The submissions have been lodged by local residents.

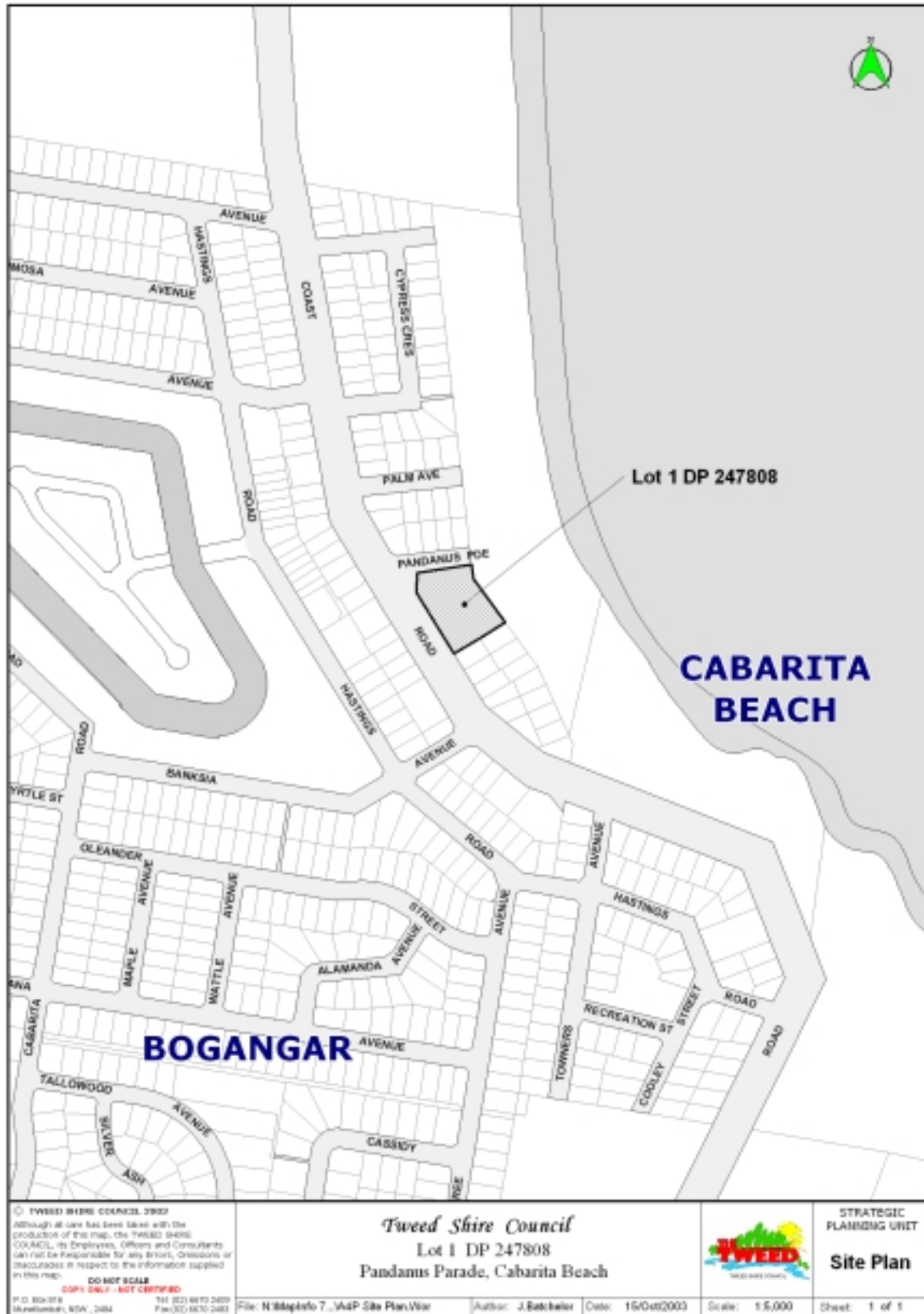
The main issues raised in the submissions are as follows-

- Height
- Shadow
- Loss of hotel

The majority of the objections related to the building consisting of four storeys rather than complying with the three-storey height limit. Concerns are also raised at the overshadowing of the reserve and beach. The loss of the hotel as a focal point for locals is a point made in some of the submissions.

Comments regarding these issues have been made above.

**SITE DIAGRAM:**



**OPTIONS:**

1. Provide PlanningNSW with issues to be addressed.
2. Make no comment.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

It should be noted that Council does not receive any fees for the assessment of the application.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

It is considered that the site is suitable for a tourist/commercial development. The current proposal should be supported subject to resolution of the issues identified in this report.

**UNDER SEPARATE COVER:**

Two A3 drawings

- i) View from Pandanus Parade
  - ii) West & East elevation
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