

Items for Consideration of Council

Items 1a, 1b and 1c were printed on 18 April 2003 prior to finalisation of a recommendation and should be read in conjunction with Item 1.
Item 1 (Page 151) was printed on 23 April 2003 and contains conditions recommended for approval and should be read in conjunction with Items 1a, 1b and 1c.

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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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1a. ORIGIN: Director

FILE REF: DA02/1422

REPORT TITLE:

SALT Development

SUMMARY OF REPORT:

This is one of the most significant development proposals for this Shire and certainly for the social, economic, development and environmental future of the Tweed Coast. This report deals with three (3) development applications with one proposing the construction of an Outrigger strata titled resort hotel comprising 213 units and 334 rooms. The proposal is asserted by the Ray Group Pty Ltd to generate over 500 equivalent full time jobs an annual contribution to the Shire's economy of \$45.5 million and that construction – valued at \$218.5 million and will create over 600 direct jobs and over 1100 indirect jobs.

While the original applications were lodged in October 2002 there was a significant delay involving legal clarification through the Land and Environment Court on whether the proposals included designated development. Following that clarification from the Court the development applications were exhibited until 21 February 2003. Subsequently there has been an intensive process of assessment, negotiations and consultations with the Ray Group, community representative and State Government agencies. That process has worked extremely well – enabling the recommendation below to be made. The key issues are the proposed filling of the site, visual impacts from the beach, public access to foreshore areas and related public open space provision, provision of public car parking, surf lifesaving facilities and the strategic economic justifications and significance of the proposal.

These issues have now been resolved to enable the recommendation below. It is still subject to the concurrence of PlanningNSW on the relevant issues of overshadowing, building height of the Outrigger Resort and works within the Environmental Protection 7(f) zone.

Council has received a letter (Annexure 1) from the National Parks and Wildlife Service on 17 April 2003 that requires further discussion and assessment of legal implications before final recommendation can be made. This will be undertaken urgently on Tuesday 22 April 2003.

In the event that Council is in a position to consider a recommendation based upon resolution of the National Parks and Wildlife Service issues, draft conditions are annexed to the report.

Council should consider resolving to go into Committee to enable sound briefing and explanation on the proposal and this report.

RECOMMENDATION:

That the report be received and that Council notes that urgent consultations will occur on the National Parks and Wildlife Service letter of 17 April 2003.

Reports from Director Development Services

REPORT:

1.0 THE DEVELOPMENT

Applicant: Ray Group Pty Ltd

Owners: Conservation and Land Management, South Kingscliff Developments Pty Ltd & Tweed Shire Council

Location: Lot 194 DP 755701, Lot 301 DP 755701, Lot 312 DP 755701, Lot 490 DP 47021, Tweed Coast Road, Kingscliff

Zoning: 2(f) Tourism, 7(f) Environmental Protection (Coastal Lands), 7(l) Environmental Protection (Habitat) and 7(a) Environmental Protection (Wetlands and Littoral Rainforests)

Est. Cost: \$218.5 million

1.1 THE THREE DEVELOPMENT APPLICATIONS

Council has received three (3) development applications for a development known as “SALT” south of Kingscliff on land described as Lots 194, 301 and 312 DP 755701 and Lot 490 DP 47021, Parish of Cudgen, Tweed Coast Road, Kingscliff. A master plan for the overall development has been prepared and incorporates the following key elements:

- Construction of an “Outrigger” branded strata title resort hotel comprising 334 rooms (i.e. 213 units).
- Construction of 280 resort units
- Creation of 612 dwellings in a mixture of medium density and detached dwelling house configurations.
- Relocation of the Tweed Coast Road.
- Provision of a 50 metre environmental buffer to Cudgen Creek.
- Construction of a north/south cycleway/walkway within Lot 500 (Crown Reserve for public recreation and environmental protection forming part of the beach to the east of the site).
- Dedication and embellishment of a central public recreation reserve (passive open space) adjacent to the resort/commercial precinct.
- Dedication of the land zoned 7(f) on the eastern boundary of the site abutting the beach foreshore area.
- Provision of a retail/commercial/restaurant precinct adjacent to the resort hotel.
- Provision of discreet residential precincts defined by open space corridors and roads.
- Provision of public car parking areas adjacent to the coastal public reserve and “Outrigger” resort incorporating 397 public spaces.
- Dedication of linear parks to provide east/west connectivity between the creek foreshore and the beachfront.

Reports from Director Development Services

- Rehabilitation of the Lot 500 dunal system in accordance with a Dune Management Plan.
- Rehabilitation of the Cudgen Creek foreshore area in accordance with a riparian management plan (including a north/south cycleway/walkway).
- Provision of emergency services facilities (surf lifesaving on proposed Lot 473).
- The importation of approximately 750,000 m³ of fill to raise the finished level of the land on the eastern portion of the site by approximately 2 metres on average.

Approval of the overall development is sought by the submission of three separate development applications.

- Development Application 02/1422 seeks development consent for a 473 lot subdivision incorporating staged consent for a number of medium density development and resort developments.
- Development Application 02/1423 seeks development consent for the construction of an “Outrigger” branded strata title resort hotel comprising 334 rooms, of which 121 are dual key rooms.
- Development Application 02/1748 seeks development consent for the conveyancing of approximately 750,000 m³ of river sand from the Action Sands site located at Chinderah via a hydraulic pipeline.

This report assesses the merits of the 473 lot subdivision under DA02/1422. It is however recommended that all three reports contained in this business paper be read in conjunction prior to Council determining any of the applications.

1.2 STAGES OF DEVELOPMENT

Development Application DA02/1422 seeks consent for the following staged development:

Stage 1A

- Relocation and dedication of the Tweed Coast Road (and creation of a residue lot) and construction and dedication of a temporary public road under the Roads Act 1993 along the northern boundary of the site and for a short length within Lot 490 to connect the new and existing alignments.

Following relocation of the Tweed Coast Road within adjoining Lot 490 (to the north of the site) the temporary public road will be revoked and the Stage 1A (4) lots will be created.

- The construction of a temporary access and water main through the site to carry traffic for an estimated period of six months until the existing Tweed Coast Road relocation is completed and relocation of an existing right of carriageway/easement to the new temporary access.
- Relocation of the existing trunk water main from the existing Tweed Coast Road alignment to the new road alignment.

Reports from Director Development Services

- Completion of bulk earthworks over the whole site including importation of approximately 750,000 m³ of sand fill from an approved source by hydraulic means.

As mentioned previously a separate development application has been lodged for the transport of the fill material via hydraulic means (DA02/1748).

Stage 1A(1)

- Creation of 85 residential allotments with areas ranging from 550m² to 1258m² and two residue lots, together with all normal urban infrastructure.
- Dedication of Lot 86 (8639m²), Lot 88 (2075m²) and Lot 89 (1218m²) as public reserve.
- Creation of one sewer pump station on Lot 87 (100m²).

Stage 1A(2)

- Creation of 62 residential allotments with areas ranging from 555m² to 839m², together with one open space lot (Lot 152, 3710m²) and a residue lot and provision of all normal urban infrastructure.

Stage 1A(3)

- Creation of Lot 470 (152m²) and Lot 471 (102m²) as sewer pump station sites.
- Creation of three (3) resort unit lots (Lots 169, 171 and 172) and one "Outrigger" resort hotel lot (Lot 170).
- Construction of internal roads and infrastructure.
- Dedication of the central park - Lot 174 (1.24 ha), Lot 173 (7070m²), Lot 172 (2846m²) and Lot 175 (6383m²) as public open space.
- Provision of 200 public car parks for beach users
- Creation of a lot (473) for construction of a two storey building comprising a ground floor "emergency service" use for surf lifesaving and a temporary sales office on the first floor. The first floor will ultimately become part of the emergency services facility.

Stage 1A(4)

- Creation of 14 residential lots with areas ranging from 726m² to 1607m² together with all normal urban infrastructure.
- Dedication of Lots 167 (463m²) and 168 (1034m²) as public reserve.

Stage 2

- Creation of 43 residential lots with areas ranging from 458m² to 2494m², one tourist resort lot (Lot 220, 1.982ha) and all normal urban infrastructure and a residue lot.
- Dedication of Lots 221 (4643m²), 223 (8843m²), 224 (4073m²), 225 (1143m²) and 226 (1583m²) as public reserve.
- Creation of Lot 222 (1837m²) for a future public and private boat house and recreational facilities for non-powered water craft with access to a public road via an easement.

Reports from Director Development Services

- Creation of Lot 468 for a sewer pump station.

Stage 3

- Creation of 12 residential lots with areas ranging from 525m² to 6443m², dedication of Lot 239 (3034m²) as public reserve and provision of all normal urban infrastructure and a residue lot.

Stage 4

- Creation of 56 residential lots with areas ranging from 525m² to 2247m² and dedication of Lots 296 (157m²) and 297 (9215m²) as public reserve together with the provision of all normal urban infrastructure and a residue lot.
- Creation of Lot 469 as sewer pump station allotment.

Stage 5

- Creation of 18 residential allotments with areas ranging from 525m² to 6693m² and the provision of all normal urban infrastructure and residue lot.

Stage 6

- Creation of 30 residential lots with areas ranging from 526m² to 4357m² and dedication of Lot 346 (7226m²) and Lot 347 (6.364ha) as public reserve together with the provision of all normal urban infrastructure and a residue lot.

Stage 7A

- Creation of 46 residential lots with areas ranging from 525m² to 4099m², dedication of Lot 394 (2469m²) and Lot 395 (3731m²) as public reserve and provision of all normal urban infrastructure and a residue lot.

Stage 7B

- Creation of 67 residential lots with areas ranging from 525m² to 1693m², dedication of Lot 463 (2543m²) and Lot 464 (1322m²) as public reserve and provision of all normal urban infrastructure and a residue lot.
- Creation of Lot 472 as a sewer pump station lot.

Stage 8

- Creation of two medium density allotments with areas of 6619m² and 7734m² and provision of all normal urban infrastructure.
- Dedication of Lot 467 (2432m²) as a public reserve.

The application also seeks to provide reasonable certainty in relation to yields by seeking that Council granting a “staged consent”, pursuant to Section 80(4) of the Act requiring future development of the nominated medium density and tourist resort lots to be generally in accordance with the Master Plan.

The application also indicates, that they are willing to upgrade the existing Cudgen Creek Bridge to the value of \$232,000 worth of works.

Reports from Director Development Services

2.0 PLANNING HISTORY

2.1 KINGSCLIFF SOUTH PLANNING REPORT, TWEED SHIRE COUNCIL, NOVEMBER 1987

In November 1987 Council prepared a planning report (Kingscliff South Planning Report, Tweed Shire Council, November 1987). The report was prepared in response to advice from PlanningNSW that no local environmental study was required in respect of the proposed rezoning of the various lands at South Kingscliff, but a report should be prepared addressing the existing reports and studies such that any draft LEP reflects the various constraints.

Bounded by the Pacific Ocean in the east, Cudgen Lake in the south, Cudgera Creek in north/west and Duranbah Road in the west, the study area included the localities now known as Kings Forest, Casuarina, Seaside City and South Kingscliff. The planning report acknowledged that the area has been the subject of numerous reports/studies including:

- The Tweed Coast Plan – NSW Planning & Environment Commission, December 1979.
- Bogangar Bridge Coastal Engineering Advice
- Cudgen/Cudgera Flooding Investigation
- Cudgen/Duranbah Agricultural Lands Suitability Study
- Kingscliff Tourist Development Study (Dept of Environment & Planning, 1982)
- Coastal Erosion Report

2.2 TWEED LEP 1987

On 29 January 1988 Tweed LEP 1987 was gazetted. The Plan applied to the whole of the Tweed Shire and zoned the subject land 1(d) Development Investigation. The South Kingscliff Planning Report addressed population projections, tourist projections, the existing biophysical environment, infrastructure and site opportunities/constraints. Based on the outcomes of the Study, Tweed LEP Amendment No 3 was published in the Government Gazette No 149 of 30 September 1989. This Plan zoned the subject land mainly 2(t) Tourism with a small area zoned 7(a) Environmental Protection (Wetlands) in the western part of the site adjacent to Cudgen Creek.

Subsequently, on 25 May 1990 Tweed LEP No 14 was published in Government Gazette No. 68. This Plan introduced a 7(f) Environmental Protection (Coastal Lands) zoning over a narrow strip adjacent to the eastern boundary of the property.

2.3 TWEED LEP 2000

On 7 April 2000 Tweed LEP 1987 was repealed with Tweed LEP 2000 coming into effect. This Plan dispensed with the previous 2(t) zone and introduced a new 2(f) Tourism zone for the subject land. The Plan also included Clause 53 relating to specific sites which is in the following terms:

“Nothing in this Plan prevents land specified in the Table in Schedule 3 from being developed, with development consent, for the purpose specified for the land in that Table, subject to any applicable condition so specified. The other provisions of this Plan apply provided they are not inconsistent with this Clause.”

Reports from Director Development Services

Insofar as the subject land is concerned, Schedule 3 of Tweed LEP 2000 contains the following provisions:

2.4 TWEED SHIRE 2000+ STRATEGIC PLAN

There are various policies and actions that are directed to safeguard the key sectors of Kings Beach land for tourist development and the associated economic and employment benefits.

Policy 121 on South Kingscliff includes the following detailed principles applicable to this development: -

“The detailed planning for the South Kingscliff area is to include the following principles:

- *Key sectors of the Kings Beach land reserved for tourist development.*
- *Ecologically significant vegetation retained in a protective zoning with an appropriate management plan.*
- *Public access to the entire length of the beachfront.*
- *Retail and commercial facilities in Kings Beach limited to those necessary to serve that area’s tourist and permanent residents”.*

The Strategic Plan also embodies a policy to have increased emphasis on economic development, employment generation and retention in the Tweed and to not compromise employment potential by short term residential releases in tourism and agricultural sectors.

Additional Development Permitted with Development Consent		Conditions
Portions 194, 301 and 312, Kings Beach, South Kingscliff	Development for the Purposes of Dwelling Houses and a Hotel, Motel or Tourist Resort (or any combination of them)	An application made pursuant to this item must not be granted unless the consent authority is satisfied that the development, whether or not to be carried out in stages, will include a hotel, motel or tourist resort as the primary development and the number of units/rooms in the hotel, motel or tourist resort will at all times exceed the number of dwellings or dwellings houses included in the completed development. If a subdivision is proposed to create an allotment for a dwelling house as part of the proposed development then such allotment must have a minimum area of 450m ² .

2.5 HISTORY OF DEVELOPMENT APPLICATIONS

On 11 April 1990 conditional development consent No. 244/90 was issued for the erection of a hotel resort comprising 375 hotel suites and 100 condominiums, tennis courts, swimming pool, boutique shops, restaurants and conference facilities. The development was not “commenced” and accordingly the consent has lapsed.

Reports from Director Development Services

On 26 October 1992 conditional development consent No. 271/92 was issued for the erection of a tourist resort comprising a hotel, 375 hotel units, 260 condominiums, an 18 hole golf course and associated shopping, restaurant and recreation activities. The development was not “commenced” and therefore that consent has also lapsed.

On 18 May 2000 the Minister for Urban Affairs and Planning issued conditional development consent K99/1755 for the following development:

- The creation of six (6) master “lots” as a staged subdivision with associated realignment of the Coast Road and provision of the connection roads, infrastructure and bulk earthworks. The subdivision was to be the basis for future tourist development uses, including resort hotel, resort housing, associated retail conference and recreation facilities and golf course. The master lots varied in size from 1.53 ha to 50.33 ha, and the anticipated residential/tourist population to be ultimately accommodated was 1800 persons. This consent also required the construction and dedication of 200 public car parking spaces in two car parking areas and the dedication and embellishments of 1.25 ha for public open space purposes together with the additional adjoining land zoned 7(f) Environmental Protection.

PlanningNSW has issued a construction certificate for the link road contained in this consent between the existing Coast Road and the realigned Casuarina Way running through Seaside City. This portion of road has been constructed and it would appear that this would constitute physical commencement of this consent. This may, however, be open to legal interpretation. If the development has not been commenced the consent nevertheless would remain in force until 18 May 2005.

Reports from Director Development Services

3.0 SUMMARY OF KEY ISSUES

This is one of the most significant development applications received in the Shire. The key issues are:-

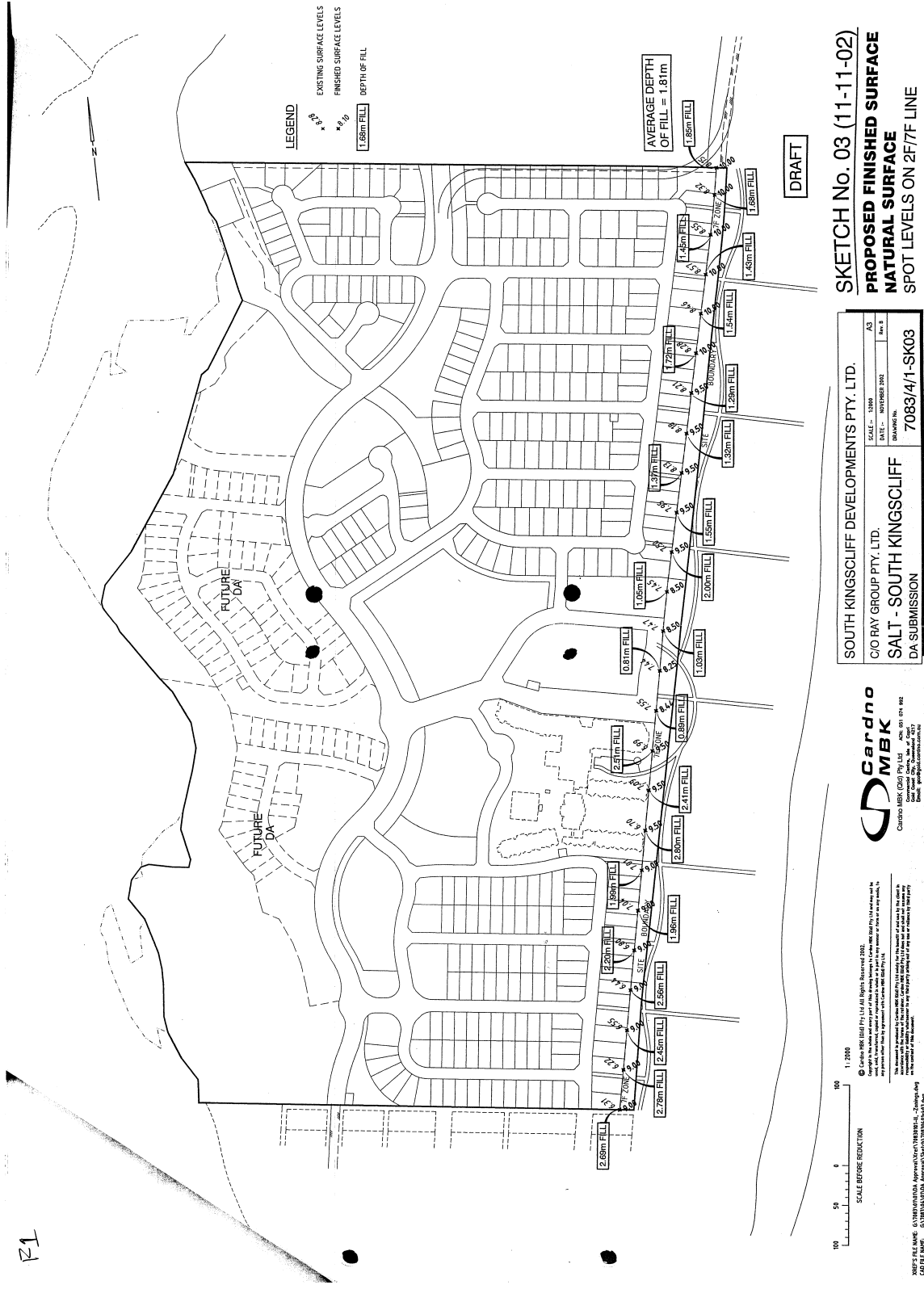
- Filling of the Site
- Visual Impacts from the Beach
- Coastal Erosion
- Height Limits
- Public Access to Foreshore Areas and Related Public Open Space
- Provision of Public Car Parking
- Surf Lifesaving Facilities

3.1 FILLING OF THE SITE

For the purposes of constructing the 473 lot residential/tourist subdivision the applicant proposes to transport via hydraulic means from the Action Sands site approximately 750,000m³ of sand to the site. This sand is to be used to raise the levels of the eastern portion of the site by an of average 2m. This will involve the placement of up to 5m of sand in places due to the uneven nature of the site as a result of past sand mining activities.

The diagram below shows the amount of fill to be placed on the beachfront lots adjoining the 7(f) zone.

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Reports from Director Development Services

As can be seen from this figure the extent of filling ranges from 0.81m to 2.80m with an average depth of fill to the beachfront lots of 1.81m.

Significant public concern has been expressed about this proposal. Concerns relate to precedent, variation to height limits, potential contamination of the groundwater and Cudgen Creek, the visual impacts of the development when viewed from the beach, economic justification and the principle of whether this is the best use of this resource.

There are two main bases put forward by the applicant for filling the site. The first is to minimise the potential for future residents to vandalising the dunal vegetation to obtain views to the beach. By raising the land this will provide future residents with ocean views over the top of the vegetation which will be established as part of the dune revegetation works proposed. The second basis for filling the land is to provide the economic drivers to allow the Outrigger Resort development to occur. The applicant has submitted emphatically that if the land is not filled, the returns on the project would be much lower and that the additional returns gained by filling the land are critical to support the viability of the Outrigger Resort building. .

Certainly filling of the land is a fundamental issue for assessment of this proposal – in terms of the community response and for professional assessment. If the environmental and visual impacts are resolved acceptance of the proposed scale of filling is then dependent upon the demonstrated need for financial viability for the tourism development components.

The Ray Group has provided the Director of Development Services with relevant documentation on project feasibility and project funding on a strictly confidential basis. These feasibility and financial reports have been provided by the Bank of Scotland, DTZ Australia (International Property Advisors) and the Ray Group Pty Ltd. Additionally, the Director of Development Services commissioned an independent Valuation Advice from the State Valuation Office on the differential residential values of beachfront and non beachfront land based upon the site being filled and unfilled (i.e. on existing site levels).

The feasibility and funding analyses together with the State Valuation advice lead to the following conclusions:

- a. That the differential value of beachfront land – filled and unfilled – is approximately 33%;
- b. That the current market value of the non beachfront land situated approximately 75m from the beach on a filled basis is approximately 30-55m² greater than the same land on an unfilled basis – representing a premium of 7.5-12.5%;
- c. That the premium values and net additional income gain from the residential development on filled land is critical to the overall financial feasibility of the total project and thereby to the funding structures associated with the major tourist developments.

It is therefore accepted that filling of the land can be supported given the analysis of the environmental and visual impacts and the project funding and viability support thereby achieved.

Reports from Director Development Services

The Social and Economic Impact Statement provided indicates that the proposal will generate on completion approximately 504 equivalent full time jobs and contribute approximately \$45 million per annum ongoing into the local economy. Considering the high levels of unemployment and particularly in the youth sector within the Tweed area it is considered that this will have a significant social benefit to the community as a whole.

Associated with the filling of the land there is the potential for significant environmental impacts particularly in relation to contamination of groundwater. A number of proposals have been put forward to manage this issue and prevent any significant contamination of the groundwater occurring. The Department of Sustainable Natural Resources (formerly DLWC) has been consulted and provided comments in relation to this matter along with a number of meetings being held with the applicant to consider the best means to treat material as it arrives to the site.

It is proposed that the 750,000m³ of fill will be delivered to a large detention basin which will be sealed to prevent salt water infiltrating into the groundwater. This water will then be decanted off and the sand passed through what is known as a “cyclone” which will reduce the amount of moisture content in the sand prior to its placement on the site. The 1,750 mega litres of water will then be required to be pumped back to the Action Sands site where it came from for disposal. No saline water will be discharged into Cudgen Creek as a result of this method nor should it enter the groundwater aquifer.

The Department of Sustainable Natural Resource has reviewed this proposal and the various models presented and agreed that this method of treatment is satisfactory subject to significant monitoring occurring during the project.

Issues have also been raised in regards to the merits of filling the site in terms of ESD or ecologically sustainable development principles. It has been argued that the sand is a non-renewable resource and the question raised on whether this is the best use of the resource considering the subject site does not need to be filled apart from a small area in the north western corner to raise levels above design flood levels.

The applicant has submitted that at the Action Sands site there is approximately 1.5 million cubic metres of resource still available under its current approval and a further 2 million cubic metres of fill material within the River to the north of the bridge. In addition to this there are other significant resources of sand of a better quality than that of the Tweed River within the Cudgen area. The increased rate of extraction from the Tweed River will have benefits in terms of navigation and royalties received as a result of the extraction of this material which may then be used to improve the Tweed River and surrounds. The origin of the sand is claimed to be from the southern beaches of the Tweed Coast including Kingscliff, Pottsville, Hastings Point etc. Therefore the nature of the sand and content is similar to that which already exists within the SALT site.

At the time the EIS was done for the extraction of the sand from the Tweed River (Action Sands), significant urban zoned land within the Tweed Shire had not been developed and were below flood levels. This EIS identifies the primary need for this material for the filling of urban zoned land to raise it above the flood levels.

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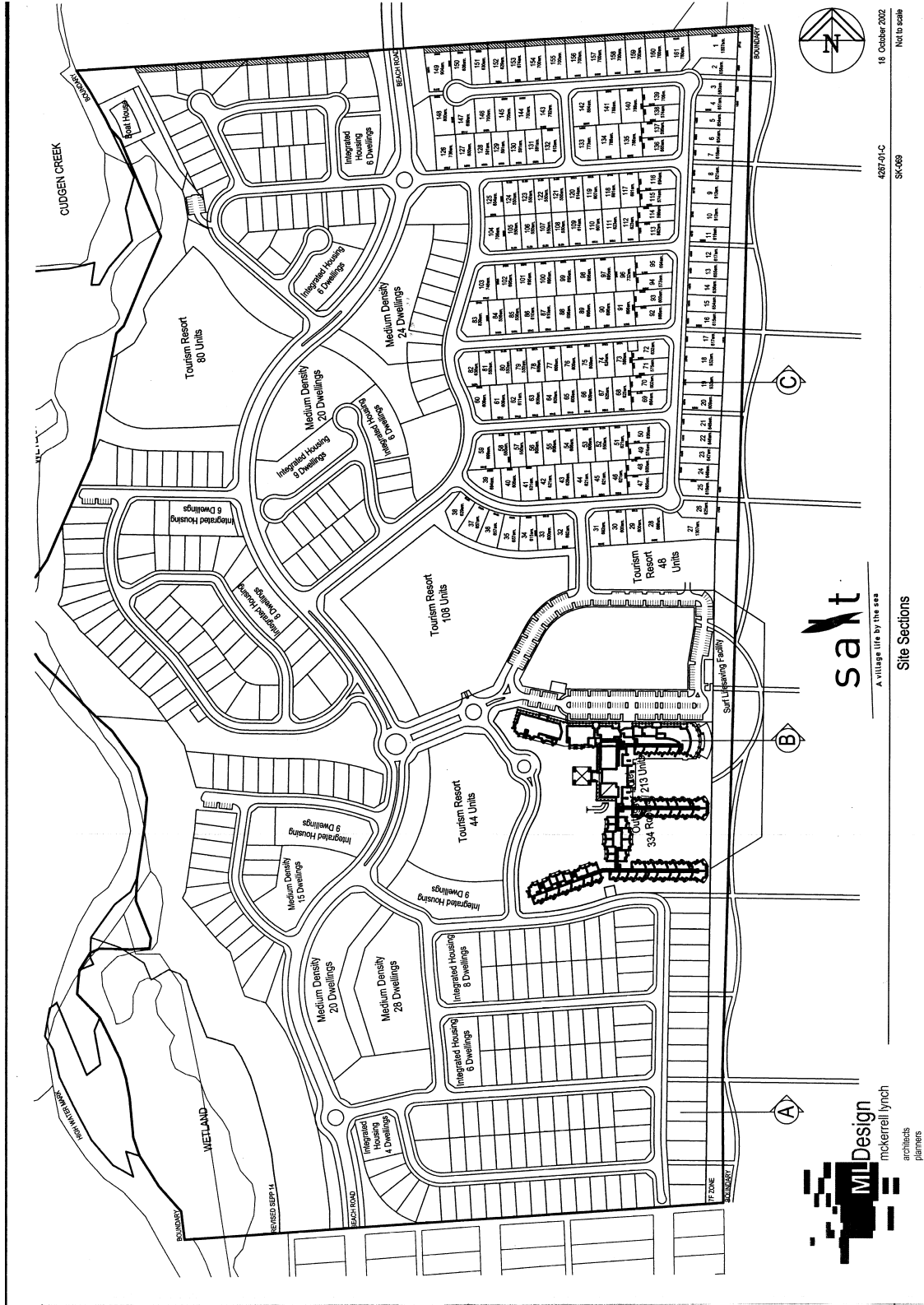
Since that time a lot of these areas have been developed such as areas in Banora Point, Flame Tree Park, areas in South Tweed and areas along the southern coast. Limited urban zoned land below the flood level still exists within the Shire which will need future filling. The area of most significance is that just west of Kingscliff and a recent development application has indicated an alternative source will be used to fill this land.

Having regard to the existing limited demand for this sand combined with the social and economic benefits which the Shire will gain from the development of an international resort on this site it is considered that the filling of the site, can be accepted.

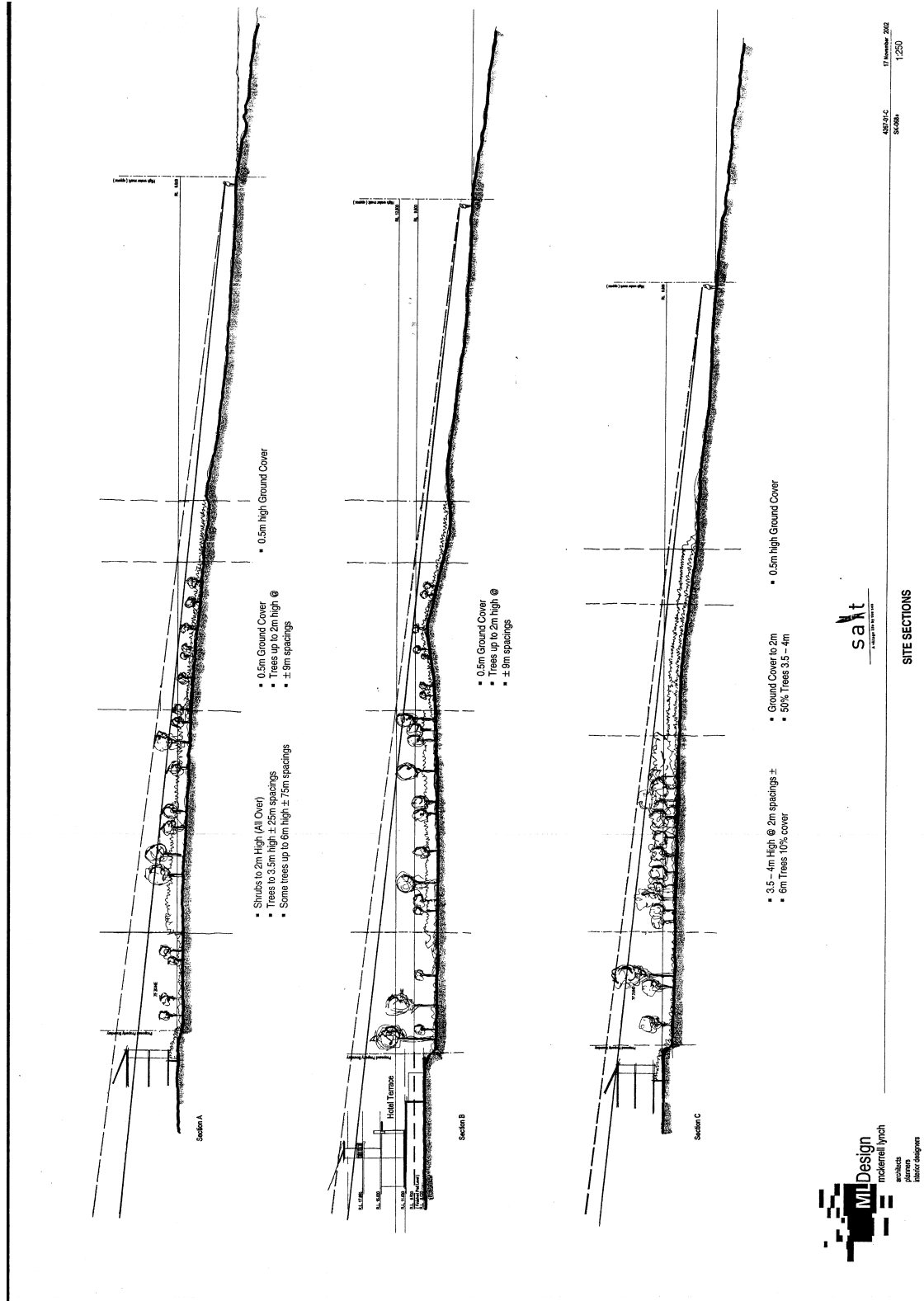
3.2 VISUAL IMPACTS FROM THE BEACH

The NSW Coastal Policy aims at minimising the visual impact of development when viewed from the beach. In considering this development the applicant has provided a number of cross sections showing view lines from the beach as detailed in the figures below.

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From these cross sections it can be seen that the buildings will be largely screened from view by vegetation. However due to the spacing of proposed vegetation regeneration works within the dunal area it is evident that filtered views of buildings through the trees will be available.

The Outrigger Hotel, due to its height and bulk, will be the most dominant structure when viewed from the beach. It will also be a number of years before the regeneration works are to a height and density to provide effective screening of buildings. The applicant has indicated that it may be 4-5 years before this occurs and 10 years for maturity of the taller species of trees planned to be planted. Therefore in the short to medium term the buildings will be quite visible and evident when viewed from the beach.

In saying this it must be acknowledged however that the buildings are setback approximately 120m from mean high water mark and therefore do not directly overlook the beach. As a result of this setback it is considered that the buildings will not dominate the beach as is the case along some Gold Coast beaches where development directly fronts the beach. Having regard to this factor and that the regeneration program over time will result in screening of development from the beach it is considered the proposal is acceptable.

3.3 COASTAL EROSION

Professor Thom, the Chair of the NSW Coastal Council has stated his position to Council that the Outrigger building should be setback a further 50m and that the residential allotments should be setback a further 25m due to the potential coastal erosion hazards which may result in the future. This advice is largely based on his experience and knowledge of coastal processes and adopting a precautionary approach to this issue.

For the purpose of managing coastal erosion issues and development along this section of the coastline, Council has relied on the position of the 50 year hazard line plus 30m as the setback requirement for development. This is reflected by the zone boundary between the 2(f) and 7(f) zone.

The Coastline Hazards Identification (jointly commissioned and also adopted by DSNR and Council) by WBM Oceanics has found that in this area of the coastline it appears that a limited erosion occurred over recent years. This study remapped the various hazard lines and in this location located the 100 year hazard line seaward of the existing 7(f) zone boundary putting all development proposed by this development westward of this hazard line.

It must be acknowledged that this is a difficult issue and as Professor Thom points out there is a level of uncertainty in predicting such hazard lines. However, based on Council's past planning approach to dealing with this issue and equity to this landowner it is considered reasonable to base Council's judgement in managing the conclusions of the WBM Oceanics Study and the current Tweed LEP 2000 zones.

3.4 HEIGHT LIMITS

As a result of filling of the land on average by 2m it has been negotiated with the applicant that a height limit of 2 storeys be applied to all low density, attached residential dwellings within the estate. This would include development on land which is not filled. The only 3 storey structures which would be permitted would be on the resort lots and the medium density housing lots. The applicant has also proposed a maximum height of any building of 10.5m with ceiling to floor heights of 4.5m maximum.

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The current height control over the subject land is 3 storeys under Tweed Local Environmental Plan 2000. Under the LEP any subfloor area or filled area greater than 1.5m would constitute a storey and therefore in the case of the applicants proposal developments will in effect still be 3 storeys by definition under the LEP.

Council has resolved to amend the LEP to restrict the height of buildings by placing restrictions on the height between ceiling and floor and also proposing to measure height limits from the finished ground level not the natural ground level.

It is considered that restricting future dwellings to 2 storeys would result in finished dwelling heights and impacts that are improved outcomes compared to residences on unfilled land on the current site.

Urban form is anticipated to be more consistent in terms of finished heights of buildings. No such controls exist on the Casuarina Beach development apart from Council's 3 storey height limit. There are examples at Casuarina Beach of significant variations in building form ranging from 3 storey to single storey. These larger 3 storey buildings can dominate the urban form.

It is considered essential that a 2 storey height limit be imposed on any future detached dwellings to be erected on the subject land to ensure that the heights of future buildings are consistent with the current provisions of Tweed LEP 2000. Should Council approve this application it is recommended that Council prepare a LEP amendment to place a 2 storey height limit over the subject land with the exception of the resort lots and medium density allotments.

3.5 PUBLIC ACCESS TO FORESHORE AREAS AND RELATED PUBLIC OPEN SPACE


The applicant has prepared Management Plans for both the dunal area and riparian zone fronting Cudgen Creek. The Dune Management Plan proposes to rehabilitate the dunal area in front of the development and provide six (6) designated access points to the beach across the dune. This Dune Management Plan has been developed in consultation with the Department of Sustainable Natural Resources and also Council. It proposes the dedication of the 7(f) land which is currently in private ownership to Council provides for a pedestrian/cycleway along the full frontage of the development. This dunal foreshore area will comprise the following works.

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SALT - 473 LOT SUBDIVISION - DEVELOPMENT APPLICATION.
LOT 500 & 7F Zone.
 Ratio's of vegetation / lawn etc.
 Based on AMENDED Dune management plans lodged with part 5 licence application to DLWC.

Metres Square.	Lot 500 area	7F zone	Total area	% of Lot 500	% of 7F zone	% of overall
Turf.	4,640	6,791	11,431	25.5%	33.4%	29.6%
Path.	1,667	1,620	3,287	9.1%	8.0%	8.5%
Infiltration Basin.	0	3,900	3,900	0.0%	19.2%	10.1%
Dune type revegetation.	11,866	7,500	19,366	65.1%	36.9%	50.2%
Boardwalk.	52	541	593	0.3%	2.7%	1.5%
Total.	18,225	20,352	38,577	100.0%	100.0%	100.0%

Hectares.	Lot 500 area	7F zone	Total area
Turf.	0.46	0.68	1.14
Path.	0.17	0.16	0.33
Infiltration Basin.	0.00	0.39	0.39
Dune type revegetation.	1.19	0.75	1.94
Total.	1.82	1.98	3.80



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It is proposed that the main public car park will be provided around the central park and the primary access point for the public will be at this point. Residential streets to the north and

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south running along the beachfront have been designed to allow some on street parking which will also provide access to the beach for the public.

It has been argued that smaller public parking areas should be provided throughout the development along the beachfront to provide for greater public access to the beach. In support of the design of the subdivision the applicant has argued that it is better to locate the primary public parking area in a central location adjacent to the surf lifesaving facilities to allow for increased protection of swimmers and beach users. This approach has been supported by Surf Lifesaving NSW.

This centralisation approach does have merits in encouraging the public to swim in the patrolled areas of the beach and on this basis is supported.

Public access to Cudgen Creek will be controlled through a pathway network within the riparian zone. To ensure the protection of the ecological values of this area. The main recreation area will be located in the northern section of the site where it is proposed to construct in the future a boat shed and public jetty and associated picnic areas. The boat shed will house non motorised water craft such as surf skis, paddles etc and will be partly privately operated. No vehicular access will be available to this area. A public parking area is proposed to be constructed to the south east. The riparian management plan submitted has been reviewed by the NSW Department of Sustainable Natural Resources and no objections have been raised to it. In summary it is considered the subdivision design provides adequate public access to foreshore areas.

3.6 PROVISION OF PUBLIC CAR PARKING

A total of 294 car parking spaces are proposed to be located around the central park area and adjacent to the Outrigger retail area. Ninety-six (96) of these car parking spaces will be contained within the Outrigger lot with a right of way in favour of the public over these. This leaves 198 to be dedicated to the public. Adequacy of public car parking has been a significant issue for the representatives of community organisations. Any consent granted should be conditioned that this number be 200 minimum. A further 33 spaces are proposed within the Cudgen Creek area providing public parking for creek users. The design of the beachfront streets also provides for on street parking for an additional 197 spaces. A total of 420 public car parking spaces will be provided throughout the development.

Council's current policy requires the provision of 300 spaces per 1km of beachfront land. This site occupies approximately 1.2km of beachfront land and based on Council's policy this would translate to the requirement to provide 360 public car parking spaces. Section 94 Plan No. 25 requires the provision of 200 public car parking spaces located at the northern and southern ends of the site. This is a reflection of the previous negotiated Kings Heath Club Of Clubs development approval. There are also 96 car parking spaces provided within the Outrigger lot in front of the Outrigger adjacent to the central park area. These spaces will contain a right of way providing public access and use of these spaces. The applicant has also indicated the 57 spaces proposed in the forecourt area of the Outrigger Resort will also be available to the public. It is considered that adequate public car parking has been provided to service the development.

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3.7 SURF LIFESAVING FACILITIES

The subdivision design makes provision for an allotment for the provision of surf lifesaving facilities adjacent to the central park area and the Outrigger resort. The application also provides a concept plan for a 2 storey building on this site.

The applicant has offered to fund the construction of this facility and the surf lifesaving personnel in the short term and dedicate the facility to Council at a later date. It is intended that the Ray Groups' initial funding will be succeeded by funding from fees paid by the unit owners and managed by the Body Corporate. The concern with this proposal is that Council may be required at a later date to resource and man this facility, particularly as the population at SALT increases and there is a community expectation created for the provision of surf lifesaving facilities.

In light of the existing clubs along the Tweed Coast struggling in terms of providing adequate resources to meet surf lifesaving demands, this is of concern in considering whether to accept a further facility.

An urgent need has therefore been identified that a Strategic Plan for the provision of surf lifesaving facilities needs to be developed for this section of the coastline to establish what facilities and where they are required to be provided in the future. Other issues such as whether any new facility should be an outpost to existing facilities or stand alone facilities also needs to be addressed in this plan.

The applicant has commissioned Surf Lifesaving NSW to look at this issue and is currently providing the funding for such a study to be carried out. It is understood that this study will not be completed for another 4-6 months. Council has also resolved to prepare such a Plan.

In light that no such strategy is in place it is difficult to make a proper assessment of whether there is a genuine community need for a facility at this site specifically or whether there may be alternative sites where a facility could be located.

There is however no doubt that approval of this development will bring to the area a significant population increase and result in increased usage of this beach. Considering that the beach has a Class 6 rating from Surf Lifesaving NSW which indicates a relatively dangerous beach for swimmers, it would lead to the conclusion that a facility of some sort, to ensure the public safety of swimmers using the beach will be required in this location, particularly having regard to the resort developments and the number of visitors unfamiliar with the conditions who will be frequenting the area.

It is also in the interest of the resort operators to ensure that safe swimming conditions exist in proximity to their developments.

Based on this understanding the developer has agreed to fully fund and provide the facilities in consultation with Surf Lifesaving NSW and the outcomes of the Strategic Plan when finalised. Ongoing funding for the provision of these services will be via a levy per bed on the resort operators. Any consent granted by Council should contain a condition requiring this to occur.

Should in the future it become evident that the SALT community and possible surrounding communities can sustain either an out-post or an individual club then Council may wish to

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accept dedication of this facility as a community facility. The alternative is for Council to accept Ray Group funding of building construction and patrolling operation to NSW Surf Lifesaving standards and lease back to the Outrigger resort management.

To best progress the provision of surf lifesaving in relation to this development, it has been negotiated with the Ray Group and recommended that a surf lifesaving facility be provided and equipped to the standards as determined by the Surf Lifesaving NSW and in conjunction with Council and that the surf lifesaving services be provided for a period of 10 years from the time of occupation of the Outrigger Resort through a 10 year lease at a nominal rental.

3.8 CUDGEN CREEK BRIDGE

As part of the application the developer originally offered to construct a new bridge over Cudgen Creek in the existing location but however, requests that Council reimburse part of the costs of this through its' S94 contribution plan for roads.

Council at its recent meeting resolved to place on exhibition an amendment to this Plan to include the bridge within the works schedule and collect a local area contribution from the SALT development and Lot 490. This would in effect result in the SALT development paying for a large proportion of this bridge which is unacceptable to the developer.

Through negotiations it has agreed that an alternative to building a new bridge is a requirement to upgrade the bridge, including the construction of a pedestrian cycleway across the bridge. The developer has made a submission to carry out works for the upgrading of this bridge. This is considered acceptable and should be conditioned as part of any consent.

3.9 PASSIVE AND ACTIVE OPEN SPACE PROVISIONS

The applicant submits that under Council's passive open space requirements a total of 5.8243ha of passive open space is required for this development. The applicant claims that 16.19ha of passive open space will be dedicated to Council as part of this development. An audit of passive open space carried out with the applicant has looked at the useability of this open space and only included passive open space which contributes positively to the public use of these areas and meets Council's design standards. This audit concluded that 6.9 hectares to be confirmed of passive open space will be provided which satisfies Council's requirements.

The application proposes the provision of no active open space and is embodied in Council Policies. No S94 plans currently apply to this site which would require the provision of active open space or the payment of a monetary contribution to the provision of such space. However, it is considered due to the permanent residential population which will occupy this site that there is a demand created for the provision of active open space within the area or locality. The development generates a demand for approximately 2.4ha of active open space. Through negotiations with the developer it has been agreed that it is inappropriate to provide this active open space physically on-site due to the premium land values in this area due to its close proximity to the beach. However, an option is to contribute to the acquisition and embellishment of land in the West Kingscliff area. Based on these figures, it is estimated that a contribution of \$1.2 million would be applicable for the provision of this active open space in the West Kingscliff area.

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Following negotiations, the Ray Group confirmed the negotiated outcome in a letter of 15 April 2003 – Annexure 2 based upon 40% structured and 60% passive open space. This concludes with a contribution of \$830,351.10 for structured open space.

3.10 FLORA AND FAUNA

The applicant has undertaken a detailed flora and fauna assessment pursuant to Part 5P of the Environmental Planning and Assessment Act. This study concludes that the vegetation of the site is in a highly disturbed state. Past sand mining activities and uncontrolled recreational use of the site have lead to the loss of original vegetation structure and composition. The site contains a few small stands of disturbed vegetation considered to have a medium conservation value. These stands are predominantly located in the riparian and dunal zones which will be protected.

Current and past disturbances including an inappropriate flora rehabilitation program after mining ceased, have lead to significant weed infestation within the site. It is expected that these weed infestations will continue if control is not undertaken. The weed infestation is expected to further reduce the habitat value of the study site and will not promote the natural regeneration of the site by local native species.

The proposed development and associated vegetation clearance does not involve the removal of any significant area of known habitat for threatened flora species or communities. The study site value as habitat for threatened fauna is low. The floristic structure is not conducive to supporting large species, diversity or proven core habitat for threatened species.

The riparian zone and the dunal zone are considered to contain habitat of the greatest value. These zones will be excluded from development activities and will be subject to a rehabilitation plan. It is expected that a successful rehabilitation program and plantings within the development of local native species will provide a significant foraging resource within the study site.

The overall impact on the physical environment in relation to conservation of significant species and land forms is low. No threatened species will be significant affected as a result of the proposed development.

National Parks and Wildlife Service (NPWS) reviewed this report and provided a number of comments which are detailed later in this report. These comments have lead to subsequent fauna and flora survey work being undertaken and specialist reports prepared. These reports have confirmed that there will be no significant impact on threatened species. NPWS have recommended a number of mitigation measures be put in place as conditions of any consent. The two species of particular concern to NPWS are the Common Blossom Bat and the Loggerhead Turtles.

Based on the report submitted, it is concluded that the proposed development will not have a significant impact on threatened or endangered species or their ecological communities and the application does not warrant a species impact statement being prepared.

3.11 CONTAMINATION

In the north-western corner of the site, there exists an old ilmenite dump which is a legacy of past sand mining activities on this site. Studies undertaken of the site have indicated elevated

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levels of radiation in these areas above the prescribed levels permitted. The application proposes the remediation of these areas so as to comply with the relevant standards.

A detailed radiation remediation action plan has been submitted as part of the application and reviewed by Council's Environment and Health Unit. This plan primarily proposes the mixing of uncontaminated fill material with the contaminated material on site and then respreading this material over the site so as to dilute the radiation levels contained within the soil. The applicant proposed to remediate the land to a level below any public infrastructure services so as not to present an occupational health and safety risk in the future to persons who may be required to maintain these utilities.

The remediation plan has been prepared in accordance with Council's Contaminated Land Policy and also SEPP55 – Contaminated Lands.

Council's Environmental Health Unit and the EPA are satisfied with the proposed remediation works.

3.12 NSW STATE COASTAL POLICY AND STATE ENVIRONMENTAL PLANNING POLICY NO 71

State Environmental Planning Policy No. 71 – Coastal Lands came into operation on 1 November 2002. This application was lodged prior to this date and therefore due to the saving provisions contained in this Policy, this Policy does not apply to this development.

Notwithstanding this, the principles contained in this Policy should be taken into consideration by Council when considering this application in terms of best planning practice. The design and layout of this proposal is generally consistent with the principles contained in this policy with the only concern arising as a result of the potential visual impacts on the beach which the development may have as a result of the filling of the land. As previously mentioned, these impacts will be managed by the provision of dunal vegetation to screen the development from the beach. This, along with the setback of development from the beach will result in acceptable impacts.

3.13 STORMWATER DRAINAGE

The applicant has provided a detailed preliminary stormwater drainage design for the proposed development. The eastern lots will drain to the eastern portion of the site and be collected by a number of infiltration basins located within the current privately owned 7(f) land which is to be dedicated to Council as part of this application. Water will then be channelled to the central park area where a large stormwater drain will be constructed east-west across the site to take the water back to Cudgen Creek.

Discharge into Cudgen Creek will only occur during large storm events as the system has been designed, similar to that of Casuarina, to provide significant infiltration of stormwater on-site. Lots on the western side of the development will be drained to the west and three infiltration basins are proposed within the riparian buffer area and a stormwater outlet in the northern section of the site. Once again, discharge of stormwater into Cudgen Creek at this outlet will only occur during major storm events as the infiltration basins will largely control stormwater on-site.

The stormwater drainage system has been reviewed by Council's Engineering Services Division and no objections are raised in regards to its' design.

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3.14 SUSTAINING THE ECONOMIC BENEFITS

The issue of ensuring that tourism development does not become more permanently occupied residential apartments over time is crucially important to the economic benefits. This is responded to by emphatic statements by the Ray Group, the scale of investment in support facilities, and the conditional staging of development to fulfil the Tweed LEP Schedule 3 provisions.

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4.0 PUBLIC CONSULTATION

4.1 PUBLIC EXHIBITION

The three (3) applications in relation to the SALT development have been advertised on a number of occasions with the exhibition period concluding on 21 February 2003. At the conclusion of this exhibition period a total of 115 submissions were received, 90 of which were objecting to the proposal, 17 in support and 8 raising various issues neither in support or objecting to the application. As development applications 02/1422, 02/1423 and 02/1748 are all inter-related, consideration of the submissions are dealt together.

Since the close of the exhibition period a further 7 submissions have been received, 6 of which were objecting to the proposal and one raising further issues in association with the proposal.

Provided below is a summary of issues raised in relation to the applications in response to the public exhibition and during the public meeting.

4.2 ISSUES RAISED IN PUBLIC CONSULTATIONS AND RELATED ANALYSIS

DA02/1422, DA02/1423 & DA02/1748	
Against	Comment
Vegetated dune area should be at least 150m	The vegetated dune area proposed by the development is approximately 70 to 80m in width. A management plan for the rehabilitation of this area has been submitted with the application. The application also proposes to dedicate the privately owned 7 (f) land, which is approximately 20m in width as public land increasing the dunal area between the beach and development. Council past planning has also set the limits of development at the 7(f) zone boundary. It is therefore considered unreasonable to require a further setback.
Dune area should be preserved for public	A management plan has been prepared for the regeneration and embellishment of this dunal area. The applicant also proposes to dedicate privately owned 7(f) land into public ownership. Therefore the dunal area will be improved and the amount of land in public ownership increased.
Traffic going through Kingscliff	A traffic report accompanied the application, which indicates that traffic impacts on Kingscliff from the development are acceptable and the existing road network will accommodate the increase in traffic. Increased traffic may however result in impacts on the amenity of residents. In

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	<p>response to these concerns the applicant has agreed to provide traffic calming measures to discourage through traffic in Kingscliff. A condition of consent is proposed requiring this to occur.</p>
<p>Lack of parking for South Beach users</p>	<p>The application proposes to provide and dedicate 200 public car parking spaces in the central area of the site adjacent to the main access to the beach. In terms of numbers this is consistent with Councils S94 plan No 25 however this plan recommends that the spaces be provide at both the north and south ends of the site. The applicant has justified the central location of these spaces based on public safety management and the need to direct people to the location where surf lifesaving facilities are provided. Considering that a pedestrian/bicycle pathway is to be provided for the full length of the beach frontage and that walking distances are approximately 500m in either direction to the extremities of the site this is considered acceptable. A further 197 spaces will be provided within the road reserves in walking distance to the beach.</p>
<p>Setbacks from beach inadequate. Should be 150-170m to avoid coastal erosion problems from cyclone.</p>	<p>The 7(f) zone boundary is Council current planning control for managing coastal erosion impacts. The location of this line is based on the 50 year plus 30m coastal erosion hazard line from DPWS studies in the 1980's. A more recent study has been undertaken by WBM oceanics which identifies the 100 year hazard line eastward of the existing 7(f) zone boundary and any private development which will result as part of this subdivision. Based on Councils current and past policies for managing coastal erosion issues it would be difficult for Council to justify a further setback.</p>

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Raising of land by average 2m will set a precedent for other developments.	The bases for raising the land has been justified on the basis of protecting future dunal vegetation from vandalism and the economic/employment benefits to the local community the development will result in (see the section on key issues).
Development will be an eyesore for people living on Kingscliff Hill.	The subject development will be viable from Kingscliff hill however the subject land has been zoned for tourism development for 14 years and could reasonably have been expected to have been developed at some time.
Removal of mangroves in Cudgen Creek will impact on breeding of fish and prawns in creek.	The application will result in the removal of only one mangrove. NSW Fisheries have granted general terms of approval for the removal of this mangrove. As part of these general terms of approval a bond of \$200,000 is required to be paid to ensure the protection of marine vegetation.
The development will result in increased land values and rates, which will force people out of their homes.	This is of matter of limited relevance for consideration under section 79 of the EPA Act.
Placement of dredged sand on site will result in tailwater entering Cudgen Creek with suspended matter and possible Acid Sulphate Soils.	Any approval will be conditioned requiring all tailwater to be returned to its origin. Therefore no tail waters will be discharged into Cudgen Creek
Object to stormwater pipes in Cudgen Creek - No thought has gone into alternative method.	There are only two stormwater outlets to Cudgen creek and these will be located below the water line. The subdivision has been designed on the basis that much of the stormwater will be detained on site and infiltrated. Water which will enter Cudgen Creek will be pre-treated and required to meet stringent water quality standards prior to discharge.
Object to jetty in Cudgen Creek.	The public jetty proposed in Cudgen creek will be subject to a further development application and public consultation to ensure any structure is acceptable to the local community. Motorised craft are not permitted in Cudgen Creek at this point and this facility is not proposed to facilitate the future use of the creek for these type of craft.

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<p>Object to raising building heights – heights of development should not be changed by the use of dredged sand.</p>	<p>Following the filling of the land it is proposed that residential all single dwelling residential allotments will have a height limit of two storeys and 10.5 metres. It is recommended that Council amend LEP 2000 should this application be approved to reflect this in Councils planning controls for the area and ensure compliance.</p>
<p>Management Plan for Creek side Reserve The plan lacks clear detailed specifications of the types of work to be undertaken in different parts of the site. The schedule setting out the order and pace of works grossly inadequate. NSW Department of Sustainable Natural Resources should decide which contractor undertakes the works. Works should be bonded.</p>	<p>The final plan will need to be approved by the Reserves Trust and DSNR. This should be reflected by a condition of consent. Works associated with this plan will need to be completed prior to the release of residential lots in the western portion of the site. The timing of this is reflected in the Statement of Environmental Effects submitted with the application.</p>
<p>Development exceeds height limit under Local Environmental Plan creating precedent.</p>	<p>Height limits under Tweed LEP currently will not be exceeded for single dwelling houses provided 2 storey height limits are placed on all residential allotments. Height limits for the resort development on the filled areas may exceed the height limit of 3 storeys. In the case of the Outrigger Resort, PlanningNSW has been requested to grant concurrence for this variation.</p>
<p>Dredging will destroy habitat in river and create precedent.</p>	<p>Dredging of the Tweed River has been approved by a consent in the early 1990's. At that time a detailed EIS was prepared which took into account the environmental impacts of this activity. No dredging of Cudgen creek will occur as a result of this project.</p>
<p>Water from filling will result in environmental impact.</p>	<p>The proposal in its original form had the potential to result in impacts on groundwater and water quality of Cudgen Creek due to discharge of saline water. Condition of consent is proposed requiring all tail waters to be returned to the Action sands site at Chinderah</p>

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<p>Insufficient parking provided.</p>	<p>200 public parking spaces are proposed to be provided adjacent to the central park. Parking is also proposed to be provided for the outrigger. Satisfactory parking is considered to have been provide based on cross utilisation as detailed in the parking analysis provided with the application. See parking assessment for DA 02/1423.</p>
<p>Variations of height limits based on profit is a dangerous precedent and should not be supported.</p>	<p>It is not considered support for the filling or variation of the site will create a precedent as the justification is based on the net economic/employment benefits the community will receive from the overall development. Any future proposal to fill a site would need to be assessed on its merits.</p>
<p>No public car parking at access points to beach creating in-effect private access to beaches for residents.</p>	<p>All access points are within walking distance (500m) of the central parking area. Locating the main public parking area adjacent the surf lifesaving facilities directs swimmers to areas of the beach, which will be patrolled. Provision for on-street parking in these streets has been made.</p>
<p>Application does not reflect the fundamentals of the NSW Coastal Policy in that it promotes ocean views and economic gain over the needs of the natural values of the coastal environment.</p>	<p>See detailed assessment of application against coastal policy objectives</p>
<p>Hotel should be sited a further 50m back for coastal erosion reasons as suggested by Professor Thom.</p>	<p>The Coastal Council has suggested that the hotel should be set back a further 50m for coastal erosion reasons on a precautionary basis due to scientific uncertainty. This is not considered reasonable having regard to Councils current planning controls and the most recent coastal erosion study by WBM.</p>
<p>Original EIS done in 1991 for sand extraction and envisaged much smaller volumes. The increased volumes should generate need for a new EIS (refer Table 1 in EIS)</p>	<p>Review of the consent for Extraction of sand from the Tweed River does not place any restriction on volumes which may be extracted however the EIS does contain a table which provides an estimate of expected volumes to be extracted each year. There are a number of other statements which imply that assessment of environmental impacts was largely based on this expected rate of extraction. The required rate of extraction is approximately 4 times</p>

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	<p>that estimated in the EIS. In addition the EIS is based on the assumption that the dredge will only operate for 3 months per annum. A recent letter from WBM states that “the dredging period for the current proposal would extend over 12 to 18 months” Based on these facts it is considered that the current proposal which will result in increased volumes being extracted over the subject period and increased operating hours of the dredge triggers the need to amend the existing action sands consent or otherwise comply with existing annual limits. Complying with existing annual limits would significantly extend the time taken to fill the site. A condition of consent should be imposed on any consent requiring extraction rates to comply with development consent 91/281.</p>
<p>EIS required for works within SEPP 14 Wetland Under Management Plan. This should be done before any approvals given.</p>	<p>An EIS is only required for the draining, clearing, filling or construction of a levee within a SEPP 14 wetland. None of these works are proposed under the management plan. It should be noted that clearing does not include the removal of noxious weeds. Restoration works under SEPP 14 however require development consent and the concurrence of the Director General PlanningNSW. A condition of consent should require the submission of a DA prior to any restoration works occurring in the SEPP 14 areas.</p>
<p>Filling of the site is for short-term gain and is an unproductive use of the material.</p>	<p>See comments provided earlier in this report.</p>
<p>Control of the rehabilitation of public land should not be with the developer.</p>	<p>All rehabilitation works will need to be carried out to the satisfaction of Council and DSNR. DSNR will also require substantial bonds to be put in place prior to works commencing. This will ensure that these works are carried out satisfactorily.</p>
<p>Inadequate infrastructures to support development.</p>	<p>Existing infrastructure in the area will need to be and is capable of being upgraded to service this development.</p>

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Hydraulic impact on Cudgen Creek from tailwater discharge.	All tailwaters will be required to be contained on-site and returned to the action sands site.
Insufficient electricity supplies.	Country Energy has provided a letter confirming adequate services will be able to be provide without any adverse impacts resulting on surrounding areas.
Infiltration basins should not be located on 7(f) land but on the developers land.	The area of 7(f) land where the infiltration basins will be located is currently in private ownership that will be dedicated. Approximately 20% of the dedicated land will be occupied infiltration basins and the remainder will be dedicated as public open space and embellished. On this basis it is considered acceptable to locate the infiltration basins within this zone. Under the zoning urban stormwater facilities are also permitted in the 7(f) zone.
Fill levels for beachfront lots exceed 3m.	Existing ground levels are at approximately 8.0m AHD for the northern half of the beachfront land and 6.5m for the southern part. Finished levels for the northern lots will be approximately 10.5m and the southern lots 9.5m. Therefore beachfront lots are intended to be filled between 2.5m to 3.0m and do not exceed 3m
Dust from the development site would impact on Kingscliff Hill residents.	Conditions will be imposed on any consent to ensure minimum areas of the site will be open at any one time (no more than 10 hectares) so as to control dust and erosion.
Salt residents and tourists will be exposed to dangerous beach conditions.	Surf Lifesaving NSW has carried out an audit of this beach and have classified it as 6 which indicates that it is quite a hazardous beach for swimmers. In considering this issue it must be recognised that the subject land has been zoned for development for a number of years and Council and State policies require that public access to the beach be provided. It is considered that it would be inappropriate and not practical for Council not to require the developer to provide surf lifesaving facilities and prohibit people from swimming at the beach considering that should Council approve the subdivision and subsequent tourist

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	development there will be a significant increase in population in this area.
The development will result in the destruction of more than one mangrove.	From information provided with the application only one mangrove will be destroyed.
Lack of water supply. Development should not be approved until new dam built.	Existing water supplies are adequate to accommodate the proposed development. Should Council approve the development the developer will be required to pay water headwork contributions for the upgrade and construction of new infrastructure to accommodate population growth within the shire.
Reduction in height of dune in front of hotel not supported as acts as a sponge providing protection during storm events particularly as sand dune within 100-year hazard line.	In response to this concern WBM Oceanics have provided a further submission advising that the removal of this 1m of dune will not have any adverse impact on coastal erosion processes provided that the material removed is placed in front of the existing dune so that overall volumes of sand in the location are not reduced
The current proposal is for 330 hotel rooms (including dual key) and 386 lots. This does not appear to be permissible under the LEP.	The development application seeks endorsement of the master plan submitted with the application and seeks Council grant a staged consent pursuant to section 80(4) of the Act. The number of resort units contained in the masterplan is in excess of the number of dwellings proposed to be created which is consistent with schedule 3 of TLEP.
Inadequate area appears to be available on-site to manage water as result of pumping.	The applicant has advised that an area of approximately 2 hectares will be required to manage and handle fill material delivered to the site. On this basis there would be adequate area.
Excessive noise, which will be generated from the development. Noise controls should be imposed on the development.	The applicant has provided a noise assessment which addresses both construction noise and traffic noise. Appropriate conditions of consent will be applied to any consent granted to ensure compliance with this report.
Beachfront residences sterilise prime tourist sites, which is contrary to the zone intent.	The primary intent of the zone is to encourage integrated tourist development. It is considered that with the Outrigger development and other tourist developments

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	proposed for the site that the intent of the primary zone objective will be achieved. The location of dwellings on some beachfront lots assists in providing the economic support to allow the development to proceed. It is also considered the development of resorts throughout the site provides for varying standards of resorts catering for a wider socio-economic group.
No sound justification provided to raise the site. Casuarina did not have to raise the site.	From figures provide by the developer the filling of the site provides the financial backing for the project to occur. It also may discourage future removal of dunal vegetation to obtain views.
Buffer to creek is insufficient-should be 100m to protect vegetation.	A 50m buffer is generally proposed which is consistent with both State Government policy and Council policy.
The cumulative impacts of development from Pottsville to Kingscliff needs to be carefully considered and not rushed.	Council has prepared and adopted a number of policies and plans including the "Tweed Coast Strategy" aimed at managing growth within this area of the Shire.
Filling of the land is motivated by profit not environmental considerations.	There are financial benefits to filling the land which allows the development to be financially viable. It is considered that the socio- economic benefits the community as a whole will gain from the development provides justification for the proposal.
Object to marina on Cudgen Creek located on public land. Will result in a change in the use of the creek.	No marina is proposed in Cudgen Creek. A small jetty is proposed which will be subject to a further DA.
Opposed to removal of dunal vegetation prior to rehabilitation of dune.	Native vegetation will be retained with only the bitou bush to be removed.
Development shouldn't be considered until water supplies are at 65% and restrictions lifted.	Water supplies are now well over 65%
No shopping facilities for local community provided within development.	A retail commercial precinct is proposed as part of the Outrigger application. This will largely support the tourist component of the development. Shopping facilities are available at Kingscliff to service the permanent population.

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Infiltration ponds, pollution traps etc are considered inadequate during heavy rain periods. No stormwater should leave the site.	The stormwater system has been designed to minimise the amount of stormwater leaving the site. Councils engineering services division is satisfied with the stormwater drainage system proposed.
Owners near the creek will create their own access points.	Properties adjoining the cudgen creek riparian zone are proposed to be fenced which will discourage separate access.
Detailed fauna and flora survey required for Cudgen Creek area.	The Part 5A assessment undertaken by Aspect North considered the riparian buffer area adjacent cudgen creek. Mapping and survey work has also been undertaken within cudgen creek which identifies areas of sea grass.
Concerned that stormwater pipes are less than 50 metres away from mangroves.	Stormwater outlets have been located in areas of the creek to minimise impacts on aquatic habitat. NSW Fisheries have required a bond of \$200,000 to be paid to ensure the protection of these areas as a result of the outlets not strictly complying with state policy.
Object to private use of public land for boatshed and jetty.	The application proposes that the boat shed will be 50% available for public use and 50% private. Appropriate leases will need to be put in place and compensation paid for the private component of this facility.
Paddleboats, jet skis, motor boats and boats with keels should all be banned.	It is understood that jet skis and motorised craft are currently prohibited from this area of Cudgen creek. This application does not seek approval for such craft. Non motorised craft are considered acceptable
North West corner is flood-prone and therefore should not be filled.	Development Control Plan No 5 permits the filling of flood prone land subject to it being demonstrated that the filling will not result in any adverse impacts on adjoining properties. The applicant has provided a flood impact report which satisfies this requirement.
Suggestion that Council should require a beachfront esplanade with parking between 7(f) and residential properties. Concern over availability of parking along beachfront and accessibility.	The revised NSW Coastal Design Guidelines encourage the provision of esplanades or pedestrian/cycleway corridors along beachfront foreshore areas. This proposal provides for a pedestrian cycleway corridor for the full frontage of the development, which is consistent with the

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	latest guidelines. Public carparking for beach users have been provided around the central park area. Centralisation of public carparking was encouraged by Surf Lifesaving NSW and PlanningNSW for safety reasons and management of people using the beach.
Clearing of crown reserve to create formal open space unacceptable.	The creation of formal open space on lot 500 adjacent the outrigger resort site has been negotiated with DSNR as part of the development of the dune management plan. This has been agreed to on the basis of balancing this with the regeneration of parts of the current 7 (f) land in private ownership.
Overshadowing of the beach should not be dismissed as suggested.	Concurrence of PlanningNSW is required for overshadowing.
Concern regarding completion of hotel. Concern that residential lots may be expedited at the expense of hotel and jobs.	A condition of consent has been proposed that requires the substantial completion of hotel rooms prior to release of residential lots. Completed hotel rooms will always need to exceed number of residential dwellings.
Little regard has been given to SEPP 71 provisions and NSW Coastal Policy principles.	SEPP 71 does not apply to this application as it was lodged prior to the commencement of this policy. Notwithstanding the assessment has had regard to the principles of this policy.
The approval of the spine road will commit the location of the road at the northern boundary adjacent to lot 490. This would seem to unreasonably fetter Council's incomplete planning for lot 490.	The approval of this application will set the location of the connection point of the spine road at the southern boundary of lot 490 however considering the size of lot 490 there is still considered reasonable flexibility for the location of the spine road within lot 490.
The quality and quantity of public open space provided in this plan is likely to be deficient. It is noted that the previous deal brokered with Sue Holliday as part of the Ministers Consent to a hotel site and golf course specifically set aside Councils public open space policy under the Coastal Policy Guidelines. This was for the use of public external to the site (as there were then virtually no permanent residents internal to the site who would have recourse to	The application provides sufficient passive open space to satisfy Council's policy of 1.13 Ha per 1000 population. No active open space is provided onsite. The applicant has agreed to pay a contribution for the provision of active open space in west Kingscliff.

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the space). It seems that any new plan would need to fully retain this external visitor provisions in addition to the Normal provision of public open space expected to service residential developments. This has not occurred.	
Open space provided is lined by fences not streets (50% of perimeter should be bordered by street as required by Council).	The majority of pocket parks have a large percentage of their frontage to a public road. Many of the green linkages however adjoin private land. Fencing adjoining these areas are proposed to be of an open transparent nature providing improved surveillance.
Central park orientated east west minimising its ocean foreshore frontage.	It would be preferable for the central park to be orientated north south however the east west orientation provides amenity to the retail area. Public open space is proposed along the entire foreshore area within the 7(f) zoned land.
Many of the design attributes of the proposal are described clearly as “Undesirable Practice” on page 60 of the Planning NSW “Coastal Design Guidelines for NSW” December 2001, and require drastic revision to become acceptable.	The Coastal Design Guidelines have recently been reissued and as discussed later in this report the development largely complies with the principles of this latest edition.
There seems to be no space allowance for a sewer pump station in northwest corner.	A lot has been provided in the northwest for the provision of the regional pump station
The design appears to neglect its immediate context to the north and south.	The fill is proposed to be graded to each of these boundaries minimising the impact of changes in levels.
Maintenance of landscaped areas needs to be considered. Deed of Agreement may need to be put in place.	Dunal and riparian areas covered by the management plans will need to be approved by DSNR and appropriate bonds put in place to ensure the maintenance of these areas.
Buildings should be required to comply with green building principles.	Future buildings will need to comply with Councils DCP No 39
Impact on landscape – area identified in Council’s Scenic Landscape Study.	The subject land has been zoned for development for a number of years and is relatively flat. The development of this land is considered not to have an unacceptable impact on the scenic landscape.
Application claims critical component for a tourist resort is views, however not identified as element of “Tourist Resort and Unit Key Usage Project for Tourism Resorts in Northern NSW and South East Queensland.	This report looks largely at the operational requirements/ characteristics of resorts in the area not the physical.

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Parking should be provided in adherence with policy of 300 spaces per kilometre.	200 spaces will be provided adjacent to the central park with a further 197 within the road reserves of streets in walking distance of the beach.
Pressure is being placed on approval authorities by statements of viability contained in document.	Socio-economic benefits must be weighed up against the viability of the project based on the filling of the land. This matter is discussed in this report
Traffic concerns in Kingscliff. Suggest blocking of Viking Street.	The applicant has agreed to the carrying out of traffic calming measures within Kingscliff to discourage through traffic from using local streets. Conditions of consent are proposed addressing this issue
What contingences are in place if pipeline fails?	The pipe would need to be closed down immediately should a failure occur.
Insufficient information provided in regards to present water quality of the Tweed River & Cudgen Creek.	A condition of consent will be imposed requiring tailwaters to be returned to the action sands site to ensure the protection of Cudgen Creek. Monitoring of the creek will also be required.

Support	Comment
Development will be major economic driver.	The development will have significant economic and social benefits to the community.
Generate employment for youth during and after construction.	A significant number of jobs will be generated by the development. The developer has indicated that he is keen to work with employment groups to ensure that opportunities are created for local youth
The development will provide:- Improved public access to beach A patrolled beach Improved public access to Cudgen Creek A wonderful network of bicycle paths Opportunity to correct our dune growth.	The development will result in improved outcomes in these areas.
The site is currently a dumping ground for old cars and other rubbish.	There is currently evidence on site that waste has been disposed of.
Meet need for first class tourist development.	The development will provide for a major tourist resort development within the Tweed area of which there are no resorts of this nature currently.

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Provides high quality residential accommodation.	The development provides for residential development.
SALT development will provide impedance to drive tourism in the area. The shire lacks currently any quality international standard hotel and resort type facilities. Tourism traditionally day tripper market.	The proposed development will expand tourism opportunities within the shire.
Public park and facilities.	It is the normal requirement for developments to provide recreation areas within there development.
Resort will provide professional conference business facilities.	Additional facilities will be a benefit to the community
Local venue for weddings.	Additional facilities will be a benefit to the community
Significant improvement of condemned area currently overgrown with noxious weeds.	The rehabilitation of the foreshore areas is in the public interest
Ray Group has good track record in reference to Koala Beach.	This is not a valid head of consideration when determining this application.
Revegetation and protection of sensitive areas.	Positive environmental outcome
Clearing up of the old sand miners Legacy.	The remediation of the sand mining area is a positive environmental outcome
Result in provision of new bridge over Cudgen Creek paid for mostly by the developers.	A condition of consent should be placed on any approval requiring the upgrading of this bridge.
Development will benefit Tweed River by opening it up.	Navigation improvements to the Tweed River will result due to increased rate of extraction from the river
Site used for camping illegally at moment.	This is a matter for the current land owner
Increased rates revenue for Tweed Council.	Council will receive increase rates however the increase in population will also place extra demands on Council for the provision of services.
Increased land taxes to the State Government.	This may be the case however is irrelevant in determining the DA

General Comments/Requests	Comment
Noise from truck carting sand along Cudgen Road from Chinderah.	Sand is not to be carted to the site by trucks but rather by Hydraulic means
Request for Minister to determine from resident associations in Kingscliff, Fingal, Pottsville, Cudgen, Hastings Point, Chinderah and Cabarita Beach.	This is a matter for the Minister

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Development should be required to be located behind the existing Coast Road.	At the point where coast road runs along the beachfront dwellings will be located to the west as this is the location of the 7(f) zone boundary
Increased setback from beach requested for following reasons:- High energy beach and protection needed from coastal erosion. Increasing need for public recreation Need to maximise natural spaces and habitat.	Issues in relation to setbacks have been previously discussed
Correction of issue regarding public road may be private with easement in public's favour. If this is case considers should be dedicated.	Existing coast road is not within a road reserve but rather controlled by a right of way. The relocation of this road will require dedication
Inadequate area for sediment ponds to manage water.	From information provided by the applicant adequate area will be available for the treatment of fill delivered to the site
Any development should maintain 'dog off leash area' along beach.	These will be a matter for Councils Environment and Community Services unit to consider at a latter date
Re-use of water should be encouraged.	Council has no policy regarding re-use of water.

Public Meeting

A public meeting was held at the Kingscliff Amenities Hall on 11 February 2003 at 7pm to discuss issues in relation to the application. The attendance at the public meeting was approximately 250. Issues raised at this meeting are summarised below.

Concerned regarding the height of the proposal, particularly with reference to the proposed 2m of sand being placed on the site and the possibility of three storey height limit above this finished level.	All residential dwellings will be restricted to a two (2) storey height limit
The turrets of the Outrigger appear to the 30m in height.	The Turrets of the Outrigger Resort are approximately 22m in height from the existing ground level. Through negotiations with the developer as a result of public concerns the turrets have been removed on the eastern wings of the building reducing it in height by 1.5 to 2m.

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Concern that the Outrigger will become a block of units as a result of the strata subdivision of the units. Concern raised regarding precedent of sand pumping onto the dunal environment, particularly as no research appeared to have been done regarding the original dune profile.	The Outrigger Resort will be configured and contain the facilities so as to operate as a resort. Issues regarding the merits of filling the land are discussed throughout the report
Who will pay the cost if the dune restoration works fail and coastal erosion impacts occur in the future?	The most recent studies indicate that the building will be located landward of 100 year coastal erosion hazard line. It is therefore considered the building will not be impacted upon within this period which is the life expectancy of the building.
Concern raised regarding the natural environment of Cudgen Creek and the potential impact the proposal will have on this environment.	The majority of the stormwater will be managed through infiltration on site. Tailwaters from the sand pumping will be required to be returned to its origin at Chinderah.
Question raised regarding the possibility of other landowners being permitted to fill their site to obtain views if the SALT development is supported.	Any future proposals would need to be assessed on their merits as has been the case with this application
Will people have views through the vegetation below 10m and will the southern lots gain views of the beach.	Filtered views will be available to the ocean through vegetation below 10m. Vegetation communities proposed at the southern end of the site will be similar to those at Casaurina. Due to the raising of the land it is expected filtered views will be obtained.
Filling of the dune will result in trees dying.	There is no filling of the dunal area proposed. There will be some reshaping of these areas to accommodate the pedestrian/cycle pathway. A condition of consent is recommended requiring the retention of existing native trees.
Question asked on how long the pumping activity will occur for. Steve McRae advised that the pumping will last for a period of 8 months.	It is expected pumping activities will last for approximately 8 to 12months.
Question asked regarding whether an environmental impact study had been done for the increase in dredging from the Tweed River.	It will be the applicants responsibility to comply with the terms of the existing approval for the Action Sands site.

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Noise impact from pumping at the Action Sands site currently heard at Fingal. Concern raised that the increased hours of operation of these pumps will increase this noise.	The current consent for the Action Sands site will need to be amended if the hours of operation at this site are to be extended. A detailed noise assessment would need to accompany any application to amend this consent.
Has radiation levels from sand mining residues been tested as part of the proposal? Steve McRae advised yes and explained the studies done.	Tests have been undertaken and a detailed remediation plan prepared. These remediation works will have to be carried out as part of this development
Concern raised regarding the strata titling of the Outrigger units and questions asked regarding the time period for strata titled contracts.	This matter has previously been addressed.
Concerns raised regarding coastal erosion processes.	This matter has previously been addressed
Public access to beach and concern raised regarding lack of public parking areas at access points. This creates in effect private beaches for residents in these areas. Brian Ray explained the justification for a central location of parking areas in terms of the location of the Surf Lifesaving facilities.	This matter has previously been discussed.
Question raised in reference to coastal erosion rates predicted and are there any differences between the Tweed Coast and Gold Coast.	Recent studies have been undertaken to establish erosion rates. This development is required to be setback approximately 120m from the beach which is much further than many Gold Coast Developments
Resident quoted Professor Thom's article in the Sydney Morning Herald which recommended buildings should be setback a further 50-100m.	Comments provided by the Coastal Council are addressed within the report.
Issue raised regarding the removal of the dune in front of the Outrigger Resort.	WBM have advised that provided the material is retained in close proximity the removal of the dune will not have a significant impact on costal erosion rates in this area.
Issue raised regarding the lack of active open space being provided by the development.	The applicant has agreed to make a monetary contribution for the provision of active open space in west Kingscliff

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Concern raised regarding the amount of car parking being provided for public guests, visitors and staff.	200 public carparking spaces are required to be provided adjacent the central park area for beach users. The design of the beachfront streets also provides for on street parking. 33 carparking spaces are also provided in the Cudgen creek area. Satisfactory public parking has been provided throughout the development.
Concern raised that coaches will access the development through Kingscliff rather than Casuarina as suggested by the traffic report.	It is proposed to place a condition on any consent requiring traffic calming works to be carried out in Sutherland street to discourage coaches from using these streets.
Question regarding the buffer provided to Cudgen Creek and whether this riparian zone will be filled.	The Riparian buffer is not to be filled
Cannot understand how erosion line will move east when greenhouse impacts are taken into account.	WBM oceanics carried out the latest studies and are considered experts in this area.
Number of traffic issues raised including: - What plans are there to upgrade Old Bogangar/Tweed Coast Road and who pays? What plans are there for the upgrading of the intersection of Cudgen and Old Bogangar Road? Paul Morgan responded to these questions.	Old Bogangar Road is intended to be upgraded to four lanes in the future and will be paid for by developer contributions from developments such as this. These upgrading works will include the intersection.
Issues in relation to the replacement of Cudgen Bridge and funding of this were raised. In addition questions were asked regarding possible traffic calming to discourage traffic from accessing Kingscliff over this new bridge. Brian Ray indicated that they are willing to consider providing traffic calming in Kingscliff to discourage traffic.	Conditions of any consent will require the upgrading of the existing bridge and provision of traffic calming within Kingscliff.
Concern raised regarding service vehicles accessing the site through Kingscliff.	Traffic calming in Kingscliff should discourage this.
Issues raised in regards to the proposed boat house and conflicting proposals in various documents e.g. the Management Plan and Statement of Environmental Effects.	A separate development application will be required for the boatshed which will finalise details of this building and its usage.
Concern raised over what types of water sports will occur within Cudgen Creek.	No motorised watersports will be permitted in Cudgen Creek only non-motorised activities.

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Issues raised in regards to the amount of public access available to the proposed boat shed versus private access. Steve McRae advised 50% public access and 50% private will be available to the boat shed.	Details will be finalised as part of the future DA
Question asked regarding the possibility of re-use of water off roofs.	The use of tanks would be encouraged however it would be up to future landowners.
Questions asked regarding how Cudgen Creek riparian area will be protected and seagrasses within the Creek.	NSW Fisheries have required a \$200 000 bond to ensure the protection of seagrass within the creek.
Question on whether people will be able to live in the Outrigger Resort. Brian Ray advised yes you can live in Outrigger, however, units are designed to discourage this.	It is very difficult if not impossible to prevent people from living in the units however they are designed for short term stays and the facilities within the building will see it operated as a resort generating similar levels of employment as if the building was to be occupied 100% by tourists. It is expected that a very high percentage of units will be within the tourist letting pool for which management rights are sold.
Why are sportsfield not required to be provided on site?	The developer has agreed to pay a monetary contribution.
Issues raised in regard to the social impacts of the proposal and what extent these issues have been considered.	A social impact statement has been prepared as part of the application which addresses these issues.
Question asked in regards to is there any way you can cater for the youth.	The developer has indicated that he is keen to develop programs with the local training providers to ensure local youth gain the benefits of this development.
What facilities is the development providing to cater for the youth.	Limited facilities are being provided with the exception of the recreational areas. Contributions will be required to be paid by the developer for the provision of community facilities within the shire
Question raised regarding ability of the existing electrical infrastructure to service the development without having detrimental impacts on Kingscliff residents.	Country energy has confirmed that electricity services will be able to be provided without impacting on existing residents in the area.
Issues raised regarding the provision of surf lifesaving facilities at the proposal.	The developer has offered and will be required to provide surf lifesaving facilities at the site.

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4.3 CONSULTATIONS WITH REPRESENTATIVES OF THE KEY REPRESENTATIVE COMMUNITY AND BUSINESS ORGANISATIONS

In addition to the public exhibition and public meeting community representatives were given the opportunity to address the Councillors on the 12 March 2003. Attached is a summary of issues raised at this meeting. Further meetings have also been held – including site inspections involving representatives of:-

- Kingscliff Residents and Progress Association
- Kingscliff and Tweed Coast Business Association
- Tweed Coast Business Corporation
- Coalition of Tweed Coast Community Organisations

Notes of all these consultations is Annexure 3.

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5.0 CONSULTATION WITH GOVERNMENT AGENCIES

The application was identified as integrated development and required general terms of approval to be issued from the following agencies: -

- NSW Environment Protection Authority - an application to carry out a scheduled activity under the Protection of the Environment Operations Act.
- NSW Rural Fire Service to undertake development on bushfire prone land under the Rural Fires Act 1997.
- NSW Department of Sustainable Natural Resources to carry out excavations within 40m of a river under the Rivers and Foreshores Improvement Act 1948.
- NSW Fisheries to remove a mangrove under the Fisheries Management Act 1994.

In addition to these approval authorities the application was also referred to the following agencies:-

- NSW National Parks and Wildlife Service
- NSW Coastal Council
- Roads and Traffic Authority under SEPP11

Provided below is a summary of key issues raised by these agencies in assessing or considering the application.

5.1 NSW ENVIRONMENT PROTECTION AUTHORITY (EPA)

The NSW Environment Protection Authority has provided its general terms of approval. Conditions recommended in these general terms must be applied to any consent granted by Council. In addition to these general terms of approval the EPA provided the following comments for Council to have regard when determining the development application.

“This advice is provided in addition to our correspondence dated 1 October 2002 relating to matters, which are subject to formal EPA approval in the integrated development assessment process.

Water Cycle Management – *Sustainable water cycle management is a fundamental factor in determining the suitability of land for urban development. It is also fundamental to the nature and extent of development that is feasible on a given area of land. The scale and nature of this proposed development provides Council with an excellent opportunity to apply a suite of stormwater management initiatives, which will contribute to achieving the objectives for new development in Council’s Stormwater Management Plan along with the water quality and river flow objectives for the Tweed River (including Cudgen Creek catchment).*

The principles of integrated water cycle management (IWCM) and water sensitive urban design (WSUD) are critical components of sustainable water cycle management. The principles of IWCM and WSUD strive to ensure that all elements of the water cycle, including the water cycle supply and waste water disposal (stormwater and sewerage) needs of proposed developments are addressed in an integrated manner to minimise the

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impact on surface and groundwater resources. Design concepts should address all water supply, stormwater and waste water needs (including reuse and ultimate disposal). In order to effectively minimise future impacts on ground and surface water systems, the approach is critical if we are to reduce the impacts of urban development on the environment and achieve sustainable development.

Consistent with WSUD and ICWD principles, opportunity for the reuse of waste water and strategies to reduce the demands placed on potable water supplies (eg. rainwater collection) should be pursued. It is noted that the proponent intends to use infiltration as a primary means of disposing of stormwater and roof runoff. While this may be preferable to the discharge of stormwater to surface water systems, such as the adjacent reach of Cudgen Creek, we believe the development of this nature should incorporate mechanisms that allow at least a proportion of this water to be captured, stored and used to reduce demands on reticulated town water supplies and reduce stress within the waterways from which they are extracted. This water would potentially be used to irrigate parks and gardens, fill swimming pools or for flushing toilets.

Any mechanism that can be employed to reduce garden water employment and the reliance on reticulated town water supply is likely to be of substantial benefit.

As indicated in our previous correspondence, the development should:

- strive to deliver no net increase in pollutant load as a goal for stormwater management at the site*
- contribute to achieving water quality and river flow objectives for the Tweed River catchment (which includes Cudgen Creek)*
- incorporates source controls (such as grass swales rather than kerbing and guttering) to ensure that water and pollutants are retained at or near their source in frequent small rainfall events.*

Water cycle management studies- *a water cycle management study (WCMS) enabled all the water management needs of proposed developments to be assessed in the context of the relevant surface and groundwater resources and the river flow and water quality objectives for the relevant catchment. We recommend that a WCMS is prepared as a major input to the integrated decision-making process that forms an important component of development planning.*

Buffers – *generally the riparian buffers provided in the developments design concept master plan are considered of an appropriate width (approximately 50m) with the exception of the point where a number of residential lots and the proposed tourism resort more to the north most SEPP14 wetland adjacent to the site boundary. We believe that the design concept should be altered to provide a buffer width of at least 50m to the proposed development and the SEPP14 wetland.*

Where the riparian buffer strips are either cleared during development to enable cut and fill operations or where they are currently devoid of nature vegetation, they should be revegetated with native riparian species as soon as possible to ensure that they deliver their designed water quality benefits.

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Importation of Fill – we note that the proposed development incorporates plans to import a large quantity of fill (sand) from another location either by road or by hydraulic means. Fill extraction and importation extends the environmental footprint of the development to another location (i.e. It can cause or contribute to environmental problem at the point of extraction). It also increases the likelihood of importing associated contamination issues or potential acid sulfate soils. We recognise that some fill importation may be necessary to remediate the radioactive mineral sand residues present at the site, however we believe the quantity of fill proposed for importation should be carefully assessed, along with its associated impacts.

Extraction and transport of the fill material will involve significant use of resources such as fill (which has inherent implications in relation to greenhouse gas emission) and will have quality, air and noise impacts. The nature of the development proposal means that a large volume of a limited and non renewable resource (i.e. Fill) will be exhausted. We believe that the proponent should attempt to minimise the quantity of fill imported in an attempt to limit the potential environmental impacts of the development”.

NSW EPA’s Radiation Unit also provided the following comments in regards to the remediation works proposed in regards to the development: -

“The information provided, in the detailed site radiation investigation report and remediation action plan, has been assessed by the EPA’s Radiation Control Unit. Based on the Units assessment you are advised: -

- 1. The radiation investigation report and remediation plan is acceptable.*
- 2. An occupational health and safety plan addressing radiation management, during the development and remediation work, should be requested to be submitted, to Council prior to development work commencing.*
- 3. A follow up gamma radiation survey should be conducted, of areas originally at or above 0.7uGy per hour, to ensure that the remediation is effective and meets the NSW levels. The survey must be conducted at the completion of the remediation and site earthworks, including the placement of capping material, and prior to development work commencing.”*

Analysis of EPA Issues

The applicant as part of the application has provided a detailed stormwater management plan for the overall development. This stormwater management plan aims at minimising the amount of stormwater receiving the site as it has been designed so that the majority of water is infiltrated prior to it reaching the Creek. It is only during major storm events that the water would discharge into the Creek.

This plan is consistent with Council’s stormwater management plan and pollutant discharge levels will be required to comply with the criteria within this plan. In addition to this the Ray Group have stated publicly that they will be encouraging individual residents to adopt reuse strategies. Council’s DCP40 – Exempt and Complying Development also encourages the use of rainwater tanks by not requiring development consent to be obtained for the installation of

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tanks up to a certain size. This is also reflected in state policy. The site will be fully serviced with reticulated sewer and water which will manage effluent waste for the development.

In response to the merits of filling the site the applicant has made the following submission: -

“In regards to the use of the dredged sand material from the Tweed River and the availability of this resource into the future, we reconfirm the points made at the recent public meeting about this issue: -

- *The proposed extraction point for this material in the Tweed River is covered by existing authority approvals and licences (Action Sands) and other than the issue about hours of operation, this material is readily available for our use.*
- *Existing Action Sands licence covers a volume of 1.5 million cubic metres from which only approximately 200,000 cubic metres has been extracted.*
- *Because the sand material from the Tweed River is only suitable for site filling (because of the quality and grade of sand particles) the actual extraction rate is minimised because of the lack of market demand for this material.*
- *The original report produced by the Department of Public Works for the Tweed River siltation issue (that eventually allowed the extraction licences to be created) shows that the sand resource is naturally replenished by tidal movement from the mouth of the river, and further that a flood event will further replenish this resource in the future.*
- *A further licence exists for the eventual extraction of 2 million cubic metres of sand from the Tweed River downstream from the Tweed River bridge. Although this material cannot yet be accessed, it is a resource for the future.*
- *If this resource was considered to be highly valuable, we question why the Department of Main Roads were able to use 800,000 cubic metres of this extract sand material to construct the bypass highway through Chinderah.*
- *It has been proven that the sand material in the Tweed River originated from the beaches at Kingscliff and Hastings Point, hence the use of this material to fill the SALT development could not be seen as the importation of foreign material that would otherwise contaminate the site.*
- *It is acknowledged by all relevant authorities for flood mitigation and river navigation reasons, the Tweed River must be dredged. At the current maximum extraction rate of 100,000 cubic metres per annum (which is a limit that Action Sands struggled to achieve because of the limited market for this material), it would mean*

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that it would take 7.5 years to extract the volume of material from the River that we are proposing can be extracted within 12 months.

- *A further benefit to the community (and Government Departments) from this increased extraction rate is the injection of substantial royalties that will be achieved and subsequently channelled through to land care groups such as the Tweed River Land Care Group.*
- *As is known to the authorises, there is a further major sand extraction licence applicable to a local site known as "The Bolster's site" and that the licence that exists for this pit is extensive and to date has only been used in part to extract a much higher grade of sand material than is available from the Tweed River. There is an expectation that extraction from the Bolster's site will continue for some 20 years hence.*

Therefore, we submit that the use of the Tweed River material for the purposes of filling the SALT site cannot be seen as a waste of a valuable resource".

In considering this issue consideration must be given to the future potential demand for this resource outside the SALT site. The original EIS for the Action Sands site justified the proposal partly on the basis that there were significant areas of flood prone land within the Tweed Shire which in the future would require filling. This consent was granted in 1991 and since that time significant areas of that flood prone land identified such as Banora Point, Flame Tree Park and areas in Kingscliff have been developed and filled from alternative sources. Residential land along Fraser Drive which is currently undeveloped has recently been granted approval for filling of the subject site. This is currently occurring and alternative sources are being used for the filling of this land. The most significant site which in the future may require filling to raise to flood levels is land to the west of the Kingscliff town centre. A recent development application for part of this land proposed to obtain the fill material from a source west of Cudgen.

From this it would appear that there are limited areas of undeveloped flood prone land within the Tweed Shire which may generate a demand for fill material in the future. The resource which is currently available within the Tweed River and potential future resources appear adequate to meet future demand. The filling of the SALT site will also not exhaust this resource in full.

Notwithstanding this Council must however have regard to potential changing technology which may find new uses for such sand. In recent times Council has approved a concrete batching plant on the Action Sands site which in part utilises river sand from this site for the making of lower grade concrete.

Therefore in assessing the merits of filling the site a broader view must be taken and consideration given to the overall net socio-economic benefits which will flow from the proposed development. The applicant has provided, in confidence to the Director Development Services, information which demonstrates the financial viability of the project both with filling and without filling of the subject site. These figures are discussed in detail

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later in this report but generally recognise that if filling of the site does not occur then the economic viability of the overall project including the Outrigger is put at risk. This must be weighed up against the socio economic benefits of the creation of approximately 504 equivalent full time positions and the economic injection of an estimated \$45.45 million per annum into the local economy.

Having regard to these issues it is concluded that the merits of filling the site can be supported.

5.2 NSW RURAL FIRE SERVICE

NSW Rural Fire Service is required to give its general terms of approval for the subject subdivision. These general terms of approval have been granted subject to conditions. These conditions are required to be placed on any consent granted by Council.

5.3 DEPARTMENT OF SUSTAINABLE NATURAL RESOURCES MANAGEMENT (FORMERLY - IN PART - DEPARTMENT OF LAND AND WATER CONSERVATION)

The Department of Land and Water Conservation originally responded to the proposal and provided the following comments: -

“From an overall perspective, the Department considers that the proposal will have significant short and long term impacts on the general locality. The coastal aquifer and specifically the adjacent Crown Lands. Accordingly, the Department considers it essential in Council’s assessment of the proposal it carefully consider the potential long term environmental, social and economic implications of this proposal, especially in regards to issues of visual amenity and coastal hazard setbacks from the beach. In addition, DLWC has major concerns regarding the potential for contamination of the underlying freshwater (low salinity) aquifer system and strongly objects to the proposed hydraulic placement of fill in its current manner (see more detailed comments below).

With respect to the impacts on the adjoining Crown Lands, DLWC strongly recommends that Council impose appropriate conditions which require the proponents to commit to a 5 year dunal and riparian rehabilitation program authorised under licence from DLWC (see more detailed comments below).

NSW Coastal Policy 1997

The proposed subdivision layout provided results in a significant amount of coastal foreshore area being 400-500 metres from a formalised public park. The lack of more widely available public car parking in association with the accessway provided at approximately 80m intervals is considered inconsistent with objective 7.1 of the NSW Coastal Policy 1997. DLWC considers that the current proposal is deficient through its lack of vehicle parking spaces to facilitate public access to Lot 500. This will result in a potential future conflict between beach users and residents over on street parking. Accordingly, DLWC recommends that additional public parking be provided at approximate coastal locations.

The proposed development site incorporates significant earth fill for a large proportion of its eastern side presumably to assist in gaining ocean views. Goal 3 of the NSW Coastal Policy seeks to protect and enhance the aesthetic qualities of the coastal zone.

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For this development proposal, consideration and application of the design and location principles contained in the coastal policy (Appendix C Table 3) will be required. In this regard DLWC recommends that particular attention be given to avoiding potential overshadowing impacts and to maintenance of natural vistas from the foreshore and beach.

Coastline Hazards

The SALT proposal represents a significant new residential development adjacent to the Tweed Coastline on a currently undeveloped site. Accordingly, the determination of the seaward boundary of the proposed development is considered crucial. Tweed Shire Council has recently completed a Tweed Coastline Hazard Definition Study (WBM 2001) as the initial stage in the preparation of a long term coastline management plan for the Shires coastline. The Study indicates the coastline adjoining the proposed SALT development is subject to the coastline hazards of short term storm erosion, long term shoreline recession and climate change including a postulated sea level rise impact from the greenhouse effect.

Appendix D of the Tweed Coastline Hazard Definition Study defines a landward extent of coastline hazard zones for various planning timeframes based upon the above hazards. Figure D18 of Appendix D indicates that the subject land is located landward of the 100 year hazard lines.

In the absence of the adopted Coastline Management Plan for the Tweed Shire Coastline it is recommended that in defining the building setback line that Council consider: -

- *Coastline hazard impacts including climate change and the need to accommodate natural shoreline fluctuations in the long term without demands for future protection and associated beach restoration works.*
- *The provision of public foreshore access requirements in perpetuity.*
- *Maintenance of natural aesthetic quality including the potential visual impact of development as viewed from the foreshore and beach.*
- *The uncertainties arising from future conditions that require a risk adverse or precautionary approach to decision-making.*

Foreshore Management

The Lot 500 and 7(f) zone management plan prepared by Aspect North has evolved from the commendable plan they have completed, and in the process of implementing, for Lot 500 seaward of Casuarina Development.

The new and novel approaches to dune vegetation are acknowledged, as is the continued 2 year planting (page 60) should failure of this proposed coastal heath shrub land planting occur. An adaptive management approach to control strategies for bitou bush is also supported, subject to appropriate consultation with DLWC and Council.

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It is acknowledged that this plan was essentially written prior to the August 2002 fire on the site. Adaptive provisions such as more extensive protective (bush) fencing to partly address this changed circumstance are noted (7.3, page 49).

Notwithstanding this good work and the opportunity to do similar work on Lot 500 (and the 7(f) zone) seaward of SALT it is recommended that both DLWC and Council be cognisant of the need to develop effective solutions to address potential illegal clearing (or fires) on Lot 500, especially in consideration of lessons learnt from earlier Casuarina vandalism problems.

The Department will consider giving its endorsement to the plan once advice has been received of the Tweed Coast Reserve Trusts' approval of the plan. It is anticipated that a similar monitoring process to that used at Casuarina will be implemented for the SALT development. Please also refer to comments on approvals needed under the Crown Lands Act 1989 and Native Vegetation Conservation Act 1997 sections below.

Riparian Management

DLWC supports the concepts and work detail contained in this plan including the provision for adaptive management subject to appropriate consultation with DLWC and Council.

DLWC will require a commitment from Council to acquire an easement for any drainage works (culverts, pipes, headwall, discharge, apron etc to be located on Crown land) (below high mean water mark for Cudgen Creek). A licence from DLWC (to the development) may be required to authorise any construction prior to finalisation of the easement acquisition.

Please also refer to comments on approvals needed under the Crown Lands Act 1989, Rivers and Foreshores Improvement Act, 1948 and Native Vegetation Conservation Act 1997 sections below.

Floodplain Management

The minimal hydraulic impact of the proposed development as modelled by WBM, is acknowledged. It is noted that up to the 100 year ARI flood event had been modelled. DLWC believes that it is essential that Council consider the following comments in light of its current approach to managing development on the floodplain.

Council is advised to assess the cumulative impacts of "fill developments" including consideration of how similar development proposals will be dealt with in the future. The current approach appears reactive where each "add on" development is weighted on its merits.

The penalties associated with this approach include: -

- *The need for a hydraulic analysis for each development.*
- *The need for these to become increasingly complex, to provide an appropriate definition of the impacts.*
- *The likely protracted and costly deliberations associated with this.*

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- *The configuration of floodplain development will be determined by the individual developments approved. This can mean a reduction in the total area that can be developed if the naturally higher flood flow areas have been occupied by an approved development.*

As with other local planning processes, the formation and implementation of floodplain risk management plan is a Council responsibility. It is recommended that a floodplain risk management plan be prepared for Cudgen Creek and its floodplain, given the potential for cumulative impacts due to this development and other proposed developments within the catchment. This plan should have regard for all associated factors including flooding, flood evacuation, environmental impacts and social issues as well as including a development strategy for the floodplain. Council is encouraged to take the opportunity to use the floodplain management committee as a vehicle for achieving this outcome.

Erosion and Sediment Control

With respect to the proposed substantial filling of the site Council will need to be satisfied that: -

- *Appropriate and adequate measures are proposed and implemented to allow for prompt revegetation of the site.*
- *Batters are formed to a stable edge consistent with end uses and should be adequately protected from erosion by vegetation or, as appropriate, by structural measures.*

DLWC seeks further detailed information on the work methods to be employed during the progressive clearing/sand placement/immediate revegetation of the filled land, particularly in regards to the potential for wind erosion of exposed sands.

Council may also wish to consider whether the proposed filling of the site to a higher level in association with housing and resort construction may impair on air movement over the site, potentially creating a salt vortex over the proposed eastern stormwater drainage system which could adversely impact on the western dunal vegetation.

Landscaped Design

The landscape design report prepared by EDAW (August 2002) states that: -

“No exotic species will be used in the landscape works”.

“Only native species will be used in the design” (page 4)

DLWC recommends that Council condition any landscaping approvals on the basis of only using local native species appropriate to the site and circumstances. It is further suggested that Council should also encourage the use of appropriate local native species generally within the development. It is also recommended that a list of plants to avoid (environmental weeds or potential environmental weeds) should be prepared for the site.

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Acid Sulfate Soils

The acid sulfate soil management plan is considered adequate in many areas in relation to acid sulfate soil (ASS) and addresses many of the associated issues. It is noted that additional soil assessments will be conducted during earthworks to determine neutralising dosing rates in accordance with the ASSMAC Guidelines.

The main outstanding issues of concern to DLWC are: -

1. Proximity of roads and services to Cudgen Creek

Sulfate potential at test pit TP3 near Cudgen Creek indicates ASS at all depths tested to 2.5m. It is possible that road or sediment pond construction will intersect similar soils in the vicinity of Cudgen Creek. In this regard Section 3.0 proposed works (page 5) should be amended to include a 3rd dot point:

- Excavation associated with roadworks and sediment pond construction on or near Class 1, 2, 3 or 4 land.*

2. Sampling regime

The ASS manual (page 21 of assessment guidelines) states that:

“The onus is on the proponent to justify that sufficient sampling has been undertaken to understand and manage the site without causing environmental harm”.

It is DLWC’s position that it contends that this has not occurred.

Element 1 control measures (at introduction – page 10) state that visual assessment will be the main determinant of further laboratory assessment requirements. This is not considered adequate for soil disturbances in Class 1, 2, 3 and 4 ASS lands. The ASS guidelines specify that for developments larger than 4ha, 2 test sites are required per hectare to obtain information to allow the preparation of an ASS management plan. The area of ASS in the development area is not stated. Once determined however this figure should be used to calculate the number of bore holes required.

Information provided in the ASS management plan suggests that results are available from 12 bore holes, a number of which are not within the ASS area. Based on the information provided, it is considered likely that additional ASS tests are required. Accordingly, the Department recommends that appropriate additional boreholes be undertaken to provide information to assist in the preparation of an ASS Management Plan.

For soil disturbances such as road and sediment pond construction on ASS land near Cudgen Creek (or within 500m of Class 1, 2,3 or 4 land if the water table is to be lowered by 1m), DLWC recommends that additional laboratory tests be required. Note that, in addition to TP3, borehole BH18 near Cudgen Creek tested at 0.03%S (the action criteria in the ASS manual) at a depth of 0.5:1 metre. BH18 also appears to coincide with the road.

Accordingly, DLWC recommends that the best environmental practices listed at page 9 and 10 be amended to cover this issue.

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3. Additional tests at deep constructions

Insufficient information has been provided to determine the maximum depth of earthworks. ASS tests are required to be undertaken to a depth of 1m greater than the depth of soil disturbances or groundwater draw down. Existing borehole data extends to a depth of 2.5m.

DLWC therefore recommends that additional ASS tests are required in all areas of earthworks or groundwater extraction greater than 1.5m depth if this occurs in Class 1, 2, 3 or 4 land, or within 500m if groundwater drawn down is an issue. The best environmental practices at pages 9 and 10 should be amended to include this requirement.

In this regard Section 3.0 proposed works (page 5) should also be amended to include a fourth dot point:

- *Construction involving deep earthworks or ground water extraction.*

4. Sediment Ponds

Sediment pond construction in this zone has not been included in the ASS management plan. No information is provided on ground water levels and quality or on ASS tests at sediment pond sites or on the elevation of the sediment ponds and outlet structures to enable an assessment of the ASS risk of discharge and groundwater draw down.

DLWC recommends that construction of sediment ponds on Class 1, 2, 3 or 4 land must be undertaken so as not to intersect ASS, acid ground water or result in a draw down of ground water in the potential acid sulfate soils, for example by evaporation from the sediment pond. Sediment ponds must not be constructed into ASS material.

If such ponds intersect the ground water table, then a licence from DLWC will be required under Part 5 of the Water Act.

5. Contingencies

On site storage of 5 tonnes of agricultural lime is appropriate for most contingencies. However, if acid ground water is intersected and disposal necessary and to manage the risk of accidental discharge of acid waters into Cudgen Creek, DLWC recommends that a secure store of hydrated lime be required for treatment purposes.

6. Dredging and Transport of Fill Material

It is understood that dredged material from the Tweed River is proposed to be used as the source of fill. Rigorous sediment sampling is required if this option is pursued. Separation of silt residues (which are more likely to contain ASS) and their subsequent permanent storage under an oxic conditions, or their full neutralisation and dry land disposal, are the nominated methods of treatment. These area both suitable methods.

DLWC recommends that sampling and laboratory testing of treated ASS fill material, after separation of silt residues or full lime neutralisation should be conducted to the satisfaction of Tweed Shire Council. The rate of such sampling to confirm the consistency and effectiveness of ASS treatment, maybe at a lower rate than described in the ASS manual for assessment purposes.

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In addition, DLWC recommends that the best environmental practices employed (see page 9 and 10) should be expanded to include a further dot point: -

- *All dredged material will be tested for ASS and treated as required and treated ASS fill material will be further tested for ASS to confirm that the treatment is effective.*

With respect to specific approvals which the Department will require to be addressed through consent conditions, the following general terms of approval are provided:

Crown Lands Act 1989

- ***Dune management and recreation infrastructure – Lot 500***

The developer will be required to obtain a licence from DLWC authorising entry onto Lot 500 and permitting construction of works associated with the undertaking of environmental rehabilitation and recreational infrastructure facilities (and associated earthworks). This licence will refer to, and require all work to be in accordance with, an adopted Dune Management Plan for Lot 500 and the 7(f) zone (once approved by DLWC and Council as Manager of the Tweed Coast Reserve Trust).

- ***Coast Road Deviation – Lots 490, 500 and Bushfire Management Lot 490***

DLWC will give its approval to the opening of a temporary road within Lots 490 and 500 (for the full length of the current unauthorised formation) and will agree to waiver claims for compensation and cost, on agreement that the developer will:

- *Undertake to survey and construct the road;*
- *Obtain an undertaking from Council that, if required, on finalisation of Lot 490, Council agrees to close and reopen the road in the new location;*
- *Rehabilitate, to the extent specified by DLWC, any part of the temporary road within Lots 490 and 500 to be removed;*
- *Undertaken to provide an equitable contribution of land by both parties (developer and DLWC) in any future design of a permanent road connection at the boundary of Lot 490 and the SALT development;*
- *Authorisation to clear and manage the asset protection zone (APZ) to be located partly within the Crown Land (Part Lot 490 DP 47021 as per drawing SK 13 (14-05-02) (Rev A) (now figure 208-07-02) will be required by way of licence from the Tweed Coast Reserve Trust to South Kingscliff Developments Pty Ltd).*

- ***Cudgen Creek Riparian Zone Plan***

The developer will be required to obtain a licence from DLWC for any construction and occupation of Crown Land along the Cudgen Creek foreshore involving earthworks, walkway/cycleways and associated revegetation subject to satisfactory completion of a land assessment (to be prepared by Aspect North and submitted to DLWC for statutory approval) and resolution of Native Title interests

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if applicable (refer Cudgen Creek riparian plan section 4.3.2 page 39). This licence will refer to and require all work to be in accordance with, an adopted Cudgen Creek riparian plan for this area (once approved by DLWC).

A similar process as outlined above will also apply to the authorisation of any proposed jetty. Continuing authority for this structure once completed may be accompanied through the general licence to Council for public recreational structures within waterways.

Rivers and Foreshores Improvement Act 1948

The Department of Land and Water Conservation (DLWC) has statutory responsibility under the Rivers and Foreshores Improvement Act 1948 to ensure the hydraulic stability of the states waterways.

Under the Act, a 3A permit is required for:

- *Excavations within the banks or within 40m of the banks of a waterway; or*
- *Works that obstruct or detrimentally affect the flow of water within the waterway.*

In regard to the subject development proposal, it is noted that a 50m buffer is proposed between the subdivision development and Cudgen Creek and “possible” wetlands. However, there may be ancillary aspects of the development (stormwater outlets, boat house, sediment ponds, sand supply pipeline etc) involving excavations or works that would require a 3A permit.

A 3A permit may be issued to the proponent and would be subject to the following condition:

- *Erosion and sediment control measures shall be employed for the duration of the construction works to minimise silts and sediments from entering the adjoining Cudgen Creek waterway.*
- *Excavated material may contain potential acid sulfate soils and shall be tested. If present than appropriate management measures should be employed to control any acid sulfate soil impacts in accordance with the ASSMAC Manual.*
- *Excavation operation shall be conducted so as not to damage or cause erosion of the adjoining river bank.*
- *Excavation, operations and construction activities shall be conducted with minimal impact on riparian vegetation.*

Council is requested to clearly inform the proponents that these comments do not comprise the actual 3A permit and that they must make application to DLWC only after development consent is obtained and prior to commencement of work.

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Native Vegetation Conservation Act 1997

The Statement of Environmental Effects correctly identifies that in accordance with Section 9(A) the Act does not apply to the following land:

- “A. Land that is within a zone designated residential (but not rural residential), village, township, industrial or business under an environmental planning instrument”.*

DLWC’s current legal advice is that land within any zone designated 2(f) Tourism equates with “residential” and/or “business” and thus the use would be excluded by Section 9. However, it is also clear that land zoned 7(a) Environmental Protection (Wetlands and Littoral Rainforests), 7(f) Environmental Protection (Coastal Lands), or 7(l) Environmental Protection (Habitat) is not excluded from the Act.

Therefore, under the current zonings applicable to the development site, consent from the Department will only be required for any proposed clearing within the Environmental zonings. However, it should be noted that some exemptions from the need to obtain DLWC do apply. Please refer to the attached guidelines and application form.

Crown Water/Water Act 1912

DLWC policy is aimed at preventing the degradation of the states aquifers whereby, each aquifer system is evaluated for its beneficial use. Potential developers are required to establish that their activity will not contaminate the ground water or impact on the ground water dependent ecosystems. The Department has major concerns about impacts on water quality due to the proposed disposal of saline water onto a freshwater (low salinity) aquifer system which it considers is contrary to the Government’s NSW State Groundwater Quality Protection Policy (1998).

This system has been mapped by the Department as a high vulnerability aquifer (Tweed/Brunswick catchment – Groundwater Vulnerability Map) which contains fresh groundwater.

The report from Cardno MBK includes a summary of groundwater modelling assessing of the proposal. The Department does not agree with the findings of this assessment on the grounds that:

- As salt water is denser than fresh water no significant consideration of mixing is provided in the report. The MODFLOW does not address the density variation and as such is not sufficient to analyse this scenario.*
- No evidence has been provided indicated that the salt will be significantly leached out of the aquifer in the short time frame mentioned.*
- The detailed technical report stating hydraulic parameters used in this assessment has not been provided.*

Accordingly the Department objects to this proposal in its current form as it considers the development will contaminate a vulnerable freshwater aquifer with saline water. The 16ha site is significant in size and this development in its current form is

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likely to change the aquifer water quality from that of freshwater (low salinity) to a brackish groundwater). Council is advised that irrespective of the filling issue, DLWC's primary concern is that the groundwater quality below the salt site must not be lowered below its beneficial use class. Accordingly, the Department may require the placement of monitoring bores which will require licensing under the Water Act, 1912."

As can be seen from the above comments the issue of most concern to the Department is that in relation to groundwater. In response to this the applicant has reviewed the methods proposed for the delivery and placement of the fill material on the site and a number of meetings have been conducted with the Department in relation to this matter. A further letter from NSW Department of Sustainable Natural Resources was received by Council on 11 April 2003. This letter states as follows: -

"The Department of Sustainable Natural Resources (DSNR) forwarded to Council in a previous letter (6/2/03) our concerns regarding the disposal of saline water for placement of sand to raise land levels on an area underlain by an identified vulnerable freshwater aquifer system. DSNR policy is aimed at preventing the degradation of the States aquifers. Each aquifer system is evaluated by determining its beneficial use. In this situation the groundwater beneficial uses have been defined as both ecosystem and drinking water protection. DSNR will require that the developers establish that their activity will not contaminate the groundwater or impact on groundwater dependent ecosystems.

A series of meetings and a general discussion were held with the proponent and their consultants Cardno MBK to address the issue of mitigation to prevent groundwater contamination. As a result of these meetings Cardno MBK produced a hydraulic mitigation report (23 March 2003). The Department endorsed the concept of creating hardstand areas to minimise infiltration of salt water into the aquifer. However, the Department still had concerns about residual salt levels left in the filling sand (site area 38ha, depth of fill 2m) that led to consultants to produce another report titled "Analyse impacts of salt leaching and groundwater" (31 March 2003). The Department considers that the results of these impacts of residual salt infiltration of the aquifer were still unacceptable. Following this the consultants proposed in a fax from Trevor Johnson dated 8 April 2003, that the proponent would use cycloning to further reduce the moisture to (1.5% by volume) and salt capacity of the fill. A meeting held between the DSNR's Regional Director North Coast, Des Schroeder, other members of the Department, Consultant Trevor Johnson and Steve McRae of the Ray Group was held on 9 April to discuss this latest proposal. The Department agreed in principle with this latest development approach, provided monitoring was undertaken to assess and manage the impacts of the site and ensured the average groundwater quality remained within drinking water band.

Accordingly, the Department will support the most recently defined proposal to hydraulically place sand on the site provided the following conditions are met:

- *The placement of sand onto hardstand material therefore allowing the collection and drainage of the salt water back to the Tweed River and preventing groundwater infiltration.*

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- *This partly drained sand is then to be placed through a “cyclone” to extract the remaining pore moisture leaving not more than 1.5% salt water (as detailed Cardno MBK letter 8/4/03).*
- *Additional monitoring bores will have to be installed by the proponent at locations agreed on by DSNR. It is anticipated that bores will be required both within the fill area and on the periphery (down hydraulic gradient).*
- *The average salinity of key monitoring bores at the site will not be permitted to exceed 850mg/litre.*
- *Groundwater salinity at key monitoring bore sites (locations to be agreed on by DSNR) will be monitored by the proponent during filling and placement of sand. Should average groundwater salinities increase above the trigger level of 850mg/litre then this should trigger a modification to the filling process subject to further discussions and endorsement by DSNR to ensure the protection of the groundwater quality.*
- *Regular groundwater monitoring around the fill sites will be undertaken and quarterly reports will be provided to the Department for review.*
- *A detailed groundwater management plan must be prepared for the site which details the monitoring of groundwater salinity and aquifer protection strategy. This plan as a minimum would be expected to include monitoring of salinity as follows:*
 - ***Pre-fill** – monitoring of groundwater to sufficiently establish background salinity;*
 - ***Sand filling Process** - monitoring at weekly intervals;*
 - ***Post filling monitoring** – to be undertaken until salinity levels decrease significantly;*
 - ***Monitoring year 1** - monthly; **Monitoring year 2** – quarterly, **Monitoring year 3** – bi-yearly. Monitoring will be required until salinity levels decrease in the aquifer and frequency of testing may have to vary depending on results”.*

Analysis of Issues from the DSNR Submission

The issue of most concern to the DSNR related to the potential impacts on the fresh water aquifer as a result of the filling of the site. As can be seen from their latest correspondence the Department is satisfied with the current proposal and a condition of any consent would need to be imposed in line with the Department’s latest recommendation.

In relation to the other issues raised in the Department’s submission it is advised that the Acid Sulfate Soils Management Plan has been amended in line with the recommendations and changes option suggested by the Department in addition to those requested by Council. Issues in reference to the foreshore management and riparian management areas will need to be conditioned should Council resolve to grant consent to the application.

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Issues regarding the NSW Coastal Policy and Coastal Hazards have been addressed in other sections of this report. In terms of erosion and sediment control the applicant has provided a revised earthworks management plan, which proposes that no more than 10ha of the site will be exposed or open at any one time. This information was forwarded onto the DSNR for their information. Issues in relation to works on crown land and the subsequent approvals should be conditioned on any consent granted by Council.

5.4 NSW FISHERIES

NSW Fisheries in their initial response to Council raised issues in regards to buffer distances to aquatic vegetation and in particular the location of the stormwater outlets. NSW Fisheries were an approval authority under the Fisheries Management Act as the application proposed the removal of a single mangrove from Cudgen Creek. In response to Fisheries issues the applicant carried out further survey work of the Cudgen Creek area and also provided further submissions in response to buffer requirements. NSW Fisheries have provided general terms of approval and state in their letter as follows: -

“I refer to NSW Fisheries previous correspondence to Council on this matter (2/4/2002, 28/10/2002, 7/3/2003) and outcomes of the recent meeting held at Tweed Shire Council on 7 April 2003.

NSW Fisheries notes that the proponent fails to satisfy the requirements identified in the Department’s initial correspondence, specifically:

1. *The development will result in stormwater being discharged to within 50 metres of seagrass beds in Cudgen Creek.*
2. *Buffers of at least 50 metres are not provided to all aquatic habitats, particularly mangroves and salt marsh on the site.*

Cognisant of these matters, and the likelihood for impacts on aquatic habitats arising from the proposal, NSW Fisheries requires Council incorporate the following general terms of approval for this proposal, specifically:

1. *That a permit to harm marine vegetation under Section 205 of the Fisheries Management Act 1994 be sought by the developer before work on the commences.*
2. *That NSW Fisheries be informed 3 days before the commencement of works that will or could harm marine vegetation.*
3. *The machinery, access tracks and material not to be stored in the buffer zone identified in the Fisheries response, SALT development application March 2003 and refined in a letter addressed to NSW Fisheries prepared by Aspect North dated 4 April 2003.*
4. *In the absence of the developer siting the stormwater pipe more than 50 metres away from seagrass beds and achieving at least a 50 metre buffer to aquatic habitats such as mangroves and salt marsh the developer is required to either:*
 - a. *off set impacts on aquatic habitats arising from the development by funding to the value of \$250,000, works within the Cudgen Creek sub catchment to*

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reduce sediment and nutrient inputs into, and maintain the aquatic habitat of, Cudgen Creek to the satisfaction of NSW Fisheries; or

- b. *submitting, for five (5) years, a \$200,000 bond in the form of bank guarantee, bank cheque or personal cheque with NSW Fisheries Conservation Trust Fund as the nominated drawer. The bond will be returned to the developer contingent upon no significant impact being detected in the health and coverage of seagrasses in Cudgen Creek after five (5) years of monitoring. The monitoring program to detect the deleterious impacts on seagrass beds in Cudgen Creek is to be funded by the proponent and must be approved by NSW Fisheries and satisfactorily completed. If statistically significant impacts are detected in the cover or health of seagrass in Cudgen Creek the \$200,000 bond will not be returned. In such an instance the bond will be used to fund projects to reduce sediment and nutrient inputs into, and maintain the aquatic habitat, or Cudgen Creek to the satisfaction of NSW Fisheries.*

It is recommended that the management of the \$250,000 discussed in point 1 of the NSW Fisheries general terms of approval be managed as a trust administered by the developer. It is felt that such an arrangement will facilitate the developer having an ongoing interest in the health and quality of aquatic habitats in Cudgen Creek."

Analysis of Issues from NSW Fisheries

From the above comments it can be seen that NSW Fisheries are concerned that the development may have impacts on aquatic vegetation and seagrasses within Cudgen Creek. To ensure that these issues are managed adequately NSW Fisheries have recommended either the payment of monies for mitigation works or a bond be put in place. As these are general terms of approval Council must impose these conditions on any consent granted.

5.5 NATIONAL PARKS AND WILDLIFE SERVICE (NPWS)

The application was referred to NPWS for comment. A number of additional information requests have been received and the applicant has provided additional information to satisfy issues raised by NPWS. Provided below is the latest response received from NPWS in relation to the application.

"The above reports have been reviewed and the following comments are provided to assist Council in its determination of the application.

Cudgen Creek Riparian Plan of Management

It is noted that a number of structural works are proposed within the 50m buffer to the riparian zone. These include jetty and boat shed, cycleway, viewing platform, stormwater infrastructure (3 infiltration basins).

A site inspection of the proposed SALT development site, including the riparian zone was undertaken with Mr Guy Holloway of Aspect North on 14 November 2002. From the site inspection it was revealed that the jetty and boat shed will be located within a cleared area of the site (with the potential removal of one individual mangrove). It is

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also noted that there would be no vehicle access to the jetty and boat shed area, however there would be a series of inter connecting pathways to access the jetty.

It is further noted that the cycleway would snake in and out of the 50m buffer and would be located within cleared areas of the site or in areas that are currently subject to weed invasion. In addition it is noted that the three infiltration basins would also be located within cleared areas or areas that are currently subject to weed invasion. The NPWS has no objection to the proposed cycleway and paths as detailed in Figure 4a, 4b and 4c of the Management Plan. However, the construction of infiltration basins in the riparian buffer zone is not supported. This is because the majority of the site is proposed to be cleared with the exception of the riparian buffer zone and the dune. Consequently, these areas will be the only refuge for displaced species. Therefore, it is recommended that infiltration basins be constructed within the development area. The proposed rehabilitation of the riparian zone with the planting of endemic species and the removal of weed species is supported.

It is recommended that raised boardwalks be constructed in wetland areas to reduce impacts to this community. The erection of post and rail fencing with chain wire is supported. Signage identifying regeneration areas and restricted access areas is also supported. The erection of interpretive signage in the riparian zone will inform the public of different habitats present, the importance of the wetland/riparian communities and the proponent's commitment to caring for the environment.

Lot 500 and 7(f) zone management plan

It is noted that a number of structural works are also proposed in the 7(f) zone. These include:

Pedestrian and cycleway corridor;

6 beach access tracks;

Signage;

Infiltration basins; and

Buns

From the site inspection of Lot 500 with Mr Guy Holloway of Aspect North on 14 November 2002, it was revealed that the cycleway corridor will be located in cleared areas or in areas subject to weed invasion species. The NPWS has no objection to the location of the cycleway within the 7(f) zone however, the construction of infiltration basins in the dune is not supported. This is because the majority of the site is proposed to be cleared with the exception of the riparian buffer zone and the dune. Consequently, these areas will be the only refuge for displaced species. Therefore, it is recommended that infiltration basins be constructed within the development area. The proposed rehabilitation of the dune with the planting of endemic species and the removal of weed species is supported.

It is recommended that the beach access tracks be dog legged to reduce impacts to turtles, (i.e. the reduction of the light reaching the beach).

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Threatened species assessment

It is noted that additional flora and fauna surveys have been undertaken as requested in the NPWS correspondence dated 11 October 2002. The following comments will assist Council in their determination of the application.

Common Planigale (*Planigale maculata*)

It is noted that additional pit fall traps targeted the Common Planigale were undertaken covering all habitat types as requested by the NPWS. It is also noted that these species was not recorded during these additional surveys and the Section 5A assessment concluded that the proposal will not have a significant effect on this species. The level of survey effort for this species has been adequate.

Common Blossom Bat (*Syconycteris australis*)

*Clarification is sought as to the quality of *Banksia integrifolia* individuals to be removed by the proposal within the development site. It is noted from the additional flora and fauna assessment report (AFFA) dated October 2002 that there will be a loss of 709 *Banksia integrifolia* individuals at the SALT development site. However, page 10 of the species management plans include in the AFFA states that "all significant species of *Banksia* are to be retained". The master plan does not demonstrate the retention of *Banksia* individuals within the development site.*

*It is further noted that 30,000 *Banksia integrifolia* individuals will be planted as compensation for the potential loss of 709 individuals, however, there would be a loss in the interim of foraging resources (i.e. the time between clearing of the existing mature banksias and growth of the new plants and the production of inflorescences). Given the delay in the growth of *Banksia integrifolia* plantings at the Casuarina beach development site (i.e. to produce sufficient inflorescences to compensate for the loss of mature plants 3 years post planting), it is unlikely that the planted banksias at SALT will provide sufficient foraging resources in the interim. Therefore there would be a cumulative foraging loss habitat for the Blossom Bat at the SALT development site.*

*The removal of 709 *Banksia* individuals would potentially result in a significant loss of foraging habitat for the Common Blossom Bat. Council should note that there has been no recent bat surveys undertake on the SALT development site. It is noted that the Section 5A assessment (report dated July 2002) concluded that the proposal would not have a significant effect on the Common Blossom Bat. The flora and fauna assessment (page 24) states that: "the *Banksia* resource within the study site is considered to be low, however still providing a small potential foraging resource". However, without additional survey information, it is difficult to determine what the impact of the removal of 709 *Banksia* individuals on the Blossom Bat population would be. It is recommended that mist netting and radio tracking of the Common Blossom Bat be undertaken to determine size of population using food resources within the SALT development site. The bat survey should be undertaken by a suitably qualified bat specialist. The outcomes of the bat survey should include numbers of bats using the SALT site as a foraging resource and the examination of potential roost sites within the locality. Council should then ensure that the Section 5A assessment is revised to reflect the result*

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of the Common Blossom Bat survey. To avoid significant habitat loss for this species, Council should consider requiring the retention of large numbers of mature coastal banksias within the SALT development site as a condition of consent however, in order to achieve this outcome the filling of the entire site would not be possible. This is because prior to filling, the entire site would need to be cleared. Therefore it is recommended that, if filling is considered essential to the development that only a portion of the site be filled in order to retain large numbers of mature coastal banksias.

Mitchell Rainforest Snail (*Thersites mitchellae*)

It is noted that a survey targeting the Mitchell Rainforest Snail was undertaken by Dr John Stenezic. It is also noted that this species was not recorded on the SALT development site. The report prepared by Dr John Stenezic (dated 19 October 2002) and the 8 part test for the species prepared by Aspect North has been reviewed and the following comments are provided to assist Council in their determination of the application.

It is noted in Dr Stenezic's assessment that the rainforest communities on the SALT development site are dryer than those typically utilised by the species. It is further noted that he considers the rainforest patches to be of relatively recent origin, rather than remnant of previously more extensive rainforest areas. Page 5 of Dr Stenezic's report indicates that he is aware of recent records of the species from Swamp Sclerophyll forest in addition to rainforest. However, it would have been very useful to have a comparison of the potential snail habitats on the subject site with those areas at West Kingscliff where the species has been confirmed to occur. This comparison will provide a local perspective based on local occurrence given that the two (2) sites are within close proximity to each other (i.e. within 1.2km). The following is concluded from a review of the Mitchell Rainforest Snail survey and report:

- *NPWS are in agreement with conclusions presented in the Mitchell's Rainforest Snail report. However, a comparison of the snail habitat at the West Kingscliff site (where Mitchell's Rainforest Snail has recently been recorded) and SALT site would have been useful to provide a local perspective of this species, local occurrence given the close proximity of the two sites (i.e. within 1.2km).*
- *The proposal to retain and protect the two (2) rainforest areas within the 50m buffer on the site is supported.*

Turtles

As detailed in previous correspondence dated 11 October 2002, the NPWS has previously consulted Dr Colin Limpus, a turtle researcher with the Queensland Environment Protection Agency, with regard to these issues.

Advice received indicated that the most effective way to manage the beach adjacent to the development to ensure successful nesting and hatching is to maintain darkness on the beach, as artificial light may interfere with their ability to use light horizons to navigate. Given that the proposal includes the filling of the site up to 5m with buildings on top of this, it is important that no lights are directly visible from the beach and that

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salt spray on the beach is not illuminated. It is recommended that, should the proposal be approved, the following management recommendations be implemented and included as conditions of consent to achieve this outcome:

- *Maintenance or establishment of a vegetated buffer on the dunes between the development and the beach sufficient to block light penetration to the beach.*
- *Low mounting of street lights and lights within the grounds of buildings.*
- *Shading of the top and seaward side of outside lights.*
- *Restrictions on length of time outside light is maintained at night.*
- *External building features, such as lattice, to mitigate the amount of light from windows.*
- *Construction of narrow, dog legged access tracks to the beach from the development to reduce light levels reaching the beach.*

Threatened Species Management Plans

It is noted that Threatened Species Management Plans (TSMP) have been prepared. As stated in previous correspondence dated 18 October 2002, Council have not yet assessed the development application and it is too early in the process to prepare SMP's as this presupposes that the application would be approved. Consequently, the SMP's provided have not been reviewed. It is also noted that SMP's are usually associated with threatened species concurrence and threatened species licences.

Bushfire Management

It is noted that the Rural Fire Service has approved the bushfire management plan for the this development. Consequently, the NPWS has no further comment in relation to this issue.

Aboriginal Cultural Heritage Assessment

The NPWS has reviewed the Archaeological report prepared by Haberfield-Short dated November 2002 and taken into consideration the local custodians recommendations for the SALT development. The recommendations presented in the Aboriginal Cultural Heritage assessment are supported. Aboriginal Cultural Heritage issues have been addressed adequately from a NPWS perspective."

Analysis of NPWS Issues

In response to the NPWS comments and in particular the issues surrounding the Common Blossom Bat the applicant engaged a report to be undertaken by Dr G C Richards an expert in this area. This report concludes as follows in relation to this issue:

1. *That the issues raised by NPWS have been addressed and that there would be no significant impact upon the local Blossom Bat population that may at any time be present at the SALT development.*
2. *Any further survey by mist netting and any radio tracking studies would not contribute any information that would significantly change the assessment*

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outlined above, which is based on the extensive information on ecology and ecophysiology that is available from past research.

3. *That there is no difficulty in determining “the impact of the removal of 709 Banksia individuals on the Blossom Bat population”, and in fact it is highly doubtful that there would be any significant impact because this species obviously has the ability to respond to short term change, and will be advantaged by the long term improvements in resources available to the local bat population.*
4. *That a condition of consent by Tweed Shire Council be that the site be partially or progressively cleared to retain large numbers of individual banksias is totally unnecessary.*
5. *That the strategy of replacing the present sub-optimal foraging habitat with greater areas of optimal foraging habitat, as well as creating a number of new roost sites meets the ecologically sustainable development objectives of State and Federal Governments.”*

This further report has been forwarded to NPWS for comment. The following comments have been provided in a letter received late on 17 April 2003:

- Concerns regarding the threats to the local population of the Common Blossom Bat
- Adequate investigations of the bat have not been undertaken
- Removal of the 709 banksia plants within the development site as a potential to further stress local populations of the Common Blossom Bat
- Retention of mapped major stands of banksia intergrifolia on the site should be a priority unless these can be clearly demonstrated to be unimportant to the local populations of the Blossom Bat

This has raised the question of whether a Species Impact Statement is actually required. This matter will be urgently discussed with the Regional Manager of NPWS on Tuesday 22 April 2003.

With regard to issues raised by NPWS regarding the location of the retention basins it should be noted that these basins are located in land currently zoned 2(f) and owned by the developer. Having regard to the area of land proposed to be dedicated into public ownership for the overall development including both the foreshore land and the riparian buffer zone area it is considered reasonable under these circumstances to permit the location of these retention basins within these areas.

In reference to issues regarding the logger head turtle it is recommended that Council impose conditions on any consent in line with the NPWS recommendations with the exception of the recommendation to dog leg beach access tracks as this would create potential public safety issues. An alternative could be a condition which requires the offset of these access tracks slightly so as not to provide a direct line of sight to the beach.

5.6 COASTAL COUNCIL OF NSW

The Coastal Council of NSW was consulted in reference to the application as there are significant coastal issues and the Executive Officer was involved in the prelodgement

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consultation process. Coastal Council originally provided a response to Council raising a number of issues in which the applicant responded to. The applicant's response was forwarded to Coastal Council for further comment. Comments provided in their latest response to Council of relevance to the determination of the application are as follows:

"We do not wish to comment further on any dune management plan given the involvement of DLWC in consultation with Tweed Shire Council. The critical point for the Coastal Council is the ecological integrity of the buffer zone, which will from time to time be destroyed in whole or in part by storm wave attack. This means that public access should be on designated tracks to minimise dune sand disturbance. I believe the DMT will aim to do this.

The Council remains unconvinced on the justification for raising the site. We support a full EPA investigation of potential impacts. I have also provide, on request to David Broyd, the name of an independent groundwater hydrologist which may assist Tweed Shire Council with assessment of impacts.

The setback issues remain of concern to the Coastal Council given our role in providing advice relevant to the interests of future generation. I am familiar with expert advice and respect the way in which such advice is developed. I have also been around long enough (40 plus years) to expertise in house coastal erosion has developed so I remain to be convinced by WBM or anyone else of projecting any degree of certainty into erosion estimates. Anyone familiar with IPCC reports on global change will be aware that it is very difficult to place lines on maps, which will offer positions of shorelines in the future. So with respect I must still offer my view based on knowledge of shoreline erosion processes that the precautionary principles should be invoked as far as possible. This is for the interests of the investor as well as the public authority/community who will be involved with the area in the future. I simply cannot understand the argument that the economic viability of the Outrigger building is threatened by a further setback. To argue that 100 years is a magical number for a building, and to put reconstruction into that timeframe when limits are placed on where the reconstruction can take place is begging the question. As the erosion scarp approaches the footprint of the building then the Neilson, Lord, Powless point becomes relevant. It is cited in the Coastal Council report as another reason to be cautious on a potentially receding shoreline, not to be dismissed as irrelevant.

To say that there needs to be equity in approval processes with Casuarina development avoids a key reasons for SEPP71. Experience from developments such as Casuarina has led Coastal Council to offer advice on the need to create a more consistent and stringent method for assessing developments in the coastal zone of NSW. The coastal zone has special legislative status in NSW and must be treated accordingly by all consent authorities. Unfortunately Coastal Council in its early incarnation was not involved with Casuarina: under SEPP71 it would be and hence it is possible a different outcome may have resulted. The surf lifesaving issue and resulting liabilities for rescue, injury or death remains a difficult issue. I would advise Tweed Shire Council to consult with Angus Gordon, General Manager of Pittwater Council on this matter. He is well versed with legal and management issues associated with swimming and surfing on crown land. Incidentally, a surf rating of 6 is very high and to say that "lives can be

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protected” is expecting from Tweed Shire Council a long term commitment which may be a concern. Will the hotel and residents be permanently levied to ensure life guard facilities during daylight hours at this site”.

Analysis of Coastal Council Issues

Issues raised by the Coastal Council are addressed throughout this report however in summary it is considered difficult to require or justify further setting back of the development having regard to Council’s existing policies and approach to managing coastal erosion issues particularly having regard that the WBM report shows the 100 hazard line as being seaward of any development on this site. Issues in regards to the merits of filling the site must be weighed up against the socio-economic benefits, which will derive from the establishment of a major international resort within this area. In regards to surf lifesaving facilities from the NSW Coastal Council response it is implied that the developer should be responsible for the provisions of surf lifesaving facilities. Negotiations with the developer have reached a point where the developer has agreed to the provision of these services and facilities and that the cost of ongoing running of these facilities will be paid for by the future resort owners and operator and managed by the Resort Body Corporate. Conditions of consent are proposed which requires this to occur.

5.7 ROADS AND TRAFFIC AUTHORITY (RTA)

Pursuant to SEPP11 the application was required to be referred to the Regional Traffic Advisory Committee of the RTA. The Committee provided the following comments in relation to the application:

- *“The Committee considered these development proposals as one. The proposed resort is within the subdivision area and for traffic assessment purposes these proposals are linked.*
- *The traffic analysis accompanying these proposals adequately addresses the traffic generation and future impacts on the adjoining network to be expected of these types of development.*
- *There should be a contribution towards the upgrading of the road bridge over Cudgen Creek on the Coast Road to the north of the proposal.*
- *For the resort proposal there is a request for a relaxation of the required parking provided. To adequately provide for the needs of this type of development sufficient parking should be provided. This will be necessary to reduce congestion and provide improved neighbourhood amenity at times of parking demand.*
- *For the subdivision there should be provision of adequate public parking throughout the proposal to cater for day trips, particularly in the vicinity of beach access locations. This will be necessary to ensure parking congestion does not impact on residents”.*

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Analysis of RTA Issues

The applicant has agreed to undertake upgrading works of the Cudgen Creek bridge to the value of approximately \$232,000. Any consent should be conditioned requiring these works to be undertaken. In relation to the provision of parking the applicant provided a parking assessment which takes into consideration cross utilisation of uses within the resort development. This is discussed in more detail in the report on the Outrigger Resort. Issues in relation to the provision of public parking throughout the subdivision is noted. The applicant has however argued that there is a community benefit in terms of public safety and management of people visiting the site in providing a centralised parking area adjacent to the surf lifesaving facilities and services to be provided. This approach has been supported by Surf Lifesaving NSW and on this basis it is considered reasonable not to provide formalised hardstand parking areas throughout the estate adjacent to the beach. It should be noted however that the design of the roads running along the beachfront have been designed to allow for on street parking.

5.8 MINERAL RESOURCES OF NSW

The application was referred to the Department of Mineral Resources for comment. The following comments were provided.

“The site occurs on site previously mined for heavy mineral sands. There is no potential for further mining. It is noted that an area of anomalous monazite concentrations has been identified and that it is intended to treat and dispose of this potentially hazardous contaminant. It is also noted that the shortfall of fill for the site will probably be overcome by importing sand from an existing dredging operation on Cudgen Creek.

The western most edge of the site is located about 900m from Blundells quarry. The development poses no apparent threat to the quarry and does not impinge upon its Section 117 notification zone.

This Department is satisfied that the development application meets our requirements and poses no threats to existing extractive industries. There are therefore no objections to the proposal.”

Analysis of Issues from Mineral Resources

As is evident from the above comments no objections are raised to the subject proposal. It should however be clarified that the sand to fill the site will not be obtained from Cudgen Creek but rather than Action Sands at Chinderah. It is assumed that this is an oversight in their response.

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6.0 EVALUATION

A complete assessment of the application against the matters for consideration under Section 79c(1) of the Environmental Planning & Assessment is provided below:

(a) (i) **The provisions of any environmental planning instrument**

6.1 TWEED LEP 2000 (TLEP 2000)

The subject land is zoned largely 2(f) Tourism with small areas zoned 7(1) Environmental Protection (Habitat), 7(f) Environment Protection (Coastal Lands) and 7(a) Environment Protection (Wetlands) under the provisions of TLEP 2000. All residential and tourist development is located within land zoned 2(f).

The objectives of the 2(f) zone are as follows:

“Primary Objective

- *To encourage integrated tourist development and uses associated with, ancillary to or supportive of tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.*
- *To ensure that prime sites are developed for the best use and fulfil their economic and employment generating potential for the area.*

Secondary Objective

- *To permit high quality residential development as being integral and supportive of the primary intent of this zone (tourist orientated development) in terms of design and management, and only at a scale which enhances the proposed tourist resort character.”*

The land use table permits, with consent, development for the purposes of hotels, motels, tourist resorts, tourist accommodation and multi-dwelling housing but prohibits dwelling houses.

Clause 53 states as follows:

“Nothing in this Plan prevents land specified in the Table in Schedule 3 from being developed, with development consent, for the purpose specified for the land in that Table, subject to any applicable conditions so specify. The other provisions of this Plan apply provided they are not inconsistent with this Clause.”

Insofar as the subject land is concerned, Schedule 3 of Tweed LEP 2000 contains the following site specific provisions:

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Additional Development Permitted with Development Consent		Conditions
Portions 194, 301 and 312, Kings Beach, South Kingscliff	Development for the Purposes of Dwelling Houses and a Hotel, Motel or Tourist Resort (or any combination of them)	<p>1. An application made pursuant to this item must not be granted unless the consent authority is satisfied that the development, whether or not to be carried out in stages, will include a hotel, motel or tourist resort as the primary development and the number of units/rooms in the hotel, motel or tourist resort will at all times exceed the number of dwellings or dwellings houses included in the completed development.</p> <p>2. If a subdivision is proposed to create an allotment for a dwelling house as part of the proposed development then such allotment must have a minimum area of 450m².</p>

Development of the site in accordance with the subdivision plan and master plan will result in the following mix of dwelling and tourist resort units/rooms:

Total No. of dwellings proposed	=	612
Total No. of “Outrigger” resort rooms rooms (based on 213 titles and dual key rooms)	=	334
Total No. of resort units 280	=	

The master plan provides for 614 tourist resort unit/rooms and a total of 612 dwellings being a mix of detached dwellings and medium density dwellings. Based on this master plan the subject proposal satisfies the requirement of Schedule 3 in that the number of resort rooms exceeds the number of dwellings. Should Council support the application then a condition of consent should require that the number of hotel units/rooms when completed is always in excess of the number of dwellings to which Council has granted consent for construction. All residential allotments are in excess of 450m² in area.

The master plan also contains a precinct of commercial/retail floor space. Having regard to the project as a whole it is considered that the proposal is generally consistent with the objectives of the zone and Clause 53.

Works within the Environmental Protection Zones

Works within the 7(a) and 7(l) zones located along Cudgen Creek is minimal being largely restricted to rehabilitation works in accordance with the Cudgen Creek Riparian Plan of Management submitted with the application. The proposed pedestrian

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cycleway, boatshed, jetties and stormwater management works are located largely within the 2(f) Tourism zone. The subject works within the 7(a) and 7(l) zones would fall within the definition of environmental facilities under the Tweed LEP and are permissible with consent. Other works within the 2(f) zone are also permissible with consent or, in the case of the walking track, would fall within the definition of an environmental facility and be permissible without consent.

Should Council grant consent to the subject development a condition should be imposed requiring that the Riparian Management Plan submitted with the application be approved by both Council and the NSW Department of Sustainable Natural Resources prior to the issue of a construction certificate for any subdivision works.

It is also recommended that a separate development application for the boatshed and jetty and also the viewing platform over the main trunk drainage outlet into Cudgen Creek be submitted as limited details have been provided of these facilities with the development application.

A number of works are proposed within the 7(f) Environmental Protection (Coastal Lands) zone which runs along the front of the site. These works include rehabilitation works of the dunal vegetation, construction of defined pedestrian links to the beach (6 in total), cycle/pedestrian path, fencing, urban infiltration basins and amenities such as showers and seating. These works would either constitute environmental facilities which would not require consent under the Tweed LEP, recreational areas or urban stormwater quality management facilities which would require consent under the Tweed LEP.

The primary objective of the 7(f) zone is:

- *“To identify land susceptible to coastal erosion and protect it from inappropriate development.*
- *To protect and enhance the scenic and environmental values of the land.”*

The secondary objective of the 7(f) zone is to allow for other development that is compatible with the primary function of this zone.

The subject works proposed within this 7(f) zone as part of this development are considered to be consistent with the objectives outlined above.

A portion of the land zoned 7(f), approximately a 20 metre strip, is currently in private ownership and it is proposed to be dedicated as part of this development. All urban stormwater works are contained in this area of land and are considered acceptable within this zone.

Availability of Essential Services - (Clause 15)

Sewer

The subject development will be serviced by reticulated water and sewer. As part of the application the applicant provided a sewer strategy which has been reviewed by Council’s Engineering Services Division and considered acceptable.

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Development Consent No 0856/2000DA was issued by Council on 8 September 2000 for the construction of a sewerage rising main from a location in the northwestern area of the site across Cudgen Creek to Cudgen Road and then to the existing rising main in Old Bogangar Road. This consent includes directional drilling under Cudgen Creek to minimise impacts on riparian areas and adjacent wetlands. It is proposed to implement this consent to provide sewerage services to the subject site.

Construction of a regional pumping station and the rising main in general accordance with the terms of this consent will provide adequate sewer capacity for the proposed development.

Water Supply

The site is currently serviced by a 200mm diameter trunk water main adjacent to the existing Coast Road. This main will be relocated to the new alignment of the Tweed Coast Road and be upgraded to meet the needs of the subject development. Each residential and tourist allotment will need to be provided with separate water connections. A strategy to achieve this has been provided as part of the application and has been reviewed by Council's Engineering Services Division and considered satisfactory.

Power and Telephone

Optus and Telstra cables exist on the eastern boundary and a Country Energy overhead power line traverses the western part of the site. Telstra and Country Energy have advised that supply can be provided to the development. Specifically Country Energy has provided a letter to Council in response to concerns by residents of the potential impact the development may have on surrounding electricity supply. Country Energy in their letter states as follows:

“As discussed, Country Energy has processes in place, including the use of Council Planning documents, to ensure that the electrical infrastructure for developments like Salt is planned well in advanced. The timeframe for Salt City's development conveyed by Mr MacRae is consistent with information previously obtained by Country Energy.

In addition, the construction of new infrastructure should have a positive effect on the quality of supply to the area in the vicinity of the Salt City development. This development is similar to others across Country Energy where the new infrastructure required to supply large developments can then be shared by pre-existing customers in the area.”

Heights of Buildings - (Clause 16)

This application for the subdivision of the subject land does not propose any buildings with the exception of seeking “in principle” support for the boat shed and jetty within the riparian buffer zone adjacent to Cudgen Creek. However, it is proposed that the land be raised by filling of the eastern portion of the site by on average 2 metres above the existing ground levels. The purpose of this filling is to provide views over revegetated dunal areas for beachfront lots avoiding the need for future residents to remove vegetation to secure ocean views. Filling of the beachside precinct raises an

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issue in relation to future dwellings complying with development standards Tweed LEP 2000 limits buildings to three storeys in height. The term storey is defined in the Tweed LEP as follows:

“means:

- a) the space between two floors; or*
- b) the space between the floor and any roof immediately above it; or*
- c) foundation areas, garages, workshops, store rooms and the like, where the height between natural ground level and the top of the floor immediately above them is 1.5 metres or more.*

For the purposes of counting the number of storeys in a building, the number is to be the maximum number of storeys of the building which may be intersected by the same vertical line, not being a line that passes through any wall of the building”.

As the proposed fill exceeds 1.5 metres in places, the potential may arise that future landowners would wish to construct a three storey house on a subject allotment. This in effect would constitute four storeys by definition under Tweed LEP currently. To counteract this the applicant proposes to limit all low density, detached residential lots to a maximum of two storeys above the finished ground level. This includes both filled and unfilled lots.

In addition, it is proposed to limit the ceiling to roof height of each floor to 4.5 metres and a maximum height of the building to 10.5 metres.

The applicant, however, requests that a 3 storey height limit be permitted above finished ground level for the five tourist lots and all medium density allotments. In considering this it should be noted that only two of the beachfront tourist lots are wholly contained on filled land, while two others are only partly filled. All medium density housing allotments are located on land which is not proposed to be filled. The remaining tourist allotment adjacent to Cudgen Creek is also on unfilled land. Annexure 4 is a plan which shows the proposed height restrictions.

These height restrictions are generally supported and it is recommended that Council, for the purpose of ensuring compliance with these restrictions in the future seek to amend Tweed LEP 2000 for the subject land to formally put in place these restrictions within Council’s planning controls. The applicant also proposes to incorporate these controls within a Section 88B restriction over the subject allotments.

Issues regarding heights of buildings and particularly views from the beach will be later discussed in this report.

Social Impact Assessment - (Clause 17)

Clause 17(2) of the Tweed LEP states as follows:

“Where the consent authority considers that a proposed development is likely to have a significant social or economic impact in the locality, or in the area of Tweed, the consent authority may only grant consent to the proposed development

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if it has considered a Social Impact Statement in respect of the proposed development.”

To satisfy the requirements of this Clause and also in response to Development Control Plan No. 45 (DCP45) the applicant has prepared a socio economic impact statement for the subject development. The Social Impact Statement concludes as follows:-

“Both Council and the State Government have been attempting, for many years, to facilitate sustainable tourist orientated development on the Tweed Coast. While three approvals have been issued over the site, no development has proceeded to date, apparently for reasons relating to commercial viability and securing a major resort operator. Insofar as these development applications are concerned, Outrigger has signed an agreement to operate the major international resort and negotiations are well advanced with other operators for the smaller resorts. In addition, the joint venture development company is committed to commencing the project in early 2003 with a view to completion of the Outrigger resort in 2004. The project managers and joint venture partners (Ray Group Pty Ltd) have a proven record in resort and residential developments (Calypso Plaza, Coolangatta, Calypso Cairns, Outrigger Port Douglas, Calypso Tower Coolangatta and Koala Beach) and are committed to development of the site in accordance with the master plan.

The proposal achieves a sound balance between the sites opportunities and constraints and substantially complies with all relevant statutory and strategic planning policies and guidelines. Some minor impacts may arise during the construction stage, however, these can be managed and mitigated as reflected in Section 8.0 of this statement. As the site is remote from existing residential areas the construction phase impacts are unlikely to be significant. Clearly the proposed development will result in significant positive social and economic outcomes by way of sustainable employment generation, input into the local economy, enhancement and rehabilitation of existing public foreshore land, relocation of the Tweed Coast Road onto a public road alignment, provision of surf lifesaving facilities and facilitating lawful public access to the beach and Cudgen Creek foreshore areas.”

The Social Impact Assessment envisages the total project will contribute very positively to the local economy, particularly in terms of sustainable employment (approximately 504 equivalent full time positions) and direct contributions to the local economy of up to \$45.45M per annum. In addition to this the report indicates that direct employment during the construction phase will take in 617 direct jobs and 1147 indirect jobs. The total estimated cost of construction is \$218.5M.

In summary the Socio Economic Impact Statement concludes that the proposed development is likely to result in significantly positive socio-economic impacts on the locality and the Tweed generally, subject to appropriate mitigation and management measures identified in Section 8. Development of the site will provide sustainable employment, local economic benefits and housing choice, based on a range of lot sizes, in a location that is suitably serviced and conveniently located in relation to existing

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community facilities. Approval of the development will be consistent with Council's Urban Land Release Strategy (as reflected in the Tweed Shire 2000⁺ Strategic Plan) and would generate contributions towards additional community infrastructure based on the additional demand generated. An estimated 617 full-time equivalent employment positions will be generated during the construction phase. Indirect employment opportunities are estimated at 1147 positions based on the employment multiplier from the Northern Rivers construction industry of 2.3 (CARE, 1997).

The development has been designed to achieve social cohesion, high levels of amenity, ecologically sustainable outcomes and positive social and economic impacts for the community. The total estimated cost of the development is approximately \$218.5M, including future resort buildings, medium density dwellings and dwelling houses. The annual contribution to the local economy from the future residential dwellings is estimated at \$15M and approximately \$21.2M from the Outrigger Resort Hotel and other resorts.

In considering potential negative social impacts one of most significant risks would be the potential environmental impact as a result of filling the site with approximately 750,000 cubic metres of sand. This report will consider each of these potential impacts later and it is concluded that the potential impacts can be adequately managed through various techniques and monitoring.

It has been concluded that the net economic benefits which will be gained by the development when considered against the potential negative impacts and the likelihood that these impacts can be adequately managed, it is considered that the net economic and social benefits generated by the development outweigh the negatives and therefore the development may be supported on this basis.

Subdivision in Environmental Protection 7(l) and 7(f) Zones - (Clause 20)

A small area of land within the riparian buffer to Cudgen Creek is zoned 7(l) Environmental Protection. The buffer area is proposed to be dedicated but does not comply with the 40 hectare development standard contained in this clause. However, Clause 19(4) provides development consent is not required for a subdivision for the purpose of creating a public reserve.

Development Near Designated Roads (Clause 22)

Under Tweed LEP 2000 Tweed Coast Road is a designated road and therefore Council may grant consent to development on land to which this clause applies only if it is satisfied that:-

- a) The development (because of its nature, appearance, cumulative effect and illumination, or the intensity or the volume or type of traffic likely to be generated, or for another similar reason) is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road, and
- b) The location, standard and design of access points and on-site traffic management and parking arrangements, will ensure that through traffic movement on the designated road is not impeded, and

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- c) The development, or proposed access to it, would not prejudice any future improvements to, or realignment of, the designated road, and
- d) Where the land is zoned 1(a), 7(a), 7(d), 7(f) or 7(l), the development is of a type that necessitates a location in proximity to the designated road for reasons other than only commercial advantage, and
- e) The development is of a type that is not sensitive to traffic noise, or if it is, it is located or adequate measures are included to ameliorate any potential noise impact, and
- f) The development would not detract from the scenic values of the locality particularly from the point of view of road users, and
- g) Where practical, access to the land is provided by a road other than the designated road.

In considering this clause it should be noted that the proposal intends to relocate the existing Coast Road to the west, which is not currently contained in a road reserve but rather is contained within a right of carriageway. Under the terms of a Deed of Agreement with a previous landowner, the right of carriageway is to be extinguished following the construction and dedication of the permanent Coast Road alignment to the west of the existing alignment.

The application was referred to both the Regional Advisory Traffic Committee and Council's Traffic Engineer to assess the acceptability of the proposed road layout and design. Both considered that the proposed road design was acceptable.

In addition to this the applicant has provided a Noise Assessment in relation to potential traffic noise and impact on future residences within the estate. This report recommends a number of design elements which should be incorporated into the subdivision to minimise impact of traffic noise for future residents.

It is considered that the proposed development satisfies the requirements of Clause 22 of the LEP.

Control of Access - (Clause 23)

This Clause requires that a road or other forms of access which forms a junction or intersection with a designated road must not be open or formed except with development consent. As previously mentioned the subject application proposes to the reconstruction the existing Coast Road to the west to link up with Casuarina Way at the south boundary. To the north it is proposed to construct a temporary connection between the end point of the relocated Coast Road to connect with the existing Coast Road along the boundary of Lot 490 which is owned by the Crown. This connection will be located partly within Lot 490. Consent has been provided by the Crown for the construction of this temporary road within Lot 490.

For the purpose of allowing construction to commence on the proposed Outrigger Development it is also proposed to construct a temporary road around the Outrigger site which in effect will divert the existing Coast Road until such time as this road is

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realigned and dedicated to the west. The construction of this temporary road is partly within the 7(f) zone. Roads are permissible within this zone.

Development In the Environmental Protection 7(a) (Wetlands and Littoral Rainforest) and on Adjacent Land - (Clause 25)

Clause 25(3) states as follows:-

“Consent must not be granted to the carrying out of development on land within zones 7(a) or on land adjacent to land within zone 7(a) unless the consent authority has taken into consideration:

- a. The likely affects of the development on the flora and fauna found in the Wetlands or littoral rainforest and*
- b. The potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and*
- c. A Plan of Management showing how any adverse affect arising from the development can be mitigated, and*
- d. The likely affects of the development on the water table, and*
- e. The affect on the wetlands or littoral rainforest of any proposed clearing, draining excavation or filling.”*

The subject site contains areas zoned 7(a) adjacent to Cudgen Creek along the western side of the site. The subject development does not propose any significant works within these areas and provides for buffers to these areas. This clause also requires a Plan of Management to be prepared showing how any adverse affects arising from the development can be mitigated. The applicant has prepared a Riparian Management Plan for these areas which accompanies the development application. Any consent should be conditioned requiring that this plan be approved by both Council and the NSW Department of Sustainable Natural Resources prior to the issue of any Construction Certificate. These works should be required to be undertaken as early as possible within the project to allow maximum time for regeneration to occur prior to human occupation of the subdivision.

Development in Zone 7(f) Environmental Protection (Coastal Lands) - (Clause 27)

This Clause requires the following:-

- “27 (2) In deciding whether to grant consent to development in zone 7(f) the consent authority must consider the provisions of any Plan of Management adopted by the Council under the provisions of the Local Government Act 1993 that is applicable to the land.*
- (3) Development (other than that included in Item 1 in zone 7(f) in the Table to Clause 11) must not be carried out within zone 7(f) except with the concurrence of the director.*

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- (4) *In determining whether to grant concurrence, the director must take into consideration the likelihood of the proposed development:*
- a. *adversely affecting the behaviour, or being adversely affected by the behaviour of the sea, or an arm of the sea, or any bay, inlet, lagoon, lake, body of water, river, stream or water course, and*
 - b. *adversely affecting any beach or dune or the bed, bank, shoreline, foreshore, margin or floodplain of the sea, or any bay, inlet, lagoon, lake, body of water, stream or water course, and*
 - c. *adversely affecting the landscape or scenic quality of the locality”.*

No Plan of Management has currently been adopted for the subject land. However, as part of this application, the applicant has prepared a Dune Management Plan which will need to be approved by both NSW Department of Sustainable Natural Resources and Council prior to any construction certificate being issued. This Plan of Management provides for controlled access to the beach across the dunal system, regeneration of the dunal system, and provision of recreation areas. It also proposes that urban stormwater detention basins be located within the privately owned 7(f) land. These basins will primarily be dry basins and will form part of the water quality control for the overall development.

As required by this clause, the application was referred to PlanningNSW for the purposes of gaining concurrence. Concurrence has not been received from the Department at the time of finalising this report. Work in Lot 500 will have to be licensed by the Department of Sustainable Natural Resources – including a significant bond.

Development in Zone 7(l) Environment Protection (Habitat) and on Adjacent Land - (Clause 28)

This Clause states as follows:

- “28 (3) *The consent authority must not grant consent to development (other than for the purpose of agriculture, or a dwelling house or a home business) on land within 7(l) without having regard to any representations made by NSW Fisheries and the National Parks and Wildlife Service.*
- (4) *The consent authority must not grant consent to development on or adjacent to land within zone 7(l) unless it has taken into consideration:*
- a. *The likely affect of the development on the flora and fauna found in the locality, and*
 - b. *The potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals,*

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increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and

- c. A plan of management showing how any adverse affects arising from development are to be mitigated”.*

The subject application has been referred to both NSW Fisheries and National Parks and Wildlife Service for comment and general terms of approval in the case of NSW Fisheries. Responses from both these authorities are separately discussed in this report.

The application has been accompanied by a Flora and Fauna Survey and mapping of significant vegetation. This survey concludes that there will be no significant impact on flora and fauna as a result of the development. In addition to this a Riparian Management Plan has been prepared which incorporates the area zoned as 7(1). This Plan contains recommended management measures to be put in place and also proposes significant regeneration of these areas through planting of native vegetation.

Development Adjoining Waterbodies - (Clause 31)

The subject development abuts Cudgen Creek on the western boundary and Clause 31(3) states as follows:-

- “31 (3) Consent must not be granted to development on land to which this Clause applies, within such distance as is determined by the consent authority of the mean high water mark, the top of the bank or shore of a stream, creek, river, lagoon or lake unless it is satisfied that:-*
- a. the development will not have a significant adverse affect on scenic quality, water quality, marine ecosystems, or the biodiversity of the riverine or estuarine area or its function as a wildlife corridor or habitat, and*
 - b. adequate arrangements for public access to and use of foreshore areas have been made in those areas where the consent authority considers the public access to and use of foreshore areas are appropriate and desirable requirements, and*
 - c. the development is compatible with any coastal, estuary or river plan of management adopted by the Council under the Local Government Act 1993 that applies to the land or land that may be affected by the development, and*
 - d. it has considered the impact of increased demand from domestic water supply on stream flow.*
- (4) The consent authority may require as a condition of consent to any development that the following be carried out:*
- a. The rehabilitation of land adjoining the water bed to create a vegetated riparian zone or wetland,*
 - b. works to stabilise banks or shoreline of waterbed.*

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- (5) *In determining a distance for the purposes of this clause, the consent authority shall have regard to:-*
- a. *The preservation of the scenic qualities of foreshores, and*
 - b. *minimising the risk of pollution of waterways, and*
 - c. *the protection of foreshore ecosystems, and*
 - d. *the intended or planned use for the foreshore.”*

As previously stated the application is accompanied by a Riparian Management Plan. This plan satisfactorily addresses all the issues require by this Clause. Of particular relevance is the Cudgen Creek Estuary Management Plan (August 1997) which provides that:

“While it is not appropriate to stipulate a prescribed buffer width within the Management Plan, a minimum buffer width of 50m has been adopted. Buffer widths required and vary depending on the reason for the buffer (access control, reduced edge affects, reduced bushfire hazard, bank erosion etc), the buffer composition and design (open space, fencing, tree/shrub planting etc), and the development format and design (residential, tourist, eco-tourism etc).

Suitable buffer areas between human activities and environmentally sensitive areas are recommended to minimise likely human impacts. For estuaries with dense strips of vegetation, revegetation is recommended to create a minimum buffer area of 50m from creek banks. This width was recommended in the National Parks and Wildlife Service submission to Council regarding draft Local Environmental Plan 106 for riparian vegetation adjacent to Cudgen Creek.

Some areas may require an additional buffer area to vegetated riparian areas abutting future development that is likely to generate adverse impacts. Specific studies will need to be undertaken by the developer to demonstrate that the proposed buffer width would satisfactorily address the above issues.

Although a minimum buffer width of 50m is recommended, in some instances, the buffer may form part of the development landscaping or recreational facilities (eg. boardwalk, picnic areas) where it can be demonstrated these are consistent with the environmental management objectives of the creek.”

The proposal provides for a 50m general buffer to the creek bank which is considered consistent with this estuary management plan. The provision of a future boatshed and jetty and picnic facilities is also considered consistent with this plan, particularly having regard that the area chosen is relatively clear of native vegetation and will be restricted from general vehicle access.

Flooding Liability - (Clause 34)

This clause states as follows:-

- “34 (2) Where, in the consent authority’s opinion, land is likely to be subject to flooding, then it must not grant consent to development on that land unless it has considered:-*

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- a. *the extent and nature of the flooding hazard affecting the land, and*
- b. *whether or not the development would increase the risk or severity of flooding of other land in the vicinity, and*
- c. *whether the risk or severity of flooding affecting the development could be reasonably mitigated, and*
- d. *the impact of the development on emergency services, and*
- e. *the provisions of Tweed Development Control Plan No 5 – Development of Flood Liable Land – and any other relevant Development Control Plan”.*

The north-western corner of the site is subject to flooding and will require some filling to comply with DCP No 5. The applicant provided a report prepared by WBM which concludes the filling will have negligible impact.

Acid Sulfate Soils – (Clause 35)

Council Acid Sulfate Soils planning maps indicate that the site is located in areas identified as mainly Class 4 with small areas of Class 3 adjacent to Cudgen Creek and Class 2 on the south-eastern corner of the site within SEPP No 14 – Wetland Area. In accordance with the provisions of this clause, an Acid Sulfate Soils Management Plan has been prepared and submitted with the application.

Council’s Environment and Health Unit has reviewed this plan and required a number of amendments along with DSNR. Amendments to this plan have been made in accordance with Council’s requirements and is now considered satisfactory. A condition of consent should require compliance with this plan during the construction phase.

Coastal Erosion Outside Zone 7(f) – (Clause 36)

This clause requires Council in determining whether to grant consent to development involving erection of a building or the carrying out of a work, at or above the surface of the ground, on land that in the consent authority’s opinion may be subject to coastal erosion, the consent authority must:-

- a. *notify the Department of Land and Water Conservation of the proposed development and take into account any comments received from the Department within 21 days of notification, and*
- b. *consider the likelihood of the proposed development;*
 - i. *adversely affecting the behaviour or being adversely affected by the behaviour of the sea or of water in an arm of the sea or any other body of water, and*
 - ii. *adversely affecting any beach or dune or the bed, bank, shoreline, foreshore, margin or floodplain of the sea, any arm of the sea or any other body of water, and*

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iii. adversely affecting the landscape or scenic quality of the locality.”

In response to this clause the application was referred to both the NSW Department of Sustainable Natural Resources and also NSW Coastal Council for comments in regards particularly to coastal erosion issues. It should be noted that concern by these agencies was raised in regards to potential affects of coastal erosion on the subject development in the future.

Both these government departments advised Council that the precautionary principle should be adopted when dealing with this application. This issue is further discussed in detail later in this report. In considering Part B of this clause it should be noted that the applicant proposes to remove approximately 60m to 80m of frontal dune area and reduce the height of this dune by 1m. A letter has been provided by WBM Oceanics advising that this will not have any significant impact on coastal erosion processes within the area, provided that the material removed is retained in the same area as it currently exists.

The raising of the land by approximately 2m along the beachfront lots will increase the visual exposure of the subject development. This has been compensated by proposed planting within the dunal area which will largely screen residential developments in the future on maturity of the vegetation. The only exception to this will be the Outrigger Resort building which will be more significantly visible from the beach. This issue is later discussed in the report.

Remediation of Contaminated Land- (Clause 39)

This clause states that SEPP No 55 – Remediation of Land, applies to land to which this plan applies despite any other provisions of this plan.

The subject site contains land which would be classified as contaminated under SEPP No 55. This land is located in the south-western corner of the subject site and is proposed to be remediated in accordance with SEPP No 55.

Development of Land Within Likely or Known Archaeological Sites – (Clause 44)

The subject site has been significantly disturbed as a result of past sandmining activities and accordingly archaeological sites are unlikely to exist. The applicant has consulted with Tweed Byron Local Aboriginal Land Council (TBLALC) and prepared a Study addressing this issue. This study did not identify any archaeological sites within the site. However, it may be appropriate to place a condition on any development consent which requires that the NPWS be notified in the event of the discovery of a relic during works and that work must cease immediately and the NPWS and TBLALC be notified.

6.2 STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS)

SEPP No 11 – Traffic Generating Developments

In accordance with this Policy the subject application was required to be referred to the Regional Traffic Advisory Committee for comment and consideration. Comments provided by this Committee are discussed later in this report under government agency submissions.

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SEPP No 14 – Coastal Wetlands

The subject site contains SEPP No 14 Wetlands located in the south-western and western portion of the site adjacent to Cudgen Creek. A 50m wide environmental buffer is proposed to the SEPP No 14 Wetlands. No works are proposed within these areas and therefore the provisions of this policy are not strictly applicable to the subject development with the exception that restoration works may require the submission of a further development application.

SEPP No 44 – Koala Habitat

Clause 9 of this Policy provides that before a Council may grant consent to a development application to carry out development on land to which Part 2 of the Policy applies, that it must be satisfied that should the consent contain core koala habitat that there is a plan of management prepared in accordance with Part 3. The Flora and Fauna Assessment prepared by Aspect North which accompanies the development application identifies that there is no core koala habitat on the subject site and therefore a management plan is not required.

SEPP No 55 – Remediation of Land

Clause 7 of this policy provides that the consent authority must not consent to the carrying out of any development on land unless it has considered, among other things, whether the land is contaminated, based on a preliminary investigation of the land carried out in accordance with Contaminated Land Planning Guidelines.

The Contaminated Land Planning Guidelines (Department of Urban Affairs and Planning, Environmental Protection Authority 1998) provide information relating to preliminary contamination investigations. In addition, Council has adopted a Contaminated Land Policy, which contains details of the information required to be submitted with an application for development.

The subject site contains an illmenite dump in the south-western area of the site. This area, and the site generally, have been subject of a detailed contamination assessment including surface and sub-surface measurement of radio-activity levels. As a consequence of these investigations, a management plan has been prepared proposing mixing of areas where higher concentrations of radio-activity are present with clean sand to dilute levels to below the health threshold levels. Remediation will be carried out as an integral part of the bulk earthworks proposed for the site consistent with the requirements of this SEPP, the Contaminated Land Planning Guidelines and Council's Contaminated Land Policy.

Council's Environment and Health officer has reviewed this plan and is satisfied with the proposed remediation works.

Under this Policy there is also a requirement for Council to advertise the subject development for a period of 30 days as advertised development. The subject application has been advertised in accordance with this Policy.

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SEPP No 71 – Coastal Protection

This policy came into effect on 1 November 2002. Clause 25 of this policy states as follows:-

“This policy does not apply to development application made, but not finally determined, before the commencement of this policy.”

This application was received by Council 2 September 2002 and in accordance with SEPP No 71 the provisions of this policy do not apply to the subject application. Notwithstanding this, it is considered relevant for Council to have regard to the matters for consideration under this policy prior to determining the application. Each of the matters listed in Clause 8 of this policy are briefly discussed below.

a. The aims of this policy set out in Clause 2.

“SEPP 71 aims

- a. To protect and manage the natural, cultural, recreational and economic attributes of the NSW coast, and*
- b. To protect and improve existing public access to and along coastal foreshores to the extent that it is compatible with the natural attributes of the coastal foreshore, and*
- c. To ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and*
- d. To protect and preserve aboriginal cultural heritage, and aboriginal places, values, customs, beliefs and traditional knowledge, and*
- e. To ensure that the visual amenity of the coast is protected, and*
- f. To protect and preserve beach environment and beach amenity, and*
- g. To protect and preserve native vegetation, and*
- h. To protect and preserve the marine environment of NSW, and*
- i. To protect and preserve rock platforms, and*
- j. To manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6(2) of the protection of the Environment Administration Act 1991), and*
- k. To ensure that the type, bulk, scale and size of the development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and*
- l. To encourage a strategic approach to coastal management”.*

Comment

Having regard to the above aims it is considered that the proposed development generally complies with the aims of this policy. The subject development will

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result in a regeneration program of the dunal and riparian zones and provide for more controlled access and management of these areas as development occurs.

The issue of most significance in considering these aims is the proposal to fill the site on average by 2m along the beachfront allotments to raise the finished level of the land to provide ocean views for future residents. This results in potential impacts on visual amenity of the coastline in this area.

To compensate for this the development is setback approximately 120m-140m from the tidal high water mark and planting of the dunal area in front of dwellings is proposed to screen the development from the beach. Development will, however, be visible in the short term prior to the establishment of this dunal vegetation.

The Outrigger Resort proposal will be visible from the beach on maturity of vegetation due to its overall height and bulk. To minimise this impact the building has been designed so that it has minimal frontages directly adjoining the 7(f) boundary and the overall height of the building has been amended and reduced at the eastern boundary.

Architectural features “*follies*” have been removed from the original design following objections from local resident and business corporation representatives.

Considering the economic benefits the development will create through employment and financial contribution to the local economy and the limited beach frontage in which the proposal will be able to be seen, it is considered acceptable.

“*Clause 8b*

Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and where possible, public access to and along the coastal foreshore for pedestrian or persons with a disability should be improved.”

Comment

It is proposed to construct a pedestrian/cycleway for the full frontage of the foreshore meandering within Lot 500 and the adjoining coastal reserve. Six formal beach accesses will be provided giving access to the beach. Currently no formal public access is available to the public along this stretch of coastline. It is considered that the subject development satisfies this objective.

“*Clause 8c*

Opportunity to provide new public access to and along the coast foreshore for pedestrians or persons with a disability.”

Comment

As per “b” above.

“*Clause 8d*

The suitability of the development given its type, location and design and its relationship with surrounding area.”

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Comment

The subject land is zoned 2(f) Tourism and is currently a greenfield site with no surrounding developed areas. The design of the proposal has been through significant public consultation with PlanningNSW, NSW Coastal Council representatives and other relevant government authorities. It is considered that the subject development is suitable for the site having regard to its design and zoning of the land.

“Clause 8e

Any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant losses of views from a public place to the coast foreshore.”

Comment

As mentioned previously the development will result in some visual impacts when viewed from the beach and will also result in some overshadowing of the adjacent foreshore areas, particularly in relation to the Outrigger Resort and possible future resorts on beachfront lots. This issue has been considered under Clause 32(B) of the North Coast REP by PlanningNSW and concurrence has been sought to permit a variation of this development standard. It is therefore concluded that overshadowing impacts on the beach and adjacent foreshore areas are considered acceptable.

“Clause f

The scenic qualities of the NSW coast and means to protect and improve these qualities.”

Comment

The dunal area between the beach and development is proposed to be planted with appropriate native vegetation to provide screening of buildings and minimise impacts on the coastline.

“Clause 8g

Measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their Habitats.”

Comment

The applicant has undertaken a Flora and Fauna Assessment of the overall proposal which concludes that the subject development will not result in any significant impacts on either threatened species of plants or animals which may frequent or occupy the site. NPWS reviewed the proposal in context with this report and has provided a number of recommendations to manage impacts on flora and fauna.

“Clause 8h

Measures to conserve fish (within the meaning of Part 7(a) of the Fisheries Management Act 1994) and Marine Vegetation (within the meaning of that Part) and their Habitats.”

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Comment

In general a 50m buffer is proposed to the high water mark of Cudgen Creek which will in effect provide protection of estuarine habitats within the Creek. It should, however, be noted that two stormwater outlets are proposed to discharge into Cudgen Creek. NSW Fisheries has reviewed the application and raised concerns in regard to buffer distances to seagrass beds within Cudgen Creek. NSW Fisheries have, however, granted general terms of approval for the removal of a mangrove and as part of those general terms of approval required an amount of \$250,000 to be paid for compensatory works within Cudgen Creek catchment or alternatively a bond of \$200,000 to be paid and the requirement for monitoring to ensure that estuarine vegetation will not be significantly harmed as a result of the proposal.

“Clause 8i

Existing wildlife corridors and impact of development on these corridors.”

Comment

The majority of the site will be cleared of existing vegetation with the exception of the riparian buffer zone along the edge of Cudgen Creek and the regeneration works proposed within Lot 500 and the dunal foreshore area. These revegetation works will maintain wildlife corridors north/south within the development.

“Clause 8j

The likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards.”

Comment

Professor Thoms from the NSW Coastal Council has raised significant concerns in regard to potential impacts as a result of coastal processes into the future. Professor Thoms has recommended that consideration should be given to the Outrigger Resort being setback a further 50m than currently proposed and that all residential allotments should be setback a further 25m. This request is largely based on the precautionary principle and the uncertainty which surrounds coastal processes.

This concern is acknowledged, however, in light that Council’s current planning policy for protection of property etc from coastal erosion processes based on the principle of the 50 year plus 30m concept identified in earlier studies and that a recent study undertaken by WBM Oceanics identified the 100 year hazard line as being eastward of the existing 7(f) zone line. It is considered reasonable and equitable to conclude that the development will be outside the 100 year hazard line and complies with current council planning requirements.

“Clause 8k

Measures to reduce the potential for conflict between land-based and water-based coastal activities.”

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Comment

Potential conflict may arise as a result of activities associated with the use of the Cudgen Creek riparian area. It is proposed that the boatshed/jetty, which is intended to be constructed within the riparian area, will be restricted from having vehicular access which minimises the potential for conflicts arising between the public within Cudgen Creek area.

“Clause 8l

Measures to protect the cultural places, values, customs, beliefs and traditional knowledge of aboriginals.”

Comment

Studies undertaken as part of the development application have identified that there are no places of aboriginal significance located within the subject site. Any consent would be conditioned requiring if any relics or places of significance were identified during the construction phase, that NPWS would need to be notified and works would need to cease immediately.

“Clause 8m

Likely impacts of the development on water quality of coastal water bodies.”

Comment

Significant volumes of sand are proposed to be transported to the site by hydraulic means from Action Sands in Chinderah. The transport of sands will involve significant volumes of saltwater being delivered to the site. This water is proposed to be treated in large detention ponds and it is recommended that this water not be discharged into Cudgen Creek but rather returned to the site at Action Sands.

Stormwater management plans have been provided with the application. Water is proposed to be treated on site prior to discharge to Cudgen Creek. It is also intended that each lot be required to provide on-site detention and infiltration to minimise the amount and quality of water being discharged into Cudgen Creek to minimise potential environmental impacts.

“Clause 8n

The conservation and preservation of items of heritage, archaeological or historic significance.”

Comment

No items of heritage, archaeological or historic significance have been identified on the site.

“Clause 8o

Only in cases in which a council prepares a draft local environmental plan that applies to land to which this policy applies, the means to encourage compact towns and cities.”

Reports from Director Development Services

Comment

No such draft local environmental plan applies to this development.

“Clause 8p

Only in cases in which development application in relation to proposed development is determined:

- i. the cumulative impacts of the proposed development on the environment, and*
- ii. measures to ensure the water and energy usage by the proposed development is efficient.”*

Comment

It is considered the proposed development has put in place measures to adequately manage the potential environmental impacts of the proposed development. In addition to that, future development will be required to comply with Council’s DCP No 39 in relation to Energy Smart Housing principles.

In conclusion having regard to the principles contained in SEPP No 71 it is considered the development generally complies with these principles and is acceptable in terms of this policy.

6.3 NORTH COAST REGIONAL ENVIRONMENTAL PLAN 1988 (NCREP 1988)

The NCREP applies to the subject site. The following clauses are of relevance to the subject development:

Impacts on rivers, streams and wetlands – (Clause 15)

This Clause requires Council to have regard to the protection of rivers, streams and wetlands. The proposed subdivision is bordered by Cudgen Creek on its western boundary. SEPP No 14 Wetlands also exist in this area. The application proposes environmental buffers of up to 50m wide to ensure the protection of the Creek and wetland areas. Appropriate construction phase and operational phase control measures are incorporated in the development to ensure that water quality and habitat values in downstream water bodies are not degraded.

Coastal Lands – (Clause 32B)

This Clause requires Council to consider the following:-

- “(2) In determining an application for consent to carry out development on land to which the coastal policy applies, the Council shall take into account –*
 - a. The NSW Coastal Government Policy*
 - b. The Coastline Management Manual*
 - c. The North Coast Design Guidelines*
- (3) The Council shall not consent to carry out development which would impede public access to the foreshore area;*
- (4) The Council shall not consent to the carrying out of development –*

Reports from Director Development Services

- a. *On urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out of development would result in beaches and adjacent open space being overshadowed before 3pm mid-winter (standard time) or 6.30pm mid-winter (daylight saving time); or*
- b. *Elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 4.00pm mid-winter (standard time) or 7.00pm mid-summer (daylight saving time)”.*

North Coast Design Guidelines

These Guidelines largely relate to the built form of buildings and structures within the coastal areas. The key guidelines can be included in the design of future buildings, particularly in relation to the building form, cladding materials, solar access and energy efficiency. The applicant has prepared architectural design guidelines for future development of the estate. These guidelines appear satisfactory with the exception of one of the proposals for front fencing.

Coastal Lands – Clause 33)

This Clause requires the consent authority to take into account the provisions of the Coastline Management Manual and require as a condition of development consent that disturbed foreshore areas be rehabilitated and require, as a condition of development consent, that access across fore dune areas be confined to specific points.

The applicant has submitted a management plan for both the beach foreshore area and Cudgen Creek riparian area. These management plans satisfies the provisions of this clause.

Residential Development – (Clause 43)

This clause provides that Council should not grant consent to development for residential purposes unless it is satisfied that the density of dwellings have been maximised without adversely affecting environmental features of the land, road widths are not excessive having regard to the hierarchical stages of the road and it is satisfied that the road network is designed to encourage the use of public transport to minimise the use of private transport.

Residential densities within this development are controlled by the requirements of Tweed LEP in that the number of hotel, motel or tourist resort units must exceed the number of dwellings erected on the subject land under the provisions of Tweed LEP 2000. Notwithstanding this, the master plan achieves a density of approximately “14” dwellings per hectare, which is consistent with the standard of 15 dwellings per hectare contained within the North Coast Urban Planning Strategy (Department of Planning 1995).

Reports from Director Development Services

Tall Buildings – (Clause 51)

This clause requires that council shall not, without the concurrence of the Director of PlanningNSW, grant consent to a development application for the erection of a building over 14m in height.

This clause is not specifically relevant to the subdivision application, however, is relevant to the proposed Outrigger application and possible future resort developments within the site. The Outrigger application has been referred to PlanningNSW for concurrence under this Clause.

Adequacy of Community and Welfare Services – (Clause 66)

This clause requires the consideration of the adequacy of community and welfare services to service the subject development. Community facilities are provided some 3km north of the site at Kingscliff, including medical practitioners, a local shopping centre, recreation facilities, library, primary and high schools and a TAFE College. Higher order facilities including a hospital, university, sub-regional shopping centres and welfare support services are available some 10km north of the site in Tweed Heads.

The development proposes to provide emergency service facilities in the form of surf lifesaving facilities adjacent to the resort.

Tourism Development – (clause 75)

This clause provides that Council shall not consent to an application for tourism development unless it is satisfied that road access is adequate, social and community services exist in close proximity for permanent residents, urban services are available and natural site values will be maintained.

The site is adequately served by the existing and proposed realignment of Coast Road and is conveniently located in relation to both Kingscliff and Tweed Heads where appropriate social and community support services are available. In addition, full urban infrastructure is proposed for both the permanent, residential and tourist populations. Natural site opportunities and constraints such as the foreshore area and Cudgen Creek are proposed to be dedicated as public open space and rehabilitated.

Development Adjacent to an Ocean or a Waterway – (Clause 81)

This clause requires Council to take into account any existing waterway within 100m of the development site and the need for the dedication of foreshore open space together with the consistency with any foreshore management plan applying to the area. This application is consistent with this clause in that dedication of the 7(f) land adjacent to the beach and the Cudgen Creek riparian area is proposed. The Cudgen Creek Estuary Management Plan (WBM, August 1997) requires a 50m buffer from the creek banks, as proposed by the development.

6.4 COASTLINE MANAGEMENT MANUAL, 1990

The Coastline Management Manual requires that council's prepare a Coastline Management Plan to address issues such as coastal erosion. Council has prepared a

Reports from Director Development Services

Coastline Hazard Definition Study which identifies the 100 year hazard line as being seaward of any development proposed as part of this development.

Overshadowing of beaches and adjacent open space

This application is for the subdivision of the subject land and does not seek approval for the erection of any structures on privately owned land. Notwithstanding this, the subject application, however, seeks endorsement of the master plan which will involve the erection of future dwellings, tourists resorts and medium density developments. A separate application is currently before Council seeking consent for an Outrigger Resort development on proposed Lot 170. This development will result in overshadowing of the adjacent foreshore and beach area. In the case of this application, the applicant has lodged a SEPP No 1 submission to vary the requirements of this clause. PlanningNSW has granted concurrence to the overshadowing of the foreshore area and beach. Future development applications for dwellings may also trigger the need to vary this clause under the provisions of SEPP No 1.

Each of these applications will need to be assessed on their merits in the future.

6.5 COASTAL DESIGN GUIDELINES FOR NSW

The NSW Government has released a set of guidelines aimed at promoting good development along the NSW coastline. Sections of these guidelines which are of particular relevance to this subdivision application are as follows:-

Design Guidelines for Open Space Networks

A number of principles are detailed in these guidelines in relation to design of open space within subdivisions. These include:-

- “1. *Locate and connect new and existing open spaces which protect and maintain:*
 - a) *nature reserves, conservation areas, parklands and environmental protection areas.*
 - b) *the natural and rural setting of the settlement including the scenic values of the visual catchment.*
 - c) *remnant native vegetation.*
2. *Establish continuous ecological corridors to incorporate existing remnant vegetation by connecting reserves and conservation areas from the hinterland or the surrounding mountains to the coastal edge.*
3. *Provide setbacks to protect property from the effects of coastal erosion, flooding and bushfire.*
4. *Locate open spaces to build on the special attributes of an area for long term public amenity and identity of the place. An open space network may include hilltops, river frontage, mature trees, places with panoramic views, rocky outcrops and remnant vegetation.*

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5. *Where feasible reserve settings for places of cultural heritage within the open space network.*
6. *Provide areas within the open space network sufficient to detain and cleanse stormwater runoff and avoid impacting sensitive ecologies.*
7. *Establish edge open spaces with streets and pedestrian pathways. These are best located within the development footprint of the settlement, rather than in an open space zone.*
8. *Provide pedestrian and cycle access that:*
 - a) *does not compromise the ecological values of high conservation areas.*
 - b) *connects important places throughout the settlement.*
 - c) *connects residential areas to commercial and retail locations without compromising the visual aesthetic or ecological values of the foreshore.*
9. *Provide a variety of large and small open spaces to serve a range of different active and passive recreation roles eg.*
 - a) *playing fields.*
 - b) *playgrounds and smaller pocket parks.*
 - c) *walking and cycling connections*
 - d) *places and activities for people with physical disabilities.*
10. *Co-locate recreation facilities with shops, schools and other community facilities to reduce parking and minimise walking distances.*
11. *Landscape design of open space should reflect the different qualities of the location and their functions.”*

The subject subdivision design generally complies with the principles detailed above, with the exception that no playing fields have been provided within the subdivision. To address it is proposed to require a contribution of \$1.2m to go towards the acquisition of land in West Kingscliff for the purposes of playing fields.

The subdivision provides good connection to open space networks stretching from the coastal strip through to Cudgen Creek providing both pedestrian and cycleway connections.

The next significant content of the Guidelines of relevance relates to the design of natural edges. Good design should contain the following elements:-

- “1. *Define the key characteristics and functions of public spaces along the foreshore with particular regard for sites of significance, social and cultural importance.*
2. *Maintain foreshore areas and setbacks in public ownerships.*

Reports from Director Development Services

3. *Ensure that existing and remnant native vegetation is protected through generous setbacks and defined points of access.*
4. *Provide pedestrian access to and along the foreshore with provision for those with less mobility.*
5. *Avoid the remodelling of foreshore areas to ameliorate coastal processes by buildings or other structures.*
6. *In new areas provide edge roads (or unformed pedestrian pathways) between all urban areas, foreshore reserves and orient streets to provide:
 - a) *direct pedestrian access to the foreshore;*
 - b) *views to the foreshore as well as distant views and vistas;**
7. *Define clear pedestrian and vehicle entry points and access routes through the foreshore reserve to reduce impact of traffic through dunes, coastal vegetation and other fragile areas.*
8. *Design and locate foreshore facilities, such as car parks, toilet blocks and picnic areas to reduce the visual intrusion on the foreshore, view corridors and vistas.*
9. *Encourage public rather than private jetties and boat facilities.*
10. *Ensure the ecological integrity of vegetation on the foreshores and headlands without compromising views and outlook from private properties and by encouraging filtered views.”*

It is considered that the subject subdivision layout generally satisfies all of the above design principles where relevant

Coastal Design Guidelines on setbacks are:

- “1. *Areas adjoining freshwater estuarine, coastal habitat and the coastal edge are managed to reduce landuse impacts through setbacks that also supports the protection of property from erosion, the protection of sensitive ecologies, provision of public access along the foreshores and to natural areas, provision of visual amenity along the foreshore, the protection of property from sea level rise, improvement of water quality.*
2. *Setbacks should also address coastal erosion hazards such as storm surge events and river flooding, long term shoreline recession and sea level rise, cliff retreat and catastrophic collapse, sand drift hazard, entrance to building, estuarine erosion and changes in tidal current position.*
3. *Setbacks are designed to protect eco-systems and reserves covered under SEPP 14 Wetlands, SEPP26 Littoral Rainforest, SEPP 53 Koala Habitat as well as saltmarsh and mangrove communities, riparian vegetation, frontal dunes and headlands, National Parks, protected areas and reserves.*
4. *For new developments the foreshore setback should be at least 50m wide as a precautionary measure where possible.*

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5. *Setbacks may need to be marked and their vegetation preserved. Setbacks should, where possible, be increased to 100m or more where they are adjacent to ecologically sensitive areas or in situations where the coastal erosion hazard requires greater distance.*
6. *Setbacks for redevelopment should consider a 100 year planning timeframe to address shoreline retreat and sea level rise.*
7. *Coastal estuary planning for local areas must detail the issues place specifically and follow guidelines in the coastal zone management manual.*
8. *Development of frontal dunes is avoided.*
9. *Set new development back from the foreshore edges of the ocean, lakes and other waterways to protect visual amenity and create opportunities for public access.*
10. *The design of buildings and other structures on properties adjoining the foreshore compliments the function and character of the foreshore.*
11. *Setbacks in public ownership wherever possible, allow opportunities for public access and have limited development including no roads, private allotments, infrastructure and retaining walls in these locations.”*

The subdivision design is considered to generally satisfy these design principles in that appropriate setbacks have been provided to Cudgen Creek and a coastal foreshore reserve with cycleway and public access proposed between private property and the beach.

6.6 NSW COASTAL POLICY, 1997

The NSW Coastal Policy applies to the subject land.

Table 2 of the Coastal Policy contains a number of strategic actions relevant to development control. Strategic actions detailed in this policy relate to stormwater quality, coastal hazards, development adjacent to estuaries, acid sulfate soils, North Coast Design Guidelines, design and location principles, public foreshore access.

The application is considered to satisfactorily address each of these issues.

6.7 THE PROVISIONS OF ANY DRAFT ENVIRONMENTAL PLANNING INSTRUMENT

A draft local environmental plan is currently on public exhibition that relates to redefining the definition of storey under Tweed LEP 2000.

6.8 DEVELOPMENT CONTROL PLANS (DCPs)

Development Control Plan No 5 (DCP 5) – Development of Flood Liable Land

The majority of the site is above the design flood height under DCP 5. The only area below this flood level is located in the north-western corner of the site. Filling of this area is proposed to the design flood level in accordance with the provisions of this plan.

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Draft Development Control Plan No 8 (DCP 8) – Development of Land Liable to Coastal Erosion

This DCP remains in draft form, however Council has historically taken it into account when assessing development applications. Plan 8(e)1 of the DCP indicates that the immediate impact line and the 100 year impact line are located west of the seaward property boundary. The existing 7(f)/2(f) zone boundary is located west of the 50 year erosion line.

A more recent study has been completed titled “Tweed Coast Hazard Definition Study”, which indicates that coastal land recession rates have either stabilised or show slight accretion with the 100 year hazard line seaward of all properties at the northern end of the beach. Based on this most recent study and Council’s past acceptance of development westward of the 7(f) zone line, it is considered that the subject development layout is satisfactory.

Development Control Plan No. 16 (DCP 16) – Subdivision Manual

The application generally complies with DCP 16 in terms of lot sizes, infrastructure provision, road layouts etc. Any consent granted by Council should be conditioned that the development is required to comply with the provisions of this Plan.

Development Control Plan No 25 (DCP 25) – Biting Midge and Mosquito Control

This issue has not been addressed by the applicant. However, considering the substantial setbacks from Cudgen Creek, generally 50m it is regarded that biting insects and their control is unlikely to be a significant issue.

Development Control Plan No 39 (DCP 39) – Energy Smart Homes Policy

In considering this development in terms of the requirements of DCP 39 it should be noted that to date no energy scorecard for subdivisions has been developed as referred to in the Plan. Notwithstanding this, it is considered that the proposed layout is generally consistent with the provisions of this Plan in that the street layout is orientated on approximately an east-west line and other streets are generally north-south. The proposed lots have generous areas and dimensions to provide flexibility in the siting, orientation and design of future dwellings to be erected on the subject lots.

Development Control Plan No 45 (DCP 45) – Social Economic Impact Assessment

Under this Plan the subject application requires a Social Economic Impact Assessment to be undertaken in accordance with the Plan. The application is accompanied by this Statement.

Development Control Plan No 48 (DCP 48) – Cut and Fill on Residential Land

Consideration will need to be given to this Plan at the time of detailed engineering design.

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6.9 ANY MATTERS PRESCRIBED BY THE REGULATIONS

NSW Coastal Policy 1997

The proposal generally appears to be consistent with the principles of the NSW Coastal Policy 1997. The land is affected by the Policy being within 1km of the open coast and tidal estuary high water mark. Specifically, the following comments are made:

1.3 Objective:

To improve water quality in coastal and estuarine water and coastal rivers where it is unsatisfactory and to maintain water quality where it is satisfactory.

As noted previously in this report, a detailed stormwater management plan has been submitted with the application which demonstrates compliance with this requirement.

1.4 Objective:

To manage the coastline and estuarine environments in the public interests to ensure their health and vitality.

The proposal is generally consistent with the adapted Cudgen Creek Estuary Management Plan and provides for rehabilitation of this riparian zone adjacent to the creek. It also proposes to rehabilitate the dunal foreshore area of the site and a dunal management plan has been provided are part of the application. NSW Fisheries have raised concern regarding the location of the stormwater outlets and the potential for this to impact on adjoining seagrasses within the area. NSW Fisheries required a bond to be provided or a monetary payment to be made for protection and restoration works to ensure impacts are minimised. With these measures put in place it is considered that the proposal satisfies this objective.

2.1 Objective:

To give the impacts of natural processes and hazards a high priority in the planning and management of coastal areas.

Recent WBM studies have shown that the expected 100 year hazard line will be seaward of any development. Based on Council's past planning practices and policies it is considered acceptable in terms of setback from the coastline of the development.

3.2 Objective:

To design and locate development to complement the surrounding environment and to recognise good aesthetic qualities.

The development has been designed to attempt to minimise the aesthetic and environmental impacts of the proposal on the surrounding environment. The filling of the site however, creates the potential for buildings to be seen from the beach. To reduce the impacts of this, the developer proposes a two storey height limit be placed on any future buildings so as to limit the maximum height of structures along this coastal strip. This combined with the rehabilitation works and plantings within the dunal area will assist in minimising these potential impacts.

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7.1 Objective

To increase public access to foreshores when feasible and environmentally sustainable options are available.

It is considered that adequate public access to the foreshore areas including the beach have been provided as part of this development. Through the six access points and the pedestrian cycle pathway proposed along the foreshore of the development. Adequate access is also being provided with the number of public car parking areas and the construction of a pedestrian pathway within the riparian zone.

6.10 THE LIKELY IMPACTS OF THE DEVELOPMENT AND THE ENVIRONMENTAL IMPACTS ON BOTH THE NATURAL AND BUILT ENVIRONMENTS AND SOCIAL AND ECONOMIC IMPACTS IN THE LOCALITY

Impacts from filling of the site

It is proposed to fill the eastern portion of the site by, on average, 2m to achieve ocean views for dwellings within the subdivision and for future tourist resort developments. The fill is proposed to be transported to the site via hydraulic means and this is subject to a separate development application (DA02/1748). At this time the source of the fill is from the Action Sands site at Chinderah which has an existing approval for the extraction of river sand from the Tweed River. The means of transportation of the fill is via a pipeline and the mix of sand to water is approximately 70% water to 30% fill material. This in effect will result in approximately 1750ML of water being delivered to the site which will need to be managed. Of most concern regarding this method is the potential for groundwater contamination of the freshwater aquifer under the site. To mitigate these concerns the applicant proposes that the fill material will be delivered to a large detention basin where the salt water will be decanted off and the sand mechanically placed on the site. These detention basins are proposed to be sealed so as to prevent contamination of the groundwater. It was originally proposed that the excess water would then be discharged into Cudgen Creek creating the potential for impacts to occur to this eco-system. It is recommended that the applicant be prevented from discharging this water into Cudgen Creek and that the water be returned to the Action Sands site via either the same pipeline as it is delivered by or by the construction of a return pipeline adjacent to the delivery pipeline. This issue has been considered by the NSW Department of Sustainable Natural Resources' experts in hydrology and a letter of agreement of this means of management has been provided by the Department (Annexure 5).

Filling of the site also raises issues in regard to the use of a non-renewable resource which could arguably be used more efficiently. The primary use of this resource historically has been for the filling of floodprone land to allow urban development to occur within the Tweed area and Gold Coast region.

With the return of the water to the Action Sands site and considering that there is limited floodprone land which has been undeveloped within the Tweed Heads area it is considered that the likely impacts from the filling of the land can be adequately managed subject to appropriate conditions.

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Affect on scenic quality of the locality and visual impacts from the Beach

To compensate for the raising of the land by up to 3m for the beachfront lots it has been negotiated with the applicant to restrict the height of dwellings to a maximum of 10.5m and two storeys. Dense planting of dunal vegetation will also assist in the screening of the development from the beach. Dense planting of the under-storey of up to 2m is proposed with larger trees extending up to 4m scattered throughout the dunal area. The applicant has provided a number of cross-sections indicating view lines from the beach based on the assumption of the height of the vegetation at maturity. The applicant has also advised that it may take up to 10 years before vegetation reaches full maturity. Perspectives have also been provided to illustrate the visual impact the proposal will have when viewed from the beach. These perspectives demonstrate that dwellings will be visible from the beach through the vegetation.

The future tourist resort development, ie the Outrigger, and possible resort to the north, which has beach frontage, will be three stories in height measured from the finished ground level and are expected to be visually prominent when viewed from the beach.

In considering the impacts of future buildings from the beach it is important to have regard to the setback of between 120m and 140m from the high water mark. This setback combined with the filtering affect of vegetation on maturity will reduce the dominance of these buildings and on this basis the proposal is considered acceptable. It should, however, be noted that until such time as the vegetation reaches maturity it is considered that the future buildings will be quite visible and dominant when viewed from the beach. It is estimated that it may take 3 – 4 years before the vegetation begins to have any great screening affect.

Access, Transport and Traffic

Issues related to traffic, access and road layout have been reviewed by Council's Subdivision Unit, Engineering Services Division and Regional Traffic Advisory Committee. The general road layout and design is generally considered acceptable from a traffic management point of view. The Regional Traffic Advisory Committee comments have previously been discussed in this report.

Public Domain

The application proposes the dedication of a number of pocket parks, a large central park area, public foreshore open space adjacent to Lot 500 and also along Cudgen Creek. Public open space areas are well linked by green space providing pedestrian and cycle linkages within the subdivision. A commercial/retail precinct is proposed adjoining the beachfront located in the central area providing relatively good access for future residents within the area. This area is also located adjacent to the Central Park area creating a civic precinct within the development. The subdivision and street layout provides relatively good connectivity to these areas and foreshore areas. As previously discussed the subdivision layout and design generally adopts the principles contained in the coastal design guidelines for NSW and is therefore considered acceptable.

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Water Management

The applicant has provided a Preliminary Stormwater Management Plan which details the proposed method of treatment and management of stormwater from the site. It is proposed that the eastern part of the site be drained towards Lot 500 and a number of infiltration basins are proposed within the privately owned 7(f) land adjacent to Lot 500. These basins have been designed to provide infiltration and minimise the amount of discharge of stormwater to Cudgen Creek. The design concept is similar to that adopted in the Casuarina Development. Council's Engineering Services Division has reviewed the proposal and considers it acceptable subject to a number of conditions in regard to achieving water quality objectives detailed in Council's Stormwater Management Plan.

The applicant has also prepared an erosion and sediment control management plan which details methods proposed to be implemented during the construction phase to minimise impact on receiving waters. This plan has been reviewed by both Council's Engineering Services and Environment & Community Services Divisions. The subject Plan is considered satisfactory.

Flora and Fauna

The provisions of Section 78(a) of the Environmental Planning and Assessment Act provides that a development application must be accompanied by a Species Impact Statement if the application is in respect of development of land that is likely to significantly affect threatened species, populations or ecological communities or their habitats. Section 5A of the Act sets out the 8 points that Council is required to consider in arriving at a decision as to whether a development is likely to significantly affect threatened species, populations or ecological communities or their habitats. A detailed assessment has been undertaken by Aspect North in addressing these requirements. This assessment concludes on balance that, having regard to the nature of the proposal and the mitigation and replanting measures, it is considered that the proposal is unlikely to have a significant impact on threatened species, populations or ecological communities including the Common Blossom Bat.

Waste and Energy

The proposal is considered generally satisfactory in terms of design for future waste management and energy conservation, subject to detailed assessment in subsequent development applications.

Natural Hazards

Appropriate conditions will be required in respect of the susceptibility of these sandy soils to wind erosion and in respect of potential bushfire risk. Other hazards of significance relate to coastal erosion processes. Issues in relation to these matters have been previously discussed in this report.

Technological Hazards

As indicated previously an illmenite dump exists on the south-western portion of the site. This area will need to be fully remediated in accordance with the Remediation Management Plan submitted as part of the application. Prior to the release of any

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subdivision certificate levels of radiation will need to be certified as complying with the relevant threshold.

Social and Economic Impacts

The applicant has undertaken a Social and Economic Impact Assessment of the subject proposal and this assessment concludes that the proposal will result in significant social and economic benefits through increased employment and expenditure within the local economy. During the construction phase there will also be significant jobs created.

Cumulative Impacts

Cumulative Impacts occur in relation to traffic, and potential water management impacts on Cudgen Creek. Concern has also been raised by NPWS regarding the potential loss of Common Blossom Bat food sources by removal of coastal Banksia species on the site, following the approval for their removal on other sites to the south. Having regard to this issue the applicant engaged a Bat expert to review this issue. This report concluded that the removal of 700 Banksias and the subsequent replacement by planting of approximately 30,000 Banksias within the riparian and coastal zone will adequately compensate in the long term. NPWS have had a review of this report undertaken and agree with the findings.

6.11 THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT

The subject site has a history of being sand-mined in the past and existing vegetation communities within the site have been degraded. The site in general is relatively flat and lends itself to the proposed development. It is considered, subject to appropriate mitigation measures to manage environmental impacts are put in place that the site is suitable for the subject development.

6.12 ANY SUBMISSIONS MADE IN ACCORDANCE WITH THE ACT OR REGULATIONS

The discussion in the consultation section of this report summarises public submissions and public authority submissions and the comments concerning the submissions. In general, the issues raised in the submission, appear capable of being satisfactorily addressed through conditions of consent.

6.13 THE PUBLIC INTEREST

The SALT development will provide significant benefits to the community through the creation of approximately 540 full time jobs and the injection of an estimated \$45.45 million into the local community each year. During the construction period 617 jobs will be created directly and 1147 indirectly. The Outrigger Resort and other resorts will be the major economic contributions to the local community.

The development will also result in the rehabilitation of the dunal area and riparian area fronting Cudgen Creek. Formal accesses are to be provided to the beach with associated public car parking.

A wide range of housing choice will be provided with the plan making provision for a mix of medium density and detached dwelling allotments of varying size.

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The proposal is consistent with Council's Strategic vision for this site as reflected in Tweed Strategic Plan 2000+.

In conclusion it is considered the proposal is in the public interest.

6.14 OTHER RELEVANT PLANNING POLICIES AND PLANS

Section 94 Contribution Plan No 25 and Strategic Planning Policies for Kings Beach North

Section 94 Contribution Plan No 25 was adopted by Council in 2000 and reflect the negotiated outcome with PlanningNSW in response to the previous development application for the Club of Clubs development on this site. This plan requires a dedicated area of 1.125 hectares of land for open space purposes to be provided as well as adjoining land zoned 7(f) Environmental Protection Coastal Lands. Of the total, 1 ha of land is to be located adjoining the southern boundary of the land and 0.125 ha adjoining the northern boundary to Cudgen. The land zoned 7(f) that is to be dedicated similarly adjoins the northern and southern boundaries and adjoins existing foreshore public reserve and the 1.125 ha proposed to be dedicated east of the site. This plan also required the embellishment and construction of the cycleway and access paths to be beach of the dunal foreshore area.

Under this plan car parking for public use was also required to be provided. One hundred spaces were required to be provided close to the northern boundary of the land and 100 spaces located close to the southern boundary of the land. As previously discussed in this report the applicant still proposes the provision of 200 car parking spaces, however, has argued that it is more appropriate to locate them in a central area adjacent to the Central Park area.

This plan also requires the provision of a 20m riparian buffer zone adjacent to Cudgen Creek and adjacent to the adjoining 7(a) and 7(l) Environmental Protection zone. The 20m distance was required to be measured from mean high water mark. This application provides for a varying riparian buffer which is generally on average 50m in width.

Tweed Shire 2000+ Strategic Plan

The proposed subdivision of the site provides for a number of integrated tourism resort sites, which is consistent in principle with the Tweed Shire 2000+ Strategic Plan, on which basis Tweed LEP 2000 was prepared and gazetted. It is noted that Policy 18 of Tweed Shire 2000+ Strategic Plan provides that management of urban release areas will be based upon full cost recovery of public infrastructure provided and the provision of infrastructure to service growth at no cost to existing ratepayers.

The Tweed Development Program notes that Council will facilitate development of urban release areas compatible with a number of strategic infrastructure constraints, including the Coast Road, and provide the realignment of Coast Road is in the correct location and of appropriate standard and arrangements are made for the upgrading of the Cudgen Creek Bridge, the proposal is satisfactory.

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Cudgen Creek Estuary Management Plan

This Estuary Management Plan adopted by Council in 1997 provides for a 50m riparian buffer for the adequate future protection of the estuary from development activities. The proposed development is generally consistent with this requirement.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS

If the applicant is dissatisfied with Council's determination, they may appeal to the Land and Environment Court. There will be additional maintenance liability for Council due to the areas proposed to be dedicated for coastal land or riparian protection, and if the proposal is to be approved, then appropriate conditions will need to be attached to ensure that the necessary infrastructure and upgrading of roads are carried out at no cost to Council.

OPTIONS

Council can either:

Approve the application subject to conditions as recommended or as modified to ensure appropriate and environmentally sustainable development of the site will occur; or

Refuse the application, giving reasons for doing; or

Defer a decision pending the advice from PlanningNSW on the concurrence issues.

CONCLUSION

The NPWS letter of 17 April 2003 has raised significant issues that require clarification and discussion. If these issues can be resolved, then on balance a recommendation to conditionally approve as contained in Annexure 6 can be considered by Council.

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1b. ORIGIN: Development Assessment Unit

FILE REF: DA02/1423

REPORT TITLE:

Development Application DA02/1423 - Proposed Outrigger Tourist Resort Hotel, Tavern and Retail Shops and Proposed Lot 170 being the Subdivision of Lots 194, 301 and 312 DP 755701 Coast Road, South Kingscliff

Reports from Director Development Services

REPORT:

Applicant: Ray Group Pty Limited
Owner: South Kingscliff Developments Pty Limited

INTRODUCTION

This report should be read in conjunction with the report for Development Application DA02/1422 which is contained in this Business Paper.

This development application is for the erection of an Outrigger Hotel Resort and Tavern and associated retail shops on proposed Lot 70 created by that subdivision. The development history and background of this site is detailed in the report for DA02/1422.

DESCRIPTION OF PROPOSED DEVELOPMENT

This application seeks development consent for the following development:

- A resort hotel comprising 334 rooms (213 units);
- A function centre 354m²;
- A tavern, bottle shop, gymnasium and spa (1382m²);
- Retail shops (979m²);
- Provision of 213 undercover car parks for resort guests;
- Creation of a two lot stratum subdivision with a view to further subdividing the resort units and retail area by way of a strata subdivision, following completion of the building.
The strata subdivision of the resort will include a separate lot incorporating housekeeping rooms, maintenance store, function centre, administration area, staff amenities etc.
- A two storey building on proposed Lot 473 comprising a ground floor "emergency services" area for surf lifesaving and temporary sales office on the first floor. The first floor will ultimately become part of the emergency services facility.

A separate and concurrent development application has been lodged for bulk earthworks, subdivision of land to create 473 lots, relocation of Tweed Coast Road and provision of necessary infrastructure. The assessment of this application is included in Item 1 of this business paper.

Filling of the resort lot by an average of 2m is proposed to achieve beach views over the revegetated dunal areas. Filling of the lot and provision of infrastructure forms part of the subdivision application referred to above.

ASSESSMENT

Considerations under Section 79(C) of the Environmental Planning and Assessment Act

(a) (i) Any Environmental Planning Instruments Applying to the Land

Comment

Proposed Lot 170 which will contain the Outrigger Resort development is zoned 2(f) Tourism under the provisions of Tweed Local Environmental Plan 2000.

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The objectives of the 2(f) zone are as follows:

Primary Objective

- *“To encourage integrated tourist development and uses associated with, ancillary to or supportive of the tourist development, including retailing and service facilities, where such facilities are an integral part of the tourist development and are of a scale appropriate to the needs of that development.”*
- *“To ensure that prime sites are developed the best use and fulfil their economic and employment generating potential for the area”.*

Secondary Objective

- *“To permit high quality, residential development as being integral and supportive of the primary intent of this zone (tourist orientated development) in terms of design and management structure and only at a scale which enhances the proposed tourist resort character.”*

The landuse table in Clause 11 permits, with consent, development for the purpose of hotels, motels, tourist resorts and tourist accommodation. It is considered that the proposed Outrigger Resort development is consistent with the primary objectives of the 2(f) zone and is permissible with consent under the provisions of the LEP.

The development of the resort is an integral part of the overall masterplan for the site and provides a mechanism, under the LEP, to allow for the subdivision of residential allotments. Schedule 3 of Tweed LEP 2000 permits the development of residential dwellings on the subject site subject to the number of rooms in any hotel or resort exceeding the number of dwellings approved on the subject site. Therefore, should Council not support the approval of the Outrigger Resort development then it would not be possible for the applicant to subdivide the land for the purposes of dwellings without the submission of another application for a resort.

Availability of Essential Services – Clause 15

Sewer

Development Consent 0856/2000DA was issued by Council on 8 September 2000 for the construction of a sewer rising main from a location in the north-western area of the site, across Cudgen Creek to Cudgen Road and then to the existing rising main in Old Bogangar Road. That consent includes drilling under Cudgen Creek to minimise impacts on riparian areas and adjacent wetlands.

Construction of the rising main in general accordance with the terms of this consent and provision of internal reticulation under the separate subdivision development application will provide adequate sewer capacity for the proposed development.

Council’s Water and Sewer Engineer has reviewed this proposal for the subdivision and is satisfied that adequate services can be provided to all the future allotments including the Outrigger allotment.

As part of this application the applicant requests that Council structure any consent to allow for the early release of the construction certificate for work to commence on the

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Outrigger building prior to the creation of Lot 170. It is normal Council policy that prior to the issue of a construction certificate that all sewer and water services are available to the subject site. This will not be the case with the early release of the construction certificate.

Having regard to the provisions of the LEP which requires Council to be satisfied prior to granting consent for any subdivision of the land, that the number of tourist rooms will always exceed the number of residential dwellings on the subject site, it is essential for the development, to be able to commence construction on the Outrigger building prior to the completion of the subdivision. In fact, it is fundamental that the Outrigger be built prior to the completion of the subdivision so as to allow the subdivision certificate to be released.

This application also seeks the subdivision of the Outrigger building into two stratum lots which will contain the tourist resort component and the commercial retail component on separate lots. Council could impose a condition of consent which requires that all services are available and connected prior to the release of this subdivision. Alternatively, to ensure the interests of Council are protected a bond to the value of the cost of providing these services to the development could be required to be submitted to Council prior to release of any construction certificate for this development.

Water Supply

The existing 200mm dia. trunk water main adjacent to the Coast Road will be relocated to the new road alignment and will provide supply to the site. Reticulated supply will be provided to the resort site under the subdivision application. Similar bonding arrangements or conditions as suggested for the sewer will need to be applied in regard to water.

Power and Telephone

Optus and Telstra cables exist on the eastern boundary and a Country Energy overhead power line traverses the western part of the site. Telstra and Country Energy have advised the applicant that supply can be provided to the development. A separate letter has been provided from Country Energy confirming that adequate supply will be able to be provided to accommodate the SALT development without compromising existing supplies within the Kingscliff area.

Height of Buildings – Clause 16

Under the provisions of Tweed LEP 2000 a three storey height limited applies to the subject site prior to filling. The proposed resort hotel includes a basement car park more than 1.5m above natural ground level and three storey hotel building above the basement. Based on the current definition of “*story*” the building comprises four storeys. The applicant has applied for a variation to this development standard under Tweed LEP 2000 by providing a submission pursuant to SEPP No 1 seeking a variation to this development standard. Under the provisions of this Policy concurrence from the Director-General of PlanningNSW is required. The application has been referred to PlanningNSW requesting this concurrence be granted. Council cannot grant consent to

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the application until concurrence from PlanningNSW has been obtained. Details of the SEPP No 1 submission will be discussed later in this report.

Social Impact Assessment – Clause 17

Clause 17(ii) of the LEP states as follows:-

“Where the consent authority considers that a proposed development is likely to have a significant social or economic impact in the locality or in the area of Tweed, the consent authority may only grant consent to the proposed development if it has considered a Social Impact Statement in respect of the proposed development.”

The subject development will have a significant social and economic impact on the locality and the Tweed area in general. A Social Impact Statement has been prepared and submitted as part of this development application. This statement concludes as follows:

“This statement concludes that the proposed development is likely to result in a significant positive socio-economic impact in the locality and in the Tweed generally subject to appropriate mitigation and management measures identified in Section 8.0. Development of the site will provide sustainable employment, local economic benefits and housing choice, based on a range of lot sizes, in a location that is suitably serviced and conveniently located in relation to the existing community facilities. Approval of the development would be consistent with the Council’s Urban Land Release Strategy (as reflect in the Residential Development Strategy) and would generate contributions towards additional community infrastructure based on the additional demand generated. An estimated 617 full-time equivalent employment positions will be generated during the construction phase. Indirect employment opportunities are estimated at 1,147 positions based on the employment multiplier for the Northern Rivers Construction Industry of 2.3 (CARE 1997) and the report at Annexure A. The development has been designed to achieve social cohesion, high levels of amenity, ecologically sustainable outcomes and positive socio-economic impacts for the community.

The total estimated cost of the development is approximately \$218.5M, including future resort buildings, medium density dwellings and dwelling houses.

The annual contribution to the local economy from the future residential dwellings is estimated \$15M and approximately \$21.2M from the Outrigger Resort Hotel and other resorts.”

From the above Socio Economic Impact Statement provided with the application it is evident that the proposal will have significant positive socio-economic impacts within the region.

Designated Roads – Clauses 22 and 23

Coast Road currently traverses the subject Outrigger site and is a designated road under Tweed LEP 2000. With the construction of the subdivision and creation of the subject Outrigger lot, Coast Road will be relocated to the west and the Outrigger site will not have direct frontage to this road. Issues in relation to the relocation of this road and

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consideration of matters under these clauses, have been considered as part of the subdivision application.

Acid Sulfate Soils – Clause 35

The area which will contain the Outrigger resort is identified as Class 4 Acid Sulfate Soils under Tweed LEP Acid Sulfate Soils Planning maps. As part of the overall application the applicant has prepared a Acid Sulfate Soils Management Plan. This plan has been reviewed by both the Department of Sustainable Resource Management (formerly Department of Land and Water Conservation) and Council's Environment & Health Unit and a number of amendments made to the plan. The plan is now considered satisfactory and satisfies the requirements of Clause 35.

Coastal Erosion Zone 7(f) – Clause 36

Clause 36 states as follows:

- “36 (2) *In determining whether to grant consent to development involving erection of building or the carrying out of work at or above the surface of ground on land that, in the consent authority's opinion may be subject to coastal erosion, the consent authority must:*
- a. *notify the Department of Land and Water Conservation of the proposed development and take into account any comments received from the Department within 21 days of the notification; and*
 - b. *consider the likelihood of the proposed development:*
 - i. *adversely affecting the behaviour or being adversely affected by the behaviour of the sea, or of water in an arm of the sea or any other body of water; and*
 - ii. *adversely affecting any beach or dune or the bed, bank, shoreline, foreshore, margin or floodplain of the sea, any arm of the sea or any other body of water; and*
 - iii. *adversely affecting the landscape or scenic quality of the locality.*

Pursuant to this clause, the application was referred to the NSW Department of Sustainable and Natural Resources for comment. The Department provided the following comments in relation to coastal erosion issues:

“The SALT proposal represents a significant new tourist development adjacent to the Tweed Coastline on a currently undeveloped site. Given the scale and associated investment in the proposed development, the determination of the seaward extent of construction is considered crucial. Tweed Shire Council has recently completed a Tweed Coastline Hazard Definition Study (WBM 2001) as the initial stage in the preparation of a long term coastline management plan for the shire's coastline. The Study indicates that the coastline adjoining the proposed SALT development is subject to the coastline hazards of short term storm erosion, long term shoreline recession and

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climate change including a postulated sea level impact from the greenhouse affect. Appendix D of the Tweed Coastline Hazard Definition Study defines the landward extent of coastline hazard zone for various timeframes based upon the above hazards. The figure D18 of appendix D indicates that the subject property's located landward of the 100 year hazard lines.

In the absence of an adopted Coastline Management Plan for the Tweed Shire coastline, it is recommended that in defining the building setback line the Council consider:-

- *coastline hazard impacts including climate change and the need to accommodate natural shoreline fluctuations in the long term without demands for future protection and associated beach restoration works.*
- *the provision of public foreshore access requirements in perpetuity.*
- *Maintenance of natural aesthetic quality including the potential visual impact of development as viewed from the foreshore and beach and the uncertainties arising from future conditions that requires a risk adverse or precautionary approach to decision making.”*

The WMB Study referred to in the NSW Department of Sustainable Natural Resources comments is the latest technical information which is available for Council in making decisions. In reference to the Department's comments, it is acknowledged that the subject development is landward of the 100 year hazard line defined by this Study. Based on this Study, it is considered that the proposal is acceptable.

Archaeological sites – Clause 44

Clause 44 of the LEP requires Council to have consideration for whether a site is likely or known to contain either aboriginal archaeological sites or non-aboriginal heritage significance. The applicant has undertaken an archaeological assessment of the subject site which has been referred to NPWS for comment. This report identified no archaeological sites within the subject land. NPWS have advised that they are satisfied with this Study. Notwithstanding this, a condition of any consent should make reference to the applicant's requirements and obligation should such a site be discovered during earthworks.

State Environmental Planning Policies (SEPP)

SEPP No 1 – Development Standards

As previously mentioned the subdivision application creating Lot 170 proposes earthworks on the site which will raise the levels of the land by approximately 2m over the Outrigger site to permit views to the ocean to be obtained. The proposed Outrigger building contains a basement car parking area and three storeys of development above this. The basement will extend more than 1.5m above natural ground level and therefore, by definition of a “storey” under Tweed LEP 2000 the building constitutes four storeys. The applicant has submitted a SEPP No 1 objection to this standard seeking a variation to the three storey standard. In support of this submission the applicant states as follows:

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“The term storey is defined in the LEP as follows ‘means:

- a. the space between two floors, or*
- b. the space between the floor and any roof immediately above it, or*
- c. foundation areas, garages, workshops, storerooms and the like, where the height between natural ground level and the top of the floor immediately above them is 1.5m or more.*

For the purpose of counting the number of storeys in a building, the number is to be the maximum number of storeys of the building which may be intersected by the same vertical line, not being a line which passes through any wall of the building’.

Identifying the natural ground levels where sites are filled/or earthworks are carried out (as has been the case at Casuarina Beach) at the development application stage for future dwellings, is difficult. To assist in resolving this issue, council has resolved, pursuant to Section 54 of the Act, to prepare a draft Local Environment Plan amendment to vary the definition of storey and to include other provisions as follows:-

- *“The definition for building height be amended to reflect ‘finished ground level’ rather than ‘natural ground level’.*
- *A definition of finished ground level be introduced as follows:*
 - a. where land is within an area designated by the council as flood liable land, the adopted design flood level adopted by Council; or*
 - b. where land is not within such a level, the level of the land (after earthworks) as approved by the Council, or where no earthworks are proposed, the natural ground level of the land.*
- *The definition of storey be amended to read:*
 - a. the space between two floors, or*
 - b. the space between the floor or any ceiling or roof immediately above it, or*
 - c. foundation areas, garages, workshops, storerooms and the like, where the height between finished ground level and the top of the floor immediately above them is 1.5m or more.*

A storey which exceeds 4.5m is counted as two storeys”.

Gazettal of the Amendment will assist in resolving the current issues, however given the uncertainty of timing of gazettal of the amendment, this development application is accompanied by the following SEPP No 1 Objection addressing the current requirement to calculate the number of storeys from natural ground level.

It is submitted that the development standard limiting buildings to 3 storeys in height measured from natural ground level is unreasonable and unnecessary for the following reasons:-

- *Council has resolved the definition of the term “storey” such that it is measured from finished ground level;*

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- *Filling of the site by an average of 2m and the erection of a 3 storey building above finished ground level is essential to achieve beach views from the hotel rooms. If beach views cannot be provided from the rooms, the resort hotel will not be developed and the entire project will not proceed because of negative economic impacts;*
- *The building has been designed with ‘east/west’ wings to minimise overshadowing and reduce the scale of the building façade presented to the foreshore area. Also, the building design reduces visual impacts from the beach and minimises the bulk and scale of the structure (see application plans);*
- *That part of the structure with a “north/south” axis is setback approximately 60m from the eastern property boundary and approximately 200m from the beach to eliminate visual and shadow impacts from the building;*
- *It is submitted that upholding of the objection would be consistent with the aims of the Policy in that strict compliance with the 3 storey height limit will preclude the development of a viable and functional resort on the site. In addition, upholding the objection would also be consistent with the objects of the Act in that it will promote the social and economic welfare of the community, achieve a better environment through rehabilitation of adjacent public land and promote the orderly and economic use and development of the land for a purpose which creates sustainable employment opportunities.”*

The Director-General of PlanningNSW has been requested to grant concurrence for the variation of this development standard pursuant to SEPP No 1. Concurrence is yet to be granted by the Department for this variation. Council cannot grant a consent for this application until concurrence has been received.

A further SEPP No1 submission has been made in reference in Clause 32(B)(4) of the North Coast Regional Environmental Plan (NCREP). This clause states as follows:-

“That Council shall not consent to the carrying out of development –

- a. On urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out of development would result in beaches and adjacent open space being overshadowed before 3pm mid-winter (standard time) or 6.30pm mid-summer (daylight saving time); or”*

The applicant has submitted:

“The NSW Coastal Policy contains, at Table 3, a strategic action in relation to beaches and waterfront open space, which is referred to in Clause 32(B) of the NCREP. The principle contained in the Coastal Policy is that:

‘Beaches and waterfront open space will be protected from overshadowing. The standard to be applied will vary according to local circumstances, however, generally the standard to be applied is:-

- *In cities or large towns, no overshadowing before 3.00pm mid-winter and 6.30pm summer daylight saving time.*

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- *Elsewhere, no overshadowing before 4.00pm mid winter and 7.00pm mid summer daylight saving time.”*

The policy contains a note relating to this standard which states that:

“The suggested standard in this principle may be difficult to apply in highly urbanised environments. An LEP or DCP which is tailored to local conditions and which has the overriding objection of minimising overshadowing may be required in these situations.”

It is apparent from the note to the Policy that it is difficult to achieve the objective of nil overshadowing of waterfront open space or beach areas in urban environments and it is therefore submitted that strict compliance with this development standard is not appropriate in the circumstances of this case.

It is submitted that upholding of the objection would be consistent with the aims of SEPP No 1 in that strict compliance with the beach and waterfront shadow restrictions would preclude the development of a viable and functional resort on the site. In addition, upholding the objection would also be consistent with the objects of the Act, in that, it will promote the social and economic welfare of the community, achieve a better environment through rehabilitation of adjacent public land and promote the orderly and economic use and development of the land for a purpose which creates sustainable employment opportunities.”

Concurrence of the Director-General of PlanningNSW is also required to vary this development standard under SEPP No 1. Concurrence is yet to be granted by the Department for a variation of this standard. Council cannot grant consent until concurrence has been received.

SEPP No 11 – Traffic Generating Developments

Under the provision of SEPP No 11 this application was required to be referred to the Regional Advisory Traffic Committee of the RTA for consideration. No objections were raised to the proposal on traffic grounds by this committee and their comments are detailed under the consultation section of this report.

SEPP No 44 – Koala Habitat

Clause 9 of this policy provides that before a Council may grant consent to a development application for consent to carry out development on land to which Part 2 of the Policy applies ie that it is satisfied is a core koala habitat, there must be a Plan of Management prepared in accordance with Part 3.

Clause 13 of this policy provides that the Plan of Management must be approved by the Director Urban Affairs and Planning.

The eight part test report submitted with the Masterplan application, which also covers this site, prepared by Aspect North concluded that there is no core koala habitat on the subject site and therefore a management plan is not required.

North Coast Regional Environmental Plan (NCREP)

NCREP applies to the subject development. The following clauses are relevant to the subject application:

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Clause 32B – Coastal Lands

This clause is in the following terms:

- “2. *In determining an application for consent to carry out development on land to which the coastal policy applies, the Council shall take into account –*
 - a. *The NSW Coastal Government Policy*
 - b. *The Coastline Management Manual*
 - c. *The North Coast Design Guidelines*
3. *The Council must not consent to carrying out of development, which would impede public access to the foreshore area;*
4. *The Council must not consent to the carrying out of development –*
 - a. *On urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out of development would result in beaches and adjacent open space being overshadowed before 3pm mid-winter (standard time) or 6.30pm mid-summer (daylight saving time; ...”*

Comment

NSW Coastal Policy, 1997

Relevant matters for consideration under the Coastal Policy are addressed under Section 79(C)a.(1b).

Coastline Management Manual, 1990

In accordance with the requirements of this manual, Tweed Shire Council has prepared a Coastline Hazard Definition Study, but as yet has not finalised preparation of a Coastline Management Plan. Issues in regards to coastal erosion and coastal development are addressed in other sections of this report.

North Coast Design Guidelines

These Guidelines deal largely with the built form of buildings along the NSW coastline and provide guidelines for their design and siting. Consideration has been given to these guidelines in development of the Outrigger development so as to minimise the impact of the building on the coastline. The subject site is not located on a coastal headland, however will be visible from the beach due to its overall height. Through consultation with local community groups, the developer has agreed to remove the topmost turrets of the building which formed part of the original design, reducing the building by approximately 1.5m to 2m in height at the eastern most point of the building. This assists in reducing the overall visual bulk and mass of the building when viewed from the beach. In addition the building has been designed so as to minimise the frontage directly adjacent to the eastern boundary of the property. Considering the size and scale of this building the design is considered acceptable in terms of minimising the impact on the coastline.

Clause 32B (4)(b) of the NCREP requires that Council shall not consent to development which overshadows a beach or coastal foreshore area.

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The outrigger building will result in approximately 6,577m² of this area being overshadowed prior to 4.00pm mid winter and prior to 7.00pm mid summer approximately 13,250m² of the foreshore area. As previously mentioned the applicant has lodged a submission under SEPP 1 to vary this development standard.

PlanningNSW has is required to grant concurrence for the variation to this development standard to allow overshadowing on the foreshore area. Concurrence is yet to be granted.

Coastal Lands – Clause 33

Clause 33 states as follows:-

“Before granting consent to development on land affected or likely to be affected by coastal processes, the Council shall:-

- a. take into account the Coastline Management Manual*
- b. require as a condition of consent that disturbed foreshore areas be rehabilitated and*
- c. require as a condition of consent that access across foredune areas be confined to specific points”.*

As discussed above the Coastline Management Manual has been taken into account in considering this application. The applicant has provided a management plan which details public access and proposes the rehabilitation of the foreshore area. A condition of consent has been recommended on the subdivision consent requiring the implementation of this management plan. A similar condition is required to be imposed on this consent.

Director’s concurrence for tall buildings – Clause 51

Clause 51(2) states as follows:-

- “2. The Council shall not, without the concurrence of the Director, grant consent to a development application for the erection of a building over 14m in height.*
- 3. In deciding whether to grant concurrence to a development application in respect to development referred to in sub-clause 2, the Director shall take into consideration the likely regional implications of the development as regards its social, economic and visual affect and the affect it will or is likely to have on the amenity of the area.”*

This application has been referred to PlanningNSW seeking the Director’s concurrence for exceedence of the 14m height limit specified in this Clause. The maximum height of the building above natural ground level is proposed to be 22.175m.

Whilst parts of the building exceed the 14m height limit claimed, the design of the building is such that its bulk, scale and visual impact from the beach is reduced by designing the building incorporating three wings on a east/west axis and setting back the main north/south axis of the building some 60m from the eastern property boundary. The Director-General is yet to grant concurrence for exceedence of this 14m height

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provision under the REP as Council cannot grant consent until concurrence has been received.

Tourism Development – Clause 75

Clause 75 states as follows:-

- “1. *That council must not consent to tourism development unless it is satisfied that:-*
 - a. *adequate access by road, railway or water transport (or any combination of them) exists or will be provided to service the development, taking into account the scale of the development proposed; and*
 - b. *if the proposal involves permanent residential accommodation, all social and community services reasonably required by those residents, exists in close proximity to the development; and*
 - c. *the development will not be detrimental to the scenery or other significant features of the natural environment; and*
 - d. *reticulated water and sewerage are available or arrangement satisfactory to the Council have been made for the provision of those facilities.*
2. *In considering an application for consent to tourism development, the council must have regard to principles contained within the tourism development along the NSW Coast Guidelines.*
3. *That council must not approve an application for large scale resort development unless it is within or adjacent to a prime tourism development area or adequate urban services are available”.*

With the construction of the subdivision adequate access by road and bus services will be available to the subject resort. The development will result in some impacts on the coastline as it will be partially visible from the beach, however, it is considered the design of the building and future vegetation in front of the building combined with the setback from the coastline will minimise these impacts. Reticulated water and sewer services will be available to the development. It is also considered that the development is generally consistent with the principles contained in the tourism development along the NSW Coast Guidelines. In terms of its location the subject site has been identified as a prime tourism site reflected in the 2(f) zoning of the land.

Clause 81 - – Development Adjacent to an Ocean or a Waterway

Clause 81 states as follows:-

- “1. *That Council shall not consent to a development application for development on land within 100m of the ocean or any substantial waterway unless it is satisfied that:-*
 - a. *there is sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development;*
 - b. *buildings to be erected as part of the development will not detract from the amenity of the waterway; and*

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- c. *the development is consistent with the principles of any foreshore management plan applying to the area”.*

The SALT development as a whole proposes to dedicate all 7(f) land in private ownership as public open space along the foreshore and embellish this area with access paths and cycleways for public use. As previously discussed it is considered that the design of the building minimises the impact when viewed from the beach and that future vegetation as part of the rehabilitation works, will assist in screening the building. A Foreshore Management Plan has been prepared and the development will be required to be undertaken in accordance with this management plan.

(a) (ii) The Provisions of Any Draft Environment Planning Instruments

Council has recently resolved to prepare a draft LEP to amend the definition of storey under the existing Tweed LEP 2000. This new definition proposes that a storey be measured from the finished surface level and that any storey exceeding 4.5m from ceiling to floor will constitute two storeys. This draft LEP has no major implications for this proposal except as to make it more compliant in that the first storey would be measured from the finished ground level rather than the existing natural ground level.

(a) (iii) Development Control Plans (DCPs)

Development Control Plan No. 2 (DCP 2) – Site Access and Parking Code

DCP 2 applies to the subject development and specifies certain parking rates for various components of the development. The following is a summary of the DCP 2 parking requirements for each component of this development:-

DCP2 Parking Requirements

Landuse	Requirement	Number required
Tourist Resort (213)	1 per unit + 0.5 plus 0.5/staff plus bicycle parking at ½ car parks	213 + 5 (10 staff) Total car parks = 208 Bicycle – 109 spaces
Function Centre (384m ²)	1/15m ² floor area plus 0.5/staff Bicycle max 10 spaces)	26 + 5 (10 staff) Total carparks = 31 Bicycle – 10
Bottle Shop (84m ²)	4/100m ² (including staff) 2/100m ² (Bicycle)	3.36 carparks 2 bicycle

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Tavern/Restaurant (1298m ²) (50% restaurant – 50% Tavern)	1/3.5m ² licenced floor area (tavern) 1/7m restaurant 0.5/staff Bicycle 1/4 car parks	185 + 98 + 5 (10 staff) Total = 288 car parks Bicycle – 34 spaces
Retail (979m ²)	4/100m ² (including staff) Bicycle 2/100m ² up to 100m ² then 1/200m ²	39 car parks 6 bicycle spaces
Total requirement		570 car parking spaces 161 bicycle spaces
Total requirement with 20% reduction for commercial ESD		498 spaces required

From the above analysis the Outrigger development generates a demand for 498 car parking spaces under provisions of DCP 2 and the provision of 161 bicycle spaces. Provision for 370 car parking spaces have been provided for the Outrigger site of which 213 are provided in a basement car parking area below the building, 57 spaces in a at ground level car parking area to the rear of the Outrigger building and 96 spaces in front of the Outrigger building which will also be available to the public. The applicant has indicated a further 10 spaces can be provided in the forecourt area. Therefore the proposal has a shortfall of 122 car parking spaces or approximately 25%.

The application seeks a parking relaxation. This relaxation is based on a report from Eppell Olsen & Partners, Traffic Engineers. The submission states as follows:-

“Assumptions regarding cross-utilisation and differing peak park periods between land uses, and associated reduction in parking demand is demonstrated in Table 9.2.

Land use	Required Parking*	Relaxation#	Peak Parking Period	Justification	Recommended spaces
<i>Resort</i>	<i>218 (5)</i>	<i>Nil</i>	<i>N/a</i>	<i>N/a</i>	<i>218</i>
<i>Function Centre</i>	<i>31 (5)</i>	<i>50%</i>	<i>Various</i>	<i>Cross Utilisation. A large percentage of trips will be generated by guests of the resort who have been included in unit parking requirements</i>	<i>18</i>

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<i>Bottleshop</i>	28 (3)	50%	<i>Evening</i>	<i>Cross utilisation with resort and beach visitors. Local residents will be a large client base. All these customers already have their parking needs accommodated for</i>	16
<i>Tavern</i>	135 (5)	50%	<i>Weekends/Night</i>	<i>Shared parking can occur with beach parking due to differing peak parking periods. Local residents will be a large client base</i>	70
<i>Retail</i>	39 (5)	25%	<i>Day</i>	<i>Cross utilisation with beach and resort visitors. Local residents will also be a major customer base</i>	31
<i>Beach</i>	200	<i>Nil</i>	<i>Weekends/Day</i>	<i>N/a</i>	200
Total	651				553

* Amount in brackets is the number of staff vehicle parking spaces included in the total

Not including staff parking requirements

The provision of 553 (including 200 public) parking spaces will adequately provide for the average demands of the proposed development. The assumptions utilised herein are considered to lead to a conservative supply number for the following reasons:-

- It will be rare that the resort will be 100% occupied during normal periods. Spaces reserved for the units of the resort that are not occupied at various times, can therefore be used by staff working in the centre;
- The peak demand times of the land uses within the development are varied with only the Tavern and bottle shop and beach and retail services sharing similar peak periods. A large amount of sharing of the combined parking spaces is therefore anticipated to occur;
- The use of 'green' travel modes will be encouraged by development form (including the residential portion) particularly for local trips. The residential areas of Kingscliff Resort development are located around the community precinct and connected to the precinct by quality and convenient cycleway and footpath networks.

Of particular relevance to parking requirements for this development is Section 4 of the Tweed Heads DCP 2 which states:-

'In order to support the strategic plan, esd and reduce car dependence principles of this plan, the car parking requirements for all categories of development for customer and staff parking may be reduced to 80% of the generation rate shown in Table 1 Section 4.11)''.

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It is agreed that due to the nature of the development there will be cross-utilisation of parking demand generated by the development during varying peak periods. Section 2.3 of DCP provides relaxations to be granted subject to a detailed traffic and parking impact study being submitted with the application. The Eppell Olsen report satisfies this requirement and appears to demonstrate that a reduction in carparking for the Outrigger Resort Development can be justified. It should be noted however, that the 20% concession based on ESD principles would only apply to the commercial component of the development and would result in a reduction in carparking required by 71 spaces. This would still leave a shortfall of 122 spaces.

The plans submitted with the application makes provision for bicycle parking in the basement as required under DCP 2 however this will not be accessible to the general public visiting the site. A total of 161 spaces are required under this plan which would appear excessive and has been acknowledge as excessive in the assessment of other applications. It is recommended that an additional 50 spaces be located in proximity to the retail/tavern precinct of the development. A condition of consent should require the provision of these spaces.

Draft Development Control Plan No. 8 – Development of Land Liable to Coastal Erosion

This Development Control Plan remains in draft form, however Council has historically taken it into account when assessing development applications.

Plan No 8(E1) of the Development Control Plan indicates that the immediate impact zone and 100 year impact line are located west of the seaward property boundary. The existing 7(f)/2(f) zone boundary is located west of the 50 year erosion line.

The recently completed (Tweed Coast Hazard Definition Study) indicates that coastal land recession rates have stabilized with the 100 year hazard line seaward of the subject allotment which contains the Outrigger development. Dedication of the 7(f) zoned land (up to 20m wide) is proposed in front of the Outrigger, together with dune rehabilitation works.

These soft measures are consistent with the provisions of the Draft Development Control Plan, the Coastline Management Manual and good environmental engineering practice and will further minimise risks of damage to development due to coastal processes.

Development Control Plan No. 39 – Energy Smart Homes

Compliance with this Plan is not mandatory for tourist resort hotels. However, the design of the Outrigger development has had regard to these principles.

Development Control Plan No. 45 – Social Economic Impact Assessment

This Plan requires the preparation of a Socio-Economic Impact Statement for developments such as this. A Socio-Economic Impact Statement has been prepared in reference to this development and has previously been discussed.

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(a) (iv) **Any Matters Prescribed by the Regulation**

NSW Coastal Policy, 1997

The subject land is located within 1km of the coast line and is therefore covered by the NSW Coastal Policy and Council must have regard to this policy in determining this application. Issues in relation to the Coastal Policy in the overall development including the Outrigger development have been previously considered as part of the assessment of the subdivision application DA02/1422. Comments provided in that assessment are relevant to the assessment of this application. Council should have regard to these comments in determining this Development Application.

Crime Prevention

The design of the subject development will result in overlooking of public carparking areas adjacent to the central park area as well as over the park area. This provides surveillance of these public areas from residents occupying the resort. In addition to this, the resort and its' design provides for overlooking of the recreation facilities contained within the resort grounds and also over the foreshore area. These design features will assist in discouraging crime within the immediate locality.

(b) **The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

Built Form

The built form of the Outrigger primarily comprises seven separate buildings which are physically connected to allow movement throughout the development. There is a central north-south axis which is set back approximately 60m from the front boundary with three wings coming off this access to the east and two wings to the west. The building contains a basement carparking area with 3 storeys on top of the basement. The building height from the existing natural ground level to the ridge height of the roof ranges between 15.5m in the case of the main buildings and up to 22m where architectural turrets are provided on the building. The buildings have significant articulation providing an interesting building form with limited blank walls. This building will form a significant landmark within the development site. It will also provide for a central focal point for the overall development.

It is considered that the building form considering the size of the site is acceptable, particularly having regards to the economic/employment benefits which will flow from this development.

Overshadowing

The development will not result in any significant overshadowing of adjoining development as it is largely bordered by either parks, public carparking or the road network. The building however will result in overshadowing of public open space and beach areas to the east particularly in the later afternoon. PlanningNSW is required to grant concurrence for a variation of Clause 32(B)(4) of the North Coast REP which controls overshadowing of coastal foreshore areas. Concurrence is yet to be granted from PlanningNSW. Notwithstanding this, in context with the overall available land

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along the beach frontage, the extent of overshadowing is considered acceptable having regard that there will be limited other sites along the coastal strip where buildings of such size will be permitted. All the residential development proposed will be limited to two storeys in height above the finished fill level which will result in minimal overshadowing of the foreshore area. It is considered that the enjoyment of the foreshore open space and beach will not be significantly affected by the amount of overshadowing which will result from the Outrigger Resort.

Affect on Landscape/Scenic Quality of the Locality and Design

The proposed development is on relatively level land with finish levels ranging up to approximately RL9.5m AHD.

A scenic evaluation report was commissioned by Council in 1994 and carried out by Catherine Brower (Landscape Architect). This report assessed the land to which the application relates as having high scenic quality and located mainly in scenic management zone A. This scenic evaluation report indicates that scenic landscape management zone A is assigned to:

“those areas where the highest visual quality and sensitivity coincide. These areas are of critical scenic value to the Shire and the most vulnerable to loss of that value with change. They are recommended for maximum protection of their visual landscape values and features.”

Within zone A, landscape alterations only with minimal impact with no apparent visual disturbance are allowed.

Any form of development on the site consistent with the zone objectives and Council's desire to promote sustainable employment generating development in this locality will, inevitably, have an impact on the landscape and scenic quality of the area. While the site is visible from Kingscliff Hill and the Duranbah ridgeline in particular, it nevertheless has limited intrinsic scenic value because of its' relatively flat terrain and vegetation types.

It is difficult now, based on the zoning of the land to prohibit development of the land based on this study. If Council had adopted this study and implemented the recommendations the land would have most likely been zoned environmental protection with the amendment of LEP 2000 to restrict urban development occurring in this area.

Access, Transport and Traffic

Council's Traffic Engineer has reviewed the proposal and provided the following comments:

“The above DA was lodged in conjunction with the SALT subdivision application where many issues which relate to this DA were considered such as the access road network and traffic capacity.

The first requirement for this DA is that it is not to operate until the conditions of subdivision approval, if granted, are complied with.

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In terms of access and road capacity, the traffic generated by the development can be accommodated by the surrounding road network as demonstrated in the traffic report.

The proposal is to have all the parking for the commercial component of the resort and public beach parking as a single public carpark in the plan. This is unacceptable as it transfers the maintenance and upgrade costs of the 137 space car park to Tweed Shire when it should be the owner of the resorts' responsibility. This can be easily overcome by making the area shaded on the attached sketch a private car park attached to the resort (as for any other shopping complex).

This will also assist the loading dock access via this car park which is not acceptable in a Council public car park.

It should be noted that the proposed loading dock access is technically adequate, there may be planning issues that result in the dock being relocated such as continuity of street frontage from a visual and pedestrian impacts. These are planning issues and as such the suitability of the loading dock to the area is to be determined by Council's Development Assessment Unit.

The parking relocation request appears to be logically based with peak demand for various uses occurring at different times. It is a matter for the Development Assessment Unit to determine if this is acceptable in terms of DCP 2.

The TRCP applies to the development and the currently exhibited rate for the new resort category should be applied".

In response to these concerns and particularly the location of the commercial parking spaces, the applicant has amended Lot 170 which contains the Outrigger resort to incorporate 96 of these public car parking spaces within the resort lot and provide a public right of way over these spaces and access isles to allow public access and usage. A loading dock is proposed on the northern side of the Outrigger building and will be accessed, with the amendment to the plan, from wholly within the Outrigger site. The design of the loading dock area allows for a semi-rigid vehicle to wholly stand within the loading area without obstructing pedestrian movement along the footpath.

Eppell Olsen and Partners have provided a further report justifying the suitability of this loading area and waste disposal refuge area.

Utilities

It is proposed to provide both reticulated water and sewer services to the subject development. This issue has been discussed previously in this report.

Country Energy have also indicated that they are capable of providing adequate electricity services to the development without affecting other residents within the Kingscliff locality.

Flora and Fauna

As part of the assessment of the overall SALT development which includes the Outrigger allotment, Aspect North undertook a detailed 8 part test or assessment of flora

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and fauna impacts pursuant to Part 5A of the Environmental Planning and Assessment Act. This assessment concluded that the subject development would not result in any significant impacts on flora or fauna.

Natural Hazards

The Outrigger site is currently above the 1 in 100 year flood levels and will be further filled to approximately RL9.5m AHD. The site is also clear of contaminated material which exists on the western portion of this site. In terms of bushfire risks, NSW Rural Fire Service have provided general terms of approval which would need to be applied to this application.

Social and Economic Impacts

The proposal for the development of this prime tourism site as an integrated tourist resort is likely to lead to a social and economic impact having regard to the attributes of the site, its' location in relation to the Shire and the long term planning intention for the site and potential significant employment generation and sustainable economic benefit for the Shire.

Cumulative Impacts

The cumulative impacts associated with this development largely tie in with the overall development of this site and the development of the coast south of Kingscliff. With the development of this area comes additional demand on community facilities and services needing to be provided by Council and potential environmental impacts such as the clearing of native vegetation and water quality issues. It is considered that the SALT development as a whole has satisfactorily addressed these issues by proposing best practice stormwater management for principles, facilities within the development and in proposing to rehabilitate both riparian and foreshore areas. It is also proposed to plant approximately 30,000 banksias to compensate for approximately 709 stems lost as a result of this development.

(c) The Suitability of the Site for Development

The land is zoned 2(f) Tourism and with its' close proximity and access to the beach and its' relatively flat grades it is considered suitable to accommodate the proposed development.

(d) Any Submissions Made in Accordance with the Act or Regulations

The three applications which make up the overall SALT development were placed on exhibition concurrently and were advertised in accordance with the relevant legislation. Many of the submissions received were submissions in response to the overall development which included comments on the Outrigger Resort along with many other issues in association with the overall development. These issues have been summarised as part of the assessment of DA02/1422 for the subdivision of the subject site. In considering this application, consideration should be given to the submissions summarised in that report and the comments provided in response to these submissions.

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Government authorities

The following public authorities were consulted:

- National Parks and Wildlife Service (NPWS)
- Department of Sustainable and Natural Resources (DSNR)
- NSW Rural Fire Service (Approval Authority)
- PlanningNSW (Concurrence Authority)

NPWS provided a response to both DA02/1422 (subdivision) and DA02/1423 (Outrigger) under one cover. NPWS's response has been discussed in the assessment of DA02/1422.

DSRM provided the same response to both the subdivision and Outrigger development application. Their response has also previously been discussed in the assessment of DA02/1422.

NSW Rural Fire Service are required to grant general terms of approval under the Rural Fires Act 1997 as the subject land is identified as having a low hazard fire risk under Council's Bushfire Risk Maps. General terms of approval have been granted and are included as recommended conditions of consent.

Concurrence from PlanningNSW is required for the variation in the 3 storey height limit, exceedence of 14m in height and overshadowing of the foreshore areas. Concurrence is yet to be granted by PlanningNSW. Should Council support this application then it would need to be subject to concurrence being received.

(e) Public Interest

The SALT development will provide significant benefits to the community through the creation of approximately 540 full time jobs and the injection of an estimated \$45.45 million into the local community each year. During the construction period 617 jobs will be created directly and 1147 indirectly. The Outrigger Resort and other resorts will be the major economic contributions to the local community.

The development will also result in the rehabilitation of the dunal area and riparian area fronting Cudgen Creek. Formal accesses are to be provided to the beach with associated public car parking.

A wide range of housing choice will be provided with the plan making provision for a mix of medium density and detached dwelling allotments of varying size.

The proposal is consistent with Council's Strategic vision for this site as reflected in Tweed Strategic Plan 2000+.

In conclusion it is considered the proposal is in the public interest.

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1c. ORIGIN: Development Assessment Unit

FILE REF: DA02/1748

REPORT TITLE:

Development Application DA02/1748 for the Construction of a Pipeline for the Transportation of Fill from the Action Sands site to the SALT development

Reports from Director Development Services

REPORT:

Applicant: South Kingscliff Developments Pty Limited
Owner: Various owners
Location: Lots 8 and 9 DP 830659, Lot 57 DP 755701, Lot 33 DP 7482, Lot 13 DP 868620, Lots 1 and 3 DP 803772, Lot 12 DP 873604 and Lot 490 DP 47021, Unknown Road Reserve, Pacific Highway Road Reserve, Chinderah Road Reserve, Cudgen Road and Cudgen Creek, Chinderah (Action Sands) to Kingscliff (SALT site)
Est Cost: \$400,000.00

DESCRIPTION OF THE PROPOSAL

This application DA02/1748 forms the third application to facilitate the construction of the SALT development at South Kingscliff. Approximately 750,000 cubic metres of clean sand fill is required to be delivered to the SALT site to achieve the project objectives. It is proposed that this material will be pumped from Action Sands at Chinderah. The material brought to the site will be placed hydraulically from the end of pipe and moved into final position by earthmoving equipment. This application seeks development consent for the pipeline for the transport of the fill material to the site.

The transport operation will require the construction of a mostly aboveground delivery pipeline extending from Action Sands processing site at Chinderah Bay Drive to the SALT site on the Coast Road at South Kingscliff. The pipeline will consist of 400mm dia steel pipe, brought to site in 6m to 9m lengths and welded *in situ* using a sleeve arrangement. Concrete blocks will be used for hold-down purposes where required, but the dominant element of the installation is the placement of a pipe on ground. The pipeline is to carry a sand/saltwater slurry, generally containing 30% sand by weight. Apart from the initial pump setup, a number of diesel fuelled booster pump stations will be required along the pipeline route to deliver the required flow.

The proposed route of the pipeline is shown in Figures 1 and 2 below.

The applicant states that the key elements of the pipeline installation are:

- *“Owner’s permission has been obtained for all lands which will be crossed by the pipeline, and relevant statements are included with the application.*
- *The route avoids disturbance of existing vegetation in all areas except for a small distance at the eastern boundary of the TAFE College where some non native vegetation will be cleared to facilitate placement.*
- *Trench crossings will be required at two locations, on Chinderah Road and Cudgen Road respectively. While traffic control will obviously be required for these installations, it is likely that work can be completed out of hours with virtually no inconvenience to road users.*
- *The route avoids any disturbance to the bed or banks of Cudgen Creek and does not have any impact on existing SEPP 14 Wetland areas located in the vicinity.”*

The sand material to be used for the filling process will be obtained from the Tweed River under existing Action Sands approval issued in 1991. The application seeks 24 hour operation of the pipeline. The existing consent for sand extraction from the Tweed River restricts the hours of the

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operation from 7.00am to 6.00pm Monday to Friday, and 8.00am to 1.00pm on Saturday, with no work on Sunday. Should Council support a 24 hour operation then this existing consent would need to be separately amended to facilitate these extended hours. In addition, there is a question over whether the EIS for the Action Sands site envisaged volumes proposed as part of this application being extracted from the river in any twelve month period. No limits are contained as conditions of consent. The applicant would need to satisfy himself that the required volumes of sand are available under the current consent or alternatively, this consent would also need to be amended to increase volumes over the period desired. It is noted that the existing EPA licence places limits of 100,000 cubic metres per annum. This licence would need to be amended.

TREATMENT OF DREDGED MATERIAL AND FINAL QUALITY

The applicant states as follows:-

“The material which Action Sands removes from the river has been subject to detailed and ongoing analysis by both internal and external agencies. At present, the dredged sand is subject to a number of screening, washing and slicing processes prior to its available for sale.

Following an initial screening to remove oversized material, the residual sand and silt is processed by an uplift washing process which is highly efficient at removing finds. The sand is then pumped to holding basins on site, where excess water and silt is drained under simple hydraulic placement.

Grading information provided by Action Sands shows the final sand product has less than 1% of material under 75ums. In terms of Acid Sulphate, the majority of pyrite particles occur in the range from about 5 to 40ums. with a median diameter of 20ums. Consequently the treatment process is expected to be efficient at removing ASS and PASS material.

Acid Sulfate testing on final material shows residual SPOS concentrations of about 0.03% to 0.04% which is in line with expectations and experience with other sluiced treatment operations. It is noted that the action limit for treatment of Acid Sulfate soils is 0.03% and that these materials therefore have an Acid Sulfate potential.

However, acid trial testing shows that the samples exhibit no actual or potential acidity, and the reason for this is apparent. The dredged material has a reasonable amount of shell present within the matrix. The shell is composed of calcium carbonate which is an effective neutralising agent for acids. Following screening and processing, the shell concentration in the final mix is more than adequate to neutralise any residue acid potential in the sand. The acid trial for the washed sand universally shows negative acid generation potential.

Consequently, it can be concluded that the material which will be pumped to site by Newman Contractors will contain only a very small concentration of fine silt material, and will have no acid sulfate potential. It is therefore expected that no further treatment of the placed material will be required to demonstrate compliance with acid sulfate guidelines. This performance will of course be verified by validation testing, both at the washing facility and on the SALT site.

A significant benefit of the use of the Tweed River sand for the filling process is that it is geomorphologically and chemically identical to the sand which already exists on the SALT site. Placement of this material will therefore not alter drainage characteristics or ecology

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on the site and in the surrounding areas. In particular, the sand will not interfere with the infiltration systems proposed to handle stormwater and water quality on the developed site.”

EVALUATION

Considerations under Section 79(c) of the Environmental Planning and Assessment Act:

(a) (i) Any environmental planning instrument applying to the land

Tweed Local Environmental Plan 2000 (TLEP)

Under the provisions of TLEP 2000 the route of the pipeline passes through various properties that are zoned as follows:-

- 4(a) Industrial
- 1(b) Agricultural Protection
- 1(a) Rural
- 5(a) Special Uses
- 7(a) Environmental Protection (Wetlands) (no works within wetlands as pipe will pass under)
- 2(f) Tourism; and also
- Unzoned Land

The pipeline is for the hydraulic transport of fill material and is not specifically defined within the LEP. It is however considered that as the transport of material is for the purpose of carrying out earthworks on the SALT site, that the use would be considered ancillary to earthworks. The use is permissible with consent in all zones.

State Environment Planning Policies (SEPP)

SEPP No 14 - Wetlands

It is proposed that the pipeline will pass under Cudgen Creek and a small area of SEPP 14 Wetland. Development consent has previously been granted under Consent No 0856/2000DA to under-bore the creek for the purposes of the installation of a sewer rising main. The physical work required as part of this under-bore is proposed to be carried out under the existing consent as part of the sewer rising main works and a sleeve placed under the creek in which the pipeline will be laid through. On completion of the sand pumping activities the pipe will be removed and the sewer rising main placed through the conduit. As the SEPP 14 Wetlands area will not be disturbed by either filling, draining, constructing a levee or excavating the provisions of this plan are not applicable to this application.

SEPP No 71

SEPP 71 came into effect on 1 November 2002. The provisions of this Policy therefore do not apply to this application as it was lodged on 21 October 2002 prior to the commencement of this policy and by virtue of the saving provisions contained in the policy.

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North Coast Regional Environmental Plan (NCREP)

NCREP applies to the subject development and it is considered that the development is generally consistent with the provisions of this policy. Clause 15 of the NCREP is of most relevance in considering this development and states as follows:-

“The council shall not consent to an application to carry out development for any purposes within, adjoining or upstream of a river or stream, coastal or inland wetland or fishery habitat area or within the drainage catchment of a river or stream, coastal or inland or fishery habitat area unless it has considered the following matters:

- a. the need to maintain the quality or quantity of flows of water to the wetland or habitat;*
- b. the need to conserve the existing amateur and commercial fisheries;*
- c. any loss of habitat which will or is likely to be caused by the carrying out of the development;*
- d. whether an adequate public foreshore reserve is available and whether there is adequate public access to that reserve;*
- e. whether the development would result in pollution of the wetland or estuary and any measures to eliminate pollution;*
- f. the proximity of aquatic reserves dedicated under the Fisheries Management Act 1994 and the affect the development will have on these reserves;*
- g. whether the watercourse in an area of protected land as defined in Section 21AB of the Soil Conservation Act 1938 and any measures to prevent soil erosion;*
- h. the need to ensure that native vegetation surrounding the wetland or fishery habitat area is conserved; and*
- i. the recommendation of any environmental audit or water quality study prepared by the Department of Water Resources or the Environmental Protection Authority and relating to the river, stream, wetland, area or catchment”.*

As mentioned previously the pipeline will pass under Cudgen Creek through an under-bore which has been given development consent under a previous development application for a sewer rising main. This previous development consent contained conditions requiring setbacks from the wetland area and the provision of erosion and sediment control. These provisions will ensure the protection of the wetland habitat and fishery habitat. It is considered that the placement of the pipeline under the Creek will have no significant impacts having regard to all the issues raised above.

(a) (ii) Any draft environmental planning instruments applying to the subject land

No draft environmental planning instruments are applicable to the subject development.

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(a) (iii) **Any development control plans (DCPs) applying to the subject land**

No DCPs specifically apply to the subject development.

(a) (iv) **Any matters prescribed by the regulations**

The subject application and the land on which the pipeline will pass over is affected by the NSW Coastal Policy. Considering that the pipeline will be only of a temporary nature it is considered that the proposal is not inconsistent with the provisions of the NSW Coastal Policy. Issues in relation to the actual filling of the SALT site and the provisions of the NSW Coastal Policy are addressed in the assessment for Development Application 02/1422 for the SALT subdivision.

(b) **The likely impacts of the development on both the natural and built environment including social and economic impacts of the proposal**

Ecological Impacts

As part of the application the applicant undertook an ecological assessment of the proposed route. The findings on this assessment may be summarised as follows:-

- The majority of the pipeline route crosses grassed areas;
- No endangered, rare or threatened vegetation communities or species were identified along the route;
- In that part of the route where some removal of vegetation will be required (between the TAFE College and the High School), the dominant species are sugar cane, elephant grass, lantana and castor oil plant. No native vegetation will be affected by these works. The exotic vegetation, primarily weeds, would be cleared below the existing powerlines and the powerline easement utilised for the placement of the pipeline.

The ecological assessment concludes as follows:-

“The assessment of vegetation along the proposed pipeline route did not identify any endangered, rare or threatened vegetation communities, or any threatened species. Introduced grass species and weeds dominate the path of the pipeline and as such impacts on vegetation communities are considered low.”

Water Quality Impacts

In relation to potential water quality impacts, the Statement of Environment Effects submitted with the application states as follows:-

“In areas where trenching is required, appropriate sediment and erosion controls will be implemented. Boosts to pump stations will be energised by diesel engines. Suitable bunding arrangements will be installed at each station to ensure that refuelling operations occur without potential for spillage. Similarly, controls will be imposed at both ends of the directional drilled installation to ensure that materials used in the construction process are fully contained within banded areas.”

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In the very unexpected instance of a pipeline burst, the material being transported is clean sand and saltwater and the minor spillage which would occur will not have a detrimental impact on adjoining areas. The pump system would close down immediately if bursts occurred.

There are considered to be no likely water quality impacts on adjoining areas from the installation or operation of the pipeline”.

Due to the laying of the pipe primarily aboveground with minimal excavation required apart from under Cudgen Creek, under the Chinderah Road, and under Cudgen Road, statements made in the Statement of Environment Effects are agreed with. Appropriate conditions of any approval should ensure the suggested bunding be put in place.

Noise

The applicant states as follows in regards to noise:-

“Construction will generally involve the placement of steel pipes along the route and subsequent welding and hold-down operations. Apart from transportation noise associated with bringing the pipes to the site and unloading them, noise impacts from construction are expected to be minimal. Equipment used for transport and unloading will be no different then might be found in any conventional industry activity, and is therefore unlikely to be of concern to local residents.

All pipe placement operations will take place during normal working hours, ie 7.00am to 6.00pm Monday to Saturday.

The directional drilling operation will involve noise production throughout the drilling duration, which is expected to be up to 8 hours. It is anticipated that the directionally drilling rig will be located on the eastern side of Cudgen Creek, remote from residential premises and the Kingscliff High School. It is not considered that noise from the directional drilling operations will cause a noise nuisance to residential premises or the high school providing that drilling is undertaken between 7.00am to 7.00pm.

A separate Noise Assessment report was undertaken to determine noise levels from the operation of the booster pumps and is included in Appendix B. Noise from booster pumps will be inaudible at noise sensitive places during operation between the hours of 5am to midnight.

Should operation of booster pumps be required between the hours of midnight to 5.00am, it is recommended that high efficiency mufflers of the “critical residential type” be fitted to the booster pump diesels.

It is recommended that booster pump 3 be located equidistant between residential premises along Chinderah Road to minimise noise impact to residential premises at night.”

Council’s Environment Health Officer has reviewed this component of the application and has provided the following comment:-

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“Proposed that pipeline pumping operation operate 5.00am to midnight Monday to Sunday. A noise report is provided. Review of the data provided indicates that background noise levels to increase prior to 6.00am and after 10.00pm. It is suggested that pumping operations be limited to the hours 6.00am to 10.00pm Monday to Saturday. No pumping on Sunday. A management plan is also required which provides for the keeping of a Complaint Register, nominates a responsible person for noise matters, cessation of pumping in the case of complaint and provision for attenuation measures should justifiable complaints be received”.

These restrictions proposed by Council’s environmental health officer should be conditioned as part of any consent.

Access and Traffic Issues

The application identifies that there may be some impact on road users during the construction phase, specifically in relation to trench crossings of Chinderah and Cudgen Roads. However, these operations will be scheduled to take place out of peak hours to minimise any inconvenience. Approval under Section 138 of the Roads will be required for the undertaking of these works. This will involve the submission of a Traffic Control Plan. The requirement for this approval should be a condition of any consent.

The application identifies minimal impact on access to properties will result from the chosen route. Properties on Cudgen Road between the intersection of Chinderah Road and the proposed entry into the TAFE College will be affected. It is proposed that access to these properties will be maintained by either burial of the pipe in the nominated locations or by construction of full ramping over the pipeline. A condition of consent should be imposed requiring that all existing accesses to private property be maintained and at the conclusion of pumping operations these accesses be reinstated.

Decommissioning of the Pipe

At the conclusion of the pumping operation it is planned for the deconstruction of the pipe by oxy-cutting of the pipeline and removal by loading equipment onto trucks. It is proposed that in areas where underlying vegetation has been damaged by placement of the pipeline that it will be replaced and rehabilitated so as to ensure that no erosion occurs.

In the case of trench pipelines under roads it is intended these will not be removed on completion but rather sealed and retained in position. The acceptability of this proposal would be considered as part of the required approvals (Section 138 of the Local Government Act) for works within the road reserves. Conditions may be placed on these approvals which would require the removal of the pipelines. Any consent should be conditioned to ensure that the remediation of any vegetation or damaged areas at the conclusion of the project is carried out to ensure that soil erosion does not occur.

(c) The suitability of the site for the proposed development

The location of the pipeline is mainly on cleared land and will result in minimal disturbance to vegetation. The route also will have minimal interruption to private

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accesses to properties. It is considered that the chosen route is suitable for the subject development.

(d) **Public Submissions**

Government Authorities

The application was referred to the following government agencies as part of the consultation process:

- NSW Coastal Council
- PlanningNSW
- National Parks and Wildlife Service
- Environmental Protection Authority
- NSW Fisheries
- NSW Department of Sustainable Natural Resources (DSNR)

The application was also identified as integrated development as a result of works being required to be carried out within the Pacific Highway road reserve triggering the need for an approval from the RTA under Section 138 of the Roads Act.

Comments in relation to the application were received from the NSW Department of Sustainable Natural Resources, NSW EPA, NSW Fisheries and NSW National Parks and Wildlife Service and the RTA as follows:-

NSW National Parks and Wildlife Service (NPWS)

The following comments were provided from NPWS:

“It is understood that the proposal consists of the construction and operation of a sand pumping pipeline, which would enable approximately 750 000m³ of clean fill sand to be delivered to the Salt development site. It is further understood that the sand will be pumped from Action Sands at Chinderah.

The additional information provided has been reviewed. The following comments are provided to assist Council in its determination of the application.

Natural Heritage

It is noted that the following has been undertaken as requested by the NPWS in correspondence dated 25 November 2002.

- *A search of the NPWS Wildlife Atlas.*
- *A fauna assessment. It is noted that Section 5A assessments have been conducted for the Wallum Froglet, Black-necked Stork, Osprey, Bush hen, Glossy black-Cockatoo, Koala, Common Blossom Bat, Black Flying Fox, Little Bent-wing Bat, Common Bent Wing Bat, Large-footed Mouse-eared Bat and Greater Broad-nosed Bat. However, it is further noted that the fauna assessment provided was undertaken by James Warren and Associates in 2000. It is recommended that an up to date assessment of the*

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proposed pipeline route be undertaken in order to take into account any threatened fauna species that have been listed on the schedules of the Threatened Species Conservation Act 1995 since 2000. It is also noted that the letter from Cardno MBK dated 14 February 2003 states that "given that the majority of the pipeline route is covered by grassland with limited habitat value.... it is considered unnecessary for further threatened species assessment to occur, over and above that provided in the James Warren and Associates report". However, the Warren (2000) report did not take into account the northern portion of the proposed pipeline route. Notwithstanding, the disturbed nature of the proposed pipeline route, it is recommended that the northern portion be considered in the assessment. It is further recommended that the supplementary assessment consider any threatened fauna species listed on the Schedules of the TSC Act since 2000.

It is understood that underboring of the SEPP14 wetland (no 43a) and Cudgen Creek would be undertaken as part of the proposal to enable sand to be pumped into the Salt development site to achieve desired fill levels. It is noted that potential impacts of this operation by the use of heavy machinery near the creek during construction could impact on vegetation by increasing sediment and/or pollution load. It is noted that mitigation measures such as the placement of hay bales and silt traps have been identified in the flora assessment. It is further noted that more detailed mitigation measures have been provided (in the Warren and Associates 2000 report) to ensure that potential impacts of the directional drilling operations are minimised, should the proposal be approved. It is noted that these measures would include:

- *The requirement for adequate distance between entry and exit points either side of the creek and the wetland edges. The exit points should be at least 10 metres from the edge of SEPP14.*
- *Observations should be carried out in the fringing wetland zone whilst the directional drilling passes underneath. If there are indications of disturbance to above ground vegetation, all drilling should cease and a review of the route completed.*
- *The boundary of SEPP14 should be clearly marked on the ground for the purposes of contractors.*
- *A contingency plan would be prepared.*
- *Any tree or shrub which suffers substantial root damage as a result of trenching work should be inspected by a qualified horticulturalist.*
- *Any tree shrub which exhibits signs of dieback after trenching work should be removed and replaced with a seedling of the same species.*

The implementation of the above measures are supported, should the proposal be approved.

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Aboriginal Cultural Heritage

It is noted that the following has been undertaken as requested by the NPWS in correspondence dated 25 November 2002:

- *A search of the NPWS Aboriginal Heritage Information Management System (AHIMS). It is noted that no sites are located in close proximity to the sand pumping pipeline.*
- *Consultation with Mr Clarence Phillips Co-ordinator of the Tweed Byron Local Aboriginal Land Council (TBLALC). It is noted that TBLALC has been commissioned to undertake an inspection and assessment of the sand pumping pipeline. However, the NPWS has not received a copy of this report to date. The applicant should forward a copy of this report to the NPWS for review at their earliest possible convenience. The NPWS is unable to provide final comment on this proposal until the Aboriginal Cultural Heritage Assessment is received.*

Should the proposal proceed, and in the event that material suspected of being an Aboriginal object is discovered during the activity, work at the site must cease immediately and the NPWS (contact the Northern Aboriginal Heritage Unit on 6651 5946) and the local Aboriginal community contacted to arrange an inspection. Subject to discussions on management of the objects, any approval to proceed with the works would then require a license issued under Section 90 of the National Parks and Wildlife Act 1974. The local Aboriginal community may wish to provide a representative to monitor construction work.”

NSW Fisheries

NSW Fisheries provided the following comments in relation to the application:

“NSW Fisheries has reviewed the Development Application and accompanying statement of environmental effects in light of provisions in the Act. As discussed by phone with Stephen Enders of Council on Tuesday, 3 December 2002, NSW Fisheries condition of approval for this DA are subject to Council approval of DA02/1422 (the SALT development). Cognisant of this, NSW Fisheries general terms of approval for this proposal include:

- 1. The proportion of the pipeline route described as section 5 be directional drilled to avoid impacts on Cudgen Creek, the SEPP 14 Wetland area of the Creek and the mangroves (including Hibiscus tilliaceus and Saltmarsh Junkis Kraussii) on the western side of the creek.*
- 2. The NSW Fisheries be informed 3 days before the commencement of works near the wetland and creek.*
- 3. The machinery involved in the drilling remain at least 10m away from mangrove and saltmarsh communities and the SEPP 14 wetland.”*

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Comment

The applicant originally identified the application as integrated under the Fisheries Management Act, however, as there was no reclamation work or removal of aquatic vegetation it was later realised that no approvals were required under this Act and therefore the application was not integrated by virtue of this. The application was subsequently amended to delete reference to this approval. Notwithstanding this, issues raised in the NSW Fisheries letter and the proposed conditions are of relevance to the proposal and should be imposed as conditions of any consent.

NSW Environmental Protection Authority (EPA)

The EPA reviewed the application and provided the following comments:

“With respect to the other matter, we have reviewed all the information provided to the EPA concerning the development application number DA02/1748 “Construction and Operation of a Sand Pumping Pipeline” and considered that the DA will not be an integrated development assessment (IDA) matter for the EPA as the installation and operation of the pipeline are not schedule activities under the protection of the Environmental Operations Act.

In view of the above, Council will be the appropriate regulatory authority (ARA) for the activity and, in its role of the determining authority, council should assess the potential noise impacts and other environmental issues associated with the project and satisfy itself that the proposed control measures are adequate.

We also advise that if Action Sands Pty Limited submit an application to amend council consent conditions for their premises that include a change in operating hours at the premises or an increase in production rate, the proposal will be IDA with the EPA. This is because the amendment of the company’s consent will also require variations to conditions attached to the environmental protection licence held by Action Sands Pty Ltd.

If the Company makes an application to amend its consent, council should advise it to seek Director’s requirements from EPA and also advise that the EPA will need to issue general terms of approval for the proposal before it can proceed.”

Issues raised by the EPA in regards to noise and environmental impacts of this proposal have been previously addressed in this report. Issues in relation to possible future amendments to the existing Action Sands consent are acknowledged, however, are not fully agreed with in that any amendment would need to be dealt with as an integrated development application as this consent was issued prior to the integrated development assessment provisions coming into force and that the application would not be a new development application. This however, may be open to legal interpretation. It is however acknowledged that should any amendment be received by council then consultation with the EPA would need to be carried out as the existing EPA licence would need to be amended.

NSW Department of Sustainable Natural Resources (DSNR) (formerly Department of Land and Water Conservation)

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DLWC provided the following comments in relation to the application:

“DLWC has reviewed the provided documentation and submits the following comments for your consideration. It should be noted that the Department has also commented on the proposed filling in its responses to both the 473 lot subdivision and the Outrigger Resort.

Crown Land Affected by the Pipeline’s Location

- 1. Part Crown public road 20m wide separating Lot 57 DP 755701 from Lot 33 DP 7482 and enclosed with Lot 57 DP 755701 at Chinderah, Parish Cudgen, County Rous held under enclosure permit #45209 by John Brinsmead, Duranbah NSW. The Department supports the construction and de-construction procedures as detailed in the Statement of Environmental Effects and advises that rehabilitation of the affected Crown land will be required to the Minister’s satisfaction.*
- 2. Part bed Cudgen Creek adjacent to south-western corner of Lot 490 DP 47021, Kingscliff, Parish Cudgen, Country Rous.*

It is understood that the developer’s plan to located the pipeline across Cudgen Creek through use of a proposed easement for sewer purposes which DLWC has previously approved being created and acquired by council. As these procedural processes have not yet occurred, as well as the fact that the proposed purpose of the easement will not include the pumping of sand, the Department cannot endorse this approach.

The developer will be required to obtain a licence from DLWC for any construction and occupation of Crown land (being the bed and foreshores of Cudgen Creek) involving placement of pipeline, earthworks, and associated revegetation, subject to satisfactory completion of a land assessment (which has been prepared by Aspect North and submitted to DLWC for statutory exhibition and approval) and resolution of Native Title interests if applicable.

It should be noted, however, that the land assessment which has been prepared over Cudgen Creek only extends in a northerly direction to a line being the westerly prolongation of the northern boundary of Lot 312. Accordingly, DLWC will require that the pipeline’s proposed location be amended slightly so that its extent is contained southwards of this line. This would result in the pipeline being located completely outside Lot 490. Council is advised that should a licence be issued, that appropriate conditions relating to rehabilitation, lodgement of security bond, payment of rental etc will be included.”

The Department’s submission also raises issues in regards to filling of the development site and placement of fill. These issues were also raised in response to development application 02/1422 and DA 02/1423 for the proposed subdivision and Outrigger applications. These issues have been discussed in those reports.

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In terms of the location of the pipeline under Cudgen Creek it is practical that the approved location for the under-bore be used. From the comments provided above this may require an amendment to the existing land assessment carried out or alternatively a new land assessment undertaken for this section of Crown land. A separate licence as indicated would also be required. Conditions of consent should be placed on any approval requiring that the applicant obtain all necessary licences and approvals from DLWC prior to any under-boring or laying of the pipe occurring on Crown land. The terms of the easement granted by DLWC may also need to be varied to allow for the placement of the sand pipeline under the Creek.

Roads and Traffic Authority (RTA)

The RTA are an approval authority under the Integrated Development provisions of the Environmental Planning and Assessment Act as approval under Section 138 of the Roads Act will be required for works within the Pacific Highway road reserve.

The RTA responded to this request as follows:-

“The committee considered the application and had no objections in principle if the following matters relating to traffic and road safety are addressed adequately:

- *Prior approval from RTA is required before any works undertaken in the Pacific Highway road reserve in accordance with Section 138 of the Roads Act 1993.*
- *Preparation and approval of a Traffic Management Plan (TMP) that contains an approved Traffic Control Plan (TCP) prior to any works commencing. This is to include details of work sites.*
- *Any hazardous structure within the clear zone of the road reserve should have an approved safety barrier treatment.*
- *All road openings and works to be approved and reinstated to Tweed Council’s requirements.*
- *Any noise generated by construction of operation of the pipeline is to be maintained within current standards.*
- *Any road access point is to be constructed to AusROAD standards, provide adequate site distances and provisions made to prevent fouling of the road surface”.*

These requirements above will need to be included on any consent granted by Council as general terms of approval provided by the RTA.

Public Submissions

This application along with the other two applications for the SALT project being the subdivision application and the Outrigger application were all advertised concurrently. As a result the majority of submissions received, were in the form of a single submission addressing issues in relation to all three DAs and the SALT development in general. Therefore all submissions and issues raised have been summarised as part of

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the assessment for DA02/1422. Comments have been provided to issues raised during the exhibition period. In considering this application, Council is referred to the summary of issues provided as part of the DA assessment 02/1422.

(e) **Public Interest**

This application is essential, should Council support the overall SALT development by the approval of DA02/1422 and DA02/1423 as it provides for the means required to transport material to the site for the filling of the subject site. This means of transport of fill material is considered by far preferable over road transport which would result in significant loss of amenity to residents along the whole route and the degradation of public roads. It is therefore concluded that should Council support the SALT development by the approval of DA02/1422 and DA02/1423, that it is in the public interest to support this application due to its minimal environmental impacts, minimal impacts on the community, and the economic and social benefits which will flow on from the construction of the SALT development.

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1. ORIGIN: Director

FILE REF: DA02/1422; DA02/1423 & DA02/1748

REPORT TITLE:

SALT Development; Development Application DA02/1423 – Proposed Outrigger Tourist Resort Hotel, Tavern and Retail Shops and Proposed Lot 170 being the Subdivision of Lots 194, 301 and 312 DP 755701 Coast Road, South Kingscliff and Development Application DA02/1748 for the Construction of a Pipeline for the Transportation of Fill from the Action Sands site to the SALT development

SUMMARY OF REPORT:

The Director of Development Services previously advised in the reports distributed to Councillors on 18 April 2003 that there was a significant outstanding issue in terms of potential impact from the Common Blossom Bat raised by the National Parks and Wildlife Service. Following detailed review negotiations involving the Ray Group Pty Ltd, the NSW National Parks and Wildlife Service and the Director of Development Services, the matter has now been resolved and the potential impacts on the food source to the Common Blossom Bat on this site now no longer raised concerns. This agreement is embodied in recommended conditions of consent that are shown in italics below in the recommendation and include the Ray Group Pty Ltd funding the implementing the planting of 1000 mature Coastal Banksia's in the riparian and dune management zones. The letter of confirmation of agreement and associated conditions from NSW National Parks and Wildlife Service is Annexure 1 to this report. Since the completion of the original report concurrence has been received from PlanningNSW. Annexure 2 is a copy of the Department's letter.

RECOMMENDATION:

That :-

- A. Council in reference to the SALT development approves the three (3) applications as follows: -
1. Development Application DA02/1422 for a 473 lot subdivision at Lot 194, 301 and 312 DP 755701 Coast Road, South Kingscliff be approved subject to the following conditions: -

FUTURE DEVELOPMENT

1. Pursuant to Section 80(4) of the Environmental Planning and Assessment Act 1979, further development of Lots 169, 171, 172 and 220 for the purpose of tourist resorts with associated and related uses and facilities shall be generally in accordance with the Concept Master Plan prepared by McKerrrell Lynch Architects dated August 2002. Further development of lots shall not be carried out except by means of further development consent or consents.
2. Pursuant to Section 80(4) of the Environmental Planning and Assessment Act 1979 further development of Lots 177, 191, 238, 245, 256, 310, 311, 312, 340, 345, 349, 373, 423, 465 & 466 for the purpose of multi-dwelling

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housing with associated and related uses and facilities shall be generally in accordance with Concept Master Plan prepared by McKerrell Lynch Architects dated August 2002. Further development of these lots shall not be carried out except by means of further development consent or consents.

GENERAL

3. The applicant shall undertake works within the 7(f) zone generally in accordance with the Lot 500 and 7(f) Management Plan prepared by Aspect North dated November 2002 (as amended) to the satisfaction of Council and the Department of Sustainable Natural Resources/Department of Lands and Rural Affairs. Prior to commencement of any works this plan must be approved by the Tweed Coast Reserves Trust and the Department of Sustainable Natural Resources/Department of Lands and Rural Affairs (DSNR/DLRA)
4. The applicant shall undertake work generally in accordance with the details in the Cudgen Creek Riparian Management Plan prepared by Aspect North and to the satisfaction of Council and the Department of Sustainable Natural Resources/Department of Lands and Rural Affairs. Prior to the commencement of any works this plan must be approved by the Department of Sustainable Natural Resources/Department of Lands and Rural Affairs (DSNR/DLRA)
5. Separate Development consents and construction certificates for each structure must be obtained prior to the erection of the boat shed, jetty or viewing platform. The final design of these structures are to be developed in consultation with local community groups, Council and the Department of Sustainable Natural Resources/Department of Lands and Rural Affairs (DSNR/DLRA).
6. All works detailed in the approved Cudgen Creek Riparian Management Plan are to be carried out in accordance with that plan, to the satisfaction of Council. All foreshore buffering shall be dedicated to Council in accordance with the staging sequencing detailed in the Statement of Environmental Effects prepared by Darryl Anderson Consulting.
7. A detailed plan of landscaping for each stage is to be submitted. All landscaping work shall be completed in accordance with the approved plans. The detailed landscaping plan shall include a list of species, which ensure no potential for seed transfer to Lot 500 or riparian buffer zone, which would conflict with the propagation and maintenance of species in the Lot 500 and 7(f) Management Plans or Riparian Management Plan.
8. Landscape plans must adequately address security for open space, property and neighbouring residents. Considerations should include (but not be limited to) visibility and lines of sight, lighting and open style fencing.
9. The rear boundary of all beachfront residential allotments is to be fenced to prevent direct pedestrian access from these lots to the 7(f) Environmental Protection (Coastal Lands) zone. Details of the fencing is to be submitted to

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- and approved by the Director of Development Services prior to the issue of the construction certificate.
10. Material removed as part of the reduction in the height of the dune as detailed in the Lot 500 and 7(f) Management Plan is to be retained in the immediate area. Details of the location of where the material is to be placed must be approved by Council prior to the commencement of these works.
 11. Lots 175 and 176 are to be clearly delineated from Lots 169 and 172 (Tourism Resorts Lots), ensuring visitors are aware this is publicly accessible land, and not part of the tourism resort.
 12. This consent grants approval for dual occupancy development, subject to submission of a development application, on lots identified on the master plan and pursuant to Development Control Plan No 44.
 13. Public amenities buildings are to be provided in the Cudgen Creek riparian area and foreshore area or Central Park precinct to the satisfaction of the Manager Recreation Services.
 14.
 - (i) Arrangements shall be made for surf lifesaving facilities prior to opening of the Outrigger Resort to the satisfaction of Council.
 - (ii) The applicant shall provide permanent surf lifesaving facilities for patrons of the resorts, future residents and visitors. The applicant is required to construct and equip a surf lifesaving facility in the location nominated on the master plan and in accordance with the requirements of a future Strategic Planning report for surf lifesaving to be completed by Surf Lifesaving New South Wales (at the cost of the applicant).
 - (iii) A separate development application and construction certificate for the surf lifesaving building is to be submitted and approved prior to construction of the permanent facility.
 15. The ongoing resourcing of the surf lifesaving facilities for a period of 10 years shall be by the resort operators and the applicant is to ensure that each tourist resort development on the project will be required to annually contribute to the annual running costs of the surf lifesaving facility on the SALT development with the contributions being based on a share per tourist resort room of the costs of manning the facility with professional life guards contracted through Surf Lifesaving New South Wales.
 16. The applicant shall indemnify Council in regard to the cost of the provision of services by Surf Lifesaving New South Wales for patrolling of Council's beach which borders the SALT development for the 10 year period.
 17. The land and building containing the surf lifesaving facility is to be transferred to Council upon completion. Council will lease the facility to the body corporate of the resort/s for \$1 per year for 10 years.
 18. This consent does not authorise the filling of any land within the 7(f) zone with the exception of the bund proposed in the Lot 500 and 7(f)

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Management Plan and the toe of the batter extending into the 7(f) zone so as to retain the Q100 storm event within the public land to be dedicated.

19. Separate development consent is required to be obtained for any restoration works within the SEPP14 wetland areas prior to commencement of any works in these areas.
20. Notwithstanding any other condition of this consent, a Construction Certificate for bulk earthworks may be issued and the carrying out of bulk earthworks may be commenced prior to the issue of a Construction Certificate for all subdivisional civil works subject to compliance with the following;
 - (a) The bulk earthworks program shall be carried out in general accordance with the approved Construction Certificate, the Revised Earthworks Management Plan Rev C prepared by Cardno MBK and dated 10 April 2003, the Water Quality Monitoring Program Rev B prepared by Cardno MBK and dated March 2003 and the Hydraulic Placement Mitigation Report Rev B prepared by Cardno MBK and dated March 2003 except where varied by the following;
 - The hydraulic delivery of the pumped sand shall also include a "return water system" which will pump collected delivery water back to the Action Sands site using the sand delivery pipeline. No delivery water shall be discharged to Cudgen Creek.
 - The sand delivery basin shall be constructed with an impervious base and walls to ensure that no pumped salt water infiltrates into the ground water system. A groundwater monitoring system shall be installed prior to the commencement of pumping to ensure that the integrity of the basin is maintained at all times. The basin shall also have sufficient structural integrity to withstand construction traffic loadings associated with heavy machinery. The design of the base and wall shall be submitted with the Construction Certificate for approval. Hydraulic calculations shall be submitted for the volumetric design of the delivery basins to ensure that it has adequate capacity to prevent discharge to Cudgen Creek.
 - The hydraulic delivery of sand (phase 3) shall not occur until a bund has been constructed along the entire frontage of lot 500 to prevent the discharge of stormwater into lot 500.
 - The hydraulic delivery of sand (phase 3) shall not occur until the east west drainage corridors discharging to outlets No. 16 and No. 17 have been formed to cater for a Q₁₀₀ overland flow.
 - Compliance with condition No. 127 of this consent relating to Drainage works for stage 1A.

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- At any point in time the total area under construction which exposes unprotected surfaces shall not exceed a maximum area of 12ha.
21. The development shall be completed in accordance with the Statement of Environmental Effects and in particular Figure Nos. DA05, DA08, DA09, DA10, DA11 (Revision C), DA12, DA14, DA15, DA16 and DA17 prepared by Cardno MBK and dated August 2002 and section 2.2 of the Statement of Environmental Effects prepared by Darryl Anderson Consulting Pty Ltd describing stage 1A to 8, except where varied by these conditions.
 22. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property.
 23. The subdivision is to be carried out in accordance with Development Control Plan No 16 - Subdivisions Manual.
 24. In pursuance of the provisions of the Disability Discrimination Act, 1992 (Commonwealth) the design of the proposed development shall facilitate access for the disabled in accordance with the relevant provisions of AS1428- Design for Access and Mobility.
 25. No retaining walls or similar structures are to be constructed over Council's sewer main. The use of retaining walls is to be avoided where possible.
 26. Prior to commencement of work pursuant to this consent a Construction Certificate shall be obtained for all works proposed and required by this consent. The Applicants may lodge separate Construction Certificates for each stage of the development including phased bulk earthworks within Stage 1A provided each stage has its own complete set of supporting documents.
 27. The Construction Certificate applications shall be consistent with the proposed Statement of Environmental Effects and in particular Figure Nos. DA05, DA08, DA10, DA11 (Revision C), DA12, DA14, DA15, DA16 and DA17 prepared by Cardno MBK and dated August 2002 and section 2.2 of the Statement of Environmental Effects prepared by Darryl Anderson Consulting Pty Ltd describing stage 1A to 8.

The Construction Certificates shall include the following;

- a) copies of compliance certificates relied upon
- b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
 - earthworks
 - roadworks
 - road pavement
 - road furnishings
 - stormwater drainage
 - water supply works

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- sewerage works
- landscaping works
- boundary fencing along the 7(f) Environmental Protection (Coastal Lands) zone
- sedimentation and erosion management plans
- location of all service conduits (water, sewer, Country Energy and Telstra)
- the approved Traffic Control Plan
- the relevant maintenance manuals (eg. G.P.T's, water pump station)

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

28. Waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of in accordance with a Waste Management Plan which shall be submitted to and approved by the Director of Environment and Community Services PRIOR to the issue of a construction certificate.

The Plan shall specify how the waste is to be treated and/or where the waste is to be disposed of.

29. A traffic control plan that complies with the provisions of the RTA document "Traffic Control at Work Sites" Version 2 shall be prepared by a person who is qualified, authorised and has passed an RTA approved training course, and submitted to Council, prior to issue of the Construction Certificate for the proposed stage of the works. All works are to comply with the Occupational Health and Safety Act and the RTA document and the approval particularly in respect to works on public roads. Safe public access shall be provided at all times.
30. All allotment fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system
31. The site is to be filled to a minimum of RL 2.54m AHD.
32. The Engineering Plans and specifications to accompany the Construction Certificate applications for the various stages shall provide for the following road construction:-
- i. Construction and dedication of the temporary link for Casuarina Way along the northern boundary of the site between proposed lots 153 and 168 to connect to the new and existing alignments of Casuarina Way. The dedication of this road reserve is temporary in nature and shall be closed when Casuarina Way is constructed and dedicated through lot 490 DP 47021.

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- ii. The roads in the subdivision shall be generally in accordance with the following table and constructed in accordance with DCP 16:

Table 1

Road	Road Reserve	Pavement	Footway left	Footway right	Cycleway/ pathway (all paths are concrete)
1A	16m	9.0m	3.0m	4.0m	12.m both sides
1B	16m	9.0m	3.75m	3.25m	1.2m
2	15m	7.0m	4.75m	3.25m	1.2m
3 ch 0.0-220	15m	7.0m	4.75m	3.25m	1.2m
3 ch 220-632	16m	7.0m	4.5m	4.5m	1.2m
3 ch 660-860	14m	7.0m	3.5m	3.5m	
4	14m	7.0m	3.5m	3.5m	1.2m
5	15m	7.0m	4.75m	3.25m	1.2m
6	14m	7.0m	3.5m	3.5m	
7	14m	7.0m	3.5m	3.5m	
8	15m	7.0m	4.0m	4.0m	1.2m
9	15m	9.0m	3.0m	3.0m	1.2m
10	15m	9.0m	3.0m	3.0m	1.2m
11A	16m	9.0m	3.5m	3.5m	1.2m both sides
11B	16m	9.0m	3.5m	3.5m	1.2m both sides
12	14m	7.0m	3.5m	3.5m	
13	15m	7.0m	4.75m	3.25m	1.2m
14	14m	7.0m	3.5m	3.5m	
15 ch 0-90.0	15m	9.0m	3.0m	3.0m	1.2m
15 ch 90-220	15m	7.0m	4.75m	3.25m	1.2m
15 ch 220-530	16m	7.0m	5.5m	3.50m	1.2m
16 ch 0-160	18m	7.0m	5.5m	5.5m	1.2m both sides
16 ch 160-220	14m	9.0m	3.0m	3.0m	1.2m both sides
17	14m	7.0m	3.5m	3.5m	
18	14m	7.0m	3.5m	3.5m	
19	14m	7.0m	3.5m	3.5m	1.2m
20	14m	7.0m	3.5m	3.5m	1.2m
21	14m	7.0m	3.5m	3.5m	
22	14m	7.0m	3.5m	3.5m	
23	14m	7.0m	3.5m	3.5m	1.2m

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Road	Road Reserve	Pavement	Footway left	Footway right	Cycleway/ pathway (all paths are concrete)
24	14m	7.0m	3.5m	3.5m	
25	33m (includes 6.0m medium)	2 x 5.x5m	8.0m	8.0m	1.2m both sides
Casuarina Way Ch 0.0-400	22.0m	11.0m	5.5m	5.5m	As per EDAW's plan "Landscape principles"
Casuarina Way Ch 400-760	24.0m	2 x 5.5m	5.5m	5.5m	As per EDAW's plan "Landscape principles"
Casuarina Way 760-870	22.0m	11.0m	5.5m	5.5m	As per EDAW's plan "Landscape principles"
Casuarina Way 870-1250	Varies from 22.0m to 24.0m	11.0m +	5.5m	5.5m	As per EDAW's plan "Landscape principles"
Casuarina Way 870-1320	22.0m	11.0m	5.5m	5.5m	As per EDAW's plan "Landscape principles"

- iii. The construction of roundabouts at the following intersections in accordance with Austroads Part 6, 'Roundabouts';
 - Casuarina Way and Road No. 11A
 - Casuarina Way and Road No. 25
 - Casuarina Way and Road No. 22 and 1B
 - Road No. 25 and Road No. 16

- 33. A bond or bank guarantee of \$500,000 is to be lodged with Council prior to the issue of a construction certificate authorising the placement of any fill on the site. This bond will be drawn on by Council to undertake any rectification work directed but not completed or progressing to the satisfaction of the Director, Engineering Services within seventy two (72) hours from the date of serving any notice. The bond to be released upon completion of all work to the satisfaction of the Director, Development Services.
- 34. Permanent Stormwater Quality Treatment

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- (a) Permanent stormwater quality treatment shall comply with "*Tweed Urban Stormwater Quality Management Plan*" (adopted by Council 19 April 2000) section 5.5.3 "Stormwater Objectives During the Post Construction or Occupational Phase of Development" . New development is required to comply with table 5.4 of the plan and demonstrate compliance by modelling in accordance with section 5.5.4. Section 5.5.5 of the plan further advises that treatment that is in accordance with the "deemed to comply" provisions of *Appendix E - Tweed Shire Council, Aus-Spec D7 - Stormwater Quality* is deemed to comply with the objectives in 5.5.3.
- (b) Water sensitive design practices shall be adopted. Where it is practical, water quality features are to be designed into the land development site rather than rely on special end of pipe devices to strip pollutants and nutrients from stormwater prior to discharge. Typical water quality features that can be designed into the site development include use of porous pavements, directing runoff over filter strips or grass swales in landscaped areas, utilising landscaping as an integral part of stormwater quality management, maximising use of infiltration and stormwater reuse (eg. Rainwater tanks). These features can be complemented by site management practices which minimise creation of stormwater pollutants and nutrients and provide for appropriate operation, cleaning and maintenance of water quality control devices.
- (c) The Construction Certificate Application must include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.
- (d) Infiltration
- (i) Infiltration areas are to be sized with a safety factor of 2 (this is to allow for long term deterioration in infiltration rate).
- (ii) Runoff entering infiltration trenches/basins shall be pre-treated to remove sediment and gross pollutants.
- (iii) The infiltration rate for infiltration devices shall be determined as follows:
- Conduct percolation tests on the site in accordance with Appendix B of A.S. 1547-1994, Disposal Systems for Effluent from Domestic Premises,
 - If the above calculation yields a result <6m/day, this rate may be used for design,
 - If the result is >6m/day, the rate for design may not exceed 6m/day unless this rate is confirmed by independently determining the coefficient of permeability of the soil in accordance with AS 1289.6.7.3. Notwithstanding these

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tests, the maximum infiltration rate that may be used for design and sizing purposes is 12m/day.

(e) **Specific Requirements**

- (i) Permanent stormwater quality devices are to be designed in accordance with these conditions and "*Tweed Urban Stormwater Quality Management Plan*" Appendix E - *Tweed Shire Council Aus-pec D7 - Stormwater Quality*, and constructed in accordance with detailed engineering plans to be submitted and approved with the Construction Certificate Application. Unless stated otherwise, references in brackets refer to sections on devices in NSW EPA publication "*Managing Urban Stormwater - Treatment Techniques*, November 1997".
- (ii) Roof drainage. All future roof drainage is to be discharged to infiltration trenches/devices located on each contributing allotment or on other land appropriately title burdened to the contributing allotment. Infiltration trenches/devices shall be designed in accordance with the following criteria:
 - As a minimum requirement, trench/devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) and infiltrate this storm within a 24 hour period, with a safety factor of 2, before surcharging occurs
 - Surcharge overflow from the infiltration area is to be to the street gutter, interallotment or public drainage system and must occur by visible surface flow, or approved equivalent.
 - Runoff is to be pre treated to remove gross pollutants and sediments prior to discharge to infiltration areas (to minimise the time between major cleaning/maintenance overhauls).
 - If the site is under strata or community title, the strata/community title plan is to ensure that the infiltration area(s) are contained within common areas that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
- (iii) Where consistent with other land use requirements, grassed swale drainage (Ref 5.2) is to be used in preference to pipes or hard lined channels.

Note: Swales are not preferred as a substitute for kerb and gutter

- *where on street parking is required, unless cars can be excluded from swale area*

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- *on roads serving small lots with numerous driveways*
 - *where gradients are <1% or >5%*
- (iv) Stormwater Runoff from Roads and Hardstand Areas. The following measures are required in the underground road/hardstand stormwater drainage systems to remove sediment, litter and oil/grease prior to discharge onto the coastal drain, other swale drains or infiltration areas:
- Litter baskets or pits (ref 4.1) or litter racks (ref 4.2) are to be installed to ensure all gross pollutants and litter greater than 50mm are retained for flows up to the ARI 3 month storm (deemed to be 40% of the ARI one year event).
 - Oil and sediments are to be removed by means of Oil/Grit Separator (ref 4.7), or Filter strips (ref 5.1) providing 9 minute average residence time. Oil /Grit separators including proprietary commercially available equivalents must comply with the following sizing guidelines:
 - Sedimentation Tank Capacity**
9m³ per impervious hectare of catchment. This volume is to be calculated as the volume of the settling tank, below exit invert and includes sediment storage volume, but excludes oil storage volume.
 - Oil Storage Capacity**
2m³ per impervious hectare of catchment.
 - Impervious area**
Excludes roof area catchments discharging into infiltration devices.
- (v) Infiltration basins (ref 5.6) shall be provided prior to Outlets Nos. 16 and 17 and sized to infiltrate all runoff from upstream catchment stormwater flows of up to 40% of ultimate Q 1 year. Infiltration basin sizing shall be determined on a catchment basis. The "catchment" shall be the total area draining to each outlet.
- (vi) The infiltration basins shall be contained within reserves to be dedicated to Council.
- (vii) Infiltration basins are to consist of raw dune sand with a minimal vegetation cover of endemic dune grasses. No topsoil, mulch or other vegetative matter is to be used on infiltration basin surfaces and no establishment, operation or maintenance procedures are permitted that may reduce surface permeability.
- (f) For each subdivision stage, downstream (to the ultimate point of discharge at Cudgen Creek) drains, waterways, water quality devices

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and any ancillary works are to be constructed for ultimate capacity and title dedicated.

35. A construction certificate application for works that involve any of the following:-

- connection of a private stormwater drain to a public stormwater drain
- installation of stormwater quality control devices
- erosion and sediment control works

will not be approved until prior separate approval to do so has been granted by Council under section 68 of the Local Government Act 1993.

Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

36. Erosion and Sediment Control During the Construction Phase of Development

(a) Construction phase stormwater quality treatment (erosion and sediment control) shall be designed and constructed in accordance with detailed engineering plans to be submitted and approved with the Construction Certificate. Erosion and sediment control shall be in accordance with the *"Tweed Urban Stormwater Quality Management Plan"* (adopted by Council 19 April 2000) section 5.5.2 "Stormwater Objectives During the Construction Phase of New Development". This section requires all new development to comply with Appendix E of the Plan *"Tweed Shire Council Aus-Spec D7 - Stormwater Quality"* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works". Erosion and sediment controls shall remain in place until final approval is given and the maintenance bond (if required) has been released.

(b) The Construction Certificate Application for any identified stage and/or phase in the application (or supporting documents) or a Construction Certificate for site earthworks is to include a detailed stage/phase specific erosion and sedimentation plan for each stage/phase (ESCP), prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.

37. Construction certificate drawings for all stages shall make provision for the design of earthworks, landforming and site regrading in accordance with "Development Design Specification - Site Regrading" or to the satisfaction of the Director of Engineering Services.

38. Stormwater Drainage and Lawful Points of Discharge

(a) Stormwater runoff from the site may only be discharged at three designated lawful points of discharge. Two of these points of discharge are shown on Cardno MBK "Figure No. DA62 Stormwater Drainage Layout, Rev A August 2002" and designated as Outlet No. 16 and Outlet No.17. The third designated point of discharge is at the

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south eastern end of the site where surface water from the section of Road 15 south of the Road 12 intersection may be discharged onto the adjacent road reserve in "Seaside City". No stormwater runoff in any duration storm of up to Q100 ARI shall be permitted to discharge to lot 500 to the east of the proposed development or lot 490 DP 47021 to the north of the proposed development.

- (b) The catchments and drainage system shall be in general accordance with Cardno MBK "Figure No. DA62 Stormwater Drainage Layout, Rev A August 2002" and "Figure No. DA63 Stormwater Treatment Strategy and Q100 Inundation Plan, Rev A August 2002".
- (c) The catchment discharging to road reserves in Seaside City" is to be limited to Road 15 south of the Road 12 intersection and adjacent lots that fall to that section of Road 12.
- (d) The Cudgen Creek bank 50m either side of Outlet No.16 is to be laid back and stabilised/revetted. The design of these bank works is to be approved by Council, DSNR/DLRA and NSW Fisheries prior to the lodgement of a construction certificate.
- (e) The alignment, levels, supporting structures and configuration of Outlets No.16 and No.17 are to be approved by Council, DSNR/DLRA and NSW Fisheries prior to the lodgement of a construction certificate.
- (f) For each subdivision stage, downstream (to the ultimate point of discharge at Cudgen Creek) drains, waterways, water quality devices and any ancillary works are to be constructed for ultimate capacity and title dedicated.

39. Management Lots

This condition refers to proposed lots 170 (hotel/resort), 169, 171, 172, 220 (tourism resorts), 238, 311, 465, 466 (medium density dwellings) and 191, 177, 310, 312, 256, 245, 340, 345, 348, 349, 373, 423 (integrated housing).

Prior to release of any subdivision certificate that creates master lots:

- Sufficient permanent infrastructure must be constructed in the subdivision that creates the management lots so that they may be capable of being developed to their ultimate capacity by subsequent applicants without any requirements for provision or augmentation of external infrastructure. All proposed infrastructure that crosses management lot boundaries or runs adjacent to management lot boundaries must be constructed in the subdivision that creates the management lots.
- Bulk earthworks over management lots shall be completed sufficient to ensure that the drainage system is established and management lot boundaries are at their final level
- Waterways, drains and stormwater quality devices down stream of management lots are to be designed, title dedicated and constructed.

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- The subdivision drainage system shall provide for acceptance and transport of Q100 overland flows from the management lots. The underground street drainage system shall be extended to management lot boundaries for acceptance and transport of underground piped Q5 flows from the management lots.
- Where infrastructure required to serve a management lot, passes through another lot, easements in favour of Council shall be granted over the infrastructure and necessary access roads to such infrastructure.

40. Landform

The subject land shall be shaped in accordance with Cardno MBK Figures Nos. DA14, 15, 16, & 17 "Finished Surface Contours" Sheets 1 -4, Rev A August 2002, except as follows;

- The levels adjacent to the Crown Public Road at the southern end of the subdivision shall not vary from existing levels by more than 500mm and:
- Where the proposed levels of this development are inconsistent with existing levels on adjacent land, retaining walls (and any necessary ancillary or drainage works) shall be provided on the lot boundaries to ensure the land shaping has no adverse affect on adjoining land. Plans and specifications of the retaining walls and ancillary works and the written approval of the adjacent landowner shall be submitted with the construction certificate application.
- The finished levels of the southern section of Road 15 shall be in general accordance with Cardno MBK "Figure No. 04 (24-10-02) R.F.I. Road Link to Lorna Street Access to Lots 402 and 403". The finished levels of lots 402 & 403 shall be generally graded to be consistent with (without retaining walls) the finished road reserve levels of Road 15. The finished surface level of Lot 403 shall be generally graded to be consistent with the existing levels of the road reserve to the south.
- Provision shall be made to ensure surface runoff does not discharge onto adjoining land except at the three lawful points of discharge.
- Provision shall be made to accept up to Q100 natural or existing surface runoff from adjacent land that discharges onto the subject land.

PRIOR TO COMMENCEMENT OF WORK

41. Prior to commencement of work, a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Consulting Engineer shall be erected and maintained in a prominent position at the site to the satisfaction of the Director, Development Services. The sign is to remain in place until the Subdivision Certificate is issued.

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42. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised to the satisfaction of the Principal Certifying Authority and provided with a dish drain or similar at the base or otherwise retained to the satisfaction of the Principle Certifying Authority. All retaining works shall be completed to the satisfaction of the Principal Certifying Authority prior to start of building work. Please note timber retaining walls are not permitted.
43. Prior to commencement of works all required sedimentation and siltation control measures are to be installed and operational to the satisfaction of the Principal Certifying Authority for the proposed area of works.
- Erosion and sediment control shall be in accordance with *the "Tweed Urban Stormwater Quality Management Plan"* (adopted by Council 19 April 2000) section 5.5.2 "Stormwater Objectives During the Construction Phase of New Development". This section requires all new development to comply with Appendix E of the Plan *"Tweed Shire Council Aus-Spec D7 - Stormwater Quality"* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works". Erosion and sediment controls shall remain in place until final approval is given and the maintenance bond has been released.
44. Subdivision work in accordance with a development consent must not be commenced until:-
- (a) a construction certificate for the subdivision work has been issued by:
 - (i) the consent authority, or
 - (ii) an accredited certifier, and
 - (b) the person having the benefit of the development consent:
 - (i) has appointed a principal certifying authority, and
 - (ii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment, and
 - (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the subdivision work.
45. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.
46. Where water is required to be drawn from Council's water reticulation system it shall be the applicants responsibility to notify the Engineering Services Division prior to taking water.
- All drawn water shall be via a Tweed Shire Council metered standpipe. The location of the hydrant shall be nominated by Tweed Shire Council and all water shall be only used for the purposes nominated by the applicant for the duration of the construction activities.

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47. Prior to the commencement of work the applicant shall submit to Council evidence that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared in accordance with either:-
 - a. Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
 - b. AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.

DURING CONSTRUCTION

48. All threatened species identified on the SALT site area to be managed in accordance with the Threatened Species Management Plans detailed in the Aspect North Report dated October 2002 or as otherwise required by National Parks and Wildlife Service.
49. The walkway/cycleway detailed in the Lot 500 and 7(f) Management Plan shall be constructed in accordance with detailed engineering plans to be submitted to the Council and approved prior to work on the walkway/cycleway commencing.
50. In accordance with the National Parks and Wildlife Act, in the event of the discovery of a relic during works, work must cease immediately and the National Parks and Wildlife Service and the Tweed/Byron Local Aboriginal Land Council shall be notified. Works in the locality must not recommence until consultation with the National Parks and Wildlife Service and the Tweed/Byron Local Aboriginal Land Council has concluded to the satisfaction.
51. A detailed post radiation remediation validation report shall be provided to Council and approved by Council in writing, at the completion of remediation works and prior to the commencement of any works or stage of works on the subject site. That report shall specifically include:
 - (i) Maps indicating the surface radiation readings across the entire site or stage, including residential allotments, roads, parks and public open space to the west of the development (SEPP 14).
 - (ii) Details of the remediation bulk earthworks that have been undertaken and a map which indicates the areas which have received remediated fill materials.
 - (iii) Maps which indicate where on the development site unremediated materials have been left undisturbed at depth and provided with a minimum of 2 metres of clean cover material.
 - (iv) A map which indicates western SEPP 14 buffer areas which have been left untreated and still contain radioactive materials at 1m depth or greater.
 - (v) Confirmation that excavations for remediation works have been monitored by a suitably qualified consultant and the full depth and extent of radioactive materials at depth have been identified and remediated.

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- (vi) A validation statement that all remediation works have been completed in accordance with the *Detailed Site Radiation Investigation Report & Remediation Action Plan SALT, South Kingscliff (Rev. B Cardno MBK, March 2003)*, that all radioactive materials at depth have been remediated to the agreed level of 0.35yGy/hr and that surface levels at all residential areas do not exceed 0.7Gy/hr.
52. All works shall comply with the Revised Earthworks Environmental Management Plan (Cardno MBK, April 2003).
53. Radioactive sand material (above 0.2uGy/hr) shall not be removed or relocated from the boundaries of the development site.
54. Sand fill material proposed to be pumped to the site shall be tested for acid sulfate soil potential and neutralised where necessary, prior to being pumped to the site, strictly in accordance with Part 4.1 of the submission - *Revised Earthworks Environmental Management Plan (Cardno MBK, April 2003)*. Records of this testing shall be maintained on site and provided to Council upon request.
55. A bi-monthly progress report shall be provided to Council during the period of the earthworks which provides confirmation that all relevant management and monitoring plans are being complied with, and details of the measures being undertaken to achieve that compliance.
56. Should it be necessary to bury silt or fine residues from the pumping of slurry fill to the site, these materials shall be tested for acid sulfate potential and treated if necessary. Council approval of the burial location shall be obtained prior to burial of the material.
57. All works shall comply with the Acid Sulfate Soils Management Plan SALT, South Kingscliff (Rev. C Cardno MBK, March 2003).
58. All works shall comply with the Detailed Site Radiation Investigation Report & Remediation Action Plan SALT, South Kingscliff (Rev. B Cardno MBK, March 2003) unless otherwise stated by condition in this approval.
59. All works shall comply with the Water Quality Monitoring Programme SALT, South Kingscliff (Rev. B Cardno MBK, March 2003).
60. All works associated with this approval shall be carried out between the hours of 7am to 10pm, and no works shall be carried out between the hours of 10pm to 7am. Noise levels shall not exceed background LA90 levels at any receiving premise by more than 10 dBA between the hours of 7am to 6pm and shall not exceed background LA90 levels by more than 5 dBA between the hours of 6pm to 10pm.
61. All parks and open space are to be formed to their final shape and levels, and suitably embellished to the satisfaction of the Manager, Recreation Services. Details to be included with the landscaping plans required as part of the Construction Certificate. Embellishments are to meet the relevant Australian Standard where applicable. Embellishments include (but are not

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limited to) grass cover, soft landscaping and garden beds (local indigenous species), toilets, playground equipment, shade shelters, seating, picnic/barbeque facilities, paths, drinking water and vehicle control measures.

62. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742-1991 (Manual for Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.
63. The contractor must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.
64. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.
65. Suitable covering and protection is to be provided to ensure that no material is removed from the site by wind, causing nuisance to neighbouring properties. This covering and protection shall be in accordance with the revised Earthworks Management Plan Rev C dated 10 April 2003.
66. All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.
67. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles. These precautions shall be in accordance with the revised Earthworks Management Plan Rev C dated 10 April 2003.
68. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
 - A. Short Term Period - 4 weeks.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
 - B. Long term period - the duration.

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L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

69. Prior to and during construction a "shake down" device shall be provided at the construction entry point which shall be located immediately before the intersection of the road reserve. The "shake down" area shall comprise of a shaker grid (metal bar cattle grid minimum 7m in length) and an access 10 metres long, 3.0 metres wide and constructed of a minimum 50mm diameter crushed rock.
70. The burning of builders waste on site by open fire is prohibited.
71. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.
72. All engineering works required to be approved prior to the issue of a construction certificate are to be constructed in accordance with the approval.
73. No soil, sand, gravel, clay or other material shall be disposed of off the site unless otherwise permitted by conditions of this consent.
74. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.
75. Prior to the application for a **Subdivision Certificate** for the various stages, a Compliance Certificate or Certificates shall be obtained from Council **OR** an accredited certifier for the following:-
 - (i) Compliance Certificate - Roads
 - (ii) Compliance Certificate - Water Reticulation
 - (iii) Compliance Certificate - Sewerage Reticulation
 - (iv) Compliance Certificate - Sewerage Pump Station
 - (v) Compliance Certificate - Drainage
 - (vi) Compliance Certificate - Bulk Earthworks

- Note:** 1. Where Council is requested to issue compliance certificates, applications for such certificates must be accompanied by documentary evidence from the Developers Supervising Consulting Engineer certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, DCP16 - Subdivision Manual and good Engineering Practice.
2. Where Council is requested to issue the construction certificate all compliance certificates and a Subdivision Certificate,

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Council will carry out the following inspections as deemed necessary by Council based on the rates contained in Council's current Fees and Charges:-

Roadworks

- a. Pre-construction commencement erosion and sedimentation control measures
- b. Completion of earthworks
- c. Excavation of subgrade
- d. Pavement - sub-base
- e. Pavement - pre kerb
- f. Pavement - pre seal
- g. Pathways, footways, bikeways - formwork/reinforcement
- h. Final inspections - on maintenance
- i. Off Maintenance inspection

Water Reticulation, Sewer Reticulation, Drainage

- a. Excavation
- b. Bedding
- c. Laying/jointing
- d. Manholes/pits
- e. Backfilling
- f. Permanent erosion and sedimentation control measures
- g. Drainage channels
- h. Final inspection - on maintenance
- i. Off maintenance

Sewer Pump Station

- a. Excavation
- b. Formwork/reinforcement
- c. Hydraulics
- d. Mechanical/electrical
- e. Commissioning - on maintenance
- f. Off maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

3. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

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76. Before the commencement of the relevant stages of road construction, reports shall be submitted to Council from a Registered NATA Consultant demonstrating.
 - a. That the pavement has been designed and constructed in accordance with subgrade analysis as per Austroads Pavement Design, A Guide to the Structural Design of Road Pavements.
 - b. That the pavement materials used comply with the specifications in RTA Form Q3051 (June 1998)
 - c. That the pavement layers have been compacted to RTA specifications.
 - d. That site fill areas have been compacted to the specified standard.
 - e. That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.
 - f. That pavement testing has been completed in accordance with Table 8.1 of AS 3798-1996.
77. All lots must be graded and trimmed to prevent the ponding of surface water. Additionally, all lots must be adequately vegetated and action must be taken to prevent erosion from wind and/or water to the satisfaction of the Director, Development Services.
78. All proposed road/streets, drainage and associated works within the subdivision shall be designed and constructed in accordance with the development consent plans **AND** the relevant provision of DCP No. 16 - Subdivisions Manual, except where varied by the conditions of this consent.
79. Provision of temporary turning areas for refuse vehicles at the end of roads which will be extended in subsequent stages until such time as the road is extended or a dedicated turning area is provided at the end of the road. These temporary turning areas shall be constructed with a minimum 150mm pavement (CBR 45) and shall have a right of carriageway registered over the turning area until such time as the road is extended.
80. The owner or contractor must not undertake any work within the public road reserve without giving Council's Engineering Services Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.
81. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.
82. Pram ramps are to be constructed at road intersections in accordance with Council's Plan No. A4-96 to the satisfaction of the Director of Engineering Services and in accordance with Council's Standard Plan No. A4-96. Mountable or roll top kerb does not meet pram ramp requirements, and therefore requires a pram ramp to be constructed as above.

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83. The footpath areas are to be graded to the kerb and a minimum of a turf strip shall be provided behind all newly laid kerb.
84. The earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments". In general, material shall be placed in layers not exceeding 300mm in depth, watered and compacted to achieve the specified density ratio as monitored in Table 5.1 - Guidelines for Minimum Relative Compaction.
85. The earthworks program shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with Appendix B, AS 3798-1996. In addition, the frequency of field density testing shall be to a Type 1 standard in accordance with Table 8.1 of AS 3798. The geotechnical report shall be accompanied by a certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798.
86. Infiltration of Subdivision Stormwater Runoff
- Infiltration areas are to be sized with a safety factor of 2 (this is to allow for long term deterioration in infiltration rate).
 - Runoff entering infiltration trenches/basins shall be pre-treated to remove sediment and gross pollutants.
 - The infiltration rate for infiltration devices shall be determined as follows:
 - * Conduct percolation tests on the site in accordance with Appendix B of A.S. 1547, Disposal Systems for Effluent from Domestic Premises,
 - * if the tests yield a result <6m/day, this rate must be used for design
 - * if the result is >6m/day, the rate for design may not exceed 6m/day unless this rate is confirmed by independently determining the coefficient of permeability of the soil in accordance with AS 1289.6.7.3. Notwithstanding these tests, the maximum infiltration rate that may be used for design and sizing purposes is 12m/day.
87. i. The allotments containing the sewage pumping stations and lift stations shall be transferred to Council in fee simple, at no cost to Council within 28 days of the date of registration of the plan of subdivision.
- ii. Accurate plans of the sewage pumping stations and lift station shall be submitted to Council 60 days prior to lodgement of the Application for Subdivision Certificate (form 13) to allow the land to be classified.
- Note:** The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

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88. The burning off of trees and associated vegetation felled by clearing operations is not permitted unless such burning is carried out in a specially constructed pit provided with an air curtain over the top. Separate approval is required prior to any burning.
89. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.
90. Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired to the satisfaction of the Director of Engineering Services prior to the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.
91. Landscaping for each stage of the development shall be carried out in accordance with approved landscaping plans. Separate Construction Certificate applications maybe lodged for the landscaping plans. The landscaping to be completed prior to the issue of the Subdivision Certificate, to the satisfaction of the Director, Development Services and the Manager Recreation Services.
92. Prior to carrying out the work required by the Lot 500 and 7(f) Management Plan the applicant shall obtain any necessary approvals or licences from the Department of Sustainable Natural Resources/Department of Lands and Rural Affairs.
93. Prior to commencement of filling works on the site the applicant is to ensure that the source from which the fill material is obtained has the necessary approvals and that the rate of extraction is in accordance with the terms of that consent.

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

94. A **certificate of compliance** (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall **NOT** be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water:

Stage 1A(1):	83 lots @ \$4000	\$332,000
Stage 1A(2):	62 lots @ \$4000	\$248,000
Stage 1A(3):	5 lots @ \$4000	\$20,000
Stage 1A(4):	14 lots @ \$4000	\$56,000

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Stage 2:	44 lots @ \$4000	\$176,000
Stage 3:	12 lots @ \$4000	\$48,000
Stage 4:	56 lots @ \$4000	\$224,000
Stage 5:	18 lots @ \$4000	\$72,000
Stage 6:	30 lots @ \$4000	\$120,000
Stage 7A:	46 lots @ \$4000	\$184,000
Stage 7B:	67 lots @ \$4000	\$268,000
Stage 8:	2 lots @ \$4000	\$8,000

Sewer:

Stage 1A(1):	83 lots @ \$3275	\$271,825
Stage 1A(2):	62 lots @ \$3275	\$203,050
Stage 1A(3):	5 lots @ \$3275	\$16,375
Stage 1A(4):	14 lots @ \$3275	\$45,850
Stage 2:	44 lots @ \$3275	\$144,100
Stage 3:	12 lots @ \$3275	\$39,300
Stage 4:	56 lots @ \$3275	\$183,400
Stage 5:	18 lots @ \$3275	\$58,950
Stage 6:	30 lots @ \$3275	\$98,250
Stage 7A:	46 lots @ \$3275	\$150,650
Stage 7B:	67 lots @ \$3275	\$219,425
Stage 8:	2 lots @ \$3275	\$6550

South Kingscliff Local Water Levy:

Stage 1A(1):	83 lots @ \$205	\$17,015
Stage 1A(2):	62 lots @ \$205	\$12,710
Stage 1A(3):	5 lots @ \$205	\$1,025
Stage 1A(4):	14 lots @ \$205	\$2,870
Stage 2:	44 lots @ \$205	\$9,020
Stage 3:	12 lots @ \$205	\$2,460
Stage 4:	56 lots @ \$205	\$11,480
Stage 4:	18 lots @ \$205	\$3,690
Stage 6:	30 lots @ \$205	\$6,150
Stage 7A:	46 lots @ \$205	\$9,430
Stage 7B:	67 lots @ \$205	\$13,375
Stage 8:	2 lots @ \$205	\$410

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

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Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an Accredited Certifier.

95. Section 94 Contributions

- (i) Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

a. Tweed Road Contribution Plan:

Stage 1A(1): \$198,887

Stage 1A(2): \$148,429

Stage 1A(3): \$12,154

Stage 1A(4): \$33,516

Stage 2: \$105,337

Stage 3: \$28,728

Stage 4: \$134,065

Stage 5: \$43,092

Stage 6: \$71,820

Stage 7: \$110,125

Stage 7B: \$160,583

Stage 8: \$4,788

S94 Plan No. 4 (Version 4.0)

(Duranbah/Cabarita)

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 4.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. The contribution shall be based on the following formula:-

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$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$ heavy haulage contribution

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

Dist. average haulage distance of product on Shire roads

(trip one way)

$\text{\$Unit}$ the unit cost attributed to maintaining a road as set out in Section 6.4 (currently 2.5c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.5

b. Street Trees:

S94 Plan No. 6

Stage 1A(1): \$3,560.70

Stage 1A(2): \$2,659.80

Stage 1A(3): \$214.50

Stage 1A(4): \$600.60

Stage 2: \$1,887.60

Stage 3: \$514.80

Stage 4: \$2,402.40

Stage 5: \$772.20

Stage 6: \$1,287.00

Stage 7A: \$1,973.40

Stage 7B: \$2,874.30

Stage 8: \$85.80

c. Shirewide Library Facilities:

S94 Plan No. 11

Stage 1A(1): \$57,104

Stage 1A(2): \$42,656

Stage 1A(3): \$3,440

Stage 1A(4): \$9,632

Stage 2: \$30,272

Stage 3: \$8,256

Stage 4: \$38,528

Stage 5: \$12,384

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- Stage 6: \$20,640
- Stage 7A: \$31,648
- Stage 7B: \$46,096
- Stage 8: \$1,376
- d. Bus Shelters:
 - S94 Plan No. 12
 - Stage 1A(1): \$1,909
 - Stage 1A(2): \$1,426
 - Stage 1A(3): \$115
 - Stage 1A(4): \$322
 - Stage 2: \$1,012
 - Stage 3: \$276
 - Stage 4: \$1,288
 - Stage 5: \$414
 - Stage 6: \$690
 - Stage 7A: \$1,058
 - Stage 7B: \$1,541
 - Stage 8: \$46
- e. Eviron Cemetery/Crematorium Facilities:
 - S94 Plan No. 13
 - Stage 1A(1): \$10,458
 - Stage 1A(2): \$7,812
 - Stage 1A(3): \$630
 - Stage 1A(4): \$1,764
 - Stage 2: \$5,544
 - Stage 3: \$1,512
 - Stage 4: \$7,056
 - Stage 5: \$2,268
 - Stage 6: \$3,780
 - Stage 7A: \$5,796
 - Stage 7B: \$8,442
 - Stage 8: \$252
- f. Community Facilities (Tweed Coast)
 - (North Coast)
 - S94 Plan No. 15
 - Stage 1A(1): \$40,836
 - Stage 1A(2): \$30,504

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- Stage 1A(3): \$2,460
- Stage 1A(4): \$6,888
- Stage 2: \$21,648
- Stage 3: \$5,904
- Stage 4: \$27,552
- Stage 5: \$8,856
- Stage 6: \$14,760
- Stage 7A: \$22,632
- Stage 7B: \$32,964
- Stage 8: \$984
- g. Emergency Facilities (Surf Lifesaving)
S94 Plan No. 16
 - Stage 1A(1): \$17,845
 - Stage 1A(2): \$13,330
 - Stage 1A(3): \$1,075
 - Stage 1A(4): \$3,010
 - Stage 2: \$9,460
 - Stage 3: \$2,580
 - Stage 4: \$12,040
 - Stage 5: \$3,870
 - Stage 6: \$6,450
 - Stage 7A: \$9,890
 - Stage 7B: \$14,405
 - Stage 8: \$430
- h. Extensions to Council Administration Offices
& Technical Support Facilities
S94 Plan No. 18
 - Stage 1A(1): \$28,619.23
 - Stage 1A(2): \$21,378.22
 - Stage 1A(3): \$1,724.05
 - Stage 1A(4): \$4,827.34
 - Stage 2: \$15,171.64
 - Stage 3: \$4,137.72
 - Stage 4: \$19,309.36
 - Stage 5: \$6,206.58
 - Stage 6: \$10,344.30
 - Stage 7A: \$15,861.26

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- Stage 7B: \$23,102.27
- Stage 8: \$689.62
- i. Cycleways
 - S94 Plan No. 22
 - Stage 1A(1): \$13,280
 - Stage 1A(2): \$9,920
 - Stage 1A(3): \$800
 - Stage 1A(4): \$2,240
 - Stage 2: \$7,040
 - Stage 3: \$1,920
 - Stage 4: \$8,960
 - Stage 5: \$2,880
 - Stage 6: \$4,800
 - Stage 7A: \$7,360
 - Stage 7B: \$10,720
 - Stage 8: \$320
- j. Regional Open Space (Structured)
 - S94 Plan No. 26
 - Stage 1A(1): \$97,691
 - Stage 1A(2): \$72,974
 - Stage 1A(3): \$5,885
 - Stage 1A(4): \$16,478
 - Stage 2: \$51,788
 - Stage 3: \$14,124
 - Stage 4: \$65,912
 - Stage 5: \$21,186
 - Stage 6: \$35,310
 - Stage 7A: \$54,142
 - Stage 7B: \$78,859
 - Stage 8: \$2,354
- k. Regional Open Space (Casual)
 - S94 Plan No. 26
 - Stage 1A(1): \$18,343
 - Stage 1A(2): \$13,702
 - Stage 1A(3): \$1,105
 - Stage 1A(4): \$3,094
 - Stage 2: \$9,724

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Stage 3:	\$2,652
Stage 4:	\$12,376
Stage 5:	\$3,978
Stage 6:	\$6,630
Stage 7A:	\$10,166
Stage 7B:	\$14,807
Stage 8:	\$442

96. A contribution of \$830,351 (as agreed by letter dated 15 April 2003) shall be paid as a contribution towards the provision of active open space. The contribution may be paid on a pro-rata basis based on the number of lots released in each stage.
97. Prior to the release of the subdivision certificate for Stage 1A(3) a bond or bank guarantee of \$200,000 be lodged with Council to ensure the ongoing maintenance of works carried out in accordance with the Cudgen Creek riparian zone management plan. Subject to a satisfactory review of the implementation of the management plan the bond or bank guarantee will be released five (5) years from the date of the completion of the plan. There will be a 6 monthly review of the implementation of the management plan for a 2 year period and a 12 monthly review thereafter until completion.
98. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of Development Consent No DA02/1422 have been complied with.
99. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including the following:
- i. Easements for sewer, water supply and drainage over **ALL** services on private property.
 - ii. A restriction as to user requiring that all roofwater from buildings or structures shall be discharged to an approved infiltration pit located on the subject property. The infiltration pit shall be approved by the Principal Certifying Authority.
 - iii. A right of carriageway shall be registered over the private portion of the car park located within lot 170 as shown on Plan No. 8145-35 prepared by Michel Group Services and dated 8th April 2003.
 - iv. Provision of building setbacks of 3m from the 7(f) zone boundary.
- Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.
- Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision

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enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

100. Prior to the issue of a Subdivision Certificate for each stage, Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council.
101. Where new state survey marks and/or permanent marks are placed, a copy of the locality sketch relating to the marks shall be submitted to Council's Surveyor within two months of the issue of the Subdivision Certificate.
102. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the Director, Development Services **PRIOR** to the issue of a Subdivision Certificate. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.
103. Prior to registration of the plan of subdivision, a **Subdivision Certificate** shall be obtained.
 - (i) The following information must accompany an application:
 - original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees of \$118 per lot shown on the face of the plan.
 - relevant development consent
 - detailed subdivision engineering plans endorsed with a construction certificate (where applicable)
 - evidence that the applicant has complied with all conditions of consent, that it is required to comply with before a subdivision certificate can be issued (where applicable)
 - a certificate of compliance from the relevant water supply authority (where applicable)
 - for subdivision involving subdivision works evidence that:
 - the work has been completed, or
 - agreement reached with the relevant consent authority regarding payment of the cost of work or as to the time for carrying out the work, or
 - security given to the consent authority with respect to the completion of the work
 - Work as Executed Plans for **ALL** works
 - (ii) Documentary evidence that **all** matters contained in Section 109J of the Act have been complied with.
 - (iii) Written evidence from Council that the proposed road/street names have been approved.

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Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

104. Prior to the issue of a **Subdivision Certificate**, Works as Executed Plans shall be submitted in accordance with the provisions of DCP16 - Subdivisions Manual.

The plans are to be endorsed by a Registered Surveyor **AND** a Consulting Engineer Certifying that:

- (i) all drainage lines, sewer lines and structures are wholly contained within the drainage easement created by the subdivision;
- (ii) the plans accurately reflect the Work as Executed.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed plans.

105. Prior to the issue of a **Subdivision Certificate** for each stage a defect liability bond (in cash **or** unlimited time Bank Guarantee) shall be lodged with Council.

The bond shall be based on 5% of the value of the works which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued and will be refunded following the remedying of any defects arising within the 6 month period.

106. i. Concrete ribbon footpaths 1.2 metres wide and 75 millimetres thick shall be constructed on a compacted base generally in accordance with the **EDAW Landscape Principles** or were modified by **table 1 of this consent**. The compacted base is to achieve 95% of maximum dry density determined in accordance with AS1289 5.4.1 for a minimum 100mm depth. A full depth construction joint is to be provided at 6.0 metre intervals and 20 millimetre deep groove joints provided every 1.5 metres, the balance area to be graded to the kerb and turfed or landscaped. The footpath is to have a 2% crossfall which must be attained at each side boundary. This may result in work to be undertaken on the footpath at adjoining properties which must not exceed 1:14 and must be reinstated with turf. The footpaving is to be located 800 millimetres from the property boundary. The concrete footpath gradient shall be parallel to the top of kerb for the full frontage of the site and maintained unvaried across the (any) driveway cross-section.
- ii. Alternatively, the developer may pay a cash contribution to the value of the works plus 25% in lieu of construction and Council will construct the footpath when the subdivision is substantially built out. The cost of these works shall be validated by a schedule of rates.
- iii. If the developer elects to construct the footpath prior to the issue of a Subdivision Certificate, a cash maintenance bond equal to 25% of the

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contract value of the footpath shall be lodged for a period of 3 years or until 80% of the lots fronting paved footpaths are built on. The maintenance bond shall be lodged prior to release of the subdivision certificate.

107. Prior to the issue of a Subdivision Certificate for each stage and also prior to the end of defects liability period, a CCTV inspection of the stormwater pipes will be required to demonstrate that the standard of the stormwater system is acceptable to Council.

Any defects identified by the inspection are to be repaired using any one of the following repair techniques or such other technique as may be approved by the Director of Engineering Services.

- Tiger Patch patch liner;
- Econoliner;
- PL Quick Sleeve System;
- Flexi-Bond method

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

108. Prior to issuing a Subdivision Certificate, outfall sewerage reticulation shall be provided to all lots within the subdivision including a minimum 150mm diameter sewer junction terminated at least 1.0m inside the property boundary of each lot in accordance with engineering plans to accompany the Construction Certificate application. The reticulation shall be designed and constructed in accordance with DCP16 - Subdivisions Manual.

Prior to the issue of a Subdivision Certificate for each stage and also prior to the end of defects liability period, a CCTV inspection of the sewer pipes will be required to demonstrate that the standard of the sewer system is acceptable to Council

Council does not permit the building over Council's sewers. When buildings are located in close proximity to the sewer, detailed plans of footing types, location and depth relative to the sewer are required to be included with the Construction Certificate Application.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

109. Prior to issuing a Subdivision Certificate, Town Water shall be provided to each lot including a minimum size 25mm outside diameter water service terminated 1.0m inside the property boundary of each lot in accordance engineering with plans to accompany the Construction Certificate application. The reticulation shall be designed and constructed in accordance with DCP16 - Subdivisions Manual.

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Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an Accredited Certifier.

110. The production of written evidence from Telstra Australia certifying that satisfactory arrangements have been made for the provision of underground telephone supply for each Subdivision Certificate application.
111.
 - i. The production of written evidence from Country Energy certifying that reticulation of underground electricity for each Subdivision Certificate has been completed; and
 - ii. The reticulation to include the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.
112. The following restrictions apply to dog and cat ownership and control on **all** residential lots adjoining the 7(f) zone:-
 - i. Owners of dogs within the development shall have their yards fenced so as to securely contain a maximum of one (1) dog per allotment and the ownership of cats within the development shall be restricted to one de-sexed cat per allotment and such cats shall be restrained within the house or a secure night cage between the hours of 6.00pm and 6.00am.
 - ii. No dog shall be registered without the construction of a dog-proof compound which must be approved by Council and the relevant fee paid by the applicant.
 - iii. No owner can retrieve a dog that has been impounded unless they can demonstrate to Council they have a secure compound.

These ownership and control requirements shall be reinforced by a Restrictions as to User under Section 88B of the Conveyancing Act, 1919-1964.

A Section 88B Instrument creating the restriction as to user shall contain a provision enabling the restriction to be revoked, varied or modified only with the consent of Council.
113. All stormwater gully lintels shall have the following notice **cast** into the top of the lintel: '**DUMP NO RUBBISH, FLOWS INTO CREEK**' or similar wording to the satisfaction of the Director of Development Services.
114.
 - (i) **PRIOR** to lodging an application for a Subdivision Certificate, the applicant shall obtain the written approval of Council to the proposed road/street names. Approved names are to be in accordance with Council's Road Naming Policy adopted on 7 August 1996 and are to be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate.
 - (ii) To avoid confusion resulting from duplication of private driveway/accessway name and public road/street names, the applicant

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shall submit to Council for approval the proposed name(s) of any private driveway/accessways.

The names shall be approved **PRIOR** to lodgement of any plan of subdivision in respect of the development.

Names which duplicate existing and approved street names will not be approved.

115. Prior to the issue of each subdivision certificate for each stage, the applicant shall provide evidence that the total number of resort rooms substantially commenced exceeds the total number of dwellings capable of being erected at the release of the subject stage. For the purpose of satisfying Council that the resort rooms have been substantially commenced at least 50% of construction works will need to have been completed.
116. All works (other than ongoing vegetation rehabilitation) as detailed in Section 7 of the Lot 500 and 7(f) Management Plans (when approved) north of the southern boundary of Lot 170 are to be completed to the satisfaction of Council and the Department of Sustainable Natural Resources/Department of Lands and Rural Affairs prior to the release of a subdivision certificate for Stage 1A(1).
117. All works (other than ongoing vegetation rehabilitation) as detailed in Section 7 of the Lot 500 and 7(f) Management Plans (when approved) south of the southern boundary of Lot 170 are to be completed to the satisfaction of Council and the Department of Sustainable Natural Resources/Department of Lands and Rural Affairs prior to the release of a subdivision certificate for Stage 1A(1).
118. The applicant will dedicate to Council all land zoned 7(f) with the release of the subdivision certificate for Stage 1A(1).
119. A total of 200 public car parking spaces shall be constructed adjacent to the central park, generally in accordance with the approved plans and to the satisfaction of Council and dedicated to Council prior to the release of the subdivision certificate for Stage 1A(3).
120. On street public car parking as detailed in the letter from the Ray Group dated 11 April 2003 shall be constructed with each stage.
121. Bushfire mitigation measures are to be undertaken in accordance with the plan titled "Bushfire Management Plan for Residential Land Abutting the Northern and Southern Boundaries", prepared by Cardno MBK dated 23 August 2002 prior to the issue of a subdivision certificate creating lots abutting either the northern or southern boundaries of the subject land.
122. Prior to the issue of the Subdivision Certificate for Stage 2, the bridge over Cudgen Creek at Kingscliff shall be upgraded at the applicants cost. The upgrading works shall consist of;
 - Cathodic protection of substructure reinforcement
 - Widen the substructure as required to facilitate widening of superstructure to accommodate pedestrian/cycleway on one side

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- Replace defective girders and corbels in superstructure
- Replace and widen deck to accommodate Austroads standard width cycleway/footpath
- Construct appropriate traffic barriers/handrails

Other alternative arrangements to the satisfaction of both the applicant and Council may be considered.

123. Concrete paths 2.4m wide and 2.0m wide shall be constructed throughout the development generally in accordance with the EDAW Landscape Principles or were modified by table 1 of this consent.
124. (a) The Regional Sewage Pumping station chamber shall be designed so that it has sufficient capacity to cater for outfall sewage discharged from the future development of Seaside City to the south. The applicant shall also ensure that the trunk gravity main constructed along the new alignment of Casuarina Way has adequate capacity to service Seaside City. The applicant shall negotiate with the registered property owners of Seaside City to resolve the proportional funding responsibilities associated with the construction of this regional pump station and gravity main.
- (b) All sewage pump stations and lift stations shall be constructed on separate allotments which are dedicated to Council. The allotment shall be located so that the nearest dwelling is a minimum of 10m from the boundary of the pump station lot.
- (c) Sewage pump stations and lift stations that service less than 50 lots will not be accepted by Council as a public utility
- (d) Prior to the issue of any Subdivision Certificate the 200mm diameter rising main approved by Construction Certificate 0031/2001ccsu (DA1190/115) shall be constructed and commissioned to the satisfaction of Council.
125. The Trunk water main along Casuarina Way shall be constructed as a 450mm diameter main. Council will contribute towards the marginal cost associated with the construction of the 450mm water main. Negotiations between Council and the applicant will be required to seek an agreement as to the quantum of the marginal cost.
126. All retaining walls are to be certified by a suitably qualified geotechnical / structural engineer. The certification is to be submitted with the subdivision certificate application and shall state that the retaining walls have been designed and constructed in accordance with AS 4678-2002 - Earth Retaining structures and are structurally sound.
- In addition to the above certification the following is to be included in the Section 88B Instrument to accompany the final plan of subdivision.
- i. A restriction to user for each lot that has the benefit of a retaining wall that prevents any cut or fill greater than 0.5m in vertical height

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- ii. Each lot burdened and or benefited by a Type 1 wall as defined in AS 4678 -2002 - Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to monitor and maintain the structure in accordance with that standard.

Tweed Shire Council is to be nominated as the authority empowered to release, vary or modify the restrictions.

127. Drainage and landforming conditions for various stages

STAGE 1A

Trunk Drainage Stage 1A

The "basic trunk drainage network" is defined as including all the following elements -

- (a) Creation by landforming of a coastal swale drain sized to accommodate Q_{100} runoff and necessary infiltration basins to infiltrate $Q_{3 \text{ month}}$ runoff from stage 1A on the eastern boundary of the site
- (b) Construction of the east /west trunk drain including
 - o Detention basin (for later use as dual use central park)
 - o 1800 pipeline from detention basin under Casuarina Way to Cudgen Creek south outfall No. 16 (may be temporarily replaced west of Casuarina Way with an open channel, until construction of Stage 6)
 - o Cudgen Creek south outfall No.16 and associated bank improvement works
 - o Infiltration basins in above trunk drainage systems
- (c) Construction of the northern trunk drain including
 - o Pipelines under Casuarina Way
 - o Downstream drains from above
 - o Cudgen Creek north outfall No.17
 - o Infiltration basins in above trunk drainage systems

The "basic trunk drainage network" is to be completed in Stage 1A Phase 3, prior to the commencement of any placement of external fill on the site (and immediately after the relocation of Casuarina Way in Phase 2).

Other Drainage Stage 1A

All drainage works associated with Casuarina Way (including downstream drainage) shall be constructed prior to release of the subdivision certificate for Stage 1A.

STAGE 1A1

Drainage Works Stage 1A1

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All drainage works required to service Stage 1A1 must be completed prior to the issue of a subdivision certificate for Stage 1A1. These drainage works include(unless amended by Council):

- (a) All drainage works required for Stage 1A
- (b) All drainage works associated with roadworks in stage 1A1. This includes drainage works for the temporary public road located in lots 153-166 which must ensure no runoff discharges onto adjacent lot 490 DP 47021.
- (c) All drainage and stormwater quality devices downstream from (b)
- (d) Gross pollutant traps to remove oil, litter and sediment at outlets Nos. 4, 5, 6, & 7.
- (e) All infiltration basins in the trunk drainage system between Outlet No.7 and Cudgen Creek south Outlet No.16.
- (f) All infiltration basins in the trunk drainage system between Outlet No.15 and Cudgen Creek north Outlet No.17.

STAGE 1A2

Drainage Works Stage 1A2

All drainage works required to service Stage 1A2 must be completed prior to the issue of a subdivision certificate for Stage 1A2. These drainage works include(unless amended by Council):

- (a) All drainage works required for Stages 1A & 1A1
- (b) All drainage works associated with roadworks in stage 1A2.
- (c) All drainage and stormwater quality devices downstream from (b)
- (d) Gross pollutant traps to remove oil, litter and sediment at outlet No. 13.
- (e) All infiltration basins in the trunk drainage system between Outlet No.13 and Cudgen Creek north Outlet No.17.

STAGE 1A3

Drainage Works Stage 1A3

All drainage works required to service Stage 1A3 must be completed prior to the issue of a subdivision certificate for Stage 1A3. These drainage works include (unless amended by Council):

- (a) All drainage works required for Stages 1A, 1A1 & 1A2
- (b) All drainage works associated with roadworks and car parking areas in stage 1A3. Final shaping and permanent surfacing of the dual use central park/detention basin.
- (c) All drainage and stormwater quality devices downstream from (b), including drainage in road 15 that accepts runoff from road 16.
- (d) Gross pollutant traps to remove oil, litter and sediment at outlet No.3.
- (e) All infiltration basins in the trunk drainage system between Outlet No.3 and Cudgen Creek south Outlet No.16.

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STAGE 1A4

Drainage Works Stage 1A4

All drainage works required to service Stage 1A4 must be completed prior to the issue of a subdivision certificate for Stage 1A4. These drainage works include(unless amended by Council):

- (a) All drainage works required for Stages 1A & 1A1
- (b) An open and or piped perimeter interallotment drain(s) constructed and located in a drainage easement within lots 153 -168 along the lot 490 boundary to accommodate and transport Q100 overland flow from contributing allotments. This drain must be sized to ensure no runoff from Q100 events discharges onto adjacent lot 490 DP47021
- (c) Downstream drainage works to convey runoff from the perimeter drain(s) above into the trunk drainage system.

Landforming Stage 1A4

- (a) Lots 153 to 168 shall be generally reformed and graded down to the north to be consistent with the existing levels along the lot 490 boundary. The reforming shall include the earthworks required to form the perimeter interallotment drain required by other conditions, along the lot 490 DP47021 boundary.
- (b) Where the proposed levels of this development are inconsistent with existing levels on adjacent land, retaining walls (and any necessary ancillary or drainage works) shall be provided on the lot boundaries to ensure the land shaping has no adverse affect on adjoining land. Plans and specifications of the retaining walls and ancillary works and the written approval of the adjacent landowner must be submitted with the construction certificate application.

STAGE 2

Drainage Works Stage 2

All drainage works required to service Stage 2 must be completed prior to the issue of a subdivision certificate for Stage 2. These drainage works include(unless amended by Council):

- (a) All drainage works required for Stages, 1A and 1A4
- (b) All drainage works associated with roadworks and car parking areas in stage 2.
- (c) All drainage and stormwater quality devices downstream from (b).
- (d) Gross pollutant traps to remove oil, litter and sediment at Outlets Nos.12, 13, 14, & 15.
- (e) All infiltration basins in the trunk drainage system between Outlets Nos.12, 13, 14 & 15 and Cudgen Creek north Outlet No.17.
- (f) An open perimeter interallotment drain(s) constructed and located in a drainage easement within lots 204 - 213 along the lot 490 DP 47021 boundary to accommodate and transport Q100 overland flow from

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contributing allotments. This drain(s) must be sized to ensure no runoff from Q100 events discharges onto adjacent lot 490 DP47021

- (g) Downstream drainage works including creation of necessary easement, to convey runoff from the perimeter drain(s) above into the trunk drainage system.

Drainage Works in Public Open Space on Stage 2

- (a) The configuration of drainage works (location, whether surface or underground, levels, footprint, surface finish, bank slopes etc.) within proposed Pocket Park 126.5 and the open space lot 224 must be compatible with the proposed dual open space/drainage landuse. In this regard the written agreement of the Manager Recreation Services to the configuration of drainage works must accompany a construction certificate application for works associated with Stage 2.
- (b) All drainage works for this stage and any other future stages, to be located within proposed Pocket Park 127.5 and the open space lot 224 must be constructed prior to the release of a subdivision certificate for stage 2.

Landforming Stage 2

- (a) The rear of Lots 204 to 213 shall be reformed to provide the perimeter interallotment drain required by other conditions, along the lot 490 DP47021 boundary.
- (b) Where the proposed levels of this development are inconsistent with existing levels on adjacent land, retaining walls (and any necessary ancillary or drainage works) shall be provided on the lot boundaries to ensure the land shaping has no adverse affect on adjoining land. Plans and specifications of the retaining walls and ancillary works and the written approval of the adjacent landowner must be submitted with the construction certificate application.

STAGE 3

Drainage Works Stage 3

All drainage works required to service Stage 3 must be completed prior to the issue of a subdivision certificate for Stage 3. These drainage works include(unless amended by Council):

- (a) All drainage works required for Stages, 1A and 2
- (b) All drainage works associated with roadworks and car parking areas in stage3.
- (c) All drainage and stormwater quality devices downstream from (b).

STAGE 4

Drainage Works Stage 4

All drainage works required to service Stage 4 must be completed prior to the issue of a subdivision certificate for Stage 4. These drainage works include(unless amended by Council):

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- (a) All drainage works required for Stages, 1A and 2
- (b) All drainage works associated with roadworks and car parking areas in stage 4.
- (c) All drainage and stormwater quality devices downstream from (b).
- (d) Gross pollutant traps to remove oil, litter and sediment at Outlets Nos.9 & 11.
- (e) All infiltration basins in the trunk drainage system between Outlet No.9 and Cudgen Creek south Outlet No.16.
- (f) All infiltration basins in the trunk drainage system between Outlet Nos.11 and Cudgen Creek north Outlet No.17.

STAGE 5

Drainage Works Stage 5

All drainage works required to service Stage 5 must be completed prior to the issue of a subdivision certificate for Stage 5. These drainage works include:

- (a) All drainage works required for Stages, 1A, 2 and 4
- (b) All drainage works associated with roadworks and car parking areas in stage 5.
- (c) All drainage and stormwater quality devices downstream from (b).
- (e) Gross pollutant traps to remove oil, litter and sediment at Outlets No. 10.
- (f) All infiltration basins in the trunk drainage system between Outlet No.10 and Cudgen Creek north Outlet No.17.

STAGE 6

Drainage Works Stage 6

All drainage works required to service Stage 6 must be completed prior to the issue of a subdivision certificate for Stage 6. These drainage works include(unless amended by Council):

- (a) All drainage works required for Stage 1A.
- (b) All drainage works associated with roadworks, car parking areas and public open space areas in stage 6.
- (c) All drainage and stormwater quality devices downstream from (b).
- (e) Gross pollutant traps to remove oil, litter and sediment at Outlet No. 8.
- (f) All infiltration basins in the trunk drainage system between Outlet No.8 and Cudgen Creek south Outlet No.16.

Drainage and Landforming Works in Public Open Space in Stage 6

Prior to the issue of a subdivision certificate for stage 6:

- (a) The trunk drain in Pocket Park 2 is to be constructed as an underground pipeline.

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- (b) Within Pocket Park 2 the trunk drain is to be backfilled and the whole area landformed to its final shape and level. Surfacing/landscaping of Pocket Park 2 shall be completed.

STAGE 7A

Drainage Works Stage 7A

All drainage works required to service Stage 7A must be completed prior to the issue of a subdivision certificate for Stage 7A. These drainage works include(unless amended by Council):

- (a) All drainage works required for Stages 1A & 6.
- (b) All drainage works associated with roadworks, car parking areas and public open space areas in stage 7A.
- (c) All drainage and stormwater quality devices downstream from (b).
- (d) All infiltration basins in the trunk drainage system between Outlet No.3 and Cudgen Creek south Outlet No.16.

STAGE 7B

Drainage Works Stage 7B

All drainage works required to service Stage 7B must be completed prior to the issue of a subdivision certificate for Stage 7B. These drainage works include(unless amended by Council):

- (a) All drainage works required for Stages 1A, 6 & 7A.
- (b) All drainage works associated with roadworks, car parking areas and public open space areas in stage 7B.
- (c) All drainage and stormwater quality devices downstream from (b).
- (d) All infiltration basins in the trunk drainage system between Outlets Nos.1 & 2 and Cudgen Creek south Outlet No.16.

STAGE 8

Drainage Works Stage 8

All drainage works required to service Stage 8 must be completed prior to the issue of a subdivision certificate for Stage 8. These drainage works include(unless amended by Council):

- (a) All drainage works required for Stage 1A & 6.
 - (b) All drainage works associated with roadworks, car parking areas and public open space areas in stage 8.
 - (c) All drainage and stormwater quality devices downstream from (b).
128. The proposed intersection with the Casuarina Way and the 80 unit tourist site located between Roads 20 and 22 is not approved as part of this consent. Appropriate intersection and road upgrade conditions will be applied at the application stage for the particular development on that site. However it should be noted that a maximum queue length of 50 meters is identified in the year 2017 so upgrading will be required.

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129. The following intersections with Casuarina Way at Road 20, Road 1, Road 11b, and Road 17 are to be constructed with a modified protected right turn lane designed as per Roads and Traffic Authority design guidelines. It should also be noted that the shoulders are to be widened to maintain 2 meter shoulders on each side of the through carriageway lanes for the extent of the intersection.
130. The car park shown on Figure No. DA40 Roadworks Layout plan sheet No 3 shows a large car park adjacent to the international resort complex. The car park area contained between chainage 100 and chainage 210 is to be fully incorporated onto the resort allotment. This section of the car park is to remain privately owned, however a right of way is to be registered over the subject car park in favour of Council for public access.
131. The Casuarina Way road design is for a rural cross section with an 11 meter wide paved surfaced consisting of two travel lanes. The design must ensure that at all intersections with right turn bays the 2 metre, sealed shoulder is maintained for the full extend of the travel lanes on either side of the road. It is not acceptable to consume the shoulders to provide the right turn lanes as this is unsafe for cyclists.
132. Detailed design plans are to be submitted and approved by the Director of Development Services, demonstrating how pedestrian crossing locations will be catered for, given the rural cross section of Casuarina Way.
133. The section of road shown on figure DA40 roadworks layout plan sheet three and four between Roads 25 and 8 must comply with accepted design practice. As this section of street performs as a public road, the car park design must comply with AustRoads Guide to Traffic Engineering Practice part 11 - Parking. The travel lanes and manoeuvring areas specified in that document must be incorporated into the detailed design plans to be submitted and approved by the Director of Development Services.
134. The intersection of Road 8 with the car park is to be reconfigured to ensure that Road 8 and it's extension around to Road 25 has a through road status and the 'leg' leading to the public car park to the East is to be designed so as to clearly define its status as a public car park.
135. All pedestrian pathways and cycle ways are to be designed in strict compliance with AustRoad's Guide to Traffic Engineering Practice, part 14 especially in regards to width and clearance zones to obstructions of either side of such facilities. Special attention must also be given to design treatment of locations where cycle ways cross public roads.
136. All street name signage is to strictly comply with Australia Standard 1742.5 and must be 'class 1' reflective material and must contain the Council Logo. The Salt logo is not acceptable on directional street signage.
137. No directional signage is to be located within the road reserve unless such a facility warrants a directional sign in accordance with Australian Standard 1742.5 or .6. All signs are to be erected in accordance with RTA specifications in regards to height above road level and sizes.

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138. No entry statement signage such as stone clad walls are to be constructed within public road reserve unless detailed designs have been submitted and approved by the Director of Engineering Services prior to their construction.
139. All street lighting within the public roads and car parks is to be designed to comply with Australian Standard 1158. All lighting on local roads is to be of a minimum "P4" standard and the lighting for Casuarina Way is to be "V4" standard, as described in the above Australia Standard. The public and private car park is to be constructed with the relevant standard of lighting as stated in the above Australian Standard. Street lights are to be selected from Council standard range of poles and lights. If variation is requested, details must be provided and arrangements must be made to provide or demonstrate the availability of replacement equipment, and demonstrating that the energy consumption of proposed alternative lighting designs is no greater than Council standard range. If this cannot be done the lighting variation will not be accepted.
140. All bus shelters provided throughout the development, must be located so that they are clear of cycle ways or pathways and do not create pedestrian or cyclist hazards. All bus shelters must be located adjacent to or within the luminant range of a street light.
141. Streets lights are to be located adjacent to all pedestrian walkway links between streets and foreshore reserve. This is to ensure adequate lighting of such facilities.
142. A detailed signage and line marking plan is to be provided for the entire development or alternatively for each stage. All line marking and signage must comply with Roads and Traffic Authority of NSW Standards in terms of style, width and reflectivity. No signs, line marking or reflectors are to be installed until the detailed plans have been approved by the Director of Engineering Services.
143. The Developer is to construct two 'slow points' in Sutherland Street Kingscliff at locations to be determined in consultation with Council and the Kingscliff Residents & Ratepayers Association. The 'slow points' are to be constructed in accordance with detail designs that have been submitted and approved by DES. The points being located within the existing road reserve. The slow points are to be completed prior to opening of the Outrigger Resort.

Department of Sustainable Natural Resources Management/Department of Lands and Rural Affairs (DSNR/DLRA) Conditions

144. All landscaping works within the subdivision and adjacent foreshore and riparian zones are to only use local native species appropriate to the sites and circumstances. Landscaping plans are to include a list of plants to avoid (environmental weeds or potential environment weeds) for the entire site.
145. The applicant is required to obtain a licence from DSNR/DLRA authorising entry onto Lot 500 and permitting construction of works associated with the undertaking of environmental rehabilitation and recreational infrastructure

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- facilities (and associated earthworks). The licence will refer to, and require all work to be in accordance with, an adopted Dune Management Plan for Lot 500 and the 7(f) zone. (Once approved by DSNR/DLRA and Tweed Shire Council as Manager of the Tweed Coast Reserve Trust).
146. Approval is to be obtained from DSNR/DLRA for the opening of a temporary road within Lots 490 and 500 (for the full length of the current unauthorised formation). The developer will be required to:-
- Undertake to survey and constructed the road;
 - Rehabilitate, the extent specified by DSNR/DLRA, any part of the temporary road within Lots 490 and 500 to be removed;
 - Provide an equitable contribution of land by both parties in any future design of a permanent road connection at the boundary of Lot 490 in the SALT development.
147. A licence must be obtained from DSNR/DLRA prior to commencement of any works, for any construction and occupation of Crown land along the Cudgen Creek foreshore involving earthworks, walkways/cycleways and associated revegetation.
148. Any necessary approvals are to be obtained from the DSNR under the Native Vegetation Conservation Act, 1997 for clearing of land within environmental protection zones in accordance with the Riparian Management Plan prior to the commencement of any works in this area.
149. The hydraulic delivery and placement of fill onto the land must be carried out in accordance with the following requirements:-
- The placement of the sand onto hardstand material, thereby allowing the collection and drainage of the saltwater back to the Tweed River and preventing groundwater infiltration.
 - This partly drained sand is then to be placed through a "cyclone" to extract the remaining poor moisture leaving not more than 1.5% saltwater (as detailed Cardno MBK letter 8/4/03).
 - Additional monitoring bores will have to be installed by the proponent at locations agreed on by DSNR. It is anticipated that bores will be required both within the fill area and on the periphery (down hydraulic gradient).
 - The average salinity of key monitoring bores at the site will not be permitted to exceed 850mg per litre.
 - Groundwater salinity at key monitoring bore sites (locations to be agreed on by DSNR) will be monitored by the proponent during filling and placement of sands. Should average salinity increase above the trigger level of 850mg per litre then this should trigger a modification to the filling process subject to further discussions and endorsement by DSNR to ensure the protection of the groundwater quality.

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- Regular groundwater monitoring around the fill sites will be undertaken and quarterly reports will be provided to the DSNR for review.
- A detailed Groundwater Management Plan must be prepared for the site which details the monitoring of groundwater salinity and aquifer protection strategy. This plan at a minimum would be expected to include monitoring of salinity as follows:-

Monitoring of groundwater to sufficiently establish background salinity:

- **Pre-fill** - monitoring of groundwater to sufficiently establish background salinity;
- **Sand filling process** - monitoring at weekly intervals;
- **Post filling monitoring** - to be undertaken until salinity levels decrease significantly:
- Monitoring regime - Year One - monthly
Year Two - quarterly
Year Three - bi-yearly

Note: Monitoring will be required until salinity levels decrease in the aquifer and frequency of testing may have to vary depending on results.

- The Groundwater Management Plan is to be submitted and approved by the Department of Sustainable Resource Management prior to commencement of filling works occurring.
- Note: all monitoring bores are required to be licensed with the Department under the Water Act (1912).

National Parks and Wildlife Service Conditions

150. For the purpose of retaining as many existing banksias on the site as possible for as long as possible, it is required that banksias are not to be cleared until such time as filling of that portion of the site is to occur.
151. The Lot 500 and 7(f) Management Plan is to incorporate provisions to ensure the maintenance or establishment of a vegetated buffer on the dunes between the development and the beach sufficient to block light penetration to the beach.
152. External lights on buildings and streetlights are to be mounted so as to minimise light penetration to the beach. Details of such lighting proposals are to be provided to Council as part of the construction certificate drawings where relevant. These lights are to be designed so as to shade the top and seaward side where located in close proximity to the beach.
153. Access paths to the beach are to be slightly offset so as to not allow penetration of light down these paths onto the beach.

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154. *Compensatory planting of Banksia's is to be undertaken in accordance with details provided in the application and the report titled "Compensatory Planting, Research and Monitoring Proposal" dated 22 April 2003 prepared by Greg Richards and Associates except as varied below: -*

- *Banksia integrifolia are to be planted rather than Banksia ericifolia*
- *1000 large potted Banksia's in 25 litre containers are to be planted*
- *All plantings are to be located in the drier areas of the site*
- *Monitoring reports are to be provided every 6 months over a minimum of a 5 year period*

The monitoring reports are to be reviewed by an independent consultant with experience in botany/bushland regeneration and funded by the applicant and approved by Council. Additional compensatory planting are to be identified by the monitoring reports and the review of the monitoring reports. The monitoring reports and independent review of the monitoring reports are to be forwarded to Council and the National Parks and Wildlife Service. Council, National Parks and Wildlife Service and the applicant are to meet annually to discuss the outcomes of the monitoring program and agree upon future actions within an adaptive management framework.

- *Where Blossom Bats are captured all individuals, up to 10 in number, are to be fitted with radio-transmitters. Bats fitted with transmitters are to be tracked during the day for five consecutive days.*
- *All baseline bat surveys are to be undertaken prior to the removal of any Banksia's and over the winter flowering period of 2003.*
- *Submission with Council of a bond to the value of \$50,000. This bond will be released upon the satisfactory establishment of the Coastal Banksias to the satisfaction of Council in consultation with the National Parks and Wildlife Service.*

DIRECTOR-GENERAL OF PLANNINGNSW CONDITIONS OF CONCURRENCE

155. *The works within the 7(f) zone are to be undertaken in accordance with the Management Plan endorsed by Tweed Shire Council, the Department of Sustainable Natural Resources and PlanningNSW.*

GENERAL TERMS OF APPROVAL UNDER SECTION 205 OF THE FISHERIES MANAGEMENT ACT (Permit to cut remove damage or destroy marine vegetation on public water land or an aquaculture lease on the foreshore of any such land or lease)

1. That a permit to harm marine vegetation under s205 of the Fisheries Management Act 1994 be sought and obtained by the developer before work on the stormwater pipe commences.
2. That NSW Fisheries be informed 3 days before the commencement of works that will or could harm marine vegetation.

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3. That machinery, access tracks and material not be stored in the buffer zone identified in the 'Fisheries Response, Salt Development Application March 2003' and refined in a letter addressed to NSW Fisheries prepared by Aspect North dated 4 April 2003.
4. In the absence of the developer siting the stormwater pipe more than 50 metres away from seagrass beds and achieving at least a 50 metre buffer to aquatic habitats such as mangroves and saltmarsh the developer is required to either:
 - a. off-set impacts on aquatic habitats arising from the development by funding to the value of \$250,000, works within the Cudgen Creek subcatchment to reduce sediment and nutrient inputs into, and maintain the aquatic habitat of Cudgen Creek to the satisfaction of NSW Fisheries; or
 - b. Submitting, for five (5) years, a \$200,000 bond in the form of a bank guarantee, bank cheque or personal cheque with 'NSW Fisheries Conservation Trust Fund' as the nominated drawer. The bond will be returned to the developer contingent upon no significant impact being detected in the health and coverage of seagrasses in Cudgen Creek after five (5) years of monitoring. The monitoring program to detect deleterious impacts on seagrass beds in Cudgen Creek is to be funded by the proponent and must be approved by NSW Fisheries and satisfactorily completed. If statistically significant impacts are detected in the cover or health of seagrass in Cudgen Creek the \$200,000 bond will not be returned. In such an instance the bond would be used to fund projects to reduce sediment and nutrient inputs into, and maintain the aquatic habitat of, Cudgen Creek to the satisfaction of NSW Fisheries.

It is recommended that management of the \$250,000 discussed in point one of NSW Fisheries General Terms of Approval be managed as a Trust administered by the developer. It is felt that such an arrangement will facilitate the developer having an ongoing interest in the health and quality of aquatic habitats in Cudgen Creek.

GENERAL TERMS OF APPROVAL UNDER SECTIONS 43(b), 48 and 55 OF THE PROTECTION OF THE ENVIRONMENT OPERATIONS ACT 1997 (Environment protection licence to authorise carrying out of scheduled activities at any premises)

1 Administrative conditions

A1. Information supplied to the EPA

A1.1 Except as expressly provided by these general terms of approval, works and activities must be carried out in accordance with the proposal contained in:

- the development application DA 02/14422 submitted to Tweed Shire Council on 5 September 2002;

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- the Supplementary Reports submitted to the EPA from Council 1 April 2003 and
- all additional documents supplied to the EPA in relation to the development, including all documentation supplied in response to the EPA letters to Council and advice received by Council and the EPA from the Department of Sustainable & Natural Resources concerning groundwater.

A2. Fit and Proper Person

A2.1 The applicant must, in the opinion of the EPA, be a fit and proper person to hold a licence under the Protection of the Environment Operations Act 1997, having regard to the matters in s.83 of that Act.

2 DISCHARGES TO AIR AND WATER AND APPLICATIONS TO LAND

P1 Location of monitoring/discharge points and areas

P1.1 The following points referred to in the table below are identified for the purposes of monitoring

and/or the setting of limits for the emission of pollutants to the air or water from the point.

Air and Water

EPA Identification no.	Type Monitoring Point	of Type Discharge Point	of Description of Location
1	Ambient monitoring	air	Dust gauge labelled "Kingscliff TAFE" located at the Kingscliff TAFE.
2	Ambient monitoring	air	Dust gauge labelled "Kingscliff High School" located at the Kingscliff High School
3	Ambient monitoring including Meteorological station	air	Dust gauge labelled "Meteorological Station" located at a location on the eastern bank of the Cudgen creek which is representative for wind speeds for the Western boundary of the site
4	Discharge Monitoring	and Discharge to waters Effluent quality monitoring	At point nominated as SP2 on drawing number 7083/1/8- SK 04B dated February 2003 in "Revised Earthworks Management Plan REV B 28 March 2003"

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5	Discharge and Monitoring	and Discharge to waters Effluent quality monitoring	At point nominated as SP3 on drawing number 7083/1/8- SK 04B dated February 2003 in "Revised Earthworks Management Plan REV B 28 March 2003"
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P1.2 Prior to constructing and commissioning the ambient air and meteorological monitoring stations, the proponent must provide the EPA with a report that clearly establishes that the proposed monitoring stations:

- will be sited and operated in accordance with the Approved Methods for Modelling and Assessment of Air Pollutants in New South Wales and will produce data for Level 2 impact assessment. In particular, the proponent must demonstrate that the meteorological station meets the requirements of AM-1, AM-2 and AM-4
- adequately describes the meteorological patterns in the vicinity of the development
- is representative of the ambient conditions prevailing at the nominated receptors identified in the revised Earthworks Management Plan.

3 Limit conditions

L1. Pollution of waters

L1.1 Except as may be expressly provided by a licence under the Protection of the Environment Operations Act 1997 in relation of the development, section 120 of the Protection of the Environment Operations Act 1997 must be complied with in and in connection with the carrying out of the development.

L2. Concentration limits

L2.1 For each monitoring/discharge point or utilisation area specified in the table/s below, the concentration of a pollutant discharged at that point, or applied to that area, must not exceed the concentrations limits specified for that pollutant in the table.

L2.2 Where a pH quality limit is specified in the Table, the specified percentage of samples must be within the specified ranges.

L2.3 To avoid any doubt, this condition does not authorise the discharge of any other pollutants.

POINT 4 and 5 Water

Pollutant	Units of measure	100% concentration limit
Suspended solids	mg/L	50
PH	pH	6.5 to 8.5

L6. Noise limits

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L6.1 Prior to the commencement of construction activities, the licensee must submit a Construction Noise Management Protocol to the EPA. The protocol shall include, but not be limited to:

- (a) identification of each work area;
- (b) identification of general activities that will be carried out and associated noise sources for each work area;
- (c) identification of all potentially affected noise sensitive receivers including residences, schools, commercial premises and noise sensitive equipment;
- (d) determination of appropriate noise and vibration objectives for each identified noise sensitive receiver;
- (e) assessment of potential noise impacts from the proposed construction methods including noise from construction vehicles and noise impacts from required traffic diversions;
- (f) examination of all reasonable and feasible noise mitigation measures including the use of alternative construction methods where potential noise impacts exceeds the relevant objectives;
- (g) description and commitment to work practices which limit noise;
- (h) description of specific noise mitigation treatments and time restrictions including respite periods, duration, and frequency; extent of noise monitoring;
- (i) construction timetabling;
- (j) procedures for notifying residents of construction activities likely to affect their noise and vibration amenity; and,
- (k) contingency plans to be implemented in the event of non-compliances and/or noise complaints.
- (p)

L6.2 Construction activities shall be restricted to the hours of 7:00 am to 6:00 pm (Monday to Friday); 8:00 am to 1:00 pm (Saturday) and at no time on Sundays and public holidays except for:

- (a) any works which do not cause noise emissions to be audible at any nearby residential property and other noise sensitive receivers;
- (b) the delivery of plant, equipment and materials which is required outside these hours as requested by Police or other authorities for safety reasons;
- (c) emergency work to avoid the loss of lives, property and/or to prevent environmental harm;
- (d) any other work as agreed by Council in consultation with the EPA, and considered essential to the project and where it can be demonstrated that it would achieve a better environmental outcome, through a Community Consultation Process.

L6.3 Piling, rock hammering and any other activities which result in impulsive or tonal noise generation shall only be scheduled between the following hours unless otherwise agreed by the EPA:

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- (a) 8 am to 12 pm, Monday to Saturday (except on Public Holidays); and
- (b) 2 pm to 5 pm Monday to Friday (except on Public Holidays).

Where these activities are undertaken for a continuous three hour period and are audible at noise sensitive receptors, a respite period of at least one hour must follow.

Wherever practical, piling activities shall be completed using bored piles. If driven piles are proposed to be used, reasons they are required shall be specified in the Construction Noise Management Protocol.

L7 Waste

L7.1 The licensee must not cause, permit or allow any waste generated outside the premises to be received at the premises for storage, treatment, processing, reprocessing or disposal or any waste generated at the premises to be disposed of at the premises, except as expressly permitted by a licence under the Protection of the Environment Operations Act 1997.

L7.2 This condition only applies to the storage, treatment, processing, reprocessing or disposal of waste at the premises if it requires an environment protection licence under the Protection of the Environment Operations Act 1997.

4 OPERATIONAL CONDITIONS

O1 Stormwater/sediment control

O1.1 Construction Phase

O1.2 A *Soil and Water Management Plan (SWMP)* must be prepared and implemented. The plan must describe the measures that will be employed to minimise soil erosion and the discharge of sediment and other pollutants to lands and/or waters during construction activities. The *SWMP* must be prepared in accordance with the requirements for such plans outlined in *Managing Urban Stormwater: Soils and Construction* (available from the Department of Housing).

O2 Dust

O2.1 Activities occurring at the premises must be carried out in a manner that will ensure that any emissions of dust from the premises are not visible in the atmosphere beyond the boundary of the premises.

O2.2 Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.

O4 Bunding

O4.1 Impervious bunds must be constructed around all liquid fuel, oil and chemical storage areas and the bund volume must be large enough to contain 110 % of the volume held in the largest container. The bund must be designed in accordance with the requirements of the EPA's Environment Protection Manual Technical Bulletin *Bunding and Spill Management*.

5 MONITORING AND RECORDING CONDITIONS

M Requirement to monitor concentration of pollutants discharged

M1 For each monitoring/discharge point or utilisation area specified below (by point number), the applicant must monitor (by sampling and obtaining results by

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analysis) the concentration of each pollutant specified in Column 1. The applicant must use the sampling method, units of measure and sample at the frequency, specified opposite in the other columns:

POINTS 1, 2 and 3 - AIR

Pollutant	Units of measure	Frequency	Sampling Method
Particulate Matter - PM ₁₀	µg/m ³	1 day in 6 or Continuous	AM-18 or AS3580.9.8
Particulates - deposited matter	g/m ² /mont h	Continuous	AM-19

M2 Meteorological monitoring requirements

M2.1 The applicant must monitor (by sampling and obtaining results by analysis) the parameters specified in Column 1. The applicant must use the sampling method, units of measure, averaging period and sample at the frequency specified opposite in the other columns.

POINT 3 - METEOROLOGICAL

Parameter	Units of Measure	Frequency	Averaging Period	Sampling Method
Air Temperature	°C	Continuous	1 hour	AM-4
Temperature @ 2 metres	°C	Continuous	15 minute	AM-4
Temperature @ 10 metres	°C	Continuous	15 minute	AM-4
Wind speed	m/s	Continuous	15 minute	AM-2 & AM-4
Wind direction	°	Continuous	15 minute	AM-2 & AM-4
Sigma theta	°	Continuous	15 minute	AM-2 & AM-4
Wind speed @ 10 metres	m/s	Continuous	15 minute	AM-2 & AM-4
Wind direction @ 10 metres	°	Continuous	15 minute	AM-2 & AM-4
Temperature @ 2 metres	°C	Continuous	15 minute	AM-4
Temperature @ 10 metres	°C	Continuous	15 minute	AM-4
Sigma theta @ 10 metres	°	Continuous	15 minute	AM-2 & AM-4

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Humidity	%	Continuous	1 hour	AM-4
Rainfall	mm	Continuous	1 hour	AM-4
Rainfall	mm	Continuous	24 hour	AM-4
Additional requirements - Siting - Measurement				AM-1 & AM-4 AM-2 & AM-4

M3 Monitoring Locations 1

M3.1 Monitoring at Points 1, 2 and 3 must commence before construction commences and after the granting of development consent or finalisation of any subsequent appeals.

M3.2 Monitoring Point 4 and 5 must commence after the first sedimentation pond is constructed.

M4 Reporting

M4.1 The results of any monitoring required to be conducted by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, in relation to the development or in order to comply with the load calculation protocol must be recorded and retained as set out in conditions M1.2 and M1.3.

M4.2 All records required to be kept by the licence must be:

- in a legible form, or in a form that can readily be reduced to a legible form;
- kept for at least 4 years after the monitoring or event to which they relate took place; and
- produced in a legible form to any authorised officer of the EPA who asks to see them.

M4.3 The following records must be kept in respect of any samples required to be collected: the

- date(s) on which the sample was taken;
- the time(s) at which the sample was collected;
- the point at which the sample was taken; and
- the name of the person who collected the sample.

M5 Testing methods - concentration limits

M5.1 Monitoring for the concentration of a pollutant emitted to the air required to be conducted by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, in relation to the development or in order to comply with a relevant local calculation protocol must be done in accordance with:

- any methodology which is required by or under the POEO Act 1997 to be used for the testing of the concentration of the pollutant; or

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- if no such requirement is imposed by or under the POEO Act 1997, any methodology which the general terms of approval or a condition of the licence or the protocol (as the case may be) requires to be used for that testing; or
- if no such requirement is imposed by or under the POEO Act 1997 or by the general terms of approval or a condition of the licence or the protocol (as the case may be), any methodology approved in writing by the EPA for the purposes of that testing prior to the testing taking place.

Note: The Clean Air (Plant and Equipment) Regulation 1997 requires testing for certain purposes to be conducted in accordance with test methods contained in the publication "Approved Methods for the Sampling and Analysis of Air Pollutants in NSW".)

M5.2 Monitoring for the concentration of a pollutant discharged to waters or applied to a utilisation area required by condition M3 must be done in accordance with:

- the Approved Methods Publication; or
- if there is no methodology required by the Approved Methods Publication or by the general terms of approval or in the licence under the Protection of the Environment Operations Act 1997 in relation to the development or the relevant load calculation protocol, a method approved by the EPA in writing before any tests are conducted,
- unless otherwise expressly provided in the licence.

M6 Reporting conditions

M6.1 The applicant must provide an annual return to the EPA in relation to the development as required by any licence under the Protection of the Environment Operations Act 1997 in relation to the development. In the return the applicant must report on the annual monitoring undertaken, provide a summary of complaints relating to the development, report on progress on studies and investigations being undertaken.

GENERAL TERMS OF APPROVAL

PERMIT UNDER PART 3A OF THE RIVERS AND FORESHORES IMPROVEMENT ACT 1948

- Erosion and sediment control measures shall be employed for the duration of construction works to minimise silts and sediments from entering the adjoining Cudgen Creek waterway.
- Excavated material may contain potential acid sulfate soils and shall be tested. If present then appropriate management measures shall be employed to control any acid sulfate soil impacts in accordance with the ASMACC Manual.
- Excavation operations shall be conducted so as not to damage or cause erosion of the adjoining riverbank.
- Excavation operations and construction activities shall be conducted with minimal impact on riparian vegetation.

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- These comments do not comprise the actual 3A Permit and the applicant must make application to DLWC only after development consent is obtained and prior to commencing any works. For clarification, further information or the issue of a 3A Permit, please contact Richard Hagley at DSNR's Alstonville office on Ph: 02 66270106.

GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997

1. The development shall be carried out in accordance with the submitted plans and documents including the Cudgen Creek Riparian Plan (Aspect North Environmental Consultants 2002) and the "Salt" Development at Kingscliff Bushfire Management Plan for Residential Land Abutting the Northern and Southern Boundaries (Cardno MBK August 2002).
 2. The proposed development is to be provided with a fire hydrant system that is capable of servicing the perimeter fire trail system and the riparian zone boundary in accordance with Australian Standard AS2419.1 and the Cudgen Creek Riparian Plan (Aspect North Environmental Consultants 2002). Such fire hydrant system is to be installed so as to be compatible with the requirements of local fire fighting authorities.
 3. Proposed perimeter fire trails are to be constructed in accordance with the requirements of Planning for Bushfire Protection 2001 and are to incorporate sufficient and adequate passing bays for fire fighting appliances.
 4. Residential and commercial areas shall be maintained as an inner protection area at all times in accordance with the requirements of Planning for Bushfire Protection 2001.
 5. Trees within the Inner Protection Area of the APZ must not overhang the buildings or be continuous and there must be a minimum 2m separation between tree canopies.
 6. Any changes to the proposed layout of the allotments on the site are to be referred back to the RFS for further determination to ensure adequate bushfire protection measures are incorporated into the final approval of the proposed development.
 7. All fencing in the residential and commercial areas of the subdivision shall be constructed in non-combustible materials.
2. Development Application DA02/1423 for the erection of a tourist resort and 2 lot stratum subdivision on proposed Lot 170 being the subdivision of Lot 194, 301 and 312 DP 755701 Coast Road, South Kingscliff be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos A-DD-001 to 004 Rev A, A-DD-005 Rev B, A-DD-006 Rev A, A-DD-007 Rev A & Rev B, A-DD-008 Rev A, A-DD-009 Rev A & Rev B, A-DD-011 Rev B, A-DD-016 Rev A dated 28

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- May 2002, 28 August 2002, 16 July 2002 & November 2002 prepared by ML Design, except where varied by these conditions.
2. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property.
 3. In pursuance of the provisions of the Disability Discrimination Act, 1992 (Commonwealth) the design of the proposed development shall facilitate access for the disabled in accordance with the relevant provisions of AS1428- Design for Access and Mobility.
 4. The provision of 376 spaces. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls.
 5. Advertising structures/signs to be the subject of a separate development application, where statutorily required.
 6.
 - (i) Arrangements shall be made for surf lifesaving facilities prior to opening of the Outrigger Resort to the satisfaction of Council.
 - (ii) The applicant shall provide permanent surf lifesaving facilities for patrons of the resorts, future residents and visitors. The applicant is required to construct and equip a surf lifesaving facility in the location nominated on the master plan and in accordance with the requirements of a future Strategic Planning report for surf lifesaving to be completed by Surf Lifesaving New South Wales (at the cost of the applicant).
 - (iii) A separate development application and construction certificate for the surf lifesaving building is to be submitted and approved prior to construction of the permanent facility.
 7. The ongoing resourcing of the surf lifesaving facilities for a period of 10 years shall be by the resort operators and the applicant is to ensure that each tourist resort development on the project will be required to annually contribute to the annual running costs of the surf lifesaving facility on the SALT development with the contributions being based on a share per tourist resort room of the costs of manning the facility with professional life guards contracted through Surf Lifesaving New South Wales.
 8. The applicant shall indemnify Council in regard to the cost of the provision of services by Surf Lifesaving New South Wales for patrolling of Council's beach which borders the SALT development for the 10 year period.
 9. The land and building containing the surf lifesaving facility is to be transferred to Council upon completion. Council will lease the facility to the body corporate of the resort/s for \$1 per year for 10 years.
 10. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
 11. The erection of a building in accordance with a development consent must not be commenced until:

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- a. detailed plans and specifications of the building have been endorsed with a construction certificate by:
 - (i) the consent authority; or
 - (ii) an accredited certifier; and
 - b. the person having the benefit of the development consent:
 - (i) has appointed a Principal Certifying Authority; and
 - (ii) has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and
 - c. the person having the benefit of the development consent has given at least 2 days notice to the Council of the person's intention to commence the erection of the building.
12. Following the completion of all bulk earthworks on the subject allotment (proposed Lot 170) and prior to the construction of any resort buildings, a validation statement shall be provided to Council which confirms that all works have been completed in accordance with the *Detailed Site Radiation Investigation Report & Remediation Action Plan SALT, South Kingscliff (Rev.B Cardno MBK, March 2003)*, that no radioactive materials were encountered in the relevant fill materials imported to the subject site and that surface radiation levels do not exceed 0.7uGy/hr.
 13. Prior to occupation of the resort buildings the regional pump station and rising main approved under Development Consent 0856/2000DA shall be constructed and commissioned to the satisfaction of the Director of Development Services.
 14. A construction certificate application shall be lodged for the temporary relocation of the Casuarina Way (Old Coast Road). The alignment of this road relocation shall be in accordance with Figure No. DA24 prepared by Cardno MBK and dated August 2002. A temporary road reserve shall be created over this road relocation and dedicated free of cost to Tweed Shire Council. At all times public access and continuity of Casuarina Way (Old Coast Road) shall be maintained.
 15. The filling of the Outrigger building pad and embankment for the Casuarina Way (Old Coast Road) shall be done so in accordance with the Revised Earthworks Management Plan Rev C prepared by Cardno MBK and dated 10 April 2003.
 16. All erosion and sedimentation control and dust management associated with the filling operations shall be in accordance with the Reviewed Earthworks Management Plan Rev C prepared by Cardno MBK and dated 10 April 2003.
 17. The existing 200mm diameter water main adjacent to the Casuarina Way (Old Coast Road) shall be temporarily relocated to provide water supply to the site. The relocation shall be done in accordance with an approved construction certificate and all works to be carried out under Council supervision.

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PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

18. A detailed plan of landscaping is to be submitted and approved by Council's Director, Development Services within 3 months after the issue of a Construction Certificate. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.
19. Any car parking floodlighting shall not spill beyond the boundaries of the site. A plan of the lighting shall be approved by the Director of Development Services **PRIOR** to the issue of a Construction Certificate.
20. A traffic control plan that complies with the provisions of the RTA document "Traffic Control at Work Sites" Version 2 shall be prepared by a person who is qualified, authorised and has passed an RTA approved training course, and submitted to Council, prior to issue of the Construction Certificate for the proposed stage of the works. All works are to comply with the Occupational Health and Safety Act and the RTA document and the approval particularly in respect to works on public roads. Safe public access shall be provided at all times.

21. Section 94 Contributions

- (i) Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

- a. Tweed Road Contribution Plan: \$325,954
S94 Plan No. 4 (Version 4.0)
(Duranbah/Cabarita)
- b. Emergency Facilities (Surf Lifesaving) \$90,180
S94 Plan No. 16
- c. Extensions to Council Administration Offices
& Technical Support Facilities \$79,675.25
S94 Plan No. 18
- d. Cycleways \$20,548

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S94 Plan No. 22

- e. Regional Open Space (Casual) \$28,169

S94 Plan No. 26

22. A **certificate of compliance** (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall **NOT** be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water: \$500,920

Sewer: \$410,128

South Kingscliff Water Levy: \$25,672

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an Accredited Certifier.

23. Waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of in accordance with a Waste Management Plan which shall be submitted to and approved by the Director of Environment and Community Services **PRIOR** to the issue of a construction certificate.

The Plan shall specify how the waste is to be treated and/or where the waste is to be disposed of.

24. Erosion and Sediment Control During the Construction Phase of Development

- (a) Construction phase stormwater quality treatment (erosion and sediment control) shall be designed and constructed in accordance with detailed engineering plans to be submitted and approved with the Construction Certificate. Erosion and sediment control shall be in accordance with the *"Tweed Urban Stormwater Quality Management Plan"* (adopted by Council 19 April 2000) section 5.5.2 "Stormwater Objectives During the Construction Phase of New Development". This section requires all new development to comply with Appendix E of the Plan *"Tweed Shire Council Aus-Spec D7 - Stormwater Quality"* and its Annexure A - "Code of Practice for Soil and Water

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Management on Construction Works". Erosion and sediment controls shall remain in place until final approval is given and the maintenance bond (if required) has been released.

- (b) The Construction Certificate Application must include a detailed erosion and sediment control plan (ESCP) for the construction phase of development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.
25. A construction certificate application for works that involve any of the following:-
- connection of a private stormwater drain to a public stormwater drain
 - installation of stormwater quality control devices
 - erosion and sediment control works

will not be approved until prior separate approval to do so has been granted by Council under section 68 of the Local Government Act 1993.

Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

26. Permanent Stormwater Quality Treatment
- (a) Permanent stormwater quality treatment shall comply with "*Tweed Urban Stormwater Quality Management Plan*" (adopted by Council 19 April 2000) section 5.5.3 "Stormwater Objectives During the Post Construction or Occupational Phase of Development" . New development is required to comply with table 5.4 of the plan and demonstrate compliance by modelling in accordance with section 5.5.4. Section 5.5.5 of the plan further advises that treatment that is in accordance with the "deemed to comply" provisions of *Appendix E - Tweed Shire Council, Aus-Spec D7 - Stormwater Quality* is deemed to comply with the objectives in 5.5.3.
- (b) Water sensitive design practices shall be adopted. Where it is practical, water quality features are to be designed into the land development site rather than rely on special end of pipe devices to strip pollutants and nutrients from stormwater prior to discharge. Typical water quality features that can be designed into the site development include use of porous pavements, directing runoff over filter strips or grass swales in landscaped areas, utilising landscaping as an integral part of stormwater quality management, maximising use of infiltration and stormwater reuse (eg. Rainwater tanks). These features can be complemented by site management practices which minimise creation of stormwater pollutants and nutrients and provide for appropriate operation, cleaning and maintenance of water quality control devices.
- (c) The Construction Certificate Application must include a detailed stormwater management plan (SWMP) for the occupational or use

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stage of the development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.

- (d) Infiltration
- (i) Infiltration areas are to be sized with a safety factor of 2 (this is to allow for long term deterioration in infiltration rate).
 - (ii) Runoff entering infiltration trenches/basins shall be pre-treated to remove sediment and gross pollutants.
 - (iii) The infiltration rate for infiltration devices shall be determined as follows:
 - Conduct percolation tests on the site in accordance with Appendix B of A.S. 1547-1994, Disposal Systems for Effluent from Domestic Premises,
 - If the above calculation yields a result <6m/day, this rate may be used for design,
 - If the result is >6m/day, the rate for design may not exceed 6m/day unless this rate is confirmed by independently determining the coefficient of permeability of the soil in accordance with AS 1289.6.7.3. Notwithstanding these tests, the maximum infiltration rate that may be used for design and sizing purposes is 12m/day.
- (e) Specific Requirements
- (i) Permanent stormwater quality devices are to be designed in accordance with these conditions and "*Tweed Urban Stormwater Quality Management Plan*" Appendix E - *Tweed Shire Council Aus-pec D7 - Stormwater Quality*, and constructed in accordance with detailed engineering plans to be submitted and approved with the Construction Certificate application. Unless stated otherwise, **references in brackets** refer to sections on devices in NSW EPA publication "*Managing Urban Stormwater - Treatment Techniques*, November 1997."
 - (ii) Roof drainage. All roof drainage is to be discharged to infiltration trenches/devices located on the resort allotment (proposed lot 170). Infiltration trenches/devices shall be designed in accordance with the following criteria:
 - As a minimum requirement, trenches/devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) and infiltrate this storm with a 24 hour period, with a safety factor of 2, before surcharging occurs.
 - Surcharge overflow from the infiltration area to the coastal swale drain on the eastern boundary of the allotment is to be visible surface flow, or approved equivalent.

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- Runoff is to be pre-treated prior to discharge to infiltration areas to remove litter and sediment (to maximize the period between major cleaning/maintenance overhauls).
 - If the site is under strata or community title, the strata/community title plan is to ensure that the infiltration area(s) are contained within common areas that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
- (iii) Stormwater Runoff from Roads and Hardstand Areas. The following measures are required in road/hardstand stormwater drainage systems to remove sediment, litter and oil/grease prior to discharge onto the coastal drain, other swale drains or infiltration areas:
- Litter baskets or pits (ref 4.1) or litter racks (ref 4.2) are to be installed to ensure all gross pollutants and litter greater than 50mm are retained for flows up to the ARI 3 month storm (deemed to be 40% of the ARI one year event).
 - Oil and sediments are to be removed by means of oil/grit separator (ref 4.7), or Filter strips (ref 5.1) providing 9 minute average residence time. Oil/grit separators including proprietary commercially available equivalents must comply with the following sizing guidelines:
 - Sedimentation Tank Capacity**
9m³ per impervious hectare of catchment. This volume is to be calculated as the volume of the settling tank, below exit invert and includes sediment storage volume, but excludes oil storage volume.
 - Oil Storage Capacity**
2m³ per impervious hectare of catchment.
 - Impervious area**
Excludes roof areas in catchment discharging into infiltration devices

PRIOR TO COMMENCEMENT OF WORK

27. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore required that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.
28. Prior to commencement of work, a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Consulting Engineer shall be erected and maintained in a prominent position at the site

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to the satisfaction of the Director, Development Services. The sign is to remain in place until the Subdivision Certificate is issued.

29. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised to the satisfaction of the Principal Certifying Authority and provided with a dish drain or similar at the base or otherwise retained to the satisfaction of the Principle Certifying Authority. All retaining works shall be completed to the satisfaction of the Principal Certifying Authority prior to start of building work. Please note timber retaining walls are not permitted.
 30. The building is to be protected from attack by termites by approved methods in accordance with the provisions of Australian Standard AS 3660.1, and:
 - (i) Details of the proposed method to be used are to be submitted to and approved by the Principal Certifying Authority prior to start of works; and
 - (ii) Certification of the works performed by the person carrying out the works is to be submitted to the PCA; and
 - (iii) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
 - (A) the method of protection; and
 - (B) the date of installation of the system; and
 - (C) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
 - (D) the need to maintain and inspect the system on a regular basis.
- Note:** Underslab chemical treatment will not be permitted as the only method of treatment unless the area can be retreated without major disruption to the building.
31. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every twenty (20) persons or part of twenty (20) persons employed at the site. Each toilet provided must be:-
 - (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council, or
 - (c) if that is not practicable, any other sewage management facility approved by the council.
 32. A sign must be erected on the site in a prominent, visible position stating:
 - a. that unauthorised entry to the work site is prohibited; and
 - b. showing the name of the builder, or another person responsible for the site and a telephone number at which the builder or other person can be contacted outside working hours.
 - c. Lot number.

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33. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least **2 days** prior to work commencing.
34. Prior to the commencement of work the Principal Certifying Authority is to be provided with and approve details of the kitchen exhaust system. Such details are to include the location of discharge to the air, capture velocity, size of hood and angle of filters. The system shall comply with Australian Standards SAA 1668 Part 2 Ventilation Requirements.
35. Prior to commencement of works all required sedimentation and siltation control measures are to be installed and operational to the satisfaction of the Principal Certifying Authority.

Erosion and sediment control shall be in accordance with *the "Tweed Urban Stormwater Quality Management Plan"* (adopted by Council 19 April 2000) section 5.5.2 "Stormwater Objectives During the Construction Phase of New Development". This section requires all new development to comply with Appendix E of the Plan "*Tweed Shire Council Aus-Spec D7 - Stormwater Quality*" and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works". Erosion and sediment controls shall remain in place until final approval is given and the maintenance bond has been released.
36. An application to connect to Council's sewer is to be submitted to and approved by Council prior to the commencement of any works on the site.
37. Any business or premises proposing to discharge a pollutant discharge greater than or differing from domestic usage is to submit to Council an application for a Trade Waste Licence. This application is to be approved by Council prior to any discharge to sewer being commenced.
38. Prior to commencement of building works provide hydraulic drawings on the proposed sewer drainage systems including pipe sizes, details of materials and discharge temperatures.
39. Trade Waste application fee will be applicable as per Councils Fees and Charges.
40. Prior to the commencement of works on the Outrigger site the diversion of the existing Coast Road around the Outrigger building footprint is to occur with the creation of a temporary road reserve or right of carriageway over the temporary road way in favour of Council.
41. Where water is required to be drawn from Council's water reticulation system it shall be the applicants responsibility to notify the Engineering Services Division prior to taking water.
42. All drawn water shall be via a Tweed Shire Council metered standpipe. The location of the hydrant shall be nominated by Tweed Shire Council and all water shall be only used for the purposes nominated by the applicant for the duration of the construction activities.

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43. **Prior** to the commencement of work the applicant shall submit to Council evidence that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared in accordance with either:-
- a. Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
 - b. AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.

DURING CONSTRUCTION

44. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate or complying development certificate was made).
45. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742-1991 (Manual for Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.
46. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.
47. The certifying authority is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- a. footings, prior to pouring of concrete
 - b. slab, prior to pouring of concrete
 - c. frame prior to the erection of brick work or any wall sheeting
 - d. final inspection prior to occupation of the building
 - e. completion of work
 - f. swimming pool safety fencing prior to filling the pool with water
48. It is the responsibility of the applicant to restrict public access to the building site, building works or materials or equipment on the site when building work is not in progress or the site is otherwise unoccupied.
49. Provision to be made for the designation of a minimum of two (2) durable and pervious car wash-down area/s. The area/s must be identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must not discharge directly to the stormwater system.
50. All fire service connections are to be compatible with those of the NSW Fire Brigade.

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51. Bicycle racks to accommodate a minimum of 50 bicycles is to be provided adjacent to the commercial/retail component of the development and be available for public usage. The bicycle rack is to be contained within Lot 170.
52. Access to the building for disabled persons shall be provided and constructed in accordance with the requirements of Part D3 of the Building Code of Australia and Australian Standard AS 1428.1.
53. Prominently displayed signs and symbols must be provided to identify for disabled persons all routes and areas where architectural barriers do not exist. Such access must comply with the requirements of Australian Standard AS 1428 Parts 1 and 2.
54. Disabled car parking spaces are to be provided at the rates provided for under Part D3.5 of the Building Code of Australia and constructed in accordance with Australian Standard AS2890.1.
55. Any premises used for the storage, preparation or sale of food are to comply with the relevant provisions of the Food Act, 1989 and Council's adopted Code for the construction of Food Premises. Details of fittings and equipment are to be submitted to the Principal Certifying Authority prior to installation.
56. All walls in the food preparation and food storage areas shall be of solid construction, easily washable, lightly coloured and tiled to a height of at least 2 metres above floor level, or where not tiled, cement rendered to provide a smooth even finish to ceiling. **Note:** Stud framed walls will not be acceptable. Intersections of all floors with walls shall be covered to a radius of not less than 25 millimetres.
57. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices.
58. Shop fitters are to liaise with the Principal Certifying Authority prior to fitting out of shop.
59. Windows and doors opening into food preparation and storage areas are to be fully screened in accordance with Council's adopted code for the construction of food premises.
60. All surface water collected from hard stand parking areas to be directed to Council approved pre-treatment facilities before discharge to approved discharge locations. Stormwater from covered or enclosed car park areas shall not be discharged to the public sewer unless approved treatment facilities have been provided. Details are to be submitted to and approved by the Director of Environment and Community Services prior to installation

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61. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.
Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.
This inspection program is to be maintained until the maintenance bond is released or until Council is satisfied that the site is fully rehabilitated.
62. Suitable covering and protection is to be provided to ensure that no material is removed from the site by wind, causing nuisance to neighbouring properties. This covering and protection shall be in accordance with the revised Earthworks Management Plan Rev C dated 10 April 2003.
63. All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.
64. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles. These precautions shall be in accordance with the revised Earthworks Management Plan Rev C dated 10 April 2003.
65. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
 - A. Short Term Period - 4 weeks.
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
 - B. Long term period - the duration.
L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.
66. Prior to and during construction a "shake down" device shall be provided at the construction entry point which shall be located immediately before the intersection of the road reserve. The "shake down" area shall comprise of a shaker grid (metal bar cattle grid minimum 7m in length) and an access 10 metres long, 3.0 metres wide and constructed of a minimum 50mm diameter crushed rock.
67. The burning of builders waste on site by open fire is prohibited.
68. Any proposed cooling tower installation must also include details on the proposed means of back flow prevention to the water supply prior to installation.

Reports from Director Development Services

69. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.
70. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:
- a. internal drainage, prior to slab preparation;
 - b. water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
 - c. external drainage prior to backfilling.
 - d. completion of work.
71. A. A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- B. The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.
72. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.
73. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
 - * 50⁰C in all other classes of buildings.
- A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.
74. A hose tap shall be provided adjacent to a grease arrester for cleaning purposes and shall be fitted with a RPZD for the purpose of back flow prevention.
75. A trade waste agreement will be issued and a permit number allocated once the device has been installed, inspected and Council has received a copy of the Waste Contractor's Service Agreement
76. In the event that Council is not utilised as the inspection/Certifying authority, within seven (7) days of building works commencing on the site a Compliance Certificate in the prescribed form is to be submitted to Council together with the prescribed fee, by the nominated principal certifying authority to certify the following:
- i. All required erosion and sedimentation control devices have been installed and are operational.

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- ii. Required toilet facilities have been provided on the site.
 - iii. A sign has been erected on the site identifying:
 - Lot number
 - Builder
 - Phone number of builder or person responsible for site.
 - iv. All conditions of consent required to be complied with prior to work commencing on the site have been satisfied.
 - v. That the licensee has complied with the provisions of Section 98(1)(b) of the Environmental Planning and Assessment Amendment Regulations 2000.
77. All inspection openings in sanitary plumbing stackwork are to be readily accessible by way of suitable access points or the like.
78. The premises and equipment shall be constructed and operated in accordance with the requirements of the Australian Food Standards Code as called into force by the Food Regulations 2001.
79. All work shall comply with the approved Detailed Site Radiation Investigation Report and Remediation Action Plan SALT, South Kingscliff (Rev.B Cardno MBK, March 2003)
80. All works shall comply with the approved Acid Sulfate Soils Management Plan SALT, South Kingscliff (Rev. C Cardno MBK, March 2003).
81. All work shall comply with the approved Water Quality Monitoring Program SALT, South Kingscliff (Rev.B Cardno MBK, March 2003).
82. Sedimentation control measures shall be placed around the perimeter of the proposed development site, and maintained for the duration of the proposed works, to the satisfaction of the Director of Environment and Community Services.
83. All fill is to be contained within Lot 170 with the exception of the toe of the batter being permitted to extend into the 7(f) zone to control the Q100 stormwater event within the 7(f) zone.
84. All works associated with the approval shall be carried out between the hours of 7am to 10pm, and no works shall be carried out between the hours of 10pm and 7am. Noise levels shall not exceed background LA90 levels at any receiving premise by more than 10dBA between the hours of 7am to 6pm and shall not exceed background LA90 levels by more than 5 dBA between the hours of 6pm to 10pm.
85. The Lot 500 and 7(f) Management Plan submitted as part of DA02/1422 is to be implemented as required by development consent DA02/1422.
86. If access for the disabled is required under Part D3 of the Building Code of Australia, facilities for the use of the disabled shall be provided as specified in Part F2.4 of the Building Code of Australia and shall be constructed to the requirements of Australian Standard AS1428.1.

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87. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.
88. The earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments". In general, material shall be placed in layers not exceeding 300mm in depth, watered and compacted to achieve the specified density ratio as monitored in Table 5.1 - Guidelines for Minimum Relative Compaction.
89. The earthworks program shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with Appendix B, AS 3798-1996. In addition, the frequency of field density testing shall be to a Type 1 standard in accordance with Table 8.1 of AS 3798. The geotechnical report shall be accompanied by a certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798.

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

90. In the event that Council is not utilised as the inspection/certifying authority, prior to occupation of the building a Compliance Certificate in the prescribed form is to be submitted to Council from the nominated principal certifying authority, together with the prescribed fee, to certify that all work has been completed in accordance with the approved plans and specifications, conditions of Consent and the relevant provisions of the Building Code of Australia.
91. A person must not commence occupation or use of the whole or any part of a new building (within the meaning of Section 109H(4)) unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).
92. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

USE

93. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like.
94. Owners of buildings served by plant involving the operation of "cooling towers", "evaporative condensers" or "tepid water systems" must submit to Council, half yearly, a report detailing the maintenance, cleansing and chemical treatment of such plant every three (3) months in accordance with Part 6 of the NSW Public Health Act.

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95. The LA10 noise level emitted from the premises shall not exceed the background noise level (LA90) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends.
96. Material shall not be excavated and removed from the subject site if that material exists below the pre-remediation surface levels, unless the radiation levels of that material has been validated to a level satisfactory to the Director of Environment and Community Services.
97. Material which exists at a greater depth than the radioactive sand remediation depth in roads or public lands shall not be excavated or disturbed without a written radiation work safety plan having been submitted to, and approved by Council prior to the commencement of those works.
98. The swimming pool shall be maintained and operated in accordance with the Public Swimming Pool and Spa Pool Guidelines, NSW Health, 1996.
99. All skin penetration activities shall comply with the Skin Penetration Guidelines, NSW Health, 1999.
100. All foods shall be stored and prepared in a clean and healthy manner.
101. Noise from plant, refrigeration and air conditioning units shall not be permitted to impact the amenity of any other premises.
102. Lighting from the tennis courts, swimming pools or other activities shall not be permitted to detrimentally impact the amenity of any other premises.
103. All wastes shall be collected, stored and disposed of to the satisfaction of the Director of Environment and Community Services.
104. Footpath dining shall not be conducted on the road reserve without an approval or footpath dining agreement having been finalised with Council.
105. The loading and unloading of goods shall not be carried out on or from the footpath or road reserve. All vehicles loading or unloading goods to the resort shall enter the boundaries of the premises prior to commencing such activities. Loading and unloading of goods shall not be permitted to impact the amenity of any other premises.

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

106. A Subdivision Certificate for the two lot stratum subdivision will not be issued by the General Manager until such time as all conditions of Development Consent No DA02/1423 have been complied with.
107. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including the following:

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- i. Easements for sewer, water supply and drainage over **ALL** services on private property.
- ii. Easements for support, maintenance, service ducting etc in relation to the stratum subdivision of the building.

Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.

Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

Any damage to property (including pavement damage) is to be rectified to the satisfaction of the Director, Development Services **PRIOR** to the issue of a Subdivision Certificate. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.

108. Prior to registration of the plan of subdivision, a **Subdivision Certificate** shall be obtained.
 - (i) The following information must accompany an application:
 - original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees.
 - relevant development consent
 - detailed subdivision engineering plans endorsed with a construction certificate (where applicable)
 - evidence that the applicant has complied with all conditions of consent, that it is required to comply with before a subdivision certificate can be issued (where applicable)
 - a certificate of compliance from the relevant water supply authority (where applicable)
 - for subdivision involving subdivision works evidence that:
 - the work has been completed, or
 - agreement reached with the relevant consent authority regarding payment of the cost of work or as to the time for carrying out the work, or
 - security given to the consent authority with respect to the completion of the work
 - Work as Executed Plans for **ALL** works

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- (ii) Documentary evidence that **all** matters contained in Section 109J of the Act have been complied with.
- (iii) Written evidence from Council that the proposed road/street names have been approved.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

109. Prior to the issue of a subdivision certificate the title shall be issued for Lot 170 (Parent Lot) under Development Consent DA02/1422.

DIRECTOR-GENERAL OF PLANNINGNSW'S CONDITIONS OF CONCURRENCE

110. *Concurrence under Clause 51 is granted on the condition that lighting in the buildings is designed to minimise any impact upon the Loggerhead and Green Turtles.*

GENERAL TERMS OF APPROVAL UNDER SECTION 100B OF THE RURAL FIRES ACT 1997

1. An evacuation plan for the proposed development will be forwarded to the NSW Rural Fire Service Manager Planning and Environment Services at the abovementioned address, for approval, prior to the commencement of construction.
2. An asset protection zone comprising a 30 metre inner protection area and a 10 metre outer protection area shall be maintained from the face of habitable buildings on the eastern side of the development in accordance with Planning For Bushfire Protection 2001.
3. Development Application DA02/1748 for the construction of a temporary pipeline for the transport of sand from the Action Sands site at Kingscliff to the SALT development site at South Kingscliff at Lot 194, 301 and 312 DP 755701 Coast Road, South Kingscliff be approved subject to the following conditions: -

GENERAL

1. The proposed pumping of materials or placement of materials shall not be commenced until such time as Development Consent DA02/1422 has been approved and any deferred commencement conditions or other conditions on that approval relating to remediation of radioactive sands have been satisfied.
2. This consent does not authorise the directional under boring of Cudgen Creek.
3. These works must be completed in accordance with Development Consent 0856/2000DA.
4. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by these conditions of consent.

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5. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject route.
6. The construction of the pipeline in accordance with this development consent must not be commenced until:
 - a. detailed plans and specifications of the pipeline have been endorsed with a construction certificate by:
 - (i) the consent authority; or
 - (ii) an accredited certifier; and
 - b. the person having the benefit of the development consent:
 - (i) has appointed a Principal Certifying Authority; and
 - (ii) has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment; and
 - c. the person having the benefit of the development consent has given at least 2 days notice to the Council of the person's intention to commence the construction of the pipeline.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

7. Waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of in accordance with a Waste Management Plan which shall be submitted to and approved by the Director of Environment and Community Services PRIOR to the issue of a construction certificate.

The Plan shall specify how the waste is to be treated and/or where the waste is to be disposed of.
8. Erosion and Sediment Control During the Construction Phase of Development
 - (a) Construction phase stormwater quality treatment (erosion and sediment control) shall be designed and constructed in accordance with detailed engineering plans to be submitted and approved with the Construction Certificate. Erosion and sediment control shall be in accordance with the *"Tweed Urban Stormwater Quality Management Plan"* (adopted by Council 19 April 2000) section 5.5.2 "Stormwater Objectives During the Construction Phase of New Development". This section requires all new development to comply with Appendix E of the Plan *"Tweed Shire Council Aus-Spec D7 - Stormwater Quality"* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works". Erosion and sediment controls shall remain in place until final approval is given and the maintenance bond (if required) has been released.
 - (b) The Construction Certificate Application must include a detailed erosion and sediment control plan (ESCP) for the construction phase

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of development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.

PRIOR TO COMMENCEMENT OF WORK

9. Prior to commencement of work, a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Consulting Engineer shall be erected and maintained in a prominent position at the site to the satisfaction of the Director, Development Services. The sign is to remain in place until the pipeline is decommissioned.
10. Prior to commencement of works all required sedimentation and siltation control measures are to be installed and operational to the satisfaction of the Principal Certifying Authority.

Erosion and sediment control shall be in accordance with *the "Tweed Urban Stormwater Quality Management Plan"* (adopted by Council 19 April 2000) section 5.5.2 "Stormwater Objectives During the Construction Phase of New Development". This section requires all new development to comply with Appendix E of the Plan *"Tweed Shire Council Aus-Spec D7 - Stormwater Quality"* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works". Erosion and sediment controls shall remain in place until decommission and rehabilitation works have been completed.
11. Any necessary amendments to development consent 91/281 must be approved prior to the operation of the pipeline.
12. Bunding of an adequate size to contain any spills are to be constructed around all pump booster stations and work areas. Details to be submitted and approved by the Director of Development Services prior to commencement of works.
13. Any works within a public road reserve, including the placement of the pipe will require an approval to be granted either by Council or the RTA under Section 138 of the Roads Act prior to commencement of works.

DURING CONSTRUCTION

14. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742-1991 (Manual for Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.
15. The builder must provide an adequate trade waste service to ensure that all waste material is contained, and removed from the site for the period of construction.
16. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

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Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until Council is satisfied that the site is fully rehabilitated.

17. All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.
18. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles.
19. The burning off of trees and associated vegetation felled by clearing operations is not permitted unless such burning is carried out in a specially constructed pit provided with an air curtain over the top. Separate approval from Council is required prior to any burning.
20. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:
 - A. Short Term Period - 4 weeks.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.
 - B. Long term period - the duration.

L10 noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.
21. The burning of builders waste on site by open fire is prohibited.
22. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.
23. All works associated with this approval except for the pumping of the return waters shall be carried out between the hours 7am to 10 pm, and no works shall be carried out between the hours 10 pm to 7 am.
24. The LA10 noise level emitted from any pumping or associated activities shall not exceed the background noise level (LA90) by more than 10dB(A) at the boundary of any affected residence between 7am and 6pm, and shall not exceed the background noise level (LA90) by more than 5dB(A) at the boundary of any affected residence between 6pm and 10pm. Notwithstanding the above, noise from pumping or associated operations shall not be audible within any habitable room in any residential premises between the hours 10pm and 7am.

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25. Water shall not be permitted to discharge from any fill slurry settlement pond unless those waters comply with the limits for pH and SS stipulated in Part 4.2 of the submission - *Revised Earthworks Management Plan (Cardno MBK, April 2003)*. Waters shall be monitored prior to any such discharge and the results recorded on site, and provided to Council upon request.
26. All works shall comply with the Revised Earthworks Environmental Management Plan (Rev. C Cardno MBK, April 2003).
27. Sand fill material proposed to be pumped to the site shall be tested for acid sulfate soil potential and neutralised where necessary, prior to being pumped to the site, strictly in accordance with Part 4.1 of the submission - *Revised Earthworks Management Plan (Cardno MBK, April 2003)*. Records of this testing shall be maintained on site and provided to Council upon request.
28. Should it be necessary to bury silt or fine residues from the pumping of slurry fill to the site then Council approval of the burial location shall be obtained prior to burial of the material.
29. All works shall comply with the Acid Sulfate Soils Management Plan SALT, South Kingscliff (Rev. C Cardno MBK, March 2003).
30. All works shall comply with the Detailed Site Radiation Investigation Report & Remediation Action Plan SALT, South Kingscliff (Rev. B CardnoMBK, March 2003).
31. All works shall comply with the Water Quality Monitoring Programme SALT, South Kingscliff (Rev. B Cardno MBK, March 2003).
32. Access to existing properties affected by the works authorised by this consent is to be maintained at all times. At the time the pipe is decommissioned all accesses affected are to be reinstated to their original condition.
33. At the conclusion of the pumping operations any disturbed areas are to be rehabilitated to the satisfaction of the Director Development Services.
34. The boundary of the SEPP 14 wetland adjacent Cudgen Creek is to be clearly marked on the ground for the purposes of contractors.
35. Any tree or shrub which suffers substantial root damage as a result of trenching work should be inspected by a qualified horticulturalist and any necessary remediation works carried out.
36. Any tree shrub which exhibits signs of dieback after trenching work is to be removed and replaced with a seedling of the same species.
37. Should any material be discovered that may be an Aboriginal object of heritage value all work is to cease immediately and NPWS and the Local Aboriginal Land Council contacted. No further works in this area are to recommence until any necessary approvals have been obtained under the National Parks and Wildlife Act 1974.

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38. All necessary approvals/licences required to be obtained from Department of Sustainable Resource Management for works within Crown Lands are to be obtained prior to any works occurring on Crown Lands.
39. The terms of the easement for the construction of sewer rising main under Cudgen Creek will need to be amended to allow for the use of this conduit for the purposes of transport of fill material.
40. All engineering works required to be approved prior to the issue of a construction certificate are to be constructed in accordance with the approval.

GENERAL TERMS OF APPROVAL UNDER S138 OF THE ROADS ACT (Consent to (a) erect a structure or works (b) dig up or disturb the surface of a public road or (c) remove or interfere with a structure work or tree on a public road or (d) pump water into or (e) connect a road to a classified road)

- Prior approval from RTA is required before any works undertaken in the Pacific Highway road reserve in accordance with Section 138 of the Roads Act 1993.
- Preparation and approval of a Traffic Management Plan (TMP) that contains an approved Traffic Control Plan (TCP) prior to any works commencing. This is to include details of work sites.
- Any hazardous structure within the clear zone of the road reserve should have an approved safety barrier treatment.
- All road openings and works to be approved and reinstated to Tweed Council's requirements.
- Any noise generated by construction or operation of the pipeline is to be maintained within current standards.

Any road access point is to be constructed to AUSROAD standards, provide adequate site distances and provisions are made to prevent fouling of the road surface.

- B. In accordance with Section 54 of the Environmental Planning and Assessment Act, 1979 Council resolve to prepare a draft Local Environmental Plan to amend Tweed Local Environmental Plan 2000 to apply height limits to future development of Lots 194, 301 and 312 DP 755701 Coast Road, South Kingscliff consistent with the plan titled "3 storey and 2 storey Ratio Plan" numbered 426701-C prepared by ML Design dated March 2003.
- C. Council adopt a policy statement as follows: -
"The filling of the site for the SALT development has been endorsed by Council given the resultant financial benefits to the overall funding package that enables viability of tourism development and the consequent economic and employment benefits to the Shire.
This endorsement is based on merit assessment and factors that are pertinent to this development application and should not be interpreted by any other landowners and/or

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developers as setting any form of precedent for other development proposals on the Tweed Coast”.

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REPORT:

As per summary.

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