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SCHEDULE OF OUTSTANDING RESOLUTIONS

Schedule of Outstanding Resolutions

FOR COUNCILLOR'S INFORMATION:

18 December 2002

REPORTS FROM DIRECTOR ENVIRONMENT & COMMUNITY SERVICES

28a. Surf Life Saving Services - Casuarina Beach

604

Cr Youngblutt

Cr Davidson

RESOLVED that

3. The Director Development Services and Director Environment & Community Services in the long term considers and develops a policy in regard to the responsibility and obligations where a private developer proposes to pay for the provision of surf lifesaving services. This policy should also consider any necessary conditions of consent for future developments.

Current Status: Consultant to be appointed.

22 October 2003

REPORTS FROM DIRECTOR DEVELOPMENT SERVICES

1 Seaside City - Local Environmental Study and Draft Local Environmental Plan

897

Councillor H James

Councillor B M Luff

RESOLVED that the Mayor convenes a meeting of all landowners at Seaside City and any associated legal and planning representatives who they wish to also attend - together with relevant State Government agencies - to explain the historical position, status and process towards the completion of the planning and development of Seaside City.

Current Status: Meeting arranged for the 16 January 2004.

5 November 2003

REPORTS FROM DIRECTOR DEVELOPMENT SERVICES

- 9 [DS] Development Applications DA02/2086 & DA02/2088 for Tourist Accommodation at Lots 12 and 13 Section 6 DP 14895 and Lots 16, 17 and 18 Section 2 DP 14895 Lorna Street, Kingscliff**

918

Councillor M R Boyd

Councillor B J Carroll

RESOLVED that this matter be deferred until after the meeting with landowners, which is to be convened by the Mayor.

Current Status: Meeting arranged for 16 January 2004.

19 November 2003

REPORTS FROM DIRECTOR DEVELOPMENT SERVICES

- 6 [DS] Draft Tweed Local Environmental Plan 2000, Amendment No 37 - Tweed Heads West**

979

Councillor H James

Councillor M R Boyd

RESOLVED that a report be prepared on traffic implications of the proposed rezoning given the recent announcement of the NSW Government regarding Tugun By-pass.

Current Status: Report to be prepared.

7 [DS] Development Application DA03/0922 for a 228 Berth Marina, Construction of Carpark, Installation of a 35000 Litre Capacity Fuel Tank & Underground Piping to Connect the Fuel Tank to Previously Approved Re-fuelling Jetty within Tweed River at Lot 121

980

Councillor B M Luff

Councillor W M Marshall

RESOLVED that : -

1. This report be received and noted.
2. Council agrees to conduct a workshop as requested by the concerned community groups relating to the proposed Marina at Chinderah sometime during the exhibition period for the amended proposal and invite all interested parties to attend including relevant State government agencies.

Current Status: Workshop to be arranged.

ORDERS OF THE DAY

6 [NOM] Local Environmental Plan - Definition of "Bed and Breakfast" - GT1/LEP/2000 Pt2

1000

Councillor L F Beck

Councillor R D Brinsmead

RESOLVED that a report be prepared on the implications of the proposal to change the current definition of "bed and breakfast" to:-

"a dwelling used as a principal place of residence, and in addition for the provisions of:

- (a) accommodation for people away from their normal place of residence, and*
- (b) meals and ancillary services, by the permanent resident or residents of the building for those people."*

Current Status: Report to be prepared.

7 [NOM] Provision of Lifts in Multi-Dwelling Housing Developments

1001

Councillor L F Beck

Councillor H James

RESOLVED that a report be brought forward identifying the issues associated with a Council Policy requiring lifts to be installed in multi-dwelling housing developments consisting of three or more stories.

Current Status: Report to be prepared.

3 December 2003

ORDERS OF THE DAY

1 [NOM] Honorary Rangers

1033

Councillor W J Polglase

Councillor G Davidson

RESOLVED that a report be prepared by Council on the feasibility of appointing honorary rangers to observe destruction/vandalism of dunal vegetation in the Casuarina Beach Precinct.

Current Status: Report to be prepared.

MAYORAL MINUTE

Mayoral Minute

Councillors,

1. Gold Coast Airport

4 December – Mtg at Gold Coast Airport with Runway Extensions Community Reference Group

2. Coastline Management Study Stage 2

Workshop at Kingscliff re Management Objectives

3. Citizenship Ceremony

5 December – Presented Citizenship Certificates to 11 new citizens at Tweed Heads

4. Christmas Party

5 December – Councillors, Directors & Managers Christmas Party at Tweed Bowls Club

5. Seabreeze Estate

7 December – Launch of MBS Display Village at Seabreeze Estate Pottsville

6. Cudgen Headland SLSC

7 December – Launch of new surfboat at Cudgen Headland Surf Club

7. Lifeworx Christmas Carols

7 December – attended Lifeworx Christmas Spectacular Carols at Tweed Heads

8. Twin Towns Friends Association

8 December – attended Twin Towns Friends Association's Christmas Luncheon at Tweed

9. Tweed Chamber of Commerce

9 December – attended Tweed Chamber Breakfast at South Tweed

10. Centaur School

9 December – attended Senior Presentations at Centaur School South Tweed

11. RSL Care

9 December – attended Tree Planting Ceremony to celebrate the commencement of the development of the RSL Care Darlington Retirement Community at Banora Point

12. TAFE

9 December – Kingscliff TAFE Achievement Awards at Condong

13. Business Excellence

10 December – Business Excellence Breakfast at Tweed

14. Tweed Cemetery

10 December – met with community representatives at Tweed Heads Cemetery

15. CDSE (Community Development Support Expenditure Scheme)

11 December – Presentation of funds – Tweed Civic Centre

16. Green Corps

11 December – Job Futures Green Corps Conservation Project opening by Larry Anthony – Tweed Valley Cemetery & Botanic Gardens

17. Tweed Futures

11 December – Tweed Futures Meeting Banora Point

18. Cabarita Advisory Committee

11 December – Meeting of Cabarita Advisory Committee at Cabarita

19. Black Rocks Bridge

12 December – official opening of Black Rocks Bridge at Pottsville

20. Christmas Function

12 December – Bolster & Co. Christmas Function - Banora

21. Border South Bodyboard Club

13 December – Border South Bodyboard Club Presentations at Duranbah

22. Greg Norman Junior Masters

13 December – Opening of Greg Norman Junior Masters at Coolangatta Tweed Golf Club

23. Salvation Army Carols

13 December – Salvation Army Christmas Carols Banora Point

24. Christian Outreach Centre

14 December – Christian Outreach Centre Christmas Carols by Candlelight Murwillumbah

25. Tweed River High School

15 December – Tweed River High School Annual Presentation Evening

26. Country Passenger Transport Infrastructure

16 December – Handover of cheque by Neville Newell for completion of Shelters (Kingscliff)

27. Autumn Club

16 December – Autumn Club Murwillumbah Christmas Lunch

28. Tweed Futures Issue Paper

16 December – Tweed Futures Issue Paper Public Meeting Murwillumbah

29. Tweed Valley Regional Art Gallery

16 December – Extraordinary General Meeting Tweed Valley Regional Art Gallery

30. Tweed Heads Public School

17 December Tweed Heads Public School Presentation Day (THCC)

INVITATIONS ACCEPTED:

- 18 December – Seaside City – LES & LEP Murwillumbah
- 18 December - Council Combined Staff Christmas Party Branding Rail
- 16 January 2004 – Seaside City Land Owners Meeting – Canvas & Kettle
- 22 January 2004 – Guest Speaker at Association of Independent Retirees Coolangatta/Tweed Branch Morning Tea

INFORMATION ON CONFERENCES TO BE HELD - Councillors to advise Mayoral Assistant, Jan Green, if they wish to attend and/or require further details:

- Coastal Zone Asia Pacific Conference **5-9 September 2004** in Brisbane
 - Coast to Coast '04 (Australia's National Coastal Conference **19-23 April 2004** Hobart Tasmania)
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ABSENCES FROM SHIRE BY EXECUTIVE, AND COUNCILLORS:

EXECUTIVE

DECS	15 December 2003	15/1203	Sydney	Local Government Liaison Committee
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ITEMS DEFERRED

[ID] Enclosure of Buildings Contrary to the Provisions of Development Control Plan No 5 - Development of Flood Liable Land (THIS ITEM IS THE SUBJECT OF A FURTHER REPORT AT ITEM NO 2 OF THE CONFIDENTIAL AGENDA)

ITEM DEFERRED FROM MEETING HELD:

5 November 2003

935 RESOLUTION:
Councillor H James
Councillor B J Carroll

RESOLVED that this item be deferred to seek legal advice.

ORIGIN:

Building Services

FILE NO: Development Control Plan; DCP No 5; Flooding

SUMMARY OF REPORT:

Problems have been identified relating to the unauthorised enclosure of the ground floor areas of dwellings in flood liable localities. This report identifies the issues and reviews some options.

This report should be read in conjunction with the report relating to premises at 1A Anne Street, Chinderah to be considered at this meeting.

RECOMMENDATION:

That

1. Council investigates availability of funding of up to \$50,000 for an initial one (1) year period to employ a person to investigate and pursue areas of non-compliance relating to dwellings erected on flood liable lands not in accordance with the provisions of Development Control Plan No 5 - Development in Flood Liable Land.
2. Subject to the availability of the \$50,000 for this purpose, Council pursues Option 1 of this Report to employ a person to investigate buildings on all flood liable land and where non-compliance issues are identified, issue and pursue orders to require the removal of non-compliant structures and enclosures so

as to conform with the requirements of Development Control Plan No 5 -
Development in Flood Liable Land.

REPORT:

Background

A growing problem has been identified in relation to some property owners in certain flood liable localities such as Murwillumbah, Condong, Tumbulgum Chinderah and Fingal Head, enclosing the ground floor areas of their two storey dwellings without consent and contrary to the provisions of Council's Development Control Plan No 5 - Development of Flood Liable Land.

Council's flood mitigation strategy is to minimise future potential flood damage both by structural protection and by planning controls to ensure that only appropriate compatible development occurs on floodplains in the future.

DCP 5 generally requires in these localities that:-

"The habitable areas of all residential buildings are to be at a level of not less than Council's adopted minimum floor level for development in each locality.

The area below Council's design flood level is not to be totally enclosed. Consideration will be given on application, to permitting the enclosure of laundry, stairway entry and double garage space, provided that such an enclosure does not significantly restrict flood flows.

An area of 50m² will generally encompass these facilities. Any larger enclosures will only be considered when the application can demonstrate that the additional area enclosed will not provide any greater restriction to flood flow.

The free flow of flood water must be a major consideration in the design of any area to be enclosed."

In some instances, this work has been carried out by owners of older premises unaware of the requirements, whilst other instances exist of owners of more recent developments being fully aware of Council's requirements and obtaining approvals for developments which comply at the time of approval, but are later altered or adapted after the building has been completed and occupied.

Council is made aware of these premises when applications for Building Certificates are made to Council, and in other cases, when instances are reported to Council by neighbours.

In such cases, the unauthorised enclosures are challenged by Council officers and in some instances are rectified, whilst in other instances non-compliances are not always pursued because the property concerned is withdrawn from sale.

In some instances, the non-compliant enclosures are then re-instated after Council action has ceased, similar to the case in question which is the subject of the report in Item 5 of Council's Confidential Agenda for this meeting.

Regardless of their origin, the fact remains that there are a great many of such non-compliant dwellings in existence within the Shire, which provide precedents for claims by owners of similar properties to develop in like manner.

Aside from the precedent issue, the continuance of such dwellings and increase in their numbers, poses a very substantial risk of litigation against Council in the event of a major flood event which causes damages directly to the properties concerned, or to adjacent properties which may be detrimentally affected by the retention of floodwaters at increased levels due to the diversion or ponding effect of the structures and the resulting build up of flood debris.

The cumulative effect of an increasing number of such buildings will also exacerbate the problem.

Current Status of DCP 5

Council is currently undertaking a review of the flood model and DCP No 5, however, amendments proposed to the current Development Control Plan will not significantly alter the current requirements relating to the maximum floor area of 50m² permitted to be enclosed.

Options

A number of options exist for Council ranging from embarking on a program to identify all non-conforming developments and issuing orders requiring compliance with DCP No 5 requirements to taking no action. These options include:-

1. Pursue All Non-Compliant Structures

This option would require an investigation to be carried out by Council officers of all flood liable areas and all affected properties identified.

Appropriate orders would be issued to owners concerned who would be ordered to remove non-complying structures to effect compliance with DCP No 5 requirements.

This option would involve very considerable staff resources which are not currently available, and would likely be extremely unpopular within the community and would be expected to be strongly resisted by owners of such properties involved.

It would however protect future property owners interests and discharge Council's legal obligations in ensuring effective compliance with the adopted DCP No 5 provisions. It would also greatly reduce, if not eliminate, potential litigation against Council in the wake of a major flood event.

2. Pursue Non-Compliant Structures Only as Identified by Applications for Building Certificates, or Complaints, etc.

This option basically retains the status quo whereby non-compliant structures are only identified and challenged, when brought to Council's attention through an application or complaint process.

This approach invariably causes great conflict between Council and owners involved.

In some instances the owners have purchased in good faith, without the benefit of a Building Certificate, and without the knowledge that the ground floor area of their property is required to remain open and unenclosed in accordance with the DCP No 5 requirements.

In other instances the owners have knowingly enclosed the ground floor area in full understanding that their actions are illegal and contrary to DCP No 5 and their relevant Council consents.

When challenged, all such owners always identify other similar situations nearby and consider that they are being victimised.

This option is currently being utilised because staff resources do not permit the continued ongoing surveillance and follow-up action necessary, involving issue of orders.

3. Allow Non-Compliant Dwellings to Go Unchallenged by Council

This option would involve Council taking no action in instances involving pursuit of complaints or information received relating to non-compliant dwellings. In addition, under this option Council would not require flood flow openings in dwellings, which had been illegally enclosed, to be reinstated prior to the issue of Building Certificates.

This option is illogical, capitulating and totally conflicts with the objectives of DCP No 5 and would encourage further non-compliant enclosures to be constructed.

In the event of a major flood, Council would be accused of not progressing the objectives and requirements of DCP No 5 and would render itself subject to litigation for losses and damages occasioned.

This option could not be recommended under any circumstances.

Conclusion

The issues have been discussed with the Manager Water Unit and it is agreed that Option 1 above most effectively discharges Council's responsibilities, albeit this option will be the most controversial, unpopular, and have the most impact on the public.

In addition, this option will require staff resources to be provided for which no provision currently exists.

To provide for this action to occur it would be necessary in the first instance to employ a person to investigate and pursue non-compliant buildings utilising an order process and follow-up with legal action for non-compliance with orders.

It is estimated that such person could be employed for an initial short term period of twelve (12) months at a cost of about \$50,000.

In the event that Council considers that this option is not justifiable or sustainable, then Option 2 to retain the status quo could be pursued.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Legal and resource implications have been addressed above.

Legal costs will be incurred in pursuing orders.

Resources of an estimated \$50,000 would be required to pursue option 1 for a twelve (12) month initial period and are likely to be ongoing.

POLICY IMPLICATIONS:

The actions discussed in this report are deemed necessary to pursue the objectives of Council's adopted Development Control Plan No 5 - Development of Flood Liable Land.

UNDER SEPARATE COVER:

Nil.

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM DIRECTOR DEVELOPMENT SERVICES

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

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

MATTERS FOR CONSIDERATION

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

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1 [DS] Draft Development Control Plan No 52 Friday Island, Bogangar

ORIGIN:

Strategic Town Planning

FILE NO: GT1/DCP/52 Pt1

SUMMARY OF REPORT:

On Wednesday 16th July 2003 Council resolved to prepare and exhibit draft Development Control Plan No 52 - Planning Controls Friday Island Bogangar. The purpose of the Plan is to ensure that the approval of individual development applications do not accumulatively have an adverse impact on the desired future character of Friday Island.

The draft Plan was exhibited for 28 days from Wednesday 29th October 2003 to Wednesday 26th November 2003. A number of submissions, resulting from the Plans exhibition, were received and the identified key issues have been summarised in the report.

RECOMMENDATION:

That Council: -

1. Pursuant to Clause 21 of the Environmental Planning and Assessment Act Regulation 2000 adopts Development Control Plan No. 52 - Planning Controls - Friday Island Bogangar.
2. Gives public notice in the Tweed Link of its decision in accordance with the Environmental Planning and Assessment Regulations 2000, specifying that the amended Development Control Plan comes into effect on the date of the notice.

REPORT:

Introduction

On Wednesday 16th July 2003 Council resolved to prepare and exhibit draft Development Control Plan No 52 - Planning Controls Friday Island Bogangar. The purpose of the Plan is to ensure that the approval of individual development applications do not accumulatively have an adverse impact on the desired future character of Friday Island.

Planning Issues

The approved Friday Island subdivision provides for a specific desired future character, namely unique island home sites, comprising 38 residential allotments, incorporating two (2) nominated dual occupancy allotments in accordance with DCP 44 - Dual Occupancy Controls - Tweed Shire.

To achieve this desired future character the subdivision was approved based on a concept plan for an integrated residential area, carefully balancing residential amenity with lot dimensions and size, road layout, road widths, on street parking, property frontages and yield.

Submissions

The draft Plan was exhibited for 28 days from Wednesday 29th October 2003 to Wednesday 26th November 2003. A number of submissions, resulting from the Plans exhibition, were received and the identified key issues have been summarised as follows:

1. Any proposed further development of the Island is consistent with the current 2(c) zoning.
2. This current zoning and the potential for further development influenced the purchase of land on the Island.
3. By adopting the Plan the potential returns on individual investments will be heavily restricted.
4. It is against good town planning practice to retrospectively impose conditions particularly when opportunity was provided in the past during the approval of the original subdivision.
5. It is discriminatory to isolate Friday Island whilst neighbouring 2(c) areas are excluded from additional controls.
6. Further development of the Island should be encouraged in respect of its location to the Cabarita Beach/Bogangar business centre.

7. The Plan is inconsistent with recently constructed neighbouring development, which has a greater density than that of the Island's current layout.
8. Current planning provisions (DCP 6 and DCP 44) are more than adequate to enable each application to be assessed on merit.

Whilst no submissions of support for the draft DCP were received as a result of its exhibition the community has strongly objected to recent development applications on the Island, which are inconsistent with the proposed Plan, on the basis that they are contradictory to the approved desired future character of the Island and the accumulative impacts that their development will have on the Island and Bogangar in general.

Recommendation

It is recommended that Council adopt the exhibited draft Development Control Plan No 52 - Planning Controls - Friday Island Bogangar justified by the following: -

1. The purpose of the 2(c) zone is to allow for flexibility within the development of expanding urban areas. However the objectives of the zone outline that through the adoption of development control plans, which clearly guide future development, the needs and expectations of the surrounding community will be met.
2. The Island whilst being zoned 2(c) is distinct from the rest of the surrounding 2(c) land and was approved as providing "unique island home sites".
3. The approved concept plan of the Island carefully balances residential amenity with lot dimensions and size, road layout, road widths, on-street parking, property frontages and yield.
4. Albeit the Island's location to the Cabarita Beach/Bogangar business centre the intention and desired future character of the Island is that it establish as a low-density residential area reflective of the Tweed Coast Lifestyle.
5. Whilst individual development applications could be approved in accordance with current planning provisions (DCP6 and DCP44) a DCP should control the accumulative adverse impacts of developments of a similar nature which would change the character of the Island.
6. Further provisions, as provided for by the objectives of the zone, are sometimes required to ensure that development is in accordance with that originally intended.
7. The local community's strong support that the Island develop as currently approved.

OPTIONS:

1. Adopt the Development Control Plan.
2. Not adopted the Development Control Plan.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The adoption of Development Control Plan No 52 - Planning Controls - Friday Island Bogangar will ensure that the approval of individual development applications do not accumulatively have an adverse impact on the desired future character of Friday Island.

UNDER SEPARATE COVER:

Nil.

2 [DS] DA K99/1450.02 for an Amendment to Development Consent K99/1450 for the Establishment of a Winery & Tourist Accommodation & Facilities (Golf Course) to be Developed in Three Stages at Lot 1 DP 121377, Lots 250, 251, 263 & 264 DP 755685, Carool Road,

ORIGIN:

Development Assessment

FILE NO: DA0960/730 Pt4

SUMMARY OF REPORT:

Council is in receipt of an application to amend the original development consent for the Carool Winery. The application to amend the development consent was lodged with Council following a resolution of Council on 17 September 2003 in relation to the use of the land and conditions of the development consent.

Council resolved: -:

- "A. Penny Brothers Pty Ltd be given a final notice to comply with the conditions of Development Consent K99/1450 being for the construction of a tourist resort comprising a winery Building, 16 accommodation units, 4 bungalows and an 18 hole golf course at Lot 1 DP 1043885 Carool Road, Carool.*
- B. If after twenty eight (28) days of the date of the notice referred to in "A" there are still outstanding conditions, the matter referred to Council's Solicitors to initiate appropriate action in the Land and Environment Court."*

The following report assesses the proposed amendments and acceptable changes are recommended.

Providing the Development Consent is amended as recommended and that the applicant addresses any further outstanding issues on the development consent the areas of non compliance with the development would be resolved. In the event that the applicant is able to achieve compliance with the development consent Council will not need to pursue legal action.

RECOMMENDATION:

That: -

- A: Development Application K99/1450.02 for an amendment to Development Consent K99/1450 for the establishment of a winery and tourist accommodation and facilities (golf course) to be developed in three stages at Lot 1 DP 121377, Lot 250 DP 755685, Lot 263 DP 755685, Lot 264 DP

755685, Lot 251 DP 755685, Carool Road, Carool be approved with the following amendments: -

1. Condition No. 2 be AMENDED TO READ.
 2. The construction of a one (1) metre wide concrete table drain along that section of Carool Road commencing at the end of the wider road pavement, adjacent to Camp Goodenough, and finishing at the entrance to the subject property.

Detailed engineering plans are to be submitted and approved by the Director of Engineering Services prior to the issue of an occupation certificate for stage 1. Alternatively, a contribution, equal to the cost of the proposed works is to be lodged with Council prior to issue of the occupation certificate for stage 1. The quantum of the contribution to be determined on the basis of an itemised works costing agreed between the applicant and Council's Director of Engineering Services.
 2. Condition No. 13 be AMENDED TO READ:
 13. The provision of 82 off street car parking spaces and four (4) bus parking spaces. A minimum of 50 car parking spaces to be provided with stage 1 and the remainder with stages 2 or 3. The engineering design plans and construction standards shall be approved by Council's Engineering Services Division prior to construction. Construction shall be completed and approved prior to occupation of each stage. All constructed parking areas are to be a minimum of two (2) metres from any property boundary. All batters involved in the construction of the parking areas are not to encroach on adjoining properties.
 3. Condition No. 52 be AMENDED TO READ.
 52. The proposed development shall not gain access from or use the adjoining crown road reserve.
 4. Condition No. 53 be AMENDED TO READ:
 53. All access driveways and parking areas are to be constructed in accordance with detailed engineering drawings to be submitted and approved prior to the commencement of work. Construction of all car parking and access driveways is to be completed as required by Condition 13 of this consent for each stage of the development.
- B. Council determine if the \$500 fee associated with the lodgement of the Section 96 Application should be refunded.

- C. The applicant be required to demonstrate in writing to Council compliance with Development Consent K99/1450 within 30 days of the date of the amended consent.

REPORT:

Applicant: Penny Brothers Pty Ltd
Owner: Penny Brothers Pty Ltd
Location: Lot 1 DP 121377, Lot 250 DP 755685, Lot 263 DP 755685, Lot 264 DP 755685, Lot 251 DP 755685, Carool Road Carool
Zoning: 1(a) Rural
Cost: Not stated

BACKGROUND:

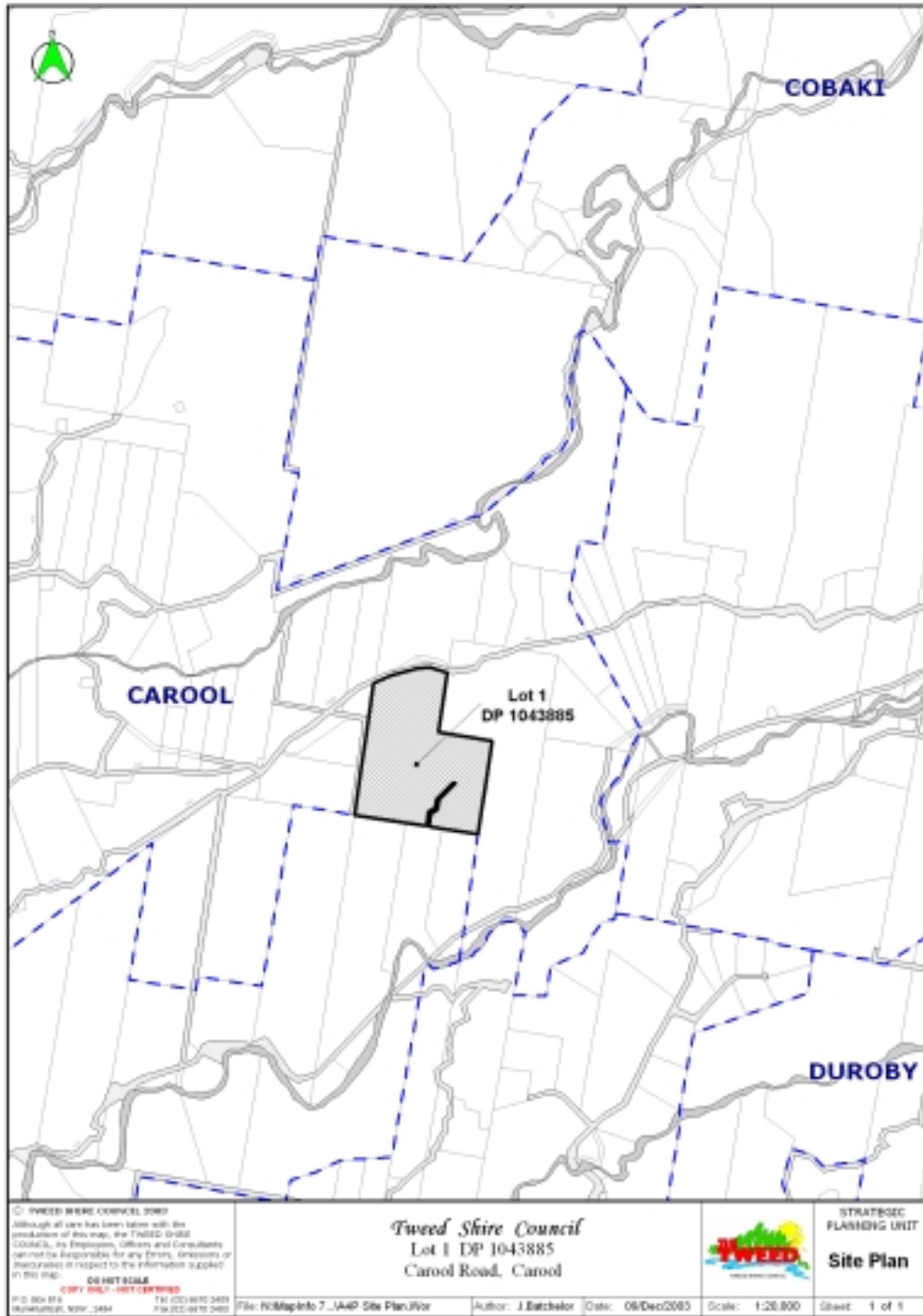
Council considered a report in confidential on 17th September 2003 in relation to compliance with the conditions of development consent K99/1450. Council resolved that:

- "A. Penny Brothers Pty Ltd be given a final notice to comply with the conditions of Development Consent K99/1450 being for the construction of a tourist resort comprising a winery Building, 16 accommodation units, 4 bungalows and an 18 hole golf course at Lot 1 DP 1043885 Carool Road, Carool.*
- B. If after twenty eight (28) days of the date of the notice referred to in "A" there are still outstanding conditions, the matter referred to Council's Solicitors to initiate appropriate action in the Land and Environment Court."*

As a consequence of this decision the applicant has submitted this subject application to amend the development consent, with the intention of modifying the conditions to address the compliance issues. The proposed amendments include changes to the road works condition, the car parking and access conditions, and the closure of the Crown Road condition.

The proposed amendment has been assessed by Council's Engineers and the following assessment in relation to each proposed modification is made.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Assessment of the Proposed Modification to the Development Consent

Road Works

Condition No.2 requires specified upgrading of Carool Road as well as the completion of all works prior to the issue of an occupation certificate for Stage 1. The applicant has submitted that Condition No.2 be amended to read as follows:

- 2. The construction of a one (1) metre wide concrete table drain along that section of Carool Road commencing at the end of the wider road pavement, adjacent to Camp Goodenough, and finishing at the entrance to the subject property.*

Detailed engineering plans are to be submitted and approved by the Director of Engineering Services prior to the issue of an occupation certificate for stages 2 and 3. Alternatively, a contribution, equal to the cost of the proposed works is to be lodged with Council prior to the issuance of an occupation certificate for stages 2 and 3. The quantum of the contribution to be determined on the basis of an itemised works costing agreed between the applicant and Council's Director of Engineering Services.

Comment

Council's Developments Engineer has advised that a number of discussions have been held with officers of Council's Engineering Services Division and the developer. It had been agreed that arrangements as tabled above were acceptable however the timing of any works / contribution shall be required prior to the occupation of stage 1. Any amended consent format shall require the issue to be addressed prior to the occupation of stage 1.

It is considered that it is acceptable to amend Condition No.2 to reflect the above wording, providing the condition requires the roadworks to be resolved prior to occupation of stage 1.

Car Parking

Conditions No.13 & 53 relate to the provision of 82 off street car parking spaces and four bus parking spaces, including full construction in accordance with DCP as part of stage 1.

The applicant has submitted that the car parking area shown on the master plan has been constructed to a stage where it provides effective parking for a minimum of 50 vehicles for stage 1. This is shown on a plan prepared by a consulting Engineer. The

applicant has submitted that the on site parking conditions should reflect staging and the specification for construction which would be a gravel surface not bitumen.

The applicant proposes the conditions to read:

- 13 *The provision of 82 off street car parking spaces and four (4) bus parking spaces. A minimum of 50 car parking spaces to be provided with stage 1 and the remainder with stages 2 or 3. The layout and construction standards to be in accordance with the plan prepared by Richard Harry Engineering Services Pty Ltd (plan 00009, 1 to 15, dated 9/00) and otherwise in accordance with Development Control Pan No.2 - Site Access & Parking Code. All constructed parking areas are to be a minimum of two (2) metres from any property boundary. All batters involved in the construction of the parking areas are not to encroach on adjoining properties.*

53. *All access driveways and parking areas are to be constructed in accordance with detailed engineering drawings to be submitted and approved prior to the commencement of work. Construction of all car parking and access driveways is to be completed as required by Condition 13 of this consent for each stage of the development.*

Comment

Council's Developments Engineer has advised that the engineering detail submitted by the consulting Engineer provides detail of the proposed car parking area and has indicated the extent of works undertaken to provide a minimum of fifty (50) parking spaces. Site inspections indicate the extent of works identified on the engineering plans has not been provided and that less than the fifty parking spaces specified are available.

Further, the detail provided does not indicate the extent of parking to be provided within each stage, pavement detail, and extent of existing parking available.

However it is considered that Condition No.13 can be amended to read:

- 13 *The provision of 82 off street car parking spaces and four (4) bus parking spaces. A minimum of 50 car parking spaces to be provided with stage 1 and the remainder with stages 2 or 3. The engineering design plans and construction standards shall be approved by Council's Engineering Services Division prior to construction. Construction shall be completed and approved prior to occupation of each stage. All constructed parking areas are to be a minimum of two (2) metres from any property boundary. All batters involved in the construction of the parking areas are not to encroach on adjoining properties.*

With Condition No.13 being amended as above it is considered that Condition No.53 can be amended as submitted by the applicant, being:

53. *All access driveways and parking areas are to be constructed in accordance with detailed engineering drawings to be submitted and approved prior to the commencement of work. Construction of all car parking and access driveways is to be completed as required by Condition 13 of this consent for each stage of the development.*

Crown Road

The applicant has submitted that Condition No.52 should be deleted. Condition No. 52 states:

"On the completion of the new access to the property the existing access over the crown road reserve is to be physically closed off at the boundary of Lot 1 DP 121377 and Lot 251 DP 755685."

The applicant has submitted that this condition appears to require closure of the Crown Road, which is not the intention of the condition and as such that the condition should be deleted.

Comment

It is understood that the applicant cannot comply with this condition as an adjoining property uses the Crown Road for access. However it is considered that the condition needs to remain in a reworded manner to ensure that this development does not use or gain access from the crown road reserve. The following condition is considered to satisfy these two issues:

The proposed development shall not gain access from or use the adjoining crown road reserve.

Considerations Under Section 96 1(a) Of The Environmental Planning And Assessment Act 1979

Minimal Environmental Impact

The proposed modification to the road works condition would not result in any additional environmental impacts in the road reserve. The proposed changes enable these works to occur at the identified stage and there is also the alternate for Council to undertake the works providing a contribution is paid to equal the cost of works.

The proposed modification to the access and car parking conditions has not been supported as the submitted engineering documentation is not acceptable to Council's Developments Engineer. These conditions are however recommended to be amended to enable the staging of the car parking and that plans for these be submitted and approved by Council's Engineering services Division.

The proposed modification to the Crown Reserve condition by way of deleting the condition is not supported however instead the replacement of this condition with more suitable wording is recommended.

The proposed modifications that are requested that can be supported by Council and are not considered to result in a significant impact on the environment.

Substantially The Same Development

The proposed amendments result in the same development as that approved. The proposed amendments result in the conditions being modified to provide clearer indication of staging and reword conditions to ensure the original intention is achieved.

Notification and Consideration of Submissions

The proposed amendments did not require notification or advertising under Council's Policy. There are no submissions to consider in relation to the proposed modification.

OPTIONS:

1. To modify Development Consent K99/1450 as recommended being to modify Condition No.2 in relation to road works, Condition No.13 in relation to car parking, Condition No.53 in relation to access and reword Condition No.52 in relation to the crown road. This recommendation does not support the applicants submitted engineering plans however it enables the staging of the car parking for the development.

2. To modify Development Consent K99/1450 as submitted by the applicant being:

AMEND Condition No.2.

The construction of a one (1) metre wide concrete table drain along that section of Carool Road commencing at the end of the wider road pavement, adjacent to Camp Goodenough, and finishing at the entrance to the subject property.

Detailed engineering plans are to be submitted and approved by the Director of Engineering Services prior to the issue of an occupation certificate for stages 2 and 3. Alternatively, a contribution, equal to the cost of the proposed works is to be lodged with Council prior to the issuance of an occupation certificate for stages 2 and 3. The quantum of the contribution to be determined on the basis of an itemised works costing agreed between the applicant and Council's Director of Engineering Services.

AMEND Condition No.13

The provision of 82 off street car parking spaces and four (4) bus parking spaces. A minimum of 50 car parking spaces to be provided with stage 1 and the remainder with stages 2 or 3. The layout and construction standards to be in accordance with

the plan prepared by Richard Harry Engineering Services Pty Ltd (plan 00009, 1 to 15, dated 9/00) and otherwise in accordance with Development Control Pan No.2 - Site Access & Parking Code. All constructed parking areas are to be a minimum of two (2) metres from any property boundary. All batters involved in the construction of the parking areas are not to encroach on adjoining properties.

AMEND ConditionNo.53. All access driveways and parking areas are to be constructed in accordance with detailed engineering drawings to be submitted and approved prior to the commencement of work. Construction of all car parking and access driveways is to be completed as required by Condition 13 of this consent for each stage of the development.

DELETE Condition No.52.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

On Wednesday the 17th September 2003 Council resolved: -

- "A. *Penny Brothers Pty Ltd be given a final notice to comply with the conditions of Development Consent K99/1450 being for the construction of a tourist resort comprising a winery Building, 16 accommodation units, 4 bungalows and an 18 hole golf course at Lot 1 DP 1043885 Carool Road, Carool.*
- B. *If after twenty eight (28) days of the date of the notice referred to in "A" there are still outstanding conditions, the matter referred to Council's Solicitors to initiate appropriate action in the Land and Environment Court."*

To assist in meeting some of the obligations regarding non compliance with conditions of consent the Section 96 Application to modify some existing conditions was considered as being a solution in part.

However there are still matters in relation to non compliance raised by the proposal including:

- Specifically rock retaining walls that are more than 1.2m in height require certification. The applicant has provided this certification for the entry to the resort however areas within the development remain outstanding. The certification from a practising structural engineer is required for all of these structures.
- Condition No.40 requires detailed landscaping plans and the payment of a maintenance bond. While the applicant has indicated that he is of the view that this condition is unreasonable the proposed amendment application does not seek to vary this condition.

To further reinforce the importance of complying with conditions of consent this report concludes that the applicant demonstrate compliance with all of the conditions of consent

upon amendment to Council's satisfaction thereby resolving the need to seek legal action to remedy areas of non compliance.

POLICY IMPLICATIONS:

The applicant has submitted that the \$500 fee associated with the lodgement of this application to amend the development consent should be refunded. At the time of lodgement of the Section 96 Application it was indicated that to support resolution of the various outstanding issues a refund could be supported if a formal request was made.

While this formal request for refund is noted and previous indication made it is noted that this Section 96 Application does not fully resolve all outstanding issues in relation to the development. The request for the refund is submitted to Council for determination.

CONCLUSION:

In lodging the proposed Section 96 Amendment Application with Council the applicant demonstrated a willingness to address the concerns raised by Council in terms of non compliance with the development consent. The application to amend the consent results in some of the issues being resolved with the applicant needing to demonstrate compliance with the amended conditions of consent.

It will still be necessary for the applicant to demonstrate to Council compliance with the conditions of consent as this amendment application does not resolve all outstanding issues. To meet this requirement the applicant will need to provide certification for all structures more than 1.2m in height, and compliance with Condition No.40 in relation to the landscaping and payment of a bond.

It is recommended that the applicant be given the opportunity to demonstrate compliance with the amended conditions of consent prior to any legal action being taken to remedy non compliances.

UNDER SEPARATE COVER:

Nil.

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3 [DS] Development Application DA03/0504 for Two (2) Accommodation Bungalows at Lot 1 DP 1043885, Carool Road, Carool

ORIGIN:

Development Assessment

FILE NO: DA03/0504 Pt1

SUMMARY OF REPORT:

Council is in receipt of a development application that seeks the approval of a further two accommodation bungalows in the south-western area of the subject site. Issues for consideration in this application primarily comprise the potential impact upon the scenic amenity of the area and impact upon neighbouring lands.

RECOMMENDATION:

That Development Application DA03/0504 for two (2) accommodation bungalows at Lot 1 DP 1043885, Carool Road Carool be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Plans Nos 215B Sheets 1 & 4 dated December 2003 and the site plan dated September prepared by Parameter Designs, except where varied by these conditions. [GEN0010]
2. 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. [GEN0050]
3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia. [GEN0120]
4. The erection of a building in accordance with a development consent must not be commenced until:
 - 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. [GEN0150]
5. Driveway access to the accommodation bungalows is to be constructed to Tweed Shire Council standards.
6. The driveway to the accommodation bungalows shall be contained wholly within the property boundary, except where documentary evidence is provided from the NSW Department of Lands that identifies the use of the Crown Road as lawful.
7. Each accommodation bungalow is to be provided not less than one (1) car parking space each and shall be constructed in accordance with Council's Development Control Plan No.2 and all of its attachments. [GENNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

8. A. Building work that involves residential building work (within the meaning of the *Home Building Act 1989*) must not be carried out unless the Principal Certifying Authority for the development to which the work relates:
- i. in the case of work to be done by a licensee under that Act:
 - (i) has been informed in writing of the licensee's name and contractor licence number; and
 - (ii) is satisfied that the licensee has complied with the requirements of Part 6 of that Act; or
 - ii. in the case of work to be done by any other person:
 - (i) has been informed in writing of the person's name and owner-builder permit number, or
 - (ii) has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of **owner-builder work** in Section 29 of that Act, and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.
- B. A certificate purporting to be issued by an approved insurer under Part 6 of the *Home Building Act 1989* that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part. [PCC0310]
9. 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: S94 Plan No. 4 (Version 4.0) (Sector 12 - Carool)	\$5,458
b.	Open Space (Casual): S94 Plan No. 5	\$127
c.	Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16	\$476
d.	Regional Open Space (Casual) S94 Plan No. 26	\$168

[PCC0050/PSC0005]

PRIOR TO COMMENCEMENT OF WORK

10. 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.

[PCW0050]

11. 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.

[PCW0060]

12. 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.

[PCW0090]

13. 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.

[PCW0190]

14. Prior to commencement of any works on the site a plumbing and drainage inspection fee is to be submitted to Council.

[PCW0200]

DURING CONSTRUCTION

15. 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).

[DUR0010]

16. 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.

[DUR0080]

17. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council. [DUR0130]
18. 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
- [DUR0170]
19. 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. [DUR0200]
20. Details of the intended method of water storage are to be submitted to the Principal Certifying Authority for approval. Please note that the minimum storage capacity required shall be 20,000 litres. [DUR0800]
21. Construction site work including the entering and leaving of vehicles is to be restricted to between 7.00 am and 7.00 pm Monday to Saturday and no work on Sundays or public holidays. [DUR0900]
22. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed. [DUR0950]
23. 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.
- [DUR1020]
24. 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. [DUR1030]
25. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993. [DUR1090]

26. Yard gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR1130]

27. The finished floor level of the building should finish not less than 225mm above finished ground level.

[DUR1150]

28. 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.

[DUR1160]

29. 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.
- 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.

[DUR1200]

30. 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.

[DUR0850]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

31. 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.

[POC0020]

32. It is a condition of an approval to install, construct or alter a sewage management facility that the facility is not used (or used as altered) until the Council has given the applicant for approval notice in writing that it is satisfied that the facility has been installed, constructed or altered in substantial accordance with the approval.

[POC0100]

33. It is a condition of this consent to operate a system of sewage management that this clause is complied with.

- (i) The sewage management facilities used in the operation of the system must be maintained in a sanitary condition and must be operated in accordance with the relevant requirements of this Regulation.
- (ii) A sewage management facility used in the operation of the system must not discharge into any watercourse or onto any land other than its related effluent application area.
- (iii) The conditions (if any) of any certificate of accreditation issued by the Director-General of the Department of Health under this Division in respect of the plans or designs for any components of the sewage management facilities must be complied with.
- (iv) The person operating the system of sewage management must provide details of the way in which it is operated, and evidence of compliance with the relevant requirements of this Regulation and of the conditions of the approval, whenever the Council reasonably requires the person to do so.

[USE0230]

USE

34. 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.

[USE0160]

35. Effluent from the two accommodation bungalows the subject of this approval and the previously approved neighbouring accommodation bungalow, which is being re-sited, shall be treated by a New South Wales Health accredited Aerated Waste Treatment System having a minimum rating equivalent to 10EP or 2000L/per day.

36. Treated effluent from the accredited Aerated Waste Treatment System shall be disposed of to an irrigation area designed and used solely for the purpose of the disposal of treated effluent via a subsurface drip pressurised irrigation system to the satisfaction of Council's Director for Environment and Health Services.

37. The minimum area of the designated irrigation area shall not be less than 1000m².

38. Water supplied for drinking purposes to each bungalow shall be of a potable quality acceptable to the Council's Director for Environment and Health Services.
39. Supply shall be connected to the potable water supply for the development in accordance with requirements of Condition Nos.54 to 57 of Development Approval K99/1450, when this system becomes available or following the completion of the 16 accommodation units approved under K99/1450, which ever occurs first.

REPORT:

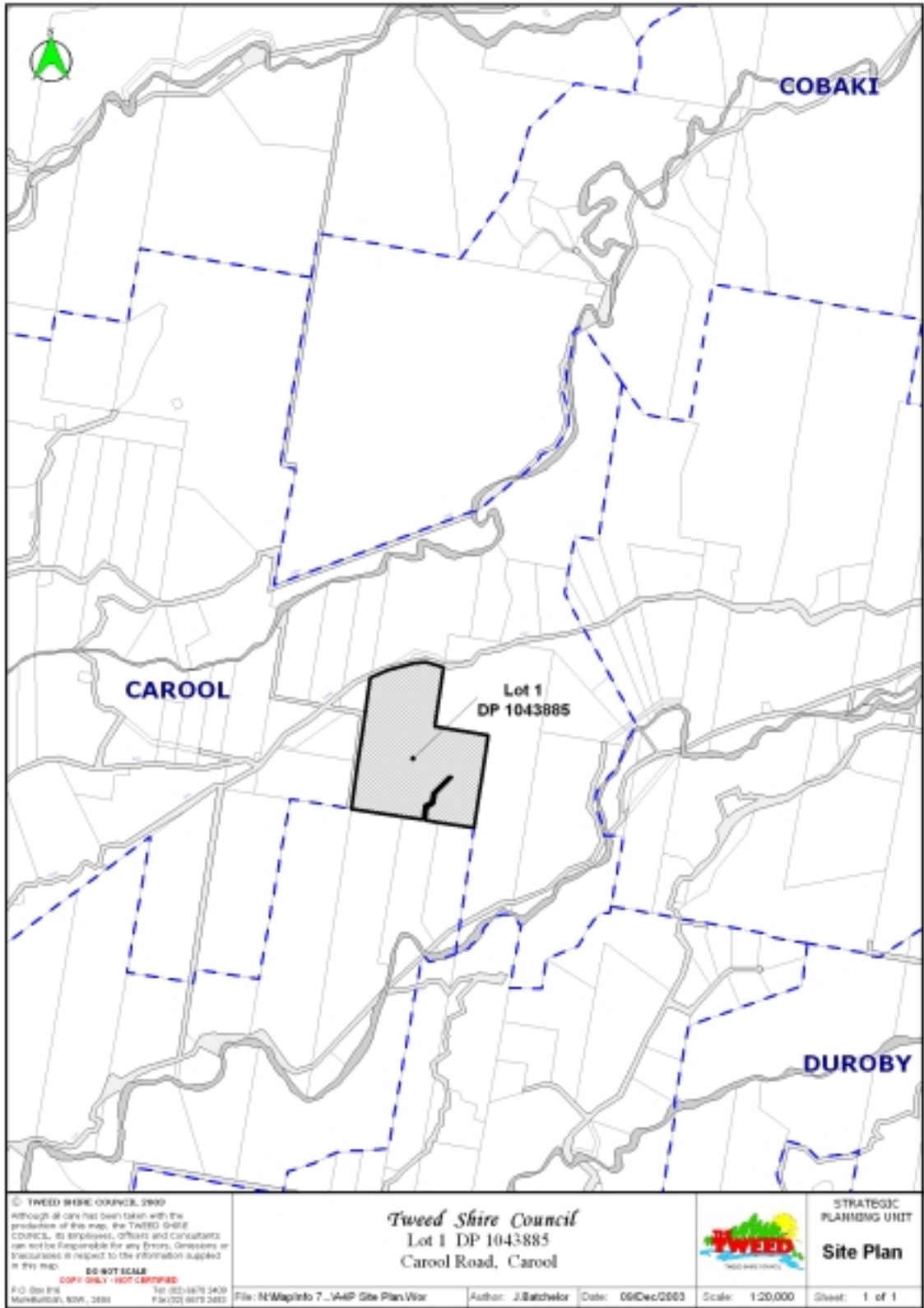
Applicant: Parameter Designs
Owner: Penny Brothers Pty Ltd
Location: Lot 1 DP 1043885 Carool Road, Carool
Zoning: 1(a) Rural
Cost: \$140,000.00

BACKGROUND:

Council is in receipt of a development application that seeks the approval of a further two accommodation bungalows in the south-western area of the site, adjacent to a previously approved bungalow. The bungalows have a floor area of 81.3m² (58m² excluding decking) that comprise a bedroom, bathroom and combined lounge and kitchen area. The roofline is a traditional truss construction with a 25 degree pitch, with colour-bond cladding. The exterior walls will be rendered and painted in an off white (wheat) finish, consistent with the recently erected bungalows located to the north-east.

Issues for consideration in this application primarily comprise the potential impact upon the scenic amenity of the area and impact upon neighbouring lands. These issues are addressed further in this report.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000 (TLEP 2000)

The subject land is zoned 1(a) Rural pursuant to the provision of the TLEP 2000. The proposed development may be described as a recreation area and is permissible under the zoning.

The primary objectives of the 1(a) zone are: -

- * *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development.*
- * *to protect rural character and amenity.*

The original approval was granted on the basis of a "tourist resort" under TLEP 2000. The definition of "tourist resort" is as follows: -

"a largely self contained holiday destination establishment which provides:-

- a. tourist accommodation; and*
- b. on site facilities to satisfy all or substantially all of the recreational, entertainment, dining and other holiday needs of its resident tourists".*

The proposed bungalows are in-keeping with the tourist development approval K99/1450 and are considered generally consistent with the zone objectives.

North Coast Regional Environmental Plan 1988

Clause 75 of the Plan provides matters for consideration from a development control aspect with respect to the assessment of tourism development. An assessment against the four sub-clauses is provided below.

- (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*

The proposed additional two bungalows will be accessed via the approved site access in K99/1450. The impact upon the local road network resulting from the additional units is considered minimal and not warranting of a revised traffic analysis. There remains a status quo on access provision to the site

and to the approved car parking area, a parking bay will be required at each unit.

(b) if the proposal involves permanent residential accommodation, all social and community services reasonably required by those residents exist in close proximity to the development, and

The proposed bungalows are not for permanent residential use. It is noted however, that the site is within reasonable driving distance to support functions, e.g. shops, access to financial institution.

(c) the development will not be detrimental to the scenery or other significant features of the natural environment, and

The development site is at an elevated position, with views to the Bilambil area and ocean to the east, southeast. The approved tourist resort will be prominent upon the land where viewed from vantage points to the east, southeast. Council has in previous determinations permitted the use of the land for tourist and golfing development activities and in so doing has accepted that a level of scenic encroachment will occur. The encroachments may not be viewed detrimentally where the development is sympathetic to the landscape. In this regard, it is considered that the cumulative impact of the proposed buildings, which are not of a large scale, will be relatively minor. Site inspection of the site has occurred on several occasions. It is concluded that impact upon the scenic amenity available from the neighbouring land to the west will be largely unfettered. This is considered so, because the neighbouring residences, when viewed from the proposed building pads, are obscured by topographic elevation and existing site vegetation.

Notwithstanding the above, it should be noted that the development of the site is increasing with subsequent development consents, with very little approved works actually being undertaken. Such circumstances render a true appreciation of the suitability of further development works very difficult to assess.

(d) reticulated water and sewerage are available, or arrangements satisfactory to the council have been made for the provision of those facilities.

Council's Environment and Health Services Unit has assessed the proposed infrastructure servicing of the site as satisfactory.

(2) In considering an application for consent to tourism development, the council must have regard to principles contained in the Tourism Development Along the New South Wales Coast: Guidelines.

The *Tourism Development Along the New South Wales Coast: Guidelines*, is a strategic policy document that aims to identify spatial location opportunities

and constraints for tourist development. Two categories exist, 'prime' and 'secondary' tourism development areas. Tweed Heads and Kingscliff are identified as prime tourism development area and as such the subject land, being the hinterland to these areas, is considered a 'secondary' development area. Pursuant to the guidelines, retention of the lands natural features would therefore be a high priority. Limiting the amount of development on the ridgeline or elevated positions is paramount to retaining the environmental value of the land. Assessment of the impact upon the lands amenity arising from the proposed development has been discussed earlier in this report.

(3) The 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.

The proposed development comprises an addition to an approved tourist development. The site forms the hinterland area of district that is identified as prime tourism development area and is within reasonable proximity to urban support functions. As discussed earlier in this report, the proposed development is relatively minor in scale and does not represent a significant encroachment to the areas aesthetic and environmental amenity.

State Environmental Planning Policies

SEPP55 applies to the subject land. A site contamination report was submitted with the previous applications, which concluded the site is suitable for development.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

No draft Environmental Planning Instruments apply to the proposal.

(a) (iii) Development Control Plans (DCP's)

The proposed buildings will be required to provide a car parking space each. There will be no other increase demand for car parking over and above the previously approved 82 car and 4 bus parking spaces.

(a) (iv) Any Matters Prescribed by the Regulations

In accordance with cl.92 the development has been assessed against the NSW Coastal Policy 1997, as Satisfactory.

(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

The physical impact upon the natural environment is considered minimal due to the highly disturbed nature of the land. The aesthetic impact on the

environmental value of the land is compromised by virtue of the facilitating tourist development approval. Cumulative impact arising from the proposed accommodation bungalows is considered minimal. Economically, it is considered that the proposed bungalows will assist with commercial viability of the development. The development is likely to have a positive flow-on effect to other business in the region. Socially, the proposed facilities are not perceived to have any significant external detrimental impact. In particular, it is noted that the structures will be obscured from the nearest neighbouring residences. The level of social amenity determined to exist resulting from the approved tourist development will remain largely unaffected by the subject development. The approved future built environment will be further complemented by the proposed bungalows.

(c) Suitability of the site for the development

The site is considered satisfactory for the proposed development, this is considered particularly so having regard to previous development approvals.

(d) Any submissions made in accordance with the Act or Regulations

The development application was publicly notified for 14 days. During this period one submission was received. The submission raises a number of issues however, it is considered that with exception to the issues discussed below all other issues relate to the statutory validity of the application and not 'impact assessment'. The application is considered statutorily valid.

ISSUE	IMPACT ASSESSMENT	COMMENT
Integrated development because proximity/use of Crown Rd	s.91 of the Environmental Planning and Assessment Act identifies the scope of integrated approvals. Crown Roads is listed not as requiring integrated approval. Notwithstanding this, the Manager Land Access, Dept of Lands, was written to on 20 August 2003. No response has been received.	Does not warrant amendment or refusal of application. A condition is proposed that requires the access driveway to be constructed within the property boundary, except were written evidence from the NSW Lands Dept. is produced, identifying the lawful use of the Crown Road.

(e) Public interest

Subject to the recommendations of this report the proposed development is not considered contrary to the public interest.

OPTIONS:

1. Approve the development application with the conditions provided.
2. Refuse the application and provide grounds for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should Council resolve to approve the development in accordance with Option 1, as provided, there will be no direct financial impact upon Council's adopted budget or forward estimates. If the applicant is however dissatisfied with Council's decision he has the right to appeal to the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Upon assessment of the issues raised in this and previous planning reports the development is considered suitable for a conditional approval.

UNDER SEPARATE COVER:

Nil.

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4 [DS] Development Application DA03/0503 for a Sanitary Facility and Kitchen Extension at Lot 1 DP 1043885 Carool Road, Carool

ORIGIN:

Development Assessment

FILE NO: DA03/0503 Pt1

SUMMARY OF REPORT:

Council is in receipt of a development application for an additional toilet and kitchen extension to an approved golf pro shop. The application whilst increasing the area of the kitchen, does not seek to increase the seating capacity of the dining area. In this regard, the requirement for a further road contribution and additional car parking is not considered warranted.

The proposed kitchen extension and toilet facility are not considered likely to have any significant detrimental impact upon the environment, socially or economically in the locality, subject to strict compliance with the proposed conditions of approval.

RECOMMENDATION:

That Development Application DA03/0503 for a sanitary facility & kitchen extension at Lot 1 DP 1043885, Carool Road, Carool be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plans Nos 352A Sheets 2 to 5 prepared by Parameter Designs and dated March 2003, except where varied by these conditions.
[GEN0010]
2. The golf club and associated dining facility is for the exclusive use of golfing members, their guests and guest of the tourist accommodation.
[GENNS01]
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.
[GEN0050]
4. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
[GEN0120]

5. The erection of a building in accordance with a development consent must not be commenced until:
- 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.
- [GEN0150]
6. Prior to a future request to any authority to further the patron licensing capacity of the dining / bar facility approval must be obtained from Tweed Shire Council, and if deemed necessary by Council, for assessment purposes, the submission and approval of a separate development application.
- [GENNS02]
7. 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.
- [PCW0120]

PRIOR TO COMMENCEMENT OF WORK

8. 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.
- [PCW0050]

9. 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.

[PCW0090]

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 final approval is given and the maintenance bond has been released.

[PCW0190]

11. Prior to commencement of any works on the site a plumbing and drainage inspection fee of is to be submitted to Council.

[PCW0200]

DURING CONSTRUCTION

12. 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.

[DUR0080]

13. A garbage storage area shall be provided in accordance with Council's "**Code for Storage and Disposal of Garbage and Other Solid Waste**".

[DUR0090]

14. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0130]

15. 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

[DUR0170]

16. 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.

[DUR0310]

17. 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.
- [DUR0320]
18. Shopfitters are to liaise with the Principal Certifying Authority prior to fitting out of shop.
- [DUR0340]
19. Construction site work including the entering and leaving of vehicles is to be restricted to between 7.00 am and 7.00 pm Monday to Saturday and no work on Sundays or public holidays.
- [DUR0900]
20. 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.
- [DUR1020]
21. 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.
- [DUR1030]
22. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.
- [DUR1090]
23. Yard gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.
- [DUR1130]
24. 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.

[DUR1160]

25. 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.
- 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.

[DUR1200]

26. 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.

[DUR0330]

27. 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.

[DUR0350]

28. 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.

[DUR0870]

29. 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).

[DUR0010]

30. All walls to the cooking area are to be of solid masonry construction or similar homogenous material acceptable to Council's Director for Environment and Health Services. Timber stud walls with gyprock lining or other cavity type construction is not acceptable.

[DURNS01]

31. A separate handwashing facility which is to be provided with hot and cold water, soap and hand drying facility is to be installed in the cooking area.

[DURNS02]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

32. 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.
- [POC0020]
33. 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).
- [POC0030]
34. Portable fire extinguishers containing an extinguishing agent suitable for the risk being protected must be installed in accordance with Australian Standard AS 2444 "Portable Fire Extinguishers - Selection and Location" and Part E1.6 of the Building Code of Australia.
- [POC0070]
35. It is a condition of an approval to install, construct or alter a sewage management facility that the facility is not used (or used as altered) until the Council has given the applicant for approval notice in writing that it is satisfied that the facility has been installed, constructed or altered in substantial accordance with the approval.
- [POC0100]

USE

36. It is a condition of this consent to operate a system of sewage management that this clause is complied with.
- (i) The sewage management facilities used in the operation of the system must be maintained in a sanitary condition and must be operated in accordance with the relevant requirements of this Regulation.
 - (ii) A sewage management facility used in the operation of the system must not discharge into any watercourse or onto any land other than its related effluent application area.
 - (iii) The conditions (if any) of any certificate of accreditation issued by the Director-General of the Department of Health under this Division in respect of the plans or designs for any components of the sewage management facilities must be complied with.
 - (iv) The person operating the system of sewage management must provide details of the way in which it is operated, and evidence of compliance with the relevant requirements of this Regulation and of the conditions of the approval, whenever the Council reasonably requires the person to do so.
- [USE0230]
37. 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.
- [USE0160]

38. The premises and equipment must comply with the requirements of the Australian Food Standards Codes as called into force by the Food Regulation 2001.
39. Any adequate or necessary measures shall be implemented to safeguard neighbouring lands from offensive levels of smoke arising from the use of externally exposed barbeques, grills or similar like facility
[USENS01]
40. The premises is to be conducted in accordance with the requirements of the Australian Food Standards Code as called into force by the Food Regulation 2001.
[USENS02]
41. The premises is to be treated initially prior to commencement of trading upon completion of development works and thereafter on a regular basis by a licensed pest control operator.
42. Patronage of the refreshment area shall not exceed at any given time that stipulated under any statutory approval or licence.
[USENS03]
43. Adequate measures are to be incorporated as to deny access at all times by animals to the kitchen and dining areas. This includes peacocks and their access to water collection areas.
[USENS04]
44. Adequate measures are to be provided and effectively maintained so as to prevent contamination of the water supply used in conjunction with the kitchen and that provided for consumption and use.
45. Refreshment areas are for the exclusive use of golfing members, their guests and guests of the tourist accommodation.
46. Live entertainment is not permitted. Any such future proposed entertainment is subject to separate prior approval.
47. Amplified music shall not unreasonably interfere with the amenity of adjoining lands.
48. No artificial light spill is permitted beyond the property boundaries.
49. Water supplied for the kitchen / restaurant facility and dining area, pro shop and games area shall be of a potable quality standard acceptable to Council's Director for Environment and Health Services. Such supply shall be tested at an interval not exceeding every six months at a NATA registered testing laboratory and a test report is to be submitted to Council's Director immediately (within the same 24hr period) following each sample test.

50. The water supply for the kitchen / restaurant facility and dining area, pro shop and games area shall be connected to the potable water supply for the development in accordance with the requirements of Condition Nos.54 to 57 of Development Approval K99/1450 when the designated system becomes available or following the completion of the 16 Accommodation Units, also approved under K99/1450, which ever occurs first.
51. Effluent from the Kitchen / restaurant facility and dining area, pro shop and games area shall be treated by either a two (2) x 10 EP or one (1) x 20 EP NSW Health accredited Aerated Waste Treatment System, minimum 2000 litres.
52. A suitably sized grease arrestor system shall be installed on the restaurant discharge line in accordance with the Tweed District Plumbing Service Pty Ltd report, as submitted.
53. Treated effluent from the two (2) x 10 EP or one (1) x 20 EP NSW Health accredited Aerated Waste Treatment System shall be disposed of to an irrigation area designed and used solely for the purpose of the disposal of treated effluent via a subsurface drip pressurised irrigation system to the satisfaction of Council's Director for Environment and Health Services.
54. The minimum area of the designated irrigation area shall not be less than 1550m².
55. At the time the sewerage treatment plant for the main accommodation buildings and winery building becomes operational the kitchen / restaurant facility and the dining area, pro shop and games area shall be connected to the this plant and the Aerated Waste Treatment System(s) and associated irrigation area shall be decommissioned to the satisfaction of Council's Director for Environment and Health Services.
56. Operational hours of the kitchen / refreshment and dining areas is limited to the operational hours of the golf course, plus one (1) hour.

[USENS05]

REPORT:

Applicant: Parameter Designs
Owner: Penny Brothers Pty Ltd
Location: Lot 1 DP 1043885 Carool Road, Carool
Zoning: 1(a) Rural
Cost: \$6,000.00

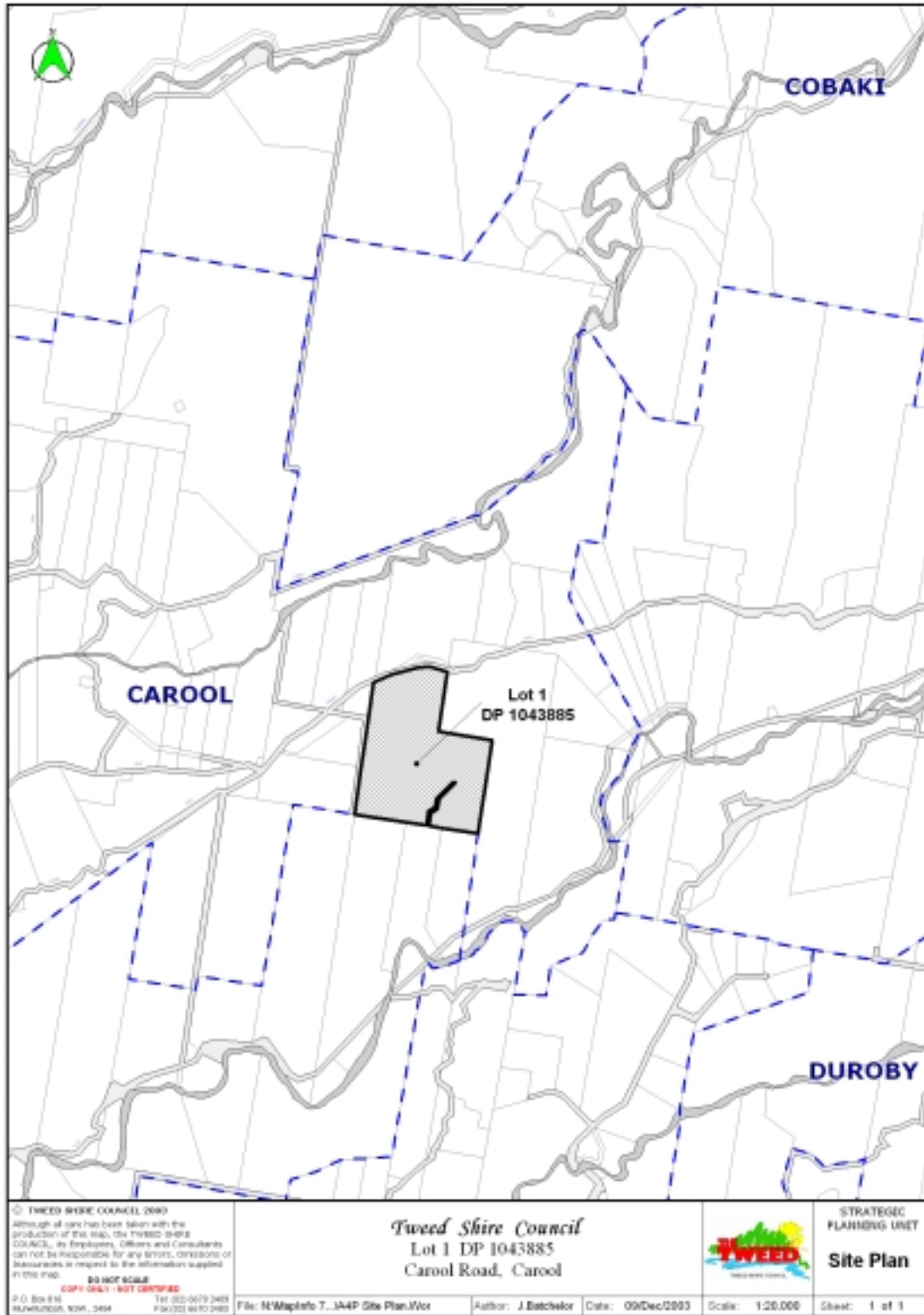
BACKGROUND:

Council is in receipt of a development application that seeks the provision of an additional toilet and kitchen extension to an approved golf pro shop, which forms part of a tourist resort comprising a winery building, accommodation units and an 18 hole golf course. Approved works constructed to-date include the golf pro shop, golf course, pool, tennis court and three accommodation bungalows, which are nearing completion.

The golf pro shop was approved on 25 October 2000. An extension to the facility to include a kitchen, bar and dining area was approved at Council's ordinary meeting of 3 July 2002 and included a condition requiring the payment of a road contribution in the amount of \$13,100 to be paid over a period of 3 years. The application (DA02/0820) was the subject of an earlier report to Council on 26 June 2002. The report highlighted a noticeable change in use of the golf course proposed via the offering of public membership, which was contrary to the original approval that identified the golf course for use by visitors to the resort only. The change gives rise to a more formalised golf club and subsequently would increase the anticipated usage of the golfing facilities and as such brought about the requirement for a further road contribution.

The present application, whilst increasing the area of the kitchen, does not seek to increase the seating capacity of the dining area and will not impact upon any concurrent licensing arrangements held by the operator. In this regard, the requirement for a further road contribution is not considered warranted, provided the use of the facilities remain for golfing members, their guests and visitors of the resort.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000 (TLEP 2000)

The subject land is zoned 1(a) Rural pursuant to the provision of the TLEP 2000. The proposed development may be described as a recreation area and is permissible under the zoning.

The primary objectives of the 1(a) zone are: -

- * *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development.*
- * *to protect rural character and amenity.*

The original approval was granted on the basis of a "tourist resort" under TLEP 2000. The definition of "tourist resort" is as follows: -

"a largely self contained holiday destination establishment which provides:-

- a. tourist accommodation; and*
- b. on site facilities to satisfy all or substantially all of the recreational, entertainment, dining and other holiday needs of its resident tourists".*

North Coast Regional Environmental Plan 1988

The proposed development is satisfactory with respect to attaining the provision of the Plan.

State Environmental Planning Policies

SEPP55 applies to the subject land. A site contamination report was submitted with the previous applications, which concluded the site is suitable for development.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

No draft Environmental Planning Instruments apply to the proposal.

(a) (iii) Development Control Plans (DCP's)

The Council report of 26 June 2002 for the extension of the golf pro shop for a kitchen, bar and dining area identified, because of the change in nature of the proposal that was brought about by the offering of memberships, a need for a revised traffic analysis. However, in resolving to approve the additions on 3 July 2002, without a requirement for additional parking, Council accepted the original approved 82 car and 4 bus parking spaces as adequate.

The subject proposal by not seeking to increase the patronage of the 'golf club' by increasing the dining capacity is not considered warranting of further car parking requirements.

(a) (iv) Any Matters Prescribed by the Regulations

In accordance with cl.92 the development has been assessed against the NSW Coastal Policy 1997, as Satisfactory.

(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

The proposed kitchen extension and toilet facility are not considered likely to have any significant detrimental impact upon the environment, socially or economically in the locality.

It is noted that a public submission has been received but that the issues raised are predominantly focused toward other approvals presently sought by the Applicant from Council. However, it is noted that concern was raised about the noise impact from the dining area, in particular from live music, upon neighbouring residences. In this regard it is noted that the development, as approved, caters for members and their guest utilising the golfing facilities but does not include the use of the club for any other function, i.e. catered events. The impact of activities consistent with the approval is therefore likely to be minimal and is likely to be further reduced as a result of the kitchen extension, which will act as a de facto acoustic barrier.

Live entertainment is neither proposed nor approved at the golf club facility. Any future use of the site for entertainment purposes will be subject to separate approval being obtained.

(c) Suitability of the site for the development

The proposed extension and addition is minor in scale. The subject site is considered not unsuitable for the proposed development.

(d) Any submissions made in accordance with the Act or Regulations

The subject proposal was not considered to be one that requires public notification pursuant to Development Control Plan No.42 – Notification of Development Proposals. However, one submission has been received that raises a number of issues, which fundamentally apply to ‘other’ applications presently before Council over the same site.

Of relevance to this proposal is an issue that had already come to light. On May 29 2003 the Daily News placed an advert for the ‘Penny Ridge Resort’ that clearly identified the use of the golf club kitchen and dining facilities for the purposes of a wedding. As discussed earlier in this report the development has not been approved for any purpose beyond that for use by golfing members and their guests and visitors of the resort. Previous alleged functions have been identified as providing unwanted adverse noise impact upon a neighbouring residence.

In light of the above and to reaffirm the approved operational parameters of the golf club dining area a condition of consent is proposed that limits use of the facility to golfing members, their guest and guest of the tourist resort. Any further usage of the facility must be subject to further approval that would permit the assessment of all likely impacts.

It is also recommended that any further licensing arrangements that may seek to increase the patron capability of the facility be subject to prior approval. A condition to this effect is also proposed.

(e) Public interest

Subject to the recommendations of this report the proposed development is not considered contrary to the public interest.

OPTIONS:

1. Approve the development application with the conditions provided.
2. Refuse the application and provide grounds for refusal.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should Council resolve to approve the development in accordance with Option 1, as provided, there will be no direct financial impact upon Council’s adopted budget or forward estimates. If the applicant is however dissatisfied with Council’s decision he has the right of appeal to the Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Upon assessment of the issues raised in this and previous planning reports the development is considered suitable for a conditional approval.

UNDER SEPARATE COVER:

Nil.

5 [DS] Development Application DA03/0505 for a Pool Gazebo, Gym Building and Golf Buggy Shed at Lot 1 DP 1043885 Carool Road, Carool

ORIGIN:

Development Assessment

FILE NO: DA03/0505 Pt1

SUMMARY OF REPORT:

Council is in receipt of a development application for the erection of associated tourist resort facilities comprising a golf buggy cart shed, gym building and gazebo. The golf buggy shed has already been erected and is to be pursued as a separate matter.

Issues covered in this report include:

- Permissibility
- Landscape
 - o aesthetic impact
 - o amenity
 - o appropriateness
- Suitability of the site
- Siting
- Impact upon neighbouring properties.

RECOMMENDATION:

That Development Application DA03/0505 for a pool gazebo, gym building and golf buggy shed at Lot 1 DP 1043885 Carool Road, Carool be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Plans Nos. 398C-Gym Sheets 1 to 6 dated April 2003 and the addendum plans submitted 31 March 2003 for the gazebo structure prepared by Parameter Designs, except where varied by these conditions.

[GEN0010]
2. 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.

[GEN0050]

3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.
[GEN0120]
4. The erection of a building in accordance with a development consent must not be commenced until:
 - 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.
[GEN0150]
5. The proposed golf cart 'buggy' shed is NOT approved by this development consent.
[GENNS01]
6. The gym building and pool gazebo areas are for the exclusive use of guests staying at the tourist development.
7. The gym building is not permitted to be run as an independent facility to the tourist development for the purposes of servicing the general public, being persons other than those staying at the tourist accommodation.
[GENNS02]
8. Prior to operation of the gym building all car-parking and ingress/egress requirements of Development Approval K99/1450 must first be constructed and operational to the satisfaction of Council's Director Development Services.
[GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

9. Prior to the issue of a Construction Certificate a Building Certificate is to be submitted to and approved by Council for the existing golf buggy/cart shed. The details submitted with the Building Certificate shall include structural certification from a practising structural engineer, elevation and structural detail plans. In the event that structural certification cannot be obtained a Construction Certificate shall be submitted for any works that involve either the full or part reconstruction or for any reinforcement work.

PRIOR TO COMMENCEMENT OF WORK

10. 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.
- [PCW0060]
11. 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.
- [PCW0090]
12. 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.

[PCW0190]

DURING CONSTRUCTION

13. 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).
- [DUR0010]
14. 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.
- [DUR0080]
15. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.
- [DUR0130]
16. 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. steel reinforcing prior to pouring of concrete
- [DUR0170]
17. 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.
- [DUR0200]
18. 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.
- [DUR0260]
19. 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.
- [DUR0270]
20. 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.
- [DUR0300]
21. The spa pool is to be installed and access thereto restricted in accordance with Council's "Code for the Installation of New Swimming Pools" and Australian Standard AS1926-1986 (Copy of code enclosed).
- [DUR1310]
22. Construction site work including the entering and leaving of vehicles is to be restricted to between 7.00 am and 7.00 pm Monday to Saturday and no work on Sundays or public holidays.
- [DUR0900]
23. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.
- [DUR0950]
24. 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.
- [DUR1020]
25. 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. [DUR1030]
26. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993. [DUR1090]
27. Yard gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level. [DUR1130]
28. 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. [DUR1160]
29. 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.
 - 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. [DUR1200]
30. 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. [DUR0870]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

31. 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.

[POC0020]

32. 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).

[POC0030]

33. It is a condition of an approval to install, construct or alter a sewage management facility that the facility is not used (or used as altered) until the Council has given the applicant for approval notice in writing that it is satisfied that the facility has been installed, constructed or altered in substantial accordance with the approval.

[POC0100]

USE

34. It is a condition of this consent to operate a system of sewage management that this clause is complied with.

- (i) The sewage management facilities used in the operation of the system must be maintained in a sanitary condition and must be operated in accordance with the relevant requirements of this Regulation.
- (ii) A sewage management facility used in the operation of the system must not discharge into any watercourse or onto any land other than its related effluent application area.
- (iii) The conditions (if any) of any certificate of accreditation issued by the Director-General of the Department of Health under this Division in respect of the plans or designs for any components of the sewage management facilities must be complied with.
- (iv) The person operating the system of sewage management must provide details of the way in which it is operated, and evidence of compliance with the relevant requirements of this Regulation and of the conditions of the approval, whenever the Council reasonably requires the person to do so.

[USE0230]

35. Effluent from the gym building shall be treated by a New South Wales Health accredited Aerated Waste Treatment System having a minimum rating equivalent to 10EP or 2000L / per day.

36. Treated effluent from the Aerated Waste Treatment System shall be disposed of to an irrigation area designed and used solely for the purpose of the disposal of treated effluent via a subsurface drip pressurised irrigation system to the satisfaction of Council's Director for Environmental and Health Services.

37. The minimum area of the designated irrigation area shall not be less than 1000m².
38. At the time the sewerage treatment plant for the main accommodation buildings and winery building becomes operational, the gym building shall be connected to the plant and the Aerated Waste Treatment System and Irrigation Area shall be decommissioned to the satisfaction of Council's Director for Environmental and Health Services.
39. Water supplied for drinking purposes to the gym building shall be of a potable quality standard acceptable to Council's Director for Environmental and Health Services. Such supply shall be tested at an interval not exceeding every six months at a NATA registered testing laboratory and a test report is to be submitted to Council's Director for Environmental and Health Services immediately (within same 24hr period) following each sample tested.
40. Such water supply for the gym building shall be connected to the potable water supply for the development in accordance with the requirements of Condition Nos.54 to 57 of Development Approval K99/1450 when this system becomes available or following the completion of the 16 accommodation units approved under K99/1450, which ever occurs first.
41. Spa pool water quality shall be maintained at all times to a standard in accordance with the guidelines entitled "*Public Swimming Pool and Spa Pool Guidelines*" and "*Guidelines for Disinfecting Public Swimming Pools and Spa Pools*" as published by the NSW Department of Health.
[USENS01]
42. 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.
[USE0160]
43. The operating hours of the gym building are 6.30am to 8pm Monday to Sunday, except Friday and Saturday at 6.30am to 9.30pm.
[USENS02]

REPORT:

Applicant: Parameter Designs
Owner: Penny Brothers Pty Ltd
Location: Lot 1 DP 1043885 Carool Road, Carool
Zoning: 1(a) Rural
Cost: \$90,000.00

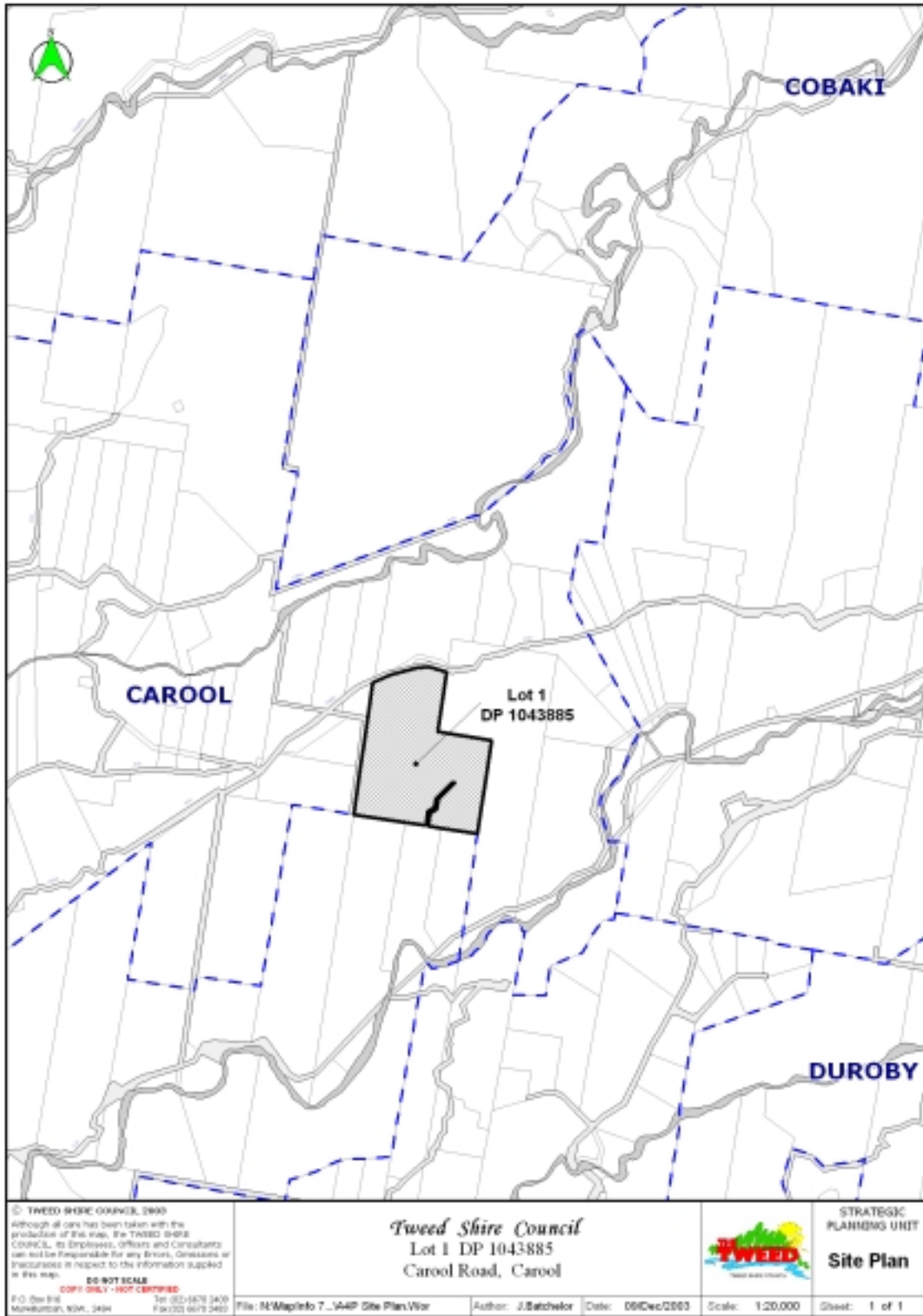
BACKGROUND:

Council is in receipt of a development application that seeks the erection of associated tourist resort facilities comprising a golf buggy/cart shed, gym building and gazebo. The golf buggy shed has already been erected and it is advised by Council's Building Surveyor that it may be structurally deficient. In this regard the shed remains as an assessable component of the application but is subject to structural certification. This is sought via a proposed condition of approval, which will necessitate a Building Certificate being obtained from Council.

The gym building comprises a gym, sauna, massage room, locker room and sanitary area. The floor area is 171.91m². The building is proposed to the south of the existing pool and tennis court area, which is located north east of the golf pro shop and refreshment and dining area. The existing golf cart shed is located south of the existing timber cottage on the western side of the golf pro shop/refreshment area, and has an approximate floor area of 80m². It serves as a dry storage area for golfing carts. The gazebo is located between the pool and proposed gym building (see site layout plan prepared by Parameter Designs dated September 2003).

Issues for consideration in this application primarily comprise the potential impact upon the scenic amenity of the area and impact upon neighbouring lands. These issues are addressed further in this report.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000 (TLEP 2000)

The subject land is zoned 1(a) Rural pursuant to the provision of the TLEP 2000. The proposed development may be described as a recreation area and is permissible under the zoning.

The primary objectives of the 1(a) zone are: -

- * *to enable the ecologically sustainable development of land that is suitable primarily for agricultural or natural resource utilisation purposes and associated development.*
- * *to protect rural character and amenity.*

The original approval was granted on the basis of a "tourist resort" under TLEP 2000. The definition of "tourist resort" is as follows: -

"a largely self contained holiday destination establishment which provides:-

- a. tourist accommodation; and*
- b. on site facilities to satisfy all or substantially all of the recreational, entertainment, dining and other holiday needs of its resident tourists".*

The proposed additions are ancillary to the approved golf course and tourist resort and as such are permissible with consent and generally consistent with the zone objectives.

North Coast Regional Environmental Plan 1988

Clause 75 of the Plan provides matters for consideration from a development control aspect with respect to the assessment of tourism development. An assessment against the four sub-clauses is provided below.

- (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*

The proposed golf cart shed, gazebo and gym building are ancillary structures to the approved golf course and tourism resort development. These facilities

are for the exclusive use of guests of the resort and as such will not increase patronage of the site. As such, there remains a status quo on access provision to the site, as previously determined in the resorts facilitating development approval K99/1450.

- (b) *if the proposal involves permanent residential accommodation, all social and community services reasonably required by those residents exist in close proximity to the development, and*

The development as approved to-date and that the subject of this report does not include the provision of permanent residential development. It is noted however, that the site is within reasonable driving distance to support functions, e.g. shops, access to financial institution.

- (c) *the development will not be detrimental to the scenery or other significant features of the natural environment, and*

The development site is at an elevated position, with views to the Bilambil area and ocean to the east, southeast. The approved tourist resort will be prominent upon the land where viewed from vantage points to the east, southeast. Council has in previous determinations permitted the use of the land for tourist and golfing development activities and in so doing has accepted that a level of scenic encroachment will occur. The encroachments may not be viewed detrimentally where the development is sympathetic to the landscape. In this regard, it is considered that the cumulative impact of the proposed structures will be relatively insignificant. This is achieved in-part by the design and materials of construction of the roof areas. In particular, it is noted that the golf cart/buggy shed is obscured to the remainder of the site by the existing timber cottage and the golf pro shop/refreshment area. It should be noted however, that the perpetual approval of developments on this site will ultimately impact detrimentally upon the scenic quality / amenity of the area.

- (d) *reticulated water and sewerage are available, or arrangements satisfactory to the council have been made for the provision of those facilities.*

Council's Environment and Health Services Unit has assessed the proposed infrastructure servicing of the site as satisfactory.

- (2) *In considering an application for consent to tourism development, the council must have regard to principles contained in the Tourism Development Along the New South Wales Coast: Guidelines.*

The *Tourism Development Along the New South Wales Coast: Guidelines*, is a strategic policy document that aims to identify spatial location opportunities and constraints for tourist development. Two categories exist, 'prime' and 'secondary' tourism development areas. Tweed Heads and Kingscliff are

identified as prime tourism development area and as such the subject land, being the hinterland to these areas, is considered a 'secondary' development area. Pursuant to the guidelines, retention of the lands natural features would therefore be a high priority. Limiting the amount of development on the ridgeline or elevated positions is paramount to retaining the environmental value of the land. Assessment of the impact upon the lands amenity arising from the proposed development has been discussed earlier in this report, and is considered satisfactory.

(3) The 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.

The proposed development comprises an addition to an approved tourist development. The site forms the hinterland area of district that is identified as prime tourism development area and is within reasonable proximity to urban support functions. As discussed earlier in this report, the proposed development is relatively minor in scale and does not represent a significant encroachment to the areas aesthetic and environmental amenity.

State Environmental Planning Policies

SEPP55 applies to the subject land. A site contamination report was submitted with the previous applications, which concluded the site is suitable for development.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

No draft Environmental Planning Instruments apply to the proposal.

(a) (iii) Development Control Plans (DCP's)

The proposed golf cart shed, gym building and gazebo are ancillary support facilities to the approved tourist development and will not serve to increase demand for car parking over and above the approved 82 car and 4 bus parking spaces.

(a) (iv) Any Matters Prescribed by the Regulations

In accordance with cl.92 the development has been assessed against the NSW Coastal Policy 1997, as Satisfactory.

(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

The physical impact upon the natural environment is considered minimal due to the highly disturbed nature of the land. The aesthetic impact on the

environmental value of the land is compromised by virtue of the facilitating tourist development approval. Cumulative impact arising from the proposed ancillary facilities, when offset against the likely benefits the gym, in particular, will yield to the tourist development, is considered acceptable. Economically, it is considered that the proposed facilities will assist in attracting a broader patron base and hence assist in the commercial viability of the development. This in turn should result in a positive flow-on effect to other business in the region. Socially, the proposed facilities are not perceived to have any significant external detrimental impact. In particular, it is noted that the structures will be largely obscured from the nearest neighbouring residences and will not result in noticeable acoustic levels. The golf cart shed, which is located the nearest to a neighbouring property serves only to provide a dry and secure storage area for carts. The boundary of the two properties is adequately vegetated and separation between the neighbouring residence and the shed is of a reasonable distance. In this regard, it is considered the loss of amenity arising from the storage shed would be minimal. The level of social amenity determined to exist resulting from the approved tourist development will remain largely unaffected by the subject development. The approved future built environment will be complemented by the proposed facilities.

(c) Suitability of the site for the development

The site is considered satisfactory for the proposed development, this is considered particularly so having regard to previous development approvals.

(d) Any submissions made in accordance with the Act or Regulations

The development application was publicly notified from 4 to 19 June 2003. During this period two submissions were received. The submission raises a number of issues however, it is considered with respect to 'impact assessment' and in determining 'suitability' that the following issues only, warrant consideration:

ISSUE	IMPACT ASSESSMENT	COMMENT
No details for golf buggy shed	The golf buggy shed has been unlawfully erected. It is correct that the applicant has omitted a satisfactory level of detail for the proposed cart shed. However, the proposed conditions of approval will require the submission of structural certification and the necessity to obtain a Building Certificate from Council. Appropriate details will be required for the assessment of the Building Certificate.	Does not warrant amendment or refusal of application.
The application is silent on traffic, parking noise and	The proposed development is for ancillary facilities to the approved golf course and tourist	Does not warrant amendment or refusal of application.

ISSUE	IMPACT ASSESSMENT	COMMENT
operating times.	development, it is not the generator of patrons but service facilities for those utilising the 'resort'. Noise generated from such facilities is not considered to have any significant impact, particularly in light of siting arrangements and the location of other existing structures. Operating hours are proposed to restrict the use of the gym building to 'reasonable' hours.	Condition imposed.
Impact upon scenic amenity.	This issue has been discussed in the report.	Does not warrant amendment or refusal of application
Shape and colour of buildings.	The shape of any building can be viewed and experienced as many times as there may be spectators. The subjective nature of design renders the defining of what may be an 'appropriate' design extremely difficult, and it is impossible to normalise it with predetermined criteria. Having regard to the approved development, its location and function the development as proposed is considered an acceptable design response.	Does not warrant amendment or refusal of application
The gym building is not ancillary to the	This view is not concurred with. The proposed facilities are for the use by visitors to the tourist development and not for general public usage.	Does not warrant amendment or refusal of application Condition imposed.

(e) Public interest

Subject to the recommendations of this report the proposed development is not considered contrary to the public interest.

OPTIONS:

1. Approve the development application with the conditions provided.
2. Refuse the application and provide grounds for refusal.
3. Amend the development conditions.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should Council resolve to approve the development in accordance with Option 1, as provided, there will be no direct financial impact upon Council's adopted budget or forward estimates.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Upon assessment of the issues raised in this and previous planning reports the development is considered suitable for a conditional approval.

UNDER SEPARATE COVER:

Nil.

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6 [DS] Proposed Installation of a Needle and Syringe Vending Machine and Disposal Bin at Lot 1 DP 1015202 No. 8-10 Nullum Street, Murwillumbah

ORIGIN:

Director

FILE NO: DA3770/295 Pt2

SUMMARY OF REPORT:

As Council would be aware a development application lodged by the Northern Rivers Area Health Service for the installation of a needle syringe vending machine and disposal bin at Lot 1 DP 1015202 No. 8-10 Nullum Street, Murwillumbah was considered at a meeting on 18 July 2001 when it was resolved that: -

- "1. Council seeks the approval of the Minister for Urban Affairs and Planning for the refusal of Development Application 0195/2001DA for the installation of a needle and syringe vending machine.*
- 2. The applicants be advised to resubmit an application for another location".*

As required by the legislation mediation between the applicant and Council occurred on 25 October 2001. The mediation was conducted by a delegate for the Director-General of the Department of Urban Affairs and Planning. A report on the mediation was presented to a Council meeting on 7 November 2001 when it was resolved that: -

"Council requests that the Minister for Health to make a decision on behalf of the Community".

Both the Department of Urban Affairs and Planning and the Northern Rivers Area Health Service were advised of Council's decision.

On 20 November 2003, Council received a letter from the Department of Infrastructure, Planning and Natural Resources advising that the Minister assisting the Minister for Infrastructure and Planning (Planning Administration) does not agree with the Council's proposed refusal of the application. The Department has invited Council to submit to them within 40 days any conditions it wishes to impose on approval of the application.

RECOMMENDATION:

That the Minister assisting the Minister for Infrastructure and Planning (Planning Administration) be advised that if the development application lodged by the Northern Rivers Area Health Service for the installation of a needle and syringe vending machine and disposal bin at Lot 1 DP 1015202 No. 8-10 Nullum Street,

Murwillumbah, is approved then the following conditions should be attached to the consent: -

GENERAL

1. The consent will expire in one (1) year from the date of this approval. The applicants may lodge a Section 96 modification of consent prior to the expiration of this consent. This condition may be removed if sufficient evidence determines that the use has not had an adverse impact on the amenity of the locality.
2. The development shall be completed in general accordance with Plan No 95208 WD.5.C, dated 10 February 2000 and prepared by Robert Gow Architects, except where varied by these conditions.
3. The erection of lattice screens to reduce the visibility of the vending machine from the street.
4. Mature plants are incorporated into the surrounding garden to minimise visual impact.
5. The immediate area is maintained on a daily basis.
6. The applicant continues to liaise with Councils Environment and Health Unit during the trial period for the placement of single use needle and syringe disposal bins.
7. No information, signage or directions shall be so placed to be visible to the general public.
8. The disposal bin is to be secured to the wall and/or ground to prevent removal by vandalism or during periods of flood.

DRAINAGE/FLOODING

9. Subject to the requirements of Northpower, all electrical wiring, power outlets, switches, etc, should, to the maximum extent possible be located above the design flood level. All electrical wiring installed below the design flood level should be suitably treated to withstand continuous submergence in water.

REPORT:

BACKGROUND:

A development application was lodged on 6 March 2001 by the Northern Rivers Area Health Service for the installation of a needle and syringe vending machine and disposal bin at Lot 1 DP 1015202 No. 8-10 Nullum Street, Murwillumbah.

The application was reported to a Council meeting on 18 July 2001 when it was resolved that: -

- "1. Council seeks the approval of the Minister for Urban Affairs and Planning for the refusal of Development Application 0195/2001DA for the installation of a needle and syringe vending machine.*
- 2. The applicants be advised to resubmit an application for another location".*

A copy of the report is attached to this Agenda for the information of Councillors.

Pursuant to Section 116C(a) of the Environmental Planning and Assessment Act, 1979 (as amended) prior to the Minister considering Council's request mediation must be undertaken between the applicant and Council. This mediation occurred on 25 October 2001 and was attending by the following people: -

- Suzie Dryden - Delegate for the Director General Department of Urban Affairs and Planning (Mediator)
- Cr. Bronwyn Luff (Tweed Shire Council Representative)
- Cr. Phil Youngblutt (Tweed Shire Council Representative)
- Stephen Enders (Tweed Shire Council Representative)
- Maureen Lane – Director Primary and Extended Care Northern Rivers Area Health Service
- Wendi Evans – Program Manager HIV/HCV and Sexual Health Northern Rivers Area Health Service
- Owen Westcott – Manager, Aids and Infectious Diseases Branch, NSW Health

A report on this meeting was considered by Council at a meeting on 7 November 2001 and it was resolved that: -

"Council requests that the Minister for Health to make a decision on behalf of the Community".

A copy of this report is also attached to this agenda for the information of Councillors.

A letter has now been received from the Department of Infrastructure, Planning and Natural Resources advising that the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) pursuant to Section 116E(6) of the Environmental Planning and Assessment Act, 1979 (as amended) notifies Council of the intention (in terms of Section 116E(4)(c)) not to agree with the Council's proposed refusal of the application. They have now invited Council to submit to the Department within 40 days of the date of the letter any conditions Council wishes to impose on approval of the application.

The reason for the Minister's decision has been given as follows: -

- The proposed location is preferable to the existing site at Murwillumbah Hospital, in view of its accessibility and more central location;
- A social impact statement has adequately addressed matters raised in community objections; and
- Staff of the Community Health Centre area able to supervise operation of the machine and accessories, and responsibility to do so is within the core business of the Northern Rivers Area Health Service.

Comment

The original report to Council on 18 July 2001 recommended 9 conditions of approval and these remain relevant and should be referred to the Department for the Minister's consideration. Given the concerns raised in the public consultation proposed Condition 1 limits the consent for an initial period of 1 year with the ability for that limitation to be removed if it is demonstrated that the use has not had an adverse impact on the amenity of the locality.

OPTIONS:

1. Provide conditions to the Minister within the 40 day period.
2. Not respond to the Minister's request.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Although it has been some time since this application was before Council, the opportunity should be taken to provide conditions to the Minister.

UNDER SEPARATE COVER:

1. Council report of 18 July 2001 (DW 617125)
 2. Council report of 7 November 2001 (DW 638184)
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7 [DS] Development Application DA03/1241 for a Four (4) Lot Residential Subdivision at Lot 28 DP 1052380 and Lot 29 DP 1052380, No. 7 The Foreshore, Bogangar

ORIGIN:

Development Assessment

FILE NO: DA03/1241 Pt1

SUMMARY OF REPORT:

Council is in receipt of a Development Application to subdivide two vacant allotments within 'Friday Island' to create a total of four allotments. The proposed application does not incorporate the erection of any buildings, however, the applicant has provided additional information detailing the proposed construction of the driveways and one (1) onsite parking space per allotment to compensate for the loss of on street parking spaces.

However, having regard to the background of 'Friday Island' and the overall concept presented at the time of subdivision, this application is not considered appropriate for land with so many physical constraints. The potential cumulative impact of higher density development in this location is inappropriate.

It is acknowledged that this application generally complies with the numerical requirements for land within the 2(c) zone, however, the wider strategic issues at hand warrant refusal of this application.

RECOMMENDATION:

That Development Application DA03/1241 for a four (4) lot residential subdivision at Lot 28 DP 1052380 & Lot 29 DP 1052380, No. 7 The Foreshore, Bogangar be refused for the following reasons: -

1. The proposed development is not consistent with the 2(c) zone objectives in that the application has not adequately considered the environmental constraints of the land. The 2(c) zone objectives read as follows;

“to identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake”.

2. The proposed development does not adequately satisfy Clause 43 of North Coast Regional Environmental Plan 1988 as the proposed density is considered to be excessive having regard to the site constraints, the approved

low density nature of the subdivision and the approved land use character of the area;

3. The proposed development does not adequately satisfy Clause 8 of State Environmental Planning Policy No. 71 - Coastal Protection. The potential cumulative impact is unacceptable having regard to the site constraints;
4. The application is not considered to be consistent with the aims and purposes of Development Control Plan No. 16 - Subdivisions, specifically (but not limited to) as follows:

"to achieve the highest quality and 'best practice' of subdivision development in the Shire"

5. The application is not considered to be consistent with the desired future character of the approved low-density estate;
6. The subject site is not considered to be suitable having regard to the approved low density housing character which carefully balances residential amenity with lot dimensions and size, road layout, road widths, on street parking, property frontages, and yield;
7. The application could potentially set an unwarranted precedent; and
8. The application is not considered to be in the public interest due to the constraints of the land and the cumulative impact of density increases.

REPORT:

Applicant: Mr S Farrington
Owner: Villa World Limited
Location: Lot 28 DP 1052380 & Lot 29 DP 1052380, No. 7 The Foreshore, Bogangar
Zoning: 2(c) Urban Expansion
Cost: Nil

BACKGROUND:

Friday Island has an extensive development history with various options for development being discussed with Council Officers and the Development Assessment Panel over many years. These meetings discussed a number of issues with the proposed Island subdivision including, the provision of a pedestrian footbridge from Cabarita Road to 'Friday Island', the provision of 3.0m front and rear setbacks, the density of the proposal; and the provision of satisfactory open space.

At that time the developer presented a Concept Plan that detailed medium density housing on the land adjoining Hastings Road, with large lots (low density housing) on the Island itself. This allowed for an element of exclusivity and was an immediate response to the physical constraints of the land

Subsequently, Council approved the 'Friday Island' subdivision (DA02/0895) on Wednesday 21 August 2002. The submitted plan detailed 38 large residential allotments (varying between 700m² and 1390m²) and one open space allotment. It should further be noted that this subdivision specifically excluded any dual occupancy allotments and excluded the need for a pedestrian footbridge from Cabarita Road to Friday Island due to the low density nature of the proposed subdivision and the costs involved with such a bridge.

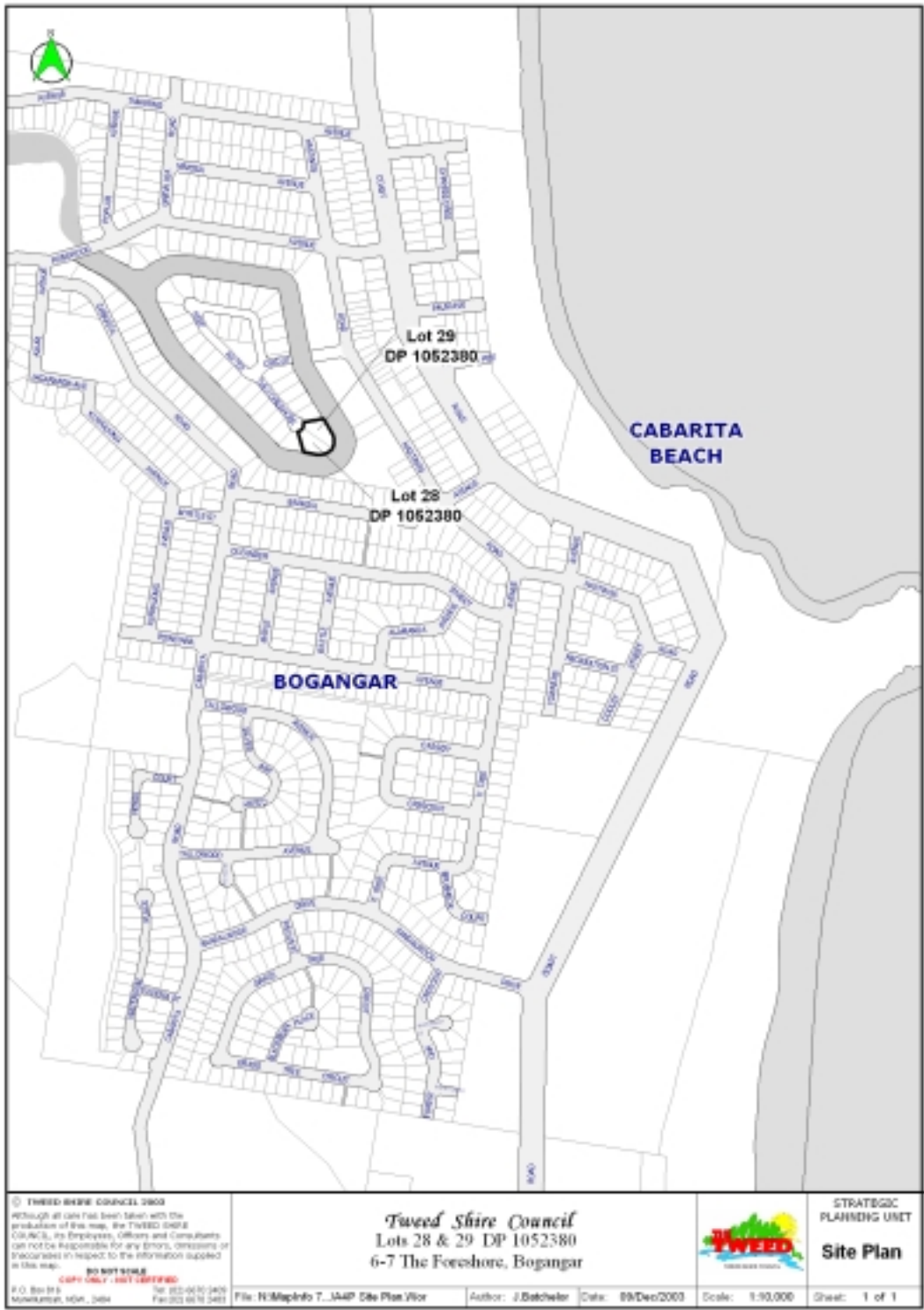
Council is now in receipt of a development application to further subdivide approved lots 28 & 29 (cul-de-sac allotments) into a total of four allotments. Lot 28 was originally approved with a 10-metre frontage to The Foreshore and a total area of 1390m². Lot 29 was also approved with a 10-metre frontage to The Foreshore and total site area of 1370m², creating a combined total area for the two allotments of 2760m². The approved allotment shapes and sizes resulted in compliance with the concept plan (of larger lots) and compliance with Development Control Plan (DCP) No. 16 – Subdivision Design Specification One (1) which specifies that allotments must have a 9-metre frontage to any cul-de-sac. This ensures adequate room for a driveway and room for at least one on street parking space. The proposed subdivision is as follows:

- Lot 281 - A 6.091m frontage to The Foreshore and total area of 605m²;
- Lot 282 - A 4.126m frontage to The Foreshore and a total area of 765m²;
- Lot 283 - A 4.037m frontage to The Foreshore and a total area of 786m²;
- Lot 284 - A 6.182m frontage to The Foreshore and a total area of 604m²;

Approval of this subdivision would create the smallest parcels of land on the Island with the most constrained allotment shape. Furthermore, the proposed allotment frontages to The Foreshore are non compliant with DCP No. 16. This is not considered to be good planning having regard to the cumulative impact on density, parking and general amenity for future residents of the Island and for other residents fronting the canal.

The proposal was advertised and neighbouring properties notified between 15 October 2003 and 29 October 2003. Council received thirty-four (34) objections to the proposal from predominantly residents of Bogangar and eight (8) letters of support from predominantly owners of lots on the Island itself.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

The subject is located within the 2(c) Urban Expansion zone pursuant to the provisions of TLEP 2000.

The primary objective of the 2(c) zone is as follows:-

“to identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake”.

The proposed development could be seen as optimising the sites utilisation. However, the subdivision is not considered to have had adequate regard to the physical constraints of the Island. The Island is bounded by a water canal with only one access point, narrow streets, and lot restrictions due to the slope of the land down into the canal itself.

This land has already been identified for urban expansion through Council's approval of DA02/0895. Any further expansion is considered excessive having regard to the constraints of the land and the strategic implication (cumulative effect) of any such approval.

Clause 15 of TLEP 2000 refers to the provision of services. In this regard, the proposal can be adequately serviced by way of existing water and sewer mains within the locality. The proposal is considered to be consistent with the provisions of Clause 15 of TLEP 2000.

Clause 31 of TLEP 2000 refers to Development adjoining Waterbodies and generally seeks to protect and enhance and to provide adequate public access to waterways. The adjacent water body is identified as a drainage reserve and is not a natural stream or river. Notwithstanding, the provisions of Clause 31 are considered to generally apply to the proposed development. In this regard, the subject site, by virtue of it's zoning, has been identified as suitable for development. Indeed, the detail submitted as part of the original subdivision demonstrates that no adverse impacts will occur in relation to the adjacent water body.

Clause 34 of TLEP 2000 refers to the development of flood liable land. See comments under the heading of DCP No.5 for greater detail in this regard.

Clause 35 of TLEP 2000 refers to Acid Sulfate Soils. In this regard, the subject site is identified as possessing Class 3 Acid Sulfate Soils on Council's ASS Planning Maps. The original plan of subdivision addressed Acid Sulfate Soils to the satisfaction of Council Environment & Community Services Division.

North Coast Regional Environmental Plan 1988

Clause 15 of NCREP 1988 provides as follows:-

15 Development control—wetlands or fishery habitats

The proposed development adjoins an area identified as a drainage reserve, which subsequently flows directly into Cudgen Lake. Whilst the adjacent reserve is man made, it also forms a potential aquatic habitat. It has previously been established that the subject area was a man made environment and possesses few of the habitat features of a natural watercourse.

Clause 32 of NCREP 1988 provides as follows:-

32B Development control—coastal lands

The proposal is considered to be generally consistent with the relevant provisions of the NSW Government Coastal Policy, 1997 and the Coastline Management Manual. Further, the proposal does not incorporate any physical restriction of access to a foreshore area or the creation of deleterious impacts upon the coastal character and amenity of the site.

Clause 43 of NCREP 1988 provides as follows:-

43 Development control—residential development

- (1) *The council shall not grant consent to development for residential purposes unless:*
 - (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*
 - (b) *it is satisfied that the proposed road widths are not excessive for the function of the road,*
 - (c) *it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,*

- (d) *it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and*
- (e) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.*

The proposed density (two additional allotments) is considered to be excessive having regard to the approved low-density nature of the subdivision and the approved land use character of the area. Further subdivisions (cumulative impact) will have an adverse impact on the intended nature and character of the Island.

State Environmental Planning Policies

The subject site is identified as a Sensitive Coastal Location for the purposes of State Environmental Planning Policy No. 71 - Coastal Protection. Subdivisions within 100m of a waterway require a master plan approved by the Department of Infrastructure Planning & Natural Resources or alternatively to have the need for a master Plan waived by the Department. The application was subsequently referred to the Department with the following comments received;

"The application and supporting information have been examined to determine whether a master plan can be waived in this case. Having regard to Coastal Council's view that a master plan is not required, the existing planning controls applying to the land and the level of information provided in support of this request, pursuant to clause 18(2) of SEPP 71, the need for a master plan has been waived.

Although the Coastal Council has advised a master plan is not warranted in this instance, it has raised some concerns about the proposed subdivision. A copy of its submission is included for your information. The Department endorses the concerns raised by the Coastal Council.

While the Department has waived the need for a master plan, it is none the less recognised that the whole estate is in a prominent location surrounded by drainage canal. Significant parts of most lots consisting of relatively steep slopes down to the canal, reducing the area available for development. We are also concerned about the precedent such a subdivision would have for further possible subdivision within the estate. It may be appropriate to have a master plan prepared for the whole estate if further subdivisions of this nature are to proceed.

As the lots front a canal, it may be classified as a canal estate development that would be prohibited under the provisions of State Environmental Planning Policy No. 50. Council should assure itself of the legalities of the development in accordance with this Policy.

I urge Council to carefully consider the ramifications of approving the proposed subdivision."

The concern expressed by the Department is concurred with. This subdivision application may set a dangerous precedent for other lots on the Island to further subdivide their allotments. This would have an undesirable cumulative impact and result in an unacceptable development, which would be contrary to Council's original approval, which approved larger lots to create a low density development.

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. These matters generally relate to maintaining and protecting existing access to the foreshore and have little bearing on this application. However, one of the sixteen matters requires Council to consider the compatibility of the development with the existing surroundings and the suitability of the site. As previously discussed the application is not considered to be suitable for the site having regard to the potential cumulative impacts and the physical constraints of the site.

Having regard to SEPP 50 – Canal Estates the proposed subdivision relies on an existing man made canal, this Policy is not considered to apply.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

There are no draft planning instruments applicable to the subject land.

(a) (iii) Development Control Plans (DCP's)

Development Control Plan No.5 – Development of Flood Liable Lands

The subject site is identified as flood prone pursuant to the provisions of DCP No.5. In this regard, DCP No.5 identifies a requirement to fill residential lands within Bogangar to a level of 3.4m AHD. The proposal is considered to be consistent with the relevant provisions of DCP No.5.

Development Control Plan No. 16 – Subdivision

Development Design Specification D1 states that: -

"a minimum of 9 metres of kerb frontage is required for each lot in a cul-de-sac unless alternative provision for parking is made"

With Development Design Specification D1 – Road Design (parking) elaborating as follows:

"Adequate on street parking should be provided within the road reserve for visitors, service vehicles and any excess resident parking since a

particular dwelling may generate a high demand for parking. Such parking is to be convenient to dwellings. Bearing in mind driveway crossovers are 4.5m minimum, an average of at least one on street car park per single (or dual occupancy) frontage lot should be provided, except for battle axe blocks with handles longer than 20m".

Originally the subject application had no regard for this criterion. The submitted plan merely detailed the proposed subdivision with no provision for an alternative parking arrangement. Subsequently, Council's Development Engineer did not support the original plan of subdivision, as the lot frontages were substantially less than the 9-metre requirement for a cul-de-sac.

The applicant was advised of the non-compliance and Council then received amended plans that incorporated 4 car-parking areas contained within the proposed property boundaries for each respective lot. The plan shows a central driveway servicing the four (4) lot subdivision with a driveway width of 4.5metres and a kerb splay width of 6 metres.

Council's Development Engineer reviewed the amended plans and determined that the revised plan had adequately demonstrated an alternative parking arrangement as required by Design Specification No. 1. However, if the application were to be approved conditions of consent would need to be imposed to ensure that the car park and driveway construction were completed prior to issue of a subdivision certificate and an easement for services within the right of carriageway is to be provided in the 88B instrument.

Notwithstanding the acceptability of this alternative parking arrangement the application is still considered to warrant refusal given the physical constraints of the site, and the potential cumulative impact that approval may have.

The subject lots are currently oriented generally in a west to eastern direction and can accommodate a building envelope for a single dwelling of 10m x 15m, and orientate living space to the north east while retaining adequate outdoor space in accord with the relevant provisions of DCP 16 - Subdivisions.

The proposed subdivision obviously does not change the sites orientation, and can physically accommodate a building envelope of 10m x 15m, however, the reduction in useable area per lot will not guarantee correct orientation of living space and leaves little landscaping opportunities given the shape and slope of the block.

The proposal is not considered to be good planning nor consistent with the aims and purposes of the DCP specifically as follows:

"to achieve the highest quality and 'best practice' of subdivision development in the Shire"

Development Control Plan No.39 – Energy Smart Homes Policy

Development Control Plan No.39 provides for relevant principles relating to the siting and orientation of residential allotments. In this regard, the proposed subdivision is generally consistent with the principles referred to, in that the majority of allotments are oriented in a general northwest to southeast direction. DCP No.39 requires allotment orientations with one axes within 30° east and 20° west of true north and 30° south and 20° north of true east.

The proposal is considered to be generally consistent with the relevant provisions of DCP No.39, however, concern is still expressed with the reduced site areas having regard to their shape and physical constraints such as the canal and proposed driveway configurations.

Draft Development Control Plan No. 52 – Planning Controls Friday Island, Bogangar

On Wednesday 16th July 2003 Council resolved to prepare and exhibit for public comment draft Development Control Plan No 52 - Planning Controls Friday Island, Bogangar.

The purpose of the amendment is to: -

- Ensure that the integrity of the design philosophy detailed in DA02/0895 is maintained;
- Ensure the desired future character of Friday Island is achieved;
- Maintain the density of Friday Island as detailed by the Concept Plan lodged with DA02/0895;
- Ensure the Island caters for adequate on-street parking; and
- Ensure the amenity of surrounding residential development is maintained.

The approved Friday Island subdivision provides for a specific desired future character, namely “unique island home sites”. Comprising 38 residential allotments, with two (2) being nominated as dual occupancy allotments in accordance with DCP 44 - Dual Occupancy Controls - Tweed Shire, the subdivision is to establish a low-density residential area. The approved concept plan carefully balances residential amenity with lot dimensions and size, road layout, road widths, on-street parking, property frontages and yield. Future residents should be assured that the development and desired future character, as approved, will result.

The DCP states in relation to future subdivision application that:

"Given existing lot layout, road widths, cul-de-sac dimensions, lot frontages and limited availabilities for on street parking further subdivisions of existing lots will not be supported."

The Draft DCP is before Council for adoption at this meeting. However, given it's draft status the Policy has no determining weight.

However, the Policy raises general concepts and aims (such as site suitability, parking, and density) that should all be normally assessed under the provisions of Section 79C of the Environmental Planning & Assessment Act 1979. Therefore, while the DCP has no statutory weight the concepts contained within the document are still valid.

(a) (iv) Any Matters Prescribed by the Regulations

The subject land is affected by the coastal policy. The proposed development is not considered to be in conflict with the policies or strategies contained in the coastal policy.

The adjacent reserve is considered to be somewhat different from a natural watercourse, with particular reference to its function and environmental value. Accordingly, and with regard to the configuration and density of the proposed subdivision, no reasonable planning benefit could be attained by requiring public foreshore access around the site.

(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

Compatibility with the Desired Future Character

The approved Island home site established a low-density residential area, surrounded by medium density development on less constrained sites. The approved subdivision pattern currently balances residential amenity with lot dimensions and size, road layout, road widths, on-street parking, property frontages and yield. Further subdivision of the approved allotments would disrupt this balance and set a dangerous precedent for other allotments on the Island. Council has approved the original application based on this balance, and residents and surrounding property owners should be assured that this balance and desired future character, as approved, will result.

Visual Amenity

While the subject site has been earmarked for development for a considerable time and the large majority of residents would have been aware of its desired and likely future use, the residents adjoining this development have an expectation that the approved density (low density) will be maintained in accordance with the consent. The further intensification of this Island is unreasonable when considering the proposed change in visual amenity for those residents facing the site.

(c) Suitability of the site for the development

The existing subdivision provides for a unique low-density housing character. It carefully balances residential amenity with lot dimensions and size, road layout, road widths, on-street parking, property frontages and yield. Any further subdivision of the island will disrupt this balance and set an undesirable precedent for other allotments on the Island.

Existing and future residents should be assured that the development and desired future character, as approved, will result and therefore this subdivision application is not supported.

(d) Any submissions made in accordance with the Act or Regulations

The proposal was advertised and neighbouring properties notified between 15 October 2003 and 29 October 2003. Council received thirty-four (34) objections to the proposal from predominantly residents of Bogangar and eight (8) letters of support from predominantly owners of lots on the Island itself. The following tables detail the reasons given for the submissions:

Table 1 - Objection Letters

ISSUE	RESPONSE
All properties facing a cul-de-sac must have a minimum street frontage of 9 metres in accordance with DCP 16.	This issues is discussed in the above report. Whilst this is a criteria of DCP 16, the DCP also allows an alternative solution to compensate for on street parking. The applicant has provided an adequate alternative and therefore this objection does not warrant refusal or amendment of the application.
The approval of the Estate was given by Council as a set plan.	This comment is concurred with and forms a reason for refusal of the application.
The approval of the application goes against the character of the Estate.	This comment is concurred with and forms a reason for refusal of the application.
The approval of these applications also goes against Council Streetscape Policy.	Council does not have a "Streetscape Policy" however, the proposed centralised driveway and narrow frontages to The Foreshore are not considered the best design outcome. The visual change associated with the proposal changes the character of the estate and this forms a reason fro refusal of the application.
Increase in density should not be supported.	This comment is concurred with and forms a reason for refusal of the application.
The application in not consistent with the existing development.	This comment is concurred with and forms a reason for refusal of the application.
Subdivision will be detrimental to other property holders in the vicinity	This comment is concurred with and forms a reason for refusal of the application.
This application will create a precedent for other similar applications.	This comment is concurred with and forms a reason for refusal of the application.
The original advertising for these lots were for single lot homes and	This comment is concurred with and forms a reason for refusal of the application.

<u>ISSUE</u>	<u>RESPONSE</u>
as such should remain that way	
The canal system is under a great deal of pressure and any further housing would add to this problem.	The water quality of the canal is not considered to be at risk as a result of the proposed subdivision
The re-subdivision will see lots as small as 604m ² , which goes against the integrity and charm of the Island.	This comment is concurred with and forms a reason for refusal of the application.
50% of one building envelope is proposed to go on fill, if this is allowed it would destroy the view that adjacent neighbours currently have of the canal.	The subject application does not detail any building, the footprints shown are indicative only.
Maintaining development in the context that it was originally intended.	This comment is concurred with and forms a reason for refusal of the application.
Council must adhere to the covenants in place for current owners adjacent to Friday Island to maintain an appealing and consistent living environment.	Having regard to the character of the subdivision and the amenity that adjoining residents currently enjoy the application warrants refusal.

Table 2 - Letters of Support

<u>ISSUE</u>	<u>RESPONSE</u>
All installations and infrastructure required are in place to support the proposed use.	Whilst the infrastructure may be able to accommodate a higher density the site is not physically considered suitable and nor is the application considered suitable having regard to the intended low density character.
There is an unrealised demand for further residential land in the area.	Residential demand needs to be weighed up against best planning practice and this application is not considered best practice.
The application is consistent with the intent of the current zoning for the land which states: "to ensure its optimum utilisation"	The zone objective goes on to state "...consistent with environmental constraints and the need to minimise residential landtake". As detailed in the report above the application is not considered adequate having regard to the zone objective.
The site is close to all services and residential development in this area should be supported.	Council has encouraged (and approved) medium density development along Hastings Road and acknowledges the importance of higher densities near services, however, the subject site has constraints which make it better suited to low density housing as originally intended.

The applicant was given the opportunity to review these issues and provided that:

"we acknowledge their concern, however, we are unable to neither quantify nor comprehend how the amenity of the overall Island will be impacted upon by the proposed infill subdivision, indeed the general consistency of the proposal with Council's relevant controls provides for demonstrated evidence of this."

This application has the potential to set an undesirable precedent that should not be encouraged or supported by Council. The site is within 300 metres of a business centre and could potentially accommodate a dual occupancy on all allotments on the Island as all lots have a site area of greater than 500m². The adoption of the Draft DCP and the adoption of the general concepts discussed in this report should be adopted to ensure the integrity of the originally approved subdivision is maintained.

(e) Public interest

On the balance of information provided and upon analysis of the likely impacts, the proposed development should be refused.

OPTIONS:

1. Refuse the application in accordance with the recommendation;
2. Support the proposal and request appropriate conditions for approval be submitted to the next Council meeting.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the decision he has the right of appeal to the Land & Environment Court.

POLICY IMPLICATIONS:

This application has Strategic Planning Policy implications, in addition to the setting of an undesirable precedent.

CONCLUSION:

This application may generally comply with the requirements for land within the 2(c) zone, however, the wider strategic and cumulative issues involved warrant refusal of this application. The concept plan that Council adopted at the time of subdivision should be upheld and supported by Council, so that existing and future residents can know that the Island will maintain the originally approved low density character and retain good planning principals.

UNDER SEPARATE COVER:

Nil.

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8 [DS] Development Application DA03/1406 for a 3 Lot Re-subdivision at Lot 12 DP 1052380 & Lot 13 DP 1052380, No. 11 Reef Water Circuit, Bogangar

ORIGIN:

Development Assessment

FILE NO: DA03/1406 Pt1

SUMMARY OF REPORT:

Council is in receipt of a Development Application to subdivide two vacant allotments within 'Friday Island' to create a total of three allotments. The proposed application does not incorporate the erection of any buildings or any driveway construction.

Having regard to the background of 'Friday Island' and the overall concept presented at the time of subdivision, this application is not considered appropriate for land with so many physical constraints. The potential cumulative impact of higher density development in this location is inappropriate.

It is acknowledged that this application generally complies with the numerical requirements for land within the 2(c) zone, however, the wider strategic issues at hand warrant refusal of this application.

RECOMMENDATION:

That Development Application DA03/1406 for a 3 lot re-subdivision at Lot 12 DP 1052380 & Lot 13 DP 1052380, No. 11 Reef Water Circuit Bogangar be refused for the following reasons: -

1. The proposed development is not consistent with the 2(c) zone objectives in that the application has not adequately considered the environmental constraints of the land. The 2(c) zone objectives read as follows;

“to identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake”.

2. The proposed development does not adequately satisfy Clause 43 of North Coast Regional Environmental Plan 1988 as the proposed density is considered to be excessive having regard to the site constraints, the approved low density nature of the subdivision and the approved land use character of the area;

3. The proposed development does not adequately satisfy Clause 8 of State Environmental Planning Policy No. 71 - Coastal Protection. The potential cumulative impact is unacceptable having regard to the site constraints;
4. The application does not comply with Development Control Plan No. 16 - Subdivision Design Specification One which specifies as follows:

“a minimum of 9 metres of kerb frontage is required for each lot in a cul-de-sac unless alternative provision for parking is made”
5. The application is not considered to be consistent with the aims and purposes of Development Control Plan No. 16 - Subdivisions, specifically (but not limited to) as follows:

"to achieve the highest quality and 'best practice' of subdivision development in the Shire"
6. The application is not considered to be consistent with the desired future character of the approved low-density estate.
7. The subject site is not considered to be suitable having regard to the approved low density housing character which carefully balances residential amenity with lot dimensions and size, road layout, road widths, on street parking, property frontages, and yield;
8. The application could potentially set an unwarranted precedent.
9. The application is not considered to be in the public interest due to the constraints of the land and the cumulative impact of density increases.

REPORT:

Applicant: Mr ME Petrie and Mr NR Douglass
Owner: Mr ME Petrie, Mrs PJ Petrie and Mr NR Douglass
Location: Lot 12 DP 1052380 & Lot 13 DP 1052380, No. 11 Reef Water Circuit Bogangar
Zoning: 2(c) Urban Expansion
Cost: Nil

BACKGROUND:

Friday Island has an extensive development history with various options for development being discussed with Council Officers and the Development Assessment Panel over many years. These meetings discussed a number of issues with the proposed Island subdivision including, the provision of a pedestrian footbridge from Cabarita Road to 'Friday Island', the provision of 3.0m front and rear setbacks, the density of the proposal; and the provision of satisfactory open space.

At the time the developer presented a Concept Plan that detailed medium density housing on the land adjoining Hastings Road, with large lots (low density housing) on the Island itself. This allowed for an element of exclusivity and was an immediate response to the physical constraints of the land

Subsequently, Council approved the 'Friday Island' subdivision (DA02/0895) on Wednesday 21 August 2002. The submitted plan detailed 38 large residential allotments (varying between 700m² and 1390m²) and one open space allotment. It should further be noted that this subdivision specifically excluded any dual occupancy allotments and excluded the need for a pedestrian footbridge from Cabarita Road to Friday Island due to the low density nature of the proposed subdivision and the costs involved with such a bridge.

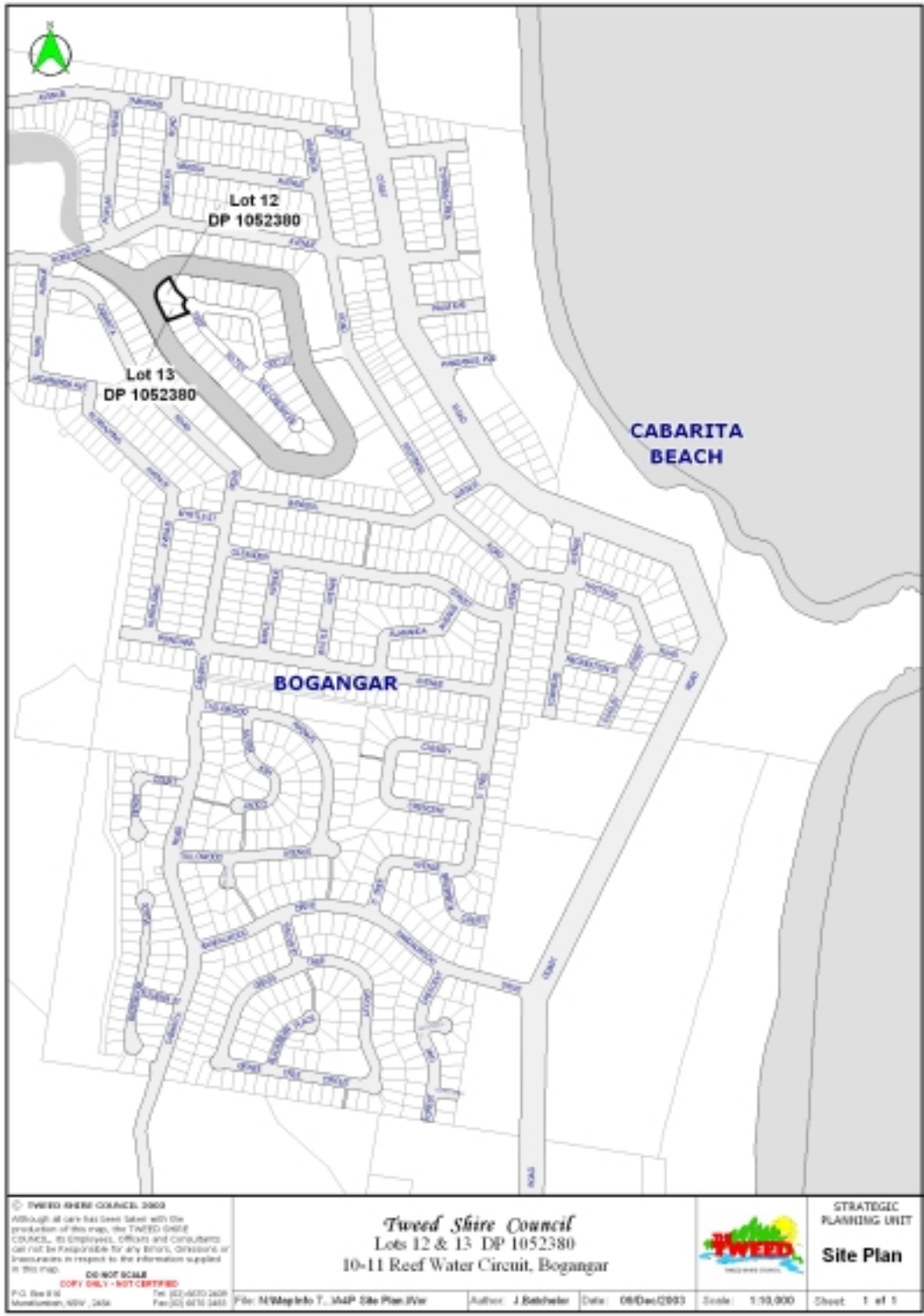
Council is now in receipt of a development application to further subdivide approved lots 12 & 13 (cul-de-sac allotments) into a total of three allotments. Lot 12 was originally approved with a 9-metre frontage to Reef Water Circuit and a total area of 1211m². Lot 13 was approved with a 12-metre frontage to Reef Water Circuit and a total site area of 839.5m², creating a combined total area for the two allotments of 2050.5m². The approved allotment shapes and sizes resulted in compliance with the concept plan (of larger lots) and compliance with Development Control Plan (DCP) No. 16 – Subdivision Design Specification One (1) which specifies that allotments must have a 9-metre frontage to any cul-de-sac. This ensures adequate room for a driveway and room for at least one on street parking space. The proposed subdivision is as follows:

- Lot 121 - A 8.015m frontage to Reef Water Circuit and a total area of 684m²;
- Lot 122 - A 8.015m frontage to Reef Water Circuit and a total area of 684m²; and
- Lot 123 - A 6.354m frontage to Reef Water Circuit and a total area of 683m²;

Approval of this subdivision would create the smallest parcels of land on the Island with the most constrained allotment shape. Furthermore, the proposed allotment frontages to Reef Water Circuit are non compliant with DCP No. 16. This is not considered to be good planning having regard to the cumulative impact on density, parking and general amenity for future residents of the Island and for other residents fronting the canal.

The proposal was advertised and neighbouring properties notified between 15 October 2003 and 29 October 2003. Council received thirty-four (34) objections to the proposal from predominantly residents of Bogangar.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

The subject is located within the 2(c) Urban Expansion zone pursuant to the provisions of TLEP 2000.

The primary objective of the 2(c) zone is as follows:-

“to identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake”.

The proposed development could be seen as optimising the sites utilisation. However, the subdivision is not considered to have had adequate regard to the physical constraints of the Island. The Island is bounded by a water canal with only one access point, narrow streets, and lot restrictions due to the slope of the land down into the canal itself.

This land has already been identified for urban expansion through Council's approval of DA02/0895. Any further expansion is considered excessive having regard to the constraints of the land and the strategic implication (cumulative effect) of any such approval.

Clause 15 of TLEP 2000 refers to the provision of services. In this regard, the proposal can be adequately serviced by way of existing water and sewer mains within the locality. The proposal is considered to be consistent with the provisions of Clause 15 of TLEP 2000.

Clause 31 of TLEP 2000 refers to Development adjoining Waterbodies and generally seeks to protect and enhance and to provide adequate public access to waterways. The adjacent water body is identified as a drainage reserve and is not a natural stream or river. Notwithstanding, the provisions of Clause 31 are considered to generally apply to the proposed development. In this regard, the subject site, by virtue of it's zoning, has been identified as suitable for development. Indeed, the detail submitted as part of the original subdivision demonstrates that no adverse impacts will occur in relation to the adjacent water body.

Clause 34 of TLEP 2000 refers to the development of flood liable land. See comments under the heading of DCP No.5 for greater detail in this regard.

Clause 35 of TLEP 2000 refers to Acid Sulfate Soils. In this regard, the subject site is identified as possessing Class 3 Acid Sulfate Soils on Council's ASS Planning Maps. The original plan of subdivision addressed Acid Sulfate Soils to the satisfaction of Council Environment & Community Services Division.

North Coast Regional Environmental Plan 1988

Clause 15 of NCREP 1988 provides as follows:-

15 Development control—wetlands or fishery habitats

The proposed development adjoins an area identified as a drainage reserve, which subsequently flows directly into Cudgen Lake. Whilst the adjacent reserve is man made, it also forms a potential aquatic habitat. It has previously been established that the subject area was a man made environment and possesses few of the habitat features of a natural watercourse.

Clause 32 of NCREP 1988 provides as follows:-

32B Development control—coastal lands

The proposal is considered to be generally consistent with the relevant provisions of the NSW Government Coastal Policy, 1997 and the Coastline Management Manual. Further, the proposal does not incorporate any physical restriction of access to a foreshore area or the creation of deleterious impacts upon the coastal character and amenity of the site.

Clause 43 of NCREP 1988 provides as follows:-

43 Development control—residential development

- (1) *The council shall not grant consent to development for residential purposes unless:*
 - (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*
 - (b) *it is satisfied that the proposed road widths are not excessive for the function of the road,*
 - (c) *it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,*

- (d) *it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and*
- (e) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.*

The proposed density (one additional allotment) is considered to be excessive having regard to the approved low-density nature of the subdivision and the approved land use character of the area. Further subdivisions (cumulative impact) will have an adverse impact on the intended nature and character of the Island.

State Environmental Planning Policies

The subject site is identified as a Sensitive Coastal Location for the purposes of State Environmental Planning Policy No. 71 - Coastal Protection. Subdivisions within 100m of a waterway require a master plan approved by the Department of Infrastructure Planning & Natural Resources or alternatively to have the need for a master Plan waived by the Department. The application was subsequently referred to the Department with the following comments received;

"The application provided with the application has been assessed for consideration under the above Clause. However, having regard to the nature and scale of the development proposed, the existing planning controls applying to the land and the level of information provided, it is considered that a master plan is not warranted in this instance. Therefore pursuant to Clause 18(2) of SEPP 71, the need for a master plan has been waived.

While the Department has waived the need for a master plan, it is none the less recognised that the whole estate is in a prominent location surrounded by drainage canal. Significant parts of most lots consisting of relatively steep slopes down to the canal, reducing the area available to each of the existing lots for a dwelling. This would be even more crucial on the proposed new lots created in the subdivision. As indicated in our earlier letter of the 13 October 2003 regarding a subdivision of the same estate, we are concerned about the precedent such a subdivision would have for future applications. It may be appropriate to consider the preparation of a master plan for the whole estate for development. We are also concerned about the precedent such a subdivision would have for further possible subdivision within the estate. It may be appropriate to have a master plan prepared for the whole estate if further subdivisions of this nature are to proceed.

I again urge Council to carefully consider the ramifications of approving the proposed subdivision."

The concern expressed by the Department is concurred with. This subdivision application may set a dangerous precedent for other lots on the Island to further subdivide their allotments. This would have a undesirable cumulative impact and result in an unacceptable development, which would be contrary to Council's original approval, which approved larger lots to create a low density development.

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. These matters generally relate to maintaining and protecting existing access to the foreshore and have little bearing on this application. However, one of the sixteen matters requires Council to consider the compatibility of the development with the existing surroundings and the suitability of the site. As previously discussed the application is not considered to be suitable for the site having regard to the potential cumulative impacts and the physical constraints of the site.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

There are no draft planning instruments applicable to the subject land.

(a) (iii) Development Control Plans (DCP's)

Development Control Plan No.5 – Development of Flood Liable Lands

The subject site is identified as flood prone pursuant to the provisions of DCP No.5. In this regard, DCP No.5 identifies a requirement to fill residential lands within Bogangar to a level of 3.4m AHD. The proposal is considered to be consistent with the relevant provisions of DCP No.5.

Development Control Plan No. 16 – Subdivision

Development Design Specification D1 states that:

“a minimum of 9 metres of kerb frontage is required for each lot in a cul-de-sac unless alternative provision for parking is made”

With Development Design Specification D1 – Road Design (parking) elaborating as follows:

“Adequate on street parking should be provided within the road reserve for visitors, service vehicles and any excess resident parking since a particular dwelling may generate a high demand for parking. Such parking is to be convenient to dwellings. Bearing in mind driveway crossovers are 4.5m minimum, an average of at least one on street car park per single (or dual occupancy) frontage lot should be provided, except for battle axe blocks with handles longer than 20m”.

The subject application has had no regard for this criterion. The submitted plan merely details the proposed subdivision with no provision for an alternative parking arrangement. Subsequently, Council's Development Engineer does not support the proposed plan of subdivision, without imposing a deferred commencement condition requiring an alternative parking arrangement in lieu of compliance with the 9-metre requirement for a cul-de-sac. However, given the other areas of non-acceptability this application is recommended for refusal given the physical constraints of the site, and the potential cumulative impact that approval may have.

The subject lots are currently oriented generally in a east west direction and can accommodate a building envelope for a single dwelling of 10m x 15m, and orientate living space to the north east while retaining adequate outdoor space in accord with the relevant provisions of DCP 16 - Subdivisions.

The proposed subdivision obviously does not change the sites orientation, and can physically accommodate a building envelope of 10m x 15m, however, the reduction in useable area per lot will not guarantee correct orientation of living space and leaves little landscaping opportunities given the shape and slope of the block.

The proposal is not considered to be good planning nor consistent with the aims and purposes of the DCP specifically as follows:

"to achieve the highest quality and 'best practice' of subdivision development in the Shire"

Development Control Plan No.39 – Energy Smart Homes Policy

Development Control Plan No.39 provides for relevant principles relating to the siting and orientation of residential allotments. In this regard, the proposed subdivision is generally consistent with the principles referred to, in that the majority of allotments are oriented in a general northwest to southeast direction. DCP No.39 requires allotment orientations with one axes within 30° east and 20° west of true north and 30° south and 20° north of true east.

The proposal is considered to be generally consistent with the relevant provisions of DCP No. 39, however, concern is still expressed with the reduced site areas having regard to their shape and physical constraints such as the canal and proposed driveway configurations.

Draft Development Control Plan No. 52 – Planning Controls Friday Island, Bogangar

On Wednesday 16th July 2003 Council resolved to prepare and exhibit for public comment draft Development Control Plan No 52 - Planning Controls - Friday Island, Bogangar.

The purpose of the amendment is to: -

- Ensure that the integrity of the design philosophy detailed in DA02/0895 is maintained;
- Ensure the desired future character of Friday Island is achieved;
- Maintain the density of Friday Island as detailed by the Concept Plan lodged with DA02/0895;
- Ensure the Island caters for adequate on-street parking; and
- Ensure the amenity of surrounding residential development is maintained.

The approved Friday Island subdivision provides for a specific desired future character, namely "unique island home sites". Comprising 38 residential allotments, with two (2) being nominated as dual occupancy allotments in accordance with DCP 44 - Dual Occupancy Controls - Tweed Shire, the subdivision is to establish a low-density residential area. The approved concept plan carefully balances residential amenity with lot dimensions and size, road layout, road widths, on-street parking, property frontages and yield. Future residents should be assured that the development and desired future character, as approved, will result.

The DCP states in relation to future subdivision application that:

"Given existing lot layout, road widths, cul-de-sac dimensions, lot frontages and limited availabilities for on street parking further subdivisions of existing lots will not be supported."

The Draft DCP is before Council for adoption at this meeting. However, given it's draft status at the time of writing this report the Policy has no determining weight.

However, the Policy raises general concepts and aims (such as site suitability, parking, and density) that should all be normally assessed under the provisions of Section 79C of the Environmental Planning & Assessment Act 1979. Therefore, while the DCP has no statutory weight the concepts contained within the document are still valid.

(a) (iv) Any Matters Prescribed by the Regulations

The subject land is affected by the coastal policy. The proposed development is not considered to be in conflict with the policies or strategies contained in the coastal policy.

The adjacent reserve is considered to be somewhat different from a natural watercourse, with particular reference to its function and environmental value. Accordingly, and with regard to the configuration and density of the proposed subdivision, no reasonable planning benefit could be attained by requiring public foreshore access around the site.

(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

Compatibility with the Desired Future Character

The approved Island home site established a low-density residential area, surrounded by medium density development on less constrained sites. The approved subdivision pattern currently balances residential amenity with lot dimensions and size, road layout, road widths, on-street parking, property frontages and yield. Further subdivision of the approved allotments would disrupt this balance and set a dangerous precedent for other allotments on the Island. Council has approved the original application based on this balance, and residents and surrounding property owners should be assured that this balance and desired future character, as approved, will result.

Visual Amenity

While the subject site has been earmarked for development for a considerable time and the large majority of residents would have been aware of its desired and likely future use, the residents adjoining this development have an expectation that the approved density (low density) will be maintained in accordance with the consent. The further intensification of this Island is unreasonable when considering the proposed change in visual amenity for those residents facing the site.

(c) Suitability of the site for the development

The existing subdivision provides for a unique low-density housing character. It carefully balances residential amenity with lot dimensions and size, road layout, road widths, on-street parking, property frontages and yield. Any further subdivision of the island will disrupt this balance and set an undesirable precedent for other allotments on the Island.

Existing and future residents should be assured that the development and desired future character, as approved, will result and therefore this subdivision application is not supported.

(d) Any submissions made in accordance with the Act or Regulations

The proposal was advertised and neighbouring properties notified between 15 October 2003 and 29 October 2003. Council received thirty-four (34) objections to the proposal from predominantly residents of Bogangar. The following table details the reasons given for the submissions:

Table 1 - Objection Letters

ISSUE	RESPONSE
All properties facing a cul-de-sac must have a minimum street frontage of 9 metres in accordance with DCP 16.	This issues is discussed in the above report and forms a reason for refusal.
The approval of the Estate was given by Council as a set plan.	This comment is concurred with and forms a reason for refusal of the application.
The approval of the application goes against the character of the Estate.	This comment is concurred with and forms a reason for refusal of the application.
The approval of these applications also goes against Council Streetscape Policy.	Council does not have a "Streetscape Policy" however, the proposed centralised driveway and narrow frontages to The Foreshore are not considered the best design outcome. The visual change associated with the proposal changes the character of the estate and this forms a reason fro refusal of the application.
Increase in density should not be supported.	This comment is concurred with and forms a reason for refusal of the application.
The application in not consistent with the existing development.	This comment is concurred with and forms a reason for refusal of the application.
Subdivision will be detrimental to other property holders in the vicinity	This comment is concurred with and forms a reason for refusal of the application.
This application will create a precedent for other similar applications.	This comment is concurred with and forms a reason for refusal of the application.
The original advertising for these lots were for single lot homes and as such should remain that way	This comment is concurred with and forms a reason for refusal of the application.
The canal system is under a great deal of pressure and any further housing would add to this problem.	The water quality of the canal is not considered to be at risk as a result of the proposed subdivision
The re-subdivision will see lots as small as 604m ² , which goes against the integrity and charm of the Island.	This comment is concurred with and forms a reason for refusal of the application.
50% of one building envelope is proposed to go on fill, if this is allowed it would destroy the view that adjacent neighbours currently have of the canal.	The subject application does not detail any building, the footprints shown are indicative only.
Maintaining development in the context that it was originally intended.	This comment is concurred with and forms a reason for refusal of the application.
Council must adhere to the covenants in place for current owners adjacent to Friday Island to maintain an appealing and consistent living environment.	Having regard to the character of the subdivision and the amenity that adjoining residents currently enjoy the application warrants refusal.

(e) Public interest

On the balance of information provided and upon analysis of the likely impacts, the proposed development should be refused.

OPTIONS:

1. Refuse the application in accordance with the recommendation;
2. Support the proposal and request appropriate conditions for approval be submitted to the next Council meeting.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the decision they have the right of appeal to the Land & Environment Court.

POLICY IMPLICATIONS:

This application has Strategic Planning Policy implications, in addition to setting of an undesirable precedent.

CONCLUSION:

The application has the potential to set a undesirable precedent that should not be encouraged or supported by Council. The site is within 300 metres of a business centre and could potentially accommodate a dual occupancy on all allotments on the Island as all lots have a site area of greater than 500m². The adoption of the Draft DCP and the adoption of the general concepts discussed in this report should to ensure the integrity of the originally approved subdivision is maintained.

The wider strategic and cumulative issues involved warrant refusal of this application. The concept plan that Council adopted at the time of subdivision should be upheld and supported by Council, so that existing and future residents can know that the Island will maintain the originally approved low density character and retain good planning principals.

UNDER SEPARATE COVER:

Nil.

9 [DS] Development Application DA03/1300 for the Erection of a Dual Occupancy at Lot 34 DP 1052380, No. 1 Reef Water Circuit, Bogangar

ORIGIN:

Development Assessment

FILE NO: DA03/1300 Pt1

SUMMARY OF REPORT:

Council is in receipt of a Development Application to construct a new detached dual occupancy. Both proposed dwellings are two-stories in height and comprise kitchen, living, dining and family rooms on the ground floor in addition to the laundry, study and double garages. The upper floor contains four bedrooms a bathroom and ensuite. Both dwellings propose a swimming pool at ground level fronting Reef Water Circuit and extensive terrace areas.

The subject site was approved as part of the 'Friday Island' subdivision and was not a nominated dual occupancy site. Council later received a request to nominate the subject site for dual occupancy purposes, however, this application was refused based on an assessment against Clause 2.1 of Development Control Plan No. 44 - Dual Occupancy.

Having regard to the background of 'Friday Island' and the overall concept presented at the time of subdivision, this application is not considered appropriate for land with so many physical constraints. Furthermore, whilst this application may seem reasonable independently, the potential cumulative impact of higher density development in this location is inappropriate.

It is acknowledged that this application generally complies with the numerical requirements for land within the 2(c) zone, however, the wider strategic issues at hand warrant refusal of this application.

RECOMMENDATION:

That Development Application DA03/1300 for the erection of a dual occupancy at Lot 34 DP 1052380, No. 1 Reef Water Circuit, Bogangar be refused for the following reasons: -

1. The proposed development is not consistent with the 2(c) zone objectives in that the application has not adequately considered the environmental constraints of the land. The 2(c) zone objectives read as follows;

“to identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake”.

2. The proposed development does not adequately satisfy Clause 43 of North Coast Regional Environmental Plan 1988 as the proposed density is considered to be excessive having regard to the site constraints, the approved low density nature of the subdivision and the approved land use character of the area;
3. The proposed development does not adequately satisfy Clause 8 of State Environmental Planning Policy No. 71 - Coastal Protection. The potential cumulative impact is unacceptable having regard to the site constraints;
4. The application is not considered to be consistent with the aims and purposes of Development Control Plan No. 6 - Multi-Dwelling Housing, specifically (but not limited to) as follows:

Clause 3.1.3 *"the scale of new development is compatible with and sympathetic to the scale and bulk of existing development in the locality"*.

5. The application is not considered to comply with Clause 2.2 of Development Control Plan No. 44 - Dual Occupancy.
6. The application is not considered to be consistent with the desired future character of the approved low-density estate.
7. The subject site is not considered to be suitable having regard to the approved low density housing character which carefully balances residential amenity with lot dimensions and size, road layout, road widths, on street parking, property frontages, and yield;
8. The application could potentially set an unwarranted precedent;
9. The application is not considered to be in the public interest.

REPORT:

Applicant: GPS Properties Pty Ltd
Owner: Villa World Limited
Location: Lot 34 DP 1052380, No. 1 Reef Water Circuit Bogangar
Zoning: 2(c) Urban Expansion
Cost: \$300,000.00

BACKGROUND:

Friday Island has an extensive development history with various options for development being discussed with Council Officers and the Development Assessment Panel over many years. These meetings discussed a number of issues with the proposed Island subdivision including, the provision of a pedestrian footbridge from Cabarita Road to 'Friday Island', the provision of 3.0m front and rear setbacks, the density of the proposal; and the provision of satisfactory open space.

At that time, the developer presented a Concept Plan that detailed medium density housing on the land adjoining Hastings Road, with large lots (low density housing) on the Island itself. This was further reflected by a restriction on the use of the land via a Section 88B Instrument stating that "*No main building shall be constructed for any other purpose other than a single private dwelling*". This allowed for an element of exclusivity and was an immediate response to the physical constraints of the land.

Subsequently, Council approved the 'Friday Island' subdivision (DA02/0895) on Wednesday 21 August 2002. The submitted plan detailed 38 large residential allotments (varying between 700m² and 1390m²) and one open space allotment. It should further be noted that this subdivision specifically excluded any dual occupancy allotments and excluded the need for a pedestrian footbridge from Cabarita Road to Friday Island due to the low density nature of the proposed subdivision and the costs involved with such a bridge.

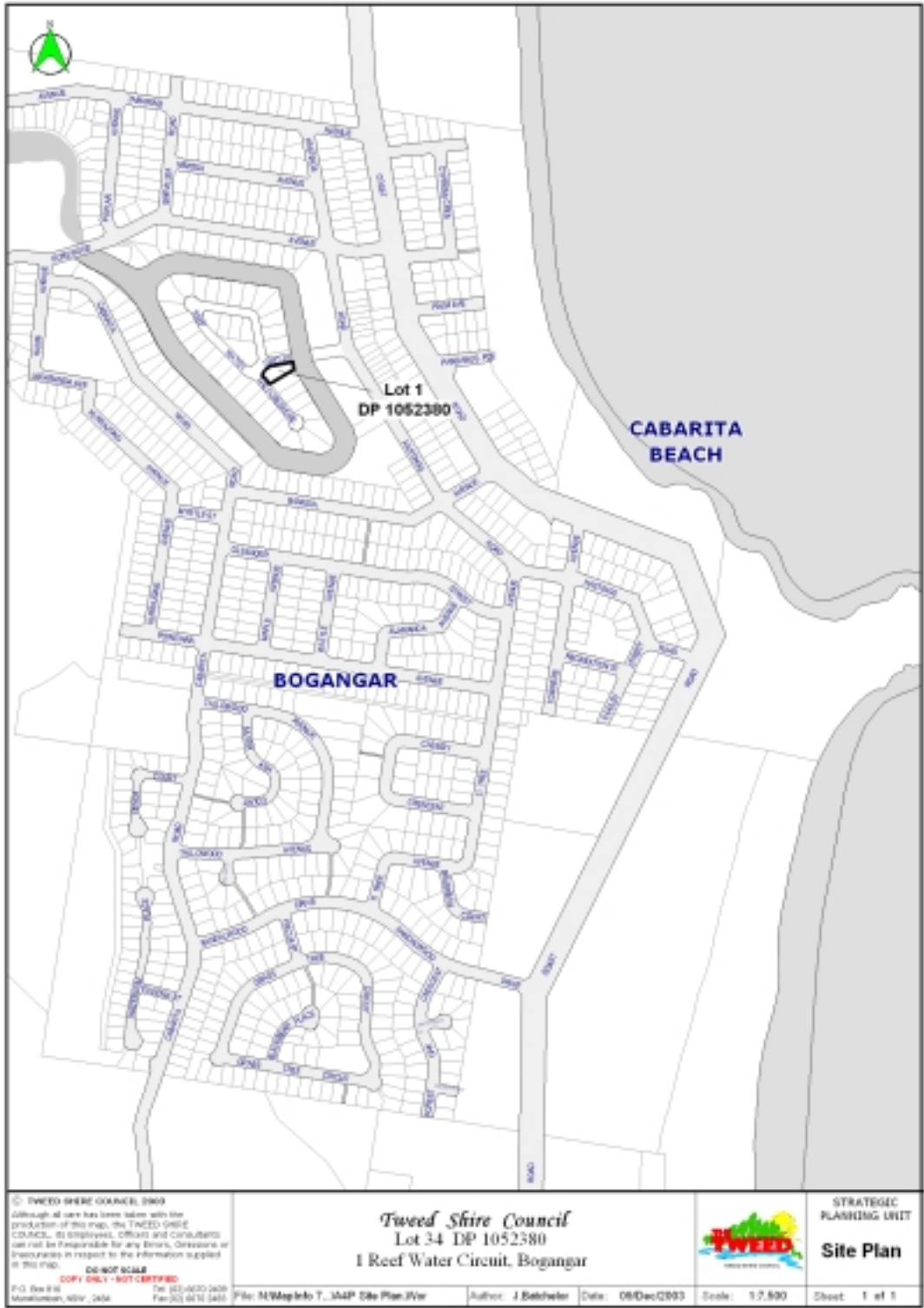
While the application for subdivision specifically excluded any dual occupancy allotments Council later received two separate requests for nomination of Dual Occupancy sites. The first request came in December 2002 and requested the nomination of Lots 22 and 33 as Dual Occupancy allotments. Following an assessment of the proposed nomination against Clause 2.1 of Development Control Plan 44 - Dual Occupancy the two lots were considered to be appropriate for nomination. This nomination has since occurred and the two allotments were sold accordingly. The second request for nomination was received in April 2003 and requested the nomination of the subject site (Lot 34). Following an assessment of the proposed nomination against Clause 2.1 of DCP 44 the subject site it was determined that the subject site is not rectangular in shape and has circular frontages. Its orientation (north east to south west) can not guarantee adequate northerly orientation for the main living areas nor could it guarantee adequate private open space or vehicular access. Subsequently, the application was refused nomination for dual occupancy purposes.

Despite this refusal of nomination Council is now in receipt of a development application to construct two detached dwellings on the corner of Reef Water Circuit and The Foreshore (located at the entry to Friday Island). The subject site has a 12-metre frontage to The Foreshore and a 40 metre frontage to Reef Water Circuit, however, 7 metres of this 40 metre frontage is circular in shape. The subject site has a total site area of 1000m² and also has frontage to the canal itself (9 metres).

Independently this application may seem reasonable, however, this application has the potential to set a dangerous precedent that should not be encouraged or supported by Council. The Island is within 300 metres of a business centre and could potentially accommodate a dual occupancy on all allotments on the Island as all lots have a site area of greater than 500m². The adoption of the Draft DCP and the adoption of the general concepts discussed in this report should be adopted to ensure the integrity of the originally approved subdivision is maintained.

The proposal was notified to neighbouring properties between 17 September 2003 and 1 October 2003. Council received two (2) letters of support for the proposal.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

The subject is located within the 2(c) Urban Expansion zone pursuant to the provisions of TLEP 2000.

The primary objective of the 2(c) zone is as follows:-

“to identify land for urban expansion (which will comprise mainly residential development focused on multi-use neighbourhood centres) and to ensure its optimum utilisation consistent with environmental constraints and the need to minimise residential landtake”.

The proposed development could be seen as optimising the sites utilisation. However, the dual occupancy is not considered to have had adequate regard to the physical constraints of the site. A water canal, two street frontages and an adjoining parcel of land bound the site.

This land has already been identified for urban expansion through Council's approval of DA02/0895. Any further expansion is considered excessive having regard to the constraints of the land and the strategic implication (cumulative effect) of any such approval.

Clause 15 of TLEP 2000 refers to the provision of services. In this regard, the proposal can be adequately serviced by way of existing water and sewer mains within the locality. The proposal is considered to be consistent with the provisions of Clause 15 of TLEP 2000.

Clause 31 of TLEP 2000 refers to Development adjoining Waterbodies and generally seeks to protect and enhance and to provide adequate public access to waterways. The adjacent water body is identified as a drainage reserve and is not a natural stream or river. Notwithstanding, the provisions of Clause 31 are considered to generally apply to the proposed development. In this regard, the subject site, by virtue of it's zoning, has been identified as suitable for development. Indeed, the detail submitted as part of the original subdivision demonstrates that no adverse impacts will occur in relation to the adjacent water body.

Clause 34 of TLEP 2000 refers to the development of flood liable land. Please see comments under the heading of DCP No.5 for greater detail in this regard.

Clause 35 of TLEP 2000 refers to Acid Sulfate Soils. In this regard, the subject site is identified as possessing Class 3 Acid Sulfate Soils on Council's

ASS Planning Maps. The original plan of subdivision addressed Acid Sulfate Soils to the satisfaction of Council Environment & Community Services Division.

Clause 56 of TLEP 2000 relates to the suspension of covenants, agreements and similar instruments and specifies "...*any covenant, agreement, or similar instrument that restricts or prohibits development allowed by this plan shall not apply to the development to the extent necessary to serve that purpose*".

The Section 88B Instrument establishes a number of restrictions affecting Lot 34, however the most applicable is as follows;

Clause 6.3 "*No main building shall be constructed for any other purpose other than a single private dwelling*"

As stated above this does not form grounds for refusal, however, it clearly demonstrates the intended density of the allotment. Furthermore, the current owner should have purchased the subject land knowing of this restriction as to user.

North Coast Regional Environmental Plan 1988

Clause 15 of NCREP 1988 provides as follows:-

15 Development control—wetlands or fishery habitats

The proposed development adjoins an area identified as a drainage reserve, which subsequently flows directly into Cudgen Lake. Whilst the adjacent reserve is man made, it also forms a potential aquatic habitat. It has previously been established that the subject area was a man made environment and possesses few of the habitat features of a natural watercourse.

Clause 32 of NCREP 1988 provides as follows:-

32B Development control—coastal lands

The proposal is considered to be generally consistent with the relevant provisions of the NSW Government Coastal Policy, 1997 and the Coastline Management Manual. Further, the proposal does not incorporate any physical restriction of access to a foreshore area or the creation of deleterious impacts upon the coastal character and amenity of the site.

Clause 43 of NCREP 1988 provides as follows:-

43 Development control—residential development

- (1) *The council shall not grant consent to development for residential purposes unless:*
- (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*
 - (b) *it is satisfied that the proposed road widths are not excessive for the function of the road,*
 - (c) *it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met,*
 - (d) *it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and*
 - (e) *it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.*

The proposed density (dual occupancy) is considered to be excessive having regard to the approved low-density nature of the subdivision and the approved land use character of the area. Further development (cumulative impact) will have an adverse impact on the intended nature and character of the Island.

State Environmental Planning Policies

The subject site is identified as a Sensitive Coastal Location for the purposes of State Environmental Planning Policy No. 71 - Coastal Protection. Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. These matters generally relate to maintaining and protecting existing access to the foreshore and have little bearing on this application. However, one of the sixteen matters requires Council to consider the compatibility of the development with the existing surroundings and the suitability of the site. As previously discussed the application is not considered to be suitable for the site having regard to the potential cumulative impacts and the physical constraints of the site.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

There are no draft planning instruments applicable to the subject land.

(a) (iii) Development Control Plans (DCP's)

Development Control Plan No.2 – Access & Car Parking

The following table details the compliance of the proposed development with the on site car parking provisions contained in DCP 2:

Standard	Requirement	Proposal	Satisfactory
On Site Car Parking	2 spaces per dwelling	2 spaces per dwelling (4 in total)	YES

The proposed development proposes 4 onsite parking spaces in the form of two double garages. The driveways provide the possibility of providing addition onsite parking spaces in a stacked parking arrangement. In regard to the proposed parking layout the development is considered to comply with the objectives of DCP 2.

Development Control Plan No.5 – Development of Flood Liable Lands

The subject site is identified as flood prone pursuant to the provisions of DCP No.5. In this regard, DCP No.5 identifies a requirement to fill residential lands within Bogangar to a level of 3.4m AHD. The proposal is considered to be consistent with the relevant provisions of DCP No.5.

Development Control Plan No.6 – Multi Dwelling Housing

A numerical assessment of the application has been undertaken in accordance with the provisions of DCP No. 6. The application generally complies with the numerical criteria except for the streetscape criteria, which specifies that garages should be located behind the dwelling. The submitted application does not satisfy this criterion, as the garages are parallel to the dwellings. This criterion is almost non-achievable due to the narrow site depth and limited building area. This demonstrates the constraints of the site.

In addition to the numerical requirements the DCP contains objectives and acceptable solutions, for example Clause 3.1.3 specifies that *"the scale of new development is compatible with and sympathetic to the scale and bulk of existing development in the locality"*. The proposed development is not considered to be consistent with the approved low density character of the Island and will have a detrimental cumulative impact on the urban amenity of the surrounding area. The units are considered to dominate the street frontages, and the canal and is not in keeping with the approved concept plan.

Development Control Plan No.39 – Energy Efficient Housing

The applicant has submitted a NatHERS certificate for the proposed development that outlines compliance with the requirements DCP 39 as follows: -

Standard	Requirement	Proposal	Complies
Unit Energy rating	3.5 stars minimum	3.5 each	YES

Development Control Plan No. 44 – Dual Occupancy Homes

The DCP specifies that: -

Council shall not consent to an application for dual occupancy on land to which this plan applies unless:

- a) *it has been identified for that purpose in a plan of subdivision approved by Council; or*
- b) *if it is not within a subdivision approved by Council that has identified land for that purpose, the development is proposed in a form where.....*

The subject site is within a Council approved subdivision (within 300m of a nominated business centre), however the subject site has not been nominated for dual occupancy. Therefore, dual occupancy is only permissible if:

- Land within the 2(c) zone has not less than 500m² if not a corner block;
- Land within the 2(c) zone has not less than 1000m² (for a corner block) or 900m² based on Draft DCP 44;
- Is not a battle axe block;
- Is not irregular in shape or have large circular frontages to public roads; and
- Must generally comply with DCP 6.

The subject site is 1000m², which complies with the current standard and the draft amendment to reduce the requirement for corner blocks down to 900m².

The subject site is not a battle-axe block.

However, the subject site is not considered to be rectangular in shape. Whilst it is generally a four-sided shape with slight curvatures, this is considered to be an irregular shaped block. And therefore dual occupancy is not permitted

The proposed development generally complies with the numerical requirements contained within DCP 6 (see above) however, the duplex is not considered to be consistent with the low-density character of the approved subdivision.

The site falls to the canal the while the design of the buildings have tried to respond to this less usual lot layout the constraints of the site are better suited to single dwellings only. The proposed density should not be supported.

Draft Development Control Plan No. 52 – Planning Controls Friday Island, Bogangar

On Wednesday 16th July 2003 Council resolved to prepare and exhibit for public comment draft Development Control Plan No 52 - Planning Controls - Friday Island, Bogangar.

The purpose of the amendment is to: -

- Ensure that the integrity of the design philosophy detailed in DA02/0895 is maintained;
- Ensure the desired future character of Friday Island is achieved;
- Maintain the density of Friday Island as detailed by the Concept Plan lodged with DA02/0895;
- Ensure the Island caters for adequate on-street parking; and
- Ensure the amenity of surrounding residential development is maintained.

The approved Friday Island subdivision provides for a specific desired future character, namely “unique island home sites”. Comprising 38 residential allotments, with two (2) being nominated as dual occupancy allotments in accordance with DCP 44 - Dual Occupancy Controls - Tweed Shire, the subdivision is to establish a low-density residential area. The approved concept plan carefully balances residential amenity with lot dimensions and size, road layout, road widths, on-street parking, property frontages and yield. Future residents should be assured that the development and desired future character, as approved, will result.

The DCP states in relation to future development applications that: -

Council will not support any development application in respect of any residential lot created within Friday Island other than for a single dwelling house, or, in the case of the two nominated lots, dual occupancy dwellings.

The Draft DCP is before Council for adoption at this meeting. However, given it's draft status the Policy has no determining weight.

However, the Policy raises general concepts and aims (such as site suitability, parking, and density) that should all be normally assessed under the provisions of Section 79C of the Environmental Planning & Assessment Act 1979. Therefore, while the DCP has no statutory weight the concepts contained within the document are still valid.

(a) (iv) Any Matters Prescribed by the Regulations

The subject land is affected by the Coastal Policy. The proposed development is not considered to be in conflict with the policies or strategies contained in the coastal policy.

The adjacent reserve is considered to be somewhat different from a natural watercourse, with particular reference to its function and environmental value. Accordingly, and with regard to the configuration and density of the proposed subdivision, no reasonable planning benefit could be attained by requiring public foreshore access around the site.

(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

Compatibility with the Desired Future Character

The approved Island home site established a low-density residential area, surrounded by medium density development on less constrained sites. The approved density currently balances residential amenity with lot dimensions and size, road layout, road widths, on-street parking, property frontages and yield. Further development of the approved allotments would disrupt this balance and set a undesirable precedent for other allotments on the Island. Council approved the original subdivision application based on this balance, and residents and surrounding property owners should be assured that this balance and desired future character, as approved, will result.

Visual Amenity

While the subject site has been earmarked for development for a considerable time and the large majority of residents would have been aware of its desired and likely future use, the residents adjoining this development have an expectation that the approved density (low density) will be enforced in accordance with the consent. The further intensification of this site is unreasonable when considering the proposed change in visual amenity for those residents facing the site.

(c) Suitability of the site for the development

The subject site is confined by two street frontages, a canal, and an adjoining property. It also could be categorised as an entry statement allotment being one of the first sites on the left upon entering Friday Island. It is not considered appropriate to have a large dual occupancy form the entry to the low density housing of the Island. The proposed dual occupancy has orientated two pools, one garage and large terrace areas to the Reef Water Circuit entry and further exhibits a solid fence to screen these open space areas.

Approval of this dual occupancy is not considered appropriate having regard to the unique low-density housing character which carefully balances residential amenity with lot dimensions and size, road layout, road widths, on-street parking, property frontages and yield. Any further development of the Island will disrupt this balance and set a detrimental precedent for other allotments on the Island.

Existing and future residents should be assured that the development and desired future character, as approved, will result and therefore this subdivision application is not supported.

(d) Any submissions made in accordance with the Act or Regulations

The proposal was only notified to neighbouring properties for 14 days. Council received two (2) letters of support for the proposal.

Table 1 - Letters of Support

<u>ISSUE</u>	<u>RESPONSE</u>
All installations and infrastructure required are in place to support the proposed use.	Whilst the infrastructure may be able to accommodate a higher density the site is not physically considered suitable and nor is the application considered suitable having regard to the intended low density character.
There is an unrealised demand for further residential land in the area.	Residential demand needs to be weighed up against best planning practice and this application is not considered best practice.
The application is consistent with the intent of the current zoning for the land which states: " <i>to ensure its optimum utilisation</i> "	The zone objective goes on to state " <i>...consistent with environmental constraints and the need to minimise residential landtake</i> ". As detailed in the report above the application is not considered adequate having regard to the zone objective.
The site is close to all services and residential development in this area should be supported.	Council has encouraged (and approved) medium density development along Hastings Road and acknowledges the importance of higher densities near services, however, the subject site has constraints which make it better suited to low density housing as originally intended.

(e) Public interest

On the balance of the information provided and upon analysis of the likely impacts, the proposed development should be refused to ensure the interests of the general public are protected.

OPTIONS:

1. Refuse the application in accordance with the recommendation;
2. Support the proposal and request appropriate conditions for approval be submitted to the next Council meeting.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicants be dissatisfied with the decision they have the right of appeal to the Land & Environment Court.

POLICY IMPLICATIONS:

This application has Strategic Planning Policy implications, in addition to the setting an undesirable precedent.

CONCLUSION:

This application is not considered to be suitable for the site and furthermore the wider strategic and cumulative issues involved warrant refusal of this application. The concept plan that Council adopted at the time of subdivision should be upheld and supported by Council, so that existing and future residents can know that the Island will maintain the originally approved low density character and retain good planning principals.

UNDER SEPARATE COVER:

Nil.

10 [DS] Development Application DA03/1018 for the Establishment of a War Memorial at Lot 7061 DP 755740 Coral Street, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA03/1018 Pt1

SUMMARY OF REPORT:

Council is in receipt of a development application for the establishment of a war memorial on land near Point Danger bounded by Boundary Street, Tweed Terrace and Coral Street, Tweed Heads, for the Rats of Tobruk Association - Gold Coast Sub Branch. The application seeks consent to construct a 2 metre high replica of the memorial erected in Tobruk which was later destroyed. The memorial requires a concrete base measuring 4.2m² x 800mm thick with the Association asking if Council would be willing to supply same.

The application has been discussed with members of the Tweed Heads Task Force, Council's Recreational Services Unit, and Council's Director of Environment and Community Services. Having regard to Council's recently adopted Public Arts Policy 2003 and the Draft Plan of Management for Jack Evans Boat Harbour it has been considered that a central location for such monuments is more appropriate than numerous monuments spread throughout various parks around the Shire.

It has therefore been recommended that this particular application be refused, however, Council should clearly indicate support to the Rats of Tobruk Association for an appropriate memorial in a centralised location (such as Chris Cunningham Park) which is to be determined by Council in conjunction with the Tweed Heads Task Force and other community groups such as the RSL.

RECOMMENDATION:

That: -

- A. Council indicates support to the Rats of Tobruk Association for an appropriate memorial in a centralised location (such as Chris Cunningham Park) which is to be determined by Council in conjunction with the Tweed Heads Task Force and other community groups such as the RSL.

- B. Development Application DA03/1018 for the establishment of a War Memorial at Lot 7061 DP 755740, Coral Street Tweed Heads be refused for the following reasons: -

1. The application does not represent a cohesive approach to memorials within Tweed Shire;
2. The proposed memorial is considered to be pre-emptive of the Management Plan for Jack Evans Boat Harbour; and
3. The subject site is not considered the most suitable site for the proposed memorial.

REPORT:

Applicant: Rats of Tobruk Association
Owner: Tweed Shire Council
Location: Lot 7061 DP 755740 Coral Street, Tweed Heads
Zoning: 6(a) Open Space
Cost: \$5,000.00

BACKGROUND:

The Rats of Tobruk Association have lodged a Development Application for a memorial to be erected at Cerlin Park on Point Danger, bordered by Boundary Street, Tweed Terrace, and Coral Street. The memorial is a 2-metre replica of one erected in Tobruk. It is to be constructed of concrete blocks, cement rendered and painted cream finish, with two granite crosses attached to the top tier facing front and rear. At the base of the monument there would be bronze plaques describing the monument, its purpose and its historic value.

Council at the meeting of 7 July 1999 discussed a similar request by way of the following item: -

"Rats of Tobruk Monument (PF4030/9010 Pt 7)

I have received a letter (copy appended) from the Rats of Tobruk Gold Coast Sub Branch Association requesting approval from Council to erect a memorial adjacent to the existing cenotaph in Chris Cunningham Park.

This matter is referred to Council for decision."

Council resolved: -

"THAT this item be discussed with the local Services Club and the Main Street Committee for their consideration."

It is now understood that the RSL have agreed to allow the Rats of Tobruk to have a small plaque in Chris Cunningham Park. Notwithstanding this, the Rats of Tobruk now seek determination of this application for the proposed monument.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

The subject site is zoned 6(a) Open Space under the provisions of Tweed Local Environmental Plan 2000. The 6(a) zone objectives are as follows;

Primary objective

- *to identify existing public land, and land that is proposed to be acquired for public ownership, to satisfy the open space and recreational needs of local residents and visitors to the area of Tweed and to enable its development to encourage or assist their recreational use and enjoyment of the land.*

Secondary objective

- *to allow other development that is compatible with the recreational use of the land.*

The proposed development would be best defined as a recreational area for the purposes of the Tweed Local Environmental Plan 2000, and is considered to be permissible development in the 6(a) zone.

North Coast Regional Environmental Plan 1988

There is nothing contained within the REP that would restrict the proposed memorial.

State Environmental Planning Policies

The subject site falls within the coastal zone and is therefore affected by the provisions of the State Environmental Planning Policy No. 71 - Coastal Protection. Clause 8 details sixteen matters for consideration when determining applications, however, these matters generally relate to, ensuring access to, and the protection of, the coastal foreshore areas are maintained. However, Clause 8(d) requires consideration of the suitability of the development given its type, location, and design and its relationship with the surrounding area. Whilst the subject site can physically accommodate such a memorial, Council faces difficulty in quantifying the suitability between associations such as The Rats of Tobruk and other similar organisations. Council receives many applications from several worthy organisations and it is an impossible task to be asked to choose which organisations should have which sites for such memorials. Therefore, having regard to the Draft Plan of

Management for Jack Evans Boat Harbour, and the recently adopted Public Arts Policy, a more holistic approach to public art and memorials is required. It is recommended that Council in conjunction with the Tweed Heads Task Force and the Public Art Advisory Committee determine an appropriate centralised location for memorials within the Tweed Heads area and that the Rats of Tobruk be informed of any determination.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

There are no draft Environmental Planning Instruments applicable.

(a) (iii) Development Control Plans (DCP's)

There are no applicable Development Control Plans.

Public Art Policy 2003

The Public Art Policy details the Tweed Shire Public Art Register and specifically identifies existing war memorials such as The ANZAC Memorial Fountain at Tweed Heads. The Policy contains seven main objectives, however the most applicable being;

(e) to ensure all existing cultural assets and the procuring of future Public Art are managed, maintained and conducted in an appropriate and professional manner.

Approval of this memorial without consideration of the wider issues involved would be encouraging ad hoc planning and not encouraging the adoption of Policies such as the Public Arts Policy.

(a) (iv) Any Matters Prescribed by the Regulations

The subject site is affected by the Coastal Policy, however, the proposed development would not contravene the objectives of this Policy.

(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

Whilst the proposed structure is physically capable of being constructed in the given location without damage to the natural or built environments, the concept of a large single monument in such a prominent location pre-empts the outcome of extensive studies being undertaken for the Tweed Heads Area as part of the Plan of Management of Jack Evans Boat Harbour. The Plan has been designed to divide the subject area into precincts. At least one segment of a precinct will be specifically nominated for Art & Culture. Such location would be ideal to incorporate a centralised memorial, which can be monitored

and maintained efficiently, rather than multiple memorial sites scattered throughout the Shire.

(c) Suitability of the site for the development

The subject site is a prominent area of open space that may well be identified as an Art & Culture precinct within the Plan of Management for Jack Evans Boat Harbour. However, even if this site is nominated for that purpose it is more likely that the area should accommodate many memorials of a smaller scale rather than one large memorial. Therefore the site is not considered suitable at this time.

(d) Any submissions made in accordance with the Act or Regulations

The proposed development was not required to be advertised or notified, and therefore no submissions were received.

(e) Public interest

The proposed memorial is not considered to be in the interest of the wider public community, as approval of this memorial would indicate preference to this organisation over others. It is considered important that Council indicate general support to the Rats of Tobruk and that this association be kept updated and informed on the progress of identifying a central location for memorials for all types of organisations.

OPTIONS:

1. Refuse this application in accordance with the recommendation
2. Resolve that the application be supported and draft conditions be prepared for Council's consideration.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the right to appeal any decision in the Land & Environment Court.

POLICY IMPLICATIONS:

Approval of this application may undermine both the Public Arts Policy and the Draft Plan of Management for Jack Evans Boat Harbour.

CONCLUSION:

While it is recommended that this particular application be refused, Council should clearly indicate support to the Rats of Tobruk Association for some kind of memorial in a centralised location (such as Chris Cunningham Park) which is to be determined by

Council in conjunction with the Tweed Heads Task Force, The Public Art Advisory Committee and other community groups such as the RSL.

UNDER SEPARATE COVER:

Nil.

11 [DS] Development Application DA03/0273 for Multi-Dwelling Housing Comprising of 127 Units at Lot 119 DP 29195, Lot 142 DP 29195, No. 35 Panorama Drive, Tweed Heads West

ORIGIN:

Development Assessment

FILE NO: DA03/0273 Pt3

SUMMARY OF REPORT:

Council considered a report in relation to the subject development on Wednesday 5th November 2003 and resolved: -

"That in the view of the letter from the Department of Infrastructure Planning and Natural Resources to Council dated 30 October 2003, that DA03/0273 for Multi Dwelling Housing Comprising 127 units at Lot 119 DP 29195, Lot 142 DP 29195, No.35 Panorama Drive, Tweed Heads West be referred to the Minister for Infrastructure, Planning and Natural Resources for determination."

As such the development application was referred to the Minister and the applicant was advised of this action. Subsequently the applicant indicated his intention to reduce the height of the proposed development to comply with the height limitation for the site, and no longer require the use of State Environmental Planning Policy No.1 - Development Standards to vary the height limitation. This is able to be achieved without reducing the number of storeys, rather modifying the height of storeys and the roof design.

The Department of Infrastructure Planning and Natural Resources have advised Council in writing that the effect of this change will be that the consent authority power for the proposed development will be Council.

Consequently the following report assesses the proposed development in light of the reduction in height to the required 25m AHD and includes all other aspects of the development as previously reported to Council.

The subject development is on the disused quarry site located at the intersection of Scenic Drive and Gull Place. The land also has frontage to Panorama Drive and presents a unique opportunity to be redeveloped to contain medium density housing within the old quarry while preserving the prominent tree ridgeline.

The subject land was identified as being suitable for this scale of development through a local environmental study process that resulted in the land being zoned in part 2(b) Medium Density Residential and 7(l) Environment Protection (Habitat) zone, with a 25m AHD and three storey height limitation. These planning controls have been in place on the subject land since 1991.

The proposed development is for 127 units. The proposal involves the erection of two buildings one being a 'tower building', containing 106 units, and the second being 'terrace units' containing 21 units. Both of the buildings are accessed from Gull Place.

The site is unique in that there are no specific Development Control Plans identifying the desired performance criteria of future development, rather the site relies on development guidelines identified through the local environmental study process and State Environmental Planning Policy No.65 – Quality of Residential Flat Development. The applicant has however responded to the relevant performance criteria contained in other Council controls for this type of development.

The proposed development complies with the height limitation for the site being 25m AHD and in relation to the terrace units a three storey height limitation.

The proposed development requires the general terms of approval of the Environment Protection Authority due to the nature and extent of earthworks required for the construction of the proposal.

The proposed development was publicly exhibited and received 72 submissions and a petition of 183 signatures.

The main issues with the proposed development are the intersection design for Scenic Drive/Gull Place, the noise generated during construction as the proposal involves significant earthworks, and the change in character of the locality with the development of medium density housing of the proposed height and scale.

These issues are assessed in the following Council report.

RECOMMENDATION:

That Development Application DA03/0273 for multi-dwelling housing comprising of 127 units at Lot 119 DP 29195, Lot 142 DP 29195, No. 35 Panorama Drive, Tweed Heads West be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plans Nos ADD101 RevA dated Feb 2003, ADD201 RevA to ADD208 RevA dated Feb 2003 inclusive, ADD211 RevB, ADD212 RevA and ADD213 RevA, ADD 214 RevB, ADD215 RevA dated Feb 2003 inclusive, SK-01-501 RevB to SK-01-502 RevB dated 21/2/2003 and AR301 RevB dated Jan 2003 prepared by Fulton Trotter and Partners, except where varied by these conditions.
[GEN0010]
2. 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.

[GEN0050]

3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0120]

4. The erection of a building in accordance with a development consent must not be commenced until:

- 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.

[GEN0150]

5. 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 three metre wide right of way for public access shall be provided parallel to the boundary splay between Scenic Drive and Gull Place.

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.

6. The proposed 'tower building' shall be no more than 25m AHD in height. The 'terrace units' shall be no more than three storeys in height. On completion of the building a registered surveyor shall provide documentation demonstrating that this condition has been complied with.

[GENNS01]

7. The application is required to obtain the necessary licences for the proposed development from the Environment Protection Authority.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

8. A detailed plan of landscaping is to be submitted and approved by Council's Director, Development Services prior to 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.

[PCC0010]

9. Any carparking 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.

[PCC0030]

10. The application is required to satisfy the Environment Protection Authority requirements prior to the issue of a Construction Certificate.

11. 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: \$326,131.00
S94 Plan No. 4 (Version 4.0)
(Sector 4_4 Bilambil Heights)

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:-

$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

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.	Open Space (Structured): S94 Plan No. 5	\$63,196.00
c.	Open Space (Casual): S94 Plan No. 5	\$13,509.00
d.	Shirewide Library Facilities: S94 Plan No. 11	\$55,777.00
e.	Bus Shelters: S94 Plan No. 12	\$2,240.00
f.	Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$10,797.00
g.	Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16	\$18,724.00
h.	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$32,530.13
i.	Cycleways S94 Plan No. 22	\$13,016.00
j.	Regional Open Space (Structured) S94 Plan No. 26	\$95,316.00

- k. Regional Open Space (Casual) \$17,846.00
S94 Plan No. 26

[PCC0050/PSC0005]

12. 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: \$383,258.00
Sewer: \$306,793.00

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.

[PCC0070/PSC0004]

13. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[PCC0190]

14. 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 stage of the development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.
- (d) Specific requirements:
 - (i) Runoff from all hardstand/impervious areas (includes driveway, car park and hardstand landscape areas and excludes roof area) must be pre-treated to remove oil and grit, prior to discharge into the public stormwater system. Roof water runoff does not require treatment and must be discharged downstream of any pollutant treatment device.
 - (ii) Washdown runoff generated from the proposed basement area must also be sized to remove oil and grit pollutants and must be discharged into the sites sewer system, if levels permit. The installed pollutant device must also satisfy the following sizing requirements.
 - (a) The retained volume of the Oil/Grit arrestor must be no less than 0.5m^3 per 1000m^2 of the basement/undercover car park area.
 - (b) The minimum retained volume of an Oil/Grit arrestor is 0.75m^3 .
 - (iii) The appropriate number of car wash bays must be provided for the development. If these bays are to be constructed of impervious material, then all runoff from the bays must be bunded to remove oil and grit pollutants prior to discharge. If levels allow, discharge must be via the sewer network and a Tweed Shire Council Trade Waste application will be required. If levels don't permit, connection can be made to the site stormwater network. Council prefers if these bays are constructed of pervious material.
 - (iv) The appropriate number of visitor car parking bays must also be provided for the development. If these bays are to be constructed of impervious material, then all runoff from these bays must be treated to remove pollutants prior to discharge into the site's drainage network.

[PCC0230]

15. 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.

[PCC0240]

16. A. Building work that involves residential building work (within the meaning of the *Home Building Act 1989*) must not be carried out unless the Principal Certifying Authority for the development to which the work relates:
- i. in the case of work to be done by a licensee under that Act:
 - (i) has been informed in writing of the licensee's name and contractor licence number; and
 - (ii) is satisfied that the licensee has complied with the requirements of Part 6 of that Act; or
 - ii. in the case of work to be done by any other person:
 - (i) has been informed in writing of the person's name and owner-builder permit number, or
 - (ii) has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of **owner-builder work** in Section 29 of that Act,and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.
- B. A certificate purporting to be issued by an approved insurer under Part 6 of the *Home Building Act 1989* that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

[PCC0310]

17. 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 of development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.
 - (c) Diversion drains are to be provided along the western and northern boundaries of the site to divert clean water from external catchments around the site, as proposed in Jim Glazebrook & Associates 'Statement of Environmental Effects ' dated February 2003.
- [PCC0320]
- 18. The applicant shall submit a full schedule of exterior colours for the proposed development to the satisfaction of and approval by the Director of Development Services.
 - 19. The applicant shall submit details on the proposed location for employee car parking for the duration of the construction of the proposed development. This shall detail the location of such car parking, approval by owner and shall not compromise any other approved use of land. These details are to be to the satisfaction and approval by the Director of Development Services.
 - 20. The applicant shall submit a hydraulic analyses demonstrating the adequacy of the existing 150 diameter water main for meeting fire fighting requirements.
 - 21. The applicant is to submit detailed engineering plans for the Gull Place / Scenic Drive intersection, and associated kerb and gutter and pavement widening for Scenic Drive, in accordance with Sketch No.202038-SK-20/06/03 for the approval of the Director of Engineering Services. In the event that the Director of Engineering Services requires a round about, based on Black Spot funding to be determined in February 2004, a cash contribution of \$50,000 in lieu of the intersection works described above shall be provided, alternatively the protected turn lanes are to be constructed.
 - 22. The lots are to be consolidated into one (1) lot under one (1) title. The plan of consolidation shall be registered with the Lands Titles Office prior to issue of the construction certificate.
 - 23. A Plan of Management shall be provided for the development in relation to development of land adjoining the 7(l) Environmental Protection (Habitat) zoned land. This plan shall address adverse effects arising from the development and mitigation measures to be adopted. The plan shall detail the

ongoing maintenance required in this area and the persons responsible for ensuring the long-term implementation of the Plan of Management. This Plan shall be submitted to and approved by the Director of Development Services prior to the issue of a construction certificate.

[PCCNS01]

24. A basement plan shall be provided identifying the 48 visitor car parking spaces with the majority located in the first block or entering the basement. This plan is to be to the satisfaction of and approved by the Director of Development Services.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

25. 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.

[PCW0060]

26. 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.

[PCW0070]

27. It is a condition of this approval that, if an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made must comply with the following:
- i. The person must, at the person's own expense:
 - a. preserve and protect the building from damage; and
 - b. if necessary, underpin and support the building in an approved manner.
 - ii. The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

[PCW0080]

28. 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.

[PCW0090]

29. 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.

[PCW0190]

30. 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.

[PCW0210]

31. Prior to commencement of building works provide hydraulic drawings on the proposed sewer drainage systems including pipe sizes, details of materials and discharge temperatures.

[PCW0230]

32. Prior to commencement of works all required plumbing and drainage inspection fees are to be submitted to Council.

[PCWNS01]

33. 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.

[PCW0030]

34. 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.

[PCW0220]

DURING CONSTRUCTION

35. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:
- A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.
 - The chute shall be located in a position approved by the Principal Certifying Authority.
 - A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust.

[DUR0070]

36. 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. [DUR0080]
37. A garbage storage area shall be provided in accordance with Council's "**Code for Storage and Disposal of Garbage and Other Solid Waste**". [DUR0090]
38. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council. [DUR0130]
39. 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
 - g. the fire protection of penetrations through any fire rated elements prior to covering
 - h. steel reinforcing prior to pouring of concrete. [DUR0170]
40. 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. [DUR0200]
41. a. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
b. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property. [DUR0210]
42. If the work involved in the erection or demolition of a building:
- a. is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
 - b. building involves the enclosure of a public place,
- a hoarding or fence must be erected between the work site and the public place.

If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

Any such hoarding, fence or awning is to be removed when the work has been completed.

[DUR0220]

43. All surface runoff from sealed driveway, car parking areas and the like, is to be piped to the street. Drainage from all uncovered carpark areas must comply with AS3500.3, Clause 3.4.5.2.

[DUR0770]

44. Construction site work including the entering and leaving of vehicles is to be restricted to between 7.00 am and 7.00 pm Monday to Saturday and no work on Sundays or public holidays.

[DUR0900]

45. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.

[DUR0950]

46. Any proposed cooling tower installation must also include details on the proposed means of back flow prevention to the water supply prior to installation.

[DUR0970]

47. 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.

[DUR1020]

48. 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.

[DUR1030]

49. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.

[DUR1040]

50. Where two (2) or more premises are connected by means of a single house service pipe, the owner of each premises must (*unless all the premises are*

occupied by a single household or firm as a residence or place of business) ensure that a separate water meter, of a class and size approved by Council, is installed on each of those premises.

[DUR1070]

51. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.

[DUR1090]

52. 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.

[DUR1110]

53. 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.

[DUR1160]

54. 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.
- 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.

[DUR1200]

55. 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.

[DUR1210]

56. Backwash from swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9.

[DUR1290]

57. The internal road and ramps must comply with AS2890.1.

58. No paving is to be constructed past the concrete footpath alignment on Gull Place directly opposite Inlet Drive.

59. The proposed concrete pathway on Scenic Drive is to have a pram ramp at the Gull Place intersection and on the shop side of Gull Place and extend the footpath to connect with the paths at the shopping centre.

60. No gardens are to be provided on the corner of Gull Place and Scenic Drive due to road widening on the corner to accommodate a future round about.

61. Kerb and gutter shall be constructed to Scenic Drive along with associated pavement widening and intersection works in accordance with Council's road construction standards.

[DURNS01]

62. 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).

[DUR0010]

63. The provision of 192 off street car parking spaces, 48 visitor spaces are to be provided. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls. The visitor spaces are to be marked and sign posted as for visitors.

[DUR0050]

64. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction.

[DUR0060]

65. A concrete ribbon footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire frontage of the site to Gull Place only. No footpath is to be provided along the Scenic Drive frontage. 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. The footpath is to have a 3% 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. An inspection of the formwork is to be arranged with Council's Engineering Services Division prior to concrete being placed.

[DUR0520]

66. 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.

[DUR0430]

67. Testing for the presence of Potential Acid Sulfate Soils and Actual Acid Sulfate Soils shall be carried out in accordance with the ASSMAC guidelines of the full material overlying the orck floor of the original quarry at the time of construction. If such tests reveal the presence of PASS or AASS then such soil shall be managed in accordance with the provisions of the ASSMAC Guidelines and a management plan is to be submitted to Council for consideration and approval. Such management shall be to the satisfaction of Council's Director of Environment and Community Services.

68. It is a condition of this consent that the area directly in front of the collection area as referenced in the advice provided by Solo Resource Recovery and dated 12th May 2003 be designated and sign posted accordingly as a 'No Parking' area.

[DURNS02]

69. Provision to be made for the designation of a 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.

[DUR0240]

70. 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.

[DUR0730]

71. The water quality control pond shall be fully fenced in accordance with the requirements of AS1926 for children less than five (5) years of age. [DUR0810]
72. 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. [DUR0850]
73. 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. [DUR0870]
74. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles. [DUR0880]
75. 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. [DUR0890]
76. 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. [DUR0910]
77. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited. [DUR0920]
78. Prior to and during construction provide a "shake down" area along the haul route located immediately before the intersection with the road reserve. The "shake down" area is to be 10 metres long, minimum 3.0 metres wide, constructed of minimum 50mm diameter crushed rock; or other such device approved by the Director of Engineering Services. [DUR0930]

79. The burning of builders waste on site by open fire is prohibited. [DUR0940]
80. Pre-treatment devices must be serviced by a Council approved waste contractor. The applicant will be required to enter into a service agreement with this waste contractor. Pre-treatment device service frequency will be approved by Councils Manager Water. [DUR1170]
81. The management measures contained in the Peter Parker Flora and Fauna report dated February 2003 shall be adopted during the construction.
82. Discharge of stormwater from the site is to be via connection into the existing gully pits in either Gull Place or Scenic Drive. No discharge is allowed onto neighbouring properties.
83. The driveway entrance must be designed in accordance with DCP2 and AS2890.1 (section 3.4(a)) with the maximum driveway gradient for 6m from the property boundary not exceeding 1:20 or 5%.
84. The driveway entrances must be graded to ensure Q100 stormwater runoff from Gull Place's kerb and gutter does not enter the site.
85. If pumps are required to drain the basement, the pumps utilised must be designed and installed in accordance with Section 9 of AS/NZS 3500.3.2.1998 (Natural Plumbing and Drainage3 - Part 3.2: Stormwater Drainage - Acceptable Solutions). Failsafe measures must be in place such that property (on site and adjacent) is protected in case of pump failure.
86. Peak stormwater discharge from the developed site must be limited (in events of intensity up to the ARI 100 year design storm), such that Post Development discharge from site does not exceed Pre Development discharge flows. This may be achieved by on site detention (OSD), on site retention or a combination of both. If On Site Detention (OSD) tanks are proposed, the tanks may be positioned such that runoff is required to be pumped from the driveway and basement areas into the tank, but roofwater must enter the tank by gravity means only. The tank may incorporate infiltration techniques to reduce the size of the tank required but pipe discharge from the tank to the site's legal point/s of discharge be via gravity means only. Pumps will not be accepted as a control of discharge. OSD devices including Discharge Control Pits (DCP) are to comply with standards in The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook, Second Edition 1994"). Permissible site discharge (PSD) and site storage requirements (SSR), do not apply to the Tweed Shire. The DCP must be installed within the drainage network, such that stormwater is discharged into the DCP prior to any discharge entering the OSD tank/s. The DCP must discharge into the OSD device, only once the maximum allowable site discharge rate is reached. Surcharging of the drainage network is only acceptable under storm events greater than an ARI 100 year design storm event. If infiltration is incorporated,

- the tank must be designed to completely empty (by means of infiltration) for a 3 month ARI storm event (deemed to be 40% of the ARI 1 year event) within a 24-hour period, with a safety factor of 2. Note, infiltration is not an acceptable method of treatment for Oil/Grit. Any overflow of the tank/s is to be via visual, overland flow into the kerb and gutter drainage networks of either Gully Place or Scenic Drive or other approved permanent drainage systems. Preliminary calculations indicate that an OSD tank exceeding 150m³ is required.
87. All mechanical plant, air handling system plant or equipment and the like are to be acoustically shielded in accordance with recommendations from a qualified acoustic consultant and to the satisfaction of Council's Director of Environment and Community Services where required to ensure that the operation of such mechanical plant and equipment does not result in the emission of offensive noise to any neighbouring residential area or premises.
88. All mechanical plant, air handling plant, equipment and the like shall be positioned on the premises in locations that will not unreasonably interfere with the amenity of existing residential areas or premises in respect to noise, dust and visual or other air borne emissions.
89. In the event that dewatering operations are to be carried out on the site, all practical measures to the satisfaction of Council's Director of Environment and Community Services shall be undertaken to ensure that the operation of dewatering pumps and associated equipment do not result in the emission of offensive noise to any neighbouring residential area or premises.
90. Any dewatering pumps or associated equipment and sediment control pumps are to be located in a position on the site to the satisfaction of Council's Director of Environment and Community Services so as to not unreasonably interfere with the amenity of any existing residential area or premises in respect to noise, dust, visual or other air borne emissions.
91. In the event of any on site dewatering operations, a dewatering management plan specifying discharge quality criteria is to be submitted for consideration and approved by Council's Director of Environment and Community Services.
92. All artificial external lighting shall be shielded where required to the satisfaction of Council's Director of Environment and Community Services so that the spill of light or glare does not create a nuisance to any neighbouring residential area or premises.
- [DURNS03]
93. The proposed development is to fully comply with Councils Energy Smart Housing Policy (DCP39). In order to comply with DCP39 consideration must be given to the building envelope, orientation, insulation, ventilation, thermal mass, zoning, and hot water supply.
- [DUR1000]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

94. 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.
[POC0020]
95. 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).
[POC0030]
96. On completion of work a certificate signed by a practising structural engineer is to be submitted to the PCA to certify the structural adequacy of the structure.
[POC0060]
97. Prior to the issue of an occupation certificate the management measures, specifically in relation to weed eradication, contained in the Peter Parker Flora and Fauna report dated February 2003 shall be completed.
[POCNS01]

USE

98. Swimming Pools (Building)
- A. It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pool Act 1992).
- B. The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).
[USE0250]
99. 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.
[USE0160]
100. 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.
[USE0180]

GENERAL TERMS OF APPROVAL FROM THE ENVIRONMENT PROTECTION AUTHORITY

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 DA03/0273 submitted to Tweed Shire Council on 20 March 2003;
- The supplementary Reports submitted to the EPA from Council dated 26 June 2003; and
- All additional documents supplied to the EPA in relation to the development, including all documentation supplied in response to the EPA's letters to Council and advice received by Council.

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 of Monitoring Point	Type of Discharge Point	Description of Location
1	Discharge to waters and effluent monitoring point	Discharge to waters and effluent monitoring point	Discharge from stormwater detention pond labelled as "SB1" on map titled "Figure 5 Erosion Control Plan" (Martin Findlater & Associates dated February 2003) submitted in the Statement of Environmental Effects for the development dated February 2003.

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 1

Pollutant	Units of measure	100% concentration limit
Suspended soils	Mg/L	50
Oil & Grease	Mg/L	10
PH	PH	6.5 to 8.5

L6. Noise limits

L6.1 Prior to the commencement of construction activities, the licensee must submit an Excavation 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 impact exceed 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;
- (i) extent of noise monitoring;
- (j) construction timetabling;
- (k) numbers of vehicles proposed to transport extracted material off site;
- (l) position and size of stockpile of excavated material;
- (m) procedures for notifying residents of construction activities likely to affect their noise and vibration amenity; and
- (n) contingency plans to be implemented in the event of non-compliances and/or noise complaints.

L6.2 Construction activities shall be restricted to the hours of 7.00am to 6.00pm (Monday to Friday); 8.00am to 1.00pm (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:
- (a) 8am to 12pm, Monday to Saturday (except on Public Holidays); and
 - (b) 2pm to 5pm 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.
- L6.4** The excavation works and removal of excavated materials from the site must be completed within a continuous period of 40 working days excluding Saturdays (after 1pm) , Sundays and Public Holidays).
- 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

01 Stormwater/sediment control

01.1 Extraction Phase

01.2 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).

02 Dust

- 02.1** 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.
- 02.2** Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.

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 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

Pollutant	Units of measure	Frequency	Sampling Method
Oil & Grease	mg/L	Daily during any discharge	Grab sample
Total suspended solids	mg/L	Daily during any discharge	Grab sample
PH	PH	Daily during any discharge	Grab sample

M3 Monitoring Locations 1

M3.1 Monitoring at monitoring point 1 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.

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
- 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 placing place.

Note: The Clean Air (Plant and Equipment) Regulation 1997 requires testing for certain purposes to be conducted in accordance with test method 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.

REPORT:

Applicant: Icehot Pty Ltd
Owner: Icehot Pty Ltd
Location: Lot 119 DP 29195, Lot 142 DP 29195, No. 35 Panorama Drive Tweed Heads West
Zoning: Partly 2(b) Medium Density Residential and 7(l) Environmental Protection (Habitat)
Cost: \$13,252,000.00

BACKGROUND:

Council is in receipt of a development application over the subject land for multi dwelling housing consisting of 127 residential units. The land is located at the intersection of Scenic Drive and Gull Place and also has a frontage to Panorama Drive, Tweed Heads West.

Council considered a report in relation to the subject development on Wednesday 5th November 2003 and resolved: -

"That in the view of the letter from the Department of Infrastructure Planning and Natural Resources to Council dated 30 October 2003, that DA03/0273 for Multi Dwelling Housing Comprising 127 units at Lot 119 DP 29195, Lot 142 DP 29195, No.35 Panorama Drive, Tweed Heads West be referred to the Minister for Infrastructure, Planning and Natural Resources for determination."

As such the development application was referred to the Minister and the applicant was advised of this action. Subsequently the applicant indicated his intention to reduce the height of the proposed development to comply with the height limitation for the site, and no longer require the use of State Environmental Planning Policy No.1 - Development Standards to vary the height limitation. This is able to be achieved without reducing the number of storeys, rather modifying the height of storeys and the roof design.

The Department of Infrastructure Planning and Natural Resources have advised Council in writing that the effect of this change will be that the consent authority power for the proposed development will be Council.

The Current Proposal

The proposed development involves the erection of two buildings one being for a 'tower building' containing 106 units. This building consists of eight levels of residential accommodation and a basement for car parking. The units in this building comprise of 8 x 1 bedroom units, 86 x 2 bedroom units, 6 x 3 bedroom units and 6 x 3 + study/bedroom units. One of these two bedroom units is proposed to be a manager's residence.

The 'tower building' is accessed from Gull Place. The 'tower building' is proposed to be at RL 25m AHD to the top of the roof, thereby complying with the height limitation of the site.

The second building is for 'terrace units' containing 21 units comprising 20 x 2 bedroom units and a penthouse. This building is connected to the 'tower units' by a lift from the basement. The 'terrace units' step down the site from Panorama Drive with three levels of residential accommodation.

The 'terrace building' is accessed from Gull Place via the basement with no vehicle access from Panorama Drive. The 'terrace building' is designed to comply with the three storey height limitation.

The proposed development is to be constructed in one stage. The earthworks involved in constructing the multi dwelling housing, being the removal of approximately 67,000m³ of material, resulted in the application being assessed as integrated development requiring a permit from the Environment and Protection Authority.

While the applicant has not nominated the proposal as being housing for 55 + the proposal has been designed with all of the amenities future occupants in this age group would seek such as pool/recreation BBQ area and library/reading room area.

The applicant has submitted that the proposed development would have a live in manager and also result in the employment of 5 people for the daily running, management and maintenance of the complex.

Local Environmental Study and Amendment No.34 of the Tweed Local Environmental Plan 1987

The land was the subject of an amending local environmental plan in 1991 being Amendment No.34 to the Tweed Local Environmental Plan 1987. The aims of the Amendment Plan were:

- a) *to rezone land in the West Tweed Heads locality from zone 2(a) (Residential A zone) to zones 2(b) (Residential B zone) and 7(l) (Environmental Protection (Habitat) zone) under Tweed Local Environmental Plan 1987; and*
- b) *to amend the map marked "Tweed Local Environmental Plan 1987 – Heights of Buildings" to impose height restrictions on land in the West Tweed Heads locality.*

To amend the Tweed Local Environmental Plan 1987 in this regard, Council resolved that a local environmental study be prepared to determine the feasibility of rezoning the land from 2(a) Residential Zone to 2(b) Residential Zone. In this regard a consultant was commissioned by Council at the applicants expense to prepare the Environmental Study.

The Draft Plan was publicly exhibited and referred to the relevant state government agencies. Council considered a report in relation to the Draft Plan on 6th June 1991 and resolved:

- A. *Council amend the exhibited draft plan as outlined in this report summarised as follows:*
- i) *Change the 7(d) Environmental Protection (Scenic Escarpment) Zone to 7(l) Environmental Protection (Habitat) Zone.*
 - ii) *Council amend the map marked "Tweed Local Environmental Plan 1987 Heights of Buildings" to incorporate height restrictions outlined in this report. (in part)*

Development Guidelines for the Site

The local environmental study recommended the following summary of development guidelines for the site.

(1) The built form on the existing quarried floor area should either:

- a) *Maintain the dramatic visual effect currently provided by the quarried face; or*
- b) *Restore the more gradual sloping/stepping down appearance of the natural land form.*

In relation to (a), buildings should be either low rise (maximum three storeys above existing ground level) such that much of the scarp remains as a visible backdrop, or medium rise (maximum height of about RL 25m to approximately match the height of the quarry face) and sited so as to present a strongly vertical façade along the Scenic Drive frontage and at the scenic Drive/Gull Place corner of the site. The objective would be to maintain the dramatic visual effect of a high vertical wall within the vista along Scenic Drive and would have to be achieved with a high standard of design and architectural treatment (particularly for any façade above three storeys above finished ground level).

The built form on the elevated parts of the site should maintain a view of a heavily treed ridgeline with buildings set among trees. Buildings should not be higher than a single storey level (ie. 4.5 metres including roof) above the level of Panorama Drive and three storeys above finished ground level. A mixture of building heights would be most desirable.

In relation to (b), buildings should be no higher than a single storey level (ie. 4.5 metres including roof) above the level of Panorama Drive and

three storeys above finished ground level. A mixture of building heights would be most desirable.

- (2) *Any building or structure on the site should be of height less than the height of the existing tree canopy and should be constructed and finished with materials which blend in with the colours (greens, greys, browns, etc) and textures (timber etc) of the natural elements of the site.*

Except that the walls of any medium rise building on the quarry floor could be finished in materials with a rich earthy colour (eg. cream, brick red, etc) if the dramatic quarry face visual effect is being sought.

- (3) *The existing remnant forest vegetation in the southern corner of the site should be retained.*

- (4) *No tree on the site which:*

(a) *is of a rare or threatened species, or otherwise.*

(b) (i) *has a minimum circumference of 150cms measured at chest height from the adjoining ground level; or*

(ii) *is not less than 10 metres high;*

should be cut down, lopped, removed or otherwise injured or destroyed without the express permission of the Council.

- (5) *Building approval(s) should be subject to the following geotechnical requirements:*

(a) *Weathered and eroded crests of all rock slopes to be battered back and designed to prevent further erosion.*

(b) *Rock slopes to be cleared of loose material, inspected and where necessary, their soundness improved by localised support such as masonry infill or dowels.*

(c) *Stormwater drainage to be designed to prevent slope erosion or instability.*

(d) *A foundation site investigation to be carried out to determine foundation levels and design parameters, particularly in the soil areas.*

(e) *Foundations and retaining structures to be designed to take account of down-hill creep in the surface soils.*

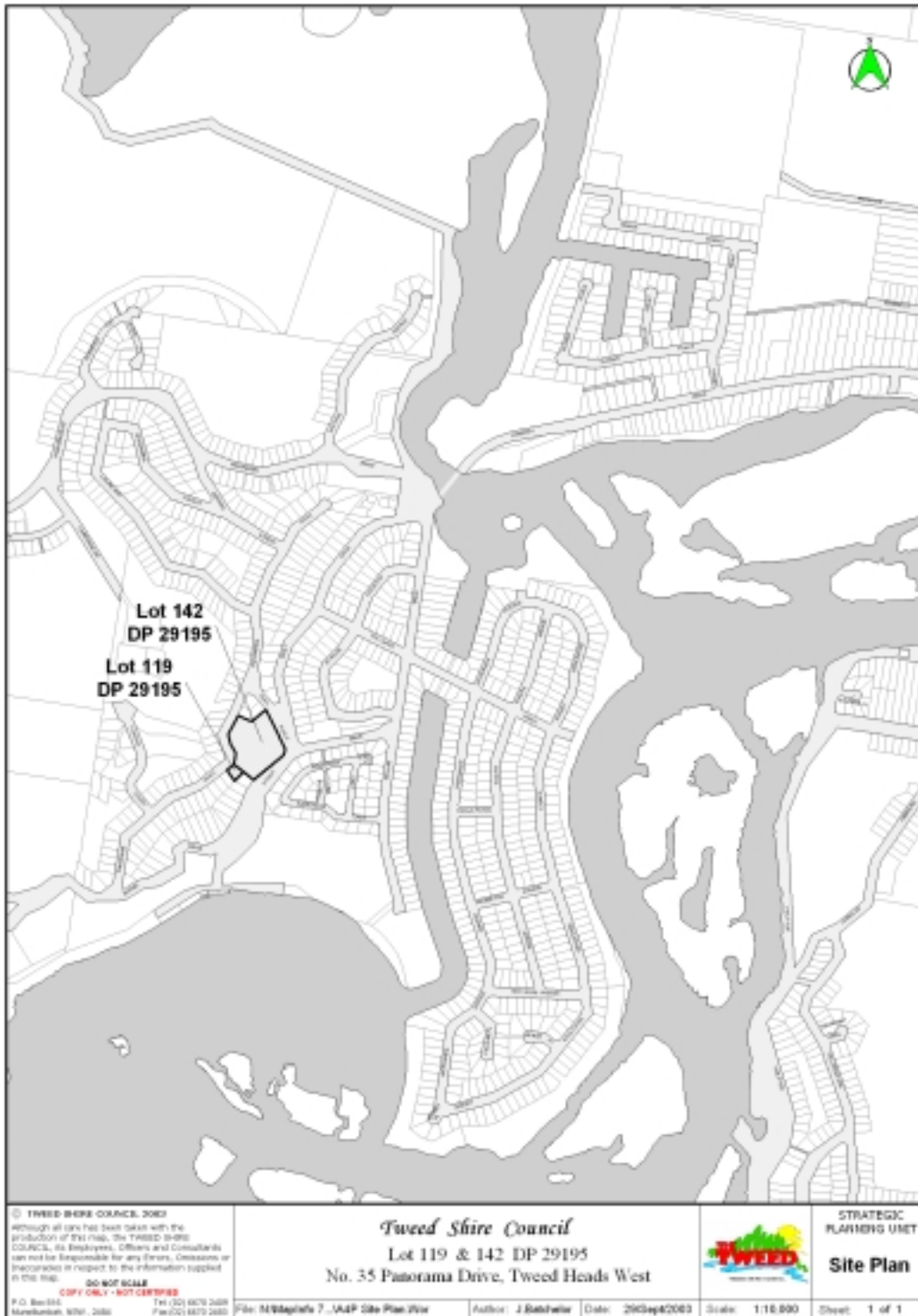
- (f) *Stability analyses to be carried out for all structures proposed to be placed above the quarry slopes.*

Following the gazettal of the Draft Plan on the 17/9/1991 the subject land has been identified as being for medium density residential development at the nominated height.

Tweed Local Environmental Plan 2000

The controls that were adopted for the site under Amendment No.34 were carried over to the Tweed Local Environmental Plan 2000. The proposed development application attempts to adopt the identified controls and form a proposal within the above outlined development guidelines.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

The subject land is partly zoned 2(b) Medium Density Residential and 7(l) Environmental Protection (Habitat) under the Tweed Local Environmental Plan 2000. The area of the land the subject of the proposed multi dwelling housing is zoned 2(b) Medium Density Residential. The proposal does not involve any works in the 7(l) Environment Protection (Habitat) zone.

The objectives of the 2(b) Medium Density Residential zone are:

- *To provide for and encourage development for the purpose of medium density housing that achieves good urban design outcomes.*
- *To allow non-residential development which supports the residential use of the locality.*
- *To allow for tourist accommodation that is compatible with the character of the surrounding locality.*
- *To discourage the under-utilisation of land for residential purposes, particularly close to the Tweed Heads sub-regional centre.*

The definition of multi dwelling housing is:

"More than one dwelling on an allotment, but does not include a rural worker's dwelling."

The proposed development is considered to be consistent with the zone objectives as the proposal is for medium density residential housing that achieves urban design outcomes identified as being suitable for the site. The proposal has been designed with regard to the design principles contained in State Environmental Planning Policy No.65 – Quality of Residential Flat Development (SEPP65) and is considered to achieve a high design outcome for the site. The proposal and its urban design qualities are addressed in full in this report. The proposed development is not for tourist accommodation.

The proposed development does not result in under utilisation of the site as the proposal utilises the building envelope identified for the site to maximise the density of residential units provided without compromising the urban design outcomes for the site.

It is considered that the proposed development is not in conflict with the objectives of the zone and may be considered by Council.

Clause 15 of the TLEP states that consent should not be granted for development on any land unless essential services are available or arrangements satisfactory to the consent authority are made. The applicant submitted that essential services are available to the site.

Council's Water and Sewer Engineer did not raise an objection to the proposed development.

Clause 16 of the TLEP provides a building height plan for the subject site and identifies the land as having a building height limitation of three stories in the elevated area near Panorama Drive and a 25mAH height limitation in the area previously quarried fronting Scenic Drive.

The proposed development has been redesigned to ensure compliance with the height limitation for the site. It is recommended that a condition of consent be imposed to ensure the development does not exceed these height limitations.

Clause 17 of the TLEP requires a social impact assessment where the consent authority considers that the proposal is likely to have a significant social or economic impact in the locality. The applicant has provided a socio economic impact assessment for the proposed development.

Council's Strategic Planning Unit provided comments on the Socio-Economic Statement and raised no objection to the proposal and its location. The only issue the proposal raises in this regard is incremental increase in demand on services and facilities and difficulty in meeting the demands of an expanding community. The Strategic Planning Unit advised that this issue would arise from any other development catering for the 50+ age group.

Clause 22 of the TLEP is applicable as the subject land fronts a Council designated road, this being Scenic Drive. The consent authority may consent to a development application providing it is satisfied in relation to the following relevant provisions.

- (4) *The consent authority 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 or 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 movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded, and*

- (c) the development, or proposed access to it, will not prejudice any future improvements to, or realignment of, the designated road, and*
- (d) where the land is in Zone 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 practicable, access to the land is provided by a road other than the designated road, and*

The applicant submitted an engineering report that addressed traffic issues and a statement of environmental effects raising the following points in relation to this clause.

- Access to the site is proposed from Gull Place, in accordance with the findings of the Local Environmental Study. No vehicular access is proposed from Scenic Drive.
- Traffic noise was not identified as a constraint to the development of the site for medium density housing purposes in the Local Environmental Study.
- Visual impacts have been considered from both the local impact and the distant views and an assessment provided.
- A detailed traffic assessment has been prepared and submitted.
- Traffic issues have been addressed in the Statement of Environmental Effects.

The provisions of Clause 22 are further addressed in this report and an assessment of the environmental impacts of the proposal on the local road network is addressed.

Clause 28 of the TLEP contains provisions in relation to development on land within the 7(l) Environmental Protection (Habitat) zone. As the proposed development does not involve any works on land zone 7(l) the provisions applicable to Council in considering the proposal are the following consent considerations.

- a) The likely effects 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, increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and
- c) a plan of management showing how any adverse effects arising from the development are to be mitigated.

The applicant has submitted a Flora and Fauna report assessing the impacts of the proposal on the natural environment. The submitted documentation is assessed further in this report under environmental impacts.

Clause 35 of the TLEP provides for the management of acid sulfate soils. The subject land is mapped as being Class 5 acid sulfate soils. The applicant has submitted that the development is unlikely to affect local groundwater conditions. Council's Environmental Health Surveyor has raised no objection in relation to this issue.

North Coast Regional Environmental Plan 1988

Clause 32(b) of the REP applies to the land as the land is covered by the NSW Coastal Policy 1997. The Council must take into account a number of documents when considering the proposed development. These documents are the NSW Coastal Policy 1997 and the North Coast Design Guidelines.

The North Coast Design Guidelines contain guidelines for tall buildings. These guidelines include general statements regarding overshadowing of public reserves and beaches, views and amenity. The North Coast Design Guidelines detail that public reserves and beaches should be protected from overshadowing and any wall effects which may adversely affect the view and amenity of others from tall buildings. Careful consideration is also to be given to the impact of such buildings or surrounding buildings on the local coastal environment on the views to ridges and backdrops and on the image or sense of local identity of the town or locality in which they are proposed.

The proposed development is not overshadowing any public reserves or beaches. The site is distanced from the Terranora Broadwater and the River and there are no immediate reserves adjoining the site. The proposed development has been assessed in terms of the height of the building ridgeline and backdrop and the existing Eucalyptus.

The plans and documents submitted to Council detail that the tall building is still lower than/equivalent to the quarry wall and as such the existing backdrop of Eucalyptus on the hill will remain as a main feature and landmark in that locality.

The building form as designed is broken up into smaller elements and has some stepping through the façade to provide variety in the appearance of the

building. These features as well as the proposed colours in the façade assist in making the development blend in with the natural environment.

The design features of the development are further assessed in this report and it is considered that they are not in conflict with the North Coast Design Guidelines.

In addition, Clause 32(b) requires an assessment of the proposal in relation to the NSW Coastal Policy. This is addressed further in this report.

Clause 43 of the NCREP relates to urban residential development and this clause states that council shall not grant consent for residential purposes unless: -

- (a) It is satisfied that the density of the dwellings have been maximised without adversely affecting on the environmental features of the land,
- (b) That it is satisfied that the proposed road widths are not excessive for the function of the road,
- (c) That it is satisfied where development involves long-term residential use of caravan parks, the normal criteria for location of dwellings has access to services and physical suitability of the land have been met, and
- (d) It is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles.

The applicant has submitted that the density of the development is 1 unit per 96m² of site area. The proposed density appropriately maximises development of the site within statutory planning and environmental constraints whilst maintaining satisfactory density, amenity and recreational opportunities for residents. The applicant also submits that the erosion and sedimentation control measures that would need to be implemented with the proposal and that this will mitigate against any adverse impacts on the environment.

In response to this, it is considered that the proposal achieves the intention of Clause 43 of the REP as the development form as a tall building minimises the environmental impact onto the environmental features of the land which include the hill and escarpment and its vegetation, and instead utilises the area of the land that is scarred by the previous quarrying activity. Therefore, it is considered that the proposed density has been maximised without adversely affecting the natural features of the land. Issues to do with the suitability of the road environment and the local road network are further addressed in this report.

Clause 51 of the REP requires the concurrence of the Director-General of the Department for development applications for buildings over 14m in height. Council has assumed concurrence under the REP for developments that exceed 14m in height. Council's is able to consider development that exceeds

14m in height under the Tweed Local Environmental Plan 2000 gazetted height plan. Council is able to consider the proposed development.

State Environmental Planning Policies (SEPPs)

SEPP1 – Development Standards

The development application was originally lodged with a SEPP1 submission in relation to height, however the proposal has been redesigned to comply with the height limitations for the site. The proposed development does not require the use of SEPP1.

SEPP65 – Quality of Residential Flat Development

SEPP65 applies to the proposed development. This SEPP aims at improving the design quality of residential flat development in NSW and provide a number of design quality principles for which residential flat development should be assessed against. The applicant has submitted as part of the Statement of Environmental Effects an architectural statement addressing all the principles contained in this SEPP.

Principle No. 1 – Context

The applicant has submitted that context has been a strong influence in the development of the proposed design. The site is currently characterised by the “big scar” being the quarry face of a predominantly treed hill. On a larger scale the site is located on the edge of one of the many hill spurs that dominate the caldera of the Tweed Valley. The site is also dominated by the bulk of the Seagulls tower that sits on the alluvial plain below. The proposed design responds to this context and the intent of the LES for the site by infilling the quarry face and building within the steep cliff face context.

There has been an attempt within the design to maximise the development to within the quarry therefore minimising the visual impact of the development on neighbouring sites. Part of the development is located in the upper area of the site just above the level of the tower. The form of the building responds to the context by providing a new vertical face to the site much like the existing cliff but giving it more form and interest. The façade design has a random quality that provides a transition between the river plain and the forest hills in the background. In looking back at the hills, the view is dominated by large trees with the occasional house form jutting out beyond the greenery in a random display of colour and form. The design utilises a variety of curved verandah forms and screens and handrail types to provide a mosaic of colour and texture. The design is to create an effect that is a cross between the colours and forms of coloured leaves and sticks that you find on the forest floor along with the forms made out as the strata somewhat like a quarry face.

Comment

It is considered that the proposed development has been designed with considerable regard to Principle 1 being context. The architect has defined the key natural and built features in the area and attempted to come up with a suitable design in accordance with the desired future character as provided under Council's LEP.

Principle 2 – Scale

The applicant has submitted that the curved nature of the plan provides some exciting possibilities for the elevational treatment and the designers are keen to maintain a sense of unity by continuing the curves in plan and elevation using the balcony screens, balustrades and windows. In order to reduce the apparent height of the main buildings the structure has been capped with a sweeping curved skillion roof that cantilevers and floats visually above the main body of the façade. The wall behind would be largely glazed and recessed to maximise its impacts on the elevations from below. The building would also sit on a plinth of heavier weight and darker materials giving the appearance of 6 floors on the main curving façade.

The tower form would dominate the appearance from street level with the terraces above having a minimal impact on the scale of the development with them being recessed well back from the tower face. The scale of the building is somewhat reduced in bulk because the site is already dominated by a large quarry face. The design seeks to improve the amenity of the area by concealing this rock face and replace it with well articulated buildings and interesting building façade. In terms of the aspect to Panorama Drive the development has minimal impact with the building forms well below the allowable levels along the street. Views will be preserved to the horizon for all housing located on the upper side of Panorama Drive.

Comment

The applicant has addressed the issue of scale in relation to the proposed development and addressed the issues of bulk and height of the development in relation to the surrounding buildings and the environment. It is considered that the applicants have addressed Principle No. 2 adequately.

Principle No. 3 – Built Form

The applicant has submitted they have used a sweeping bell shape plan to its greatest potential. This results in the upturns to the balconies on the last 3 modules at the end of the building progressively lowering as they are placed higher up the façade. The balconies are also made slender at the ends to give the building a striking slick modern appearance that will be further enhanced by the thin ends of the cantilevered roof. The covered form of both the tower building and the terrace building will reduce or minimise impacts that

may have arisen due to the building setback lines. Only very small parts of the buildings are built up to the setback lines with the building receding well back as it curves around the side. The buildings offer excellent amenity to Gull Place in terms of streetscape and interest at street level. The building engages the public domain in a positive way with all units opening out towards Gull Place and Scenic Drive. The development also functions well with the ability to provide privacy at street level with raised planting areas and the recreational part of the site is contained behind the tower and one level.

Comment

The applicant has addressed the built form for the site and the buildings purpose adequately in terms of the alignment and setback and the proportions of the building and how they have manipulated the building elements. The applicant has also addressed the issue of public domain. It is considered that the proposed development does not have an adverse impact on the public domain, however has been designed in all respects to minimise impacts to the public domain.

Principle 4 – Density

The applicant has submitted that the main density of population for the site has been located adjacent to Scenic Drive and Gull Place within the old quarry void. This density is appropriate given the accessibility of all units to ground level on Gull Place. The development site will contain large areas of untouched areas of natural vegetation including the western part of the site, the lower and terrace configuration allows for reasonable densities while leaving large parts of the site for landscaping.

Comment

It is considered that the proposed development has achieved good density over the site and has achieved this density with minimal environmental impact to the features that have been identified over the site. The density is in accordance with what was identified with the LES for the site and it is considered to be sustainable in relation to the public infrastructure in the area, access to public transport in the area and availability of facilities.

Principle 5 – Resource, Energy and Water Efficiency

The applicant has submitted that the steep nature of the site and topography makes the site very difficult in terms of development and design. The design responds to this positively by retaining the large area of forest on the southern part of the site. As a trade off for this large area, the rest of the site has been utilised by modifying the topography to achieve the proposed larger building. The component of the site, the subject of the development, will involve extensive removal of material and this will allow the construction of the building. By dealing with the site in this manner it is possible to leave major

areas of the site as is. The flat areas that are formed as part of the civil works can then be utilised for the economic construction of units that have a great sense of amenity with access to breezes and light. The applicant has submitted that all of the units perform well passively having excellent orientation to either the north, east or the south. No units face the west and all of the units are well shaded with extensive eaves and overhanging and verandas. All of the units have extensive glazed areas that open out onto the verandas ensuring the units remain cooler in the summer with limited need for air-conditioning. The natural slope of the land to the west is capitalised upon, as the hill shades most of the buildings as the sun moves towards the horizon line in the afternoon.

Comment

The applicant has submitted energy efficiency ratings for the proposed units as part of the application. Their submission in relation to principle 5 acknowledges the environmental impacts during construction as part of the extensive earthworks, but identifies this as being a trade off to retain the majority of the site. It is considered that principle 5 has been addressed in the development.

Principle No. 6 – Landscape

The applicant has submitted that the main feature of the landscaping will be the preservation and enhancement of the area currently protected on the site by way of the environmental protection zone. It is proposed that a significant amount of the soft landscaping is provided along Scenic Drive and Gull Place in the form of raised planters that will provide privacy to those residents located on the ground floor level. These planters will also be utilised for larger trees that can provide a soft foreground to the tower units behind. The application is also accompanied by a landscaped architects report.

Comment

The proposed development has proposed a landscape design and adopted some deep rooting planting locations on the site that can be provided and not be impacted on by the basement. Landscaping has been designed having regard to privacy to residents as well as providing a suitable presentation of the development to the public domain. Landscaping has also been provided in the areas where the development adjoins other residential properties and has respected the neighbours amenity in that regard. It is considered that the proposed design has had full regard for principle 6.

Principle No. 7 – Amenity

The applicant has submitted that amenity is the single most important design element for the project that makes the project not only desirable but aesthetically pleasing. The curved forms have been utilised to maximise the

views the site offers from each unit by curving the building. The external perimeter is utilised for glazing of verandah areas thereby making each unit highly desirable and comfortable. The concept also ensures that the most active and interesting face of each tower and terrace is viewed from the street. Conversely the curved shape restricts each units exposure to the harsh western aspect which can be utilised only by pedestrian access and vertical circulation. All of the internal layouts of units ensure living areas have the best aspect along with the master bedrooms. The internal areas are characterised by large open plans from front to rear with wet areas restricted to the area of each unit. The whole site is entirely accessed as a pedestrian from Gull Place with its lift servicing each building and the car park below.

Comment

The proposed developments optimised amenity features such as room dimensions and shapes, access to light, ventilation, visual and acoustic privacy, the outlook and ease of access throughout the development as being addressed by way of the lifts and the connectivity between the terrace units and the main building. It is considered that the applicant has adequately addressed principle 7.

Principle No. 8 – Safety and Security

The applicant has submitted that the design offers excellent on site and off site security. External security is imposed by providing some passive surveillance with the public domain including Gull Place and Scenic Drive. Pedestrian traffic will also increase in this public zone and the quality of the space facing Gull Place will ensure that security is improved along these boundaries. The underground basement car parking will have restricted access and the external common areas to be utilised by residents and guests are located one level above Gull Place. Access to these areas will be restricted via the main reception entry area. The applicant has submitted that while there will be limited outlook to the west up onto Panorama Drive due to the topography, the situation will not be any worse than what currently exists with the street well supervised to overlooking of the houses on the upper side of Panorama Drive.

Comment

It is considered that the proposed development has addressed safety and security. The proposed development has a high level of exposure and overlooking of the public domain area as that is the orientation of each of the units. The issue of on site safety and security has also been adopted in the design. It is considered that the applicant has adequately addressed principle 8.

Principle No. 9 – Social Dimensions

The applicant has submitted that the application will suit many of the lifestyles of many people within the community and will offer inexpensive units that have access to the following: -

- Great views
- At grade access to local shops on the opposite side of Gull Place
- At grade access to Seagulls
- Close proximity to Tweed Heads via Kennedy Drive
- A range of unit configurations to suit various lifestyles
- Adequate parking with direct access to a major service road
- Direct access to the Terranora recreational area
- Excellent comfortable location
- Excellent on site recreational facilities including pool, open space and amenity areas and recreation rooms

Comment

It is considered that the applicant has had regard for the demand for social dimensions of the future residents on site regard providing services and facilities to enable residents to establish relationships. The applicant has also identified all of the other social, infrastructure available in and around the area. Social impacts of the proposal have been assessed. It is considered that the applicant has adequately addressed principle 9.

Principle No. 10 – Aesthetics

The applicant submitted that the development offers a wonderful opportunity to fix what is an unattractive and difficult site and replace it with a dynamic building form that responds to its natural context. The quarry face will disappear and be replaced by visual interesting and dynamic form characterised by the sweeping nature of the plan and overlaid by a rich deeply textured coloured façade. The development will infill the side of the hill which is characterised by a large visual hole in the natural and built landscape. The main façade will now dominate the view from Scenic Drive as one drives west and up towards Terranora. The buildings main façade will be a great visual appeal and interest. The buildings will be modern pieces of architecture that respond well and utilise materials of their time. They will have a light visual quality due to the use of materials and the articulation of the roof façade.

Comment

The applicant has had regard for the aesthetic of the building design and address elements such as the textures and materials and colours and responded to the environment and context that the site provides. Principle 10 has been adequately addressed.

Conclusion

The proposed development meets the requirements of SEPP65. It is considered that the proposed development would provide a long-term residential housing asset to the neighbourhood, benefiting the local communities and the environment. It is designed to improve the adjacent streetscapes and public open spaces when viewed from Scenic Drive and Gull Place and that the proposal achieves the intention of the planning policies for the site.

SEPP71 – Coastal Protection

The subject site is within the coastal zone and as such SEPP71 – Coastal Protection applies. The site is not affected by any environmentally sensitive location by the policy. While the proposed development exceeds 13m in height it is not considered to be state significant development as the proposal does not require the use of State Environmental Planning Policy No.1 - development Standards. This is clearly detailed in the letter from Department of Infrastructure Planning and Natural Resources dated 25th November 2003 and attached to this report.

Clause 8 provides for the matters for consideration of Council. The proposed development is considered to be in accordance with the aims of the policy. The proposed development is not adjacent to any foreshore area and does not impede any form of public access to coastal foreshore reserves, beaches or other coastal attributes. It is not in a coastally visual prominent location, adjacent to any beach or coastal vegetation, marine environment or rock platform.

The main aim of the policy that is considered to be applicable to the development application is contained in Clause 2(i)(k) which reads *“to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area”*.

It is considered that the proposed development is consistent with this aim as the particular site has been identified by way of the local environmental study process as being suitable for a building of this scale, type and bulk and that the development is appropriate. The proposed development protects the scenic quality of the surrounding area by being sited below the Eucalyptus contained on the ridgeline, the natural qualities of the site which are covered by the environmental protection area are maintained.

In relation to the other heads of consideration under Clause 8 the proposed development does not impede any pedestrian access to a coastal foreshore. It is considered to be a suitable development for its location as identified under the Tweed LEP, it is not likely to cause any detrimental impact or significant loss of views from a public place. The proposed development does not impact

on the environment of any threatened species or marine vegetation. The applicant has submitted that in relation to the matters relevant under Clause 8:

-
- The site is located approximately 300m away from natural waterways
- The proposal does not generate the need to provide any new public access to or along a foreshore. The only possible public access to the foreshore would be to Boyds Bay to the south of the site along a partly unsealed road. This road leads to an oyster lease and processing plant where public access is not desirable
- The design of the development and its visual impact have been addressed and considered to be supportable
- The site is not affected by coastal processes
- The management measures would be implemented to minimise impacts on water quality
- The proposal would not have a significant impact on flora and fauna
- There are no known heritage items or in close proximity of the site

The applicant has also submitted that in relation to part 4 of SEPP71 the proposal would not affect any right of access to public of the public to a foreshore. That effluent would be disposed of by way of a reticulated system and that the development will not discharge untreated sewer to the sea or a creek.

It is considered that the proposed development generally complies with the provisions of SEPP71. There are a number of matters for consideration contained in Clause 8 of SEPP71 which are further addressed in this report in relation to any likely environmental impacts.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

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

This amendment does not affect the proposed development as there are no storeys that incorporate a space in excess of 4.5 metres. The natural ground level and finished ground level for the ground floor would be the same. As such the amendment does not have an affect on the proposed development.

(a) (iii) Development Control Plans (DCP's)

DCP2 – Site Access and Parking

The applicant submitted an assessment of the proposed development in relation to the provisions of Development Control Plan No.2 – Site Access and Parking. The on site car parking complies with the provisions of DCP 2 however the applicant is seeking a variation on the number of bicycle spaces.

Standard	Requirement	Complies/variation
On site Car Parking	1.5 per unit @ 127 units = 191 of which 25% for visitors = 48 visitor spaces	192 spaces are provided in the basement. The proposal complies. The 48 visitor spaces are also to be provided in the basement. A condition of consent will require these 48 visitor spaces to be marked and signposted as for visitors. The visitor spaces are to be the first block of parking on entering the basement, with final agreement prior to issue of a construction certificate.
Bicycle parking	2 per unit = 254	45 proposed, variation sought. While the applicant has marked 45 spaces in the security caged enclosures in the basement, it is considered that there is at least space for a further 15 bicycle.
Delivery Vehicles	1 per 50 units = 3	3 loading bays are located at ground level adjacent to the roundabout. Proposal complies.

The variation to the bicycle parking is considered to be able to be supported as the level of utilisation of the bicycle enclosures can be managed by the body corporate. While the proposal is for 127 units it is unlikely that there would be a demand for 254 bicycle spaces. The proposed bike enclosures are considered to be adequate for the proposal.

The applicant has also identified in this section of the submission that the basement is only to provide two car wash bays instead of the 13 that would be required if calculated at the rate of 1 per 10 units. It is noted that this standard does not strictly apply to the proposal. The applicant has submitted that given the proximity to 24 hour car wash facilities on Kennedy Drive the need for 13 car wash bays is unlikely to be generated. The provision of two car was bays is considered to be adequate for the proposal.

The proposal complies with the on site car parking requirements of DCP 2.

DCP6 – Multi-Dwelling Housing

DCP 6 only applies to multi dwelling housing development up to three storeys in height. This DCP does not apply to the proposal and does not provide any specific performance criteria applicable for the assessment of the development application.

The applicant has submitted that the design and amenity objectives set out in this DCP were considered during the design process and the resultant design reflects the performance criteria.

The performance criteria contained in DCP6 are a general statement of means of achieving the objectives. They are not meant to be overly limiting in nature. Instead, they provide designers and developers an opportunity to work through a variety of design criteria. Not all performance criteria would be applicable to every development.

The performance criteria considered to assist in the assessment of the proposed development include the following.

- Site analysis - taking into consideration likely impact on surrounding development particularly with regard to overshadowing privacy and obstruction of views. Topographical features of the site and surrounding properties such as slope, existing natural vegetation and opportunities for the creation of views and vistas. The character of surrounding development particularly street setbacks, subdivision and road patterns. Opportunities to link into existing open space, pedestrian and cycle networks.

Comments

The applicant has submitted that the primary factors that have determined the building location, orientation and footprint are the site topography and available views. The portions of the site that can be built on are essentially the quarry floor, and the terrace adjacent to Panorama Drive.

As the site presents topographical constraints the proposed development can only occupy the areas as identified in the local environmental study. This has resulted in a proposal that is orientated to the public streets being Gull Place and Scenic Drive. The development therefore does not overlook adjoining property. The applicant has provided heights in relation to adjoining land that confirms that the proposal does not obstruct views of adjoining properties. The development is also orientated such that the shadow impacts of the development do not reduce amenity to adjoining residential land.

The proposed development does not impact on the natural vegetation area contained in the 7(l) Environmental Protection (Habitat) zone. The development achieves the opportunity for views for the proposed

development. The proposal has also been designed to comply with the building setbacks. The site does not present a strategic pedestrian or cycleway link in the locality however the proposal includes pedestrian link and pathway along Gull Place and connecting to Panorama Plaza. This performance criteria appears to have been satisfied.

- Site layout - integrating with the surrounding environment through buildings facing streets and public open spaces with their entries visible, buildings streetscapes and landscapes relating to the site topography and to the surrounding neighbourhood character. Visual links to views or features of significance are created or maintained. Dwellings designed to maximise solar access to living areas and open space area. The principle area of private open space is located away from the public street frontage.

Comment

The applicant has submitted that the layout is restricted by the identified site access restrictions from the Local Environmental Study process. The opportunity for views towards the south east, east and north east has also influenced the layout of the proposed development. The applicant has submitted that the site topography, location and orientation of adjacent dwellings and the height controls ensure that the development would have an acceptable impact on surrounding development.

The proposed development design is limited by there being only one suitable access to the site. The proposed development has been designed with regard to the height limitation and orientated the proposed units to capture any available views, with consideration of adjacent dwelling sites, levels and views. This performance criteria appears to have been satisfied.

- Site Density - in areas subject to redevelopment, new development is compatible with the desired future character of the locality.

Comment

The applicant has submitted a comparison of the proposed development with relevant controls contained in Development Control Plan No.18 – Tweed Heads in relation to size of balconies and total open space. The proposal has a total landscaped area of over 9000m² with each unit having a balcony ranging in area from 15m² to 29m². The provisions of DCP 18 that provide for developments of this scale would require units to have a balcony of a minimum area of 8m² and 3135m² of open space.

The proposed development is of a density of one dwelling per 96m². Due to the building envelope the site is able to support a substantial landscaped area.

Given the site has no specific density controls or alternate controls for landscaped area, it is considered that the comparison with other controls for similar developments is justified. The application clearly exceeds the density requirements for other similar developments. This performance criteria has been satisfied.

- Streetscape building appearance and front setback - the scale and appearance of new development is compatible and sympathetic to existing development in the locality, or desired future character of the locality, particularly on the perimeter of the development site and where that locality or development site has some heritage significance or distinctive character.

Comment

The applicant has submitted that streetscapes are defined by a combination of public elements and private elements. Public elements are the street verges and footpaths and private elements are street setbacks, fences and building facades.

The applicant has submitted that the buildings offer excellent amenity to Gull Place in terms of streetscape and interest at street level. The buildings would be largely below the level of Panorama Drive and therefore the impact on this streetscape would be minimal. The proposed setback would be a minimum of 6 metres from all property boundaries which complies with Council's building line policy.

The proposal has a curved building line that results in the front setback increasing from 6 metres in sections and following the street frontages rather than presenting as a flat frontage. This improves the presentation of the building to the streetscape with relief being provided in the design of the façade of the building.

The public elements of the streetscape would not be compromised by the development as Council's Traffic Engineer requires the provision of footpaths and pram ramps for a safe and appropriate pedestrian environment. This performance criteria has been satisfied.

- Amenity and Character - setbacks are progressively increased as wall heights increase to reduce bulk and overshadowing while maintaining adequate daylight and sunlight. Building siting and height that are related to land form, with minimal cut and fill. Building forms that enable a sharing of views with neighbours. Building bulk that is generally distributed to reduce impact on neighbours and on the public street. Building heights similar to those in the public streetscape, with higher buildings sited behind and out of direct view from the street. Adequate separation between facing dwellings for privacy.

Comment

The setbacks of the proposed building increase by way of the curved building façade to the frontage. The side setbacks vary based on the position of the building on the site and topography. The overshadow impacts from the proposed development mainly occur within the site due to the orientation of the site and the topography (ie quarry wall). Scenic Drive is also covered by shadow at 3pm midwinter. The areas of shadow impact do not impact on any public open space or private residences. It is considered that the proposal does not generate an adverse shadow impact.

The siting and height of the proposed building has been designed with regard to the landform and sites the proposed tower building no higher than the quarry wall. It is also considered that the terrace units are sited with the land form when viewed from Panorama Drive.

The proposed development does require significant earthworks to enable the construction of the basement. These earthworks have been assessed by the Environment Protection Authority and more detailed assessment on this aspect of the development is addressed in this report.

The proposed buildings are considered to enable view sharing and due to the topography the buildings do not obscure current views.

Distribution of the building bulk is adopted into the design by way of the variable building setback to the public street. Also building bulk is attempted to be reduced by way of the proposed façade treatment.

It is considered that the proposed development provides adequate separation from adjoining residences and achieves the amenity and character performance criteria.

- Views visual and acoustic privacy – Existing views should not be substantially affected where it is possible to design for the sharing of views. The general objective is for views not to be obscured by new development. Direct overlooking of main internal areas and private open spaces of other dwellings is minimised by building layout, location and design of windows and balconies, screening devices and landscape or by remoteness. Internal living and sleeping areas designed to be protected against uncontrollable high levels of sound through the building structure.

Comment

The proposed development does not change the views from residences to the west of the site, on the opposite side of Panorama Drive as the units are predominantly below the level of Panorama Drive. The dwelling located at

120 Panorama Drive is two storeys with a balcony on the second level. The level of the balcony is higher than the proposed development.

There is a vacant allotment located at 52 Gull Place that has a level building pad at RL22mAHD. This property is the immediate neighbour to the proposed development. The proposed development provides a landscape buffer to this property that ranges in width from 15metres to 5metres. The proposed building is at its closest point 20 metres from the property boundary with no.52 Gull Place. Due to the curved building shape and setbacks the future dwelling house on 52 Gull Place will be able with design achieve some views and maintain good solar access to the north due to the orientation of the allotment.

In terms of visual impacts in the locality it is acknowledged that tall buildings have the potential to impact on the views of the surrounding residents. The majority of the residences in the locality are unable to obtain direct views of the proposal due to the steep topography of the site. The vacant block located at 52 Gull Place will be able to overlook the development and therefore it is considered that the landscaping buffer needs to be dense to remove the sense of being located adjacent to a tall building. The proposal is considered to have addressed this performance criteria.

Conclusion

The above identified performance criteria have been considered in relation to the assessment of the proposed development. These criteria provide a guide as to the performance requirements for multi dwelling housing. It is considered that the proposal has have regard to these criteria and been designed to minimise likely impacts.

Development Guidelines for the Site

As detailed in the background of this report there were development guidelines identified for the site through the local environmental study process. The proposed development has been assessed and it is considered that it is a very positive response to the significant and adverse visual effect currently provided by the quarry. The proposal has been designed to approximately match the height of the quarry face.

The design also achieves the guideline of a strongly vertical façade along the Scenic Drive frontage and Scenic Drive/Gull Place corner of the site. The proposed development is considered to achieve a high standard of design and architectural treatment.

The 'terrace units' have been designed to be no higher than a single storey above the level of Panorama Drive. The 'terrace units' also have a mixture of height that was identified as being most desirable in the guidelines.

Exterior finishes of the proposal will be finalised prior to issue of a construction certificate, however it is noted from the architectural statement that the greens, greys, timber and earthy tones expressed in the guidelines are the intent of the applicant.

The proposed buildings maintain the heavily treed ridgeline. The 10-15 brushbox and eucalypts to be removed are less than 10 metres in height. The only tree to be removed that does not comply with the guideline is the one significant tree that is assessed in detail under the natural environment section of this report. The guideline allows for the removal of this tree with the approval of Council.

There are a range of geotechnical guidelines identified that the applicant has addressed as part of the Geotechnical and stability report.

It is considered that the proposed development has satisfied the development guidelines as identified through the local environment study process for the site.

DCP39 – Energy Smart Homes Policy

The applicant has provided NatHERS certificates for the proposed development. The proposed units meet the required 3.5 stars. The proposed development is to have a gas hot water system complying with the DCP requirement.

DCP45 – Socio-Economic Impact Assessment

The proposed development required a socio-economic impact assessment as it is multi dwelling housing with more than 50 units. The applicant prepared a socio-economic assessment that Council's Strategic Planning Unit has assessed. The statement covers the issues required and generally speaking there are no major areas of concern on social or economic grounds.

The use is considered to be justified by its location adjacent to a local commercial centre with good public transport access. The development would contribute to forming a sustainable local neighbourhood centre and reducing low density residential sprawl.

DCP47 – Cut and Filling on Residential Land

DCP 47 is applicable to residential development in the Shire. As the proposed development involves substantial earthworks a geotechnical and site stability assessment of the site has been undertaken. The proposed development was also referred to the Environment Protection Authority (EPA) as the amount of earthworks requires a permit. The EPA required further information that was assessed and conditions imposed as general terms of approval.

It is considered that in the event that Council is of the view to approve the proposal a range of conditions would be imposed in relation to the earthworks. The proposed development complies with DCP 47 as the required study has been undertaken and documentation provided.

(a) (iv) Any Matters Prescribed by the Regulations

NSW Coastal Policy 1997

The subject land is affected by the NSW Coastal Policy. The applicant has submitted that the application is consistent with the relevant provisions of the policy, in particular: -

- The proposal would not alienate or impede access to any public land, there would no shadow impacts on public open space. The proposal would achieve the intent of the height controls and contextually the building design suitably response to its environment with respect to siting, bulk and height while contributing positively to the lack of future character of development in the locality in terms of articulation of building facades, choice of building materials, energy efficient design and landscape treatment.

Comment

The proposed development is considered to be generally consistent with the objectives and strategic actions contained in the NSW Coastal Policy. The site is not identified as being in an area of high natural or built aesthetic quality. The site is proposed to be developed in accordance with the expected use of the site and is clear of the land within the 7(l) Environmental Protection (Habitat) zone.

(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

Visual Impact

Consideration has been given to a number of aspects of visual impact from the proposed development. The proposal has the visual impact of being development of a site that has been a disused quarry for a number of years, and the visual impact of the design of the development.

The site will change from being a disused quarry to a residential development. The proposed building has adopted the development guidelines intended for the site reflecting the attributes of the natural environment, rock and vegetation. The site is prominent, with frontage to public roads. The proposed development will substantially change the visual amenity of this area to the travelling public.

The proposed buildings have been designed with regard to the attributes of the site. The applicant has indicated that this is also to be reflected in the exterior finishes to be adopted in the building. The roof material for the development is to be of a low reflectivity so that the roof does not impact on the future residents in the 'terrace units', adjoining residences or detract from the vegetation screening.

The applicant has indicated that there are a number of greens and greys that could be suitable for the roof material. This would not compromise the energy rating of the development as the use of insulation will still ensure compliance. These colours assist in ensuring the roof is appropriate to the natural environment when viewed through the trees.

The face of the buildings are to incorporate balconies of lighter colour, with panels over handrails to be in green, greys and ochres, in keeping with the natural environs.

The base of the 'tower building' is intended to be dark, reflecting a rock base. The colours through the façade of the building change, becoming lighter and finishing with the top level of the building using more glass being lighter, thereby altering the bulk and appearance of the building.

Rock retaining walls are to utilised on the site instead of concrete or similar. This is to reflect the rock nature of the quarry. The end walls of the proposed building are to be provided with differential treatment breaking up the end wall towards Gull Place, however the Scenic Drive end wall is not able to be easily viewed from a public place.

The use of texture and colour, differential setback and play of light across the building façade will ensure the development is not of a blocky regular appearance. Visually the development is considered to achieve a high standard for the site.

Loss of Views

The assessment of the proposed development under the performance criteria for DCP 6 details how the proposed design has considered a site analysis and limited obstruction of views due to the topographical features of the site.

Due to the heights of adjoining and surrounding dwellings the proposed development does not have an unacceptable impact on any views.

Building Environment and the Design

The existing built environment contains single dwelling houses, dual occupancies and is a combination of single and two storey development. The

built environment contains commercial uses along Scenic Drive being Panorama Plaza and the Seagulls Club being located in the local environs.

The proposed development has been designed as two buildings. This design has enabled the 'terrace units' to be set into the landscape, and based on the submitted plans is below the centre line of Panorama Drive. Due to the nature of the topography the 'terrace units' will predominantly be screened with at most the top floor being viewed from the street. This results in the 'terrace units' not adversely impacting on the residential built environment of Panorama Drive.

When viewed from Scenic Drive and Gull Place the development will appear as two separate buildings, the 'tower building' being more prominent on the site. The subject land is not surrounded by low density housing, as the Environmental Protection zone provides a buffer. The residential properties in the Seagulls club precinct are orientated within and are screened by fencing to Gollan Drive / Scenic Drive.

The more immediate properties to the development may be able to view the development in part between landscaping. The proposal does however include substantial landscaped screening of substantial width. Combined with careful selection of external finishes it is considered that the proposal will not compromise the residential amenity of the built environment.

Road Environment

The application was accompanied by an engineering report that included a traffic assessment. Council's Traffic Engineer considered this report in his assessment and required further information from the applicant. Specifically this addressed the performance of Gull Place/Scenic Drive intersection and its adequacy.

Council's Traffic Engineer advised that the proposed intersection treatment consisting of a protected right turn and left turn lane in Scenic Drive will greatly eliminate the conflict that currently occurs with rear end collisions. Council's Traffic Engineer advised that Council has lodged a Black Spot application to construct a round about at this intersection and its success should be known by February 2004.

Council's Traffic Engineer has recommended that a number of conditions can be imposed to ensure an appropriate intersection upgrade occurs, being a roundabout should Council be success with the Black Spot application or a protected right turn and left turn lane. A number of other conditions have also been recommended in relation to construction of footpath and other Council requirements.

The application was considered by the Local Traffic Committee on 14/8/2003 and agreed that the Gull Place and Scenic Drive intersection was adequate subject to detailed design.

It is considered that the assessment of the application and detailed consideration of the road safety elements has satisfied the provisions of clause 22 of the Tweed Local Environmental Plan 2000.

The majority of the objections for the proposed development raised the inadequacy of the existing intersection and safety as a significant issue. Council is aware of the need to improve this intersection and is endeavouring to secure Black Spot funding for the intersection. In the absence of a Black Spot funded roundabout the applicant will be required to provide an alternate intersection that is considered to adequately address these concerns raised in the objections received.

Other local road network issues that have been raised by the proposed development include impact of additional traffic on Kennedy Drive. This leads to delays on various residential street intersections and concern was raised that the proposed development would generate significant number of traffic increasing existing difficulty.

Council's Traffic Engineer advised that as a total proportion of the traffic on Kennedy Drive the development impact is minimal. Alternative intersection treatments at Lakes Drive and Gollan Drive are being considered separately to this application.

The volume of Kennedy Drive is set by the capacity of the two lane bridge. The subject site was catered for in the threshold limit, being land zoned for medium density residential purposes.

The proposed development raised a number of local road network issues however it is considered that the application has satisfied Council's requirements and conditions of consent would ensure a suitable outcome is achieved.

Natural Environment

The subject land does contain an area of 7(l) Environment Protection (Habitat) zone, however this area of the site is not to be developed. The proposed buildings and services are clear of the natural habitat area.

The application is accompanied by a Flora/Fauna report that details the features of the site. Within the environmental protection zone two individuals of the vulnerable stinking crytocarya were recorded. There are no earthworks or building works proposed in the area.

The flora/fauna report proposed management measures to ensure the protection of this habitat area including the installation of sediment traps and erosion control devices to the west of the environmental protection zone. Also the flora/fauna report recommended the eradication of the weeds located in the environmental protection zone.

The remaining area of the site is characterised by exotic grasses and shrubs on the lower slopes and scattered eucalypts and grasses on the upper slopes. From detailed site inspection identifying the footprint of the proposed buildings it is apparent that the open woodland association that contained some scattered brushbox and eucalypts, with a grass understorey, will be impacted upon by tree removal. This area is not part of the environmental protection zone, however it is adjacent to this area.

The flora/fauna report identified 10-15 eucalypts and brushbox, all being 10 metres and less in height requiring removal. From site inspection this number would appear accurate and due to the scatter nature of the trees, they do not currently provide a significant role as a buffer to the environmental protection zone.

The flora/fauna report identified one significant tree, a grey ironbark of approximately 30m in height, that requires removal. This tree is the closest tree to the environment protection zone. From site inspection it was noted that this the only significant tree to be removed. It is not the only significant tree on the land as the environmental protection zone contains a number of substantial trees, that are visually prominent and provide habitat purposes.

In terms of fauna the report stated that the depauperate habitats at the development site are unlikely to prove significant for threatened species. There are no koala food trees, under schedule 2 of State Environmental Planning Policy No.44 – Koala Habitat, on the site.

In terms of vulnerable bat species it is considered likely that foraging for food on flowering eucalypts would occur in the environmental protection zone. However the small amount of habitat available and its fragmentation and isolation from other habitat areas reduces the significance of the site for threatened terrestrial fauna.

Given the findings within the flora/fauna report and observations from site inspection it is considered that the proposed development is not likely to result in a significant impact to the natural environment. The removal of one significant tree has been assessed as reasonable given the findings of the flora/fauna report.

During Construction and the Earthworks

The proposed development is substantial in size and requires significant earthworks. The proposal involves the removal of 67,000m³ of soil. The

Environment Protection Authority has assessed the proposed earthworks and require a number of general terms of approval to be included on any consent issued.

The EPA have advised that the noise generated by the excavation works for the development will exceed EPA guidelines. There are residences in close proximity to the development site and there are limited measures available to reduce the noise impacts from the operation of excavators and trucks on the site. Given the relatively short duration of the excavation works and lack of noise attenuation measures available the EPA issued their general terms of approval without specific site noise limits but have included a time limit of 40 working days for the excavation works and a condition requiring the preparation of a 'Excavation Noise Management Protocol'.

Noise during construction is likely to be a significant issue for the local community. A further significant issue during construction is the impact of vehicle parking on the local streets. There is no available on street car parking in the locality. As such all construction vehicles will need to be located on the site. The site is significantly constrained topographically. The applicant has advised that once the basement is built it can to be used for car parking during construction of the remaining components of the development.

While this will be ample area upon completion of the basement there is the issue of construction vehicles up to that stage. The applicant has advised that they have been investigating alternate car parking options for employees, and recognise that arrangements will need to be made prior to any construction certificate being issued. As such a condition of consent will be imposed requiring the approval of the Director of Development Services of the alternate parking arrangement for employees for the construction phase of the development.

Social Impacts

The proposed development is not considered to raise significant social issues. There are a range of impacts during the construction of the development that will be experienced by the local residents, however upon completion of the development it is not considered that the proposal would result in significant social impacts.

Council's Strategic Planning Unit have assessed the social economic impact assessment and find it to be a supportable development given its access to services and facilities and proximity to Tweed Heads.

It is noted that a number of objections raised concern that the development would end up being a public housing project with limited facilities for the housing group or children on site. It is considered unlikely that the Department of Housing will purchase any of the units within the development.

It is not considered that the future residents of the proposed development will bring any adverse social impacts to the local residential community.

(c) Suitability of the site for the development

Geotechnical Stability

The development application is accompanied by a Geotechnical and site stability assessment. The report contains guidelines and recommendations on: -

- Footing and slab construction,
- Retaining wall design,
- Site preparation,
- Excavation characteristics and earthworks,
- Slope stability and stabilisation works.

The Geotechnical issues with the site are significant however the applicant has submitted that they are not an absolute constraint. Council is aware that the top section of the site at Panorama Drive where the 'terrace units' are located is an area where slip problems have occurred in the past.

The proposed development would need to be undertaken in accordance with the relevant Australian Standards and good hillside engineering and building practices. Conditions of consent are recommended to ensure construction is undertaken in accordance with the requirements of the submitted report and certified.

Contamination

Based on the site history that accompanied the development application Council's Environmental Health Surveyor has not raised any objection to the proposal based on contamination.

Bushfire

The subject site is not mapped as being bushfire prone.

(d) Any submissions made in accordance with the Act or Regulations

The subject development application was publicly exhibited for a fortnight during which 72 submissions were received. The following table addresses the concerns raised in the submissions received. A petition against the proposed development was received which included 183 signatures. The following table addresses the concerns raised in the submissions received.

Issue	Concern	Assessment
Overdevelopment of the Site	The majority of the submissions received raised concern regarding the proposal and likely overdevelopment of the site. Most of the submissions also raised the concern that the proposal was not in keeping with the area.	<p>In response to this issue the applicant has submitted that they consider the scale of the development is appropriate having regard to the zoning of the land and the fact that this type of development was anticipated for the site. Also the building setback complies with the minimum 6m from both Scenic Drive and Gull Place at its closest points. The applicant has submitted that the building would be setback over 20m from the closest residential boundary and given that the proposal has a site coverage of only 24.2% and a total landscape area of 9000m² the applicant contends that the proposal is not an overdevelopment of the site.</p> <p>The assessment of the proposed development finds that the design meets Council's requirements and is not an over development of the site. The proposal maximises densities without undermining the environmental values of the site.</p> <p>The proposal does not warrant refusal for this reason.</p>
Zoning and Permissible	The majority of the submissions received raised concerns that the proposal should not be permissible in the land use zone. Concern was also raised that the zoning of the site is not in	The applicant has submitted that the development is for multi-dwelling housing which is permissible with development consent in the 2(b) Medium Density zone. The applicant has also stated that the Tweed Local Environmental Plan 2000

Issue	Concern	Assessment
	<p>keeping with the zone of the surrounding residential areas.</p>	<p>(TLEP 2000) does not contain definitions for high or medium density housing. The applicant compares the high density controls in other areas of Tweed Heads affected by DCP18 and the required minimum area of open space per unit. In this regard the applicant illustrates that should the proposed development have been in a high density control area, the site would only have needed to provide 3135m² of open space. Instead, the proposed development exceeds that amount by providing landscaped open space of 9000m² and consequently contends that the comparison of this proposed development with high density housing is not relevant.</p> <p>The proposed development is permissible with consent and complies with the objectives of the zone. It is understood from the objections that a number of residents would appear to not have been aware that the site has been identified for units since 1991. The proposal does not warrant refusal for this reason.</p>
<p>Height of the Proposal</p>	<p>Concern was raised that the height of the proposal should not be supported. Concern was raised that the applicant is attempting the exceed the height limitation of RL 25m</p>	<p>In response to this issue the applicant has referred to the LES prepared for the site when establishing the height controls. This particular study which was completed in 1991 indicated that the development</p>

Issue	Concern	Assessment
	<p>AHD by 2m and that Council should not use its assumed concurrence to approve this SEPP1 objection to height. In relation to height concern was raised that there would be issued such as loss of views, loss of privacy, overshadowing of adjoining properties.</p>	<p>completed in the eastern portion of the site should have a maximum height of about RL 25m AHD to approximately match the height of the quarry face. The applicant contends that the quarry face actually varies from approximately RL 20m at its northern and southern ends to over RL 32m in the centre. Therefore, the applicant contends the height control was not determined by a specific site reference point, rather an approximate level. The quarry face is well over RL 25m AHD in the centre. The proposed building is designed to fall within the height of the quarry face. The applicant referred to their submission under SEPP1, that was lodged with the original application, and contends that the height above RL 25m AHD would not significantly alter the visual impacts of the development. The applicant further contended that the area of the site affected by the 3 storey height limitation is exceeded to create a 4 storey component due to the foyer of the terrace area as a result from a transition between the upper step and the lower step of the building. In relation to this height issue the applicant has modified the design to comply with the height limitation for the site, and no</p>

Issue	Concern	Assessment
		<p>longer requires the use of SEPP1.</p> <p>In relation to the design the applicant detailed that the building would be lower into the fill by the earthworks so that the majority of the building would be below the level of Panorama Drive. One of the intentions of the original LES was to limit the height of this location to a maximum of 1 storey above the level of Panorama Drive. The applicant contends that the proposal achieves this. The applicants contends that the height of the proposal would not exacerbate any amenity impacts on adjoining properties. Floor levels have been obtained from the adjoining dwellings. The applicant has provided these levels to demonstrate their view that the development would not impact on any views. This aspect of the proposed development is further assessed in this report. The submissions also raised concern that Council did not have the ability to use its assumed concurrence for the proposed height variation. This aspect of the proposed development has been addressed and as the applicant no longer requires the use of SEPP1 Council is the consent authority. The proposal does not warrant refusal for this</p>

Issue	Concern	Assessment
<p>Aesthetics and Design</p>	<p>Concern was raised that the proposed development has not adequately addressed the provisions of SEPP65 – Quality of Residential Flat Building Development. This was also reflected in concern that was raised regarding the massive scale and bulk of the building, the orientation of the units, the colour treatment on the front facade of the building, location of clothes drying areas and the density of the development.</p>	<p>reason.</p> <p>In response to this concern that has been raised the building architect has provided a statement: -</p> <p><i>“The development offers a wonderful opportunity to fix what is an unattractive and difficult site and replace it with a dynamic building form that responds to its natural context. The ugly quarry face will disappear and be replaced by visually interesting and dynamic form characterised by the sweeping nature of the plan and overlaid with a rich deeply textured coloured façade. The development will infill the side of the hill which is characterised by a large visual hole in the natural and built landscaped. While the development envisaged will have a reasonably large density, its overall curved form will minimise is visual impact on Scenic Drive. The main façade will now dominate the view from Scenic Drive as one drives west up the hill towards Terranora. The buildings main façade will be of great visual appeal and interest with the use of</i></p>

Issue	Concern	Assessment
		<p><i>various verandah forms and fenestrations. The texture and colour of the façade should provide a great deal of amenity and activity on the existing streetscape. The buildings will be modern pieces of architecture that respond well and utilise materials of their time. They will have a light visual quality due to the use of materials and the articulation of the roof and façade. It will not be a visually heavy bulky building. The thinly detailed edges to the building including roofs, balcony design and its curving nature will give the building a quality that is light and responsive to the natural and low density environment. The building will at last remove the ugly quarry from the streetscape and provide a sense of completeness to the area which has suffered visually due to the ongoing use as and old quarry.”</i></p> <p>In response to the concern raised that the applicant has not addressed SEPP65, a full assessment of the proposal in relation to</p>

Issue	Concern	Assessment
		<p>SEPP65 and the architectural statement is addressed in this report. It is considered that the applicant had an extensive assessment of SEPP 65 that meets the design principle requirements. The proposal does not warrant refusal for this reason.</p>
Shadow Impacts	Some of the submissions received indicated that the proposal would create shadow impacts.	<p>The applicant has submitted that shadow diagrams were made available for public viewing as part of the development application exhibition process. The applicant contends that the shadow diagrams indicate that there will be no shadow impacts adversely affecting residents. The proposed development, as detailed in the DCP6 component of the report, does not generate shadow impacts to adjoining residences due to the orientation of the site. In this regard it is considered that the site is suitable for the proposal. The proposal does not warrant refusal for this reason.</p>
Construction Impacts	Some of the submissions received raised concern about the construction impacts which would include noise and vibration from the actual earthworks as well as car parking of construction employees during the construction phase.	<p>The applicant has submitted that upon completion of the basement all site construction employee vehicles would be able to be parked in the basement. This will limit adverse impacts to the local area for the remaining components of the development. For the interim period the applicant will be required to advise</p>

Issue	Concern	Assessment
		<p>Council of the alternate parking arrangements for employees prior to issue of a construction certificate.</p> <p>Noise impacts have been identified as being a major issue for the earthworks component and therefore the EPA have limited the general terms of approval to require these works to be undertaken in 40 days.</p> <p>It is acknowledged that the local residents will be impacted upon during this phase of the development. However it is also considered that following the completion of the earthworks the site should be able to be managed so as to not cause disturbance to local residents.</p> <p>The proposal does not warrant refusal for this reason.</p>
Infrastructure	<p>Concern was raised that the infrastructure available to the site may not be adequate to service the development. This included concern about the sewer and water.</p>	<p>The applicant has submitted that the engineering impact assessment lodged with Council as part of the development application details how the site can be adequately serviced by water, sewer and drainage infrastructure. Council's Water and Sewer Engineer has advised that the proposal can be serviced by existing infrastructure and will require conditions on any approval.</p> <p>The proposal does not warrant refusal for this reason.</p>
Traffic	<p>Concern was raised that the continuation of local road network is</p>	<p>In response to the issue that the applicant did the traffic counts during school</p>

Issue	Concern	Assessment
	<p>not adequate for the proposed development. This is raised in nearly all of the submissions in relation to the intersection of Scenic Drive and Panorama Drive and the location of the site. Concern was raised about the type of intersection and its safety. Other intersections that were referred to in some of the submissions include the Gollan Drive intersection, the Inlet Drive intersection. Other traffic issues that were raised included the question of the capacity of Kennedy Drive. Concern was also raised that the traffic report submitted with the application was misleading.</p>	<p>holidays, the applicant has detailed that the assessment of traffic impact on Gull Place, Inlet Drive was used to weigh traffic volumes increased by 50%. The increase was intended to account for the survey occurring during the school holidays. The applicant has also submitted alternate intersection design that Council's Traffic Engineer has assessed and found to be acceptable. The issues in relation to the local road network are addressed in the report.</p> <p>The proposal does not warrant refusal for this reason.</p>
On site Car Parking	<p>Concern was raised that the existing road network has no capacity for casual on street car parking. That the site needs to be able to cater for all visitor car parking and that during construction there would be car parking impacts in the locality.</p>	<p>The applicant has submitted that the on site car parking complies with the provisions of DCP2 – Site Access and Parking Code.</p> <p>A DCP 2 assessment is contained in this report. The application complies with on site car parking requirements.</p> <p>The proposal does not warrant refusal for this reason.</p>
Stability of the Site	<p>Concern has been raised about the stability of the site and the engineering capacity for the development to be</p>	<p>The applicant has accompanied the development application with a Geotechnical and site stability report. Any approval will require the</p>

Issue	Concern	Assessment
	constructed on the property.	development to meet the recommendations of the report and any relevant standards. The site has significant Geotechnical issues however providing the required engineering is adopted, this should not limit the development of the site. The proposal does not warrant refusal for this reason.
Open Space	Concern was raised that there would be inadequate private open space on the development.	The proposal exceeds the open space requirements. It is considered that the recreational facilities provide further areas for residents to use. The proposal does not warrant refusal for this reason.
Impacts to adjoining owners	Concern was raised regarding the impacts of the proposed development to the immediate residents of the development site. These concerns involved loss of views and loss of privacy, including amenity impacts associated with the garbage service, ventilation shafts for the basement potential lighting impacts from the development.	These concerns have arisen from the immediate neighbour and they have been carefully reviewed in assessing the proposal. It is acknowledged that the proposed development is substantial. It may have been expected that the site would support a single dwelling house of smaller unit development however this has not been Council planning for this site. Detailed consideration has been given to the impacts on the immediate adjoining owner of the vacant block (contained in DCP6 assessment). It is considered that the proposal does afford the immediate neighbours with a buffer. Further conditions of consent can be imposed

Issue	Concern	Assessment
		in relation to the issues of lighting and waste management that would minimise some of the concerns raised. The proposal does not warrant refusal for this reason.
Natural Environment Impacts	Concern was raised that the proposed development would have significant adverse impacts on the natural environment and the environment of threatened species.	This aspect of the development has been fully assessed in this report. One significant tree is to be removed with a further 10 – 15 brushbox and eucalypts being removed. These impacts have been assessed and it is concluded that there is not likely to be a significant impact to the environment. The proposal does not warrant refusal for this reason.

(e) Public interest

The proposed development raised a significant number of objections during the advertising process. The concerns raised in the submissions have been fully considered in the assessment of the application. Some of the concerns raised were followed up with responses from the applicant. In relation to the impacts to the local road network, further information was required.

It is apparent that some of the local residents have been surprised by the proposal and not aware that the site has been identified for medium density housing of this scale since 1991. Therefore in assessing the proposal consideration has been given to the development guidelines that were originally identified in the local environmental study for the site to ensure the objectives for the sites development are achieved.

The subject land is unique in that it does not have a specific development control plan, rather relies on SEPP 65 and more generally performance objectives contained in DCP 6.

The applicant has had regard for the history of the site and the relevant controls and created an architectural design that reflects the elements of the site, these being the natural vegetation and rock foundation.

The proposal provides benefits to the local community through employment during construction and operation. There are associated multipliers effects from a development of this size. The proposal is a high standard of development for the subject site, given its constraints.

The proposal will result in significant changes to the local residential character. The site analysis undertaken by the architect has achieved the best outcome for the site and where possible limited impacts to the residences.

It is in the public interest that the site be developed in accordance with the planning instruments applicable and from assessment it is concluded that this would be achieved without a detrimental impact to the general public interest.

OPTIONS:

1. Approve the proposed development in accordance with the recommended conditions of consent.
2. Refuse the development application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination of the application they may seek a remedy in the NSW Land and Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The subject site presents a unique opportunity in the Tweed Shire to develop medium density housing within an old disused quarry. Environmental attributes of the site were identified as part of the local environmental study processes undertaken in 1991. From this process development guidelines were identified and height limitation adopted for the site.

Since this process the state government have implemented State Environmental Planning Policy No.65 – Quality of Residential Flat Development that sets out principles to be adopted in the design of development such as that proposed. The architect utilised the development guidelines and state policy to formulate the proposal while still having regard to other performance criteria Council would normally adopt when assessing like proposals.

The proposed development complies with the height limitation for the site.

Variations sought relate to bicycle parking and number of car wash bays. The proposal provides these facilities however at a reduced rate given the likelihood of demand.

The development application lodged with Council and further information submitted through the assessment process has satisfied Council's requirements in terms of adequacy. An acceptable solution has been proposed in relation to the significant issue of the intersection design.

The Environment Protection Authority has issued general terms of approval for the proposed earthworks and through the imposition of conditions of consent it is considered that the proposal will not generate a significant impact. The scale of the proposed development will necessitate thorough management from the developers perspective and given the detail of consideration demonstrated thus far it is considered that methods to minimise impacts will be adopted.

UNDER SEPARATE COVER:

1. Letter from Department of Infrastructure Planning and Natural Resources dated 25th November 2003 (DW 978296)
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12 [DS] Development Application DA03/0962 for the Erection of a Mixed Commercial/Retail and Residential Building at Lot 24 DP 31208, No. 47 Tweed Coast Road, Bogangar

ORIGIN:

Development Assessment

FILE NO: DA03/0962 Pt1

SUMMARY OF REPORT:

Council reviewed this application at the Council meeting held on Wednesday 3rd December 2003. Council resolved that Council supports this application in principle and that the Director be requested to bring back conditions for Council's consideration. In accordance with the latest resolution draft conditions have been included in this report.

RECOMMENDATION:

That Development Application DA03/0962 for the erection of a mixed commercial/retail and residential building at Lot 24 DP 31208, No. 47 Tweed Coast Road, Bogangar be refused for the following reasons: -

1. The proposed variation to the height limitation as provided by Clause 16 of the Tweed Local Environmental Plan 2000 is not supported.
2. The proposed variation to the on site car parking requirements of development Control Plan No.2 - Access and Car Parking is not supported.
3. The height and scale of the proposed development is not considered appropriate resulting in impacts to the amenity of the rear laneway and adjoining property.
4. The proposed development does not achieve an adequate standard of security and amenity in the design.
5. The proposed development would result in a precedent in the locality that is considered unacceptable.
6. The SEPP1 application has not demonstrated why the 3 storey height limit is unreasonable or unnecessary.
7. The development is not considered to be in the public interest due to the number and magnitude of variations to Council's standards that are proposed.

8. The proposal is an overdevelopment of the site given the significant non-compliances with Council's height, car parking and setback requirements.

REPORT:

Applicant: BN & DJ Developments Pty Ltd
Owner: BN & DJ Developments Pty Ltd
Location: Lot 24 DP 31208, No. 47 Tweed Coast Road, Bogangar
Zoning: 3(b) General Business
Cost: \$1,600,000.00

BACKGROUND:

The following report was submitted to the Council meeting held on 3rd December 2003:-

"BACKGROUND:

Council is in receipt of a development application for the redevelopment of the subject land to contain four commercial tenancies and two floors of residential units above. The proposed development is for six residential units each containing three bedrooms. The commercial gross floor area is 444.2m².

The proposed building is a part three and four storey structure. The proposed development is accompanied by an application under State Environmental Planning Policy No.1 - Development Standards in relation to the height variation to four storeys. The extent of the four storey component is extensive.

The proposed development is to be accessed from the extension of the laneway at the rear. The proposed development includes the dedication of land at the rear for the formation of the laneway.

The natural ground level at the rear is open to provide car parking, a car wash and loading bay, bike parking, and stair access to the upper levels.

The proposed development presents to the street level with three shop frontages and an arcade leading to the fourth at the rear of the development. The arcade leads to the lift and stair well for access to the two floors above of residential accommodation and one floor below being the open car parking area. The on site car parking does not comply with Council's requirements.

The upper two floors of residential accommodation have balconies to the street.

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

The subject land is zoned 3(b) General Business under the Tweed Local Environmental Plan 2000. The objectives of the zone include:

- To provide business centres in which the community's shopping, business, welfare and social needs can be met.*
- To provide business locations within residential areas, and to ensure that the scale and type of development is compatible with the character and amenity of the surrounding residential areas.*
- To provide for tourist orientated development.*
- To encourage upper floor residential or tourist accommodation.*

The proposed development is a commercial development and meets the primary objective of the zone. All of the proposed residential units are located on the upper levels and therefore satisfy the objective requirements.

Clause 15 of the TLEP requires essential services to be available to a site prior to consent being granted. The subject land has the benefit of essential services.

Clause 16 of the TLEP provides a height limitation for the site, being three storeys. The objective of this clause is:

To ensure that the height and scale of development is appropriate to its location, surrounding development and environmental characteristics of the land.

The application is accompanied by an objection under State Environmental Planning Policy No.1 - Development Standards to this height limitation as the development is four storeys at the rear.

State Environmental Planning Policies

State Environmental Planning Policy No.1 - Development Standards

The proposed development seeks a variation to the three storey height limitation. The proposal is four storeys in height for the majority of the length of building. The building is approximately 30 metres in length with approximately 26 metres being at four storeys. The subject land falls away from Tweed Coast Road with the building only appearing as three stories when viewed from the public road frontage.

The objective for the development standard is:

To ensure that the height and scale of development is appropriate to its location, surrounding development and environmental characteristics of the land.

The applicant has submitted a justification in relation to the height variation with the following matters being relevant in assessing the merits of the departure from the standard.

"(i) There are special circumstances owing to the unusual topography of the subject land, with in excess of one (1) storey in height difference between the lowest level of the site at the western side and the Coast Road frontage.

The combination of zoning and topography makes the situation of the western side of the Coast Road, Cabarita unique in the context of the urban areas in Tweed Shire. This is because the land falls away behind the road frontage, thereby ensuring among other things that views are not obscured. Furthermore, adjacent land to the west, being similarly zoned commercial, can be developed with boundary-to-boundary buildings of three (3) storeys above road level, just the six (6) metre width of the proposed laneway from the rear of the subject land.

Because of this situation, and the fact that no adverse impact could result from the height variation, the upholding of the SEPP 1 Objection would not create any form of precedent for other parts of the Shire.

Similarly, this application is not seeking to use any other instances of approvals for height variations as justification for this proposal. However, it can nevertheless be instructive to consider the circumstances within which any particular variation may have been agreed to, as far as decision-making processes are concerned.

In this regard, the recent approval of a "4-storey" building in Marine Parade, Kingscliff shows the commonsense of

examining and determining individual proposals on their merits.

That proposal can be distinguished from the proposal in Coast Road, Cabarita in a number of respects:

- *In the case of the Kingscliff proposal, the topography involves a rise in levels from the front of the site to the rear, in contrast with the subject proposal,*
 - *In the case of the Kingscliff proposal, views from properties to the west of the site may apparently be adversely affected to an extent, although the Council found that such was not sufficient to warrant refusal of the application based on the building's height. In the subject application, there is of course no adverse effect on adjoining properties, through reduction of views or otherwise and,*
 - *The site of the Kingscliff proposal is within an area where the three (3) storey height limit has been confirmed after specific local area planning. For the Cabarita site there has been no local planning, in the form of a DCP or otherwise, therefore this application should be assessed on its merits. This merit assessment indicates that the departure from the development standard in this instance is entirely appropriate.*
- (ii) The site's rear access is to a narrow lane (right of carriageway), and there is the prospect of a building being constructed to the boundary of the adjacent property to the west. This means that it will be impractical to construct a building with useable space at lower ground floor level (eg. Shops, offices), even with basement parking, since frontage to the lane would be inappropriate. By contrast, on the opposite side of the Coast Road, three (3) storey buildings above basement parking (which can be 1.5 metres above ground level) can be achieved;*
- (iii) There are examples of buildings, including opposite the site, of three (3) storeys above Coast Road. The Cabarita Hotel redevelopment will be up to a height of RL 20m AHD, which is 3.3 metres (or one storey) higher than the proposal.*
- (iv) The land is zoned 3(b) General Business, and this fact, coupled with the configuration of adjacent allotments and development on sites fronting Hastings Road, means that*

there would be no adverse effects due to building height especially on residential properties;

- (v) There is no logical planning reason that this building, on the western side of the Tweed Coast Road, further removed from the beach, should be one (1) storeys lower than those on the eastern side.*
- (vi) Avoidance of excessive floor to ceiling heights means that the building would not be significantly in excess of what could eventuate with a building of two (2) levels above Coast Road, especially one with a pitched roof (subject to the Council's proposed height limit review);*
- (vii) An articulated rear façade will avoid adverse visual effects which could occur with blank, unarticulated walls (of either three (3) storey or four (4) storey building).*
- (viii) It is concluded that the proposal meets the objectives of the development standard as it is appropriate to its location, surrounding development and the environmental characteristics of the land (ie. topography). No good planning purpose would be achieved, in this case, by strict adherence to the three (3) storey height limit."*

Comments

In considering the justification submitted Council needs to be satisfied that the objection to the height standard is well founded and is also of the opinion that granting of consent to that development application is consistent with the aims of the policy. SEPP1 provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance would be unreasonable or unnecessary.

When deciding whether to grant concurrence to a SEPP 1 variation the following matters must be taken into consideration:

- a) Whether compliance with the development standard raises any matter of significance for State or regional environmental planning; and*
- b) The public benefit of maintaining the planning controls adopted by the environmental planning instrument.*

The proposed variation to the height does not raise any matter of State of regional significance as the variation from three stories to four does not result in the development exceeding any height specified by State

Environmental Planning Policy No.71 - Coastal Protection that would trigger the State Significant category of development. The type of redevelopment does not trigger any regional significance either.

The proposed development is considered to undermine the development standard for Bogangar and erode the general public benefit of maintaining the development standard. The proposed development involves a variation to the height limitation over the majority of the allotment and results in a four storey building when viewed from the rear laneway. The site is not unique in its topography. The properties with frontage to Tweed Coast Road extending from Rosewood Avenue for the full length of the section affected by the rear lane have steep topography. The steepness of the sites dissipates moving south along the laneway. Adjoining sites have the ability to be redeveloped and given they have the same topography may seek to pursue the same variation. The potential amenity impact of this would be the laneway lined by four storey buildings.

Further amenity impact could result with future developments that front Hastings Road applying to vary the building height at the rear of allotments, resulting in a 6 metre wide laneway with buildings to each side four storeys in height.

The amenity of the laneway would be reduced by the development on either side creating a canyon effect that would be undesirable. Further the visual and amenity impact could result in impacts in the appearance of the area from Hastings Road.

There are no unique circumstances with the site. The variation from the standard would not achieve the objective of the height limitation for this locality. There is a significant likelihood that similar applications would be made in the future to vary the standard in the locality, and the cumulative effect of similar approvals in Bogangar has the ability to undermine the strategic vision, amenity and standard of development for this coastal village.

The planning objectives for this locality are being further identified with the strategic process that is near completion with the Bogangar Development Control Plan. The height limitation for the site has been established under the Tweed Local Environmental Plan 2000 and the objective of the provision is clear.

In terms of height and scale of development it is considered that the proposed development is not appropriate resulting in impacts to the amenity of the rear laneway and potentially redevelopment of adjoining lands. The proposal does not provide a setback from the rear lane and does not address the laneway with any features to reduce the bulk impact.

The application to vary the development standard is not considered to be appropriate in the circumstances as the development does not achieve the underlying purpose or objectives for this locality.

Clause 22 of the TLEP applies to land that has frontage to a designated road. Council may only grant consent to land to which this clause applies if it is satisfied that:

- *The development is unlikely to constitute a traffic hazard or materially reduce the capacity or efficiency of the designated road,*
- *The location standard and design of access points and on site traffic movement and parking arrangements would ensure that through traffic movement on the designated road is not impeded,*
- *The development or proposed access to it, will not prejudice any future improvements to or realignment of the designated road,*
- *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,*
- *The development would not detract from the scenic values of the locality, particularly from the point of view of road users,*
- *Where practicable road access to the land is provided by a road other than the designated road.*

In relation to this clause the applicant has submitted:

- *The proposed development would gain access from the rear laneway,*
- *The traffic generated by the development would not affect the safety and efficiency of the designated road,*
- *Tweed Coast Road in front of the development is a low speed environment as a result of local traffic measures. Traffic noise is not considered to be an amenity problem, given the expectations of occupants living in the business area. The bedrooms are designed away from the noise source,*
- *The proposal is design to be compatible with the existing streetscape and to enhance the scenic quality of the area.*

It is considered that the proposed development has managed the impact of the designated road by providing access and parking at the rear of the development. This is to be accessed by way of a rear laneway.

The rear laneway has not as yet been completed, however Council's Traffic Engineer has advised that the development can be accessed through Council's car park site in Hastings Road to the section of formed laneway.

The proposed development is not in conflict with the designated road provisions of the TLEP.

Clause 35 of the TLEP is applicable to the proposed development as the site is part Class 3 and part Class 4 acid sulfate soils. The management of acid sulfate soils has been addressed in the development application by way of an management plan. Council's Environmental Health Surveyor has assessed the proposal and advised of conditions that could be imposed to ensure the development does not impact on acid sulfate soils.

Clause 38 of the TLEP relates to future road corridors identified on the zoning map. The subject land has a future road, this being the rear laneway identified thereon. This clause requires Council to consider the effect of the development on the future alignment of the road prior to any consent being granted. Council's Traffic Engineer has advised that conditions would need to be imposed to ensure the rear laneway is provided to an appropriate standard and dedicated.

While the proposed development meets the objectives of the zone, the design exceeds the height limitation for the site. In this regard the proposed development is not considered to have satisfied all of the TLEP requirements for the site.

North Coast Regional Environmental Plan 1988

Clause 32B of the REP requires the Council to take into account the Coastal Policy and the North Coast Design Guidelines. The Design Guidelines do not contain specific design requirements for commercial buildings relevant to this application. The provisions of the NSW Coastal Policy are addressed in this report.

Clause 43 of the REP requires residential densities to be maximised without adversely affecting the environmental features of the land. The proposed development is for six residential units. There are no density requirements in the subject zone. The proposed development does not undermine the provisions of Clause 43 of the REP.

There are no other provisions under the REP applicable to the proposal.

State Environmental Planning Policy No. 55 - Remediation of Land

The applicant provided a submission in relation to potential for contamination that Council's Environmental Health Surveyor has assessed. From aerial photography it is apparent that the site was not subjected to sand mining. Council's Environmental Health Surveyor raises no objection in relation to contaminated lands.

State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Buildings

The applicant submitted a compliance check in relation to the design principles contained in SEPP65. The applicant contends that the proposal meets all of the design principles.

The following points are made in relation to the proposed development and the design principles.

- Principle No.2 relates to the scale of the proposed development and its bulk and height. The proposal is not consistent with envisaged future development and does not achieve the objective for the locality.
- Principle No.7 relates to amenity features within the development. The proposal is not considered to achieve an adequate standard of amenity for proposed unit 3 and 6.
- Principle No.8 relates to safety and security. The proposed design is considered to have potential entrapment points and in the absence of casual surveillance lighting may not be adequate to achieve this principle of good urban design.

State Environmental Planning Policy No. 71 - Coastal Protection

The proposed development is not affected by the State Significant development provisions and as such Council is the consent authority. The provisions of Clause 8 of SEPP71 need to be taken into account when assessing the proposed development.

The proposal does not raise any conflict with the matters for consideration as the subject land is not adjoining a coastal reserve or beach area, is not affected by coastal processes, habitat areas, cultural items or heritage values. As such the proposed development is not considered to be in conflict with the provisions of SEPP71.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

The Draft Tweed Local Environmental Plan No.46 involves amending the meaning of height in relation to a building. The proposed development would be four storey development under the Draft Plan as well as the current Tweed Local Environmental Plan 2000.

There are no further Draft Plans applicable to the proposed development.

(a) (iii) Development Control Plans (DCP's)

Development Control Plan No.2 - Access and Car Parking

The following table details the proposed development in relation to the provisions of DCP2.

Standard	Requirement	Complies Variation
On site Car parking	Residential unit = 1.5 with 25% for visitors Shop = 0.5/100GFA staff and 3.5/100m ² for customers	Proposal requires 9 for the residential units of which 3 are to be made available for visitors. The shops require 14.2 spaces based on the reduction to 80%. Of which 2 are required for staff parking. The proposal requires 24, and only 17 spaces have been provided spaces and does not comply.

Car Parking Variation

The proposed development has a shortfall of car parking on site. The sub floor parking area has 14 car parking spaces with a further six spaces that are stacked. This does not comply with Council's policy as stacked car parking is not acceptable.

The application also includes the provision of four angled parking on the Tweed Coast Road.

The applicant has combined the angled parking with all of the spaces provided in the subfloor area to contend that the application meets the twenty four spaces required. However the proposal does not comply with Council's Policy as it:

- Relies on the use of stacked car parking,

- *Removes one parallel space from the Coast Road to create the four angled spaces and therefore is only providing a net of three spaces on the Coast Road.*

The application is only providing 17 car parking spaces based on Council's Policy. This is a shortfall of 7 spaces.

The applicant has submitted that the stacked parking would be able to be allocated to the residential units with each unit managing one stacked space, thereby not causing an inconvenience to residents or visitors. The remaining eight spaces are to be allocated to the shops, with a shortfall of seven spaces. The applicant has submitted that this is where the four angled parking spaces in Tweed Coast Road will assist.

The applicant has submitted that the four on street car parking spaces should be credited to the development. Council's Traffic Engineer has advised that the applicant may not realise that other developments that have provided on street car parking within the road reserve have provided such in addition to the on site requirements, or the developer has provided some other streetscape works that are a benefit to the community which is not the case with this application. This proposal merely utilises the road reserve to meet the shortfall on site.

The proposed development is attempting to fully utilise the site and not provide the required car parking for the proposed uses. The car parking proposed in the road reserve would have a public benefit however such should be provided in addition to any required parking.

In conclusion it is considered that the proposal is an over development of the site which is reflected in the non-compliance with the on site car parking.

Development Control Plan No.6 - Multi Dwelling Housing

DCP 6 applies to multi dwelling housing and as such there are provisions with the plan that are applicable to the proposed development.

The applicant has submitted a site analysis plan as required under the DCP. This plan identifies some of the existing land uses surrounding the development.

<p>Site Density <i>The applicant submitted that the proposal achieves the performance criteria as it is compatible with and sympathetic to the scale and bulk of the existing and likely future development of the locality.</i></p>	<p>Comment <i>The proposal is not in keeping with the identified heights for the locality. This precinct should be characterised by three storey development. The future amenity of the locality would be impacted on by a development of the proposed bulk and scale. The proposal is not compatible with the desired future character of the locality.</i></p>
<p>Streetscape Building Appearance and Front Setbacks <i>The applicant has submitted that there are no traditional commercial streetscapes on the western side of the Tweed Coast Road. The proposal provides modern shop fronts with a pedestrian walkway to the boundary and an awning over the footpath. The applicant submits that the development is of a seaside village atmosphere and would make a positive contributions to the streetscape.</i></p>	<p>Comment <i>The proposed development is of a modern design. DCP 6 allows multi dwelling housing in commercial areas to have no setback for the first nine metres from the front, however thereafter multi dwelling units are to comply with the side setbacks provided in 3.3.1, this being a minimum of three metre setback from the side. The proposal does not comply with the side setbacks on the two floors of residential units. The application requires a variation in relation to unit 3 and 6 with both being provided to zero lot lines. Unit 1 and 4 also encroach by one metre for the length. The amenity of units 3 and 6 is considered to be significantly reduced due to the zero lot line.</i></p>
<p>Building Envelope and Siting <i>The applicant has submitted that the building will be compatible with the streetscape. The applicant has submitted that the units with zero lot lines can be screened from overlooking and can be screened to maintain privacy. The applicant submits that the proposal will not affect the amenity of any future residential development.</i></p>	<p>Comment <i>The proposed development achieves adequate light and ventilation between dwellings for four of the units, however units 3 and 6 are not considered to achieve a reasonable standard. The proposed development is considered to have the potential to reduce the amenity to adjacent development due to the length and height of the development. The proposal does not have a setback from the rear laneway so future adjoining development may impacted on by the extent and length of the proposal and its four storeys. The proposal is not considered to achieve all of the performance criteria for this design element to a high enough standard.</i></p>

<p>Views, Visual and Acoustic Privacy <i>The applicant submits that none of the surrounding developments contain residential units. The proposal does not impact on any views from surrounding areas. The applicant has submitted that there are no privacy issues between adjoining developments. The proposal is also designed for bedrooms to be distanced from the traffic noise of Tweed Coast Road.</i></p>	<p>Comment <i>The proposal does not result in any loss of adjoining views, or overlooking of any residential units. The proposal generally achieves this design element, however it is considered that unit 3 and 6 would require screening from adjoining units to have a reasonable amenity.</i></p>
<p>Useable Open Space <i>The applicant contends that the proposal meets the requirement of providing a shaded balcony of a minimum 10m² with a minimum dimension of 2metres.</i></p>	<p>Comment <i>The proposal satisfied this requirement.</i></p>
<p>Security Site Facilities and Services <i>The applicant submits that the entry into the development and footpath areas would be well lit. The clothes drying area is not visible from Tweed Coast Road.</i></p>	<p>Comment <i>The proposal does not provide casual surveillance of the stair well or lift entry area. Access to the residential component of the development is not secure and could present some security issues. From within the units the access into the development is not easily surveyed. The public street and laneway are however visible from the unit balconies. The proposal has a large common drying area (5m x 5m) to the rear of the development. This would be visible from the laneway.</i></p>

The proposed development complies with the other requirements of DCP 6 by providing a car wash bay and appropriate energy rating for the units.

The proposal attempts to meet the criteria in DCP 6 however it fails to achieve a high standard of design in relation to proposed units 3 and 6. Also the development is not designed with an adequate standard of security and casual surveillance. These aspects of the design would have a significant impact on the amenity and quality of residential occupation of the site.

Development Control Plan No.39 - Energy Efficient Housing

The proposed development is required to achieve a minimum 3.5 star rating for each unit. The proposed development complies with this requirement.

(a) (iv) Any Matters Prescribed by the Regulations

The NSW Coastal Policy 1997 applies to the proposed development. The proposed development is considered to be generally consistent with the strategic actions and principles of this policy document.

(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

Town Centre of Bogangar

The importance of providing direction for the redevelopment of Bogangar has been recognised by Council and its resolution for a committee to be selected to advise on the preparation of a Development Control Plan. This process is near completion.

The land the subject of the development is important in relation to the main street of Bogangar as it is located in the main view line that extends up Pandanus Parade from the beach to Round Mountain. This view corridor is considered important as it links the natural features that people are attracted to the area for, with the town centre.

Future redevelopment in the Pandanus Parade area as a pedestrian environment will further enhance these linkages. Based on the topography of the area Council's Strategic Planning Unit have advised that buildings greater than 8.5 metres in height would block the view to Round Mountain, thereby eliminating the visual link of the sea to the hinterland.

Some of the design features that have been identified in the DCP process to date include:

- Setback from the rear lane of a minimum of 3 metres,*
- Building Heights to be no more than 12.5 metres with the building being no more than 10 metres and a 2.5 metre high roof,*
- Buildings to reflect the topography of the land,*
- Active commercial street frontage with residential components setback.*

The proposal achieves an active commercial frontage however in respect to all of the other attributes identified there would be areas of non compliance. The proposed building is 12.4 in height and exceeds the 10 metre height design feature for the locality.

Although the draft DCP has not been finalised, it is considered that aspects of the development such as the height variation and bulk and

scale of the development from the rear are well beyond the intended future development of the locality.

Over development of the Site

The proposal is considered to be an over development of the site. This is evident in the variation required to the on site car parking to support the development. The extent of the variation is considered to be a significant impact on the locality and would need to be carried by the local community. The payment of monetary contributions is not a suitable planning solution to a non compliance of this extent.

Built Environment

The proposed development requires a variation to the building height for the locality. A full assessment of the proposed variation to building height has been provided in this report. It is noted that the subject site is not unique in its topography and that there is the potential that future redevelopment of sites would also pursue a height variation in the event that this standard is undermined by the proposed development.

(c) Suitability of the site for the development

The subject land is suitable for redevelopment. Council's Environmental Health Surveyor has not raised any site constraints that would limit its future redevelopment.

(d) Any submissions made in accordance with the Act or Regulations

The development application was publicly exhibited for two weeks during which four submissions were received, one of which is a petition containing 16 signatures. The petition and one of the written submissions were in support of the proposal with two submissions raising objection. The following table details the issues raised in the objections.

Issue	Concern Raised	Assessment
<i>Pre emptive Planning</i>	<i>Concern was raised in relation to proposals in Bogangar and whether such could be deferred until the Development Control Plan process is completed.</i>	<i>The development control plan process does not prevent a developer from lodging proposals. However it is noted that this application is not strictly in keeping with some of the controls envisaged for Bogangar and therefore may create a precedence that could undermine the future DCP.</i>
<i>Building Height</i>	<i>Concern was raised that the proposal exceeds Council's</i>	<i>The proposed development is not</i>

	<i>Building Height for the locality.</i>	<p><i>consistent with the height limitation for the site. The applicants submission in relation to SEPP1 has been assessed and is not supported.</i></p> <p><i>The proposal warrants refusal for this reason.</i></p>
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The petition and a letter of support are on the basis of a need for commercial growth in the locality.

(e) Public interest

It is not considered to be in the public interest to vary Council's height limit to the extent proposed or vary Council's car parking requirements so significantly.

These are two aspects of the development that are contrary to the objectives of redevelopment in Bogangar. The impact of allowing these development control standards to be varied would impact on the wider community.

OPTIONS:

- 1. Refuse the proposed development in accordance with the recommendation.*
- 2. Request conditions be provided to enable the approval of the proposed development.*

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the right of appeal to the Land and Environment Court should they be dissatisfied with the determination of the application.

POLICY IMPLICATIONS:

The proposed development is pre-emptive of the policy direction adopted by Council with the establishment of a Committee to advise on the preparation of a Development Control Plan for Bogangar. The proposed development does not achieve some of the identified objectives for this locality including:

- Setback from the rear laneway that could be in the order of three to four metres,*
- Building height limitation of 12.5 metres maximum with a maximum 10 metre height building and a roof of no more than 2.5 metres in height,*

- *Buildings reflecting the topography, stepping down the site and following the fall of the land,*
- *Linkage of the elements of the natural environment from the coast to the mountain and view lines from Pandanus Parade West.*

The proposed development would have a cumulative impact on the streetscape that would undermine the future development of the main street of Bogangar.

CONCLUSION:

The proposed development has been assessed under Council's policies. There are areas of non compliance that are considered to be unacceptable. The subject land has the ability to be redeveloped within the planning framework set out by Council's statutory instruments.

The proposed development is not supported for the reasons contained in the recommendation.

UNDER SEPARATE COVER:

Nil.

Following consideration of the report on 3rd December 2003 it was resolved as follows:-

"Council supports in principle Development Application DA03/0962 for the erection of a mixed commercial/retail and residential building at Lot 24 DP 31208 No 47 Tweed Coast Road and brings forward conditions for consideration of Council at the next meeting."

In accordance with that resolution, if Council determines to approve the development a resolution supporting the SEPP1 objection and assuming the concurrence of the Director-General will need to be carried in the following terms: -

"Council assumes the concurrence of the Director-General of Infrastructure, Planning and Natural Resources in relation to the application to vary the height standard for the subject land from three to four storeys in part"; and

the following conditions should apply: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plans Nos 2453.1 to 2453.9 inclusive prepared by Design Imagery and submitted with the development application, except where varied by these conditions.
[GEN0010]
2. 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.

[GEN0050]

3. No retaining walls or similar structures are to be constructed over Council's sewer main.

[GEN0090]

4. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0120]

5. The erection of a building in accordance with a development consent must not be commenced until:

- 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.

[GEN0150]

6. The existing house drainage line is to be capped off by a licensed plumber prior to demolition of the existing structure.

7. This development consent does not permit the use of the four commercial retail tenancies for take away food or restaurant purposes.

[GENNS01]

8. The proposed future uses must be the subject of a separate approval.

[GEN0110]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

9. The payment of a contribution of \$75880.00 in lieu of the provision of 7 off street car parking spaces. The contribution to be paid in full prior to the issue of a Construction Certificate.

[PCC0020]

10. 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. 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.

[PCC0040]

11. 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: \$43,072.00
S94 Plan No. 4 (Version 4.0)
(Sector 7a - Duranbah/Cab)

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:-

$$\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$$\text{\$Con}_{\text{TRCP - Heavy}} \text{ heavy haulage contribution}$$

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)

\\$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.	Open Space (Structured): S94 Plan No. 5	\$2,280.00
c.	Open Space (Casual): S94 Plan No. 5	\$487.00
d.	Shirewide Library Facilities: S94 Plan No. 11	\$2,012.00
e.	Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$396.00
f.	Community Facilities (Tweed Coast) (South Coast) S94 Plan No. 15	\$2,920.00
g.	Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16	\$690.00
h.	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$1,359.21
i.	Cycleways S94 Plan No. 22	\$470.00
j.	Shirewide Car Parking S94 Plan No. 23	\$75,880.00
k.	Regional Open Space (Structured) S94 Plan No. 26	\$3,437.00
l.	Regional Open Space (Casual) S94 Plan No. 26	\$643.00

[PCC0050/PSC0005]

12. 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: \$14,385.00

Sewer: \$11,515.00

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.

[PCC0070/PSC0004]

13. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided to ensure minimal impact on adjoining properties. If filling is required, a plan of proposed drainage is to be submitted and approved by the PCA prior to the issue of a construction certificate. Drainage must be installed and operational prior to commencement of any building work.

All fill and cut batters shall be obtained wholly within the subject land.

The construction of any retaining wall structures or fill batters must at no time result in additional ponding occurring within neighbouring properties.

[PCC0090]

14. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

[PCC0190]

15. 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 stage of the development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.
- (d) Specific requirements:
- (i) Runoff from all hardstand/impervious areas (includes driveway and undercover car park areas, all hardstand walkway or podium areas and any hardstand landscape areas and excludes all roof area) must be pre-treated to remove oil and grit, prior to discharge into the public stormwater system. Roof water runoff does not require treatment and must be discharged downstream of any pollutant treatment device.
- (ii) In addition to the sizing provisions specified in Council's Development Design Specification D7 - "Stormwater Quality", the Oil / Grit arrestor proposed must also be sized to satisfy the following requirements.
- a. The retained volume of the Oil / Grit arrestor must be no less than 0.5m^3 per 1000m^2 of the basement / undercover car park area.
- b. The minimum retained volume of an Oil / Grit arrestor is 0.75m^3 .

Reference is made to AS/NZ3500.3.2.1998 National Plumbing and Drainage - Stormwater Drainage - Acceptable Solutions / Section 8 / Figure 8.3 for typical Oil / Grit arrestors.

- (iii) All runoff from the proposed car wash bay must be banded and treated to remove oil and grit prior to discharge. If levels allow, discharge must be via the sewer network and a Tweed Shire Council Trade Waste application will be required. If levels do not permit, connection can be made to the site stormwater network.

[PCC0230]

16. 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.

[PCC0240]

17. A. Building work that involves residential building work (within the meaning of the *Home Building Act 1989*) must not be carried out unless the Principal Certifying Authority for the development to which the work relates:
- i. in the case of work to be done by a licensee under that Act:
 - (i) has been informed in writing of the licensee's name and contractor licence number; and
 - (ii) is satisfied that the licensee has complied with the requirements of Part 6 of that Act; or
 - ii. in the case of work to be done by any other person:
 - (i) has been informed in writing of the person's name and owner-builder permit number, or
 - (ii) has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of **owner-builder work** in Section 29 of that Act,

and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.

- B. A certificate purporting to be issued by an approved insurer under Part 6 of the *Home Building Act 1989* that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

[PCC0310]

18. 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 of development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.

[PCC0320]

19. Pursuant to Section 68 of the Local Government Act, 1993 to ensure there is no unacceptable discharge to Councils sewerage system an approved pre-treatment device (eg. Oil/grease traps, separators, etc) shall be installed to details approved prior to the issuing of a Construction Certificate. The development will be required to meet discharge standards in accordance with Councils Trade Waste Policy.

[PCC0290]

20. Prior to the issue of a construction certificate the applicant shall demonstrate to Council the method of construction and details in relation to the need for any sheet piling. In the event that any sheet piling is required to Council owned land the applicant shall provide all necessary detail to the Director of Engineering Services for approval and satisfy any such arrangements necessary for the construction period of the development.

21. All stormwater discharge from site (including roof water) is to be piped, via the proposed 375mm diameter stormwater network at the rear laneway connected to the Hastings Street drainage network. Connection is to be to the Hydraulic Engineers design and approved by the Director of Engineering Services. No discharge is allowed onto neighbouring properties.

22. The design of the proposed 375mm diameter stormwater network must be in accordance with Tweed Shire Council drawings A1-1327/01, A1-1327/02 and A1-1327/03 and must be pre-approved by the Director of Engineering Services.

23. The driveway entrance must be designed in accordance with DCP2 and AS2890.1 (section 3.4(a)) with the maximum driveway gradient for 6m from the property boundary not exceeding 1:20 or 5%.

24. Driveway entrances must be graded to ensure Q100 stormwater runoff from the proposed rear lane does not enter the site.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

25. 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.

[PCW0010]

26. 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.

[PCW0030]

27. 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.

[PCW0040]

28. 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.

[PCW0050]

29. 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.

[PCW0060]

30. 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.

[PCW0070]

31. It is a condition of this approval that, if an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made must comply with the following:
- i. The person must, at the person's own expense:
 - a. preserve and protect the building from damage; and
 - b. if necessary, underpin and support the building in an approved manner.
 - ii. The person must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work.

[PCW0080]

32. 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.

[PCW0090]

33. Prior to the commencement of building work, a certificate signed by a registered professional engineer is to be submitted to the Principal Certifying Authority to certify that adequate consolidation of foundation material has been achieved to support the proposed structure.

[PCW0110]

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.

[PCW0120]

35. Sewer main within site is to be accurately located and the Principal Certifying Authority advised of its location and depth prior to start of any building works.

[PCW0180]

36. 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.

[PCW0190]

37. 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.

[PCW0210]

38. 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.

[PCW0220]

DURING CONSTRUCTION

39. 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).

[DUR0010]

40. 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.

[DUR0040]

41. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:

- a. A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.
- b. The chute shall be located in a position approved by the Principal Certifying Authority.
- c. A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust.

[DUR0070]

42. 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.

[DUR0080]

43. All demolition works are to observe the guidelines set down under the Environment Protection Authority publication "A Renovators Guide to the Dangers of Lead" and the WorkCover guidelines on working with and handling of asbestos.

[DUR0100]

44. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0130]

45. Demolition of building existing on site is to be carried out in accordance with the provisions of Australian Standard AS 2601 "The Demolition of Structures" and to the relevant requirements of the WorkCover Authority.

[DUR0160]

46. 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

[DUR0170]

47. 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.

[DUR0200]

48. a. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- b. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0210]

49. If the work involved in the erection or demolition of a building:
- a. is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
 - b. building involves the enclosure of a public place,

a hoarding or fence must be erected between the work site and the public place.

If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

Any such hoarding, fence or awning is to be removed when the work has been completed.

[DUR0220]

50. Provision to be made for the designation of a 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.

[DUR0240]

51. 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.

[DUR0260]

52. 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. [DUR0270]
53. 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. [DUR0280]
54. Tactile ground surface indicators for orientation of people with vision impairment are to be provided in accordance with Australian Standard AS1428.4 [DUR0290]
55. 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. [DUR0300]
56. 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. [DUR0310]
57. 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. [DUR0320]
58. 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. [DUR0330]
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. [DUR0350]
60. 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. [DUR0430]

61. A full width reinforced concrete footpath is to be constructed along the entire road frontage of the development from the property line to the back of the existing kerb. Unless otherwise indicated on the approved drawings, it shall be constructed to the following standards: The concrete slab shall be 100mm thick N25 mPa with one layer of F72 reinforcing mesh (top cover 30mm). The footpath shall be graded towards the street with a crossfall not exceeding (2.5%). The floor of the prepared construction box shall be not less than 150mm below finished surface level and the sub-base pre-compacted for a minimum depth of 75mm to achieve 95% of maximum dry density determined in accordance with AS1289 5.4.1. Not less than 50mm of moist compacted sand shall be placed between the sub-base and the concrete slab. The slab shall be formed in panels not greater than 6.1m x 4m separated by full depth construction joints, such panels to be edged on all sides with a compressive joint filler strip (Jointex, or similar). The surface shall wood float finished with the construction joint edges steel trowelled. The pathway shall be joined smoothly to abut footpaths by gradually easing levels on both sides of the join line if necessary. All existing access points to public utilities shall be adjusted so that access cover plates are flush with the finished surface, and no raised edges shall protrude more than 8mm above finished surface levels within the pedestrian trafficked areas of the path.

A Traffic Safety Plan covering all aspects of the proposed work within the public road reserve shall be submitted to and approved by the Director of Engineering Services prior to commencing work on the footpath. A minimum of twenty four hours notice of intention to place concrete is to be given to the Director of Engineering Services to allow inspection of formwork, bedding and site safety provisions.

[DUR0540]

62. 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.

[DUR0730]

63. The building is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not effect or be affected by the sewer main.

[DUR0830]

64. **A Sewer manhole** is present on this site. This manhole is not to be covered with soil or other material or concealed below ground level.

Should additional fill be proposed in the area of the sewer manhole Council's Engineering Services Division must be consulted and suitable arrangements made for the raising of the manhole to the satisfaction of Council's Manager Public Utilities.

[DUR0840]

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.

[DUR0850]

66. 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.

[DUR0890]

67. Construction site work including the entering and leaving of vehicles is to be restricted to between 7.00 am and 7.00 pm Monday to Saturday and no work on Sundays or public holidays.

[DUR0900]

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.

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.

[DUR0910]

69. The use of vibratory compaction equipment (other than hand held devices) is strictly prohibited.

[DUR0920]

70. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of the buildings with direct line of sight to the proposed building.

[DUR0960]

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.

[DUR0980]

72. 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.

[DUR1020]

73. 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.

[DUR1030]

74. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.

[DUR1040]

75. Where two (2) or more premises are connected by means of a single house service pipe, the owner of each premises must (*unless all the premises are occupied by a single household or firm as a residence or place of business*) ensure that a separate water meter, of a class and size approved by Council, is installed on each of those premises.

[DUR1070]

76. 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.

[DUR1110]

77. Yard gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR1130]

78. 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.

[DUR1160]

79. Pre-treatment devices must be serviced by a Council approved waste contractor. The applicant will be required to enter into a service agreement with this waste

contractor. Pre-treatment device service frequency will be approved by Councils Manager Water.

[DUR1170]

80. 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.

[DUR1180]

81. 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

[DUR1190]

82. 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.
- 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.

[DUR1200]

83. 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.

[DUR1210]

84. Acid sulfate soils shall not be exposed or disturbed during works.

85. Lighting shall not be permitted to impact the amenity of any premises.

86. The site shall not be dewatered without the prior written approval of Council and the Department of Infrastructure Planning and Natural Resources.

87. The rear laneway from the existing driveway to the northern end of the site shall be constructed in accordance with Council's Plan No A1-1327/02 and Plan being Appendix G of the proposed development.

[DURNS01]

88. The provision of 20 off street car parking spaces and one car wash bay. The layout and construction standards to be in accordance with Development Control Plan No.

2 - Parking Controls. Three of the off street car parking spaces are to be made available to visitors for the residential units and provided in common property on the development site.

[DUR0050]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

89. 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.

[POC0020]

90. 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).

[POC0030]

91. 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.

[POC0050]

92. All existing essential fire safety measures are to be certified by a qualified person to the effect that each of the fire safety measures has been assessed and were found to be performing to a standard not less than that to which it was originally designed.

[CON0020]

93. A satisfactory final inspection of the building is to be carried out by Council prior to occupation or use commencing.

[POC0150]

94. Prior to occupation of the development the rear laneway shall be dedicated to Council at no cost to Council.

[POCNS01]

USE

95. No items or goods are to be stored or displayed outside the confines of the premises.

[USE0050]

96. 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.

[USE0160]

97. All wastes shall be collected, shred and disposed to the satisfaction of the Director of Environment and Community Services. Waste bins shall be placed within the property boundary for collection and that location shall be serviceable to and accessible by the waste collection vehicle.

[USENS01]

13 [DS] Development Application D95/0224.01 for an Amendment to Development Consent D95/0224 for a Hotel Resort Development at Lot 4 DP 1007168, Lot 17 Sec 1 DP 759009, Lot 8 Sec 1 DP 759009 & Lot 1 DP 796876, Boundary Street Tweed Heads

ORIGIN:

Development Assessment

FILE NO: PF0680/215 Pt5

SUMMARY OF REPORT:

Council has received a s.96 amended application for the Twin Towns Resort development. The amended application relates to stage 2.

The stage two consent is for the second tower to the south of the existing tower and consists of 222 rooms, car parking, ancillary uses at the podium level and shops at the Wharf Street level.

The following amendments are proposed: -

- A reduction in the number of car parking spaces from 523 (shown on the approved plans) to 356 (i.e a deletion of one parking level) based on a traffic and parking assessment carried out pursuant to condition 19.
- Nomination of specific uses (ancillary to the hotel) at podium level.
- Changes to the room configurations and layout for level 1 to 9 to provide for a mix of 1 bed and 2 bed apartments (total 126).
- Changes to room configurations and layouts for level 10 to 14 to provide for 1 bed and 2 bed apartments (total 65).
- Changes to the layout of level 15 to provide for 6x2 bed apartments.
- Changes to the shape of the balconies.
- A reduction of the number of units from 222 to 197.

The proposed units will continue to be used as hotel resort apartments. No changes to the height (RL 61.8m AHD), scale or location of the building are proposed.

The application states that the modifications are required to: -

- Reflect the outcome of the Traffic and Parking Assessment carried out pursuant to condition 19.
- To nominate specific uses for the podium level and back of house areas.
- To reconfigure the unit layouts to reflect market demand, contemporary standards and to make more efficient and effective use of each level.

RECOMMENDATION:

That: -

- A. Development Application D95/0224.01 for an amendment to Development Consent D95/0224 for a hotel resort development at Lot 4 DP 1007168, Lot 17 Sec 1 DP 759009, Lot 8 Sec 1 DP 759009, Lot 1 DP 796876, Boundary Street, Tweed Heads be approved subject to the following amended conditions: -

Schedule B

1. Condition 1 to be amended as follows: -

1. The development to be completed generally in accordance with Plan No's A1-DA dated 29th May 1995; A5-A11 dated 5th June 1995; A13-Da dated 30 June 1995; A17-A23-DA dated 18 July 1995; A24 (A-A25(A) dated 28 September 1995; A29-A30 received 16 October 1995, amended plans submitted with the Section 102 application dated 23 January 1996 and Plans Q275-A-202 issue (7) dated 13 November 1996, Q275-A-203 issue (5) dated 4 November 1996 and Q275-A-205 issue (5) dated 22 October 1996 prepared by Michael Dysart and Partners International Architects and Stage 2(b) for the second tower is to be carried out in accordance with the plans prepared by Bayden Goddard Design dated September 2003 and Numbered SK01 to SK10, except where amended by the following conditions:

2. Condition 27 be amended as follows: -

27. A certificate of compliance (cc) under Part 3 Division 2 of the Water Supply Authorities Act 1987 is to be obtained to verify the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Council before subdivision survey plans (or approved building plans) are released. Annexed hereto is an information sheet indicating the procedures to following to obtain a certificate of compliance.

Stage 1(a) Water: \$1324.30
 Sewer: \$1033.20

Stage 1(b)	Water: \$209,234.40 Sewer: \$166,245.60
Stage 2(b)	Water: \$356,707.00 Sewer: 285,539.00

These charges to remain fixed for a period of 12 months from the date of the consent and thereafter in accordance with the rates applicable in Council's adopted fees and charges current at the time of payment.

3. Condition 28 be amended as follows: -

28. The payment of the following amount is a contribution towards the upgrading of distributor roads within the locality in accordance with the Lower Tweed Transportation Study (Version 3.1). This is to be paid prior to release of the approved Line/Building Plans.

Stage 1(a), -\$3530.10
Stage 1(b), - \$71414.40
Stage 2(b), - \$77662.21

This charge remains fixed for a period of 12 months from the date of this consent and thereafter in accordance in with rates adopted by Council.

4. The addition of two new conditions as follows: -

42. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

The application is to include a construction traffic management plan.

43. A separate development application is required to be lodged for use of the podium level for a restaurant.

- B. The Section 96 application for Development Application K00/0258 for alterations and additions to the Twin Towns Services Club be determined under delegated authority.

REPORT:

Applicant: Twin Towns Services Club Limited
Owner: Twin Towns Services Club Limited
Location: Lot 4 DP 1007168, Lot 17 Section 1 DP 759009, Lot 8 Section 1 DP 759009 & Lot 1 DP 796876 Boundary Street, Tweed Heads
Zoning: 3(a) Sub-Regional Business
Cost: Not applicable

BACKGROUND:

Consent was issued on 27 December 1995 for a resort hotel complex consisting of the following stages-

Stage 1A-3 level carpark, pedestrian bridge, Wharf Street retail and entry road.
Stage 1B- Construction of the northern tower.
Stage 2- Balance of car parking and southern tower.

The consent was amended on 11 March 1996 and involved adjustments to height and staging.

Condition 19 of the consent requires a parking and traffic report to be prepared prior to release of building plans for stage 2. The condition reads as follows: -

"Prior to release of building plans for Stage 2 of the development, the Traffic Study by Eppell Consulting is to be reassessed in light of actual operating conditions for approval by the Director of Engineering Services. The reassessment shall particularly consider the adequacy of parking numbers and intersection capacities surrounding the site.

Any unacceptable traffic impacts are to be rectified, where possible, with the median and intersection improvements in accordance with recognised traffic engineering standards, or alternatively, a contribution may be made towards the provision of additional parking and/ or traffic improvement works required in accordance with any applicable S94 contributions Plan."

The proponents have prepared a parking and traffic report to support the proposed parking modifications.

K00/0258 Alteration and Additions to the Twin Towns Services Club

A separate s.96 application has been received to amend condition 7 of the consent for alteration and additions to the Twin Towns Services Club (K00/0268).

Condition 7 of the consent requires that the parking area on the stage 2 resort land be constructed, marked and sign posted for use by patrons of Twin Towns.

Whilst the area is available for parking it has not been constructed, marked and signposted.

The applicants have requested that as construction of the stage 2 tower is expected to commence within 12 months compliance with the condition be deferred until the stage 2 tower is completed.

When the stage two is completed condition 7 becomes redundant as the car parking will be provided as part of the tower complex.

The request is considered reasonable. The amendment to condition 7 is contingent upon Council consenting to the proposed modifications of the stage 2 tower. If Council agrees to the modification it is proposed to deal with the amendment to condition 7 of the Club alterations and additions consent under delegated authority.

CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

Proposed amendments

The following amendments are proposed-

- A reduction in the number of car parking spaces from 523 (shown on the approved plans) to 356 (i.e a deletion of one parking level) based on a traffic and parking assessment carried out pursuant to condition 19.
- Nomination of specific uses (ancillary to the hotel) at podium level.
- Changes to the room configurations and layout for level 1 to 9 to provide for a mix of 1 bed and 2 bed apartments (total 126).
- Changes to room configurations and layouts for level 10 to 14 to provide for 1 bed and 2 bed apartments (total 65).
- Changes to the layout of level 15 to provide for 6x2 bed apartments.
- Changes to the shape of the balconies.
- A reduction of the number of units from 222 to 197.

The proposed units will continue to be used as hotel resort apartments. No changes to the height (RL 61.8m AHD), scale or location of the building are proposed.

Impact of amendments

It is considered that the amendments to the number and configuration of units, bedroom mix, shape of balconies and the ancillary uses at the podium level are all considered acceptable and will not result in any adverse impact. The plan indicates a restaurant at the podium level. A restaurant is a separate use that requires development consent. A condition will be imposed requiring separate approval for the restaurant. This was discussed with the applicants and it is agreed that a separate application is required.

Traffic and Car Parking

The proponents have prepared a traffic and parking assessment to comply with condition 19 of the consent. The report address the traffic implications of the development and provides justification for the reduction of the approved car parking by 167 spaces.

The basis of the Club's submission is as follows: -

The proponents have undertaken a peak parking demand survey for the Twin Towns complex (club and resort). The survey was undertaken between 7.00pm and 9.00pm on Friday 25 July 2003.

The results of the survey for parking demand for the three key components of the complex are as follows-

- 68 spaces for the existing resort
- 389 spaces for the showroom
- 360 spaces for the club
- 817 spaces total

The survey identified that 117 of the 150 resort units were occupied and 68 of these used the existing resort carpark. Accordingly 58% of the guests staying in the resort travelled by private vehicle.

The survey has factored in elements to account for variations in showroom function attendance and seasonal fluctuations. A parking demand scenario has been generated which investigates the likely demands for a 95th percentile event. The demand components are as follows: -

- a) At the time of the survey, 117 of the 150 hotel units were occupied, with a 68 space parking demand. Assuming the same parking generation but 100% occupancy, the parking demand increases to 87 spaces;
- b) The showroom on the night of the survey was 80% occupied. The 95th percentile scenario assumes a showroom occupancy of 988 seats, (95% of 1,040 seats) and maintains an allowance for 7% of all guests to take advantage of accommodation deals with the resort. Based upon an arrival vehicle occupancy of 2 persons/vehicle, this equates to a total demand of 460 parking spaces for the showroom;
- c) Services club visitation is expected to vary by season and therefore tourist/accommodation activity. Twin Towns management has provided visitation records by month for the full year of 2002. This information identified that August 2002 was the peak visitation month with an attendance of 86,538 visitors. The July 2002 month recorded an attendance of 77,174 visitors. Given that the surveys were undertaken in July 2002, the services club demands have therefore been factored to the peak month (typically August) using a ratio of 1:11 developed from 2002 attendance records. The 95th percentile parking demand for the services club (and all other existing uses on the Twin Towns site not described in points a) and b)) is therefore estimated to be 380 spaces.

The total demand for parking for the existing Twin Towns complex is 927 spaces.

Stage 2

The total number of units in stage 2 is 197, 66 of which are dual key units. This is comprised of the following: -

97 – one bedroom units
34 –two bedroom units
66 - two bedroom dual key units (132 rooms)

Applying the 58% rate for guests staying at the resort arriving by private car as surveyed for the existing resort the number of car parking spaces required for stage 2 is 153. the following indicates the car parking equation for the complex.

927 spaces for existing complex (club, showroom and resort stage 1)
153 spaces required for stage 2 (58% of 263 rooms)
1080 total spaces required for existing and stage 2

596 spaces currently exist on site (resort 406 and club 190)

Therefore 484 spaces are required to be provided

356 spaces proposed for stage 2

Therefore 128 space shortfall

It is proposed that the 128 on street car parking spaces. Be used to cater for the shortfall during the peak demand period.

It is considered that this is acceptable given the peak demand period for Twin Towns is outside of daytime demand for the car parking spaces. The parking study includes identification of on street spaces in the vicinity of the club that are able to be used during the peak period. The Study also identifies external works which have been undertaken by the Twin Towns Services Club which provide community benefit and assist to off set the use of on street spaces by the complex during peak periods. The works are as follows: -

- \$305,000 in contributions was provided towards construction and landscaping works of the Wharf Street/Boundary Street/Griffith Street roundabout. Continued maintenance of landscaping has been undertaken by Twin Towns;
- As part of the Stage 2 resort, it is proposed that visual art and effects will be provided on Stuart Street adjacent the Twin Towns site. This will contribute to improving the aesthetics of the Stuart Street area for the community. This donation complements the new Ministerial Taskforce Requirements, but is not a development requirement (i.e. Twin Towns have proposed to provide the art as goodwill);
- The Advance Australia Fair bronzed statue and flagpole in Chris Cunningham Park was provided and funded by Twin Towns as a community focal point;

- The maintenance of landscaping in front of the entrance to the Service Club (corner of Boundary Street/Wharf Street) is funded by Twin Towns.

It should be noted that the parking study proposed an alternative method to determine a parking rate for the Stage 2 tower. It was argued that the parking rate could be calculated 0.3 spaces per unit. This is based on a parking rate used by the Gold Coast City Council. This rate is not accepted to determine the parking rate for the Stage 2 tower. It is considered that the 58% rate is sound and is based on survey information for Stage 1 of the Twin Towns resort.

Council's Engineering Services Division have reviewed the traffic and parking assessment and are satisfied the existing traffic management in the area is suitable to cater for the stage two development and additional works or contributions are not required. The Division is also satisfied with the methodology and conclusions of the parking study and support the reduction in the number of car parking spaces.

The application includes a proposal to utilise the former caravan park site to the north of the club site for car parking during construction of Stage 2. This would require development consent from Council and a licence agreement with Council. Owners consent from the Jack Evans Boatharbour Reserves Trust and the Crown Lands Department would be required to lodge the development application. The club may pursue this option if they wish alternatively the displaced car parking could utilise existing car parking in the vicinity during the construction period.

Submissions

The application was exhibited and two submissions were received. The submissions are summarised below: -

Tweed Heads Public School

The School revised concerns regarding noise, dust and traffic during construction.

Comment

The development consent contains conditions regarding noise and dust controls. An additional condition is to be imposed requiring a Section 138 application under the Roads Act to be submitted and for this application to include a construction traffic management plan. This has been discussed with the applicants and they have agreed to an additional condition and they are aware of the issues raised by the School.

Tweed Heads Taskforce

The Taskforce raised concerns regarding the use of public parking spaces to satisfy a private development and Council should consider the implications for future parking demands for mixed use developments proposed for the Tweed Heads Town Centre.

Comment

It is considered that the proposed parking arrangements are acceptable given the particular peak demand period of the Twin Towns Complex. The application is based on a second methodology involving surveys which is permitted by DCP2 - Parking and Traffic. Future applications will be required to comply with the DCP.

OPTIONS:

1. Approve the amended application subject to appropriate amended conditions.
2. Refuse the amended application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

If the applicant is dissatisfied with the determination a right of appeal exists in the Land and Environment Court.

POLICY IMPLICATIONS:

Use of on street parking for development proposals should be assessed judiciously. In this case the Twin Towns complex is considered to have particular operating functions that can justify utilising on street spaces during peak demand periods.

CONCLUSION:

The proposed amendments are considered acceptable. It is considered that the parking study is based on a sound methodology and the proposed parking arrangements are suitable for the Twin Towns complex and will cater for the peak demand period.

UNDER SEPARATE COVER:

Nil.

14 [DS] Development Application DA03/1172 for the Establishment of a Shop (Aldi) at Lot 1 DP 619868 No. 9-11 Machinery Drive, Tweed Heads South

ORIGIN:

Development Assessment

FILE NO: DA03/1172 Pt3

SUMMARY OF REPORT:

An application has been received for a shop proposed to be occupied by an ALDI supermarket. The total floor area of the shop is 1335m² and 94 car parking spaces are proposed for the complete development.

The land is zoned 3(c) Commerce and Trade and shops are only permissible if they satisfy specific criteria contained in clause 8(2) of the Tweed LEP 2000.

It is considered that the proposal satisfies the criteria and the application is supported.

RECOMMENDATION:

That Development Application DA03/1172 for the establishment of a shop at Lot 1 DP 619868, No. 9-11 Machinery Drive Tweed Heads South 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 DA-001 to DA-010 prepared by Peddle Thorp Architects and dated July 2003, except where varied by these conditions. [GEN0010]
2. Roadworks in Machinery Drive are to be undertaken in accordance with the plan prepared by Lambert and Rehbein Sketch No. Sk3 dated 4/7/03.
3. One pole sign only is permitted, the location of which is to be approved by the Director of Development Services prior to its erection. [GENNS01]
4. 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. [GEN0050]
5. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0120]

6. The erection of a building in accordance with a development consent must not be commenced until:
 - 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.

[GEN0150]

7. All excavation and construction works shall be carried out in accordance with the provisions of the Acid Sulfate Soils Environmental Management Plan dated 8 August 2003.
8. A copy of the Acid Sulfate Soils Environmental Management Plan dated 8 August 2003 shall be kept on site during the course of carrying out all excavation works.
9. Monitoring test results as required under the provisions of the Acid Sulfate Soils Environmental Management Plan shall be made available to Council's Environmental Health Officer upon request.
10. Trading hours are permitted to be 24 hours a day, 7 days a week for 12 months from commencement of trading. At the completion of the 12 month period trading hours are restricted to 7am to 10pm daily.

In this regard Council is to be notified in writing of the commencement date of trading a minimum of seven days prior to commencement of trading.
11. Access to the car parks located on the western boundary of the site shall be restricted to between the hours of 7am and 10pm Monday to Saturdays and 8am to 8pm Sundays and Public Holidays.
12. All external artificial lighting including all security lighting shall be adequately shielded where required to the satisfaction of Council's Director of Environment and Community Services so as to prevent the spill of light or

- glare causing a nuisance to the occupants of any neighbouring or adjacent residential premises.
13. The waste storage area and waste storage bins shall be maintained in a clean state at all times. No wastes shall be permitted to overflow from the bins or is to be stored external to the bins on the site at any time. The store manager shall take all necessary measures to ensure that foul odours are not generated as a consequence of the storage of any waste on site.
 14. All waste storage bins shall be fitted with lids appropriate for the design and use of the bin and such lids shall under no circumstances be left open or propped open by waste at any time.
 15. The premises and equipment must comply with the requirements of the Australian Food Standards Code as called into force by the Food Regulation 2001.
 16. The premises is to be operated in accordance with the requirements of the Australian Food Standards Code as called into force by the Food Regulation 2001.
 17. All plant motor units, fans and equipment that are capable of emitting offensive noise shall be acoustically treated where required to the satisfaction of Council's Director of Environment and Community Services so as to prevent the emission of offensive or unreasonable levels of noise.
 18. The operations associated with the use of the premises are to be carried out so that offensive or unreasonable noise is not emitted from or generated on the premises.
 19. All deliveries and removals to and from the store shall be restricted to between the hours of 7am and 10pm Monday to Saturday and 8am to 8pm Sundays and Public Holidays.
 20. The operation of the waste compactor shall be restricted to between the hours of 7am and 10pm Monday to Saturday and 8am to 8pm Sundays and Public Holidays.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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: \$47,456.00
S94 Plan No. 4 (Version 4.0)

(Sector 2 - Tweed Heads South)

- b. Extensions to Council Administration Offices
& Technical Support Facilities \$213.61
S94 Plan No. 18

[PCC0050/PSC0005]

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: \$1,377.00

Sewer: \$1,102.00

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.

[PCC0070/PSC0004]

23. Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be

accompanied by the required attachments and prescribed fee. In this regard the driveway access is to be widened to comply with Council's standard for commercial development.

[PCC0190]

24. All fill is to be graded at a minimum of 1% so that it drains to the street or other approved permanent drainage system and where necessary, perimeter drainage is to be provided to ensure minimal impact on adjoining properties. If filling is required, a plan of proposed drainage is to be submitted and approved by the PCA prior to the issue of a construction certificate. Drainage must be installed and operational prior to commencement of any building work.

All fill and cut batters shall be obtained wholly within the subject land.

[PCC0090]

25. 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 of development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.

[PCC0320]

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 minimise 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, minimising landscaping as an integral part of stormwater quality management, minimising 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.

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) Specific requirements:

- (i) The proposed Permanent Stormwater Quality Treatment Device (Humeceptor STC3) is to be upsized to a minimum STC5 (or approved equivalent), or less runoff from the roof areas must be connected downstream of the device. Council does not accept sizings determined by CSR Humes "Humeceptor Sizing Table".

Stormwater Discharge

- (a) All stormwater runoff from the site is to be discharged via a new manhole connected into the existing 900mm diameter stormwater line in Machinery Drive, as shown in Qantec Engineering/Consultants drawing 03B146-SW5 (Stage 2). No discharge is permitted to adjacent land. The connection to Council's drainage system shall be constructed in accordance with design calculations, plans and specifications to be submitted with the Construction Certificate application and approved by the Director of Engineering Services.

[PCC0230]

27. 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.

[PCC0240]

PRIOR TO COMMENCEMENT OF WORK

28. 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.

[PCW0220]

29. 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.

[PCW0010]

30. 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.

[PCW0060]

31. 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.

[PCW0070]

32. 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.

[PCW0090]

33. 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.

[PCW0210]

34. Prior to commencement of building works provide hydraulic drawings on the proposed sewer drainage systems including pipe sizes, details of materials and discharge temperatures.

[PCW0230]

35. Sewer main within site is to be accurately located and the Principal Certifying Authority advised of its location and depth prior to start of any building works.

[PCW0180]

DURING CONSTRUCTION

36. 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.

[DUR0080]

37. 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.

[DUR0330]

38. 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.

[DUR0350]

39. 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.

[DUR0730]

40. 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.

[DUR0850]

41. 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.

[DUR0870]

42. Construction site work including the entering and leaving of vehicles is to be restricted to between 7.00 am and 7.00 pm Monday to Saturday and no work on Sundays or public holidays.

[DUR0900]

43. 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.

[DUR0910]

44. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.

[DUR0920]

45. The burning of builders waste on site by open fire is prohibited.

[DUR0940]

46. 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.

[DUR1110]

47. 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.

[DUR1160]

48. 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).

[DUR0010]

49. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council.

[DUR0130]

50. 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
- [DUR0170]
51. 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.
- [DUR0200]
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.
- [DUR0260]
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.
- [DUR0270]
54. Tactile ground surface indicators for orientation of people with vision impairment are to be provided in accordance with Australian Standard AS1428.4
- [DUR0290]
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.
- [DUR0310]
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.
- [DUR0320]
57. Any proposed cooling tower installation must also include details on the proposed means of back flow prevention to the water supply prior to installation.
- [DUR0970]
58. 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.
- [DUR1020]
59. 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.
- [DUR1030]
60. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.
- [DUR1090]
61. Yard gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.
- [DUR1130]
62. 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.
 - 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.
- [DUR1200]
63. 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.
- [DUR1210]

64. The building is to be sited at least one metre horizontally clear of sewer main on site. All footings and slabs within the area of influence of the sewer main are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not effect or be affected by the sewer main.

[DUR0830]

65. **A Sewer manhole** is present on this site. This manhole is not to be covered with soil or other material or concealed below ground level.

Should additional fill be proposed in the area of the sewer manhole Council's Engineering Services Division must be consulted and suitable arrangements made for the raising of the manhole to the satisfaction of Council's Manager Public Utilities.

[DUR0840]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

66. 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.

[POC0020]

67. 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).

[POC0030]

68. 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.

[POC0050]

USE

69. No items or goods are to be stored or displayed outside the confines of the premises.

[USE0050]

70. 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.

[USE0160]

71. 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.

[USE0180]

REPORT:

Applicant: Aldi Foods Pty Ltd
Owner: Biggs & Sons Development Pty Ltd
Location: Lot 1 DP 619868 No. 9-11 Machinery Drive, Tweed Heads South
Zoning: 3(c) Commerce and Trade
Cost: \$2,900,000.00

BACKGROUND:

The application is for a shop to be occupied by an Aldi store. The store has a floor area of 1395m² and includes ancillary storage, delivery area and staff amenities. The application includes signage and on site car parking. The shop is single storey with a pitched roof. The application originally included a second shop with a floor area of 450m² adjacent to the Aldi store however, this component has been deleted from the proposal.

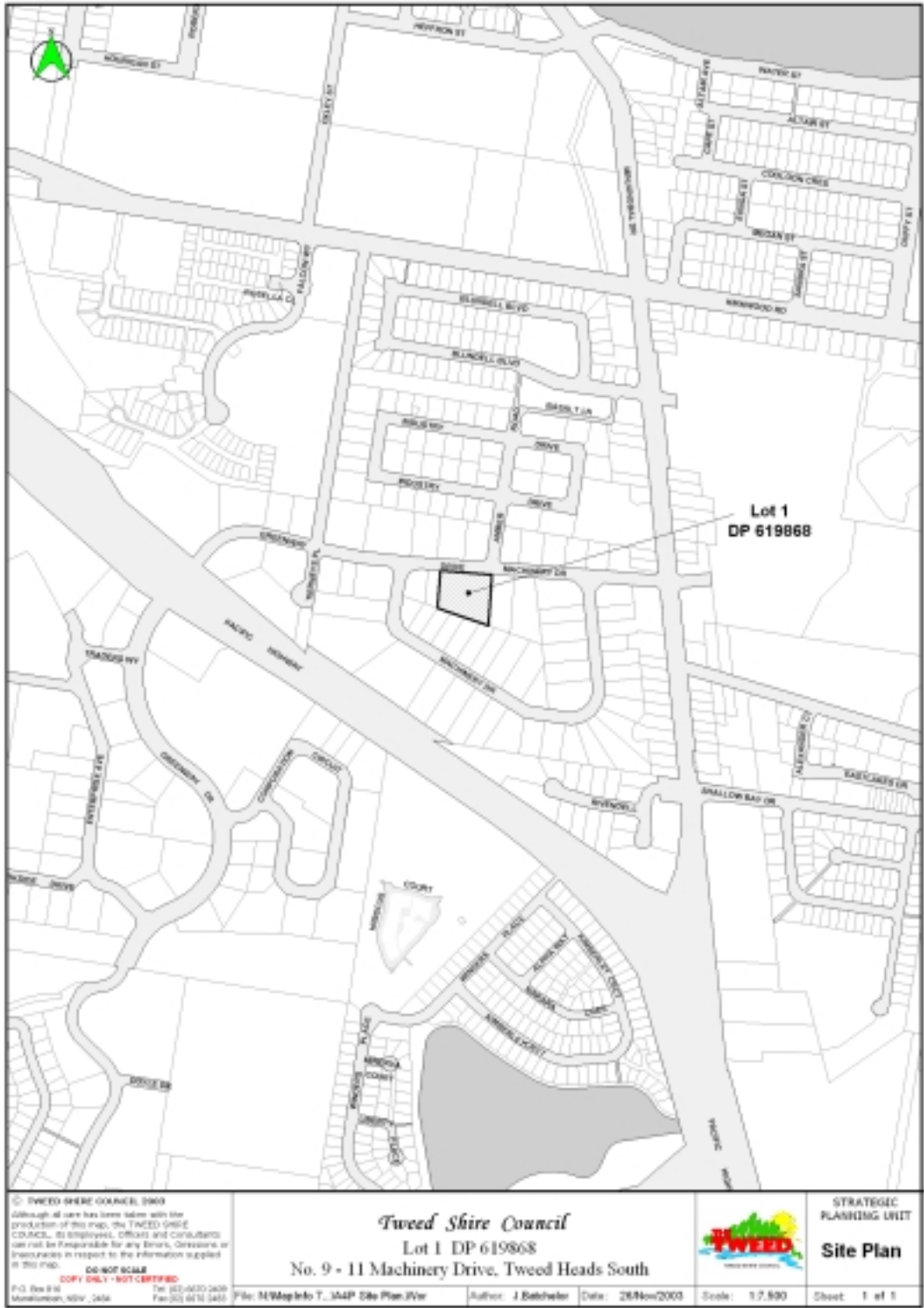
It is considered that the provisions of the Tweed Local Environmental Plan 2000 have been satisfied and the application is recommended for approval.

A valid development consent exists over the site for six bulky goods retailing shops.

The Aldi shop will employ between 15 and 20 staff.

The site has an area of 6147m² and is currently vacant. Access is via Machinery Drive.

SITE DIAGRAM:



<p>© TWEED SHIRE COUNCIL 2003 Although all care has been taken with the production of this map, the TWEED SHIRE COUNCIL, its employees, officers and consultants can not be responsible for any errors, omissions or inaccuracies in respect to the information supplied in this map. DO NOT SCALE COPY ONLY - NOT CERTIFIED P.O. Box 916 Murumbidgee NSW 2436 Tel: (61) 6330 2400 Fax: (61) 6330 2400</p>	<p><i>Tweed Shire Council</i> Lot 1 DP 619868 No. 9 - 11 Machinery Drive, Tweed Heads South</p>		<p>STRATEGIC PLANNING UNIT Site Plan Scale: 1:7,500 Sheet: 1 of 1</p>
<p>File: M:\MapInfo T. 354P Site Plan JVw</p>	<p>Author: J. Batchelor</p>	<p>Date: 26 Nov 2003</p>	<p>Scale: 1:7,500</p>

CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

The subject land is zoned 3(c) Commerce and Trade under the provisions of the Tweed Local Environmental Plan 2000. Shops are permissible with consent provided the provisions of Clause 8(2) of the Tweed LEP are satisfied.

Clause 8(2) states that consent may only be granted if the applicant demonstrates to the satisfaction of Council that:

- (a) the development is necessary for any one of the following reasons:
 - (i) it needs to be in the locality in which it is proposed to be carried out due to the nature, function or service catchment of the development,
 - (ii) it meets an identified urgent community need,
 - (iii) it comprises a major employment generator, and
- (b) there is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity, and
- (c) the development will be generally consistent with the scale and character of existing and future lawful development in the immediate area, and
- (d) the development would be consistent with the aims of this plan and at least one of the objectives of the zone with which it is proposed to be located.

The aims of the Tweed LEP are:

- (a) to give effect to the desired outcomes, strategic principles, policies and actions of the *Tweed Shire 2000+ Strategic Plan* which was adopted, after extensive community consultation, by the Council on 17 December 1996, the vision of which is:

"The management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced", and

- (b) to provide a legal basis for the making of development control plans which provide more detailed local planning policies and other provisions that provide guidance for future development and land management, such as provisions recommending the following:
- (i) that some or all development should be restricted to certain land within a zone,
 - (ii) that specific development requirements should apply to certain land in a zone or to a certain type of development,
 - (iii) that certain types or forms of development or activities should be encouraged by the provision of appropriate incentives, and
- (c) to give effect to and provide reference to the following strategies and policies adopted by the Council:
- Tweed Heads 2000+ Strategy*
Pottsville Village Strategy, and
- (d) to encourage sustainable economic development of the area of Tweed compatible with the area's environmental and residential amenity qualities.

The objectives of the 3(c) zone are:

Primary objective

- to provide for commercial, bulky goods retailing, light industrial and trade activities which do not jeopardise the viability or function of the sub-regional or business centres.

Secondary objectives

- to provide for those retailing activities which are not suited to, or desirable in, the other business zones or which serve the needs of the other businesses in the zone.
- to allow for other development that is compatible with the primary function of the zone.

The applicants state that the proposal satisfies Clause 8(2) on the following grounds:

- (a) The development is necessary because it needs to be in the locality in which it is proposed to be carried out due to the service catchment of the development and it meets an urgent community need;

- (b) There is no other appropriate site on which the development is permitted with consent development (other than as advertised development) in reasonable proximity;
- (c) The development will be consistent with the scale and character of existing and future lawful development in the immediate area; and
- (d) the development would be consistent with the aims of the LEP and the objectives of zone 3(c).

The following comments are made regarding the above points: -

- (a) Clause 8(2)(a)(i) requires identification of the service catchment of the development. The proponents have identified three catchments in the Tweed region. Coolangatta in the north, Byron in the south and South Tweed in between. All catchment areas are based on a 50,000 population base.

The applicants state that the Aldi shop will meet an urgent community need by introducing cheaper prices. This reasoning to satisfy Clause 8(2) is not supported. Whilst another supermarket may create additional competition of grocery sales it is not a planning consideration for Council. Compliance with Clause 8(2) cannot be based on competition.

Whilst it could be argued that Aldi have only identified their locational requirements based on the catchment they wish to service rather than the needs of the catchment. It is considered that a relatively small grocery outlet is suitable for the area. The essence of Aldi's argument is that the store at South Tweed is necessary because they have proposed stores at Coolangatta and Byron Bay and they have identified a catchment for their operation in South Tweed.

It is considered that the South Tweed area is suitable for an Aldi shop as it will compliment other grocery and supermarket outlets in the area. The Aldi shop is unlikely to jeopardise the function of existing shopping centres in Tweed Heads and South Tweed as it is relatively small with a retail floor area of 837m². Development of another shopping centre in Tweed Heads or South Tweed is not considered suitable and establishment of small outlets is an acceptable means to service the catchment.

- (b) Aldi have indicated that there are no other sites that suit their siting requirements in the 3(a) or 3(b) zones in Tweed Heads and South Tweed.

- (c) The scale and nature of the development is similar to other development in the 3(c) zone.
- (d) The development will not be contrary to the aims of the plan and will be generally consistent with the secondary objective of the zone which allows for other development that is compatible with the primary function of the zone. It is considered that the Aldi store will not be incompatible with the existing bulky goods retailing, commercial, industrial and trade activities in the 3(c) zone.

Social Impact Assessment

A social impact assessment report is not required as the floor area of the Aldi is less than 1500m².

Acid Sulphate Soil

Clause 35 of the LEP requires acid sulphate soil to be assessed and managed.

The subject site is identified as been affected by Class 2 acid sulphate soils accordingly a management plan for acid sulphate soil has been lodged and is considered acceptable.

North Coast Regional Environmental Plan 1988

There are no relevant matters in the REP regarding assessment of this application.

State Environmental Planning Policies

The site is within the coastal zone as SEPP-71 Coastal Development applies. The matters in the SEPP have been considered and they have no relevance to this proposal.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

None applicable.

(a) (iii) Development Control Plans (DCP's)

DCP- 2 Site Access and Parking

The DCP requires 54 car parking spaces for the development. Ninety-five spaces are proposed.

An onsite loading bay for delivery trucks is proposed. The access driveway is required to be widened for truck entry. A condition will be imposed requiring the driveway to be widened.

Roadworks are proposed in Machinery Drive to cater for entry/ exit and through traffic movements. The proposed works are acceptable to Council's Engineering Services Division.

DCP- 5- Development of Flood Liable Land

The site is affected by the 1 in 100 year flood event. The flood level in this area is 2.65m AHD. There is no minimal floor level for commercial development however provision is required to be made for flood free storage areas for stock. It is proposed to have a finished floor level 500mm above the flood level. No net loss of flood storage capacity outside the footprint of the buildings is also a requirement. Council's Engineering Division advise that that the proposal is acceptable in this regard.

DCP- 15- Advertising Signs Code

The proposal includes signage to identify the shop. Four signs are proposed. A gable sign, a display box and two pole signs.

The DCP permits the signs however only one pole sign per premises is permitted. The large pole sign is 12 meters high and the pole sign located at the entry to the site 5.4 metres in height and has an area of 5.4m². The entry pole sign will be required to be relocated if the application is approved as the driveway is required to be widened at this location.

The DCP limits pole signs to one per site and there has not been any justification provided for variation of the DCP. It is considered that two pole signs are not necessary and if the application was to be approved it should be limited to one pole sign only.

(a) (iv) Any Matters Prescribed by the Regulations

None relevant

(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

The development will provide for additional employment in the retail trade. The Aldi store will introduce a wider choice for grocery shopping in the Tweed. The proposal is likely to compliment existing retail outlets in South Tweed and is of a size that is unlikely to adversely impact on existing shopping centres in Tweed Heads and South Tweed.

Hours of Operation

Conditions regarding delivery times and compactor use are to be imposed. The proposed hours of the shop are 24 hours a day, 7 days a week. Council's Environment and Community Services Division wish to monitor these operating times. It is intended to impose a condition that will enable reassessment of the trading hours after 12 months of commencement.

Council's Environmental Health Unit require a limitation on the use of the car parking spaces adjacent to the western boundary. It is proposed to restrict the use of these car parks to between 7am and 10pm Monday to Saturday and 8am and 8pm Sundays and Public Holidays. The restricted use is to protect the amenity of the adjoining caretakers residence.

Traffic

Council's Engineering Services Division have indicated that the subject locality has traffic management difficulties. The proponents have prepared a traffic report which indicates the traffic generated by the Aldi will not significantly affect traffic flow in the area. The Engineering Services Division generally agree with this position however, concern has been raised regarding the accumulated impact of retail style developments in the 3(c) zone of South Tweed.

It is considered that future applications for shops or other retail style developments should be accompanied by a detailed traffic report that include an assessment of the accumulated traffic impact and strategic implications for traffic management in South Tweed Heads.

Traffic Committee

The Local Traffic Committee has considered the proposal and make the following comments-

- The committee noted that the delivery dock should be separate from the car park to comply with Australian Standards however if deliveries are restricted to one truck per day or at night the arrangement may be adequate.
- The proposed access design was considered to be appropriate subject to detailed design complying with relevant design standards.
- The impact of the development on traffic volumes on Machinery Drive was considered to be acceptable in terms of the total daily volumes.
- It was also noted that the driveway needs to be widened to comply with Council's standards for an industrial driveway.

Stormwater

The proposed stormwater management system is acceptable provided a larger sized gross pollutant trap (GPT) is installed. Conditions are proposed regarding the GPT and stormwater control.

(c) Suitability of the site for the development

The site is suitable for development.

(d) Any submissions made in accordance with the Act or Regulations

The application exhibited in accordance with Council's Policy and two objections were received.

The matters raised in the submissions are summarised below-

Objection One

- The requirements of clause 8(2) have not been satisfied.
- The application has not established that there is an urgent community need nor that the ALDI needs to be located in South Tweed.
- Relying on previous approvals to justify this proposal is not sustainable.
- Proposal not consistent with the objectives of the zone.
- Socio economic impacts have not been addressed in accordance with the Tweed LEP and DCP-45.
- The proposal hasn't complied with the requirements of SEPP-64-Advertising Signage.
- Issues regarding traffic and flooding were also raised in the objection.

Comment

It is considered that the provisions of Clause 8(2) have been satisfied and this has been addressed in previous sections of this report. The proponents pointed out that Council has approved other retail/grocery style developments in the 3(c) zone and the Aldi is not substantially different to any of these previous proposals. It is agreed that previous approvals do not have determining weight in the assessment of this application. Each application is required to be assessed on merit. The proposal is only required to be consistent with one of the objectives of the zone and this has been discussed in previous sections of this report.

The item regarding SEPP-64 is not agreed with as the signs are business identification signs under the SEPP and the matters referred to in the submission do not apply to this proposal.

With regards to traffic and flooding the proposed access and roadworks are acceptable to Council and flooding and stormwater issues have been dealt with adequately.

Objection 2

- The proposal would have a direct impact on Bi Lo being one of the main competitors to ALDI and have a larger impact on the tenants within the Centre, that rely on Bi Lo's customers.

Comment

Whilst competition is not is not matter for Council when considering development applications the broader scale economic impact of development in the locality is a matter for consideration. The application was amended to remove the requirement to submit a socio-economic report. It is considered that the Aldi will compliment existing retail outlets and provide a broader choice for the community.

(e) Public interest

Whilst it is not in the public interest to have a oversupply of retail/grocery outlets, it is considered that the Aldi is of a size and nature that will compliment existing outlets and is unlikely to compromise the function of the existing shopping centres.

OPTIONS:

1. Refuse the application.
2. Approve the application subject to conditions.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

It the applicant is dissatisfied with Council's decision they have a right of appeal in the Land and Environment Court.

POLICY IMPLICATIONS:

Judicious assessment of future applications for retail style developments in the South Tweed 3(c) zone should be undertaken. Future applications should be accompanied by detailed traffic reports incorporating strategic traffic management and impacts.

CONCLUSION:

It is considered that the proposal is acceptable given the relatively small scale of the shop and the limited alternative sites in the existing 3(a) and 3(b) zones.

Thorough scrutiny of future proposals for shops in the 3(c) zone at South Tweed should occur to ensure traffic and development control issues are carefully managed.

UNDER SEPARATE COVER:

Nil.

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15 [DS] Development Application DA03/1368 for a Johnny O'Keefe Statue at Wharf Street, Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA03/1368 Pt1

SUMMARY OF REPORT:

A statue of Johnny O'Keefe is proposed to be located in the road reserve opposite the Twin Towns Services Club at Tweed Heads. The statue including the base is 5.1 metres high. Subject to the deletion of the base the application is considered for approval.

RECOMMENDATION:

That Development Application DA03/1368 for a Johnny O'Keefe sculpture at Wharf Street, Tweed Heads be approved subject to the following conditions: -

GENERAL

1. 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. [GEN0020]
2. The 1.8m high base is to be deleted.
3. The erection of the statue in accordance with a development consent must not be commenced until:
 - a. detailed plans and specifications of the structure, including foundations 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 statue.

[GEN0150]

PRIOR TO COMMENCEMENT OF WORK

4. 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.

[PCW0190]

5. 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.

[PCW0090]

6. Details regarding the type of materials used for construction of the statue and the thickness and weight of the statue is to be submitted to Council prior to commencement of work.

7. A maintenance plan for the statue incorporating requirements for maintenance and budget requirements is to be submitted to and endorsed by Council prior to commencement of work.

DURING CONSTRUCTION

8. Council's acid sulphate soil management plan for minor works is to be complied with.

[DURNS01]

9. 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.

[DUR0870]

10. Construction site work including the entering and leaving of vehicles is to be restricted to between 7.00 am and 7.00 pm Monday to Saturday and no work on Sundays or public holidays.

[DUR0900]

11. The certifying authority is to be given 24 hours notice prior to completion of work.

[DUR0170]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

12. On completion of work a certificate signed by a practising structural engineer is to be submitted to the PCA to certify the structural adequacy of the structure.

[POC0060]

REPORT:

Applicant: Tweed Shire Council
Owner: Tweed Shire Council
Location: Road 5901 Wharf Street, Tweed Heads
Zoning: Unzoned Land
Cost: Nil

BACKGROUND:

The proposal involves constructing a bronze statue of the late singer Johnny O'Keefe in the road reserve opposite the Twin Towns Services Club.

The statue is proposed to be 3.1 metres high.

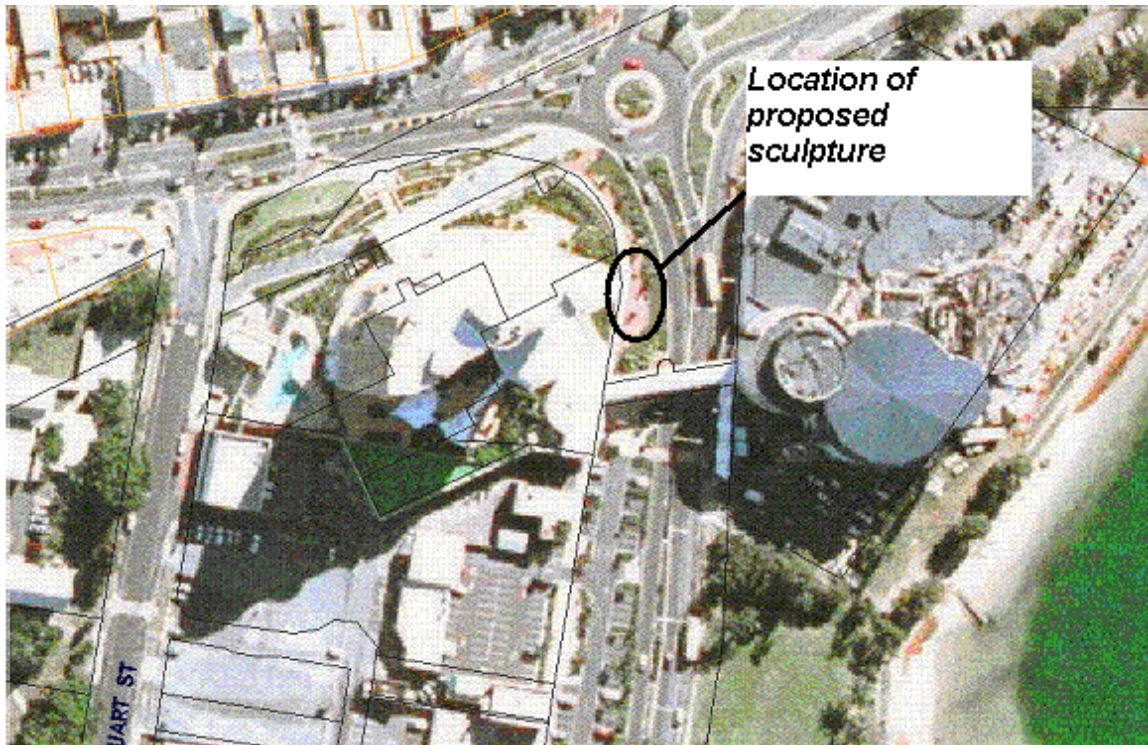
The statue is proposed to be mounted on a base 1.8 metres high and 1.30m square. The base will be located on a platform 4.3m square and 200mm high. The total height of the statue including the base will be 5.1m.

The statue will be located within the existing paved area of the footpath. The footpath in this location is wide due to previous streetscape improvements as such the statue will not impede pedestrian movement.

The application has been lodged on behalf of the Twin Towns Services Club. The application provides the following information-

"Twin Towns Services club and the annual Winter Sun Festival promotes the locality as a major rock'n'roll venue. Additionally, Twin Towns Services Club has created a niche tourism and retail market and considers the statue will further encourage tourism to reinforce the local economy."

SITE DIAGRAM:



CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

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

Tweed Local Environmental Plan 2000

The subject land is unzoned under the provisions of the Tweed LEP 2000. The development is permissible with consent from Council.

Council is required to consider whether the proposed development is compatible with development permissible in the adjoining zone and the character and use of existing development in the vicinity.

The adjoining land is zoned 3(a) Sub-Regional Business. The zone permits a wide range of commercial and tourist developments. Existing development in the vicinity consists of commercial and tourist uses. The proposal generally accords with existing and permitted development.

The site is within a class 2 acid sulfate area. Council's management plan for minor works is required to be complied with. Conditions will be imposed to reflect this requirement.

State Environmental Planning Policies

The site is within the coastal zone as such SEPP-71 Coastal Development applies. The matters for consideration contained in the SEPP have been satisfied.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

None applicable.

(a) (iii) Development Control Plans (DCP's)

None applicable.

(a) (iv) Any Matters Prescribed by the Regulations

All matters satisfied.

(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

The total height of the structure will be 5.1 metres above the existing footpath level. The statue will be located in a prominent location. It is considered that

the statue does not need to be located on a 2m high base. The statue could be located at or near ground level and still have the same effect and be a point of interest for tourists.

Whilst the statue will be located in the footpath it is proposed to be sited clear of the main traffic route. It is unlikely that disturbance to pedestrians will occur. The application was discussed with Council's Traffic Engineer and no concerns regarding traffic have been raised.

(c) Suitability of the site for the development

There are no physical impediments or safety reasons why the statue should not be located at the proposed location.

(d) Any submissions made in accordance with the Act or Regulations

The application was advertised in accordance with Council's policy and one objection was received.

The objection is summarised below with comments following: -

- The placing of statues of past celebrities in public places is detrimental to the beautification of areas for public use.
- The person depicted is not of historical significance to Tweed Shire.
- In times past, statues were once an acceptable form of tribute to people of historical fame, but times have changed and there is no need to have such permanent memorials in our streets, particularly not of past pop idols.
- Allowing one such sculpture could lead to a flood of similar applications.
- Tweed Shire has already gone to extremes with the sculpture of a whale in Wharf Street and the rather charming 'flag pole children' across the road in Jack Evans Boat Harbour- We feel that should definitely be enough for any Town Centre.
- The submission made a suggestion that the statue could be mounted on wheels and be displayed during festival occasions.

Comment

The matters raised in the submission are considered to be relevant however they are not matters that are relevant to the assessment of the development application.

Mounting the statue on wheels is a matter for Twin Towns to consider.

The application was referred to the Tweed Heads Ministerial Taskforce for comment. The Taskforce made the following comments: -

- Location of the proposed Sculpture - The Taskforce suggest that the proposed sculpture can be located within the existing garden bed (Approx. 3 metres south of the proposed location at Figure 2 of the submitted document) to blend in with streetscape works completed by Council in 1999.
- Proposed 1.8 metre plinth - The deletion of the proposed plinth will help the integration of the sculpture in to the pedestrian environment in relation to scale, improving the overall visual appeal, creating a memorable sense of place and enhancing the quality and the identity of the public space.

Comment

The location was preferred by the sculpture for orientation purposes. Either location is acceptable to Council. Point 2 is agreed with.

The application was also referred to Council's Public Art Advisory Committee and the following comments have been received: -

- (i) Identification of the metal compounds from which the figure is cast, its thickness and weight;
- (ii) Identification of the material from the plinth on which the cast figure stands is constructed, and its weight.
- (iii) An engineer's report on the stability of the entire structure as it is proposed to be constructed;
- (iv) An assessment of the maintenance requirements of the structure, and a maintenance plan and budget for maintenance;
- (v) A 'to scale' picture of the site with the figure superimposed so that its visual and spatial impact can be more properly assessed.
- (vi) Further, as the area selected by the applicant is currently under re-design within the Tweed Heads Town Centre Planning process, to approve the placement of an object of this weight and size on the proposed site at this time would be premature, possibly resulting in an expensive relocation to fit within the new plan.

Comment

The first 4 points can be dealt with via conditions of consent. Another plan is not considered necessary. The structure is relatively large however removal of the base will facilitate a less obtrusive statue.

(e) Public interest

It is considered that the statue will provide a point of interest for some sections of the community. Whilst the statue may not be universally accepted as tasteful it is considered that the structure will not have any significant detrimental impacts provided the 1.8m base is removed.

OPTIONS:

1. Approve the application subject to conditions
2. Refuse the application

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Council will be responsible for the maintenance of the statue.

POLICY IMPLICATIONS:

The proposal is not contrary to Council's Public Art Policy provided the conditions of consent are complied with.

CONCLUSION:

The statue is likely to be a tourist attraction for Tweed Heads. There is unlikely to be any significant impacts as a result of the proposal as such approval is recommended.

UNDER SEPARATE COVER:

Nil.

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16 [DS] Role of Local Government in Natural Resource Management

ORIGIN:

Strategic Town Planning

SUMMARY OF REPORT:

A report to Council on 19 November 2003 outlined the NSW State Government's reforms on natural resource management. As part of these reforms the State Government intends to abolish all state resource management committee and boards and replace them with 13 Catchment Management Authorities.

In response to the Government's announcement, the Local Government Association and Shires Association of NSW organised a Natural Resource Management Forum for Local Government in Sydney on 2 December 2003. The forum provided an opportunity for Local Government to canvass views and provide recommendations to the NSW State Government on the reform process. The recommendations of the forum are outlined in this report.

RECOMMENDATION:

That this report be received and noted.

REPORT:

A report to Council on 19 November 2003 outlined the NSW Government's proposed reforms on natural resource management. That report is attached as an appendix to this report (Appendix 1). The report recommended that Council representatives attend the Natural Resource Management Forum for Local Government at Sydney on 2 December 2003 organised by the Local Government Association and Shires Association of NSW. Graham Judge (Strategic Planning Unit) attended the forum on behalf of Council.

The forum included a briefing from Jennifer Westacott, DIPNR, on the changes to NRM delivery in NSW, a presentation from the University Western Sydney on the Association's research under way into the role of Local Government in Natural Resource Management and an opportunity to canvass and provide recommendations to the NSW Government on the reform process.

Recommendations from the Forum

The following recommendations will be provided to Jennifer Westacott (Director-General, Department of Infrastructure, Planning and Natural Resources) and the Hon Craig Knowles, Minister for Infrastructure, Planning and Natural Resources for consideration and response.

Recommendation 1

That the Minister and State Government commit to ensuring that each CMA has Local Government expertise.

Recommendation 2

That this forum generally supports the establishment of the Hawkesbury-Nepean CMA and a Sydney CMA. We reiterate the need for Local Government engagement in NRM and support the Local Government Implementation Plans to date.

Recommendation 3

That the State Government formalise a 'NRM Partnership Agreement' with Local Government which will guide and direct working relationships between the two levels of government in planning for, and investing in, sustainable natural resource management and confirm commitment to the Catchment Blueprints, Vegetation and Water Sharing Plans which have been developed throughout the State.

Recommendation 4

That within the NRM partnership agreement there should be clear recognition that CMAs must have a strong strategic investment focus which seeks to better harness the totality of public and private investment in NRM within each CMA area to deliver on ground outcomes.

That in seeking to improve NRM efficiency, CMAs should consider whether existing local government and community forums/mechanisms are able to effectively assist investment decision making.

That local government should wherever possible harness its existing local and regional mechanisms to help deliver NRM outcomes through the catchment action plan process and identify opportunities for improving its own investment in NRM.

Recommendation 5

The principles and mechanisms within the NRM Partnership Agreement should equitably secure continuing and adequate levels of State and Commonwealth Government funding for NRM and a commitment to the timely delivery of funds to the CMAs for sustainable NRM initiative across the State must be assured for the long term.

The principles and mechanisms should also guide realistic, outcome focused and transparent policies and programs enabling State and Local governments to work together with the CMAs across NSW. Written agreements and contracts for action should be principal delivery mechanisms within the NRM Partnership Agreement to ensure implementation of Catchment Action Plans and achievement of agreed outcomes. Funding should be adequate to provide on-ground expertise and support, building on existing expertise, knowledge and resources.

Recommendation 6

That the NRM Partnership Agreement outline and confirm the commitment of Local Government, the Natural Resources Commission, the Natural Resource Advisory Council and DIPNR to work together to develop and establish an appropriate and Statewide framework which ensures consistency in landuse planning and decision-making for NRM across NSW.

The framework should use regional catchments as the primary coordinating geographical units for consistency. This would ensure that identified and agreed regional and local values for all natural resources and the environment are sustained and enhanced wherever possible.

Recommendation 7

That the NRM Partnership Agreement outline and confirm means by which State and Local Government undertake the 'two way sharing' of information, coordinated at the regional level by the CMA. The State (DIPNR) and Commonwealth Governments should assist Local Government and other State agencies to document and manage the data sets they hold that are relevant to NRM and make them available to all stakeholders through the CMAs. The Agreement should also confirm the role of DIPNR as an information provider for baseline NRM data and, where relevant, to research and fill data gaps at an appropriate scale and further, that data be provided to Local Government at no cost.

Recommendation 8

That the NRM Partnership Agreement confirm commitment by State and Local Government to work together to develop environmental indicators and management performance indicators for each CMA area. The CMAs should manage a coordinated approach to monitoring that involves both Government and the community.

Recommendation 9

That the NRM Partnership Agreement confirm a joint commitment to the development and implementation of a common and consistent approach to the reporting of monitoring results and of progress in management of each catchment. Such reporting should be timed to complement Local Government SoE reporting while Local Government will work towards aligning its reporting to assist catchment wide requirements.

Recommendation 10

That the NRM Partnership Agreement outline and confirm joint commitment to developing and funding an ongoing NRM capacity building strategy, reviewed annually within each catchment. That individual CMAs develop programs and initiatives within Local Government areas in their region to build community capacity to deliver on catchment management plans. Further, that this be incorporated into the NSW Capacity Building Strategy and adequate funds be allocated to ensure implementation.

Recommendation 11

That the past progress in coastal management issues in NSW is built upon through the reform process.

That a stewardship role for the coastal zone is embodied within new management structure to achieve integrated management of the coastal zone and its interaction with the areas managed by the new catchment management authorities.

Specific recommendations include:

- a) That there is a need to build the ability and capacity to deal with coastal issues under the new NRM framework including within the CMA's NRC, NRAC and that all these bodies require coastal expertise in their representation.
- b) That a long term Coastal Management Strategy for the NSW coast be developed to focus upon development pressures and in recognition of the existing catchment blueprints having limited consideration of coastal issues. The state Coastal Management Strategy would:
 - Focus upon development and will incorporate the NSW Coastal Policy, Coastal Protection Act and SEPP 71 (Coastal Protection).

- Develop local Coastline Management Plans (under provisions in the Coastal Protection Act) to address local management issues, consistent with the state vision.
- c) That the four coastal CMAs meet 1-2 times per annum to specifically focus upon coastal issues and coordinate integrated and consistent management responses for the NSW coast.
- d) That additional resources be provided to the Comprehensive Coastal Assessment (CCA) process to enable better, and more inclusive data collection, and to provide the necessary tools and capacity building programs to assist stakeholders (primarily local government) to interpret and effectively utilise the CCA.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

1. Report to Council on 'Role of Local Government in Natural Resource Management', 19 November 2003.
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17 [DS] Section 94 Contributions and Development Levies Taskforce

ORIGIN:

Strategic Town Planning

FILE NO: GT1/S94/MC Pt6

SUMMARY OF REPORT:

On 19 November 2003 it was resolved that Council notes:

1. The taskforce set up by the NSW Department of Infrastructure, Planning and Natural Resources to investigate the Section 94 developer contributions scheme; and
2. That comments will be provided on the Terms of Reference to this Taskforce

Comments to this Taskforce are provided in this Council report.

RECOMMENDATION:

That Council endorses the comments in this report to be provided to the Taskforce investigating the Section 94 developer contributions scheme.

REPORT:

BACKGROUND:

The NSW Department of Infrastructure, Planning and Natural Resources has established a Taskforce to investigate the continuing viability of the existing Section 94 levy system for developer contributions.

The terms of reference of the Taskforce are set out in Figure 1.

The Taskforce is examining whether Section 94 remains a legitimate basis for levying development (cash and non cash) at the local level. As part of this investigation the Taskforce will assess the size of the shortfall between collected contributions and the cost of the works undertaken by authorities such as councils.

Local governments are invited to submit comments on the taskforce's terms of reference by 23 January 2004.

INTRODUCTION

With one of the highest levels of growth in NSW Tweed Council is required to provide a range of public amenities and services in a timely manner to provide for that growth. In terms of legislation the Environmental Planning and Assessment Act, 1979 requires: -

- Council to provide for the social, economic and environmental management of the Shire.
- Provides a framework through Section 94 to levy developer contributions.

Infrastructure is a major component of growth management for both the existing and future community in the Tweed. Providing the infrastructure needs also assists with the advent of sustainable communities.

Council's infrastructure planning is based on the growth identified in the Tweed Strategic Plan (TSP). While the TSP provides a broad overview of Council's intentions and directions for management of the Tweed, S94 Plans provide the detailed planning for public infrastructure.

FUNDING OPTIONS

With Council's financial capacity being limited due to its revenue base, rate capping and existing capital loan commitments, it must carefully plan for both the provision of this infrastructure and its subsequent maintenance and management. The options funding include:

- Rates revenue and loans
- State Government grants, which are provided for libraries, cycleways and sports fields

- Developer contributions

Based on the requirements of the TSP developer contributions provide the basis for most of the infrastructure provision in the Shire. These contributions are based on the user pays principle through the use of S94. Without this type of contribution Council, and subsequently its ratepayers, may not be in a position to afford and provide appropriate amenities and services in the future.

MANAGEMENT

Planning for infrastructure requires an estimate of future population growth with their needs and expectations. When drafting Council's contribution plans population growth is based on the expected development timetables of proposed urban growth areas and current rates that are then monitored over time and adjustments made if required. This monitoring process enables infrastructure to be reprioritised if population growth rate exceeds or fails to reach that anticipated in the plan.

Council regularly monitors standards so that the community receives a standard of infrastructure that is relevant to today's standards and expectations.

Because of the importance of infrastructure planning and Section 94 Plans Council has established the Section 94 Management Committee.

KEY ISSUES

Section 94 funding provides a major means for funding of growth related infrastructure, and its benefits to the local community include the following:

- enables Council to undertake forward planning. Section 94 facilities (particularly roads) form an integral part in the planning of future land releases. Council's current infrastructure plans are based on the principle of using developer contributions to fund (on a user pays basis) the infrastructure for future growth areas.
- all land use options proposed are tested to ensure that they are compatible with Council's infrastructure (S94) plans to ensure that necessary infrastructure can be provided for proposed growth areas at an acceptable economic and environmental cost. Once again this examination will assist in determining whether this growth can be serviced.
- the plans usually have common standards (they are duplicated) across the Shire for its open space, community facility buildings and libraries. This means that certain areas do not have a higher standard of facilities to other areas and it also provides certainty to the residents and the developers – one area does not have to pay more for facilities than another area and is therefore equitable. Council's plans allow in some cases the flexibility for the developer to dedicate the facility (particularly open space), provide material

public benefit, or undertake works in kind in lieu of contributing levies. This may result in savings for the developers.

- the plans allow for review and adjustments so that any significant changes in costs of facilities or population projections can be implemented through the plan. This provides the incoming population with appropriate facilities and, in the case of a release area, the developer is aware of all the facilities that will be provided and the knowledge that what is to be provided will enhance the development.
- Council has structured its plans so that the format and costing of facilities (particularly community facility buildings) across all plans is consistent. This assists with clarity and provides coherence across all plans.
- the facilities in the plans are provided as the population grows so that they are in place when there is sufficient population to support them.

CONCLUSION

Section 94 plays an important part in the development of community facilities in the Tweed Shire. It is a major contributor to Tweed's annual works program budget, particularly as the emphasis on public infrastructure funding has shifted to Local Government.

It is a fundamental component of orderly planning of development - it allows Council to plan for public facilities in line with the development within the Shire and therefore undertake forward planning.

Section 94 contribution scheme is a valuable, relevant and simple mechanism for the funding of public infrastructure for future population growth and has shown to date that it is able to deliver appropriate and timely facilities. It embodies the user pays principle.

Summary of contributions to be collected under Council's Plans

Contribution Plan	Total Funds to be collected under Plan
CP 1 Banora Pt Open Space	\$4,769,808 - excludes dedicated and embellished land or acquired embellished land.
CP 2 Banora Pt Drainage	\$2,320,000
CP 3 Banora Pt Community Facilities.	\$1,838,612
CP 4 Tweed Road	\$85,000,000
CP 5 Tweed Shire Open Space	\$2,680,939
CP 6 Street Trees	\$42.90 per lot
CP 7 West Kingscliff	\$1,601,339
CP 10 Cobaki Lakes	\$1,128,750 - community facilities only - open space to be dedicated

Contribution Plan	Total Funds to be collected under Plan
CP 11 Libraries	\$2,056,000
CP 12 Bus Shelters	\$176,000
CP 13 Cemetery	\$2,911,933
CP 15 Shire Wide Community Facilities	\$1,090,000
CP 16 Surf Lifesaving Emergency Facilities	\$1,309,831
CP 18 Council Admin Office & Support Facilities	\$4,978,330
CP 19 Kings Beach/Kings Forest	Open Space: \$1,252,000 Community Facilities: \$3,991,000
CP 20 Seabreeze Estate	Open space to be dedicated and embellished
CP 21 Terranora Village	Open Space embellishment: \$85,204 Community Facilities: \$29,000
CP 22 Cycleways	\$2,860,988
CP 23 Carparking	Rate per unsupplied car parking space
CP 25 Kings Beach North	Open space – dedication and embellishment Car parking – 200 car spaces
CP 26 Shire Wide Regional Open Space	Structured Open Space: \$23,419,500 Passive Open Space: \$4,521,000



SECTION 94 CONTRIBUTIONS AND DEVELOPMENT LEVIES TASKFORCE

TERMS OF REFERENCE:

1. Examine the previous report by DUAP titled 'Review of the Developer Contributions System 2000' and advise on those aspects of the report that merit further investigation and whether some changes could be implemented immediately as part of an interim reform package.
2. Examine and report on the original policy basis and rationale for the introduction of Section 94 contributions and whether it remains a legitimate basis for levying development at a local level.
3. Gather and analyse data on the existing Section 94 system including:
 - the total value of adopted contributions plans in NSW
 - the total value of contributions collected and works-in-kind undertaken for local councils during the previous 5 years
 - the use of developer agreements in lieu of monetary contributions
 - the total estimated value of approved development in NSW during the previous 5 years
 - the total shortfall between collected contributions and the cost of works undertaken.
4. Review the range of levies, taxes and charges (including the PlanFirst fee) currently paid at land development stage and assess their impact on the affordability of housing and their success (or otherwise) in funding the provision of local infrastructure.
5. Examine alternatives to levying under Section 94 of the Environmental Planning and Assessment Act, 1979 (such as flat rate levies and developer agreements), identify their strengths and weaknesses, report on the feasibility of using different systems for MDP and other areas and examine the appropriateness of the nexus and whether other arrangements are more appropriate.
6. Advise on implementation mechanisms for any alternative models (and whether a range of models are appropriate) including transitional arrangements and the management of associated risks.
7. Examine existing accountability arrangements and identify ways in which the system could become more transparent and the community more confident about Section 94 expenditure.
8. Advise on the role of Section 94 in funding local infrastructure, having particular regard to the impacts of local government rate pegging and debt servicing.
9. Consult with stakeholders as necessary to ascertain views.

TIMEFRAME: Final report end February 2004

CHAIR: Gabrielle Kibble

[Please click here to send your comments on this taskforce.](#)

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The contents of this report should be referred to the Taskforce.

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Nil.

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18 [DS] Amendment to Development Control Plan No 40 - Exempt and Complying Development, and Draft Tweed Local Environmental Plan 2000, Amendment No 26 - Housekeeping Stage 2

ORIGIN:

Strategic Town Planning

FILE NO: GT1/DCP/40; GT1/LEP/2000/26

SUMMARY OF REPORT:

At its Ordinary Meeting of 5 June 2002 Council resolved to amend and exhibit Development Control Plan No 40 - Exempt and Complying Development (Version 2). At this meeting Council also resolved to prepared draft LEP Amendment No 26 which proposes to reflect the new date Council will adopt Development Control Plan No 40 and add a new Clause in the LEP relating to exempt development in the zones 7(a), 7(d), 7(f) and 7(l) to include only the following categories: 'home occupation, noxious weed control and bushfire hazard reduction'. Both documents were publicly exhibited.

Draft Development Control Plan No 40

Following the exhibition of the draft amendment to DCP 40 the amended draft DCP was re-exhibited for public comment between 23 July and 20 August 2003 because of a number of proposed changes and additions. The draft Plan was also referred to State Agencies for their comment. A number of submissions have been received in response to the advertised plan as well as some further additional changes proposed by Council officers that were not originally exhibited.

As this amendment has been outstanding for some time due to a succession of additional suggestions for inclusion in the DCP it is recommended that that the latest version of the DCP that was exhibited be adopted by Council. The additions to the DCP not yet exhibited are recommended to be exhibited in the New Year. These additions to the DCP are contained in this report.

Draft Tweed Local Environmental Plan 2000, Amendment No 26

Comments were received on the draft Plan from National Parks and Wildlife Service and Coastal Council in relation to bushfire reduction in environmental protection zones being proposed as exempt development (contained in both the DCP and LEP). Both these agencies made reference to the need to comply with the current bushfire management legislation and to consult with NSW Rural Fire Service. In this respect Council sought comments from the latter but to date no comments have been received. Council is therefore awaiting comments and advice from the NSW Rural Fire Service. It is recommended that the LEP and DCP clauses relating to bushfires reduction in

environmental protection zones being proposed as exempt development be deferred until comments are received from NSW Rural Fire Service.

It is recommended that the proposed LEP Amendment, which proposes to only reflect the adoption date for Development Control Plan No 40, can be forwarded to the Minister Assisting the Minister for Infrastructure, Planning and Natural Resources.

RECOMMENDATION:

That Council:

1. Adopts the amended exhibited Development Control Plan No 40 – Exempt and Complying Development.
2. Gives public notice in the Tweed Link of its decision in accordance with the Environmental Planning and Assessment Regulations 2000, specifying that the amended Development Control Plan comes into effect on the date of the notice.
3. Adopts the amendment to Tweed LEP 2000 (Amendment No 26), with the Amendment referring only to the date of adoption of the amended exhibited DCP 40 by Council;
4. Forwards the draft Local Environmental Plan 2000, Amendment No 26, to the Department of Infrastructure, Planning and Natural Resources and requests the Minister to make the Plan in accordance with Section 70 of the Environmental Planning and Assessment Act 1979;
5. Exhibits an amended draft DCP No 40 and draft LEP in accordance with the Environmental Planning and Assessment Act to reflect the new additional changes outlined in this report that have not yet been exhibited.

REPORT:

Background

At its ordinary meeting of 5 June, 2002 Council, pursuant to Section 72 of the Environmental Planning and Assessment Act 1979, resolved to amend and exhibit Development Control Plan No 40- Exempt and Complying Development (Version 2). At this meeting Council also resolved to prepare draft LEP Amendment No 26 which proposes to reflect the new date Council will adopt Development Control Plan No 40 and add a new clause in the LEP relating to exempt development in the zones 7(a), 7(d), 7(f) and 7(l) to include only the following categories: 'home occupation, noxious weed control and bushfire hazard reduction'. Both documents were publicly exhibited.

Development Control Plan No 40

Following the exhibition of the draft amendment to DCP 40 the amended draft DCP was re-exhibited for public comment between 23 July and 20 August 2003 because of the number of proposed changes and additions by Council staff. The draft Plan was also referred to State Agencies for their comment. A number of submissions have been received in response to the advertised plan as well as some further new additional changes to DCP 40 proposed by Council officers. It is considered that the latter new additions and changes to the DCP will require re-advertising.

As this amendment has been outstanding for some time due to a succession of additional suggestions for inclusion in the DCP it is recommended that that the exhibited version of the DCP that was advertised be adopted by Council.

Further new additions and changes to the DCP that have been identified by Council offices but not yet exhibited will be advertised in the New Year. The proposed new additions and changes to the DCP are contained in this report with a recommendation that the DCP be exhibited for public comment in 2004.

Draft Tweed Local Environmental Plan 2000, Amendment No 26

Comments on draft LEP Amendment No 26 were received from National Parks and Wildlife Service and Coastal Council in relation to bushfire reduction in environmental protection zones being proposed as exempt development. Both these agencies made reference to the need to comply with the current bushfire management legislation and to consult with NSW Rural Fire Service. Council sought comments from the latter but to date no comments have been received. Council is therefore awaiting comments and advice from the NSW Rural Fire Service. It is recommended that the LEP and DCP clauses relating to bushfires reduction in environmental protection zones being proposed as exempt development be deferred until comments are received from NSW Rural Fire Service.

The amended Tweed LEP 2000 (Amendment 26) which proposes to only reflect the new date Council adopts Development Control Plan No 40, can be forwarded to the Minister Assisting the Minister for Infrastructure and Planning.

Conclusion

Exhibited Draft LEP and DCP

It is recommended that Council publish a notice of adoption of the DCP No.40 as advertised in order to bring it into effect.

It is also recommended that LEP amendment No 26 (except without the clause relating to bushfires reduction in environmental protection zones being proposed as exempt development) be finalised by asking the Minister to make the Plan.

Amendments to DCP 40 and Tweed LEP 2000 to be Exhibited in early 2004

1. Definition of 'Waterbed' (lake, lagoon, watercourse etc)

A number of agencies have suggested changes and/or additions to the definition proposed. These will be incorporated in the DCP.

2. It is proposed to include a reference to development of flood liable land that is within an existing building as being acceptable for complying development. This means that for any alterations or change of use that is proposed within an existing building in a flood liable area will not require a development application.
3. Include a condition on consents for complying development certificates for dwelling houses requiring house numbers to be painted on the gutter prior to the issuing of an occupation certificate for the dwelling.
4. The NSW Rural Fire Service has advised that for awnings, canopies, and storm blinds for dwellings, and cabanas, gazebos and fences that are erected in a bushfire prone area, comply with the requirements of AS3959 and *Planning for Bushfire Protection 2001*.
5. The Roads and Traffic Authority of NSW has advised of a wording change in the dictionary with 'designated road' to replace 'an RTA classified road' with 'a *classified Road with the meaning of the Roads Act, 1993*.'
6. The Tweed River Regional Art Gallery recommends that the installation of public art and events placed or conducted on Council land should not require a development consent. With respect to the installation of public art it is proposed to include it in exempt development if the proposal is consistent with a Plan of Management for the particular site. It should be noted that any development proposed on Council land in the 7(f) zone requires concurrence by the Department of Infrastructure, Planning and Natural Resources, unless the proposed development is consistent with the relevant Plan of Management. The exception should extend to public art,

statues, monuments and the like within road reserves. Such structures would need to comply with Council's Public Art Policy.

7. A definition of 'Refreshment Room' has been added as follows:

"A restaurant, café, tea room, eating house or the like"

8. 'Change of Use' for shops, commercial premises and industry has been deleted from complying development and added to exempt development requirements. Internal fit-outs remain under complying development

9. Clause 2.2 (f) in Exempt Development has been amended from *proposed structures likely to be sited over any easement or services such as sewer, stormwater etc and which are not in compliance with Council's adopted Policy N.5 Sewerage* to the following two clauses:

"(f) any structure proposed to be erected on any easement for sewerage, water or stormwater. (Note: No structure can be constructed on, or overhang, an easement.

- (g)*
- any structure that is to be located within 3 metres of or within a horizontal distance equal to the pipe depth, whichever is the greater, from a public stormwater, sewer or water supply pipeline;*
 - any excavation or filling of land within 3 metres of or within a horizontal distance equal to the pipe depth, whichever is the greater, from a public stormwater, sewer or water supply pipeline".*

10. Under Exempt Development Requirements, the above Clause 2(f) and 2(g) does not apply to: barbecues, bird aviaries, bus shelters, cabanas/gazebos, carports, cut and fill, decks, driveways/pathways, fences, garden sheds, greenhouses, patio or pergolas, portable classrooms, retaining walls, sails, satellite dishes, water tanks, advertising signs, antennas, external equipment shelter

11. Under Schedule 3 – Complying Development Conditions, Single Dwelling Houses, Clauses 30 and 31 have been amended from *any building is to be sited at least one metre horizontally clear of sewer mains and stormwater mains on site. All footings and slabs within the area of influence of the mains are to be designed by a practising Structural Engineer. The engineer is to submit a certification to the Principal Certifying Authority that the design of such footings and slabs will ensure that all building loads will be transferred to the foundation material and will not effect or be affected by the mains and any sewer or stormwater manhole is not to be covered with soil or other material or concealed below ground level* to the following clauses:

"30 No structure is to be sited such that it is within or overhangs an easement for sewerage, stormwater or water supply.

31. *No structure is to be located, excavation or filling of land undertaken, within 3 metres or within a horizontal distance equal to the pipe depth, whichever is the greater, from a public sewer, stormwater or water supply pipeline.*
32. *No public sewer or stormwater manhole is to be covered with soil or other material or concealed below ground level. Surface waters are to be diverted away from sewer manholes/access chambers/maintenance holes.*
- (The following clause remains - Should additional fill be proposed in the area of a manhole, Council's Engineering Services Division must be consulted and suitable arrangements made for the raising of the manhole to the satisfaction of Council's Manager ~~Public Utilities~~ Water, at the applicants cost).
33. *Any excavation within 3m of a public utility will require the approval of Council's Manager Water. If approved, any lowering of manholes will be at the owner/applicants expense.*
34. *Filling of land within 3 metres of any easement, utility or service, will require the approval of Council's Manager Water and the raising of any access chamber will be at the owner/applicants expense".*

The above changes also apply to: Swimming pool ancillary to a single dwelling house, additions to a dwelling house, bed and breakfast, and temporary buildings.

12. Under Schedule 3 – Complying Development, Clause 3.3 (viii) has been amended by deleting the words *below the 1:100 year flood level unless the proposed development is contained within an existing building* and adding the following clause:

"(ix) *Is identified by Council as flood liable land below the 1:100 year flood level and is used for residential purposes".*

It is recommended that the above changes to DCP 40 be exhibited for public comment.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Amendment to DCP 40 will require a change of Council Policy on Exempt and Complying Development.

UNDER SEPARATE COVER:

1. Draft Development Control Plan No 40 - Exempt and Complying Development.
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19 [DS] Strategic Planning Work Programme

ORIGIN:

Strategic Town Planning

SUMMARY OF REPORT:

On 20 August 2003 Council resolved that the Strategic Planning Work Programme should remain essentially as agreed by Council in February 2003.

The Programme is not due for review until August 2004 but in view of changing circumstances it is considered appropriate to bring this review forward.

These include the following: -

1. The resignation of the Director of Development Services.
2. On-going requests as to the progress of the Rural Settlement Strategy.
3. Specific rezoning requests.
4. Uki DCP.

The content of and expectations for the Work Programme continue to be of concern. There is no scope for additional projects and it is difficult to identify any potential for reducing the priority of current projects, except in respect of the following:

1. Cabarita DCP
2. Vegetation Management Plan

It is concluded that work should commence on the Uki DCP following completion of the Cabarita DCP. The Rural Settlement Strategy should then follow Uki.

RECOMMENDATION:

That:

1. The Strategic Planning Work Programme remain as agreed by Council on 20 August 2003, namely:

"A. *“the following projects be endorsed as the Strategic Planning Work Program priorities for the period until the first quarterly review of the 2003/2004 Management Plan:*

- *Tweed Shire Strategic Plan*
- *Tweed Coast Strategy and District Centre Strategy*

- *West Kingscliff planning – draft DCP9*
 - *Rural Settlement Strategy and Rural Land Use Study*
 - *Local Environmental Studies and draft Local Environmental Plans for:*
 - a) *Kings Forest*
 - b) *Black Rocks*
 - c) *Chinderah*
 - d) *South Pottsville; and*
 - e) *“Area E”, Terranora*
 - f) *Tanglewood*
 - *DCP Koala Beach*
 - *Various draft LEP Housekeeping and other amendments*
 - *Economic Development Projects:*
 - o *Kingscliff Sewage Treatment Plant rezoning*
 - o *Industrial lands*
 - o *Coolangatta Airport*
 - *Human Services Delivery Plan*
 - *Banora Point Community Centre*
 - *Public Transport Plan*
 - *Flood Management*
 - *Residential Development and Housing Affordability Strategies*
 - *Bushfire Hazard DCP*
 - *South Kingscliff Tourism site*
 - *Vegetation Management Plan and accompanying LEP*
 - *Crime Prevention Plan*
 - *Community Facilities Policy and Program*
 - *Coastal Hazard Policy*
 - *Draft LEP preparation for Leisure Gardens, Pottsville (including possible school site)*
 - *Development Control Plan for Cabarita*
 - *Draft LEP preparation for reclassification of Council land”*
- B. *The following two projects be added to the Strategic Planning Works Program as a subsequent priority at the moment:-*
- a. *DCP/Master Plan for part of Terranora/Bungalora outside of Area E*
 - b. *A Development Control Plan for rural villages.”*
2. The preparation of a DCP for Uki be commenced following the exhibition of a draft DCP for Cabarita.
 3. The preparation of a Rural Settlement Strategy be commenced following the engagement of planning consultants to prepare a DCP for Uki.
 4. The Acting Director, Development Services bring forward minor LEP Amendments as resources may permit.

REPORT:

BACKGROUND:

On 20 August 2003 Council resolved that the Strategic Planning Work Programme should remain essentially as agreed by Council in February 2003, as follows: -

"A. *“the following projects be endorsed as the Strategic Planning Work Program priorities for the period until the first quarterly review of the 2003/2004 Management Plan:*

- *Tweed Shire Strategic Plan*
- *Tweed Coast Strategy and District Centre Strategy*
- *West Kingscliff planning – draft DCP9*
- *Rural Settlement Strategy and Rural Land Use Study*
- *Local Environmental Studies and draft Local Environmental Plans for:*
 - a) *Kings Forest*
 - b) *Black Rocks*
 - c) *Chinderah*
 - d) *South Pottsville; and*
 - e) *“Area E”, Terranora*
 - f) *Tanglewood*
- *DCP Koala Beach*
- *Various draft LEP Housekeeping and other amendments*
- *Economic Development Projects:*
 - o *Kingscliff Sewage Treatment Plant rezoning*
 - o *Industrial lands*
 - o *Coolangatta Airport*
- *Human Services Delivery Plan*
- *Banora Point Community Centre*
- *Public Transport Plan*
- *Flood Management*
- *Residential Development and Housing Affordability Strategies*
- *Bushfire Hazard DCP*
- *South Kingscliff Tourism site*
- *Vegetation Management Plan and accompanying LEP*
- *Crime Prevention Plan*
- *Community Facilities Policy and Program*
- *Coastal Hazard Policy*
- *Draft LEP preparation for Leisure Gardens, Pottsville (including possible school site)*
- *Development Control Plan for Cabarita*
- *Draft LEP preparation for reclassification of Council land”*

B. *The following two projects be added to the Strategic Planning Works Program as a subsequent priority at the moment:-*

- a. *DCP/Master Plan for part of Terranora/Bungalora outside of Area E*

b. A Development Control Plan for rural villages."

The Programme is not due for review until August 2004 but in view of changing circumstances it is considered appropriate to bring this review forward. A copy of the report to Council in August 2003 is attached as that report sets out, in considerable detail, the relevant issue in the formulation of the Programme at that date.

This report will identify changed circumstances since August. Appendix 1 sets out an audit of current projects.

When the Programme was determined in August 2003 a number of requests for inclusion in the Programme (particularly rezoning proposals) were not accepted by Council. These included the following: -

1. Rezoning proposal - Kirkwood Road, Tweed Heads South: This proposal has been submitted by the landowner to provide for additional industrial land.
2. Rezoning proposal - Creek Street, Hastings Point: Council recently resolved to consider this request as a part of this review of the SPWP.
3. Rezoning proposal - Aboriginal Land Council Fingal: This rezoning application was considered as part of the deliberations in respect of the previous review of the SPWP when Council resolved not to include it in the Program.
4. Amend the definition of 'attached dual occupancy'.
5. Rezoning proposal - part of the West Murwillumbah Urban Release Area from 1(c) to 2(c) to enable more efficient use of the land and facilitate the proponent's preparation of a master plan for the locality. This rezoning application was considered as part of the deliberations in respect of the previous review of the SPWP when Council resolved not to include it in the Program.
6. LEP Housekeeping: The DES has engaged D Anderson to review the TLEP in terms of the approval process for public works on Council land. He has concluded that:
 - The LEP should be amended to facilitate the assessment of such proposals under Part 5 of the Act rather than Part 4.
 - Certain works should be included in DCP 40 Exempt and Complying Development.
 - All land accommodating Council engineering assets should be zoned 5(a), and classified operational pursuant to the Local Government Act.

In addition there has been an outstanding request to rezone Crown Land south of Cabarita from 6(a) to 7(f). This was omitted from the report when the Programme was considered by Council in August. If followed through such an amendment would make caravan parks prohibited development.

Since then there have been a number of other considerations and requests which mean a review of the work programme is appropriate. These include the following: -

1. The resignation of the Director of Development Services. This is particularly being felt in the Tweed Futures project, which is now being coordinated by the Manager of Strategic Planning. The Project is absorbing considerable resources. It is a high priority project which is in two stages.

Stage 1 identification of issues which will be completed with the submission of a "state of play" report to Council on 3 March 2004.

Stage 2 preparation of a draft Strategic Plan with the next Council in April/May 2004.

It is essential that the momentum of this project be maintained.

2. On-going requests as to where the Rural Settlement Strategy is up to together with a large number of enquiries about how to obtain a dwelling entitlement for rural lots which currently do not have such an entitlement. At this stage the LEP Advisory Committee has requested the Director of Development Services to establish a framework by which to further the Strategy in view of PlanningNSW and TEDC report and other information provided and discussed this far.

To proceed the Strategy further commitment is required to give it a higher priority in the work programme.

3. Specific rezoning requests: -

- (i) Lot 1 DP 828862 Castlefield Drive, Murwillumbah from 6(c) to 2(c). In support of the request the following information has been received: -

"This application is to rezone land 6(b), to 2(c) or equivalent to allow for a dwelling to be erected on it.

A meeting with DAP on Friday March 8, 2002 indicated that this could be pursued through this channel and in a subsequent meeting with Douglas Jardine the procedure was outlined.

The Murwillumbah West Project Planning Report, prepared by Tweed Shire Council in 1998, Table 8.1 admitted that a flexible planning arrangement should exist as the development is large and as stages or development progressed community needs may change.

As subsequent stages have been developed and recreation and 'open space' areas have developed it is apparent that this land in question is not being used for any purpose in the existing plan. I would like to have a 6 metre buffer zone suitable landscaped around the curb side of the

land to enhance the entrance to the rest of the estate. This would make any dwelling suitable blend in with the rest of the development.

In study of Table 7.5 of the West Murwillumbah Planning Project Report it is noted that the current neighbourhood community is indeed mostly of a mature nature with the rest of Lot 1 and surrounding 'duplex style' developments almost exclusively made up of retirees who find the sloping land of no recreation or open space use. The estate has more than adequate developed parks, maintained by council, to satisfy the needs of families and young children in the surrounding areas.

In study of the Planning Report I feel this request is a reasonable one and as this land already attracts a full residential rate all the facilities are obviously available. I look forward to correspondence on this matter".

- (ii) 123 Kennedy Drive, Tweed Heads West. The land is currently zoned 2(a) as is all land along Kennedy Drive, in acknowledgement of aircraft noise issues. The owner argued the LEP should be amended to allow for town houses in the following forms: -

"Regarding my current zoning and the proposed 3 townhouses.

"I sold 550 metres off to the left of me to the Main roads for there Tugan Bypass highway development project and as government land it will never be built out so the land area is truly larger in retrospect.

Also with the lane driveway at the back of the block the land mass area access over the 1,000 meter mark. Considering this driveway access is limited to only my block and the one I sold to the Main roads. This driveway is truly 99.9% used solely by the residences on my block.

Also in retrospect of the adjoining properties in the immediate area being all 3 story walk ups and my block only 2 years ago was zoned for 3 story walk up multi dwelling living.

I have enclosed the ANEF noise aircraft scale My property is on the 25-20 scale the low scale and since I have been living there I have not even noticed the planes and the noise as it is hardly relevant, so much so, I plan on living in one of the town houses being built.

I ask you most humbly to allow the three town houses I have proposed to be built for the purpose of a better development site and also better access to the homes via Honeysuckle lane access to Rose street. I have lived on Kennedy drive for 2 years now and I like using the land and have built it up to be my main access road. Also the existing home built in 1960 is at present subject to flooding and is an eyesore to the area.

There is a shopping centre only 250 meters away and a petrol station 100 meters away and another petrol station 150 meters away if this property was listed in Schedule 8 then it would come under the one dwelling per 250m site. Relaxation.

Considering that all the development has been done in the immediate area I feel the only way to improve this site rather than the renovation of the old existing house that I have already done, is to knock down and rebuild. This becomes a very expensive project and more than likely won't be done if there is only allowed one dwelling but if you SPOT REZONE the site to make it accept the three town houses I have proposed then I feel the standard of living will definitely increase".

- (iii) 1 Marie Street, Tweed Heads South. This dwelling is constructed with a small corner of the dwelling on a Council reserve, which is classified Community Land under the Local Government Act 1983. This situation goes back over many years. The owner has requested purchasing a small amount of land from Council to rectify the situation. This would first require the reclassification of the land. Such a process would have to be undertaken by a planning consultant as it is Council land, with costs borne by the proponent.
- (iv) Lot 12, DP 616260 Robcole, Upper Duroby. The current landowner considers that the TLEP 2000 has not correctly transposed the TLEP 1987 Environmental Protection Zone boundaries for his property. In his letter of submission he has stated that:

"The TLEP 2000 zones on my property Rural 1(a)/Habitat 7(l) are different to the zonings in the TLEP 1987 I have in my possession. This has consequences for the erection of a dwelling, infrastructure on the property and land use. As a result I request that the TLEP 2000 be modified for my property to reflect the TLEP 1987.

In 1990 my Surveyor, Mr Basil McLauchlan (McLauchlan Surveying) placed before Tweed Shire Council a Development Application prior to my purchase of the above property indicating that I was going to build a dwelling on the prominent hill on the property. After due consideration the Council wrote a letter dated 19th November 1990 stating that: "As the dwelling is to be erected on land zoned 1(a) Rural, then no Development Application is required". Subsequently, I acquired the property, obtained building approval and a portion of a house was erected to lock-up stage.

When the Draft TLEP 1998 was released by Council in 1999 I wrote to Council and informed it that the house site was now inside of the Habitat 7(l) zone and asked that the zone line be moved to reflect the letter dated 19th November 1990, however, this did not occur.

I have obtained two different copies of the TLEP 1987 as released to the public. One is held by Mr Basil McLauchlan, McLauchlan Surveying, Tweed Heads and the other by the Valuer General's Office, Murwillumbah. Both are both significantly different to the one held by Council. From these maps I can deduce that there is an anomaly in the TLEP 1987 held by the Council, Strategic Planning, Development Services Division. This anomaly has led to the rezoning in the TLEP 2000 of approximately 20% of my land from Rural 1(a) into Habitat 7(l)".

4. Uki DCP. Council has resolved to prepare a DCP fro Uki. The project is not included in the current Work Programme.

Discussion

The content of and expectations for the Work Programme continue to be of concern. There is no scope for additional projects and it is difficult to identify any potential for reducing the priority of current projects, except in respect of the following: -

1. Cabarita DCP. It is hoped that the local Steering Committee will shortly finalise a draft DCP for recommendation to Council. Whilst the draft has still to be endorsed by Council and exhibited it may free a Unit member for work on another project, say Rural Settlement Strategy, or Uki DCP.
2. Vegetation Management Plan. Recent legislation changes and the creation of Catchment Management Authorities has implications for this project. However, these cannot be articulated until the legislation has been finalised. In the meantime there is no practical option but to place the project on hold.

The issues in respect of the Programme are a reflection of the rate of change being experienced in the Tweed and the depth and range of resultant issues that have to be addressed by Council. The range of projects in the Programme itself also reflects the issues being raised by the local community in the Tweed Futures project. Under those circumstances it is appropriate for Council to ensure it clearly articulates its priorities, which in part it already has done in the Management Plan; and which will be completed in the finalisation of Tweed Futures.

In the meantime the critical elements which require Council's prioritisation are as follows:

1. The Uki DCP
2. Rural Settlement Strategy

The Management Plan does not identify Uki as a priority for Local Area Planning, although it does identify a 3 year Rural Villages Development Strategy, which has not yet commenced. This was intended to examine more than just land use issues.

\$20,000 has been allocated for a consultant to undertake the necessary work, although project supervision will be required. The available funding would enable the project to be done with the least disturbance to existing priorities. It is therefore concluded that work

should commence on the DCP following completion of the Cabarita DCP. The Rural Settlement Strategy should then follow Uki.

With regard to minor LEP amendments, including the reclassification of Marie Street, the amount of work incurred on these may not be significant. Discretion should be given to the Acting Director of Development Services to fit these into the Programme as resources may permit.

APPENDIX 1**STRATEGIC PLANNING UNIT WORK PROGRAM (as at 4.8.03) - AUDIT OF PROJECTS****A. PRIORITY PROJECTS AGREED BY COUNCIL**

Project	Work required to complete
Tweed Coast Strategy and District Centre Strategy	Tweed Coast Strategy DCP has been adopted by Council No further work to be undertaken on District Centres Strategy
Draft DCP 9 - West Kingscliff planning	DCP 9 being reviewed
Rural Settlement Strategy and Rural Land Use Study	Report to be presented to LEP AC setting out recommendations on how to proceed based on earlier work by SPU, TEDC Rural Viability Study and specific localities Council has not formally responded to the TEDC Rural Land Use Study. To do so a report would have to be prepared
Environmental Studies and draft Local Environmental Plans Black Rocks	Legal agreement executed and DLEP to be submitted to Minister
Review of Chinderah planning	No work commenced to date
Environmental Study and draft Local Environmental Plans Area E, Terranora	Consultants commenced work, draft Environmental Study and draft LEP anticipated by end December 2003
Environmental Study and draft Local Environmental Plans Tanglewood	Council resolved to prepare DLEP, awaiting responses to S62 consultations before preparing consultants brief for Environmental Study
Environmental Study and Draft LEP - Leisure Gardens, Pottsville (including possible school site)	Review of proposal and S54 report to be prepared.
Koala Beach	1. Amendment to DCP to be prepared following determination of Stage 5 and 6 DA 2. Amendment to Deed of Agreement to be finalised
Various draft LEP Housekeeping and other amendments	Various matters nearing completion, no further items in the pipeline

Project	Work required to complete
Kingscliff Sewage Treatment Plant rezoning	Environmental Study and Draft LEP on exhibition
W Tweed Heads Industrial Rezoning	Further traffic study to be prepared
Review of the Tweed Shire 2000+ Strategic Plan	Issues Paper on exhibition
Human Services Delivery Plan	Draft completed and circulated to Government agencies for comment prior to submission to Premiers Department. Population projections yet to be included in final document
Banora Point Community Centre	Sketch design accepted by Council, MEH to complete the project
Public Transport Plan	Draft Plan prepared, to be considered by EMT
Flood Management	No work to date. Project would require major input from Manager Water
Residential Development and Housing Affordability Strategies	Draft documents being prepared
Bushfire Hazard DCP	Bushfire Risk Management Cttee engaged consultants to undertake Bushfire hazard mapping, Draft DCP to follow
Lot 490 South Kingscliff Tourism site	Amended DCP and Management Plan submitted to Lands Department
Vegetation Management Plan and accompanying LEP	Draft LEP instrument and DCP 40 amendment finalised by Vegetation Management Committee. Zone maps to be finalised
Crime Prevention Plan	
Community Facilities Policy and Program	Draft document prepared but not finalised
Coastal Hazard Policy	Awaiting consultant's recommendations on planning options
Development Control Plan for Cabarita	Steering Committee to finalise draft DCP for submission to Council
Draft LEP - reclassification of Council land	Prepare S54 report. Engage consultant to undertake the project
Kings Forest	Consultants Brief being prepared to recommence project.
Seaside City	Meeting with landowners on 16 January 2004 before determining next action

B. OTHER PROJECTS WHICH HAVE BEEN ACCOMMODATED

Project	Progress/Comments
1. Strategies	
Retail Strategy	Consultant preparing strategy
2. S94 Plans	
Surf Life Saving Strategy	Responses to consultants being reviewed.
3. Development Control Plans	
Flood Policy	Amendments to DCP 5 on exhibition Major review of DCP 5 because of revised NSW Flood Plain Management Manual. No work to date
Bushfire Hazard Control DCP	Bushfire hazard mapping being undertaken by consultants
DCP 40 – Exempt and Complying Development	Report to be submitted to Council on 17 December 2003 to finalise
DCP 48 – Height of Buildings	Draft exhibited, Council workshop on 23/7, report to Council being prepared
DCP44 – Dual Occupancy Controls	Draft amendment being prepared for exhibition
DCP 21 – Searanch	Council resolution to amend. No work to date
DCP – Friday Island	Draft exhibited and report to Council on 17 December 2003 to finalise
4. Tweed LEP Amendments	
Bogangar Release Area (Amendment No 7).	Amendment divided into two elements. Consultants engaged to prepare DLEP for Sites 1 and 2 at proponents cost (Glazebrook); funding requested to engage consultants for sites 3 and 4
Black Rocks, Pottsville. (Amendment No 8)	Legal Agreement executed and DLEP submitted to Minister
Industrial land, South Murwillumbah (Amendment No 9)	Proponents requested to fund preparation of draft LEP and Environmental Study. No response following acquisition by proponents of Wardrop Valley land.

Project	Progress/Comments
Area E, Terranora (Amendment No 10)	Consultants preparing comprehensive planning framework
Kingscliff STW (Amendment No 14)	ES and DLEP on exhibition
Deferred Area, Chinderah Road, Cudgen (Amendment No 19)	Exhibition completed and project deferred for inclusion in W Kingscliff project.
Proposed Highway Service Centre (Amendment No 23)	Consultants preparing ES and DLEP
Housekeeping (Stage 2) – Exempt and Complying Development (Amendment No 26)	DLEP exhibited. Report to Council on 17 December 2003 to finalise
Mooball Road, Pottsville – proposed 3(c) Commerce and Trade (Amendment No 29)	Objections from Coastal Council and NPWS. Proponent investigating alternative developments for the property.
Dwelling entitlements, Uki (Amendment No 30)	PNSW require additional information.
Housekeeping Stage 1 (Administrative LEP Anomalies) (Amendment No 31)	Council resolved to submit to Minister
Caravan Park, Dry Dock Road (Amendment No 35)	S54 notification and s62 consultations undertaken. Awaiting traffic study from proponent
Tweed Heads West Industrial Area (Amendment No 37)	Traffic report to be prepared
Housekeeping Stage 2 – General Amendments (Amendment No41)	S54 notice sent to PlanningNSW
Dwelling entitlements (Amendment no 45)	Submitted to Minister

Project	Progress/Comments
Building Heights (Amendment no 46)	DLEP exhibited and submissions being reviewed. To be reported to Council
Master Plans (Amendment No 47)	Council report following exhibition prepared. To be reported to Council
Chinderah - Stirling Land	Further advice awaited from the proponents.
Tanglewood	S54 resolution submitted to PNSW
Black Rocks	Draft LEP on exhibition
Cudgen deferred areas	S54 resolution submitted to PNSW

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed Work Programme be adopted.

UNDER SEPARATE COVER:

1. Copy of the report to Council in August 2003 (DW 941519)
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20 [DS] Review of Determination of Application DA03/0651 for a Detached Dual Occupancy at Lot 101 DP 1049552 No. 34 Franklin Street, Banora Point

ORIGIN:

Development Assessment

FILE NO: DA03/0651 Pt1

SUMMARY OF REPORT:

Council is in receipt of a request from the proponent for this development application seeking a Review of Determination. The request for the Review of Determination was received in the required time and was accompanied by a fee. No further technical documentation was provided with the application to review the determination.

The applicant was requested to provide further information to support the proposed development. However the information provided to Council was not adequate to favourably determine the application. The proposed development was refused by the Development Assessment Panel on 24 September 2003. The proposed development was refused for a number of reasons associated with Development Control Plan No. 6 - Multi-Dwelling Housing and inadequate information provided to support the proposal. The report considered by the Development Assessment Panel on the 24 September 2003 is contained in this report. It is recommended that the refusal be upheld by Council.

RECOMMENDATION:

That Council reaffirms the determination of Development Application DA03/0651 for a detached dual occupancy at Lot 101 DP 1049552 No. 34 Franklin Street, Banora Point.

REPORT:

Applicant: E Bonnor
Owner: M Becker
Location: Lot 101 DP 1049552 No. 34 Franklin Street, Banora Point
Zoning: 2(c) Urban Expansion
Cost: \$195,000.00

BACKGROUND:

This development application is for a detached dual occupancy. Each dwelling contains three bedrooms. The allotment is 750m² in area.

A detailed letter requesting additional information was sent to the applicant on 16 June 2003. A response was received on 22 August 2003. The response did not address the issues adequately.

The application was reported to the Development Assessment Panel on 24 September 2003 when it was resolved to refuse the application for the following reasons: -

1. Pursuant to Section 79C(1)(a)(iii) the development proposal has not had due consideration too or provided detail as required by Tweed Shire Development Control Plan No.6 - Multi-dwelling Housing.
2. Pursuant to Section 79C(1)(b) the proposed development is considered to adversely impact upon the built environment, in particular by not maintaining or enhancing the amenity of adjoining land.
3. Pursuant to Section 79C(1)(c) the suitability of the site for the proposed development can only be determined as unsuitable on the information provided to Council.
4. Pursuant to Section 79C(1)(e) the proposed development is considered to have the adverse external impacts and as such cannot be considered in the public interest.
5. Pursuant to Section 79C(1)(e) the proposed development in unnecessarily compromising the integrity of Council's development control plan provisions is not considered to be in the public interest

The key issues regarding this proposal are as follows: -

1. Clause 3.2 of Development Control Plan No. 6 – Multi-Dwelling Housing requires that “The maximum width of garages or car ports facing the street should be 6m or 50% of the frontage width, whichever is the lesser. Carports and garages should be set back behind the front façade of the building.” The proposed plans do not appear to comply with this requirement and as such you will need to seek a variation to this requirement or address how the proposed development complies with the necessary performance criteria.
2. Clause 3.3.4 of Development Control Plan No. 6 Multi – Dwelling Housing deals with car parking provisions and dimensions. The proposed development is considered to be unsatisfactory as it has a poor relationship to the street and the garage dominates the buildings when viewed from the street. The dual occupancy should be redesigned such that it has an improved relationship to the street with the garages not dominating the street.
3. It is considered that the proposed design does not seek to maximise the potential for energy conservation in accordance with Development Control Plan No. 6 – Multi – Dwelling Housing. The double garages located on the northern side of the building will restrict solar access and overshadow habitable rooms and open space.

It is considered that the above matters are design issues that could be suitably addressed with careful consideration of Council's Development Control Plan and the layout, appearance and final design of the two dwellings.

The report to the Development Assessment Panel of 24 September 2003 is reproduced below: -

"Development Application DA03/0651 - detached dual occupancy AT Lot 101 DP 1049552, No. 34 Franklin Street BANORA POINT

DA03/0651

Applicant: Mr EW Bonnor
Owner: Metricon Pty Ltd and Lanlex Pty Ltd
Location: Lot 101 DP 1049552, No. 34 Franklin Street Banora Point
Zoning:
Est Cost: 195000.00

Background

Council is in receipt of a development application for a detached dual occupancy on the subject land. The development comprises two single storey dwellings each incorporating three (3) bedrooms, a dining/family room, a lounge and a double garage. The building footprint for the proposed development encompasses approximately 432.74m² of the 750m² site area.

The subject site is located within the Flame Tree Park estate, Banora Point. The land is highly disturbed and is clear of any significant vegetation. The surrounding allotments are predominantly vacant or undergoing construction. The consent plan for the estate identifies the subject site as a nominated dual occupancy allotment.

The application was originally lodged with Council on the 07/05/03 and subsequently considered in Area Team Meeting on 22/05/03. A preliminary assessment of the application identified several areas of non-compliance with the provisions of DCP No.6. On the 16/06/03, a letter was sent to the applicant requesting additional information in this regard. The letter advised the applicant;

- 1. Clause 3.2 of Development Control Plan No. 6 – Multi-Dwelling Housing requires that “The maximum width of garages or car ports facing the street should be 6m or 50% of the frontage width, whichever is the lesser. Carports and garages should be set back behind the front façade of the building.” The proposed plans do not appear to comply with this requirement and as such you will need to seek a variation to this requirement or address how the proposed development complies with the necessary performance criteria.*
- 2. Clause 3.3.4 of Development Control Plan No. 6 Multi – Dwelling Housing deals with car parking provisions and dimensions. The proposed development is considered to be unsatisfactory as it has a poor relationship to the street and the garage dominates the buildings when viewed from the street. The dual occupancy should be redesigned such that it has an improved relationship to the street with the garages not dominating the street.*
- 3. It is considered that the proposed design does not seek to maximise the potential for energy conservation in accordance with Development Control Plan No. 6 – Multi – Dwelling Housing. The double garages located on the northern side of the building will restrict solar access and overshadow habitable rooms and open space.*

Under Council's Determination Policy the applicant was required to respond within fourteen (14) days of the date of the letter. On the 22/08/03 Council received a submission from the applicant, seeking approval of the existing plans with no proposed amendments.

The argument made in support of the application is not considered sufficient to justify departure from the provisions of DCP No.6 and as a result, the application is recommended for refusal. The recommendation is in accordance with the advise of the Director of Development Services in a meeting on the 2/09/03.

CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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

The subject land is zoned 2(c) Urban Expansion under the Tweed Local Environmental Plan. The proposed development is permissible with consent in the subject zone.

The proposed development is generally consistent with the requirements of the TLEP.

(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

The proposed dual occupancy development is considered to exhibit a poor relationship with the street, adversely impacting on the streetscape and the degree of amenity within the estate.

The character of Flame Tree Park is evolving rapidly with construction completed on many allotments within the early stages. The existing development within the estate attains a desirable standard of development and generally demonstrates compliance with the provisions of DCP No.6.

As a result it is considered critical to enforce good urban design principles, such as those incorporated in DCP No.6, to ensure that the character for the estate is preserved as the project evolves.

Development approved contrary to these principles has the potential to undermine the amenity of the estate and facilitate further non-compliance.

(c) Suitability of the site for the development

The newly established Flame Tree Park has yet to have its character clearly defined. The proposed development is considered to be unsuitable given that the design exhibits several areas of non-compliance with the provisions of DCP No.6. A variation from these provisions is not supported on the basis that it will set an undesirable precedent in an area that is still evolving. In part, the poor standard of design can be attributed to a growing trend in dual occupancy development, whereby applicants seek to establish two large, single storey dwellings on a single allotment. Given that this is often the objective of the developer, the opportunities to encourage an improved quality of design are limited.

In this instance, the applicant has made no attempt to delineate between the appearance of each unit or reduce the impact of the garages on the streetscape. The dominant location of the garages is contrary to the design guidelines of DCP No.6 and the Australian Model Code for Residential Development (AMCORD). The proposed development is considered unsuitable for subject site due to its poor design attributes and non-compliance with DCP No.6 and is therefore recommended for refusal.

(d) Any submissions made in accordance with the Act or Regulations

The application was notified for a two week period between 30/06/03 and 14/07/03. During this time no submissions were received.

(e) Public interest

The proposed development is contrary to Council's DCP No.6 and does not exhibit good urban design principles. Permitting development of this nature compromises the urban character of the estate and sets an undesirable precedent. The application is therefore not considered to be in the public interest.

Conclusion

Having consideration for the matters raised in this report it can only be concluded that on a merit assessment the proposed development does not attain a standard of design sufficient to warrant its approval.

The single storey, three (3) bedroom nature of the dwellings is incompatible with the dimensions of the site, resulting in the unsatisfactory location of the garages. The applicant has made no attempt to resolve these issues in their submission.

RECOMMENDATION:

That Development Application DA03/0651 for a detached dual occupancy at Lot 101 DP 1049552, No. 34 Franklin Street Banora Point be refused for the following reasons:

- 1. Pursuant to Section 79C(1)(a)(iii) the development proposal has not had due consideration too or provided detail as required by Tweed Shire Development Control Plan No.6 - Multi-dwelling Housing.*
- 2. Pursuant to Section 79C(1)(b) the proposed development is considered to adversely impact upon the built environment, in particular by not maintaining or enhancing the amenity of adjoining land.*

3. *Pursuant to Section 79C(1)(c) the suitability of the site for the proposed development can only be determined as unsuitable on the information provided to Council.*
4. *Pursuant to Section 79C(1)(e) the proposed development is considered to have the adverse external impacts and as such cannot be considered in the public interest.*
5. *Pursuant to Section 79C(1)(e) the proposed development in unnecessarily compromising the integrity of Council's development control plan provisions is not considered to be in the public interest."*

OPTIONS:

1. Confirm the determination of the refusal of the application.
2. Uphold the request and request that appropriate conditions for approval be submitted to the next Council meeting.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has a right of appeal to the Land and Environment Court if dissatisfied with the determination.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposal is inconsistent with Council's Development Control Plan No. 6 for Multi-Dwelling Housing and the decision to refuse the application should be reaffirmed.

UNDER SEPARATE COVER:

Nil.

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REPORTS FROM EXECUTIVE MANAGER - OFFICE OF THE GENERAL MANAGER

21 [OGM] Monthly Investment Report for Period Ending 30 November 2003

ORIGIN:

Financial & Information Services

SUMMARY OF REPORT:

This report is provided to Council to advise details of monies Council has invested in accordance with Section 625 of the Local Government Act 1993.

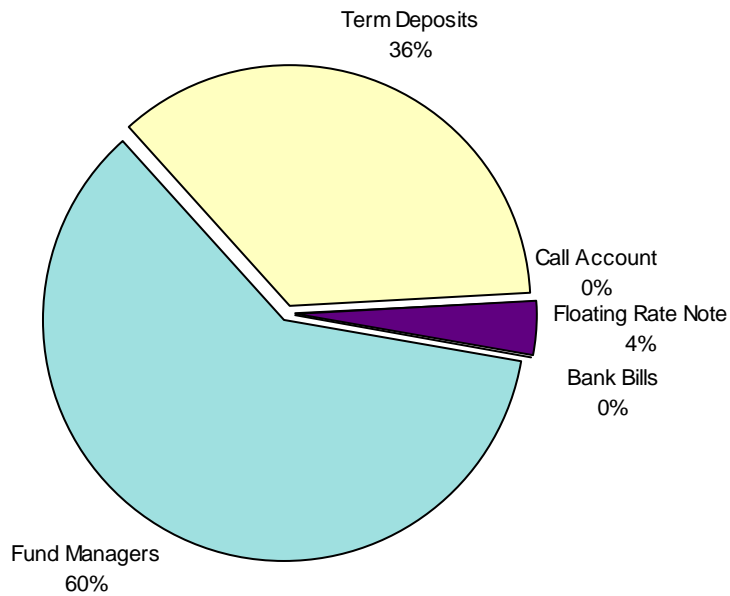
RECOMMENDATION:

That this report be received and noted.

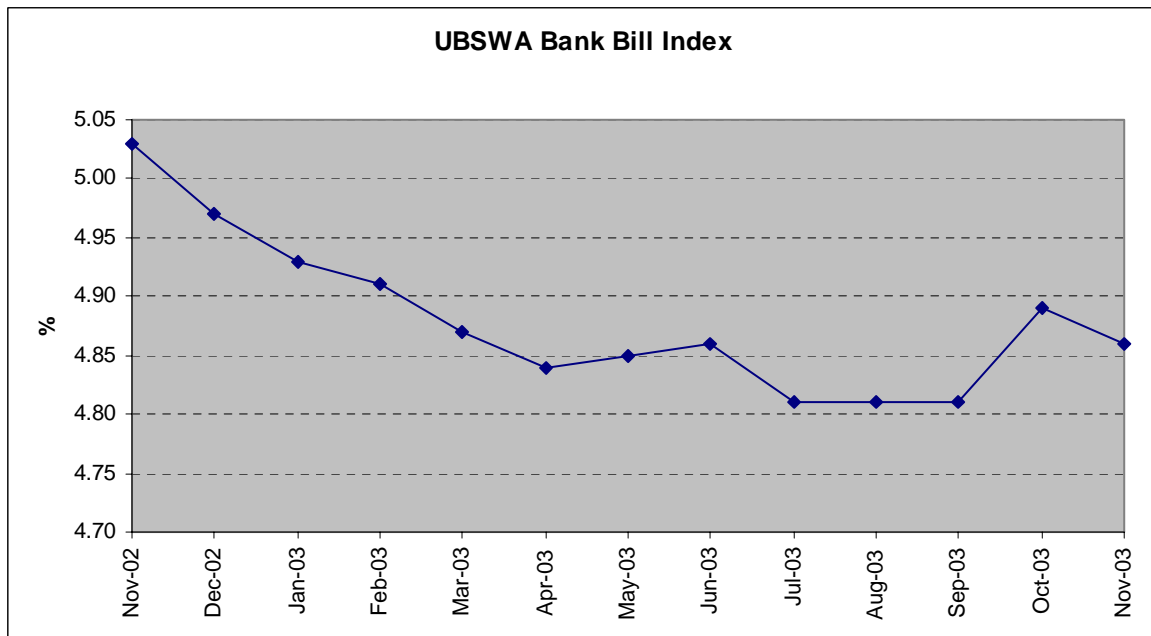
REPORT:

1. Current Investment Portfolio by Category

% of Funds Invested by Category



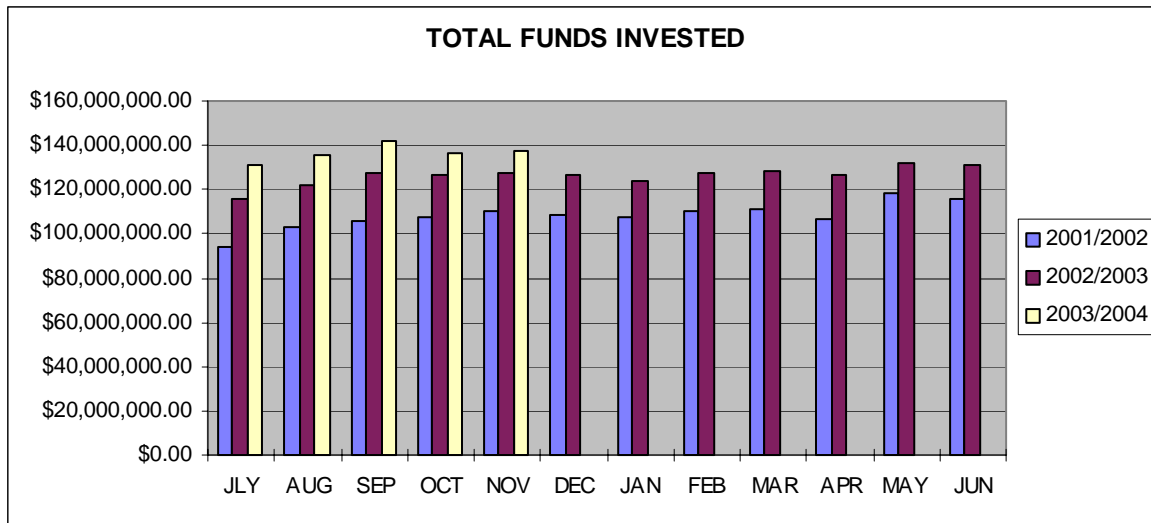
2. Investment Rates - 90 Day Bank Bill Rate (%)



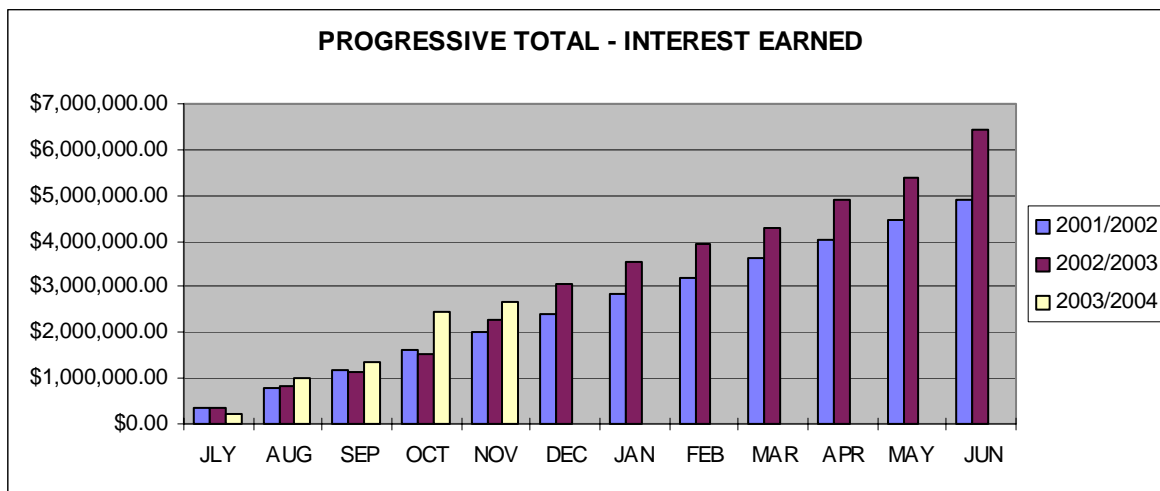
3. Annualised Rate of Return for Funds Manager - Net of Fees

Fund	30 Days	90 Days	1 Year
	%	%	%
ANZ Cash Plus	5.12	5.35	5.35
Alliance Cap Cash	4.68	5.02	5.24
Deutsche Cash Plus	5.09	5.61	5.56
Macquarie Diversified	4.83	5.21	5.27
UBS Credit Enh.	5.24	5.44	5.93

4. Monthly Comparison of Total Funds Invested



5. Annual Progressive Total of Interest on Total Funds Invested



6. Market Commentary

The US economy grew at 7.2% in the September quarter, which is the best performance seen in almost 20 years.

This turnaround in the US economy and the recent upbeat tones emanating from the other larger economies of the world, for example, the UK and Japanese economies, promoted the Reserve Bank of Australia Board to decide to tighten monetary policy in its November meeting by 0.25%, thereby taking the official rate to 5.0%.

The US economy grew at 7.2% in the September quarter, which is the best performance seen in almost 20 years.

7. Investment Summary as at 30 November 2003

GENERAL FUND

BANKS	23,365,374.87	
FUND MANAGERS	19,103,205.84	
CALL	26,563.14	42,495,143.85

WATER FUND

BANKS	7,499,999.73	
FUND MANAGERS	37,380,658.60	
	3,000,000.00	47,880,658.33

SEWERAGE FUND

BANKS	16,500,000.00	
FUND MANAGERS	26,620,814.77	
LOCAL GOVT. FIN. SERVICES	4,000,000.00	47,120,814.77

TOTAL INVESTMENTS **137,496,616.95**

It should be noted that the General Fund investments of \$42.4 million are not available to be used for general purpose expenditure. It is virtually all restricted by legislation and council resolution for such purposes as unexpended loans, developer contributions, unexpended grants and various specific purpose reserves such as domestic waste, land development and employee leave entitlements.

Statutory Statement - Local Government Financial Management Regulations (Sec.19)

I certify that Council's investments have been made in accordance with the Local Government Act 1993, the Financial Management Regulations and Council's Investment policies.



**RR Norvill FCPA
Responsible Accounting Office
Executive Manager - Office of the General Manager**

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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22 [OGM] Section 64 and Section 94 Developer Contribution Comparison with Land Sale Prices

ORIGIN:

Financial & Information Services

SUMMARY OF REPORT:

Council at its meeting 19 November 2003 considered a report on Section 64 and Section 94 contributions, using the land sale price as an indicator for determining the percentage of average land sale prices attributable to developer Section 64 and 94 contribution charges, which are levied as a condition of development consent, for future infrastructure associated with growth within the Shire.

A further review of Section 64 and Section 94 contributions, being cash contributions only, paid by developers for 1993/1994 and 2003/2004 has been conducted based upon actual developments. The figures in the report do not take into consideration non – cash contributions for infrastructure that developers provide as part of the development application approval conditions.

The review was based on contributions that would have been paid in 1993/1994 and what would be paid in 2003/2004 for the same number of allotments, together with average land prices that would be obtained for new releases of land, for the relevant years.

RECOMMENDATION:

That this report be received and noted.

REPORT:

Provision of public infrastructure is a fundamental function of Local Government. Sources of funding for infrastructure for future growth include State Governments, Local Government budget allocations and developer contributions.

Section 64 and Section 94 plans enable Councils to require developers to make either cash or non-cash contributions as a condition of consent before carrying out a development on any land for future population growth.

Contributions are currently being made for roads, water, sewerage, parking, open space, libraries, cemeteries, community and council facilities, street trees, bus shelters, cycleways and surf lifesaving emergency facilities.

The power to levy Section 94 contribution relies on there being a clear link (nexus) between the development being levied and the need for the public amenity or service for which the levy is required. If infrastructure is required for current population demands, then Council funds this expenditure from its own sources such as rates.

A review of Section 64 and Section 94 cash contributions paid by developers between 1993/1994 and 2003/2004 has been conducted. The review included a comparison between the amount of developer contributions paid and original land sale prices received by developers. The summarised findings of this comparison follow:

Percentage of Average Original Land Sale Price Attributable to Developer Contribution Charges

	1993/1994	2003/2004
Banora Point Developments	10.32%	7.64%
Tweed Coast Developments	9.12%	6.85%

It is apparent that although land prices have increased significantly in all areas of the Shire between 1993/1994 and 2003/2004, the percentage of sale price attributable to developer cash contributions has decreased. However, these figures do not take into consideration the value of non – cash contributions that developers are required to contribute as part of development consent, which would have an impact and therefore change the above scenario. Furthermore, the value of non- cash contributions does vary between developments.

Changes in Land Sale Prices and Developer Cash Contributions based on a per lot scenario

Banora Point

	1993/1994	2003/2004	% Increase
Land Sale Price	\$68,000	\$220,000	223%
Developer Cash Contributions	\$7,018	\$16,810	140%

Tweed Coast - Pottsville

	1993/1994	2003/2004	% Increase
Land Sale Price	\$78,000	\$225,000	188%
Developer Cash Contributions	\$7,110	\$15,412	117%

It should be noted, that the increase in the contributions per lot, includes not only increases in the rate for Section 64 and 94 contributions, but also new contributions plans, which have been approved, over the last 10 years.

Conclusion

It is important to note that the basis for levying Section 64 and Section 94 developer contributions to allocate the cost of providing new infrastructure for a growing population to new residents and businesses not existing ratepayers and residents.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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23 [OGM] Rural Village Development (RVD) Program 2003-2004

ORIGIN:

Executive Manager

SUMMARY OF REPORT:

A quarterly report has been received outlining progress on the Rural Village Development (RVD) Program, together with copies of the funding applications from the Community Projects Officer, Cath Donaldson, engaged with the Tweed Economic Development Corporation (TEDC).

A summation of the Community Projects Officer's quarterly report and the funding applications are detailed in this report.

RECOMMENDATION:

That this report be received and noted.

REPORT:

Following is a summation of the quarterly report, together with the funding applications from the Community Projects Officer, Cath Donaldson:

Quarterly Report:

2002/2003

During the first quarter of 2003, 5 villages – Mooball, Uki, Tyalgum, Tumbulgum and Chillingham, submitted their priority of projects for funding under the Rural Villages Development Program.

All villages have been working towards completing their projects and acquitting their funds via a quarterly report. The only outstanding monies are:

Mooball - \$20,000

This project has been delayed to a State Rail lease arrangement, which should be completed before the end of 2003, as a report is to go before Council on 17 December with recommendations regarding this lease.

It is therefore envisaged that the project should commence in January 2004.

Tumbulgum - \$4000

\$3500 involves a historic interpretation sign and community notice board project. The design is by the community with Council to construct. \$500 is for a special community event - they have chosen Australia Day.

In respect of the remaining villages, the projects have been well received by the communities and have been hugely successful in terms of the value adding.

Chillingham - The Chillingham community has used in kind labour and sought local tradesman to complete the outfitting of the new Community Centre. \$22,000 worth of materials has been used in the refurbishment of a disused old cow bail into a community technology centre, tourist visitor information centre, a market garden and a community meeting space. Local tradesman and Work for the Dole crews have provided in excess of \$30,000 worth of labour to do this.

Uki - The Uki community have begun the refurbishing of the Old butter Factory. They have commenced landscaping, concreting, internal painting, electrical work and the relocation of the Community technology centre. With \$8,800 worth of materials along with Work for the Dole crews, they have added \$10,000 worth of labour. They have constructed a new bus shelter more in keeping with the theme of the heritage look village. The Community have expressed appreciation for the programs assistance with material costs.

Tyalgum – The Tyalgum community have completed all the projects pertaining to the 2002/2003 program. The projects included the upgrade of the showgrounds,

development of a web design by Tweed Valley CTC, publication of a village brochure and the walking track survey and feasibility study.

2003/2004

Program guidelines and an application process have now been put in place for this years' funding. All rural communities were invited to put in a submission, via an expression of interest in the September Tweed Link.

An allocation of \$100,000 exists in the 2003/2004 Budget for Council's contribution towards projects approved in the Rural Village Development Program.

Seven communities expressed an interest and all submitted an application by the end of November. These were taken to an Assessment Panel meeting on 3 December 2003, there were 6 submissions viewed, for 7 communities with Mooball and Burringbar combined.

Uki

There were 9 projects approved:

1. Buttery (mezzanine refurbishment)
2. Buttery (safety)
3. Buttery (landscaping)
4. Information signboard
5. Old tennis shed
6. Youth activities
7. Calico bags
8. Assist Historical Society
9. Buttery (replace veranda decking)

Total funding:

RVD Approved	\$14,740
Inkind	\$5,850
Other contributions	\$6,760
Total cost	\$27,350

Chillingham

There were 5 projects approved:

1. Cladding of Community Centre and Creamery
2. Security lighting
3. Fending of Community Centre
4. Extend veranda
5. Erection of steel storage shed

Total funding:

RVD Approved	\$12,675
Inkind	\$2,800
Total cost	\$15,475

Tyalgum

There were 5 projects approved:

1. Gateway signage
2. Tourist Information sign
3. Walkway Stage 2
4. Calico bags

Total funding:

RVD Approved	\$14,280
Inkind	\$12,500
Other contributions	\$11,000
Total cost	\$37,780

Stokers Siding

There were 7 projects approved:

1. Roof over picnic table
2. BBQ with roof
3. Dance Group hall hire
4. Hall - kitchen repairs
5. Shade sails at playground
6. Pole removal
7. Tweed Rural Village bags

Total funding:

RVD Approved	\$11,020
Inkind	\$1,660
Other contributions	\$2,500
Total cost	\$15,180

Kunghur

There were 4 projects approved:

1. Hall - fencing
2. Hall - relocate driveway
3. Hall - shade sail
4. Hall - landscaping & replanting

Total funding:

RVD Approved	\$13,825
Inkind	\$2,800
Other contributions	\$600
Total cost	\$17,225

Mooball and Burringbar

There were 6 projects approved:

Mooball

1. Bus Shelter
2. Tweed Rural Village bags

Burringbar

3. Noticeboard
4. Landscaping
5. Playground equipment
6. Extension of park & construction of rotunda

Total funding:

RVD Approved	\$29,597
Inkind	\$10,000
Other contributions	\$26,000
Total cost	\$65,597

Total 2003/2004 RVD Approved \$96,137 (funded by Council)

Total RVD Project value \$178,607 (including in kind and other contributions)

The Co-ordinator, Cath Donaldson, is to meet and discuss the projects with relevant Managers, once they have been approved. Project management procedures will be implemented to ensure compliance with regulations such as safe work practice and OH & S issues.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

An allocation of \$100,000 exists in the 2003/2004 Budget for Council's contribution towards projects approved in the Rural Village Development Program.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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24 [OGM] Tweed & Coolangatta Tourism Inc (TACTIC) Monthly Performance Reports - October and November 2003

ORIGIN:

Executive Manager

SUMMARY OF REPORT:

Tweed and Coolangatta Tourism Inc (TACTIC) monthly performance reports for October and November 2003 are provided in accordance with the Agreement criteria.

RECOMMENDATION:

That this report be received and noted.

REPORT:

The agreement between Council and TACTIC requires the organisation to report on a monthly basis its performance in accordance with a number of specific requirements. The following details are provided for the months of October and November 2003.

FINANCIAL HIGHLIGHTS - SEPTEMBER 2003

a. *Months Results:*

- Gross Profit \$49,540
- Expenditure \$33,886
- Profit/Loss \$15,654
- Budgeted Profit/Loss (\$15,233)
- Variance from Budget \$30,887

Reasons for Variance

- Timing of Marketing spend
- Co-operative marketing – brochures invoiced one month later than anticipated
- Media contribution starting to kick in

b. *Year to Date Results:*

- Profit/Loss \$47,980
- Budgeted Profit/Loss \$45,483
- Variance from Budget \$2,497

c. *Cash at Bank 15th October 2003*

- \$27,394.17 (Plus Term Deposit \$75,758.21, Cash in Hand \$550)

d. *General Business*

- Balance Sheet – Auditor write-offs
- Co-operative Marketing Income – TVC
- Endorse Bar-coding expense

e. *Projected Extraordinary Items*

- Office Relocation – most of accounts due October
- Marketing Expenditure – TVC start of campaign – Nov/Dec
- Travel Licence – not processed yet - resources

RESERVATION & SALES

a. *Visitors to Visitor Information Centres - September 2003*

September					Tweed Heads				
WHRC					Tweed Heads				
	2003	%	2002	Variance		2003	%	2002	Variance
Total Visitors	2,450		1,034	136.94%	Total Visitors	4,133		0	#DIV/0!
Type of Enquiry					Type of Enquiry				
Tourism	829	64.73%	556	49.10%	Tourism	887	69.13%	0	#DIV/0!
National Parks	118	16.61%	231	-48.92%	National Parks	23	0.65%	0	#DIV/0!
Street Directions	106	7.88%	121	-12.40%	Street Directions	115	12.45%	0	#DIV/0!
Bus Timetables	11	1.37%	13	-15.38%	Bus Timetables	81	9.73%	0	#DIV/0!
Other	105	9.42%	113	-7.08%	Other	81	8.04%	0	#DIV/0!
TOTAL	1,169		1,034	13.06%	TOTAL	1187		0	#DIV/0!

Highlights

- No Visitor Statistics for Tweed Heads September 2002 due to temporary closure.
- Only a slight increase to visitor numbers to Murwillumbah than previous year.
- Statistics for foot traffic to Mall, sourced from Mall retailers, were noticeably down in comparison to 2002. NSW School holidays falling late September, and first week in October could be distorting figures and may increase numbers for October 2003

b. *Year to Date*

	2003/4	2002/03	Variance	2003/4	2002/03	Variance
	WHRC			Tweed Heads		
Sept Qtr	8,033	6,885	16.67%	5,544	1,401	295.72%
Dec Qtr		6,976	-100.00%		5,537	-100.00%
Jan Qtr		5,405	-100.00%		3,041	-100.00%
Jun Qtr		2,533	-100.00%		1,887	-100.00%
Total	8,033	21,799	-63.15%	5,544	11,866	-53.28%

Highlights

- September Quarter for WHRC shows a steady increase of 16.67% of visitors to the centre, in comparison to the same quarter the previous year.
- Figures for Tweed Heads are not reliable due to the temporary closure of the Visitor information Centre during August & September 2003

c. *Retail Sales*

	September 2003	September 2002
Number of Sales	552	
Average \$ per Sale	\$8.80	
Average \$ per Visitor	\$1.98	\$1.62

Highlights

- Tweed Malls Map Sales for September retail - 39 - \$154.05
- Wholesale maps sales for the month totalled - 558
- Retail sales for September were strong, \$5 553.00 which is \$1 593.00 above budget.
- Reordering of maps (wholesale) by retail outlets continues.

d. Reservations

- Appointment of Courtney Snow as Junior Reservations / Tourism Officer, commencing 27th October 2003.
- Accommodation and tour booking commissions revenue for September was \$2,255, which is \$1,242 above budget for September

e. Bookings through Reservations System

	No. Bookings	No. Nights	Total Value	Av. Stay (Nights)	Av. Value Per Bkg	Avg value per night
August	8	17	\$1,285	2.13	\$161	\$76
September	15	38	\$5,307	2.53	\$354	\$140

f. Current Group Bookings (as at 17th October 2003)

GROUP NAME	DATES	BOOKINGS TO DATE	VALUE TO DATE
Speed on Tweed	20 th & 21 st Sept 2003	2	\$378.00
Vietnam Veterans Re-Union	17 th – 20 th Oct 2003	5	\$1,356.00
Aboriginal Housing Commission	3-4 th November –booked at Twin Towns Resort	15	\$1950.00
Vindicatrix Re-Union	31 st Oct – 2 nd Nov	8	\$2,160.00

MARKETING*a. Television Campaign*

- Media Schedule from Quadrant received and currently being fine-tuned
- Request by Russel Roylance of Twin Towns to review the 'Clubs' ad
- Sponsors cocktail function held. Positive response regarding concept & strategy. Follow-up approaches now to be made by Terry Watson
- Funding commitments for campaign now \$36,000 (including brochure contribution)

b. Website

- Maintenance requests have been fulfilled for the past quarter.
- On-line reservations system now has 24 bookable accommodation products and 4 attractions being loaded

c. Retail product line

- Reprint of map due 31st October 2003
- 8 posters & 6 postcards due for launch at AGM

d. Public Relations

- Gold Coast Bulletin 'Traveller' Feature on 8th November will include Tweed editorial
- Weekend Australian visit by Dep. Travel Editor Barry Oliver confirmed for 29th – 31st October 2003
- Courier Mail articles published 11th & 19th October

- Media roadshow currently being planned for regional print media journalists.

Recommendation from Marketing Committee

'That Claire Cooper's engagement be terminated and that Verve Communications be appointed as replacement PR Consultant'.

e. *Festivals & Events*

- Interviews for Liaison Officer being held 22nd October 2003

f. *Advertising Requests*

- Toowoomba Chronicle, Northern Rivers Holiday Guide
- Bus & Coach Association (NSW) – Feature Article in 2004
- Take Time Out – Daily News
- Daily News 115yrs liftout edition
- Gold Coast Holiday Guide
- NRMA current booking finishes

MEMBERSHIP

a. *Current Financial Members*

Service	31	
TACTIC	121	
Reciprocal	4	
Corporate	6	Affils 9
TOTAL	162	

New members to be ratified:

Service 2

- Mission Employment Coolangatta
- Pottsville Beach CTC

Total Financial Members end October 2003 164 / 173

Breakdown of renewals

Members Renewed		
Service	16	
TACTIC	99	
Corporate	4	(Affils: 4)
Total	119	
Total invoices sent	168	70.84%

Renewals Outstanding as of 17th October = 12

Members advised not renewing

Tweed Unlimited Arts	Limited value
Maison de St Clair	No response
Northern Rivers Print	In receivership
Terranora Coach Tours	Selling business

Potential renewals still to come in = 12

Attrition rate: 11.3% representing 19 non-renewals / 168 invoices sent out

FINANCIAL RESULTS - OCTOBER 2003

a. *Months Results:*

- Gross Profit \$40,343
- Expenditure \$28,613
- Profit/Loss \$11,730
- Budgeted Profit/Loss \$8,515
- Variance from Budget \$3,215

Reasons for Variance

- (\$24,936) Co-operative marketing not booked
- (\$2,982) Membership under budget
- \$1,511 retail sales
- \$1,305 over budget on retail expenditure winding up for Xmas
- \$30,918 under spent on Marketing

b. *Year to Date Results:*

- Profit/Loss \$59,709
- Budgeted Profit/Loss \$53,998
- Variance from Budget \$5,711

c. *Cash at Bank 18th November 2003*

- \$62,222.77 (Plus Term Deposit \$75,758.21, Cash in Hand \$550)

d. *General Business*

- Retail products
- Co-operative Marketing Income

RESERVATION & SALES

a. *Visitor Numbers to Visitor Information Centres - October 2003*

October

	WHRC				Tweed Heads			
	2003	%	2002	Variance	2003	%	2002	Variance
Total Visitors	2,787		2,658	4.85%	Total Visitors	4,555	3,351	35.93%
Type of Enquiry					Type of Enquiry			
Tourism	893	53.77%	689	29.61%	Tourism	896	596	50.34%
National Parks	151	22.34%	292	-48.29%	National Parks	24	14	71.43%
Street Directions	143	11.70%	98	45.92%	Street Directions	96	59	62.71%
Bus Timetables	14	1.26%	16	-12.50%	Bus Timetables	128	22	481.82%
Other	127	10.93%	106	19.81%	Other	104	1743	-94.03%
TOTAL	1,328		1,201	10.57%	TOTAL	1248	2,434	-48.73%

Highlights

- Total Visitors to Tweed has increased, however the number of visitor enquiries is less than ½ compared to October 2002. The figure for “Other” enquiries 2002 could possibly include Mall enquiries, which would make sense of the large difference between 2003 and 2002.
- The number of visitors to Murwillumbah is consistent with numbers for October 2002, there was no significant increase, or decrease.

b. Year to Date

	2003/4	2002/03	Variance	2003/4	2002/03	Variance
	WHRC			Tweed Heads		
Sept Qtr	8,033	6,885	16.67%	5,544	1,401	295.72%
Dec Qtr	1,328	6,976		1,248	5,537	
Jan Qtr		5,405			3,041	
Jun Qtr		2,533			1,887	
Total	9,361	21,799		6,792	11,866	

Highlights

- September Quarter for WHRC shows a steady increase of 16.67% of visitors to the centre, in comparison to the same quarter the previous year.
- Figures for Tweed Heads are not reliable due to the temporary closure of the Visitor information Centre during August & September 2003

c. Retail Sales

	October 2003	October 2002
Number of Sales	598	
Average \$ per Sale	\$8.21	
Average \$ per Visitor	\$1.76	\$1.62

Highlights

- Tweed Malls Map Sales for October were exactly the same as September - 39 - \$154.05
- Wholesale maps sales for the month totalled - \$549
- Retail sales for October totalled, \$4,908, which is approximately \$1000 above budget. Updated stock with new retail lines introduced to the WHRC, initially have received a good response.

- New Posters & Postcards launched at AGM/Network Night
- Permission received from Tweed Mall to sell posters and postcards from the Information Booth.
- Salesperson is now on the road and establishing client base

d. *Reservations*

- Accommodation and tour booking commissions revenue for October was \$2520.01, \$69.01 above budget.
- Numerous requests for Christmas and January, with availability limited especially for apartments in the coastal areas.

e. *Reservations System*

	No. Bookings	No. Nights	Total Value	Av. Stay (Nights)	Av. Value Per Bkg	Avg value per night
August	8	17	\$1,285	2.13	\$161	\$76
September	15	38	\$5,307	2.53	\$354	\$140
October	6	19	\$1,575	3.17	\$263	\$83
Totals	29	74	\$8,167	2.61	\$259	\$99

f. *Group Bookings*

GROUP NAME	DATES	NO. BKGS TO DATE	VALUE TO DATE
Vietnam Veterans Re-Union	17 th – 20 th Oct	5	\$1,356.00
Vindicatrix Re-Union	31 st Oct – 2 nd Nov	10	\$2,338.00
Aboriginal Housing Commission	3-4 th November –Twin Towns	13	\$4550.00

- Group requests have slowed with the holiday season approaching.
- Events planned for 2004, which we are working towards securing business from:
 - NSW Veterans State Championships – Murwillumbah & Mullumbimby Golf Clubs. 6- 10 September.
 - 2004 Team Poly Wangaratta to Coolangatta Great Escape – a car rally to raise funds for Cystic Fibrosis. This will attract 60 – 70 cars and an estimated 200 people to Tweed Heads, the weekend of the 18th September 2004
 - NSW Registered Clubs Assn meeting in October

MARKETING

a. *Television Campaign*

- Media Schedule for November-December is now locked in
- On-air insertion from 16th November on Prime, QTQ-9 and regional Qld
- NBN-9 commencing December

b. Website

- Review of current contract has been undertaken and is recommended not to be renewed.
- Average site visits per day:
 August 154
 September 148
 October 167

c. Retail product line

- New Posters & Postcards launched at AGM/Network Night
- Salesperson is now on the road and establishing client base

d. Public Relations

- Estimated Advertising Value to date: \$78, 025
- Coverage to date:
 - 11 October Courier Mail - The Tweed
 - 19 October Sunday Mail - Houseboats
 - 21 October Daily Telegraph - The Tweed
 - 8 November Gold Coast Bulletin - 'Traveller' Feature

e. Festivals & Events

- Liaison Officer, Barbara Allen, has commenced in the role

f. Current Advertising Placements

- Toowoomba Chronicle, Northern Rivers Holiday Guide, October
- RACV – December/January issue
- Coffs Harbour Advocate – Travel Feature, November
- Toowoomba Chronicle – Rural Weekly Travel Feature, November
- Head for The Coast Insert by the North Coast Advocate – appearing in Toowoomba Chronicle, November

MEMBERSHIP

a. Current Financial Members

Service	35	
TACTIC	130	
Reciprocal	4	
Corporate	6	Affils 9
TOTAL	175	

New members to be ratified

Service **0**

TACTIC **2**

- Tweed Sun
- Tweed Gold Coast Farmstay
-

Corporate **0**

Total Financial Members end November 2003 177 / 186

Breakdown of renewals

Members Renewed		
Service	16	
TACTIC	104	
Corporate	4	(Affils: 4)
Total	124	
Total invoices sent	168	73.21%

Renewals Outstanding as of 17 October = 3

ANNUAL GENERAL MEETING

109 attendees: 81 Members & friends representing 40 members (28 Staff & Volunteers)

Membership Renewals

- Current Financial Membership Total 177 + 9 corporate affiliate properties
- A comprehensive action plan is being developed targeting streams of potential new members
- Suggested Pro Rata rates attached to be confirmed

Pro-Rata Rates for 2003-2004

Membership	1st Dec (half price)	15th March	1st June-31st June 05
Corporate	\$330.00	\$150.00	\$660
TACTIC	\$150.00	\$100.00	\$300
Service	\$65.00	\$65.00	\$130

BOARD ATTENDANCE

Name	23-Oct-03	27-Nov-03
Lee Eyre	Y	Y
Barrie Briggs	Y	Y
Shane Marshall	Y	Y
Clive Parker	Y	Y

Name	23-Oct-03	27-Nov-03
Zeta Grealy	Y	Y
Mark Manteit	Resigned from Board	
Wendy Marshall	N	N
Bob Brimsmead	N	N
Richard Adams	Elected 6th November 2003	Y

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

1. TACTIC Monthly Reports (YTD & Profit and Loss) DW978885
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REPORTS FROM DIRECTOR ENGINEERING SERVICES

25 [ES] Naming - Wharf

ORIGIN:

Design

SUMMARY OF REPORT:

At a meeting held on 5 February, 2003 it was resolved by Council to advertise its intention to name the wharf beside the Tweed River Regional Gallery "Skinner, Lowes Wharf".

A notice was advertised in the Tweed Link in Issue 307 on 25 February, 2003. No submissions have been received.

RECOMMENDATION:

That Council approves an application being made to the Geographical Names Board for the gazettal of the name "Skinner, Lowes Wharf" for the wharf located beside the Tweed River Regional Gallery.

REPORT:

As per Summary of Report.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

26 [ES] Upgrade of the Terranora Creek Sewer Rising Main Submarine Crossing

ORIGIN:

Design

SUMMARY OF REPORT:

Future residential development to the west of Tweed Heads and Cobaki Broadwater will require augmentation of water supply and sewerage services. The existing sewer rising main submarine crossing of Terranora Creek is also slowly deteriorating and requires replacement. This report summarises the option for its replacement for Council's information.

RECOMMENDATION:

That this report be received and noted.

REPORT:**Background**

Future residential development to the west of Tweed Heads and Cobaki Broadwater will require augmentation of water supply and sewerage services in the West Tweed area. One major deficiency in the sewerage network is Council's existing sewer rising main which crosses Terranora Creek between Philp Parade and Sunset Boulevard. This main is slowly deteriorating. A risk analysis has shown that the failure of this main would have a detrimental impact on the Terranora Creek environment and an upgrade of this main should be undertaken as soon as possible.

Two options have been identified to upgrade the Terranora Creek sewer submarine main as follows:-

- New submarine crossing across Terranora Creek along a different alignment to the existing; and
- New sewer rising main along Kennedy Drive and the Pacific Highway Terranora Creek Bridge

An earlier, cost-effective option was to attach a new rising main to the proposed Lakes Drive bridge crossing which would have continued Lakes Drive across the Terranora Broadwater. The Lakes Drive bridge proposal is no longer an option as Council has rejected the bridge connection. Repair of the existing mains is not a feasible option, as any repair would decrease the existing capacity of the main with limited durability and require duplication in any event.

The above options have been analysed in respect of both risk and benefit-cost by consultant group GHD. A summary of the analysis of each option by GHD is shown in Table 1 below:-

TABLE 1 - OPTION COMPARISON OF PROPOSED SEWER RISING MAIN TO REPLACE SRM 2018

OPTION	BENEFITS	DISBENEFITS	COST (2003-04)
1. New Submarine Crossing across Terranora Creek		Potential breakout of drilling fluid during horizontal directional drilling. High construction risk and associated potential high costs. Water quality risks. Almost impossible maintenance access.	\$3,680,000
2. Kennedy Drive – Pacific Highway Bridge Route	Easy maintenance access.	Significant traffic disruption.	\$2,610,000

The above table shows that the most cost-effective option is to construct a rising main along the Kennedy Drive route. As stated above however, this will cause significant traffic disruption along Kennedy Drive.

Current Project Progress

Survey work is about to commence on Kennedy Drive which is anticipated to be completed by the end of January 2004. Design work is expected to commence by March 2003 with actual construction to commence mid 2004.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

\$1,500,000 is already allocated in Council's current financial year's budget. Additional funding will be requested in Council's 2004/2005 budget to complete the proposed sewer rising main upgrading.

Approval from the Roads & Traffic Authority (RTA) is required for locating the rising main within the Pacific Highway road corridor and attaching the rising main to the Terranora Creek Bridge. The RTA have provided their "in principle approval" to the proposal.

Environmental concerns need to be addressed near the foreshore of the Terranora Creek Bridge and along the Kennedy Drive route generally. These concerns include the removal of vegetation and the potential of exposing acid sulfate soils. A Review of Environmental Factors (REF) is currently being prepared. It is considered that all environmental concerns can be effectively mitigated.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

27 [ES] Lease from State Rail Authority at Mooball - Streetscaping

ORIGIN:

Design

FILE NO: PF4030/27

SUMMARY OF REPORT:

At a meeting held on 22 January, 2003 it was resolved by Council to adopt the Mooball Village master plan revision and to proceed to call tenders for the construction of a toilet block alongside Tweed Valley Way at Mooball.

The text of the report referred to increasing the current lease area (in lease held with the State Rail Authority) to include the street scaping and toilet block. A draft lease has been received and the negotiations with Rail Estate (the agency dealing in property matters for State Rail Authority) in relation to terms of the lease are completed. Council is awaiting the finalised documentation from Rail Estate.

One of the requirements of Rail Estate prior to entering the lease is that "*Council accepts responsibility for the erection and future maintenance of security fencing to separate the public areas from the railway operating area*". Council has formally accepted this responsibility and it is necessary to now commence such fencing prior to entry into the lease with Rail Estate.

RECOMMENDATION:

That:-

1. Council approves to be bound by the terms, conditions and provisions of a Lease with State Rail Authority for a term of 4 years over the land adjacent to Tweed Valley Way at Mooball;
2. An amount of \$17,000.00 for fencing be considered in the December 2003 Quarterly Budget Review; and
3. All necessary documentation be endorsed under Common Seal of Council.

REPORT:

At a meeting held on 22 January, 2003 it was resolved by Council to adopt the Mooball Village master plan revision and to proceed to call tenders for the construction of a toilet block alongside Tweed Valley Way at Mooball.

The text of the report referred to increasing the current lease area (in lease held with the State Rail Authority) to include the street scaping and toilet block. A draft lease has been received and the negotiations with Rail Estate (the agency dealing in property matters for State Rail Authority) in relation to terms of the lease are completed. Council is awaiting the finalised documentation from Rail Estate.

One of the requirements of Rail Estate prior to entering the lease is that "*Council accepts responsibility for the erection and future maintenance of security fencing to separate the public areas from the railway operating area*". Council has formally accepted this responsibility and it is necessary to now commence such fencing prior to entry into the lease with Rail Estate.

The estimated cost of the security fencing is \$35.00 per lineal metre, the boundaries to be fenced measure approximately 500 metres, the total cost is anticipated to be over \$17,000.00. Funding for the fencing has not been allocated to date.

There has been considerable delay in the negotiations with State Rail for the lease, primarily due to extensive investigations into the area sought to be leased and internal investigations by State Rail.

A summary of actions since the initial inquiry was made to State Rail follows:-

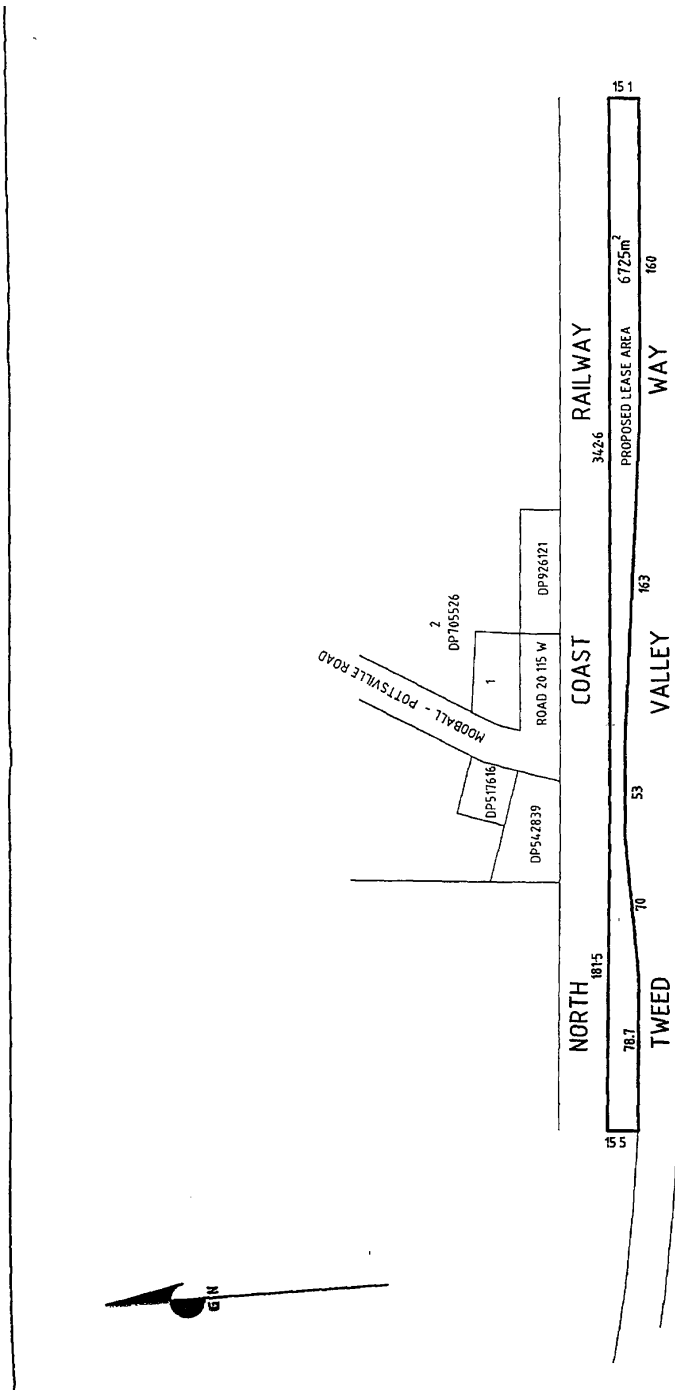
- **23/10/2001** Letter from Council to Rail Services Australia, South Grafton seeking consent to lodge development application for street scaping and toilet block and permission to occupy the site.
- **26/10/2001** Letter from Rail Infrastructure Corporation to advise that the land involved is owned by State Rail Authority of NSW and managed by Rail Estate.
- **7/11/2001** Letter to Rail Estate seeking lease and consent for development
- **23/11/2001** Letter acknowledging receipt of letter received from Rail Estate
- **3/12/2001** Letter from Rail Estate to advise that clearances were being obtained from various business groups within State Rail organization. This letter advised that the Rail Infrastructure Corporation required that they had no objection to the lease or subject to Council accepting the responsibility for the erection and future maintenance of the security fencing.
- **20/3/2002** Letter received from Coordinator General of Rail received describing the rationalisation of various agencies within State Rail.
- **18/4/2002** Letter to Office of the Coordinator General to the effect that Council accepts the responsibility for the erection and future maintenance of the security fencing.

- **17/7/2002** Letter received from Office of Coordinator General seeking payment of \$275.00 for preliminary investigation into Council's request for an expanded lease area.
- **24/7/2002** Letter sent to Office of the Coordinator General enclosing payment of the preliminary investigation fee.
- **Nov 2002** Notification from SRA that a preliminary contamination investigation was required prior to entry
- **21/11/2002** Receipt of Preliminary Contamination Investigation requirements from State Rail
- **23/1/2003** Letter received from Office of the Coordinator General seeking further monies for a detailed review by the various "Rail Parties" in the sum of **\$8,392.95**.
- **6/3/2003** Payment sent to Rail Estate
- **16/4/2003** Receipt of the SRA Preliminary Site Investigation Report from Geolink.
- **5/5/2003** Copy of Geolink Report sent to Office of the Coordinator General.
- **22/5/2003** Letter from Office of the Coordinator General advising contact details to pursue the lease
- **28/8/2003** Letter sent to Country Rail Estate enclosing plan of area to be leased
- **23/9/2003** Letter from Rail Estate enclosing draft lease agreement
- **21/10/2003** Letter to Rail Estate in response seeking amendments to draft lease
- **6/11/2003** Letter from Rail Estate in response
- **4/12/2003** Letter seeking final lease documentation

Receipt of the final lease documentation is expected in the very near future.

A copy of the plan to be attached to the Lease follows showing the area to be leased.

This matter has been drawn out over an extensive period and in anticipation of lease documentation, it is necessary to seek a resolution for approval to enter into the lease agreement and to execute all documentation under the Common Seal of Council.



LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Funding for fencing of \$17,000 is not committed.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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REPORTS FROM DIRECTOR ENVIRONMENT & COMMUNITY SERVICES

28 [EC] Banora Point Community Centre - Proposal for Preschool

ORIGIN:

Environment & Health Services

FILE NO: DA1393/320 Pt1

SUMMARY OF REPORT:

Council is preceding with the design and planning for the above community centre. An approach has now been made to Council by St Josephs Community Preschool Inc. for help to relocate their preschool. A possibility may be the community centre site. However, if Council considers it is willing to allow a development application to be submitted for this use of this part of the site, it is also advised that it would be appropriate to give other community preschools the opportunity to be considered for use of the site by an expressions of interest process.

RECOMMENDATION:

That:-

1. Council consents to the submission of a development application for use of the eastern end of the Banora Point Community Centre site for the purpose of the construction of a 40 place preschool.
2. Subject to 1 above, Council calls for expressions of interest for community preschools to use the eastern part of the Banora Point Community Centre for the purpose of a preschool and advises that any agreement to submit a development application does not necessarily mean that consent will be granted.

REPORT:

Council has resolved to proceed with the planning and construction of the Banora Point Community Centre. The original concept for the Centre included an area for a small preschool but such was not included in the current development program due to funding restrictions. The original concept design allowed for a small preschool building to be constructed on the western area of the site adjacent to Leisure Drive.

An approach has now been made to Council by St Joseph's Community Preschool Inc for help to relocate their preschool due to them being notified that the building in which they are currently located in Francis Street, Tweed Heads will not be available to them after December 2004 due to its pending demolition and redevelopment for units.

The preschool provided Council with the details of the size of building they would require together with play area to determine if there was sufficient space on the Banora Point Community Centre site. This was provided to the architect involved who reported that there is sufficient room however not on the western end as originally proposed but on the eastern end of the site which is surrounded by residential development.

The St Joseph's proposal is for a 40 place preschool whereas the original concept was for a 20 place facility thus the need for extra room.

While the St Joseph's proposal will fit on the eastern part of the site, Council is advised that there may be other community preschools either existing or proposed that should also be given an opportunity to be considered for use of this area of public land for this purpose. Also as the previous concept plan that was placed out for public consideration did not indicate any use of this eastern area apart from car park, it is considered that Council should indicate its willingness to allow the lodgement of a development application for a preschool of 40 places on the eastern end of the site prior to the calling of any expression of interest.

It is further advised that should Council, as owner, indicate it is willing to allow a development application to be lodged for a preschool, that any expression of interest for use of the site should be qualified that there is no guarantee that such use will be finally approved.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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29 [EC] Murwillumbah Memorial Pool Redevelopment - Therapeutic Pool

ORIGIN:

Environment & Health Services

SUMMARY OF REPORT:

Council at its meeting on 21 May 2003 resolved to proceed with the planning and design for redevelopment of the Murwillumbah Swimming Centre. Part of the redevelopment proposal included the possible inclusion of a heated therapeutic pool. The Mt Warning AM Rotary Club has indicated that it will make this therapeutic pool their major fund raising activity if Council confirms that such pool will be part of the redevelopment.

RECOMMENDATION:

That Council confirms that the planning and design of the Murwillumbah Memorial Pool Complex will include the provision of a heated therapeutic pool.

REPORT:

Council at its meeting on 21 May 2003 resolved to proceed with the planning and design for redevelopment of the Murwillumbah Swimming Centre. Part of the redevelopment proposal included the possible inclusion of a heated therapeutic pool.

Community support has been forthcoming for the inclusion of a heated therapeutic pool, including the Murwillumbah based Mt Warning AM Rotary Club who has advised that it wishes to assist Council in the funding of this therapeutic pool by designating it as a major fund raising project for the Club.

The Murwillumbah Hospital has also indicated strong support.

However, for the Rotary Club to begin fund raising, they have requested that Council confirm that a therapeutic pool will be part of the redevelopment of the pool complex.

It is estimated that a "stand alone" therapeutic pool would cost \$250,000 which is within the \$1.5M estimate. The Club has indicated that it would be able to raise a significant portion of this amount and accordingly it is recommended that Council confirm that the redevelopment will include a therapeutic pool.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

To be considered in the 2004/2005 Budget.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

30 [EC] Bushfire Prone Land Map - Tweed Shire

ORIGIN:

Environment & Health Services

SUMMARY OF REPORT:

In accordance with new provisions under the Environmental Planning and Assessment Act Ecograph, on behalf of Council's Bushfire Regulation Committee, have finalised a Bushfire Prone Land Map for Tweed Shire. The Committee has recommended that Council endorse the report and Bushfire Prone Land Map. It is further recommended that Council forward the Bushfire Prone Land Map to the Commissioner of the NSW Rural Fire Service for certification.

RECOMMENDATION:

That Council:

1. Endorses the report and Bushfire Prone Land Map dated November 2003 prepared for Council by Ecograph and forwards them to the Commissioner of the NSW Rural Fire Service;
2. Requests the Commissioner of the NSW Rural Fire Service to certify the Bushfire Prone Land Map in accordance with Clause 146(2) of the Environmental Planning and Assessment Act 1979.

REPORT:

Background

On 1 August 2002 the Rural Fires Act and Environmental Planning and Assessment Act were amended to introduce new provisions for bushfire protection. A circular produced by PlanningNSW (July 2002) explains some of the changes and implications for Council's landuse planning functions is attached as an appendix to this report for Councillors' information. Other legislative changes not mentioned in the Circular relate to procedures and certification for bushfire hazard reduction, bushfire danger periods and issuing of fire permits by the NSW Rural Fire Service (NSW RFS).

Bushfire Prone Land Map

The legislative changes require Councils to prepare a Bushfire Prone Land Map that identifies bushfire prone land in local government areas in collaboration with the NSW RFS. The Bushfire Prone Land Map must then be certified by the Commissioner of the NSW RFS by 1 August 2003. In the interim Councils are required to use the bushfire hazard maps adopted by the Service in a Bushfire Risk Management Plan as a basis for identifying bushfire prone land (Schedule 6 of the EP&A Act). Tweed Shire Council is currently utilising bushfire hazard maps adopted by the NSW RFS in February 2002 to identify bushfire prone land.

Councils can revise their bushfire prone map at any time for certification by the Commissioner to ensure the map is kept up to date.

Implications of Bushfire Prone Maps for Councils

Bushfire Prone Land Maps have significant implications for Council's landuse planning. Where development is proposed on bushfire prone land, Section 79BA of the EP&A Act requires the consent authority (council) to consult with the NSW Rural Fire Service Commissioner or be satisfied that the development complies with *Planning for Bushfire Protection 2001* produced by the NSW Rural Fire Service. Bushfire prone land is also required to be identified on Section 149 Planning Certificates under the EP&A Act.

Certain types of proposals on bushfire prone land will also trigger integrated development provisions under Section 91 of the EP&A Act.

Section 117 Direction No G20 (EP&A Act) by the Minister requires Council to consult with the Commissioner of the NSW Rural Fire Service and have regard to *Planning for Bushfire Protection 2001* when preparing a draft Local Environmental Plan for land that is identified as bushfire prone on a bushfire prone land map.

Bushfire Prone Land Mapping - Tweed Shire

Council's Bushfire Regulation Committee commissioned GIS and bushfire mapping consultants, Ecograph, in May 2003 to prepare a report and mapping on bushfire prone

land in Tweed Shire. The Bushfire Regulation Committee (a committee of staff) established in November 2002, was set up to review Council's responsibilities in relation to amendments to legislation regarding bushfire protection. A representative from the NSW Rural Fire Service attends the Committee meetings.

Ecograph have now completed the report and mapping (hard copy/digital) on bushfire prone land in Tweed Shire in consultation with the Committee, NSW RFS and in accordance with the Bushfire Prone Land Mapping Guidelines issued by the NSW RFS (20 August 2002). The report and maps have been prepared using the updated vegetation mapping prepared by Ecograph for the Tweed Vegetation Management Strategy (2003). The Bushfire Regulation Committee resolved at its meeting of 20 November 2003 to forward the Bushfire Prone Land Map, prepared by Ecograph, to Council for endorsement prior to sending to the Commissioner of the NSW RFS for certification.

A copy of Ecograph's report has been attached to this report for Councillors' information. The Bushfire Prone Land Map, dated November 2003, will be displayed in the Council Chamber during the Council meeting.

Conclusion

The Bushfire Prone Land Map prepared by Ecograph (November 2003) is consistent with the NSW RFS Guidelines (20 August 2003). In accordance with a resolution at a Bushfire Regulation Committee meeting on 20 November 2003, it is recommended that Council endorses the report and Bushfire Prone Land Map dated November 2003. It is further recommended that Council refer the report and Bushfire Prone Land Map to the Commissioner of the NSW RFS for certification in accordance with Clause 146(2) of the Environmental Planning and Assessment Act 1979.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Preparation and Certification of the Bushfire Prone Land Map will satisfy Council's legal obligations under Clause 146 of the Environmental Planning and Assessment Act 1979.

POLICY IMPLICATIONS:

The adoption of the Bushfire Prone Land Map by Council and its Certification by the Commissioner of the NSW Rural Fire Service will represent Council's adopted Policy for identifying bushfire prone land in Tweed Shire.

UNDER SEPARATE COVER:

1. PlanningNSW - July 2002 - Planning for Bushfire Protection.
 2. Ecograph (November 2003) - Bushfire Prone Land Mapping, Tweed Shire.
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31 [EC] Museum Grant for Thematic Study

ORIGIN:

Environment & Health Services

SUMMARY OF REPORT:

Council is advised that the NSW Ministry for the Arts, under the 2004 Museums Program, has recently approved a grant of \$20,000 towards a *Thematic Study of Heritage Collections in the Tweed*.

The project will extend the scope of the Council's Community Based Heritage Study to cover collections and movable heritage. The project will culminate in an exhibition in the City of the Arts Space (the former Tweed River Regional Art Gallery) in 2005.

RECOMMENDATION:

That Council accepts the funds and votes the expenditure accordingly.

REPORT:

Council is advised that the NSW Ministry for the Arts under the 2004 Museums Program has approved a grant of \$20,000 towards a *Thematic Study of Heritage Collections in the Tweed*.

In 2003 the three museums of the Tweed began work on a Community Based Heritage Study, funded jointly by the NSW Heritage Office and Tweed Shire Council. The Community Based Heritage Study involves the museums working with a heritage adviser and an historian to research key themes in the heritage of the Tweed and survey and identify significant heritage items related to each of the themes. The project is scheduled for completion in mid 2004.

The Thematic Study of Heritage Collections in the Tweed Project will extend the scope of the Community Based Heritage Study to cover collections and movable heritage and will culminate in an exhibition in the City of the Arts Space (the former Tweed River Regional Art Gallery in 2005).

The project aims to:-

- Build on the work of the Community Based Heritage Study by including collections and movable heritage.
- Give the Community Based Heritage Study a public face through an exhibition in 2005.
- Identify significant objects and collections related to key themes in the history and development of the Shire.
- Identify and document significant objects in public and private collections.
- Research objects and improve the way that the collections are documented.
- Prepare statements of significance for objects in each of the main themes.
- Build the skills of the volunteers in collection documentation and significant assessment.
- Develop coordinated collection policy and collecting program for the combined museums.
- Underpin the development of a regional museum, and generate collection research that will be used in new exhibitions in each museum.
- Strengthen the role of the museums in heritage interpretation and community cultural development.
- Give the museum volunteers experience working with a professional exhibition designer on exhibition development.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil. Council's contribution will be in kind.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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32 [EC] Waste Collection & Disposal Strategy

ORIGIN:

Environment & Health Services

SUMMARY OF REPORT:

In response to a need to improve waste avoidance and resource recovery, Council has developed a draft strategy. This strategy could also form part of an action plan for Council as part of the NSW Department of Environment, Conservation's Waste Avoidance & Resource Recovery Strategy.

RECOMMENDATION:

That this report be received and noted.

REPORT:

Council will recall that over the past four years Council has participated in an investigation of alternate waste disposal technologies, initially with SROC Group in Queensland and ultimately with Gold Coast City Council.

Earlier this year this investigation process was put on hold due to the perceived unreliability of the alternate technologies.

The process did however show that any future technology which could be adopted would require a better waste separation process to reduce the amount of valuable commodities such as recyclables and garden waste which would go to these technologies or until then, landfill, making the process more sustainable.

The need for better waste recovery and waste avoidance is also identified in a consultation paper issued by the Department of Environment & Conservation (NSWEPA) titled "NSW Waste Avoidance & Resource Recovery Strategy, Action Plan for Local Government".

To attempt to achieve these goals the following draft Waste Avoidance & Recycling Strategy is proposed.

DRAFT

Waste Avoidance and Resource Recovery Strategy

Waste Avoidance

Aim:

To encourage all sectors of the community to participate in waste avoidance as a strategy towards more sustainable waste management.

Resource Recovery

DOMESTIC

Aim:

1. To increase the amount of recyclables recovered from the domestic waste stream
2. To reduce the amount of garden waste being disposed of to landfill

COMMERCIAL AND INDUSTRIAL

Aim:

1. To increase the amount of recyclables recovered from the Commercial and industrial waste stream.
2. To reduce the amount of garden waste disposed to landfill
3. To reduce the amount of inert waste disposed to solid waste landfill.

CONSTRUCTION DEMOLITION

Aim:

1. To increase the amount of recyclable material recovered from the Construction and Demolition waste stream.

DOMESTIC

OPTIONS

1. A Existing Bin (split 50/50) weekly service
B Existing Bin weekly service (split 50/50) + Garden Waste 240 fortnightly service
2. A 140 l Bin weekly Garbage + 240 l fortnightly Recycling
B 140 l Bin weekly Garbage + 240 l fortnightly Recycling + 240 l Green Waste fortnightly.

Also to be included in the new contract

3. Nightsoil
4. Septic Tank Wastes
5. Litter Bins – cleaning and deodorised
6. Dead Animals
7. Clean up campaign Biannual
8. Hazardous Waste Collection – Hazmat Incidents

DOMESTIC BULK

Size 1 Bin + 2 Recycling Bins, serviced weekly, review.

Size 2 Bin + 4 Recycling Bins

Size 3 Bin + 6 Recycling Bins

- * Cleaning of Bins – regular + deodorised

COMMERCIAL & INDUSTRIAL

- * Target major food outlets to source separate recyclables from putrescible wastes – separate collections
- * Target small businesses to source separate, recyclables, inert waste, solid waste, garden waste.
- * Some sorting of recyclables, inert waste at Stotts Creek
- * Review disposal charges to encourage source separation

CONSTRUCTION AND DEMOLITION WASTE

- * Review landfill disposal charges to encourage source separation, particularly masonry, tiles
- * Review landfill disposal charges for unsorted loads, particularly loads containing garden waste

The domestic part of the Resource Recovery Section contains a number of alternate collection systems, all of which should increase the amount of recyclables collected and should also increase the amount of garden waste diverted from landfill.

A Waste & Recycling Collection Survey form has been circulated to residents by way of the Tweed Link and the residents' responses to this survey should identify the preferred collection system.

This report is submitted for Council's information and comment and a further report will follow early in the new year.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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REPORTS FROM SUB-COMMITTEES/WORKING GROUPS

Minutes of the Clarrie Hall Dam Fishery Management Committee Meeting held Tuesday 18 October 2003

FOR THE CONSIDERATION OF COUNCIL:

File Ref: GW3/3/26

VENUE: PETER BORDER MEETING ROOM

TIME: 4.00PM

PRESENT: David Oxenham (TSC) (Chairman), Col Wiley (ABA), Chris Estreich (ABA), Alan Legrand (NSW Fisheries) and Paul Cambridge (TSC) (Minute Secretary)

APOLOGIES:

Cr Lynne Beck, Barry Saunders, Cr Phil Youngblutt.

MINUTES OF PREVIOUS MEETING:

Moved: Col Wiley

Seconded: David Oxenham

RESOLVED that the Minutes of the Clarrie Hall Dam Fishery Management Committee meeting held 8 October 2003 be accepted as a true and accurate record of the proceedings of that meeting.

BUSINESS ARISING:

Nil

GENERAL BUSINESS:

1. Clarrie Hall Dam Commercial Charter Licences

Clarrie Hall – Plan of Management

Submissions to the 2003/2006 Commercial Fishing and Sight Seeing Licence on the Clarrie Hall Dam were tabled at the meeting.

Submissions were received from Gary Prerost and Bradley Smith for the Fishing Charter Licence and Jeff McCallum, Midginbil Hill and Inter-Action Experiential Learning Pty Ltd for the Sight-Seeing Charter.

The Committee endorsed the submissions as submitted.

The NSW Fisheries representative advised that he will check the Fishing Charter applicants to ensure compliance with all the necessary permits for commercial fishing from enclosed waters.

For Council's Information.

2. Fish Stocking Program

Fish Stock Clarrie - Hall Dam

David Oxenham advised that Council will be once again participating in the NSW Fisheries \$ for \$ Fish Stocking Program. 20,000 Bass Fingerlings have been ordered with delivery expected in December, 2003.

The Committee were advised that no restocking took place last year due to the low water levels in the dam and the failure of the fingerling supplier to provide stock.

Col Wiley advised that the Bass Association were in discussion with NSW Fisheries for an additional 10,000 fingerlings to be released into the dam.

For Council's Information.

3. Eel Trapping

Clarrie Hall – Plan of Management

The proposal to once again commence trapping eels on the Clarrie Hall Dam waterways was put to the Committee.

The NSW Fisheries representative advised that eels are a problem in the Dam and indeed the majority of the drainage system in the lower Tweed area.

The Committee were informed that in past years the licensed fisherman authorised to trap eels on the dam paid a \$ per kg royalty for eels captured. The NSW Fisheries representative advised that it was highly questionable that Council could legally receive payment for trapped eels as Council was not, themselves licensed to sell eels from the dam.

Council suggested and the NSW Fisheries representative indicated that the payment of an access fee to fish the dam waterways be the basis for any payment for the rights to trap eels on the dam.

The Committee supported the reintroduction of eel trapping on the dam and further suggested that due to eel problems in Lake Kimberley at Banora Point that access to both sites for eel trapping be offered to tender.

The Committee also discussed the possible use of four-stroke motors by the approved eel trapper on the Clarrie Hall Dam waterways.

The Committee were of the opinion that due to the minimal impact on water quality and the periodic use of powered boats on the dam that four stroke motors up to a maximum of 15hp be permitted for eel trapping purposes on the dam. Boat access be restricted to week days only.

RECOMMENDATION:

That licenced Eel Trapping be reintroduced on the waterways of the Clarrie Hall Dam. Further that trapping eel trapping rights on the Clarrie Hall Dam and Lake Kimberley be offered to tender with a nominated payment of an access fee the basis of the tender submission.

4. Dam Management: Dam Wall Picnic Area

Clarrie Hall Dam - General

David Oxenham informed the Committee that over the past 6 to 8 months the amenities at the dam wall have been subject to numerous instances of vandalism forcing the closure of the building.

The Committee were informed that the dam wall entry is now gated to regulate use after sunset.

The physical barrier appears to have solved the vandalism problem and the amenities are now re-open.

For Council's Information.

5. Tree Planting Crams Farm Reserve

Clarrie Hall Dam - Recreation

The Committee were informed that no formal plan exists for tree planting on the Crams Farm reserve, however significant planting has taken place in a number of areas as considered appropriate.

Further tree planting will be ongoing.

For Council's Information.

6. Fish Movements: Clarrie Hall Dam - Tweed River

Fish Stock Clarrie - Hall Dam – Operations & Maintenance

Col Wiley advised that recently 1043 fish trapped in the first pool located below the dam spillway were relocated back into the dam.

Fish losses were encountered in the fish migration period due to the lack of water flow into the pool, however since the introduction of a siphon arrangement to carry water from the dam to the pool, oxygen and water levels have increased in the pool.

The Committee identified a need for a long term solution to assist fish migration over the dam wall.

The NSW Fisheries representative suggested that the area below the dam from the first pool to the dam wall entrance be made a catch and release area during the seasonal (August-October) fish migration period. He advised that the NSW Fisheries have to be formally contacted to instigate the required change.

He further advised that the Catch and Release classification is the best option for enforcement of any illegal fishing activities during the key migration period.

RECOMMENDATION:

That the area from the first pool below the spillway downstream to the dam wall entrance be made a catch and release area during the seasonal (August-October) fish migration period. Further that NSW Fisheries be formally contacted and requested to instigate the change in classification.

NEXT MEETING:

The next meeting of will be held when required.

The meeting closed at 5.30pm.

DIRECTOR'S COMMENTS:

NIL.

DIRECTOR'S RECOMMENDATIONS:

3. Eel Trapping

That the Committee's recommendation be endorsed.

6. Fish Movements: Clarrie Hall Dam - Tweed River

That the Committee's recommendation be endorsed.

Minutes of the Sports Advisory Committee Meeting held Tuesday 18 November 2003

FOR THE CONSIDERATION OF COUNCIL:

Minutes of the Sports Advisory Committee Meeting held Tuesday 18 November 2003

Sports Advisory Committee

VENUE:

Cabarita Beach Sports Centre

TIME:

5.00pm

PRESENT:

Committee Members: Crs Warren Polglase, George Davidson, Mr Merve Edwards, Mr Peter Moschogianis, Ms Glynnis Kenny, Mrs Linda Threlfo, Mr Stewart Brawley

Informal: Mrs Blyth Short (Recorder)

APOLOGIES:

Cr Youngblutt, Mr Hubert Ehemann, Mr Ray Jarrett
Confirmation of Minutes:

CONFIRMATION OF MINUTES:

Moved: M Edwards

Seconded: P Moschogianis

RESOLVED that the Minutes of Sports Advisory Meeting held Tuesday 16 September 2003 be accepted as a true and accurate record of the proceedings of that meeting.

BUSINESS ARISING:

1. South Tweed Sports Field

Facilities are completed and will be handed over to Council on Friday 21 November 2003. S Brawley advised that two weeks ago seven windows were vandalised and last weekend four windows were broken options to address the issue will be investigated.

2. Piggabeen Sports Complex

Piggabeen Sports field top-dressing has been completed.

CORRESPONDENCE:

3. Cudgen Junior Cricket Club

Sports Field Asset Reserve Trust Fund

Funding application request for assistance with recovering the practise cricket pitch carpet. Total project cost \$3830. Amount requested from Asset Reserve Trust Fund is \$1915. General discussion.

Moved: P Moschogianis

Seconded: M Edwards

RECOMMENDATION:

That Council contributes \$1915 from the Sports Field Asset's Reserve Trust Fund to Cudgen Junior Cricket Club for the recovering of the practise cricket pitch carpet at the Cudgen Oval.

4. Bilambil Touch Association

Funding application request for assistance with the purchase of a new public address system for the Bilambil Sports Club west field. Total project costs \$2376 and club request \$1176 from Assets Reserve Trust Fund. General discussion. The committee did not agree that this was a capital works project and therefore, does not qualify for funding under this program. It was recommended that as the P.A. system would be attached to the licensed club, that the club be requested to assist with installation.

Moved: G Davidson

Seconded: G Kenny

RECOMMENDATION:

That the request for funding assistance through the Sports Field Assets Reserve Fund for Bilambil Touch Association for a P.A. system be declined.

5. Tumbulgum Rangers Sports Club (TRSC)

Sports Field Licence Agreements

The TRSC request a review of the ground usage fees for the 2003 winter season due to wet conditions on fields. The club has suffered significant financial hardship as a result of the fields being out of play for 2/3 of the season.

General discussion. S Brawley advised that reduced fees have been considered on an individual basis in the past. M Edwards expressed concerns with setting a precedent. W Polglase advised that the committee should remain focused on fostering sport and assess each case on it merits. G Davidson suggested a 50% reduction in fees under the circumstances.

Moved: G Davidson
Seconded: M Edwards

RESOLVED that the Tumbulgum Rangers Sports Club Inc. receives a 50% reduction in their 2003 winter sports field licence fee due to extended wet conditions of the field.

6. South Tweed Heads Senior Rugby League Football Club Inc (STHSRLFC)
Sports Advisory Committee

In conjunction with the roadworks underway on Leisure Drive and Frazer Drive, a drain on the southern boundary of the fields is to be filled. This drain previously limited access and egress to the field. STHSRLFC have concerns regarding safety and unlimited access affecting their ability to charge entry fees.

Consequently, they request Council to install 150m of fence with two entry points along the Leisure Drive boundary. General discussion. G Kenny expressed concerns that if the fence is constructed it should be for safety of the public and not for the purpose of allowing for the clubs to charge an entrance fee. Committee agreed that the issue should be referred back to the Council to consider as part of the road widening construction and consider issues of for the safety of the public. S Brawley will write to the club to advise them that the issue will be referred back to Council for public safety consideration only.

Moved: G Kenny
Seconded: G Davidson

RECOMMENDATION:

That Council install 150m barrier fence along the Leisure Drive side of the Dave Burns Field South Tweed as a component of the current road works.

7. St Joseph's College – Sports Grounds
Sports Field Licence

St Joseph's College allow the Tweed District Cricket Association to utilise their sports fields for weekend cricket and inturn Council mow these grounds for the College. The College has written advising that the cricket players and spectators continue to use the staff outdoor lunch area as a urinal and have destroyed the gardens. They have expressed major health problems with this issue. General discussion.

Moved: G Kenny
Seconded: M Edwards

RESOLVED that S Brawley write to the Tweed District Cricket Association and request they advise players and spectators to be more considerate of the College grounds notifying that if these practices continue the field arrangement could be jeopardised.

8. Committee Resignation

Hubert Ehemann advised that unfortunately due to ill health he has resigned his position on the committee. Mr Ehemann will not be replaced immediately as the committee tenure is near completion and nominations for a new committee will be called in the new year.

Moved: G Davidson

Seconded: S Brawley

RESOLVED that Hubert Ehemann is thanked for his contribution to the committee.

GENERAL BUSINESS:

9. Sports Advisory Committee Nominations

S Brawley advised that nominations for new committee members are generally called for in September inline with the Council elections.

NEXT MEETING:

The next meeting of the Sports Advisory Committee will be held 20 January 2004 Murwillumbah Buchanan Depot.

The meeting closed at 6.00pm.

DIRECTOR'S COMMENTS:

That the recommendations of the Committee be adopted by Council for items 3, 4, 5, 7 and 8.

6. South Tweed Heads Senior Rugby League Football Club Inc (STHSRLFC)

Any proposed fencing needs to be integrated with TTSC proposals to fence their adjoining property for the fencing to be effective (please note Director's recommendation below).

DIRECTOR'S RECOMMENDATIONS:

6. South Tweed Heads Senior Rugby League Football Club Inc (STHSRLFC)

That discussions be held with TTSC in regard to site fencing for both the Club and the sports field prior to an investment decision being made.

Minutes of the New Art Gallery Construction Committee Meeting held Thursday 4 December 2003

FOR THE CONSIDERATION OF COUNCIL:

Minutes of the New Art Gallery Construction Committee Meeting held Thursday 4 December 2003

File: New Art Gallery Construction Committee

Venue:

Mt Warning Meeting Room

Time:

4.00pm

Present:

Mayor, Cr W Polglase, Cirs G Davidson and M Boyd, Mr Doug Anthony, Mrs Margot Anthony, Ms Jo Nugent (Friend of the Gallery, President), Mr Geoff Edwards, Mr Gary Corbett (Gallery Director).

Apologies:

Mr Don Buckley (Director Environment & Community Services), Ms Penny Sochacki (Friends of the Gallery).

Agenda Items:

**1. Art Gallery Director's Report - Cafe Tender (Dated 3 December 2003)
New Art Gallery Construction Committee**

Moved: Cr G Davidson

Seconded: Cr W Polglase

RESOLVED that the Committee recommends to Council that it accepts the proposal by Ms Chereyne Hamlin (trading as Butler's on the Run) for the lease of the Gallery Café dated 28 November 2003 and that the Chair of the Committee and the Art Gallery Director proceed to negotiate with the successful proponent regarding the terms of the lease.

RECOMMENDATION:

That Council endorses the Committee's recommendation that it accepts the proposal by Ms Chereyne Hamlin (trading as Butler's on the Run) for the lease of the Gallery Café dated 28 November 2003 and that the Chair of the Committee and the Art Gallery Director proceed to negotiate with the successful proponent regarding the terms of the lease.

**2. Art Gallery Director's Report - Naming Rights (Dated 2 December 2003)
New Art Gallery Construction Committee**

Moved: Cr G Davidson

Seconded: Cr W Polglase

RESOLVED that the Committee recommends to Council that the Naming Rights of the various areas of the new Art Gallery be endorsed.

RECOMMENDATION:

That Council endorses the Committee's recommendation that the Naming Rights of the various areas of the new Art Gallery be endorsed.

There being no further business the meeting closed at 5.00pm.

DIRECTOR'S COMMENTS:

That the Committee's recommendation at Item 1 be endorsed.

DIRECTOR'S RECOMMENDATIONS:

Item 2 - Naming Rights

That as the Naming Rights are in line with the guidelines of the Gallery Foundation Donation Committee, Council endorses the recommendations contained in the Report on Naming Rights in the various areas of the new Art Gallery (the report forms a Confidential Attachment to this Agenda.)

Minutes Circulated with this Agenda not requiring Council Resolution

FOR THE CONSIDERATION OF COUNCIL:

UNDER SEPARATE COVER:

1. Minutes of the Australia Day Committee Meeting held 17 November 2003.
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ORDERS OF THE DAY

[NOM] Section 64 and 94 Contributions

NOTICE OF MOTION:

Councillor R D Brinsmead moves:

That further to the report in the Business Paper (19/11/2003) on Section 64 and 94 contributions, that Council be given complete and accurate report on Section 64 and 94 contributions, outlining the way they have been developed and made to incorporate new charges. Further to the report in the Tweed Link of 9 December 2003 that *"the contribution from developers was \$5.5 million in 1998-99 but has risen to more than \$11 million this financial year"*, the report should also assess how much of this is due to an actual increase in charges and how much is due to what the Tweed Link calls *"the pace of development"*.

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CONFIDENTIAL MATTERS

REPORTS THROUGH GENERAL MANAGER IN COMMITTEE

REPORTS FROM DIRECTOR DEVELOPMENT SERVICES IN COMMITTEE

**[DS] Settlement of Legal Action - Unauthorised Doof Rave Party at Lot 5 DP785565
Kirby's Road, Limpinwood**

REASON FOR CONFIDENTIALITY:

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(g) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

**REPORTS FROM EXECUTIVE MANAGER - OFFICE OF THE GENERAL MANAGER
IN COMMITTEE**

**REPORTS FROM DIRECTOR ENVIRONMENT & COMMUNITY SERVICES IN
COMMITTEE**

**[EC] Enclosure of Buildings Contrary to the Provisions of Development Control
Plan No 5 - Development of Flood Liable Land**

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