



Tweed Shire Council

# BUSINESS PAPER AGENDA

Date

Dear Minute Book

**NOTICE IS GIVEN** that a Meeting of Council will be held at the Council Chamber, Murwillumbah Civic and Cultural Centre on Wednesday 5 November 2003, commencing at **TIME**.

Submitted,

**Dr J Griffin**  
General Manager

## AGENDA

1. Prayer
2. Confirmation of Minutes
3. Apologies
4. Delegates Report - Mr Russell Logan (Aboriginal Mentor Program)
5. Disclosure of Interest
6. Items to be Moved from Ordinary to Confidential - Confidential to Ordinary
7. Schedule of Outstanding Resolutions
8. Mayoral Minute
9. Items Deferred
10. Reports through General Manager
  - Reports from Director Development Services
  - Reports from Corporate Services
  - Reports from Director Engineering Services
  - Reports from Director Environment & Community Services
11. Reports from Sub-Committees/Working Groups
12. Delegates Reports
13. Outstanding Inspections
14. Items of Information and Interest
15. Orders of the Day
16. Workshops
17. Question Time
18. Confidential Matters - (exclude Press and Public)

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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:** Awaiting strategy report from NSW Surf Life Saving Association.

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**9 September 2003**

#### **REPORTS FROM COMMITTEES/WORKING GROUPS**

2. **Minutes of the Tweed Shire Council Disability Access Committee Meeting held Thursday 17 July 2003**

8. **Regional Access Meeting**

**769**

**Cr Boyd**

**Cr Carroll**

**RESOLVED** that Council requests a report be brought forward on conducting an "access" survey.

**Current Status:** Report to be prepared.

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**1 October 2003**

**REPORTS FROM DIRECTOR ENGINEERING SERVICES**

**10. Lower Oxley River Bank Stabilisation Project - Water Unit Contribution**

**817**

**Cr Beck**

**Cr Marshall**

**RESOLVED** that this item be deferred to allow the community groups to address the Community Access meeting in November and to enable Council to contact the relevant Community Groups to update them on the project.

**Current Status:** Deferred to Council Meeting 19 November 2003

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**ORDERS OF THE DAY**

**3. Industrial Land Adjacent Cobaki Creek**

**853**

**Cr Luff**

**Cr Boyd**

**RESOLVED** that Council arranges a public meeting to provide information on the parcel of industrial land which adjoins Cobaki Creek, and is between Kennedy Drive and the Airport land. Council will particularly invite the landowner or representative to attend, and residents of Tringa, Gray and other nearby streets.

**Current Status:** Meeting to be held at 6.00pm on 3 November 2003 at Tweed Heads Auditorium.

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**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

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position, status and process towards the completion of the planning and development of Seaside City.

**Current Status:** No action pending. Decision on the Rescission Motion.

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## **MAYORAL MINUTE**

### **Mayoral Minute**

Councillors,

#### **1. Burringbar/Mooball Community Reference Group**

16 October – attended meeting of Burringbar Mooball Community Reference Group in Murwillumbah

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#### **2. Tweed Future Steering Committee**

16 October – attended inaugural meeting at Murwillumbah of the Tweed Futures Steering Committee

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#### **3. Silver Jubilee Celebration Election to Papacy of Pope John Paul 11**

16 October- attended Silver Jubilee Celebrations of election to Papacy of Pope John Paul 11 held at St Joseph's Parish Church, Frances Street Tweed Heads.

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#### **4. Chinderah VIC Project**

17 October – attended TACTIC meeting at GC Airport to discuss Chinderah VIC Project

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#### **5. Tweed Theatre**

17 October – attended opening of Tweed Theatre presentation "Walk This Way" at Tweed Bowls Club.

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#### **6. Chillingham Community Centre**

18 October – attended opening of Chillingham Community Centre

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#### **7. Coloon Kid's Fest**

18 October – attended Coloon Kid's Fest at Tweed Heads

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## **8. Centrelink**

18 October – attended Centrelink Fun Sports day at Tweed Heads and dinner at Seagulls.

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## **9. Lindisfarne Anglican School**

18 October – attended Lindisfarne P & C's bi-annual School Fete at Tweed Heads

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## **10 Stand Awards**

18 October – attended Stand Awards Party at Tweed Heads

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## **10. Kingscliff High School**

20 October – attended Kingscliff High School for Order of School Initiatives

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## **11. Visit of Japanese Councillors**

20 October – attended BBQ for visiting Japanese Councillors at Beach Farm Cudgen

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## **12. Absence of Mayor from duties due to illness**

21 – 28 October Mayor absent from duties due to illness

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## **13. Planning Institute Thredbo**

28-31 October - apology forwarded for inability of both the Mayor and Deputy Mayor to attend Planning Institute Conference at Thredbo due to ill health. A note of appreciation is given to Councillors James and Luff for kindly substituting for Mayor and Deputy Mayor at this conference on very short notice

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## **14. Casuarina Ocean Festival**

1 November – opening ceremony of Casuarina Ocean Festival

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### **15. Murwillumbah Show**

1 November – opening of Murwillumbah Show by Hon. Philip Ruddock

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### **16. GM's Group Meeting = Mayors**

3 November - attend with GM the GM's Group Meeting + Mayors at Lismore

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### **17. Tweed Ministerial Taskforce**

3 November – Tweed Ministerial Taskforce stakeholders' presentation on Economic Development Strategy for Tweed Town Centre

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### **18. Melbourne Cup**

4 November – guest of Daily News at Melbourne Cup races at Murwillumbah

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### **19. NRACC**

5/6 November – attend NRACC Chair's meeting in Canberra

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### **INVITATIONS ACCEPTED:**

- 7 November – NOROC Annual General Meeting Lismore
- 7 November – GC Tourism Awards Presentation Night
- 8 November – Red Cross Celebrity Prison Tweed City Shopping Centre
- 11 November – Remembrance Day Service Murwillumbah – lay wreath
- 11 November – Tweed Futures Steering Committee Meeting
- 12 November – opening Education Centre and Library Tweed Hospital
- 13 November – Bogangar/Cabarita Steering Committee Meeting
- 14 November – Family Centre Community Projects – AGM & Anniversary Celebrations Tweed Heads
- 16 November – Northern Rivers Symphony Orchestra THCC
- 17 November – Opening Community Technology Centre Pottsville
- 18 November – Tweed Futures Steering Committee Meeting
- 

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

- NSW Local Government Community Services Association Annual Conference – **12-14 November Port Macquarie**

- National Framework for Women in Local government Forum for Local Councils – **27 November Campbelltown**
  - Regional Conference on Integrated Urban Water Management & Water Sensitive Urban Design **20 November Lismore**
- 

**ABSENCES FROM SHIRE BY EXECUTIVE, AND COUNCILLORS:**

**Executive**

<b>Name</b>	<b>Period</b>	<b>Location</b>	<b>Details</b>
DES	6 November 2003 to 7 November 2003	Sydney	Water Directorate & IPWEA Meetings

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## ITEMS DEFERRED

**[ID] Development Application 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 (This report is the subject of a further report at Item 15 of this Agenda)**

### ITEM DEFERRED FROM MEETING HELD:

**15 OCTOBER 2003**

**876 RESOLUTION:**

*Councillor M R Boyd  
Councillor W M Marshall*

***RESOLVED** that this item be deferred to seek further legal advice and report back to the Council meeting of 5 November 2003.*

### ORIGIN:

**Development Assessment Unit**

**FILE NO: DA03/0273 Pt2**

### SUMMARY OF REPORT:

Council is in receipt of a development application 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 development application is accompanied by an objection to the height standard under State Environmental Planning Policy No.1 – Development Standards. The applicant has demonstrated compliance with the underlying intention of the development standard.

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 : -

- A. Council utilises its Assumed Concurrence in relation to the Clause 16 Tweed Local Environmental Plan 2000 height variation sought under State Environmental Planning Policy No.1 – Development Standards.
- B. 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 RevA to ADD215 RevA dated Feb 2003 inclusive, SK-01-501 RevA to SK-01-502 RevA dated 21/2/2003 and AR301 RevA 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.  
[GENNS01]

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

### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

7. 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. The landscaping plan should provide detail on the density and type of planting to be adopted in the landscape buffer area.

[PCC0010]

8. Any carparking or entry 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]

9. The applicant is required to satisfy the Environment Protection Authority requirements prior to issue of a construction certificate.

[PCCNS01]

10. 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): \$63,196.00  
S94 Plan No. 5
- c. Open Space (Casual): \$13,509.00  
S94 Plan No. 5
- d. Shirewide Library Facilities: \$55,777.00  
S94 Plan No. 11
- e. Bus Shelters: \$2,240.00  
S94 Plan No. 12
- f. Eviron Cemetery/Crematorium Facilities: \$10,797.00  
S94 Plan No. 13
- g. Emergency Facilities (Surf Lifesaving) \$18,724.00  
**(REMSHIRE)**  
S94 Plan No. 16

- h. Extensions to Council Administration Offices  
& Technical Support Facilities      \$32,530.13  
S94 Plan No. 18
- i. Cycleways      \$13,016.00  
S94 Plan No. 22
- j. Regional Open Space (Structured)      \$95,316.00  
S94 Plan No. 26
- k. Regional Open Space (Casual)      \$17,846.00  
S94 Plan No. 26

[PCC0050/PSC0005]

11. 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]

12. 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]

13. 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<sup>3</sup> per 1000m<sup>2</sup> of the basement/undercover car park area.
- (b) The minimum retained volume of an Oil/Grit arrestor is 0.75m<sup>3</sup>.
- (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 bundled 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]

14. 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]

15. 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]
16. 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]

17. 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.
18. 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.
19. The applicant shall submit a hydraulic analyses demonstrating the adequacy of the existing 150 diameter water main for meeting fire fighting requirements.
20. 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.
21. 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.
22. 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**

23. 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]

24. 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]

25. 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]

26. 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]

27. 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]

28. 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]
29. 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]
30. Prior to commencement of works all required plumbing and drainage inspection fees are to be submitted to Council.  
[PCWNS01]
31. 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 Occupation Certificate is issued.  
[PCW0030]
32. 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

33. 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]
34. 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 signposted as for visitors.  
[DUR0050]
35. 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]
36. 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]
37. 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]
38. A garbage storage area shall be provided in accordance with Council's "**Code for Storage and Disposal of Garbage and Other Solid Waste**".  
[DUR0090]
39. 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]
40. 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]
41. 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]
- 42.
- 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]

43. 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]
44. 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]
45. 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]
46. The guttering downpiping and roof waste water disposal system is to be installed and operational before the roofing is installed.
- [DUR0950]
47. 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]
48. 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]

49. 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]
50. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR1040]
51. 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]
52. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993. [DUR1090]
53. 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]
54. 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:-
- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
  - \* 50<sup>0</sup>C 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]
55. 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]

56. 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]

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

[DUR1290]

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

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

60. 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.

61. 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.

62. 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]

63. 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]

64. 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]

65. 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.

66. 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]

67. 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]

68. 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]

69. 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]

70. 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]

71. 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]

72. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles.

[DUR0880]

73. 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]

74. 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, unless otherwise approved of by the Environment Protection Authority:

**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]

75. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.

[DUR0920]



76. 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]
77. The burning of builders waste on site by open fire is prohibited.  
[DUR0940]
78. 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]
79. The management measures contained in the Peter Parker Flora and Fauna report dated February 2003 shall be adopted during the construction.
80. 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.
81. 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%.
82. The driveway entrances must be graded to ensure Q100 stormwater runoff from Gull Place's kerb and gutter does not enter the site.
83. 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.
84. 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 150m<sup>3</sup> is required.

85. 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.
86. 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.
87. 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.
88. 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.
89. 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.

90. 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]

91. The proposed development is to fully comply with Council's 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**

92. 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]

93. 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]

94. 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]

95. 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**

96. 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]

97. 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]

98. 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 labeled 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

<b>Pollutant</b>	<b>Units of measure</b>	<b>100% concentration limit</b>
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).

#### **L7Waste**

**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).

**O2 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**

<b>Pollutant</b>	<b>Units of measure</b>	<b>Frequency</b>	<b>Sampling Method</b>
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 taking 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.

### The 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 27.0m AHD to the top of the roof, thereby exceeding the height limitation of the site by 2m.

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 predominantly three stories however the foyer area and roof top amenities constitute a fourth storey.

The proposed development is to be constructed in one stage. The earthworks involved in constructing the multi dwelling housing, being the removal of approximately 67,000m<sup>3</sup> 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 6<sup>th</sup> 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.*

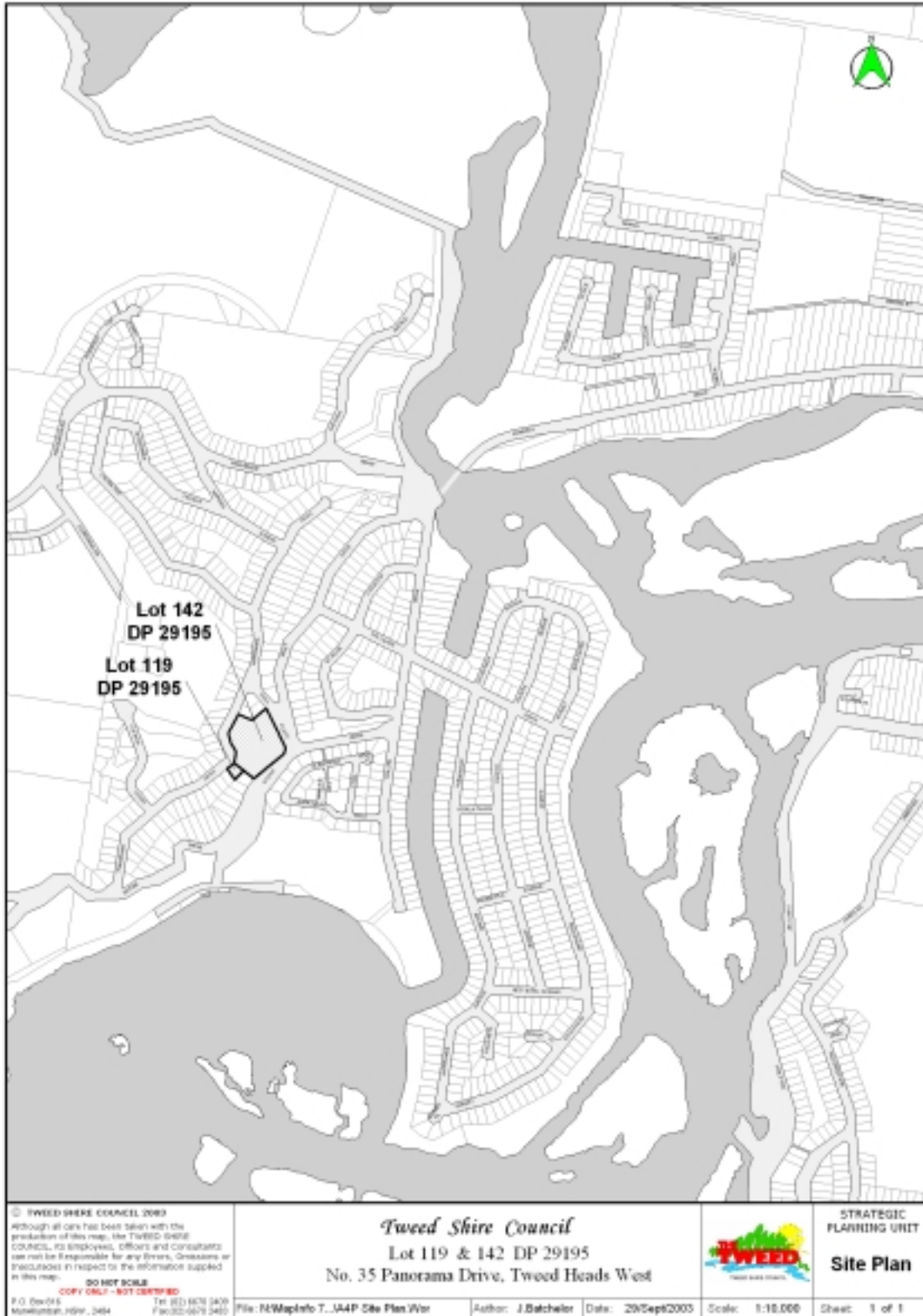
- (5) *Building approval(s) should be subject to the following geotechnical requirements:*
- (a) *Weathered and eroded crests of all rock slopes to be battered back and designed to prevent further erosion.*
  - (b) *Rock slopes to be cleared of loose material, inspected and where necessary, their soundness 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 25mAHN height limitation in the area previously quarried fronting Scenic Drive.

The application is accompanied by an objection to this height limitation under State Environmental Planning Policy No.1 – Development Standards as the proposed development exceeds the height limitation. This aspect of the development is further assessed in this report.

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 96m<sup>2</sup> 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 assumed concurrence instrument enables

Council to consider development that exceeds 14m in height under the Tweed Local Environmental Plan 2000. Therefore, Council is able to use its assumed concurrence instrument when considering the accompanying statement under State Environmental Planning Policy No. 1 in regard to an objection to the height limitation.

### State Environmental Planning Policies (SEPPs)

#### **SEPP1 – Development Standards**

An objection under SEPP1 accompanies this development application. It has been made in respect of the 3 storey height limitation and the 25m AHD height limitation contained in Clause 16 of the Tweed LEP 2000. The Tweed LEP prescribes two separate building heights over the subject land. These are: -

- 25m AHD for the lower eastern portion of the site on the corner of Scenic Drive and Gull Place; and
- 3 storey above finished ground level for the remainder of the site where such height does not exceed 4.5m above the level of the nearest part of the centre line Panorama Drive whichever is the lowest point.

Within the area of the development affected by the 25m AHD height limit, the proposed development has a height of 27m AHD to the roof with additional minor encroachments for lift overruns. The proposed terrace units are predominantly 3 storeys however, a component is 4 storeys by definition. These 4 storey areas are the foyer areas adjacent to the lift where the upper and lower steps of the terraces join and where a shower and toilet are proposed for the roof terrace. The objective of the 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 provided a submission as to why the departure from the development standard should be supported. In summary the applicants justification for the departure from the development standards are: -

- i. The original local environmental study from which the height controls were determined indicated that the development within the eastern portion of this site should have a maximum height of about RL 25m AHD to approximately match the height of the quarry face. The quarry face actually varies from approximately RL 20m from its northern and southern ends to over RL 32m in the centre. Therefore the height control was not determined by a specific site reference point, but rather an approximate level. The quarry face is well above RL 25m AHD in the centre. The building has been designed to fall within the height of the quarry face. The local environmental study prepared at the time for the amending plan indicated that the objective of this height control *“would be to maintain the dramatic visual effect of a vertical wall within the vista along Scenic Drive and would have to be achieved with a high standard*

*of design and architectural treatment.”* The proposal achieves this objective which is demonstrated in the architectural statement.

- ii. The additional building height above RL 25m AHD would not significantly alter the visual impacts for the development. The architectural statement submitted with the application concludes that *“in order to reduce the apparent main height of the building, the structure has been kept with a sweeping curve skillion roof that cantilevers and floats visually above the main built body of the façade. The wall behind would be largely glazed and recessed to maximise its impact on the elevations from below. The building would also sit on a plinth of heavier weight and darker materials so we should have only the appearance of 6 floors on the main curving façade.”*
- iii. The fourth storey component in the foyer of the terrace units is the result of the transition between the upper step and lower step of the building. This additional storey is essentially internal to the overall 3 storey building.
- iv. The building would be lowered into the hill by earthworks so that the majority of the building would be below the level of Panorama Drive. One of the intentions of the original local environmental study was to limit the height in the location to a maximum of 1 storey above the level of Panorama Drive. The proposed development achieves this.
- v. The toilet and shower on the roof top terrace do not affect the overall height or building design.
- vi. The non-compliance with the height limits would not exacerbate amenity impacts, views, privacy, overshadowing on adjacent properties.

### **Comment**

The applicants submission that the proposed quarry face varies in heights correlates with the findings of the site inspection where heights were staked on the site. The site inspection demonstrated that the proposed building would in fact be lower than the actual quarry face in some components and would be clear of the ridgeline which is heavily vegetated with the adjacent Eucalyptus. The proposed development will achieve the ability of maintaining the dramatic visual effect of the high vertical wall by way of the design of the building, but it does not encroach on the other environmental features that were identified in the LES, such as the heavily vegetated ridgeline.

The 'terrace units' exceed the 3 storey height limitation and create a fourth storey due to the transitions within the building. It is considered that the terrace units satisfies the intention of that development standard as identified in the LES as the proposed development is no greater than 1 storey above the level of Panorama Drive and in fact is lower or equivalent to the centre line of

the road in part. By exceeding the height limitation from 3 storeys to 4 storeys the applicant is not resulting in a development that reduces the ability of other properties gaining a view and it does not impact on the privacy or create overshadowing to other properties in that area.

The proposed development includes a tall building being referred to as the 'tower building'. The exceedence of the height limitation by 2m has been assessed as not generating a significant impact to adjoining properties in the area by way of loss of views, privacy or overshadowing. It is considered that should the applicant have been asked to lower the height of the building to RL 25m AHD and comply with the height limitation for the site, that the development would not alleviate any perceived impact on adjoining properties. The majority of the objections received raised concern about the site being identified as being suitable for a building of this height. It is considered that the site is suitable for a building of this height given the actual height of the old quarry face and the ability for a development such as this to be designed so as to accommodate the space that has been created by the old quarry, thereby working with the landscape and achieving the dramatic visual effect being the objective behind that height control. It is considered that the objection to the height limitation can be supported.

It is considered that the proposed development achieves the underlying intention of the development standard. The 25m AHD height control is a crude reflection of the intent as identified in the local environmental study process.

This report further assesses the issues of overshadowing and privacy impacts under the performance criteria for Development Control Plan No.6 – Multi Dwelling Housing.

In conclusion it is considered that it is warranted that Council use its assumed concurrence in relation to the height variation being sought.

### **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 Council's Assumed Concurrence instrument enables Council to consider the application. The proposed development did not require any referral to PlanningNSW and as such Council must take into consideration the matters contained under Part 2 of the Policy.

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.

<b>Standard</b>	<b>Requirement</b>	<b>Complies/variation</b>
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 wash 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 9000m<sup>2</sup> with each unit having a balcony ranging in area from 15m<sup>2</sup> to 29m<sup>2</sup>. The provisions of DCP 18 that provide for developments of this scale would require units to have a balcony of a minimum area of 8m<sup>2</sup> and 3135m<sup>2</sup> of open space.

The proposed development is of a density of one dwelling per 96m<sup>2</sup>. 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 and do not present as four storey development 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 be 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 67,000m<sup>3</sup> 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 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.	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 9000m <sup>2</sup> the applicant contends that the proposal is not an overdevelopment of the site. 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.

Issue	Concern	Assessment
		The proposal does not warrant refusal for this reason.
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 keeping with the zone of the surrounding residential areas.	<p>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 (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 3135m<sup>2</sup> of open space. Instead, the proposed development exceeds that amount by providing landscaped open space of 9000m<sup>2</sup> 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</p>

Issue	Concern	Assessment
		for units since 1991. The proposal does not warrant refusal for this reason.
Height of the Proposal	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 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.	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 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 refers to their submissions under SEPP1 and contends that the height above RL 25m AHD would not significantly alter the visual impacts of the development. The applicant further contends that the area of the site affected by the 3 storey height limitation is exceeded to create a 4 storey component due to

Issue	Concern	Assessment
		<p>the foyer of the terrace area as a result from a transition between the upper step and the lower step of the building. The applicant details 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 is comprehensively assessed in this report. The assessment report has addressed the use of Council's assumed</p>



Issue	Concern	Assessment
		<p>concurrence in relation to heights and impacts to the immediate adjoining property.</p> <p>The SEPP1 has been assessed and is considered to be able to be supported for reasons detailed. The height variation is not considered to result in any further impacts than would be experienced by a building complying with the height development standard. In this instance the numerical standard is a crude reflection of intent. The proposal meets the objective behind the standard as detailed in the LES.</p> <p>The proposal does not warrant refusal for this reason.</p>
<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>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</i></p>

Issue	Concern	Assessment
		<p><i>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 its 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 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</i></p>

Issue	Concern	Assessment
		<p><i>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 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.</p> <p>The proposed development, as detailed in the DCP6</p>

Issue	Concern	Assessment
		<p>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.</p> <p>The proposal does not warrant refusal for this reason.</p>
<p>Construction Impacts</p>	<p>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 employees during the construction phase.</p>	<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 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</p>

Issue	Concern	Assessment
		warrant refusal for this reason.
Infrastructure	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.	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. The proposal does not warrant refusal for this reason.
Traffic	Concern was raised that the continuation of local road network is 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	In response to the issue that the applicant did the traffic counts during school 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. The proposal does not warrant refusal for this reason.

Issue	Concern	Assessment
	also raised that the traffic report submitted with the application was misleading.	
On site Car Parking	Concern was raised that the existing road network has no capacity for causal 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.	The applicant has submitted that the on site car parking complies with the provisions of DCP2 – Site Access and Parking Code. A DCP 2 assessment is contained in this report. The application complies with on site car parking requirements. The proposal does not warrant refusal for this reason.
Stability of the Site	Concern has been raised about the stability of the site and the engineering capacity for the development to be constructed on the property.	The applicant has accompanied the development application with a Geotechnical and site stability report. Any approval will require the 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	These concerns have arisen from the immediate

Issue	Concern	Assessment
	<p>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.</p>	<p>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 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.</p>
<p>Natural Environment Impacts</p>	<p>Concern was raised that the proposed development would have significant adverse impacts on the natural environment and the environment of threatened species.</p>	<p>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.</p>

**(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 seeks a variation to the height limitation under State Environmental Planning Policy No.1 – Development Standards. This has been assessed as being reasonable given that the proposal achieves the intent of the standard.

Other 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:**

2 Coloured Plans

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## REPORTS FROM DIRECTOR DEVELOPMENT SERVICES

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

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

#### MATTERS FOR CONSIDERATION

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

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**1 [DS] Draft Tweed Local Environmental Plan 2000, Amendment No 8 - Black Rocks Estate**

**ORIGIN:**

**Strategic Town Planning**

**FILE NO: GT1/LEP/2000/8 Pt5**

**SUMMARY OF REPORT:**


Council previously resolved to adopt draft Tweed Local Environmental Plan 2000 (Amendment No 8) and the associated pre-rezoning Legal Agreement between Council and Black Rocks Estate Pty Ltd. In response to a number of issues raised by various State Agencies, and after consultation with State Agencies and the landowner, it is recommended that the adopted draft Plan and Legal Agreement be amended. It is recommended that additional provisions in Clause 52 of Tweed LEP 2000 be inserted into the draft Plan to address soil and water management issues raised by the Department of Infrastructure, Planning and Natural Resources. It is also recommended that the Legal Agreement be amended to reflect these changes.

**RECOMMENDATION:**

That: -

1. Council amends the adopted draft Tweed Local Environmental Plan 2000 (Amendment No 8) zone map, as shown in Figure 2, and amends the adopted Written Instrument, as follows:
  - Inserting the following additional aim:

“(d) to apply special provisions on soil and water management”.
  - By adopting a new zone map as shown in Figure 2.
  - By amending the Table in Clause 52 by inserting the following in Columns 1 and 2:

Column 1 Shown on the zone map by:	Column 2 Applicable provisions
	<p>Consent must not be granted to development unless the consent authority and the proponent has considered detailed plans of the development and for management of its consequences and made an assessment of the following matters:</p> <ul style="list-style-type: none"> <li>(a) the adequacy of proposed measures in a stormwater management plan for the purpose of maintaining or improving the quality of water leaving the site in both surface and ground waters, such measures to control soil erosion, sediment and stormwater run off, and release of ground water or surface water containing high acidity, nutrients or pollutants, resulting from disturbance and development of the site.</li> <li>(b) where development proposes the filling of land: <ul style="list-style-type: none"> <li>i. whether or not the filling of land would increase the risk or severity of flooding of other land in the vicinity, and</li> <li>ii. the potential impacts of the filling of land on groundwater quality, and</li> <li>iii. the likely impacts of increased flooding on adjacent flora and fauna habitat, and</li> <li>iv. the quality, volume and source of any fill material and the likely impacts associated with the sourcing and transportation of fill material; and</li> <li>v. the adequacy of the location and justification of the design of environmental buffers between filled areas and environmentally sensitive land eg, riparian areas, wetlands and waterways.</li> </ul> </li> <li>(c) the adequacy of proposed drainage systems, particularly in respect of Council's goal that post development drainage should mimic natural (pre-development) flows by utilising such techniques as reuse, detention, retention and infiltration.</li> <li>(d) the extent to which stormwater management and control is consistent with the Tweed Urban Stormwater Management Plan.</li> </ul>

2. Council amends the Legal Agreement between Council and Black Rocks Estate Pty Ltd dated 5 June 2003 prior to forwarding the new adopted Plan to the Department of Infrastructure, Planning and Natural Resources. The Agreement is amended by inserting an amended Annexure A1 (draft Written Instrument) and Annexure A2 (draft zone map) consistent with the amended draft Plan in 1. above.

3. All necessary documentation associated with the amended Legal Agreement in 2. above be completed under the Common Seal of Council.

## REPORT:

### Background

Council, at its meeting of 19 March 2003, resolved to adopt draft Tweed Local Environmental Plan 2000, Amendment No 8, for the residual area of Black Rocks Estate subject to finalisation of a Legal Agreement between Council and Black Rocks Estate Pty Ltd for dedication and embellishment of koala habitat and sportsfields. The Deed of Agreement was completed and signed by the proponent, and Council resolved on 4 June 2003 that:

*“all necessary documentation be completed under the Common Seal of Council”.*

The adopted draft zone map is shown in Figure 1. The adopted Written Instrument is attached as Appendix 1 to this report.

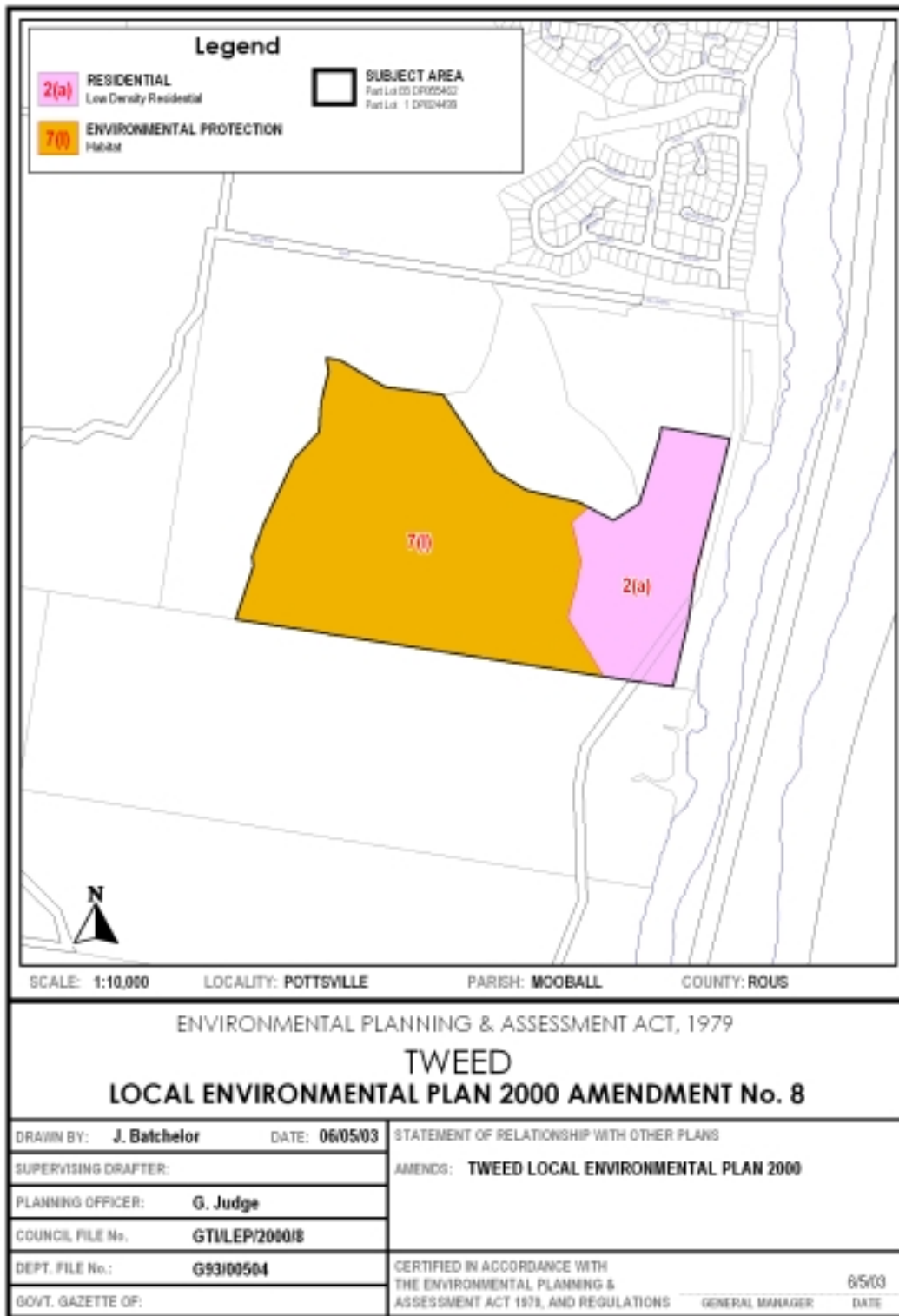
Draft Tweed LEP 2000 (Amendment No 8) proposes to rezone the residual area of Black Rocks 1(a) Rural zone to 11ha of 2(a) zone and 31 hectares of 7(l) Habitat zone. When the LEP is gazetted the owner (Richard Cowan) will be required to do the following in accordance with the Legal Agreement:

- Dedicate to Council in the first subdivision 104 hectares of koala habitat including land for the sportsfield, 2 hectares of scenic protection zone over Mooball Hill and 2.8 hectares of the Mooball Creek buffer;
- Embellish the 4 hectare sportsfield (filling, topsoiling and grassing) as part of the first stage of residential subdivision for the area to be rezoned 2(a);
- Provide an automated sprinkler system for the sportsfields as part of the final stage of residential subdivision of Black Rocks Estate. This is done latter because water and electricity will not be available to the sportsfield until the latter stages of residential subdivision;
- Dedicate and embellish a minimum of 2,000m<sup>2</sup> of casual open space as part of the residential subdivision.

The proponent has agreed to all of the requirements of the Deed of Agreement. All relevant documentation was sent to the Department of Infrastructure, Planning and Natural Resources advising the Department of Council's resolution and a request that the Minister make the Plan.



**Figure 1 – Adopted Draft Plan**



## Department of Infrastructure, Planning and Natural Resources (DIPNR)

In a letter dated 23 July 2003 the DIPNR advised Council that there were a number of issues raised by the Environment Protection Authority (EPA), DIPNR and NSW Coastal Council that they consider have not been adequately addressed in the Environmental Study prepared by Council's Consultant, GeoLINK.

- Fill and flow impacts of stormwater in Mooball Creek (EPA).
- Impacts of fill and the potential of development to create ribbon development along Mooball Creek (Coastal Council/DLWC).
- Impacts of fill on increased flood levels and effects of delayed drainage times (DLWC).
- Acid sulphate soils management (DLWC).

The letter from DIPNR is attached as Appendix 2.

Council officers contacted the relevant State Agencies and responded as follows:

*"In the report to Council on the public exhibition of the draft Plan GeoLINK (Council's consultant) and Council officers stated that all of these issues were addressed in the Environmental Study to satisfy the conclusion that eleven (11) hectares of land could be developed for residential development and the remaining thirty (30) hectares could be used for a 4 hectare sports field and for wildlife conservation. The recommendations by GeoLINK and council officers included accepting a development trade-off whereby the proponent will dedicate approximately 100 hectares to Council for wildlife conservation after the draft plan is gazetted.*

*The need for detailed design details on stormwater management, drainage and acid sulfate soil management were not considered necessary at the rezoning stage. This approach is consistent with past practice with spot rezonings by Council and accepted by PlanningNSW. Council and GeoLINK concluded that the detailed information for residential subdivision of the site and the sportsfields can be addressed at the applicant's expense when the Development Application is lodged with Council or PlanningNSW (SEPP 71). In addition adequate provisions in Council's current Tweed LEP 2000, council's adopted Tweed Stormwater Management Plan and the recently reviewed DCP 16 (Subdivision Manual) require proponents to address these detailed issues when they wish to develop the site. Most of these issues were discussed at a Stakeholder Workshop in September 2002 prior to finalisation of the Environmental Study and draft LEP"*

The response from the Environment Protection Authority dated 30 July 2003, and the Coastal Council of NSW dated 8 August 2003, is attached as Appendix 3.

The EPA and Coastal Council did not accept this response.

The EPA advised as follows:

*“We understand that the Department of Planning Infrastructure and Natural Resources (DIPNR) has identified a series of outstanding issues, which have been raised by the various State Agencies and highlighted the need to address them before the plan can be made.*

*These issues include the impacts associated with the filling of the site, which is required to provide flood immunity for residential development, concerns regarding the ‘ribbon’ like development along Mooball Creek and impacts associated with stormwater and Acid Sulphate Soils.*

*We concur with the conclusions drawn by the DIPNR and do not consider that the LES has adequately addressed the impacts associated with filling of this site. We refer Council to our previous correspondence dated 10 October 2003, which highlighted a range of issues associated with filling the site, which needed to be addressed. From our review of the LES it appears that a number of these issues have not been addressed.*

*The EP remains of the view that the filling, which is essential to facilitate residential development of the site, is a fundamental component of the proposal and as such will have a major bearing on the sustainability of the proposed change in landuse. It is therefore imperative that the impacts associated with filling the site are thoroughly addressed in LES so that the sustainability of the proposed change in landuse can be assessed. We do not consider it appropriate to defer such considerations until the development approval stage.*

*We also have some outstanding issues regarding the management of stormwater from the site”.*

The Coastal Council of NSW advised as follows:

***“Development on low-lying coastal lands***

*The rezoning of lands to facilitate residential development on areas that are low-lying and flood prone, prior to studies being completed that demonstrate the areas are appropriate for residential development, is unacceptable to the Coastal Council.*

*The Coastal Council is concerned by the apparent increasing trend for filling of low-lying lands, particularly wetlands and floodplains, to place urban development in areas that would otherwise be unsuitable for development due to flooding. The NSW Environmental Protection Authority and the Department of Infrastructure, Planning and Natural Resources have provided their concerns to you regarding this proposed rezoning and development at ‘Black Rocks Estate’.*

***Compact urban areas (Coastal Policy Strategic action 6.2.1)***

*This development is of concern t Coastal Council as it is contributing to ribbon development along Mooball Creek. Both the Premier and his Deputy have continually advocated compact coastal settlements rather than continuous developments along the coast”.*

The landowner was provided with copies of the correspondence from State Agencies and the responses from Council.

### **Meeting Between Council Officers, State Agencies and GeoLINK**

A meeting was convened between Council officers, GeoLINK and State Agencies (EPA & DIPNR) on 13 August 2003. The meeting was organised by Council officers to discuss and resolve issues raised by the State Agencies on the draft Plan and Environmental Study.

The outcomes from that meeting were as follows:

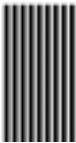
- DIPNR did not consider 'ribbon development' was an issue because the Black Rocks site is included in an agreed urban release strategy between PlanningNSW and Tweed Shire Council.
- GeoLINK and Council officers will prepare draft additional provisions that can be included in the draft Plan to address the issues raised by DIPNR and EPA (filling impacts, fill information, stormwater discharge impacts and cumulative flood impacts).

These outcomes avoided the need for Council to undertake more detailed investigations and modelling on the proposed development of the site as part of the rezoning process. The proposed additional provisions will place the onus on the landowner to address these issues as part of a Development Application.

### **Recommended Amendment to Adopted Draft Tweed LEP 2000 (Amendment No 8)**

As a result of discussions with State Agencies GeoLINK, in consultation with Council officers, recommend Council amend Clause 52 (Map Overlay) in Tweed LEP 2000 to ensure that the various agency concerns are considered at the Development Application for Black Rocks. Clause 52 enables Council to apply site specific provisions relating to particular areas shown on the LEP Zone Map (proposed 2(a) zone). The proposed Amendment focuses on addressing impacts of development on surface and ground water and impacts from filling given that flooding and acid sulfate soils are considered to be adequately addressed by existing clauses in the Tweed LEP 2000. The proposed amendment to Clause 52 and the Aims of the draft Plan are shown below. The amendment to the draft Zone Map is shown in Figure 2.

It is recommended that Clause 52 be amended by inserting the following:

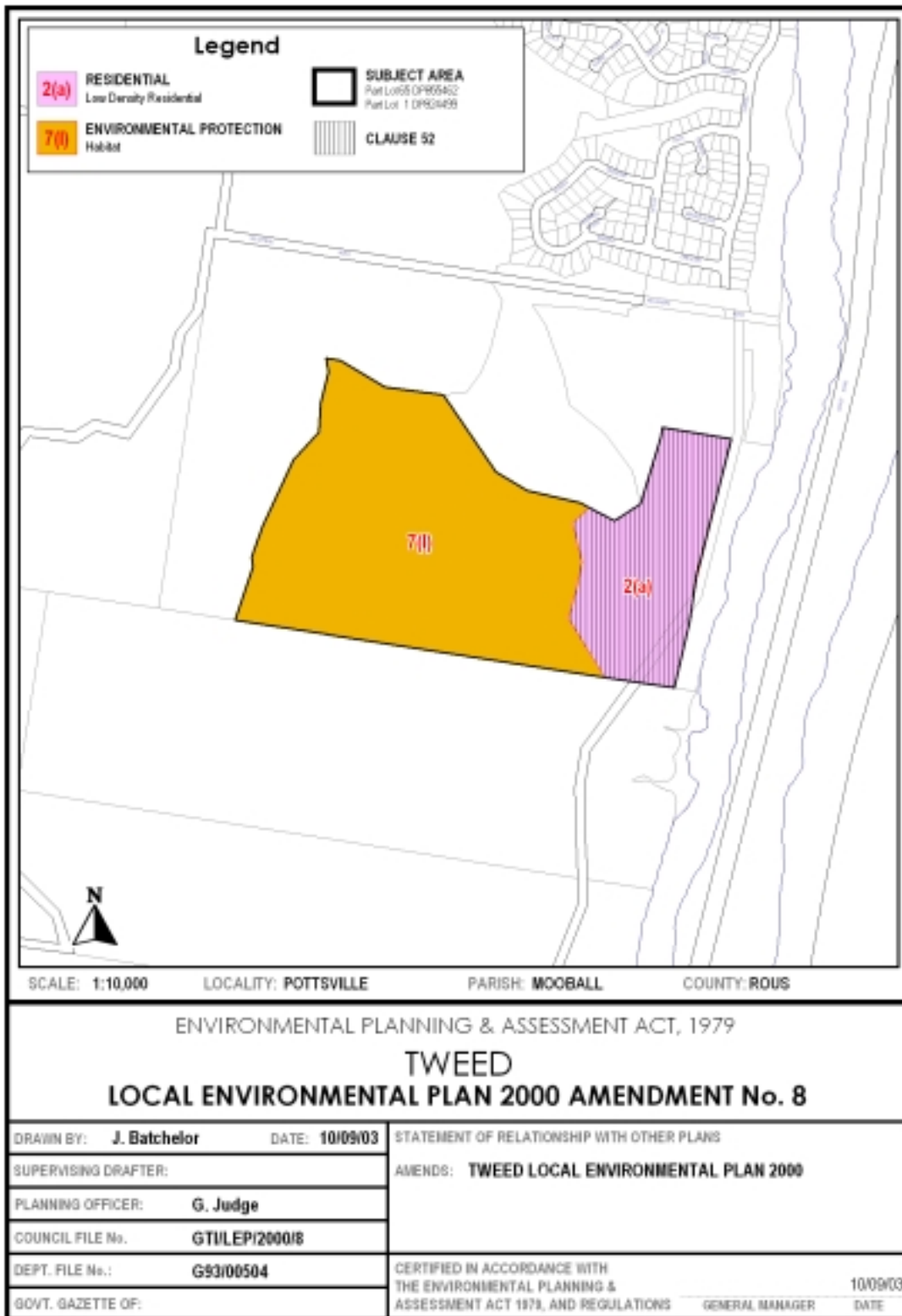
Column 1 Shown on the zone map by:	Column 2 Applicable provisions
	<p>Consent must not be granted to development unless the consent authority and the proponent has considered detailed plans of the development and for management of its consequences and made an assessment of the following matters:</p> <ul style="list-style-type: none"> <li>(a) the adequacy of proposed measures in a stormwater management plan for the purpose of maintaining or improving the quality of water leaving the site in both surface and ground waters, such measures to control soil erosion, sediment and stormwater run off, and release of ground water or surface water containing high acidity, nutrients or pollutants, resulting from disturbance and development of the site.</li> <li>(b) where development proposes the filling of land: <ul style="list-style-type: none"> <li>i. whether or not the filling of land would increase the risk or severity of flooding of other land in the vicinity, and</li> <li>ii. the potential impacts of the filling of land on groundwater quality, and</li> <li>iii. the likely impacts of increased flooding on adjacent flora and fauna habitat, and</li> <li>iv. the quality, volume and source of any fill material and the likely impacts associated with the sourcing and transportation of fill material; and</li> <li>v. the adequacy of the location and justification of the design of environmental buffers between filled areas and environmentally sensitive land eg, riparian areas, wetlands and waterways.</li> </ul> </li> <li>(c) the adequacy of proposed drainage systems, particularly in respect of Council's goal that post development drainage should mimic natural (pre-development) flows by utilising such techniques as reuse, detention, retention and infiltration.</li> <li>(d) the extent to which stormwater management and control is consistent with the Tweed Urban Stormwater Management Plan.</li> </ul>

It is recommended that the draft Plan be amended by inserting the following additional aim:

*“(d) to apply special provisions on soil and water management”.*

The draft zone map as amended as shown in Figure 2.

**Figure 2 - Amendment to the draft Zone Map**



The landowner, Richard Cowan, has been advised of the outcomes of the meeting with State Agencies and the recommended changes to the draft Plan. Richard Cowan, on behalf of Black Rocks Estate Pty Ltd, advised Council in a letter dated 15 September 2003 that he had no objection to the proposed changes. A copy of his correspondence is attached as Appendix 4.

The DIPNR have advised Council in a letter dated 2 October 2003 that the proposed changes satisfactorily address the issues raised by the State Agencies (see Appendix 5).

It is therefore recommended that Council amends the adopted draft LEP (Figure 2 Zone Map, Clause 52 and Aims of the Plan) as outlined above.

### **Legal Agreement**

As a result of the amendments to the draft Plan, Annexure A1 and A2 of the Legal Agreement between Council and Black Rocks Estate Pty Ltd must also be amended. Annexure A1 and A2 is draft Tweed LEP 2000 (Amendment No 8). It is therefore recommended that Council finalises a new signed Legal Agreement to replace Annexure A1 and A2, and that all necessary documentation be completed under Common Seal prior to forwarding the amended draft LEP to the DIPNR.

### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

### **POLICY IMPLICATIONS:**

Nil.

### **UNDER SEPARATE COVER:**

1. Tweed Local Environmental Plan 2000 (Amendment No 8),
  2. Letter from Department of Infrastructure, Planning and Natural Resources dated 23/7/03 (DW 953609),
  3. Letter from Coastal Council of NSW (DW 938911),
  4. Letter from Environment Protection Authority (DW 933949),
  5. Letter from Black Rocks Estate Pty Ltd (DW 949708),
  6. Letter from Department of Infrastructure, Planning and Natural Resources dated 2/10/03 (DW 956003).
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**2 [DS] Proposed Activity (PTV02/0063) for a Waste Water Treatment Plant, Associated Infrastructure, Decommissioning Works and Pumping Station at Lot 2 DP 611021, No. 208 Chinderah Road, Chinderah, Lot 32 DP 847319, unnamed Crown Road Reserve and Chinderah**

**ORIGIN:**

**Development Assessment Unit**

**FILE NO:** DA1070/770 Pt1

**SUMMARY OF REPORT:**

Council commissioned an EIS to be carried out to assess the impact of a new waste water treatment plant to service Kingscliff and the surrounding area. The impacts of the proposal are within acceptable limits and can be mitigated by ameliorative measures.

**RECOMMENDATION:**

That proposed activity PTV02/0063 for a waste water treatment plant, associated infrastructure, decommissioning works and pumping station at Lot 2 DP 611021, No. 208 Chinderah Road, Chinderah, Lot 32 DP 611021, unnamed Crown Road Reserve and Chinderah Road be approved subject to the following conditions: -

1. The development shall be completed in general accordance with the Environmental Impact Statement prepared by GHD dated December 2002, except where varied by these conditions.
2. Environmental Management Plans are to be prepared for the construction and operational phases of the development. In this regard the Environmental Management Plans are to be prepared in accordance with the Environmental Impact Statement and are to detail the proposed mitigation measures, modelling and monitoring programs.
3. An acid sulfate soil management plan is to be prepared for the development prior to commencement of construction.
4. A landscaping plan is to be prepared prior to commencement of construction. In this regard the number, type and size of the species used are to be included in the plan.
5. An erosion and sedimentation control plan is to be prepared prior to commencement of construction.
6. A community consultation plan for the construction phase is to be prepared prior to commencement of construction.

7. The proponent is to consult with the Department of Infrastructure Planning and Natural Resources regarding their requirements for works on Crown Land.
8. All relevant approvals from Government Authorities are to be obtained.
9. A traffic management plan for heavy vehicle movement is to be prepared prior to commencement of construction.
10. 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. 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 throughout the period of construction.
11. Where earthworks result in the creation of embankments and/or cuttings greater than 1m high and/or slopes 17° or steeper, such slopes shall be densely planted in accordance with a detailed landscaping plan.

Such plans shall generally incorporate the following and preferably be prepared by a landscape architect:

  - i) Contours and terraces where the height exceeds 1m.
  - ii) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
  - iii) Densely plant with sub-tropical (rainforest) native and exotic species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
  - iv) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.
  - v) The landscaping shall be completed to the satisfaction of the Director Development Services **PRIOR** to the operation of the plant.
12. 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.

13. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of fill shall be submitted to the satisfaction of the Director Development Services.
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.
15. 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.
16. All surface water collected from hard stand parking areas to be directed to Council approved pre-treatment facilities before discharge to approved discharge locations. Stormwater from covered or enclosed carpark areas shall not be discharged to the public sewer unless approved treatment facilities have been provided. Details are to be submitted to and approved by the Director of Environment and Community Services prior to installation
17. 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.

18. 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.
19. All battered areas are to be topsoiled and grassed, or other suitable protection provided as soon as filling is placed adjacent to neighbouring properties.
20. 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.
21. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles.
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.

23. 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.
24. 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.
25. 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.
26. 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 50 Degrees Celsius:-
- A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.
27. 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).
28. On completion of work a certificate signed by a practising structural engineer is to be submitted to Council to certify the structural adequacy of the structures.
29. 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.

30. The LA10 noise level emitted from the premises shall not exceed the background noise level (LA90) in any Octave Band centre frequency (31.5 Hz - 8KHz inclusive) by more than 5dB(A) between 7am and 12 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7am weekdays and 12 midnight and 8am weekends.
31. Noise from the Plant shall not be permitted to impact the amenity of any premises. Should operational noise from the plant unreasonably impact the amenity of any premises then a noise report shall be prepared and submitted for the consideration of the DECS. Where directed in writing by the DECS, amelioration measures identified in the noise report shall be implemented as directed in writing.
32. Lighting shall not be permitted to impact the amenity of any other premises.
33. Non-structural (effluent and sludge storage ponds) and structural infrastructure shall be constructed so as to prevent groundwater inflows to those structures or discharges/infiltration to groundwater.
34. A management plan shall be submitted to and approved by Council prior to the commencement of any decommissioning works on the existing Kingscliff Sewage Treatment Plant site. All works shall comply with the approved plan.
35. Should any decontamination or remediation works be necessary on the existing Kingscliff Sewage treatment Plant site, then those works shall not be commenced without the separate prior approval of Council.
36. Authority and relevant sections of the approved Management Plan.
37. Irrigation of effluent shall not occur without the prior written approval of Council.
38. Odour from the Plant shall not be permitted to impact the amenity of any premises. Should odour from the plant unreasonably impact the amenity of any premises then a odour report shall be prepared and submitted for the consideration of the DECS. Where directed in writing by the DECS, amelioration measures identified in the odour report shall be implemented as directed in writing.
39. The Plant shall be operated in accordance with the license or operational requirements of the NSW EPA.

## REPORT:

**Applicant:** Tweed Shire Council  
**Owner:** Gales Projects Pty Limited and Tweed Shire Council, Department of Infrastructure Planning and Natural Resources  
**Location:** Lot 2 DP 611021, No. 208 Chinderah Road, Chinderah, Lot 32 DP 847319, unnamed Crown Road Reserve and Chinderah Road  
**Zoning:** 1(b2) Agricultural Protection, 5(a) Special Uses Sewerage Treatment Plant/Turf Farm and unzoned land  
**Cost:** \$33,771,000

## BACKGROUND:

Council resolved on 4 October 2000 to prepare an EIS for the establishment of a new waste water treatment plant (WWTP) at Lot 2 DP 611021, No. 208 Chinderah Road, Chinderah. Council had previously decided not to proceed with an upgrade of the existing plant. Council selected option 2b as the preferred option following the review of the Kingscliff wastewater strategy.

The aspects of option 2b are as follows: -

- Relocation of sewage treatment facilities to an area west of Chinderah Road
- Construction of a new WWTP in two stages to cater for a total ultimate capacity of 50,000 EP
- Retaining the existing site for the transfer of raw sewage from north and south Kingscliff catchments to the new site
- Retaining the existing discharge site to the Tweed River
- New sewerage pumping rising main from the existing site to the new site
- Effluent outlet pipe that joins the exiting outlet pipe on Chinderah Road
- Decommissioning the existing site

Stage one of the activity will cater for 25,000 EP and stage two will commence in approximately 2015 depending on population growth to cater for 50,000 EP. It is anticipated that stage one will be operating by 2006.

## Need for new plant

A new WWTP is required for the following reasons-

1. To improve effluent quality in order to meet the EPA effluent quality criteria, and hence comply with the conditions of the EPA Environmental Protection Licence.
2. To provide sewerage services for the predicted increases in population in the WWTP catchment area.
3. To meet community expectations of relocating the existing Kingscliff WWTP.

The new plant is vital to meet the demands of the expected growth of the Kingscliff area. Without an increase in the capacity of the sewerage treatment plant development in the Kingscliff area would not be able to proceed.

The proposed plant is a critical component of the strategic planning for the Kingscliff catchment.

### **Impacts**

Consultants GHD were commissioned to prepare the Environmental Impact Statement and a subsequent report on the representations received during the exhibition of the document. The EIS has identified the following issues as key impacts of the proposal-

- Receiving waters, including water quality, aquatic ecology and downstream water use requirements.
- Groundwaters and flood waters management.
- Incident management, particularly effluent overflows.
- Noise, particularly during construction.
- Odour, from both general WWTP operation and biosolids handling and management.
- Flora (including weeds) and fauna management.
- Heritage, both Aboriginal and European.
- Visual amenity.

The issues have been assessed in detail in the EIS and a summary of the assessment is provided in Section 3 of the consultants report that is attached to this agenda. The EIS proposes mitigation measures to manage the impacts.

It is considered that the impacts can be managed so that they are within acceptable limits. The impacts of the plant will not be at a level that cannot be controlled or managed satisfactorily.

It is proposed to formulate environmental management plans (EMP) for the construction and operation of the WWTP. The plans will include details of monitoring and modelling for water quality, discharge dilution, aquatic ecology etc. Other matters to be addressed in management plans are acid sulfate soil, construction traffic, erosion control and landscaping. The EIS also suggests further hydraulic assessment regarding the impact of flooding at the detailed design stage.

It is considered that development of EMP's for the plant is an appropriate way to manage the construction and operation of the plant.

Appropriate conditions are proposed to reflect the requirements of the EIS.

### **Statutory Context**

Public utilities such as sewerage treatment plants do not require development consent from Council. These types of developments fall under the provisions of Part Five of the

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Environmental Planning and Assessment Act. The provisions enable Council to be the proponent for public utilities and also the approval body.

Council is required to send the attached Consultants report to PlanningNSW and the EPA prior to determining the proposal. This has been undertaken and no further submissions received from them. Council may therefore now make a decision on the proposal.

In accordance with the section 243 of the Environmental Planning and Assessment Regulation Council is required to prepare a report on the proposal, mitigation measures and give full particulars of the decision. The report is also required to be made public.

The majority of this requirement has been complied with in the attached report from the Consultants and in this report. The Regulations will be complied with by making Council's decision and both reports available to the public.

### **General Matters**

Whilst effluent reuse does not form part of the EIS the Engineering Services Department intends to prepare an Effluent Reuse Strategy. Further assessment and approvals will be required prior to commencing the reuse of effluent.

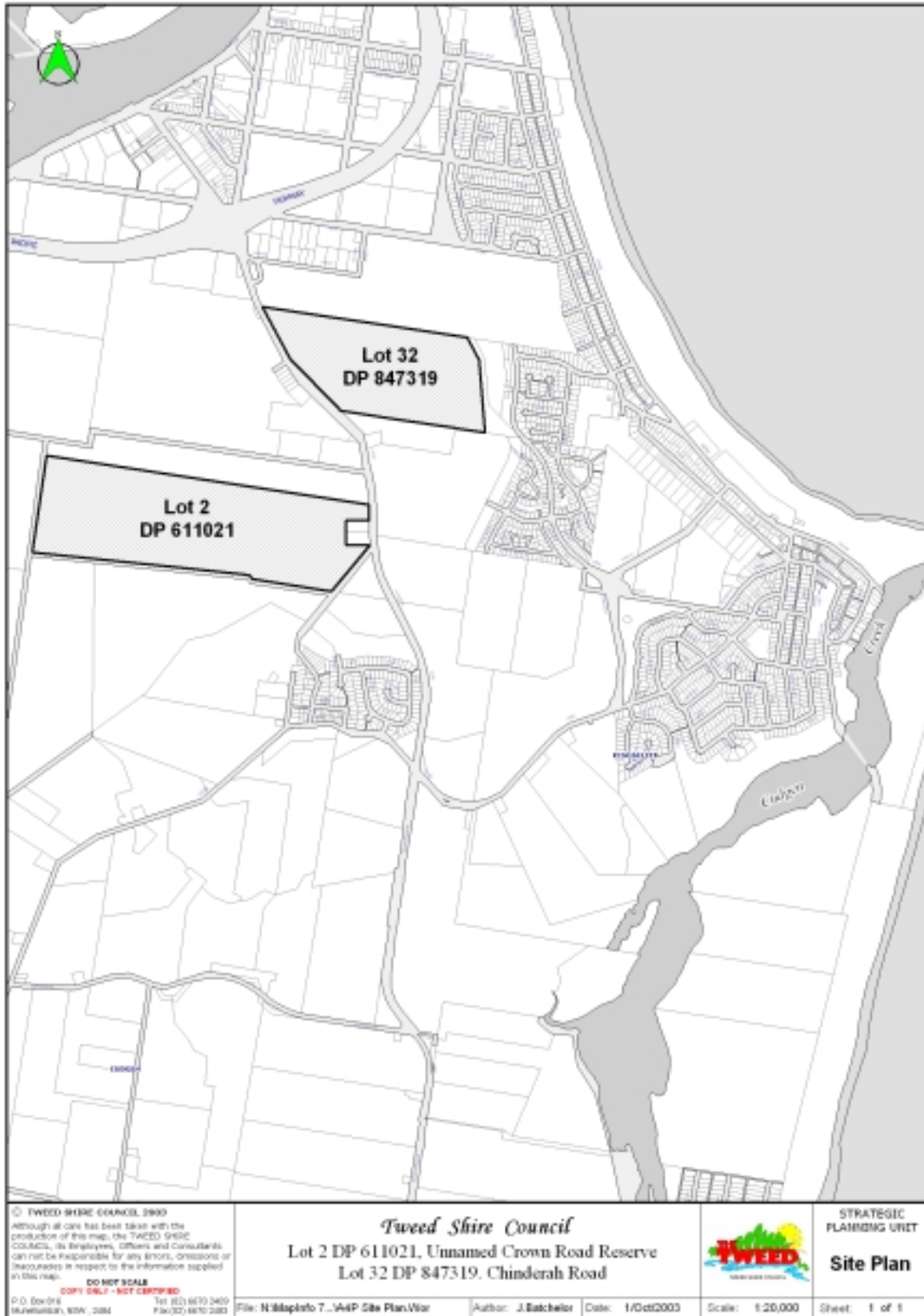
Further assessment and approvals will also be required for remediation of the existing site and demolition of any buildings.

It should also be noted that approvals are required from various State Government Authorities. The required approvals are listed in the EIS. Council is required to seek the approvals if the WWTP is approved.

Seven submissions were received. Four from Government Authorities and three from individuals. The submissions and their assessment are provided in the attached Consultants report. Issues raised in the submissions mainly related to effluent reuse. It should be noted that no objections were raised to the proposal.



**SITE DIAGRAM:**



**OPTIONS:**

1. Proceed with the activity
2. Proceed with the activity subject to conditions
3. Don't proceed with the activity

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

See Statutory Context section above.

**POLICY IMPLICATIONS:**

Provision of a new WWTP has significant strategic planning implications for the Kingscliff area. Without a new plant development will be prevented from occurring.

**CONCLUSION:**

The site is considered suitable for the treatment plant. The plant can be constructed and managed so as to minimise the impacts of the plant. Ongoing monitoring is proposed that will provide Council with information regarding the performance of the plant, which will enable mitigation or corrective measures to be employed if required.

**UNDER SEPARATE COVER:**

1. Kingscliff Waste Water Treatment Plant EIS summary and Representations Report.
-

### **3 [DS] Request for Heritage Funding**

#### **ORIGIN:**

**Strategic Town Planning**

**FILE NO: PF3640/210 Pt4**

#### **SUMMARY OF REPORT:**

A request has been received from the Sacred Heart Parish, Murwillumbah, for a contribution towards the restoration of the Parish Hall.

The Heritage Office offers Councils up to \$7,500 per annum to be met dollar for dollar by Council and then dollar for dollar by a property owner, as funding for suitable heritage projects.

Council has never taken advantage of this funding. It was intended to recommend the establishment of a Heritage Fund as an outcome of the Community Based Heritage Study. However, in view of this request that consideration has been brought forward.

To accept Heritage Office funding would require a Budget allocation. No funding has been included in this year's Budget. There is considerable merit in the Heritage Office Scheme, and therefore should Council wish to take advantage of it, it would have to find the funds at the next Budget review.

#### **RECOMMENDATION:**

That this report be considered as part of the December 2003 Budget Review.

## **REPORT:**

### **Introduction**

A request has been received from the Sacred Heart Parish, Murwillumbah, for a contribution towards the restoration of the Parish Hall.

### **Restoration of the Parish Hall**

The Church is currently restoring the Parish Hall. During this work some extraordinary items have arisen during the hall restoration project. Some features had been concealed by covering with fibro at an earlier time, and when this was removed, decorative scrolls described in newspaper reports of 1895 were revealed. These are painted in gold leaf, but have been covered with varnish and therefore require delicate restoration. There are also charming stained glass windows from 1895, which require re-leading and two of the six have been damaged and will need to be replaced. In addition, the "rose window" measuring 10'6" in diameter and consisting of three shades of cathedral tint glass, is missing from the front of the building and will need to be replaced.

### **Heritage Funding**

The Parish has sought financial help from the Heritage Office, which has responded to the Parish that it can offer Councils up to \$7,500 per annum to be met dollar for dollar by Council and then dollar for dollar by a property owner, as funding for suitable heritage projects. This funding is available whether buildings are listed or not, and they also offer to fund a Heritage Advisor to Councils who can assist with prioritising projects and in other ways.

Council has never taken advantage of this funding. It was intended to recommend the establishment of a Heritage Fund as an outcome of the Community Based Heritage Study. However, in view of this request that consideration has been brought forward. The request from the Parish could not be considered until such time as the Fund has been established. To achieve this a formal resolution of Council is required together with a Budget allocation. No funding has been included in this year's Budget. Following the establishment of the Fund, the request from the Parish could be considered along with other funding requests.

There is considerable merit in the Heritage Office scheme. Should Council wish to take advantage of it, it would have to find the funds at the next Budget review.

### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Funds required at next Budget review.

### **POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**4 [DS] Extinguishment of the Right of Carriageway and Easement over the Temporary Coast Road Deviation - SALT Development**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA02/1423 Pt5**

**SUMMARY OF REPORT:**

The proponents of the SALT development are requesting that the right of carriageway over the temporary Coast Road deviation and the pipeline easement be extinguished as the permanent Coast Road is scheduled to be dedicated and open for traffic prior to Christmas 2003. The extinguishment of the easements cannot take place until the road is dedicated however the proponents are seeking the resolution to avoid delays at the time of dedication.

**RECOMMENDATION:**

That the request to extinguish the following rights of carriageway and easements be endorsed and executed under the Common Seal of Council subject to dedication of the approved Coast Road deviation and the provision of the public utility services within that Road Reserve: -

1. The right of carriageway and easement for services 20 metres wide over lots 194, 301 and 312 DP 755701 and registered under DP1057595.
2. The easement for services over existing line of pipes over lots 194, 301, 312 DP 755701 and registered under DP1057595.

**REPORT:**

**BACKGROUND:**

A condition of consent for the Outrigger Resort development required deviation of the Coast Road around the Outrigger site. On the 30 July 2003 Council resolved to delete the rights of carriageway over the existing Coast Road and create rights of carriageway over the temporary Coast Road.

The permanent Coast Road deviation was approved as part of the 473 lot subdivision. The proponents advise that the permanent Coast Road is due to be open for traffic by Christmas this year.

**Proposal**

The proponents have requested the extinguishment of the following right of carriageway and easements-

- The right of carriageway and easement for services 20 metres wide over lots 194, 301 and 312 DP 755701 registered under DP 1057595.
- Easement for services over existing line of pipes over lots 194, 301 and 312 DP 755701 registered under DP1057595.

To enable the extinguishment of these rights of carriageways and easements the relevant documents must be executed under the Common Seal of the Council. Whilst the extinguishment cannot be formally executed until the road is dedicated the proponents are requesting Council to agree to the extinguishment in anticipation of the dedication and opening of the road. Water services must also be maintained to the existing properties in Seaside City.

**OPTIONS:**

1. Resolve to extinguishment the rights of carriageway and easements
2. Resolve not to extinguishment the rights of carriageway and easements

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.



**CONCLUSION:**

The rights of carriageway and easements become redundant with the construction and dedication of the Coast Road deviation. Extinguishment will facilitate the approved SALT development.

**UNDER SEPARATE COVER:**

Nil.

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**5 [DS] Development Application DA03/0757 for Demolition and the Erection of Multi-Dwelling Housing Comprising of 4 x 3 Bedroom Units at Lot C DP 9527, No. 8 Recreation Street Tweed Heads**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA03/0757 Pt1**

**SUMMARY OF REPORT:**

Council reviewed this application at the Council meeting held on Wednesday 15 October 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 DA03/0757 for demolition and the erection of multi-dwelling housing comprising of 4 x 3 bedroom units at Lot C DP 9527, No. 8 Recreation Street Tweed Heads be refused for the following reasons: -

1. The development application is contrary to the 2(b) Medium Density zone objectives contained within Clause 11 of Tweed Local Environmental Plan 2000, in relation to adequate supply and diversity of housing opportunities and discouragement of under utilisation of land.
2. The development application is contrary to Clause 8 of Tweed local Environmental Plan 2000, in relation to unexpected cumulative impacts.
3. The development application is contrary to The North Coast Regional Environmental Plan 1988, specifically the following matter for consideration:
  - (a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,*
4. The development application is contrary to State Environmental Planning Policy No. 71 – Coastal Protection, specifically the following matter for consideration:
  - d) *the suitability of development given its type, location, and design and its relationship with the surrounding area.*

5. The development application is contrary to Development Control Plan No. 6 – Multi Dwelling Housing, specifically including (but not limited to) Part 3 – Design Elements.
6. The development application is contrary to Development Control Plan No. 18 – Tweed Heads, specifically including (but not limited to) the nominated objectives and visions for the Tweed Heads area generally and the specific objectives for the Western Precinct;
7. The development application is not considered to be in the public interest.

**REPORT:**

**Applicant:** Thomas Homes & Constructions P/L & J & M Hession  
**Owner:** Thomas Homes & Constructions P/L, Mr NJ Hession & Mrs MN Hession  
**Location:** Lot C DP 9527, No. 8 Recreation Street, Tweed Heads  
**Zoning:** 2(b) Medium Density Residential  
**Cost:** \$480,000.00

**BACKGROUND:**

The following report was submitted to the Council meeting held on 16 April 2003: -

*"Council is in receipt of a development application from Thomas Homes & Constructions Pty Ltd & J & M Hession for the demolition of an existing single-storey residential cottage and the erection of a two storey residential development consisting of four units in two buildings connected by single storey garages.*

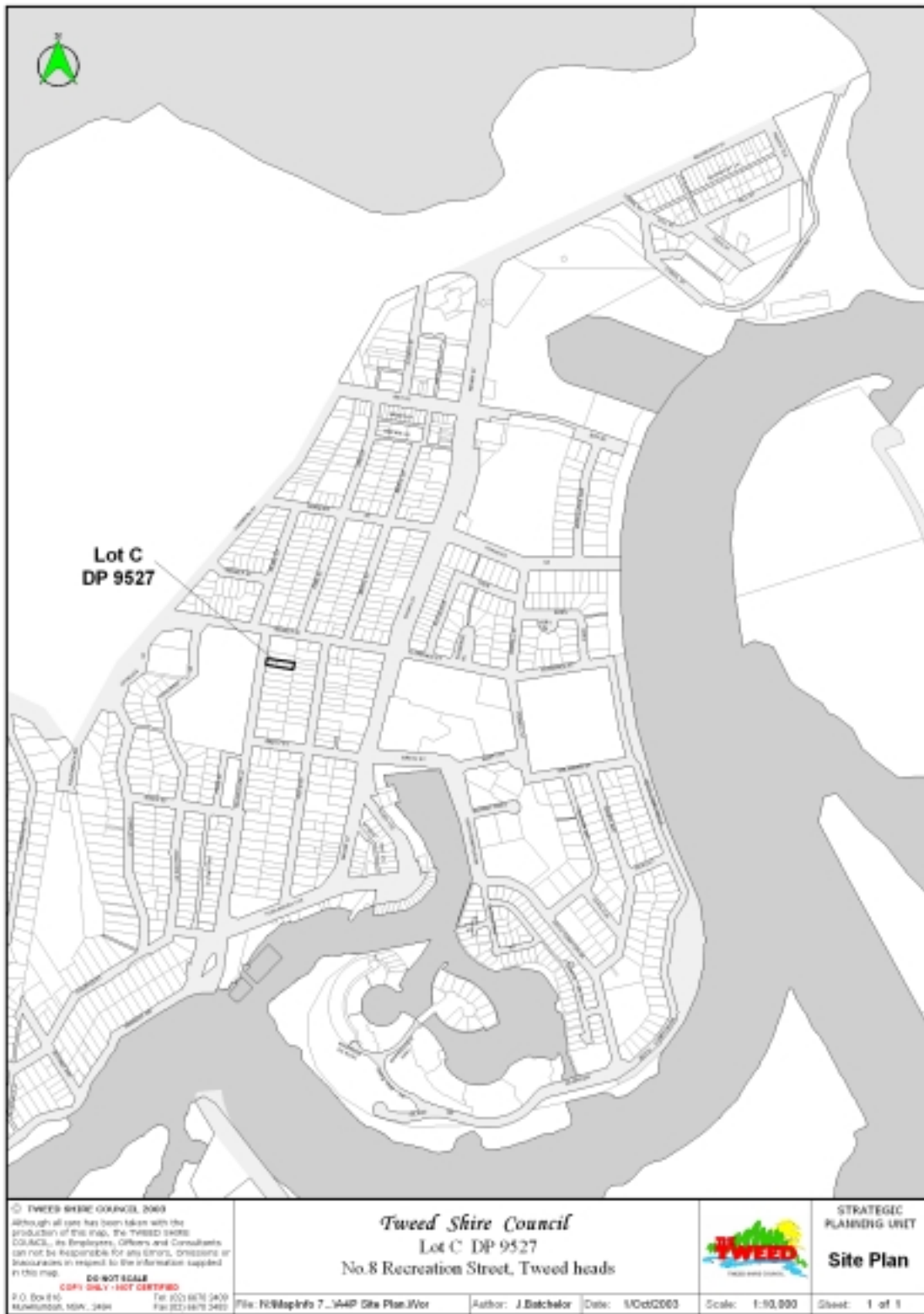
*The subject site is located south of the main central business district of Tweed Heads on the eastern side of Recreation Street. The site has a narrow 15-metre frontage to Recreation Street and an average depth of 60 metres to create a total site area of 910.56m<sup>2</sup>. The site is reasonably flat with levels varying between 3.37m RL and 4.1m RL. A single storey cottage currently occupies the site. The application proposes the demolition of this building to facilitate the development.*

*The surrounding development includes a mixture of commercial and residential development, however, is mainly characterised by 2 and 3 storey multi-dwelling housing with the exception of the adjoining No. 10 Recreation Street, which contains an older style dwelling currently used as a doctors surgery. The built form of the area would have been traditionally low-medium density residential development with a change occurring to accommodate multi-dwelling housing developments of up to 6 storeys, being the desired future character of the area as detailed in Tweed LEP 2000 and DCP No. 18 – Tweed Heads.*

*The proposed development comprises a multi-dwelling housing development containing 4 units. The building has been designed to appear as two buildings with six garages/carports linking the two elements of the building.*

*The development does not comply with the numerical requirements of Council and fails to achieve the desired future character of the area and has therefore has been recommended for refusal.*

**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 located within the 2(b) Medium Density Residential zone pursuant to the provisions of TLEP 2000.*

*Clause 8 of Tweed Local Environmental Plan 2000, specifies that:*

*"The consent authority may grant consent to development only if*

- (a) It is satisfied that the development is consistent with the primary objectives of the zone in which it is located;*
- (b) It has considered those other aims and objectives of this plan that are relevant to the development, and*
- (c) It is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

*The primary objectives of the 2 (b) zone is as follows:*

*"To provide for and encourage development for the purposes of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good urban design outcomes."*

*The secondary objectives of the 2(b) zone are;*

- To allow for 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 proposed development is not consistent with the primary objective of the zone, as the proposal is not considered to represent good urban design, as the building does not present well to the street. The building has a large amount of hardstand area associated with the driveway, a proposed high front fence, and lacks substantial landscaping to soften the development.*

*Furthermore, the secondary objective specifically discourages the under utilisation of land in this area. The subject site has the benefit of a six-storey height limitation, and whilst this is the maximum height allowable the subject development has made no attempt to satisfy the vision of the area, which seeks to utilise residential land for high-density purposes.*

*The proposed development is not considered to be compatible with the primary or secondary objectives of the subject zone.*

*Furthermore, Council is not satisfied that the development would not have an unacceptable cumulative impact on the community. The development application would present significant infrastructure in the form of low to medium density housing in an area, which has the capacity for a real re-development surge to accommodate high-density residential development. This application would prohibit the potential for consolidation of the subject site and the adjoining property, which currently has an old single storey building, which is currently being utilised, as a doctor's surgery. These two properties would ideally be consolidated to create an allotment size suitable for high-density development in accordance with the objectives of the zone.*

*By approving development of this nature (low to medium density housing) in an area nominated for high-density development the integrity of Council's height controls are compromised. Heights of buildings are always a controversial issue, particularly in the coastal villages where there is a lot of pressure to exceed the nominated height limits whether it be two or three storeys in height. However, one reason we can comfortably restrict heights to this level in the villages is because we do have areas in Tweed Heads itself where the height limits are higher. If we do not utilise these areas the pressure to exceed the height limits in our villages will only increase.*

*By approving a two storey building of substantial infrastructure it restricts future re-development options in the area. If Council were later to receive a development application consisting of four, five or six storeys adjoining this development a major consideration would be the impact that the new building's shadow would cast over the recently approved two storey building, not withstanding that the six storey building would have better complied with the objectives of the zone.*

*The proposed development is not considered to be compatible with Clause 8 (c) of the LEP by creating an unacceptable cumulative impact on the community.*

*Clause 15 of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. The*



*subject land has the benefit of services and is considered able to support the proposed development.*

*Clause 16 of the TLEP requires development to be carried out in accordance with the height limitation plan. The subject land is identified as having a six-storey height limitation with an objective to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.*

*Whilst the building is only two storeys, and therefore numerically complies with Clause 16, the development is not considered to satisfy the vision for the area to better utilise the land for high-density development.*

*Clause 17 Social Impact Assessment requires Council to consider the potential social and economical impact that a development will have. The application does not technically trigger the need for a Socio Economic Impact Statement, This application may provide additional housing for the community but it would do so compromising the integrity of the objective of the zone and the intent of the height controls. These outcomes are not considered to be in the public interest or that best meets the social and economic needs of the community.*

*Clause 35 of the TLEP requires an acid sulfate soils management plan be assessed where the proposed development is likely to interfere with acid sulfate soils. The subject land ranges from RL 3.37m AHD to approximately RL 3.57m AHD and is identified as a Class 2 acid sulphate soil area and therefore an Acid Sulphate Soil Management Plan is required. Council's Environmental Health Officer has reviewed the application and is satisfied that conditions of consent could be imposed to satisfy Clause 35.*

*North Coast Regional Environmental Plan 1988 (NCREP 1988)*

*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.*

*Council is not satisfied that the density of the proposed development has been maximised. Four dwellings on an allotment of land with a total site area of 910.56m<sup>2</sup> in a six-storey height limitation area is not considered to be a high-density development. Council is receiving applications in the Tweed Heads area for 4 unit developments on blocks of land less than 400m<sup>2</sup>, which incorporate a basement level and do not adversely affect the environmental features of the land or the residential amenity of adjoining properties. Furthermore, the application has numerical non-compliances with Development Control Plan No. 6 – Multi Dwelling Housing for landscaping, side boundary setbacks, front fence height and the building height plane, which are considered unacceptable. However, if the development was for a higher density use incorporating a building greater than three storeys in height, DCP No. 6 would not be applicable and the application could be assessed in accordance with DCP No. 18 for Tweed Heads.*

*Although the road network is capable of supporting the development and site erosion is considered manageable the development is not considered a reasonable response to the desired future land use character of the area and will result in the creation of a development that does not add to the streetscape but rather detract from it.*

*The proposal is considered to be inconsistent with the relevant provision of Clause 43 of NCREP 1988.*

*State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development*

*This SEPP applies to all residential flat buildings, however, the SEPP further provides that a residential flat building is defined as a building that comprises 3 or more storeys and 4 or more self contained dwellings, As the building is only two storeys in height this SEPP does not technically comply. However, the ten guiding principals form a good basis for a merit assessment and have been incorporated into this report under the heading of likely impacts of the development.*

State Environmental Planning Policy No. 71 – Coastal Protection

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. The most applicable is as follows:

- d) the suitability of development given its type, location, and design and its relationship with the surrounding area.

The application has not adequately satisfied all matters for consideration specifically having regard for the lack of consideration for the desirable future character of the area and the lack of innovative design which could have improved the impact of the building on streetscape in the locality.

**(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 have an affect on the assessment of this application.

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

Development Control Plan No.2 – Access and Car Parking

Off street car parking needs to be supplied in accordance with DCP2. The following table assesses the proposed development in relation to the requirements of the DCP.

<b>Standard</b>	<b>Requirement</b>	<b>Complies/variation</b>
On site car parking	1.5 per dwelling 25% for visitors = 6 spaces and 1.5 marked for visitors	6 spaces are proposed which comprise 4 individual garage spaces and 2 nominated visitor parking spaces. With one car wash bay adjacent to the garbage store parallel to Recreation Street.

The proposed development is considered to comply with DCP2 in that the required number of spaces has been provided.

Development Control Plan No.6 – Multi Dwelling Housing

The requirements for the proposed development in relation to DCP 6 are assessed in the following table:

<b>Standard</b>	<b>Requirement</b>	<b>Variation/complies</b>
<i>Floor Space Ratio</i>	<i>0.5:1.0</i>	<i>The total floor area of the units excluding the basement is 506.8m<sup>2</sup>. The site area is 910.56m<sup>2</sup>. The floor space ratio is 0.55:1. This criteria is not normally applied to residential flat buildings, however, the near compliance with this control demonstrates the under utilisation of the site.</i>
<i>Landscaped Area</i>	<i>80m<sup>2</sup> per unit = 320m<sup>2</sup></i>	<i>The proposed development provides 229m<sup>2</sup> of actual landscaping. However, the site incorporates a further 93.84m<sup>2</sup> of brick type paving throughout the site, which is not normally included in ground level landscaping, and therefore the application does not comply with this criterion.</i>
<i>Private Open Space</i>	<i>Total Minimum Area of 20% of the site area = 182.1m<sup>2</sup></i>	<i>The development only incorporates 67m<sup>2</sup> of private open space and does not comply with the criterion.</i>
	<i>Minimum Dimension of 3m</i>	<i>The patios do provide a minimum dimension of 3m.</i>
	<i>One part with an area of 25m<sup>2</sup> with a minimum dimension of 4m.</i>	<i>Not one unit has an area of private open space measuring 25m<sup>2</sup> with or without a minimum dimension of 4m and therefore does not comply.</i>
<i>Setbacks from street boundary</i>	<i>6.0m to Recreation Street</i>	<i>Complies</i>
<i>Side setbacks</i>	<i>3.0m</i>	<i>The proposed setbacks vary between 1.5-3m and therefore do not comply.</i>
<i>Front fences and walls</i>	<i>1.2m max if solid</i>	<i>The proposal includes a 1400mm high front fence</i>

<b>Standard</b>	<b>Requirement</b>	<b>Variation/complies</b>
		and therefore does not comply
Building Envelope	45° from 3.5m high at the boundary	Does not comply – Encroachments exist at the second level.
Car Wash Areas	1 required per 10 units.	There is one car wash bay provided parallel to Recreation Street.

### Landscaping

*In accordance with the Acceptable Solutions contained within DCP No. 6 each unit is required to have a minimum landscaped area of 80m<sup>2</sup> per unit. This equates to 320m<sup>2</sup> in total.*

*The subject application has provided 229.3m<sup>2</sup> of landscaping at ground level, which does not satisfy the required landscaping. The calculated landscaped area excludes all concrete paving throughout the site including the driveway and further excludes all ground floor level balconies and brick paving. If the ground level balconies and brick paving were included the application would achieve compliance.*

*However, the application is not considered to have integrated the landscaping into the design but rather that landscaping has been provided within the side boundary setbacks where the building has not encroached into the boundary setback area.*

### Private Open Space

*The development only incorporates 67m<sup>2</sup> of private open space, however, these areas do not measure 25m<sup>2</sup> and do not have minimum dimensions of 4m. Furthermore, as there are two units for each different building section with one occupying the entire ground floor and the other occupying the entire first floor. This results in an uneven distribution of private open space, as the units on the first floor have no ground floor open space and must rely upon the small balconies provided.*

### Front Fence Height

*The application proposes a solid 1.4m front fence, which incorporates 600mm x 400mm rebates within the fence itself. A solid front fence reduces the streetscape amenity by limiting the appearance of any landscaping that could soften the development. The proposed rebates are not considered to improve this element of the proposal.*

### Side Boundary Setbacks

*The application encroaches into the southern boundary setback of 3m by 2.1m for a length of 20 metres for the garages and carports and encroaches by 1.5m for a length of 16 metres to accommodate bathrooms at the first and ground floor plan. These encroachments, while not creating additional overshadowing or loss of view, result in substantial departures from the Plan.*

### Building Height Plane

*The proposed building envelope substantially complies with this criterion with some encroachment on the eastern elevation due to the pitch of the roof. This is not considered to be of substantial concern.*

### Summary

*The application does not comply with the numerical requirements of DCP No. 6. The application fails to satisfy the requirements for landscaping, private open space, front fence height, side setbacks, and the building height plane. Furthermore, the design is not considered to have a high streetscape appeal and lacks sufficient articulation.*

*The number of non compliances indicate that the design format chosen is perhaps not appropriate for such a narrow site, and that perhaps a better design outcome could be achieved if a basement was incorporated rather than trying to fit all car parking at ground floor level.*

*The application fails to adequately satisfy the objectives, performance criteria and acceptable solutions contained within DCP 6 and therefore the merits of this application do not warrant approval.*

### Development Control Plan No 18 – Tweed Heads

*This Plan applies to all forms of development within the area defined by the bold black line in Figure 1 of the DCP. Therefore the general vision for properties affected by the DCP and the specific precinct objectives and preferred outcomes for the Western Precinct contained with the Tweed Heads DCP affect the subject site. However, the Design Guidelines contained within Sections 9.0, 10.0 and 11.0 of the DCP do not apply, as the building is only two storeys in height. In lieu of these guidelines the provision contained within DCP 6 apply.*

*The vision statement for Tweed Heads is as follows:*

*“To project Tweed Heads as a residential and tourist mecca providing a variety of cultural, recreational and retail experiences,*

*people friendly streetscapes, attractive buildings and a choice of accommodation in a naturally beautiful environment.”*

*The applicable objectives of the identified vision for Tweed Heads are to create a town that exhibits the following characteristics:*

**Residential streetscapes:** *Streetscapes in residential zones will exhibit a variety of facade and roof forms, set amidst landscaped surrounds. Entrances to all buildings will be clearly identifiable from the street and causal supervision of the street and other public places will be available from all buildings.*

**Landscaping:** *The landscaping of public areas and private development will be of a high standard. The landscaping of the central Tweed Heads area should reflect the indigenous vegetation of the local area.*

*The proposed development is not considered to have a high level of streetscape appeal or have extensive landscaping that surrounds the development. Given the encroachments into the side boundary setbacks and the extensive amount of hardstand area for the driveway landscaping appears only where the building footprint is prohibited. Landscaping has not been integrated into the design but rather occurred as a secondary thought. Furthermore, the proposed high front boundary fence reduces the Recreation Street elevation and further exacerbates the amount of hardstand area.*

*The subject site falls within the western precinct of the DCP, and is categorised as a high-density residential precinct. It allows for a range of building heights, from 50m AHD in the north, 12 storeys in the centre, down to 6 storeys in the south. The Plan further acknowledges that the area offers many redevelopment opportunities.*

*The objectives of the high-density residential precincts are to:*

- *Develop the precinct primarily as high density residential areas which respect existing residential amenity;*
- *Provide additional choice in housing accommodation to cater for an increasing variety of household types;*
- *Facilitate an increased residential population in proximity to the sub regional centre of Tweed Heads to maximise economic and social benefits;*
- *Promote the efficient use of residential land;*
- *Develop a streetscape that reflects the climate, topography, and lifestyle of the locality.*

*Whilst the development increases the current yield of the property and will provide additional housing choice it is not considered to be high-density development or a development of high streetscape appeal. This*

*type of development is not considered to promote the efficient use of residential land given the site has the benefit of a six-storey height limit, and while six storeys may not be consistent with the existing character of the area the applicant has failed to create a development that better addresses the future desirable character of the area.*

*The precincts specific strategic policies relate primarily to landscaping. The Plan specifies that the residential precincts should be characterised by attractive, landscaped streets. Furthermore, the landscaping should integrate with the sites building design and blend new development into the overall streetscape. As previously mentioned the landscaping has not been integrated into the design of the building but rather occurs within the building setback area only, and given this setback has been comprised in places, the overall landscaping has been further reduced.*

*The precinct-preferred outcomes conclude by specifying that in the high-density residential precinct developments may be supported where the proposal is in accordance with the following applicable criteria;*

- *The vision for Tweed Heads;*
- *The precinct objectives;*
- *The strategic policies;*
- *The provisions of DCP 6 – Multi-dwelling housing, where the development is of a residential nature and comprises three storeys or less.*

*As detailed in the assessment above the application fails to satisfy the above, visions, aims and objections, strategic policies, and the numerical requirements of DCP No. 6 and therefore the application should not be supported.*

*Development Control Plan No.39 – Energy Efficient Housing*

*The applicant has advised that the proposed development will have a complying 4 star hot water system. Units 1 & 2 have a 5 star rating and Units 3 & 4 have a 4 star rating thus complying with the requirements of DCP39.*

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

*The NSW Coastal Policy 1997 applies to the proposed development site. The proposed development is considered to be inconsistent with the following strategic goal of the Policy.*

- 6.2 To promote compact and contained planned urban development in order to avoid ribbon development, unrelated cluster development and continuous urban areas on the coast;*



*The proposed development does not utilise the land for high-density development, which would be consistent with the zoning of the land. This application therefore produces significant infrastructure that lacks consideration for the future desired character of the area.*

*There are no additional matters prescribed by the Regulations that are considered to apply.*

**(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 Adjoining Land Uses*

*The surrounding development varies between single storey cottages to three storey residential flat buildings.*

*The land uses in this area are changing to accommodate predominantly units and whilst it is considered that this type of the development is consistent with the changing nature of this area, the subject application does not adequately satisfy the numerical controls applicable to unit development or the future desired density in accordance with the height control for the site.*

*Good urban design should respond and contribute to its context. The proposed development is not considered to contribute to the localities future desired character but rather seeks produce development that conforms to the existing character and density.*

*Over Shadowing*

*The application has been supported with shadow diagrams that demonstrate, the shadow predominantly affecting the property to the south (single storey cottage currently being utilised as a doctors surgery). However, the shadow cast will only be evident in winter and does not produce non-compliance with the requirements contained within DCP 6. It is considered that the aspect of the subject land and the two storey height of the proposed building is such that the adjoining developments would not be wholly affected by the overshadowing from the development and that a reasonable level of residential amenity could be afforded if approval were granted.*

*Privacy*

*The proposed development incorporates several balconies, which are oriented generally towards the north or west. Neighbouring properties have not raised any concern with the proposal or specifically with privacy.*

*Bulk Scale & Design*

*The bulk and scale of the development is not of planning concern, given that the subject site has a maximum height control of 6 storeys, however, the design raises concern regarding the numerical non compliances with DCP 6 and the level of hardstand area produced as a result of the design.*

*Good design should provide an appropriate scale with regard to bulk and height to suit surrounding buildings and try to address the future desired character of an area. The lack of utilisation of the six-storey height limitation coupled with the fact that even at two storeys the building cannot comply with Council's building height, side boundary setback and the landscaping indicates that the design of this development is inappropriate for this site.*

*Good urban design should recognise that landscape and buildings operate as an integrated and sustainable system. This application has not provided adequate or useable open space. Given the level of hardstand areas there is little opportunity for deep soil planting. Landscaping has only been provided in the designated setback areas and does not complement or integrate with the building itself.*

*Good urban design should provide a high level of amenity. The layout of the units being nominated on a single floor rather than a series of two storey town houses results in an uneven distribution of amenity between the units. The upper floor units have inadequate open space compared to the ground floor units which can easily utilise common property areas.*

*Good design should optimise safety & security. The proposed development does have balconies, which overlook the street to create an observation platform, however there is no clear definition between public and private space.*

**(c) Suitability of the site for the development**

*The zoning of the land and recently re-developed sites in the area obviously indicates that the site is capable of accommodating a residential flat building. Notwithstanding, this application has been assessed against the current applicable controls, and has resulted in a recommendation of refusal due to the numerical and merit assessment that has been undertaken.*

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

*The development application was notified to surrounding properties and advertised for a period of two weeks closing on 2 July 2003. During this period no objections were received. However, the southern adjoining property owner provided a letter stating no intention of selling his land for re-development purposes as he intended to occupy the premises for the next 15 years.*

**(e) Public interest**

*Council has approved the nominated height control maps for the Tweed Shire, which seeks to maximise development potential in the Tweed Heads area. To allow significant infrastructure that does not utilise these controls and prevents future re-development would compromise the integrity of the planning height maps. When pressure is placed on our height controls in the coastal villages, adherence with the plan can be justified by the local government areas ability to approve higher densities in the Tweed Heads Area. If these areas are not utilised to their potential pressure in our villages will only increase. The public interest is the adherence to Council Policy. There are many issues of non-compliance with this proposal and therefore to approve this application would be in conflict with the general public interest in the locality.*

**OPTIONS:**

1. Refuse the application in accordance with the recommendation;
2. Request conditions of consent to enable the application to be approved by Council.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

*Should Council determine to refuse the application, the applicant may lodge an appeal with the Land & Environment Court that Council would have to determine to defend.*

**POLICY IMPLICATIONS:**

*This application has the potential of compromising the integrity of Council's height control maps for the Tweed Heads area. Strategically, with pressures placed on height controls in other locations including the coastal villages - adherence with the plan can be justified by the local government areas ability to approve higher densities in the Tweed Heads area. If these areas are not utilised to their potential, pressures may increase in other locations.*

**CONCLUSION:**

*The proposed development application does not conform to current Council policy as contained in Tweed LEP 2000, DCP 6 and DCP 18. The proposal seeks to maximise development potential with little effort to satisfy the desired future character of the area.*

*The application has flaws, which have not been adequately addressed. Given the opportunities that the applicant has been presented with to amend the application and the lack of change to the application it is now considered prudent to determine the application.*

**UNDER SEPARATE COVER:**

*Nil."*

**Draft Conditions in the Event that Council Determines Approval**

Should Council determine to approve the application, conditions of consent have been brought forward for consideration.

Following consideration of the report on 15 October 2003 it was resolved as follows: -

*"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 that resolution, if Council determines to approve the development the following conditions are recommended to apply: -

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plans Nos 11002/DA/01-04 prepared by Pat Twohill Designs PTY Ltd and dated May 2003, except where varied by these conditions. [GEN0010]
2. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property. [GEN0030]
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]

## **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

### **5. 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:   \$1806  
    S94 Plan No. 4 (Version 4.0)  
    (Sector 1 - Tweed Heads)
- b. Open Space (Structured):   \$1206  
    S94 Plan No. 5
- c. Open Space (Casual):       \$269  
    S94 Plan No. 5
- d. Shirewide Library Facilities:   \$1112  
    S94 Plan No. 11

- e. Eviron Cemetery/Crematorium Facilities:\$222  
S94 Plan No. 13
- f. Emergency Facilities (Surf Lifesaving) \$388  
(Remainder of the Shire)  
S94 Plan No. 16
- g. Extensions to Council Administration Offices  
& Technical Support Facilities \$701.48  
S94 Plan No. 18
- h. Cycleways \$260  
S94 Plan No. 22
- i. Regional Open Space (Structured) \$1899  
S94 Plan No. 26
- j. Regional Open Space (Casual) \$355  
S94 Plan No. 26

[PCC0050/PSC0005]

6. 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: 2 ET's @ \$4110 \$8220  
Sewer: 2 ET's @ \$3290 \$6580

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]

7. 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.

- (i) The construction of retaining wall structures or fill batters must at no time result in ponding occurring within neighbouring properties.
- (ii) Sufficient spot heights or contours (extending beyond the subject property boundary) must be submitted, to confirm that the inclusion of retaining wall / batter structures along the property boundaries have no impact on the overland flow paths of stormwater from neighbouring properties. Ponding will not be allowed at the toe of any retaining walls / batters. If required, perimeter drainage must be provided.

[PCC0090]

8. The footings and floor slab are to be designed by a practising Structural Engineer after consideration of a soil report from an accredited soil testing laboratory and shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0160]

9. 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]

10. Development approval only is granted for a driveway from the development to connect with the adjacent public road.

You will be advised separately of the determination of your application to Council for consent under Section 138 of the Roads Act 1993 to construct or modify a driveway on the public road adjacent to your property

You must receive this separate written consent from Council under Section 138 of the Roads Act 1993 prior to the issue of a construction certificate which includes any works on the adjacent public road and prior to any works taking place on the adjacent public road.

[PCC0200]

11. 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, carpark, garage 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) The Oil / Grit arrestor proposed must also be sized to treat pollutants potential washout runoff from unit's undercover car parking areas. The installed device must satisfy the following additional requirements.
    - a. The retained volume of the Oil / Grit arrestor must be no less than  $0.5\text{m}^3$  per  $1000\text{m}^2$  of the undercover car park area.
    - b. The minimum retained volume of an Oil / Grit arrestor is  $0.75\text{m}^3$ .
  - 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) The proposed car wash bay must be constructed of pervious materials, or else runoff from the bay must be treated to remove oil / grit prior to discharge into the public stormwater system.

[PCC0230]



12. 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]

13. 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]

14. 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]

15. Driveway entrances must be graded to ensure Q100 stormwater runoff from Recreation Street's kerb and gutter does not enter the site.

[PCNS01]

**PRIOR TO COMMENCEMENT OF WORK**

16. 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]

17. 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]

18. 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]

19. 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]

20. 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]

21. 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]

22. 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]

23. 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]

24. 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]

25. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the PCA prior to commencement of building works.

[PCW0250]

## **DURING CONSTRUCTION**

26. 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]

27. The provision of 6 off street car parking spaces. Two of these spaces are to be allocated for visitors only and signposted accordingly. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls.

[DUR0050]

28. 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]

29. 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]

30. A certificate is to be submitted by a Registered Surveyor certifying that all habitable floor areas are constructed above 2.95 metres AHD, and certifying the actual finished level of the total site. Certification of those levels by a registered surveyor must be submitted to the PCA prior to proceedings past floor level to ensure that the floor is above flood level.
- [DUR0140]
31. 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]
32. 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
  - i. frame
  - j. stormwater drainage connection to inter allotment drainage system prior to back filling.
- [DUR0170]
33. Ensure adequate turfed area, or other suitable media, is incorporated and maintained into the proposed landscape of the property for use as a car wash-down area.
- [DUR0230]
34. 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 Recreation Street. 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]

35. 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]

36. 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]

37. 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]

38. 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]

39. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles.

[DUR0880]

40. 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]

41. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.

[DUR0920]

42. The burning of builders waste on site by open fire is prohibited.

[DUR0940]

43. The 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]

44. All new residential dwellings (and extensions comprising over 50% of the original floor area) are 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]
45. 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]
46. 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]
47. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.  
[DUR1040]
48. 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]
49. 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]
50. The finished floor level of the building should finish not less than 225mm above finished ground level.  
[DUR1150]
51. 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:-
- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
  - \* 50<sup>0</sup>C 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]

52. 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]

53. 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]

54. Landscaping of the site shall be carried out in accordance with the submitted landscaping plans. The landscaping to be completed prior to occupation of the building, to the satisfaction of the Director, Development Services.

[DUR1230]

55. All excavations carried out on-site below 2.0m AHD shall be subject to compliance with the Preliminary Acid Sulphate Soils Management Plan prepared by Martin Findlater and Associates dated May 2003.

[DURNS01]

## **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

56. 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]



## USE

57. The premises shall be suitably identified by Unit No. (where appropriate) and Street Number displayed in a prominent position on the facade of the building facing the primary street frontage, and is to be of sufficient size to be clearly identifiable from the street. [USE0040]
58. The garages are not to be used or adapted for separate residential habitation or occupation. [USE0070]
59. All external artificial lighting shall be shielded where required to the satisfaction of Council's Director Environment & Community Services so as to prevent the spill of light or glare causing a nuisance to adjoining or neighbouring residences. [USENS01]
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**6 [DS] 37 Lot Industrial Subdivision S96/49 - Lot 2 DP 569304 Tringa Street, Tweed Heads West**

**ORIGIN:**

**Development Assessment**

**FILE NO: GS4/96/49 Pt3**

**SUMMARY OF REPORT:**

Council resolved on 1 October 2003 that staff furnish a report which details the sequence of events surrounding the commencement of construction of the access road to the industrial land off Tringa Street and which includes: -

- i. The date when Council first became aware of the activity;
- ii. What action was taken by staff following discovery?
- iii. An explanation as to why no action was apparently taken to recommend that legal proceedings should be commenced.

The report details the sequence of events surrounding the commencement of construction of the access road to the industrial land off Tringa Street.

**RECOMMENDATION:**

That this report be received and noted.

## REPORT:

### BACKGROUND:

Council at its meeting on 1 October 2003 resolved as follows: -

*"that staff furnish a report which details the sequence of events surrounding the commencement of construction of the access road to the industrial land off Tringa Street and which includes:-*

- i) The date when staff first became aware of this activity;*
- ii) What action was taken by staff following discovery?*
- iii) An explanation as to why no action was apparently taken to recommend that legal proceedings should be commenced.*

- **The date when Council first became aware of this activity**

Construction Certificate (CC03/0535) approval for a water quality control pond associated with the industrial subdivision was granted on **29 May 2003**. Construction work commenced on the subdivision on **5 June 2003**. The commencement date for the works was confirmed by Martin Findlater and Associates Consulting Engineers responsible for the project.

A number of complaints from residents in Tringa Street, Tweed Heads raised concern regarding construction traffic and heaving haulage trucks entering the construction site via Tringa Street on **6 June 2003**.

- **What action was taken by staff following the activity**

Martin Findlater & Associates were instructed both verbally and by written correspondence on **6 June 2003** to stop construction vehicles using Tringa Street as an access to the development site. The construction access was not in accordance with the traffic control plan submitted with the construction certificate application. The traffic control plan submitted with the construction certificate application showed Parkes Drive as the route to be used for all construction vehicles.

The site was inspected at 4.00pm Friday 6 June 2003. An excavator was observed on site. The contractors had stopped work at the time of the inspection and no one was available on site.

Correspondence sent to Martin Findlater's office on 6 June 2003 advising that a number of complaints had been lodged with Council regarding the access. The correspondence further stated: -

*"Given complaints from residents and the existing approvals you are requested to cease gaining access from Tringa Street for construction works. If you wish to*

*peruse Tringa Street as a construction access, a written request is required and consultation with residents will be necessary."*

A follow up inspection was conducted during the week ending 13 June 2003. No heavy vehicles or machinery were observed on site. A utility vehicle was observed on site, parked approximately 20 metres into the site.

Correspondence from Martin Findlater & Associates was received on 11 June 2003 seeking Council's permission to use the access point. Martin Findlater was advised on 13 June 2003 that Council could consider the request, provided residents adjoining the subdivision are notified of the following: -

- The proposed temporary construction access is for a period of 10 weeks only
- No imported fill is to be brought onto the site
- The access is to be closed after the ten week period and all remaining civil works for the further construction certificate approval is to access the site via Park Drive, Tweed Heads.

Martin Findlater lodged a Section 96 application with Council on 22 June 2003.

In order to process the application, legal advice was sought to establish if work had commenced in accordance with the consent and if the consent was still a valid consent. The development consent was due to expire on 6 June 2003. This advice was received on 6 August 2003, and agreed that work had commenced and the consent remained valid.

A report on the Section 96 application was considered by Council on 6 August 2003 and was to approve with the inclusion of the following condition: -

*"The temporary construction access at the end of Tringa Street is for a period of 10 weeks only, commencing on the 6<sup>th</sup> August 2003 to 15<sup>th</sup> October 2003. The access is only to be used for construction of the water quality control pond associated with construction certificate CC03/0535. At the end of the 10 week period the temporary construction access is to be reinstated to the satisfaction of the Director of Development Services, and a chevron warning sign is to be placed at the end of Tringa Street."*

- **An explanation as to why no action was apparently taken to recommend that legal proceedings should be commenced.**

As the applicant lodged a Section 96 application with Council for a temporary construction access from Tringa Street, a report regarding possible legal proceedings for non-compliance with the conditions of consent was not completed pending a Council decision on the Section 96 application. As no practical purpose would be served by pursuing the issue by way of legal action, Council approved the Section 96 application on 6 August 2003, allowing a period of 10 weeks from the 6<sup>th</sup> August 2003 for construction works to proceed through the Tringa Street access.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**7 [DS] Development Application S95/0088.01 for an Amendment to Development Consent S95/0088 for a Five (5) Lot Rural Subdivision at Lot 6 DP 815430, No. 72 Howards Road, Burringbar**

**ORIGIN:**

**Development Assessment**

**FILE NO: GS4/95/88**

**SUMMARY OF REPORT:**

Council is in receipt of a Section 96 Modification Development Application that seeks to vary a condition of development approval and restriction as to user to facilitate the erection of a dwelling-house beyond a designated building envelope.

**RECOMMENDATION:**

That Development Application S95/0088.01 for an amendment to Development Consent S95/0088 for a five (5) lot rural subdivision at Lot 6 DP 815430, No. 72 Howards Road Burringbar be approved subject to: -

1. Condition No.7(c) be deleted and a NEW Condition No.7(cA) be inserted that reads:

*"cA. No dwelling shall be permitted to be located within Lot 5 DP868345 unless in accordance with the plan titled 'Proposed Variation of Building Envelope' ref.2362DE/1 prepared by NC White & Associates dated 4 August 2003, and the dwellings foundations are designed to account for any ground vibration and or air overblast pressure resulting from quarry operations."*
2. The Deed of Variation of Covenant prepared by Murwillumbah Lawyers, held on Council's file in this matter, be executed under the Common Seal of Council.

**REPORT:**

**Applicant:** Wayne & Peta Willis  
**Owner:** Wayne & Peta Willis  
**Location:** Lot 6 DP 815430 No. 72 Howards Road, Burringbar  
**Zoning:** 1(a) Rural  
**Cost:** Nil

**BACKGROUND:**

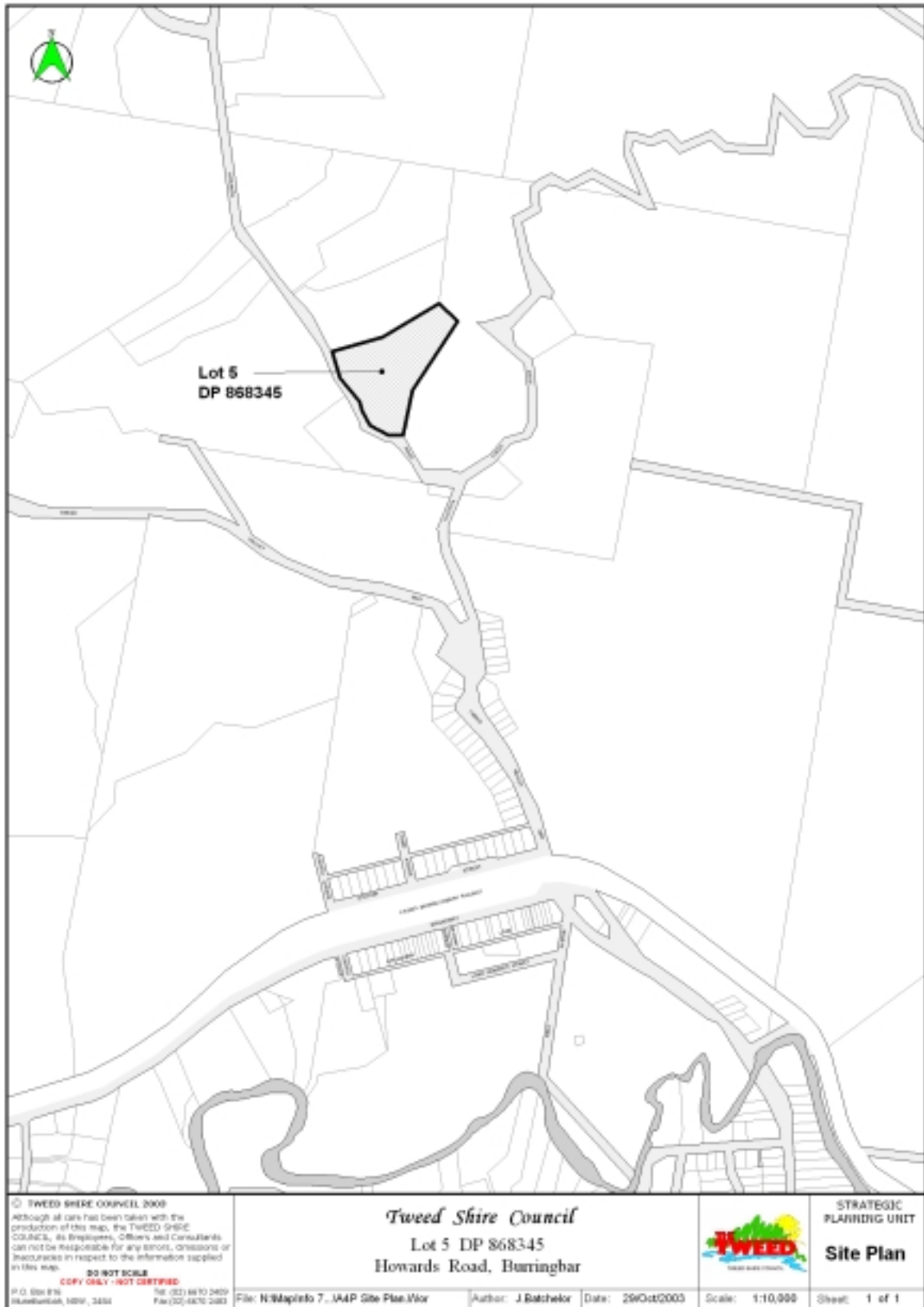
Council is in receipt of a Section 96 Modification Development Application that seeks to facilitate the erection of a dwelling-house beyond a designated building envelope. The building envelope is identified on the lands Deposited Plan, as imposed pursuant to Section 88 of the Conveyancing Act, by Condition No.7 of Development Approval S95/88 of 20 November 1995. The amendment is to be effected by an amending plan that identifies the extended building envelope area.

The subject land adjoins Burringbar Quarry to the east. It is advised that quarry operations are extending northward, away from the proposed building envelope area. Council's Environment and Health Services Unit and Works Unit raise no objection to the proposal. Potential impact upon the proposed building envelope is not considered greater than that previously assessed and approved.

The Section 88B instrument created with the parent Deposited Plan 865491 provides that the restriction secondly referred to, being the restriction on the use of the land for building envelope purposes, is at the burden of Lot 5 and at the benefit of Tweed Shire Council. This restriction is carried over to the present Deposited Plan 868345. However, on neither occasion was the s.88B provided with an appropriate clause permitting Council to release, vary or modify the restriction. Accordingly, Murwillumbah Lawyers has prepared a draft Deed of Amendment that will permit the erection of a dwelling within the building envelope area proposed in the amending plan, which will be effective via amendment to Condition No.7(c) of s95/88.



**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 proposed amendment is not inconsistent with the provisions of the TLEP 2000.

North Coast Regional Environmental Plan

The proposed amendment is not inconsistent with the provisions of the NCREP.

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

There is no draft EPI known to exist that would have any bearing on neither the assessment nor determination of the proposed amended development proposal.

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

The proposed amendment does not render the development or part thereof inconsistent with any adopted DCP.

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

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 amendment seeks to facilitate the erection of a dwelling-house in an area not presently identified for building purposes so as to expedite determination of development application DA03/0741 for a single dwelling house, which is before Council's Building Services Unit.

The proposal is not considered to significantly increase the impact upon the natural environment beyond that previously assessed and approved. The suitability of the dwelling-house, the subject of DA03/0741, for the purposes of siting within the extended building envelope area remains to be assessed and determined. The assessment of the proposed dwelling does not impact upon the assessment of the amendments sought in this report.

**(c) Suitability of the site for the development**

The impact upon the proposed area of development from quarry operations is not considered greater than that previously approved. The quarry operation is moving northward, away from the proposed building envelope, which is located on the opposite side of the ridgeline. The site is considered suitable for the proposed amendments.

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

The S96 amending development application is not required to be notified or advertised and the proposal is not of any magnitude that warranted notification or advertisement.

No submissions have been received.

**(e) Public interest**

Having regard to the proposed amendment sought and the matters raised in this report it is considered that the public interest remains unfettered.

**OPTIONS:**

1. Determine the S96 application in the negative and provide reasons for refusal.
2. Approve the S96 application amendments in the manner provided.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should Council resolve to adopt Option No. 2 in approving the S96 application there will be no direct impact upon Council's budget or forward estimates.

**POLICY IMPLICATIONS:**

No policy implications exist in the determination of the S96 application.

**CONCLUSION:**

Having regard to matters raised in this report it is concluded that the S96 amendments sought are satisfactory and recommended for approval.

**UNDER SEPARATE COVER:**

Nil.

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**8 [DS] Development Application DA03/0917 for Multi-Dwelling Housing at Lot 2 Section 6 DP 29748, Lot 3 Section 6 DP 29748, No. 57-59 Tweed Coast Road, Bogangar**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA03/0917 Pt2**

**SUMMARY OF REPORT:**

Council is in receipt of an application for a residential flat building comprising 6 x 3 and 2 x 2 bedroom apartments. The building is fundamentally three-storey in height however, there are several non-compliances evident in the building design, which are addressed in the report.

The application was reported to the Development Assessment Panel of 22 October 2003 and because of the areas of non-compliance it was decided to refer the application to Council for determination.

**RECOMMENDATION:**

That: -

1. The State Environmental Planning Policy No. 1 objections to Clause 16 of Tweed Local Environmental Plan 2000 regarding the height of the building be supported and the concurrence of the Director of the Department of Infrastructure Planning and Natural Resources be assumed.
2. That Development Application DA03/0917 for multi dwelling housing at Lot 2 Sec 6 DP 29748 Lot 3 Sec 6 DP 29748, No. 57-59 Tweed Coast Road Bogangar be approved subject to the following conditions: -

**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects prepared by Grummitt Planning Pty Ltd dated 25 June 2003 and Development Plans with the prefix 0334-DD Nos.1(F), 2(F), 3(C), 4(B), 5(E), 6(G) (as amended in RED) and 7(E) prepared by KP Architects dated April 2003, except where varied by these conditions. [GEN0010]
2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia. [GEN0120]

3. 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]
4. The front boundary fencing is not permitted to exceed 1800mm in height, measured from the finished ground level on the nature strip side of the front boundary.

[GENNS01]
5. Notwithstanding Condition No.1 in this series of development consent conditions the driveway access shall be designed and constructed in accordance with the plan, as facsimiled and dated 3 October 2003, prepared by KP Architects to the extent of an inconsistency.

[GENNS02]
6. The balcony / deck area extending of Unit Nos. 1 & 4 extending off the north-west elevation is not approved.

[GENNS03]

### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

7. 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) <b>(Sector 7a - Cabarita)</b>	\$14,364
b.	Open Space (Structured): S94 Plan No. 5	\$2,520
c.	Open Space (Casual): S94 Plan No. 5	\$538
d.	Shirewide Library Facilities: S94 Plan No. 11	\$2,224
e.	Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$444
f.	Community Facilities (Tweed Coast) (South Coast) S94 Plan No. 15	\$3,504
g.	Emergency Facilities (Surf Lifesaving) <b>(REMSHIRE)</b> S94 Plan No. 16	\$777
h.	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$1,402.96
i.	Cycleways S94 Plan No. 22	\$520
j.	Regional Open Space (Structured) S94 Plan No. 26	\$3,798
k.	Regional Open Space (Casual) S94 Plan No. 26	\$710

[PCC0050/PSC0005]

8. 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:	6 additional units @ \$4,110	\$24,660
Sewer:	6 additional units @ \$3,290	\$19,740

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]

10. 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]

11. 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 Section 138 application shall be accompanied with design details for the construction of the pedestrian / cycle path.

[PCC0190]

12. 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]

13. 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]

14. 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]

15. 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]

16. 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 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 (including all driveway and undercover car park areas, all hardstand walkway or podium areas and any hardstand landscape areas and excluding 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  $0.5\text{m}^3$  per  $1000\text{m}^2$  of the basement / undercover car park area.
    - b. The minimum retained volume of an Oil / Grit arrestor is  $0.75\text{m}^3$ .
- (iii) The proposed oil/grot arrestor must be located such that it can be serviced by appropriate machinery at all times.
- (iv) Unless constructed of pervious materials (grass pavers), runoff from the proposed car wash bay must be treated to remove oil and grit prior to discharge.

#### Other Conditions

- (a) All stormwater discharge from site (including roof water) is to be piped, via a 300mm dia (minimum) stormwater network through a legally registered easement (minimum width 1.5m) in Lot 13 Section 6 DP 30043 (54 Hastings Street Bogangar) and discharged into the kerb and gutter of Hastings Street via standard Council kerb adaptors, as detailed in Farr Engineers drawing 203124 Sk1. The easement through Lot 13 Section 6 DP 30043 must contain an overland flow path of trapezoidal dimensions with minimum depth of 300mm. No discharge is allowed onto neighbouring properties.
- (b) 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%.
- (c) Driveway entrances must be graded to ensure Q100 stormwater runoff from the Tweed Cost Road does not enter the site.
- (d) Ground anchors to retain sacrificial sheet piling will not be allowed in Council property without removal on completion, or substantial compensation. Similar if these devices are proposed to penetrate adjoining private land, then approval from the appropriate landowner will be required. If the landowner is Council, approval by Councils Director of Engineering Services will be required.

[PCC0230]

17. Prior to the issue of a Construction Certificate the window arrangement of Unit Nos.1 & 4 on the north-west elevation shall be redesigned to accommodate smaller windows and shall include the provision of and details of external privacy screening devices. The amended design drawings shall be submitted to Council's Director Development Services for approval.

[PCCNS01]

18. Design details for the construction of the pedestrian / cycle path shall be submitted for approval with the Construction Certificate.

[PCCNS02]

### **PRIOR TO COMMENCEMENT OF WORK**

19. 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]

20. 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]

21. 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]

22. 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]

23. 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]

24. 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]

25. 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]

26. 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]

27. 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]

## **DURING CONSTRUCTION**

28. 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]

29. 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]

30. 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]

31. 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]

32. 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]

33. 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]

34. 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]

35. The provision of adequate vehicular access in accordance with Council's "Vehicular Access to Property Construction Specification" pamphlet, including the provision of an invert crossing at the kerb and gutter where required and paving of the driveway across the footpath to the front alignment to the satisfaction of the Director, Engineering Services. Twenty four (24) hours notice is to be given to Council's Engineering Services Division before placement of concrete to enable formwork to be inspected. Failure to do so may result in rejection of the vehicular access and its reconstruction. Paving bricks are not acceptable unless laid on a 100mm thick concrete base.

[DUR0470]

36. 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]

37. 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]

38. All new residential dwellings (and extensions comprising over 50% of the original floor area) are to fully comply with Council's 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]

39. 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]

40. 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]

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

[DUR1040]

42. 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]

43. All water plumbing pipes concealed in concrete or masonry walls shall be fully lagged.

[DUR1100]

44. 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:-

\* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and

\* 50<sup>0</sup>C 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]

45. 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]

46. 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]

47. Swimming Pools (Building)

- A. The swimming 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 AS 1926-1986 (Copy of code enclosed).
- B. Swimming pools shall have suitable means for the drainage and disposal of overflow water.
- C. The pool filter is to be enclosed and located in a position so as not to cause a noise nuisance to adjoining properties.
- D. The certifying authority is to be given 24 hours notice for any of the following inspections prior to the next stage of construction.
  - a. Steel reinforcing prior to the pouring of concrete.
  - b. Swimming pool safety fencing prior to filling the pool with water.
- E. In the event that Council is not utilised as the inspection/certifying authority:-
  - a. Within seven (7) days of the filling of the pool a Compliance Certificate in the prescribed form shall be submitted to Council together with the prescribed fee, by the Accredited Certifier to certify that all works have been completed in accordance with the approved plans and conditions of Consent and that the swimming pool safety fencing has been installed and complies with AS 1926.
  - b. The Certifying authority is to be given 24 hours notice in writing for an inspection of the swimming pool safety fencing prior to filling the pool with water.

[DUR1280]

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

[DUR1290]

49. 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]

50. Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps or any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

[DUR0490]

51. 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]

52. 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]

53. 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]

54. 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]

55. 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]

56. 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]

57. All excavated soils shall be handled and treated in accordance with the Acid Sulfate Soils Management Plan prepared by Gilbert & Sutherland, as annexed at Appendix E of the Statement of Environmental Effects referred to in Condition No.1 of this series of development consent conditions.

[DURNS01]

#### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

58. 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]

59. 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]

60. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997.

[USE0170]

**REPORT:**

**Applicant:** Centum Developments Pty Ltd  
**Owner:** Miss M L Burgoyne  
**Location:** Lot 2 Section 6 DP 29748 and Lot 3 Section 6 DP 29748 No. 57-59  
Tweed Coast Road, Bogangar  
**Zoning:** <<Select field and type the Zoning>>  
**Cost:** \$2,000,000.00

**BACKGROUND:**

Council is in receipt of an application for a residential flat building comprising 6 x 3 and 2 x 2 bedroom apartments. The building is fundamentally three-storey in height. Basement car parking is proposed with access off Tweed Coast Road.

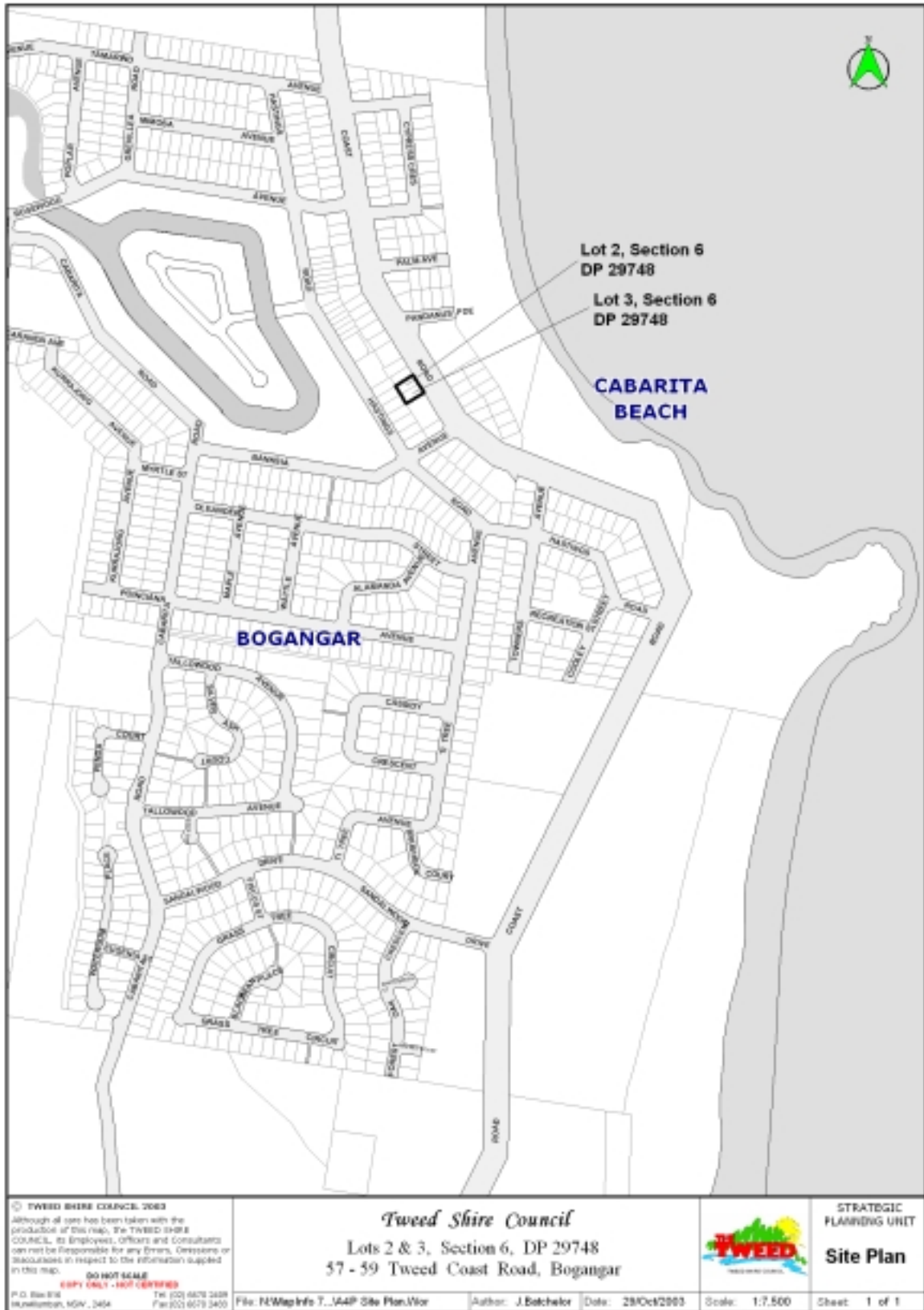
There are several non-compliances evident in the building design, which are addressed to varying degrees in the development application and in this report, they are:


**Issues for Consideration**

1. SEPP 1: variation to 3-storey height limit
2. Encroachment into the building envelope
3. Building setback variation
4. Departure from floor space ratio provision
5. Overshadowing
6. Public submission

The application was accompanied by a Statement of Environmental Effects, which inter alia provides a step through analysis to the provisions of Council's adopted Development Control Plan No.6 – Multi Dwelling Housing. Whilst the document provides some useful insights to the rational behind the building design it does not provide a numerical compliance analysis, this extends also to the architectural drawings. In this regard it should be noted that any calculations, unless expressed otherwise, have been derived either using a Planimeter or by scaling.

**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.  <b>DO NOT SCALE</b>                  COPY ONLY - NOT CERTIFIED                  P.O. Box 938                  Murumbidgee, NSW, 2464                  Tel: (02) 6679 2499                  Fax: (02) 6679 2403</p>	<p><i>Tweed Shire Council</i>                  Lots 2 &amp; 3, Section 6, DP 29748                  57 - 59 Tweed Coast Road, Bogangar</p>		<p>STRATEGIC PLANNING UNIT  <b>Site Plan</b>                  Scale: 1:7,500                  Sheet: 1 of 1</p>
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## Site Description

The subject site has a primary frontage to Tweed Coast Road, is square in shape and has an area of 1126m<sup>2</sup>. The site has a dimension of approximately 33.5 x 33.5 metres. The lands topography displays a steep fall across the site from the south-east to the north-west corners, ranging in height from approximately RL6.1 to RL4.25 respectively, diminishing to mid-rear of the site.

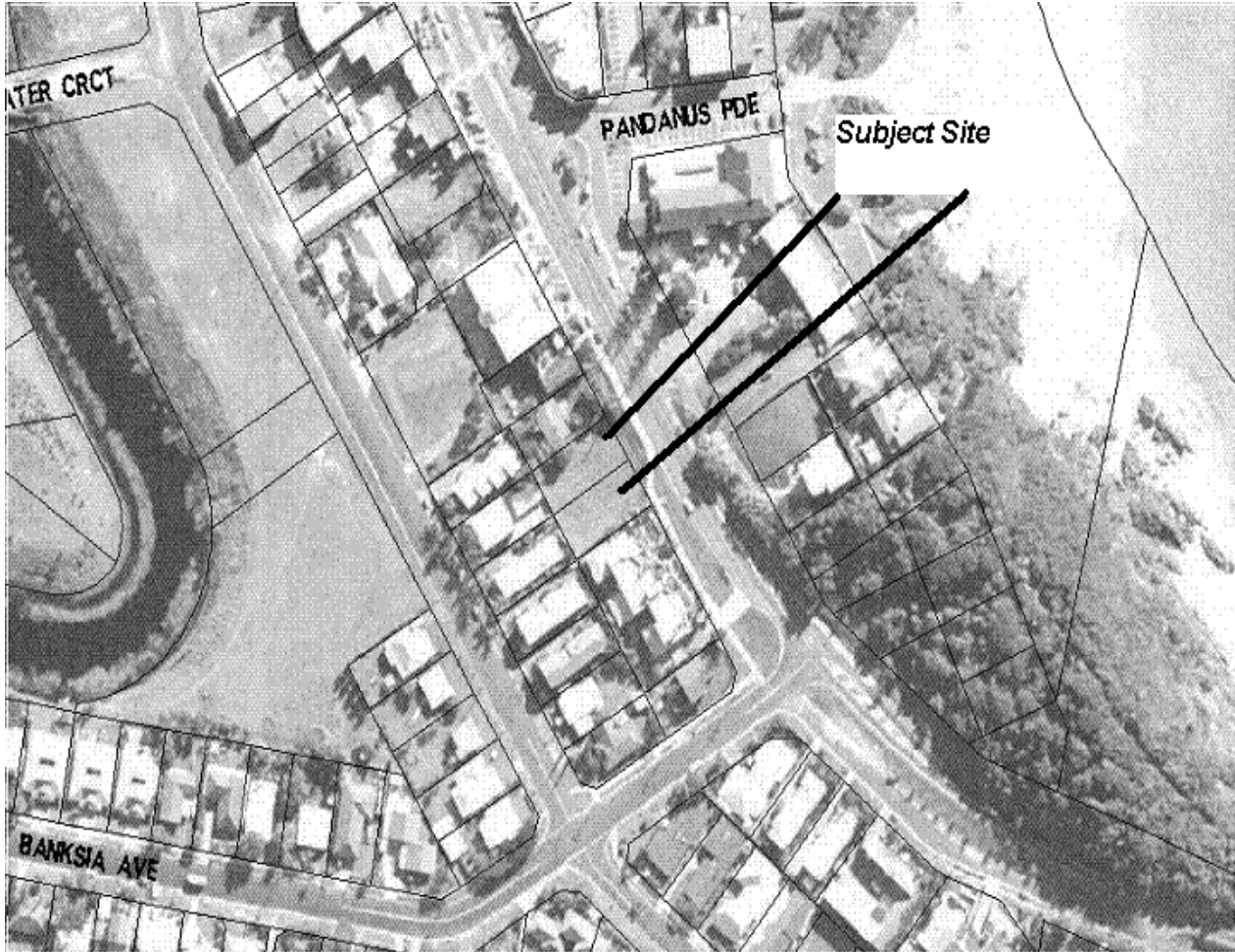
The land is denuded of significant vegetation with only grasses and weed species remaining. The site is bounded to the south-west by a mix of single and two-storey multi-dwelling buildings, a three-storey flat development to the south-east, know colloquially as Kirsty Lee Court and a two-storey single residence to the north-east.

The Cabarita Motel is located on the eastern side of the Tweed Coast Road to the north and single residences to the south. The land and dwellings on the southern area are significantly elevated by comparison to the subject land. Cabarita Motel is the subject of a development application, which if approved, will have a great impact on the social, economic and character of the area. The cumulative impact of developments such as Friday Island and the Motel site is progressively stimulating the gentrification and beautification of the area. The proposed development is in-keeping with emerging future character of the area, as illustrated in recent development applications, and will provide a further positive contribution to the diversity of executive residences presently available.

The proposed redevelopment of the Cabarita Motel site is illustrated in the montage below, which depicts the development proposal presently before the State Planning Authority for determination. The montage is a depiction of the modern architectural designs that are starting to emerge in the Cabarita/Bogangar locality.



**Aerial Site Plan**





**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 2(b) Medium Density Residential pursuant to the provisions of Tweed LEP 2000.

The objectives of the 2(b) zone state:-

***Primary objective***

*to provide for and encourage development for the purpose of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good urban design outcomes.*

***Secondary objectives***

- *To allow for 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 proposed development is considered to have been designed in accord with best practice urban design principles. The development is architecturally modern and will positively contribute to the emerging character of the locality.

The proposed density of the development is considered an appropriate response to the site characteristics, its context, and is considered to be an orderly and economic use of the land. In particular the provision of mixed dwelling size, i.e. the number of bedrooms, is considered desirable as many modern designs fail to provide such diversity, more often adopting large three bedroom units only.

The proposed development is considered to be consistent with the 2(b) Residential zone objectives.

Clause 15 - Availability of Essential Services

The subject site is adequately serviced by way of existing stormwater, electricity, sewer and water connections. The proposal is considered to be consistent with the relevant provisions of Clause 15 of TLEP 2000.

Stormwater management has been addressed by the applicant. Council's Infrastructure Engineer's raises no objection to the proposal.

#### Clause 16 – Height of Buildings

The subject land is identified as having a three-storey height limit. The proposed development is principally three-storey in height. However, a four-storey component does exist for an estimated area of 13.5sqm. This issue and the SEPP 1 objection are discussed later in this report.

#### Clause 35 - Acid Sulfate Soils

Pursuant to the provisions of Clause 35 of TLEP 2000, the subject site is identified as being located within Class 3 & 4. An Acid Sulfate Soils management plan has been submitted and assessed by Council's Environment and Health Services Unit, who raise no objection.

#### Clause 39 - Remediation of Contaminated Land

A preliminary assessment of contamination has been submitted that identifies the presence of no contaminants. There are no previous land use activities known to have occurred that may give rise to land contamination. Council's Environment and Health Services Unit has assessed the development application material and raises no issues in relation to land contamination.

#### North Coast Regional Environmental Plan 1988 (NCREP 1988)

The proposed development is not in contravention of any of the NCREP provisions and is considered satisfactory.

#### State Environmental Planning Policy No.65 – Design Quality of Residential Flat Design

The development has been assessed against the ten design quality principles provided at Part 2 of the Policy as satisfactory.

#### State Environmental Planning Policy (SEPP) 71 – Residential Development

Pursuant to the provision of the Policy the application was referred to the Department of Infrastructure, Planning and Natural Resources on 14 July. The Department subsequently advised of there being no need for involvement by the Minister. The proposal has been assessed having regard to clause 8 of the Policy. In this regard the proposal is considered satisfactory with respect to attaining the clause 8 matters.

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

There are no draft environmental planning instruments known to exist that would have any bearing on neither the assessment nor determination of the proposal.

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

The development has been assessed as satisfactory with respect to attaining either the prescriptive and or performance provisions of Development Control Plan No.6 – Multi Dwelling Housing and Development Control Plan No.2 – Access and Parking Code, with exception to those matters addressed further in this report.

Council is presently in the process of preparing a draft development control plan for the Cabarita locality. The first Committee Meeting was held on 21 August 2003. The subject development application was lodged on 26 June 2003.

There exists no doubt that the Cabarita locality would be best served by an area specific development control plan aimed at guiding development specific to the present and future expectations of the local community, however, the deliberations of the Committee to-date can be considered, they cannot be given final determining weight. Issues raised by Council's Strategic Planning Unit are discussed where appropriate in this report.

**Issues**

**1. SEPP 1: VARIATION TO 3-STOREY HEIGHT LIMIT**

The proposed development incorporates a 4-storey construction within a 3-storey zone of restriction. The non-compliance provided for is not distinct, the applicant provides:

*"The development has minor 'point' intrusions totalling no more than 6m<sup>2</sup> over the maximum limit of 3 storeys from natural ground level, the three areas totalling some 13.5m<sup>2</sup>.....The small intrusions into the ramped portion of the building envelope area function of the articulation in the building façade and do not add to the impression of the bulk of the building. The additional storey results because the site topography means that partway across the site, the basement carpark, which is up to 2 metres below ground at its eastern extremity, becomes a storey. Three small bedroom areas on the partial third floor extend westward of this line."*

The variation, as depicted on Plan No.0334-DD03, is very minor both in terms of the area of encroachment and the impact upon the buildings' mass arising from the departure. It is contended that the 'fourth-storey' component will be

essentially imperceptible and thus the building will be largely perceived as being three-storeys.

State Environmental Planning Policy No.1 - Development Standards, provides a mechanism by which Council may consent to a variation to a development standard where it is considered that strict adherence is both unnecessary and or unreasonable in the circumstances of the case.

The objective of the three storey development standard provided under Clause 16 of TLEP 2000 is *'to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.'*

It is considered that the proposed configuration and height is consistent with the abovementioned objective for the following reasons:-

- The proposed development is principally three-storeys, with the exception to the minor bedroom encroachments of Unit Nos.7 & 8, which comprises a fourth-storey (through the basement car park area exceeding 1.5m from natural ground level) component of approximately 13.5m<sup>2</sup>.
- The subject building will give the 'physical' impression of three-storeys from all elevations
- The proposed building is consistent with the zone objectives, the scale of like developments in the locality and the emerging character of the future built form of the area.
- The proposed area of non-compliance will not increase the incidence of overshadowing or other like external impacts.

It is considered that potential adverse visual impacts and loss of amenity has been minimised by designing in accord with the following:

- Providing for the practical impression of three (3) storeys only.
- Consistency with developments in the locality.
- Variation in building elements, thereby reducing the imposition of the structure upon the streetscape.

In light of the proposed development it is considered that to require strict adherence with the TLEP requirement would be inconsistent with previous application of the building height clause on other similar such approved developments and would unnecessarily impact upon the design and functionality of the proposed building without any real benefit but at the detriment to the functionality of Unit Nos. 7 & 8. The development standard is

in this instance considered unreasonable to the extent of the proposed variation.

In light of the above it is recommended that the State Environmental Planning Policy No. 1 objection to Clause 16 of Tweed Local Environmental Plan 2000 regarding the height of the building be supported and the concurrence of the Director of the Department of Infrastructure, Planning and Natural Resources be assumed.

Council's Strategic Planning Unit have advised as follows in relation to Building Heights:-

*"Draft DCP 48 proposes to impose a height limit of 9m for a 3 storey residential development. A further 2m is allowed to provide for appropriate roofing design/articulation. The proposed development has the following building heights:*

- *Max. 10.4 metres for the main building and*
- *11.3 metres to include the elevator well.*

*These building heights are in excess of the heights being proposed by draft DCP 48.*

*The issue of building heights has yet to be resolved by the Bogangar/Cabarita Steering Committee but it is anticipated that the building heights eventually adopted will be consistent with that being proposed by DCP 48.*

*In its preliminary discussions a significant issue raised by the Committee relates to roofing design. There is strong support for diverse roofing lines be accommodated with new developments as opposed to flat roof design. Ancillary structures (in this instance a lift well) would need to be incorporated within the roof design and not be visually obtrusive. This matter is also reiterated in draft DCP 48."*

In response, it is noted that the building height limits that may be incorporated into the draft DCP may be different to those presently in place, however they remain to be publicly notified and adopted. The development as proposed complies with present standards and would be adversely impacted if required to comply with a non-adopted lesser building height provision.

In relation to the requirement for roofing design it is must be noted that the *Residential Flat Design Code* and the *Residential Flat Design Pattern Book*, required references for developments the subject of *State Environmental Planning Policy No.65 – Design Quality for Residential Flat Development*, provide advisory components on roof design, incorporating objectives and better design practice. It is quite apparent that the roof design of a building has an intrinsic, almost symbiotic relationship with overall building design and

as such a wide range of roof designs exists, including flat roofs. The development as proposed is very modular in design with clearly delineated areas and sharp line design on the façade, which would likely be detrimentally impacted if a modular styled roof was employed. Reference to both planning guidelines mentioned above identifies a number of buildings having a similar appearance and where flat roof design is employed. It is contended that on appropriate building design flat roofs can add to the visual interest of the building and to the general skyline. Continuous roof articulation where inappropriately employed may clutter the skyline to the detriment of the western vistas available from the Cabarita coast.

In the context of the building design the roof design, is considered satisfactory.

## 2. ENCROACHMENT INTO THE BUILDING ENVELOPE

Variations are sought relative to the compliance of the proposed building in relation to the building envelope provisions of Development Control Plan No.6 -Multi Dwelling Housing.

In this regard it is noted that the proposed development exceeds the building plane envelope through balcony and sunscreen areas with only a minor encroachment bisecting living and bedroom areas. The non-compliances can be summarised as follows:-

North-east elevation: Through area of metal framed sunscreen / blind on second floor and bisecting through the protruding fin wall of the living area of Unit No.4.

South-west elevation: Bisect through bedroom and ensuite area of Unit No.4 due largely to the reduced setback (see Point 3), represent on sectional view 3m<sup>2</sup> or in total area 17.7m<sup>2</sup>.

South-east elevation: Minor encroachment through deck area only.

North-west elevation: Very minor encroachment through fin wall.

In assessing the appropriateness of the variation being sought the following matters were considered:-

- Impact on existing built form;
- Impact on proposed building design and functionality if required to comply;
- Articulation of proposed building design;
- Impact of proposal on local amenity, aesthetically and on the existing streetscape;
- Assimilation of design; and
- Building separation.

Having regard to the nature of the proposed encroachments into the building envelope, and in light of the abovementioned considerations, it is considered unreasonable to require strict adherence to the standard in this instance because of the likely impact upon the building design and subsequent liveability. It is considered that strict adherence to the provision would not yield any real or tangible benefit to local residents or the character and scale of the existing built form in the locality.

The variation sought does not compromise the intent or undermine the rationale of the DCP provision and as such is satisfactory, in this instance.

### 3. BUILDING SETBACK VARIATION

The development seeks a variation to the Development Control Plan No.6 – Multi Dwelling Housing side setback provision of 3 metres to 1.82 metres for a distance of 5.9 metres. The area of the departure is the bedroom and ensuite area of Unit Nos.1 & 4, located on the north-west elevation and over two-storeys. The third level remains unaffected.

In assessing the appropriateness of the variation being sought the following matters were considered:-

- Impact on proposed building design and functionality if required to comply;
- Building separation.
- Fenestration / privacy

The impact upon the bedroom and ensuite area would be very noticeable if the 3m setback provision were to be enforced, in particular by compacting the bedroom space. The area of encroachment would not be obvious from the street and does not increase the incidence of overshadowing or building bulk. In fact the area of non compliance does contribute to the buildings articulation, increasing the buildings level of visual interest.

Separation between the area of encroachment and the neighbouring two-storey dwelling is approximately 3.4 metres. This distance may be considered adequate on the proviso that fenestration does not lead to unnecessary or undesirable loss of privacy and amenity. In this regard it is not that the proposal provides for a 1.8m x 2.5m bedroom window and a small 2.5m wide balcony on this elevation. Inspection of the site and neighbouring development revealed that the window placement on the proposed development relative to that on the neighbouring dwelling may give rise to a loss of privacy through visual interaction. It is noted that no submission was received from the neighbouring dwelling.

In light of the potential for conflict it is recommended that rather than impacting upon the internal dynamics of the proposed development by requiring a

3metre setback, that the balcony / deck area situated off the kitchen area of Unit Nos.1 & 4 be deleted. In addition the window size needs to be reduced and an external screening device fitted. This can be achieved by condition of approval.

It is considered that should the above recommendations be adopted that privacy issues will be ameliorated.

Council's Strategic Planning Unit advises that the proposed future development control plan for the Cabarita locality will retain the setback provisions of Development Control Plan No.6 – Multi-Dwelling Housing. It is noted that issue of privacy and future neighbouring property development may be affected. With respect to privacy the issue has been identified and assessed as satisfactory, subject to minor amendment by condition of consent. In relation to the future development potential of the neighbouring land it is contended that the area of reduced setback can be factored into any future neighbouring development, providing opportunity for any potential impacts to be adequately treated at the design stage. This may include accommodation of an access driveway on the affected elevation, increased building articulation, landscaping, spatial arrangement facilitating wet areas on the affected elevation thus reducing the need for large openings / glazed areas, screening devices or other similar design methods.

It is considered from a development assessment perspective that the development as proposed is satisfactory and will not give rise to external impacts of significant magnitude.

#### 4. DEPARTURE FROM FLOOR SPACE RATIO PROVISION

The proposed development has been identified as having an approximate floor space ratio of 0.87:1, which is a departure from Development Control Plan No.6 – Multi Dwelling Housing that provides for a 0.5:1 ratio. It is generally accepted that the DCP provision for the purposes of facilitating residential flat development is not an appropriate provision. This is so because of the provisions limiting nature, which gives rise to unreasonable development parameters and limitations upon the development potential of appropriately zoned lands.

It is noted that many like residential flat developments within the Tweed Shire operate a site density ratio of approximately 1.3:1. The proposed development at 0.87:1 is significantly under developed by comparison and as such is considered an appropriate and satisfactory design response.

Council's Strategic Planning Unit advises that the proposed future development control plan for the Cabarita locality will retain the 0.5:1 floor space provision. It is contended however that the stated provision is not an appropriate design parameter, particularly in conjunction with the other design provisions, for residential flat development. This provision may not permit



orderly and economic land-use utilisation for residential flat design and if strictly adhered too could undermine the zoning provisions of the Tweed Local Environmental Plan 2000.

It is contended that the present floor space ratio provision is inappropriate, particularly in conjunction with the present building envelope provisions. The *Residential Flat Design Code* provides guidelines on developing appropriate, effective, floor space ratios and building envelopes. A preliminary hypothesis derived using the 'Code' revealed a floor space ratio for the subject land as 1.44:1, with a second arbitrary scenario revealing a 1.3 ratio. These are generally in line with ratios accepted for residential flat development in the Shire and significantly greater than that of the proposed development.

Having regard to the above comments, the floor space ratio of the development as proposed is considered satisfactory.

#### 5. OVERSHADOWING

The development proposal is accompanied by a series of shadow diagrams in Appendix B of the Statement of Environmental Effects. Overshadowing of adjoining land will only occur during winter months. The impact upon properties to the south-west is reasonably limited with worst case periods extending from 9 am to 12 noon. The residential flat building to the south-east is likely to be overshadowed from 12.30am to 3.30 pm. The extent of overshadowing, i.e. the duration, is compliant with the Development Control Plan No.6 – Multi Dwelling Housing section 3.3.1.

No public submission has been received raising concern over the proposed extent of overshadowing. Overshadowing is not considered likely to have an adverse effect on private recreational areas or landscaping and as such is considered satisfactory.

Council's Strategic Planning Unit advises that the proposed future development control plan for the Cabarita locality will seek to reduce building height and reinforce the requirement for roof type design. In the first instance it is noted that the development as proposed complies with one main exception with Council's adopted height limit and secondly it provides a flat roof design that compliments the homogeneous design of the building. The building presents a contemporary approach that utilises a sharp distinct rectilinear line design, which has a very modern flavour but which captures the essence of some of the older designs present in the Cabarita area.

#### 6. PUBLIC SUBMISSION

One public submission was received during the notification period of the application. The submission does not raise any issues with the development per se but rests solely on wanting the same development privileges as the subject land. It is noted that the submitters land is zoned Residential 2(a) low

density. The submission has no bearing on neither the assessment nor determination of the proposed development.

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

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**

Having regard to the issues raised in this report it is concluded that the proposed development will not have a significant impact upon the natural and built environment, socially or economically in the locality. The proposal is considered likely to have a small positive impact upon the above matters through the cumulative external impacts associated with the areas progressive gentrification to which the proposed development will contribute.

**(c) Suitability of the site for the development**

The site is not considered unsuitable for the proposed development.

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

The development application was publicly notified from 23 July to 6 August 2003. One submission was received. The content of the submission is discussed earlier in this report

**(e) Public interest**

Having consideration to the matters raised in this report it can only be concluded that on a merit assessment the proposed development is not contrary to the public interest

**OPTIONS:**

1. Refuse the application with appropriate reasons for refusal.
2. Approve the application subject to appropriate conditions.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should Council Resolve to approve the application in line with Option No.2 there will be no direct impact upon Council's budget or forward estimates. Should Council resolve not to approve the application legal cost will be incurred should the applicant appeal the decision in the NSW Land and Environment Court.

**POLICY IMPLICATIONS:**

Approval of the development as proposed will have some implications for Council DCP No.6 – Multi Dwelling Housing, by accepting to varying degrees that under certain circumstances the floor space ratio and building plane envelope provisions may not be adequate.

It is contended that approval of the development is not likely to have any significant policy implication in the formulation of the draft DCP for Cabarita, which at present has not tested any proposed design criteria.

**CONCLUSION:**

Notwithstanding a number of variations to Council's development provisions in order for the proposed development to proceed, the development does display and incorporate good urban design principles and is consistent with the contemporary buildings being constructed in the locality. Equally as important is the provision of a high level of functionality, liveability, diversity and aesthetic integration.

In light of the above, a merit assessment of the proposal concludes that on balance the development is satisfactory for conditional approval.

**UNDER SEPARATE COVER:**

Nil.

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**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**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA02/2086 & DA02/2088**

**SUMMARY OF REPORT:**

The purpose of this report is to advise Council of the concerns regarding the proposed tourist accommodation and retail proposals. The Minister for Infrastructure Planning and Natural Resources is the consent authority for the developments. The matters identified in the report should be referred to Planning NSW for information and for consideration when assessing the applications. It is concluded that the applications should not be supported by Council.

**RECOMMENDATION:**

That: -

1. The Minister for Infrastructure, Planning and Natural Resources and the Director-General of PlanningNSW be advised that on the basis of the information available to Council the developments should not be supported.
2. Council delegates to the General Manager to forward a submission to the Minister for Infrastructure Planning and Natural Resources and the Director-General of PlanningNSW based on the section of this report headed "Draft Submission on Key Issues and additional information to be forwarded to the Minister for Infrastructure, Planning and Natural Resources and the Director-General of Planning NSW", with the request that consideration be given to the matters raised in assessing and determining the applications.

**REPORT:**

**Applicant:** Richtech Pty Ltd  
**Owner:** Richtech Pty Ltd  
**Location:** Lots 12 and 13 Section 6 and Lots 16, 17, 18 Section 2 DP 14895 Lorna Street, Kingscliff  
**Zoning:** 2(f) Tourism  
**Cost:** \$1,720,000.00 (DA02/2086) & \$2,450,000.00 (DA02/2088)

**BACKGROUND:**

Three development applications (02/2086, 02/2087,02/2088) were lodged with Council on 19 December 2002 for development of lots within the Seaside City estate. It was determined that two of these applications (02/2086 and 02/2088) were categorised as State Significant development under the provisions of to SEPP-71 Coastal Development as such the consent authority is the Minister Infrastructure Planning and Natural Resources. The applications were withdrawn in February 2003 and re-lodged with the Department of Infrastructure Planning and Natural Resources (DIPNR).

The Department has now requested comments from Council regarding the two State "significant" applications.

DA02/2087 was for a bed and breakfast establishment. The application was refused by Council on 28 January 2003 and is the subject of an appeal in the Land and Environment Court.

Council has resolved to prepare a draft Local Environmental Plan for the Seaside City estate excluding the un-subdivided land west of the Coast Road and the land zoned or partially zoned 7(f) Environment Protection. The draft LEP proposes to rezone the land from 2(f) Tourism to 2(e) Residential Tourist. The change in zoning would permit dwelling-houses.

DA02/2086 is for 19 tourist accommodation units including a manager's residence. The building has 3 storeys and basement carparking. The units have two bedrooms each.

DA02/2088 is for 19 tourist accommodation units including a manager's residence and 500m<sup>2</sup> of retail floor space at ground level. The building has 3 storeys and basement parking as well as on-street parking. The units are a combination of two and three bedroom units.

The proposal is also seeking approval for the infrastructure that is required to service the developments including construction of Lorna and Ocean Streets.

A concept plan has been lodged with the applications indicating proposed future development of the Seaside City estate.

## **Report**

### **Draft submission on key issues and additional information to be forwarded to the Minister for Infrastructure, Planning And Natural Resources and the Director General of Planning NSW: -**

#### **Key Issues**

##### **Premature development**

The development is premature regarding the provision of infrastructure, social and economic impacts and general planning. Whilst the land is zoned for urban style purposes there has been no development undertaken on the estate to support development of the size and nature that is proposed.

The engineering issues need to be comprehensively addressed not only in concept but a programme established for implementation of the required infrastructure. Until these issues are resolved and planned any development in the estate is premature and will not enable the orderly development of an important part of the Tweed Coast.

The estate requires a detailed master plan or development control plan that provides solutions to the strategic issues associated with the development of this land.

The issues related to development of the estate cannot, and should not be dealt with via development applications on 5 parcels of the estate.

Proper planning of the estate needs to be in place prior to consideration of individual development applications. The concept plan is vague and lacks the necessary detail required to facilitate development of the two sites and the whole estate.

The adjoining "SALT" development to the north of the site is based on a comprehensive development application and master plan. The process adopted for the "SALT" development enabled a thorough analysis of the relevant issues and certainty for the provision of infrastructure and related facilities. A similar procedure could be adopted for the Seaside City estate.

##### **Infrastructure**

The design and provision of infrastructure needs to be comprehensively dealt with. A detailed plan for landform, road design, stormwater management, sewer and water needs to be prepared and include details of the timing of construction and identify who is responsible for the construction of the infrastructure.

An engineering design plan is not considered enough to deal with the issues associated with development of the estate. An infrastructure plan needs to include sequencing of works and agreement of other owners of land within the estate.

It is considered that the optimum way to deal with this issue is via a comprehensive development application (DA) for the whole estate or a development control plan (DCP) or master plan.

Whilst either one of these options would produce a plan for development it is considered that a DCP or master plan would be the most effective method to deal with the issues or a combined DA and DCP or master plan.

### **Concept plan**

Council's Strategic Planning section have made the following comments regarding the Concept Plan.

The Concept Plan is poorly and inadequately presented. Figure 5, which represents the principle Concept Plan for the whole "Seaside City Estate" is not adequately described in Section 5.02, which should articulate the components of the Concept Plan.

Specifically, this section and the associated figure identifies a Neighbourhood "Village" Centre. The Concept Plan describes this area as a mixed-use village centre ... lined with a diversity of retail and commercial premises. There is no indication in the Concept Plan of the size, scale and location of any retail or commercial premises. More over there is no recognition of the adjoining developments, namely, Casuarina Beach and Salt. Each of these developments have established a similar concept of a self contained and internalised retail catchment. To fully assess this concept plan a retail assessment would need to be carried out to justify the size, scale and target market of any retail development in relation to the adjoining retail facilities.

The Concept Plan also does not give any estimates on population size and density of the proposed area and in this respect fails to establish a basis for determining internal demands for retail and commercial floor spaces.

### **Subdivision Layout**

The subdivision layout that is proposed in the Concept Plan, particularly figures 5 and 6, attempts to promote a compact settlement in line with the concepts of New Urbanism. The concept plan in theory will incorporate a village centre comprising of a neighbourhood convenience centre, residential / tourism accommodation and facilities with a surrounding low – medium density residential accommodation.

There is no clear indication on the Concept Plan maps in which areas of the subdivision will cater for these different styles of development.

Also this layout does not take into consideration that the proposed road network will intersect several lots that are not owned by Richtech. There is no clear statement in the Concept Plan on what arrangements have been made with these landowners.



## **Integrated Tourist Development**

The land identified in the Concept Plan, and both development proposals, is zoned 2(f) Tourism and represents a scarce resource because of its potential for employment generation. In particular services to tourism, tourism retailing and other tourism associated employment.

However with a site as important as this it is vital that master planning is carried so that the full potential for its contribution to the Tweed tourism industry can be achieved and that employment opportunities maximised.

## **Retail Development**

As previously discussed the Concept Plan give very limited information on the proposed extent of any retail development with in the estate. Despite this the integrated tourist development proposal incorporates 500m<sup>2</sup> of retail floor space. In general terms this is enough retail floor space to service in excess of 1,000 people.

However the Concept plan alludes to more retail development than this specific component is proposing. The Concept Plan requires a full description and economic impact assessment for any development which is described in DCP 45 Socio-Economic Impact Assessment.

Currently Council has commissioned the preparation of a Retail Development Strategy for the Shire. It is advisable that no larger retail developments be considered until this investigation has been finalised.

## **Recommendations**

That there is insufficient information provided in the Concept Plan and Statement of Environmental Effects to adequately determine the impacts of the tourism, retail and commercial impacts of the proposed development. It is recommended that the applicant provide more strategic detail to the Concept Plan. Specifically;

- Size, scale and nature of any commercial floor space
- Size, scale and potential retail segment of any retail floor space
- The relationship of any commercial / retail precincts to the neighbouring developments and Kingscliff generally
- Establish an estimated ratio of permanent residential to tourist occupation
- Establish the scale, density and market of any tourism components
- Determine estimated permanent and tourist populations based density and scale
- Establish the estimated number of permanent full time jobs (or equivalent) in each sector that ultimately will be created by the proposed concept

## **Rezoning**

Council has resolved to prepare a draft LEP over the estate to change the zoning from 2(f) Tourism to 2(e) Residential Tourist.

Council considered a report regarding the Local Environmental Study and Draft Local Environmental Plan process for Seaside City on 22 October 2003 and resolved as follows: -

*"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."*

It is considered that the development applications are pre-emptive of the proposed rezoning and the abovementioned process. The rezoning process may initiate a new lot layout, planning provisions and requirements as such the proposed developments may hinder effective planning for the estate.

## **Owners**

The applicants own the majority of the land within the estate however there are 15 other owners of land within the estate.

There are no details of consultation with the other owners regarding the concept plan. There is no strategic planning regarding the timing of development and how this would affect all of the landowners in the estate.

Any procedure for development of the estate should include all landowners.

## **Road Status**

The proponents state that the assessment of the road will be undertaken via a Part V assessment. It is considered that this is not the appropriate way to deal with the road construction. Given that Council is not carrying out the work the assessment should be undertaken via a development application. Accordingly the application should have been referred to Council as an integrated development seeking Council terms and conditions for an approval under section of the 138 Roads Act. In this regard Council should have been approached to issue owners consent for the DA given works are proposed over Council owned roads.

## **Additional information**

The following comments are made by Council's Environmental Health Section regarding the two proposals.

Insufficient information has been provided on solid waste storage and collection. The submission indicates that refuse will be collected by a private contractor. The applicant is requested to provide a waste management plan which includes the storage location, bin number/size, vehicle type, frequency of collection and confirmation that the vehicle can access the collection point. At what location on the site will bins be emptied? Is this location under the building, and if so can the vehicle access this location? Is it proposed to have multiple 'wheelie bins' which are collected at the kerb? Garbage collection has been problematic at similar developments in Kingscliff recently. Confirmation is sought from the applicant that any surface or wastewater in the basement, including water from the vehicle wash bays, will be collected and directed to sewer.

The application does not identify if dewatering is required. Part 1.3.3 of the ASSMP states that groundwater levels will be identified when ASS investigations are completed. It appears from App. B of the ASSMP that testing was completed in December 2002. Is dewatering of the site required? If so a management and monitoring programme is required for this dewatering process.

The ASSMP provides test results for what looks to be 5 or 6 boreholes on the site. The plan of these borehole locations can be found in the radiation report. Test results indicate that ASS are not present on the subject site.

Pg 8 of the ASSMP notes that groundwater bores will be established and groundwater will be monitored monthly during the development. It also refers to the inclusion of this requirement in the WQMP. However the WQMP does not provide for groundwater monitoring. The applicant is requested to modify the WQMP to include groundwater monitoring, particularly if the site is to be dewatered, as queried above.

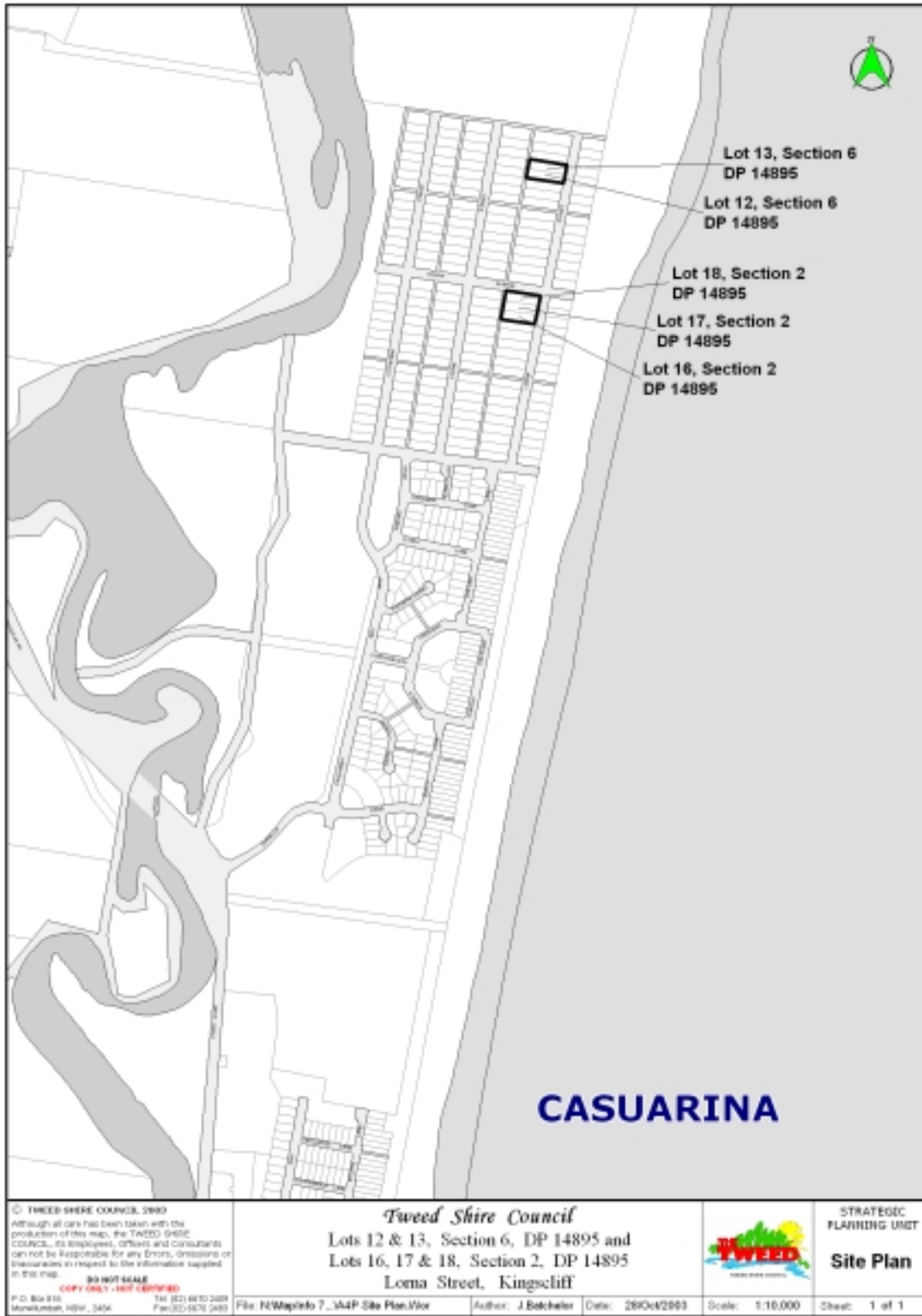
With respect to the potential for undetected radioactive material at depth on the site, is it proposed to excavated and remove material from the boundaries of lots Lot 16 – 18 DP 14895 as part of the proposed works.

A Preliminary Site Radiation Investigation Report has been submitted. It reviews historical photographs and references knowledge and experience from the Casuarina Beach subdivision and SALT development investigations. Surface radiation monitoring did not identify materials above background. The Report notes that materials of concern are unlikely to be present at depth and that the site is suitable for the proposed development. The applicant is requested to provide a plan of the surface monitoring transects which were undertaken on the subject property (the site investigation plan provided in Appendix 1 appears to be the ASS borehole locations?).

Whilst historical review indicates that radioactive material is unlikely to be present at depth, experience at adjacent development indicates that materials may be present at depth along the coastal strip despite aerial photographs. The applicant is requested to submit a construction radiation monitoring plan for disturbed areas and materials to ensure that radioactive material is indeed not present at depth. Further that monitoring plan should include a post construction work surface monitoring and validation process to ensure the site is suitable after bulk earthwork is completed.

PlanningNSW should request additional information as outlined above to enable further assessment to be undertaken.

**SITE DIAGRAM:**



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*Tweed Shire Council*  
 Lots 12 & 13, Section 6, DP 14895 and  
 Lots 16, 17 & 18, Section 2, DP 14895  
 Lorna Street, Kingscliff  
 File: N:\MapInfo 7\_364P Site Plan.Wor Author: J. Batchelor Date: 28Oct2003 Scale: 1:10,000 Sheet: 1 of 1

**TWEED**  
 STRATEGIC PLANNING UNIT  
**Site Plan**

**OPTIONS:**

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

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

There are no legal implications regarding this matter.

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

**POLICY IMPLICATIONS:**

Planning for Seaside City has significant implications relating to policy formulation for the Tweed Coast area.

**CONCLUSION:**

It is considered that the proposed developments are premature and pre-empt the rezoning process. The applications should not be supported until a comprehensive development control plan has been adopted or a master plan in place to direct development and planning within the estate. Ad hoc approvals in the estate is likely to undermine comprehensive planning for the estate.

**UNDER SEPARATE COVER:**

Nil.

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**10 [DS] Development Application 0689/2000DA for a Storage & Launching Facility for Tweed Coast Sea Rescue Squad at Lot 7018 DP 755701 Coast Road, Hastings Point**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA1180/425 Pt1**

**SUMMARY OF REPORT:**

Tweed Coast Sea Rescue Incorporated has proposed to construct a boat shed on land within the Peninsula Street Road Reserve and adjoining Cudgera Creek, Hastings Point for the purpose of storing an emergency sea rescue boat. Access to the site is via Peninsula Street, which also serves a number of residential buildings and provides access to the beach at North Hastings Point. The street ends in an unformed cul-de-sac and is utilised by the public for parking of vehicles and as an emergency access to the beach.

The development application was reported to Council on 1 October 2003 for determination, with a recommendation for refusal as NSW Fisheries had refused to issue General Terms of Approval under the Fisheries Management Act 1994, and the suitability of the site for a rescue facility is highly problematic. Council however have resolved the following:

***"RESOLVED** that Development Application 0689/2000DA for storage and launching facility for Tweed Coast Sea Rescue Squad at Lot 7018 DP 755701 Coast Road, Hastings Point, be approved in principle and the Director Development Services brings forward conditions for approval."*

NSW Fisheries have since decided to issue general terms of approval for permits under Section 201 and 205 of the Fisheries Management Act 1994 should those permits be required. This will enable Council to issue development consent should it now resolve to do this, without the risk of a third party challenging the approval under Section 123 of the Environmental Planning and Assessment Act 1979 on this specific issue.

As required by Council's decision of 1 October 2003, this report includes appropriate conditions of approval should Council decide to approve the application.

**RECOMMENDATION:**

That Development Application 0689/2000DA for storage and launching facility for Tweed Coast Sea Rescue Squad at Lot 7018 DP 755701 Coast Road, Hastings Point, be refused for the following reasons:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with the objectives of Clause 13 of Tweed Local Environmental Plan 2000.
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposal is inconsistent with the provisions of Clause 32B of the North Coast Regional Environmental Plan 1988.
3. Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, the site is unsuitable for the proposed development and the proposal would have adverse effects on public recreation and open space use; ecology of the site and adjacent land; and the amenity of residential properties in proximity.
4. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the proposal is not in the public interest.



**REPORT:**

**Applicant:** Mr R McLeod  
**Owner:** Tweed Shire Council  
**Location:** Lot 7018 DP 755701 Coast Road, Hastings Point  
**Zoning:** Uncoloured Land  
**Cost:** \$30,000.00

**BACKGROUND:**

The following report was submitted to the Council meeting on 1 October 2003 and at that meeting Council resolved as follows: -

*"that Development Application 0689/2000DA for storage and launching facility for Tweed Coast Sea Rescue Squad at Lot 7018 DP 755701 Coast Road, Hastings Point, be approved in principle and the Director Development Services brings forward conditions for approval."*

*"Tweed Coast Sea Rescue Incorporated has proposed to construct a boat shed on land adjoining Cudgera Creek, Hastings Point for the purpose of storing an emergency sea rescue boat. Access to the site is via Peninsula Street, which also serves a number of residential buildings and provides access to the beach at North Hastings Point. The street ends in an unformed cul-de-sac and is utilised by the public for parking of vehicles and an emergency access to the beach.*

*The proposal will require the removal of mangroves and being within 40 meters of a waterway the development was forwarded to NSW Fisheries and DLWC as integrated development. DLWC advised that the development does not need to obtain a permit under Part 3A of the Rivers and Foreshores Act 1948.*

*The Rescue organisation at present store the boat in a shed near the Pottsville Bowls Club which presents operational problems in getting the boat into the water during emergencies. The applicant wish to locate the boat in a suitable facility on the water to enable them to provide a more efficient services.*

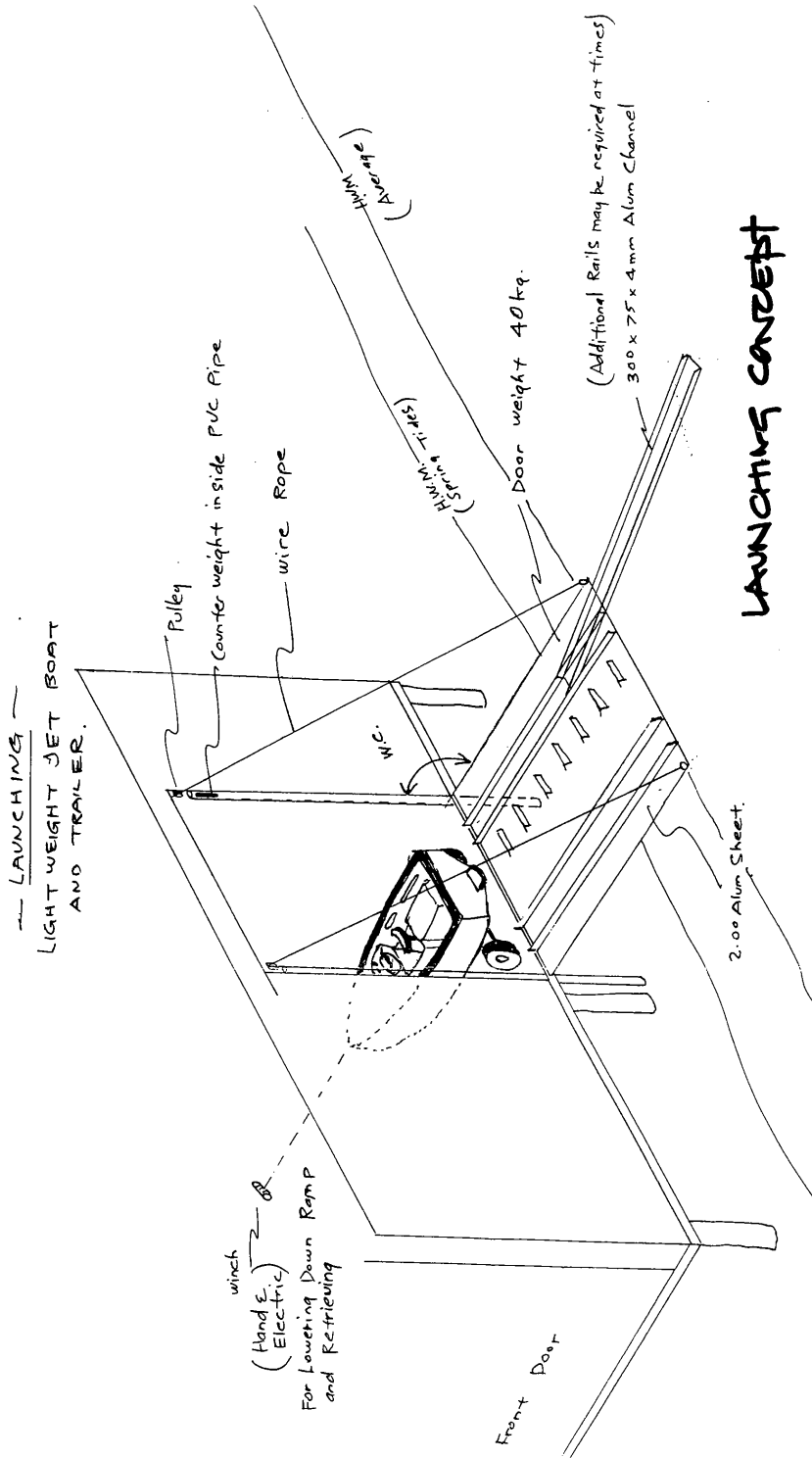
**SITE DIAGRAM:**



<p>© TWEED SHIRE COUNCIL 2002          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 on this map.  <b>DO NOT SCALE</b>  <b>COPY ONLY - NOT CERTIFIED</b>          P.O. Box 185      Tel: (07) 8676 2400          Murumbidgee, NSW, 2404      Fax: (07) 8676 2401</p>	<p><b>TWEED SHIRE COUNCIL</b>  <b>Lot 7018 DP 755701</b>  <b>Coast Road, Hastings Point</b></p> <p>File: N:\MapInfo 6... \Site Plan Wor    Author: J. Batchelor    Date: 24/Apr/02</p>	<p>STRATEGIC          PLANNING UNIT</p>  <p>TWEED SHIRE COUNCIL</p>	<p><b>Site Plan</b>          Sheet 1 of 1</p> <p>Revision: _____</p>
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**Concept Plan**

TWEED COAST SEA RESCUE SQUAD.  
 STORAGE & LAUNCHING FACILITY.  
 DA 1180/425 Pt 1 0609/2000 DA.



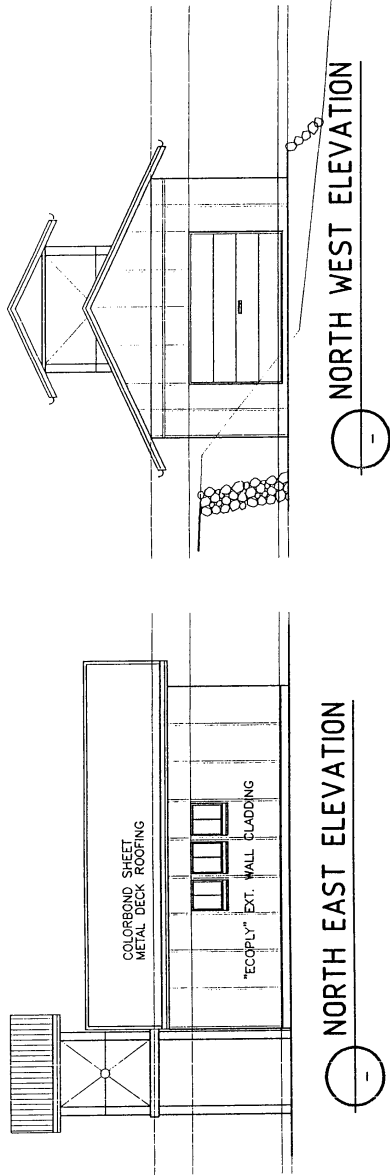
**LAUNCHING CONCEPT**

**PI12 AUGUST 2000.**

**Elevation Plans**

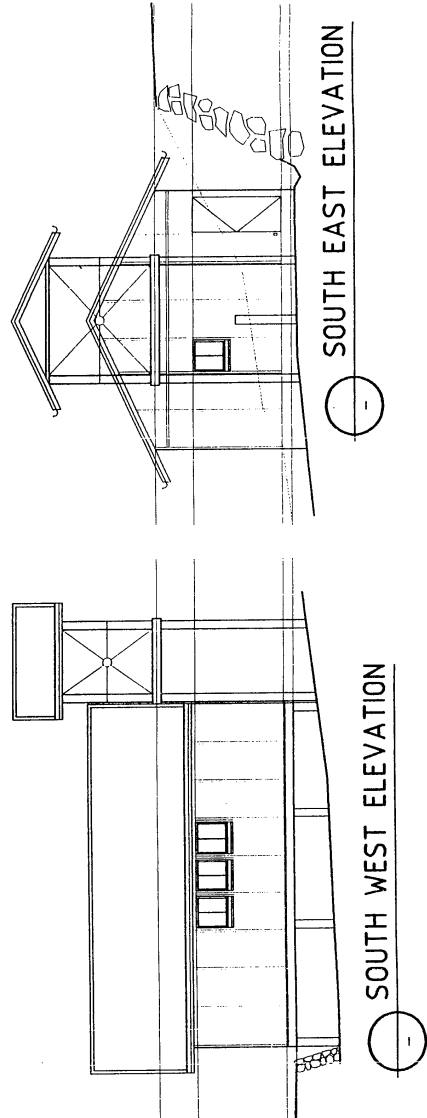
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**NORTH EAST ELEVATION**

**NORTH WEST ELEVATION**



**SOUTH WEST ELEVATION**

**SOUTH EAST ELEVATION**

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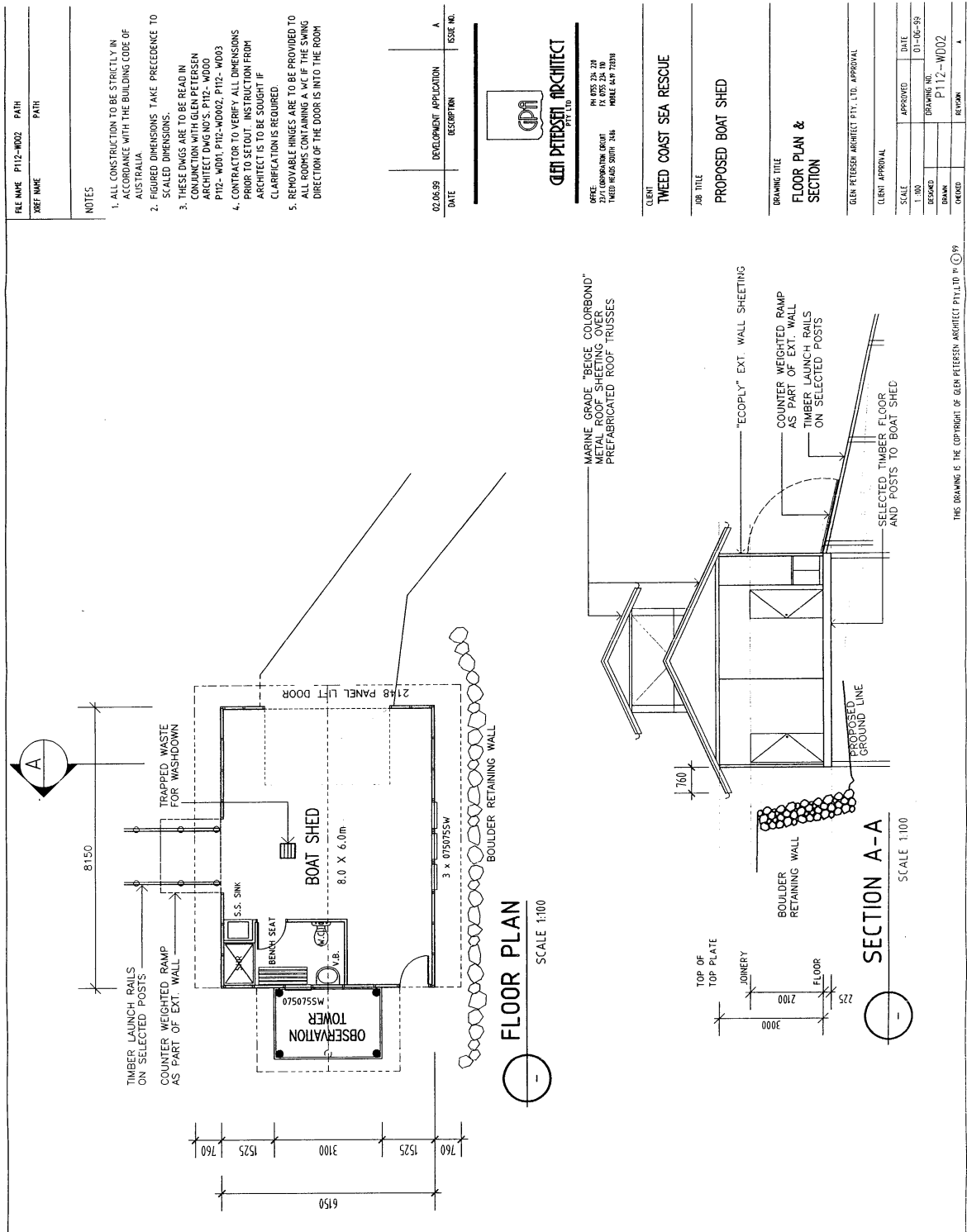
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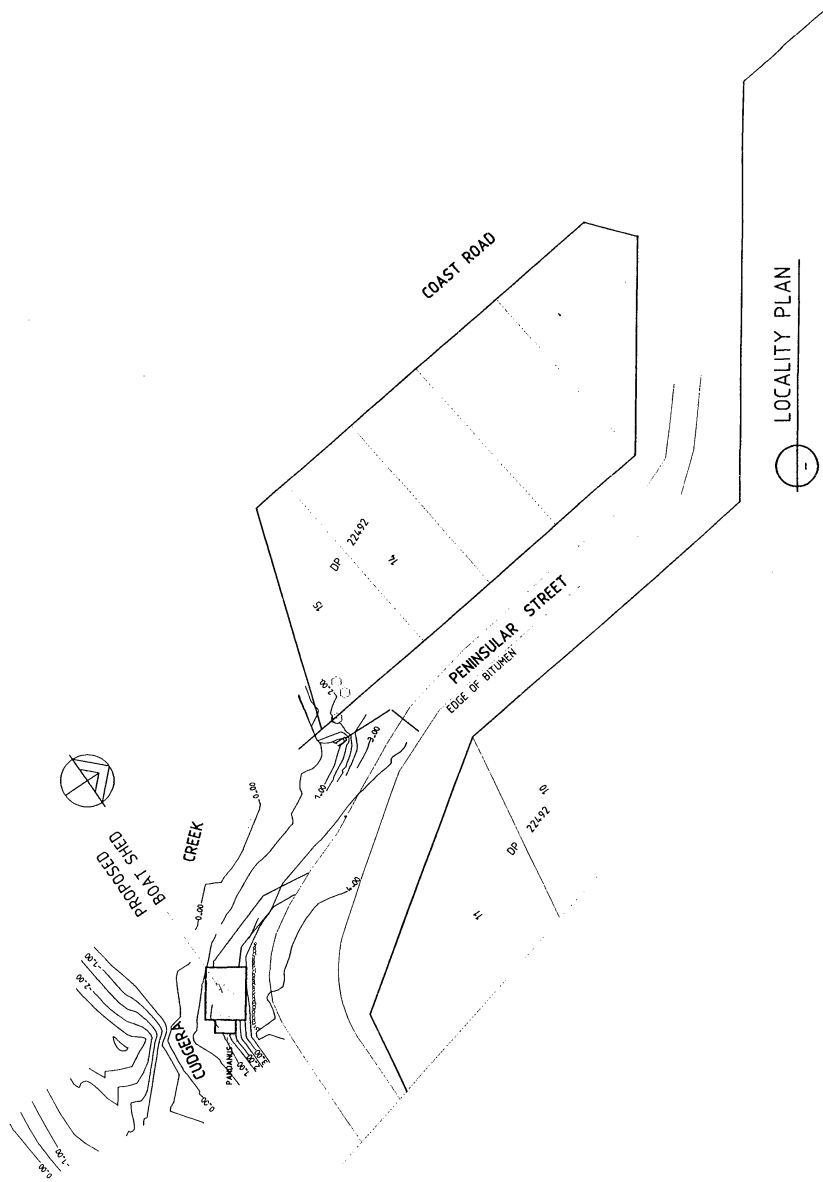
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JOB TITLE  
**PROPOSED BOAT SHED**

DRAWING TITLE  
**LOCALITY PLAN**

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

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

***Tweed LEP 2000 – Definitions***

*The proposal can be defined under Tweed LEP 2000 as an emergency services facility.*

***Clause 13 Development of uncoloured land on the Zone Map***

*The proposal is to be sited within the road reserve, which is unzoned and uncoloured land under Tweed LEP 2000. The objectives of this clause are:*

- *To enable the control of development on unzoned land.*
- *To ensure that development of unzoned land is compatible with surrounding development and zone.*
- *To ensure that development of certain waters takes account of environmental impacts and other users of the water.*

*In deciding whether to issue consent Council must consider whether the proposal is compatible with surrounding development and uses, and development permissible in adjoining zones. Land adjoining this development is zoned 6(a) Open Space, and an emergency service facility which is permissible with consent in that zone under item 2.*

*In terms of the surrounding uses in that occur in Cudgera Creek it is considered that the site of the development is not compatible with the recreational use of the locality and the development may lead to a conflict with the intended recreational use of the land and the surrounding area. Presently this area is in high demand on weekends, school holidays and during the summer by other recreational users. Cudgera Creek is also extremely narrow and shallow at low tides and is utilised heavily by families for swimming and other recreational activities, and the use of it by an emergency service for the launching of a rescue boat is not desirable.*

*Although the applicant has advised that the creek will only be used for access and egress from the boat shed to the ocean for rescues and training and there boat has a shallow draft to negotiate submerged objects and shallow sand banks. However this would mean the boat would have to travel at speed to negotiate these obstacles. This would certainly not be an ideal situation on a busy weekend or during school holidays and presents a liability risk to Tweed Coast Sea Rescue and a safety risk to the public in general.*

*The proposal is considered to be inconsistent with the second and third objective of the clause.*

### **Clause 15 Essential Services**

*The development incorporates a toilet and shower facility and as such will need to be serviced by the sewer. The applicant has proposed to install a sewer pump station to augment the existing infrastructure.*

### **Clause 31 Development Adjoining Waterbodies**

*Proposed Boat Shed is to be sited between Peninsular Street and Cudgera Creek. At present this area is negotiable by recreational users who wish to walk around the creek bank for various recreational activities such as fishing. The boat shed and driveway access will in effect partially restrict the limited public access around this foreshore area, however it is noted ready access is available to the creek on the eastern side of the side of the development and on the opposing bank of the estuary, which has a large sandy beach.*

*As a requirement of this provision the application must be compatible with the applicable Estuary Management Plan. The Tweed Coastal Committee commented on the proposal and resolved that the development was not inconsistent with the Estuary Management Plan for the Creek. It can therefore be considered that adequate arrangements for public access to the creek can be made in terms of the provisions of this clause.*

*The operation of the boat shed is likely to damage mangroves adjacent to the shed from launching and pedestrian traffic. Their removal and relocation to another site within the waterway is normally required. A large pandanus palm exists near the site and should the development proceed appropriate conditions of consent would be recommended requiring its protection. Although the mangroves are few in number their removal has not been supported by NSW Fisheries, and the Department has not issued their general terms of approval.*

### **Clause 35 Acid Sulphate Soils**

*The land is identified as Class 1 Acid Sulphate Soils. An ASS Management Plan has been submitted to neutralise this risk during construction of the development.*



## **North Coast Regional Environment Plan 1988**

### **Clause 32 B Development Control – Coastal Lands**

*Under this clause Council is not to issue development consent to a development that would impede public access to the foreshore area. Public access to the foreshore area is presently restricted at the site of the proposed boat shed due to the width of the “beach” between Peninsular Street and the water edge, although the site is negotiable along the along the foreshore.*

*The proposed boat shed and driveway access is sited on the bank of the creek between Peninsular Street and the water edge. The driveway has a length of some 41 metres and requires substantial earthworks and retaining walls to cut this driveway into the side of the creek bank. From the Engineering drawings submitted these works will encroach into the tidal area of the waterway thus restricting the public’s ability to walk along the banks of Cudgera Creek. It is considered the applicant has failed to demonstrate exactly how public access can be maintained in this area.*

### **Clause 81 Development Adjacent to the Ocean or a Waterway**

*Proposal may impede the public’s access along the foreshore area, but in general it is considered there is sufficient accessible open space for the public in the vicinity of the proposed development. The building takes on the traditional appearance of a boat shed, and would not detract from the visual amenity of the waterway. The application was forwarded to the Tweed Coastal Committee who resolved that the development was not inconsistent with the Estuary Management Plan for the area.*

### **Section 91A of the EPA Act 1979**

*The development requires approval Under Section 200 and 205 of the Fisheries Management Act 1994 for the removal of a stand of mangroves and reclamation. Since the application was in May of 2000 NSW Fisheries have objected to the proposal and refused to issue General terms of approval with their reasons being:*

- *Likely alteration to the tidal Prism through the build up of ocean sands around the proposed building and revetment walls;*
- *The site is a sensitive habitat, likely to be unstable over time (eroding and accreting), as recognised in the Draft Tweed Coast Reserve Plan of Management.*
- *There is considerable potential for lack of ocean going access for the Tweed Coast Sea rescue from the site placing a demand for the mouth of the creek to be dredged. Manipulating the entrances of intermittently opening and closing Coastal Lakes and Lagoons*

*impact on the ecology of the waterway and surrounding vegetation such as mangroves, salt marsh and seagrasses.*

- *High Speed movement of the jet boat in and out of the creek is likely to disrupt recreational fishers and other users of the estuary;*
- *Previous consultation by NSW Fisheries with emergency services reported that Hastings Point was adequately covered for marine emergencies.*

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

*No Draft EPI's affect this proposal.*

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

**DCP No. 2 Site Access and Parking Code**

*Having regard to the size of the development it is considered the provision of two vehicle spaces would be suitable to cater for this development. The applicant would be relying on parking within the public domain which is not consistent with DCP 2. However provided that the applicant understands no spaces will be reserved specifically the rescue facility this may be acceptable considering the use of the boat shed is for emergency purposes only. The access ramp when originally designed would have been difficult for a vehicle to negotiate while reversing a boat trailer. The applicant has prepared amended plans with an access ramp with an appropriate gradient.*

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

*In relation to the Coastal Policy the land is identified under the Coastal Policy, and may be affected by Coastal Processes. The land is westward of the 100 year erosion lines as depicted in the Coastal Hazards Study by WBM Oceanics. However due to it's location on the creek it may be affected by tidal inundation during storm or flood events. Building materials are considered to be capable of short-term inundation, and should the application be approved appropriate conditions would be placed on the consent to ensure all electrics are capable of withstanding inundation.*

**(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**

**Marine Vegetation:** *The proposed development will either require the removal of mangroves or result in there destruction during construction of the boat shed or during operation of the facility. NSW Fisheries have*

*issued their general terms of approval for the removal of this marine vegetation as required.*

**Fuel and Oil:** *Should the development proceed the applicant would be required to install a suitable grease arrestor, and conditions would be placed on any approval prohibiting all maintenance work on the boat other than refuelling.*

**Scenic Amenity:** *Development has been designed as a traditional boat shed and would not adversely impact upon the visual amenity of the creek or neighbourhood. If the application was to be approved conditions would be recommended in relation to the use of non reflective colours, materials and the like.*

**Acid Sulphate Soils:** *Applicant has submitted an ASS Management Plan to manage this risk during construction of the boat shed.*

**(c) Suitability of the site for the development**

**Car Parking:** *No car parking can be provided for members within the site and members would be relying on the use of car parking spaces within the Peninsula Street Road Reserve.*

**Foreshore Access:** *Development likely to restrict foreshore access as it is wedged in between Peninsular Street and the Creek and the applicant has failed to demonstrate how public access along the creek bank can be maintained.*

**The Creek:** *The creek entrance becomes extremely shallow at low tide and is restricted by rocks and the like. The applicant has advised that the Rescue Service utilises a Jet Boat which has a 150 mm draft at speed, and could if need be manhandle the boat across the entrance if there was insufficient water depth. However this raises questions regarding the suitability of locating the Boat Shed on a creek, which may not always be open to provide quick and easy access to open ocean, which should be a prerequisite for an emergency user. Further the creek is also utilised by a range of recreational users for swimming, fishing, canoeing and the entrance to the creek mouth is a popular surfing spot for locals when conditions prevail. This would also provide further hazards for the rescue boat to negotiate on it's way out of the creek and represents a liability risk for Tweed Coast Sea Rescue. The applicant has provided Council a copy of it's liability insurance to the value of \$30 million. Such insurance would be required wherever Tweed Coast Sea Rescue operated from.*

*Further should the organisation get a larger boat, or the creek entrance becomes so shallow it is cant be negotiated by boat, pressure may then be placed on the public authorities like the Council or the Department of*

*Land and Water Conservation to commit funds to keep the creek permanently open. It is noted such funding is unavailable to dredge the creek mouth at Kingscliff highlighting the difficulties in this regard.*

**Access:** *Access into the shed has been improved with the driveway ramp now proposed with an appropriate gradient. It is noted though the access from the road pavement is near the southern boundary to the large dwelling bordering the creek. This may create affect the amenity of this dwelling with vehicles and the like accessing the boat shed after hours*

**Conclusion:** *The siting of the boat shed in it's present location was raised with the applicant, whereby it was suggested more suitable sites in close proximity to the waters edge and not encumbered with the same problems as the Peninsula Street site should be investigated. Attempts have been made to secure the site opposite and adjacent to the existing boat ramp, however the Department of Lands have refused the use of this land for the proposed purpose. This site would not require permits from NSW Fisheries for dredging and reclamation, easy to access, has sufficient area for parking, and in terms of construction cost would be cheaper to build upon. Even better sites may be available on Mooball Creek at Pottsville. This waterway is deeper and wider with a short rock training wall at the mouth of the creek, while the potential for an accident with other recreational users would be further reduced.*

*In conclusion the site is considered unsuitable, and a more favourable sites may be available elsewhere in the area for an emergency facility that would overcome some if not all of these issues.*

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

*Submissions have been received from the Department of Land and Water Conservation and NSW Fisheries. DLWC have advised that Council should be satisfied with the suitability of this site as opposed to other sites in the area, and requested that the applicant verify that the proposal would not create the demand for further works such as dredging. The applicant has advised that the boat in current use by the Tweed Coast Rescue has a draft of only 150 mm and can be manhandled across sand banks if required, and therefore would be no demand to dredge the creek. As discussed above the creek is shallow, utilised for a variety of recreational activities, and the need to manhandle a boat across sand banks would not be desirable in an emergency. The matters raised by DLWC are of concern and the proposed site as discussed above is considered unsuitable.*

*NSW Fisheries although strongly against the proposal since the application was lodged have since the Council Meeting of 1 October*

*2003 decided to issue general terms of approval under the Fisheries Management Act 1994 so the proposal can now proceed.*

*An objection has also been received from a member of the public. The grounds for the objection include:*

- *the unsuitability of the site;*
- *impact upon the amenity of the creek;*
- *noise pollution as jet boats and skis are high revving water craft;*
- *lack of parking within Peninsula Street;*
- *better sites at Mooball Creek – Pottsville;*
- *proposal will impact upon public access to the foreshore;*
- *Shallow nature of the creek and creek mouth;*
- *Conflict with recreational users of the creek including dangers to children swimming and snorkelling in the creek;*
- *Impact from the wake of the boat upon the fragile creek environment causing erosion;*
- *Recreational users of the creek also create a hazard to motorised craft and will reduce response times for the rescue organisation.*

*Issues raised in the objection are considered valid and the site is not considered suitable for the proposed development.*

**(e) Public interest**

*It is considered the development is not in the public interest, as the development will rely on utilising foreshore open space, and in part alienate that part of the Creek from public usage. The Creek is a highly popular spot for recreation and in conjunction with it's physical constraints, its usage as a base for an emergency service provider is not appropriate. As such in an emergency the creek may be difficult to negotiate in a boat, presenting a hazard for recreational users and a liability risk to the rescue organisation itself.*

*Further, should Tweed Sea Rescue replace the boat with a larger craft, pressure may then be place on various public bodies such as Council and DLWC to finance the dredging of the creek.*

**Comments from the Environment and Community Services Division**

**The Environment and Health Service Unit**

*The Unit have recommended against the proposal proceeding on the grounds that site is valuable in terms of ecology and as open space, and the proposed structure will compromise recreational movements along the foreshore area. Although it is recognised marine rescue activities are valuable the proposed site is cannot be supported and an alternative location should be investigated.*

**Building Services Unit**

*No objection to the proposed development subject to conditions of consent pertaining to the construction of the development.*

**Comments from the Engineering Services Division**

*The proposal is located within the road reserve, although car parking is not in accordance with DCP 2 Site Access and Parking Code, no objection is raised subject to the Tweed Coast Sea Rescue Squad understanding that no car parking within the road reserve will be reserved for the squad. Should the application be approved appropriate conditions of consent would apply in terms of the submission of detailed engineering plans and the like to ensure the existing road pavement is protected.*

**OPTIONS:**

1. *Refuse the Development Application.*
2. *Invite the applicant to withdraw the application and investigate a more appropriate site elsewhere on the Tweed Coast.*
3. *Approve the application.*

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

*Should the application be refused the applicant has recourse to have the matter heard in the Land and Environment Court, which has resource implications for Council.*

**POLICY IMPLICATIONS:**

*Nil.*

**CONCLUSION:**

*The proposed site of the Boat Shed is constrained by it's physical and natural attributes which prevent it from being a suitable location. Further the applicant has failed to demonstrate how public access along the foreshore can be maintained, while the creek itself is narrow, shallow and provides for a variety of recreational activities which make the creek difficult to negotiate at the best of times, and more suitable sites are located elsewhere in the area which would negate a number if not all of these concerns. The application is recommended for refusal.*

## **Additional Comments**

Since the report on 1 October 2003, NSW Fisheries have now decided to issue general terms of approval for reclamation and the removal of marine vegetation under Sections 201 and 205 of the Fisheries Management Act 1994. Should Council approve the application, there permit conditions have been included in the following draft *conditions*.

If Council wishes to approve the application then the following conditions of approval should be included in the consent: -

### **GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plans Nos P112WD02 and 03 prepared by Glen Petersen Architects and dated 1/6/99, Launching Plan No. P112 dated August 2000, and Plan No A1 - 288 prepared by Richard Harry Engineering and dated June 2003, except where varied by these conditions. [GEN0010]
  
2. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property. [GEN0030]
  
3. 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]

### **PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

4. 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]

5. Prior to the issue of the Construction Certificate a detailed Engineering Plan to be prepared and certified by a suitably qualified geotechnical/ structural engineer showing the location of the proposed development and accessway. Details to also include batters, rock retaining walls and drainage works required for the driveway and there location within the Peninsular Street Road Reserve. Cross Sections to also be provided indicating where these works lie in terms of the highest astronomical tide of Cudgera Creek. (On December 24, 2003 the Highest astronomical tide is predicted at 2.09m which will reach R.L 1.065 m AHD)

The plans to also include the following detail

- i) Construction materials;
- ii) Traffic Control Plan;
- iii) Details on Retaining walls;
- iv) Guardrail/ Barrier kerb on creek side of driveway;
- v) A two metre wide pedestrain strip between the road pavement and the retaining walls;
- vi) A handrail at the top of the retaining wall adjacent to the road.

[PCCNS01]

6. Prior to the issue of the Construction Certificate all necessary permits are to be obtained from NSW Fisheries under Sections 201 and 205 of the Fisheries Management Act 1994. Should such permits not be required a letter from NSW Fisheries to be submitted with the Construction Certificate advising that such permits are not required.

[PCCNS02]

7. 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]



8. Prior to the issue of the Occupation Certificate, an application is to be submitted to and approved by Council' Director Engineering Services to connect to the sewer. Full engineering details to be provided of the package pump station and rising sewer main to connect with Council's existing infrastructure.

[PCCNS03]

9. 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]

10. 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**

11. 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]

12. 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]

13. 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]

14. 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]

15. 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]

16. 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]

17. 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]

## DURING CONSTRUCTION

18. 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]
19. 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]
20. 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]
21. 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]
22. 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]
23. 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 and driveway 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]
24. 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]

25. All engineering works required to be approved prior to the issue of a construction certificate are to be constructed in accordance with the approval.

[DUR0020]

26. 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]

27. 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]

28. 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]

29. 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]

30. 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]

31. 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]

32. 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]

33. 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]

34. 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:-

- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- \* 50<sup>0</sup>C 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]

35. 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]

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 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]

38. All earth works to comply with the Acid Sulphate Soils Management Plan prepared by HMC Environmental Services dated April 2002.

[DURNS01]

## **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

39. Prior to the issue of the Occupation Certificate all retaining walls are to be certified by a suitably qualified geotechnical/ structural engineer. The certification is to state that the walls have been designed and constructed in accordance with AS4678 - 2002 - Earth Retaining Structures and are structurally sound. [POCNS01]
40. Prior to occupation of the building a Occupation Certificate is to be obtained. If Council is requested to issue the Occupation Certificate, the application must be accompanied by relevant Compliance Certificates or documentary evidence of compliance. [POC0040]
41. 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]
42. 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]
43. Prior to the Issue of the Occupation Certificate, a lease agreement is to be entered into with Tweed Shire Council in respect to the boat shed and driveway constructed within the Peninsula Street Road Reserve. [POCNS02]
44. Prior to the issue of the Occupation Certificate, Tweed Coast Sea Rescue to obtain Public Liability Insurance to a minimum value of \$30,000,000. Documentary Evidence of this to be supplied to Council. Public Liability Insurance to be maintained at all times and to cover all functions of Tweed Coast Sea Rescue Inc and the use of the Boat Shed facility. [POCNS03]

## **USE**

45. 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]
46. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997. [USE0170]
47. Lighting shall not be permitted to impact upon the amenity of any surrounding premises.

[USENS01]

48. Activities carried out at the premises shall not be permitted to impact upon the amenity of any surrounding premises.

[USENS02]

49. The rescue boat shed shall be used only for purposes directly associated with rescue activities such as the launching and storage of rescue watercraft. The premises shall not be used for mechanical repairs. The rescue boat shed shall not be used for social gatherings or sporting events such as the launching of fishing or recreational vessels or watercraft.

[USENS03]

50. All wastes shall be collected, stored and disposed of to the satisfaction of the Director Environment and Community Services.

[USENS04]

51. Any fuels, oils or chemicals shall be stored such that there is no risk of spill or discharge to the environment or creek.

52. Safe public access for fishers shall be maintained along the foreshore in front of the facility.

53. Mangroves and marine vegetation not to be damaged, removed or destroyed through the use of the boat shed and launching facility unless prior approval is obtained from NSW Fisheries and a permit under Section 205 of the Fisheries Management Act 1994 is issued.

[USENS05]

#### **GENERAL TERMS OF APPROVAL UNDER SECTION 201 OF THE FISHERIES MANAGEMENT ACT (Permit To Carry Out Dredging Or Reclamation Work)**

1. A permit under Section 201 of the *Fisheries Management Act 1994* for dredging and reclamation activities must be obtained prior to commencement of works, if these works are to occur below the highest astronomical tide of Cudgera Creek.
2. Environmental safeguards (silt curtains, booms, etc) are to be utilised during construction/installation of the facility, including the driveway and retaining wall, to ensure there is no escape of turbid plumes into the aquatic environment. Erosion and sediment controls must be in place prior to, during and after the commencement of works.
3. Only clean rock fill is to be used for the revetment works.
4. Sand, gravel, silt, topsoil or other materials must not be stockpiled within 50 metres of the water unless adequately contained by sediment control measures.

#### **GENERAL TERMS OF APPROVAL UNDER SECTION 205 OF THE FISHERIES MANAGEMENT ACT (Permit to cut remove damage or destroy marine vegetation on public water land or an aquaculture lease on the foreshore of any such land or**

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**lease)**

1. A permit under section 205 of the *Fisheries Management Act 1994* for harm to marine vegetation (seagrass, mangroves, seaweed) must be obtained prior to commencement of works, if the works are to harm marine vegetation.
2. Mangroves that are harmed under a section 205 permit issued under the *Fisheries Management Act 1994* shall be replaced with compensatory plantings of the same species at a ratio of 2:1 within the Cudgera Creek estuary.

**UNDER SEPARATE COVER:**

Nil.

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**11 [DS] Development Application DA02/1136.03 for an Amendment to Development Consent DA02/1136 for a Mixed Commercial/Tourist Accommodation Development Including 8 Tourist Units at Lot 3 DP 964996 & Lot 2 DP 979921, 32-34 Marine Parade, Kingscliff**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA02/1136 Pt3**

**SUMMARY OF REPORT:**

Council is in receipt of a Section 96 Application seeking an amendment to DA 02/1136, which granted approval for the demolition of an existing two-storey commercial/residential development and the erection of a mixed commercial/retail and tourist accommodation development (known as Nor Nor East).

The S96 application is accompanied by a new set of plans detailing substantial internal and external design changes and seeks to amend or delete nine conditions/specifications relating to roof penetrations (including a lift over run), building classification, pedestrian awnings, future uses; release of subdivision certificate, and access easements.

Whilst some of the requested amendments are considered appropriate and/or necessary most of the requested amendments are not supported. Each amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determination.

**RECOMMENDATION:**

That Development Application DA02/1136.03 for an amendment to Development Consent DA02/1136 for a mixed commercial/tourist accommodation development including 8 tourist units at Lot 3 DP 964996 & Lot 2 DP 979921, 32-34 Marine Parade, Kingscliff be amended in the following manner:

1. No change is recommended to Condition 1 in relation to amended plans.
2. Amend Condition 2 to read as follows:
  2. *The overall height of the building shall not exceed RL 18.4 metres. On completion of the building documentation from a surveyor shall be provided to ensure compliance with this condition.*
3. Relocate Condition 22 and Condition 24 under the heading GENERAL of the consent.

4. The consent to be amended to reflect the following Building Code of Australia Classifications:

Building Code of Australia Building Classification: 3, 6 & 7

5. Amend Condition 87 to read as follows:

*87. No part of the building other than the pedestrian awnings and associated screens and anchors are to protrude beyond the confines of the property boundary*

6. No change is recommended to condition 97 in relation to future uses.

7. No change is recommended to condition 98 in relation to the release of a subdivision certificate.

8. Amend Condition 99i to read as follows:

*99. (i) The creation of an access easement under Section 88B of the Conveyancing Act creating rights of ingress and egress by way of easement in favour of 30 Marine Parade if owned by the same owner as 32-34 Marine Parade or the owners are related parties. The purpose of the Section 88B instrument allowing ingress and egress is for the purposes of allowing the owner of 30 Marine Parade to utilise as a vehicle access point the entry from Hungerford Lane to 32-34 Marine Parade and to be able to access its own car park through the existing entrance and car park at 32-34 Marine Parade.*

9. No change is recommended to condition 99(ii) in relation to future café/restaurant uses.

## **REPORT:**

**Applicant:** Pacific Projects Group (Developments) Pty Ltd  
**Owner:** Brosnan Hotels Pty Ltd and Brosnan Family Pty Ltd  
**Location:** Lot 3 DP 964996 & Lot 2 DP 979921, 32-34 Marine Parade, Kingscliff  
**Zoning:** 3(b) General Business  
**Cost:** \$1,900,000.00

## **BACKGROUND:**

Council originally received the development application in July 2002. It sought approval for the demolition of an existing two-storey commercial/residential development and the erection of a mixed commercial/retail and residential development. However, given the number and nature of objections originally received and the advice of non-acceptability by the Director Development Services, the applicant lodged a revised development application changing the development in both design and in nature by reducing the bulk of the building and replacing residential development with tourist accommodation. This change in use allowed for several compensations in terms of on site parking, setback requirements, and S94 contributions, and subsequently resulted in a development that was more compliant with the numerical controls than the originally submitted plans (however, some variations were still sought including a variation to allow the building to be partially four storeys). The approved development comprised three (3) retail/commercial premises on the ground floor to Marine Parade and 8 tourist accommodation apartments, in a part three and four storey building.

The application was reported to the Council Meetings of the 18 June 2003 and the Extra Ordinary Meeting of the 25 June 2003. It was recommended for approval subject to strict conditions of consent relating to height, future uses and a recommendation that Council review its policy in relation to the controls affecting tourist orientated development compared to residential accommodation. Council resolved to approve the application subject to varying numerous conditions of consent in relation to height, access to the adjoining allotments, future uses, and the deletion of the recommendation for a policy review. However, a rescission motion was lodged for this recommendation and the matter was subsequently further discussed at the Council Meeting of the 2 July 2003.

The rescission motion was lost and consequently the development application was approved subject to the amended conditions of consent.

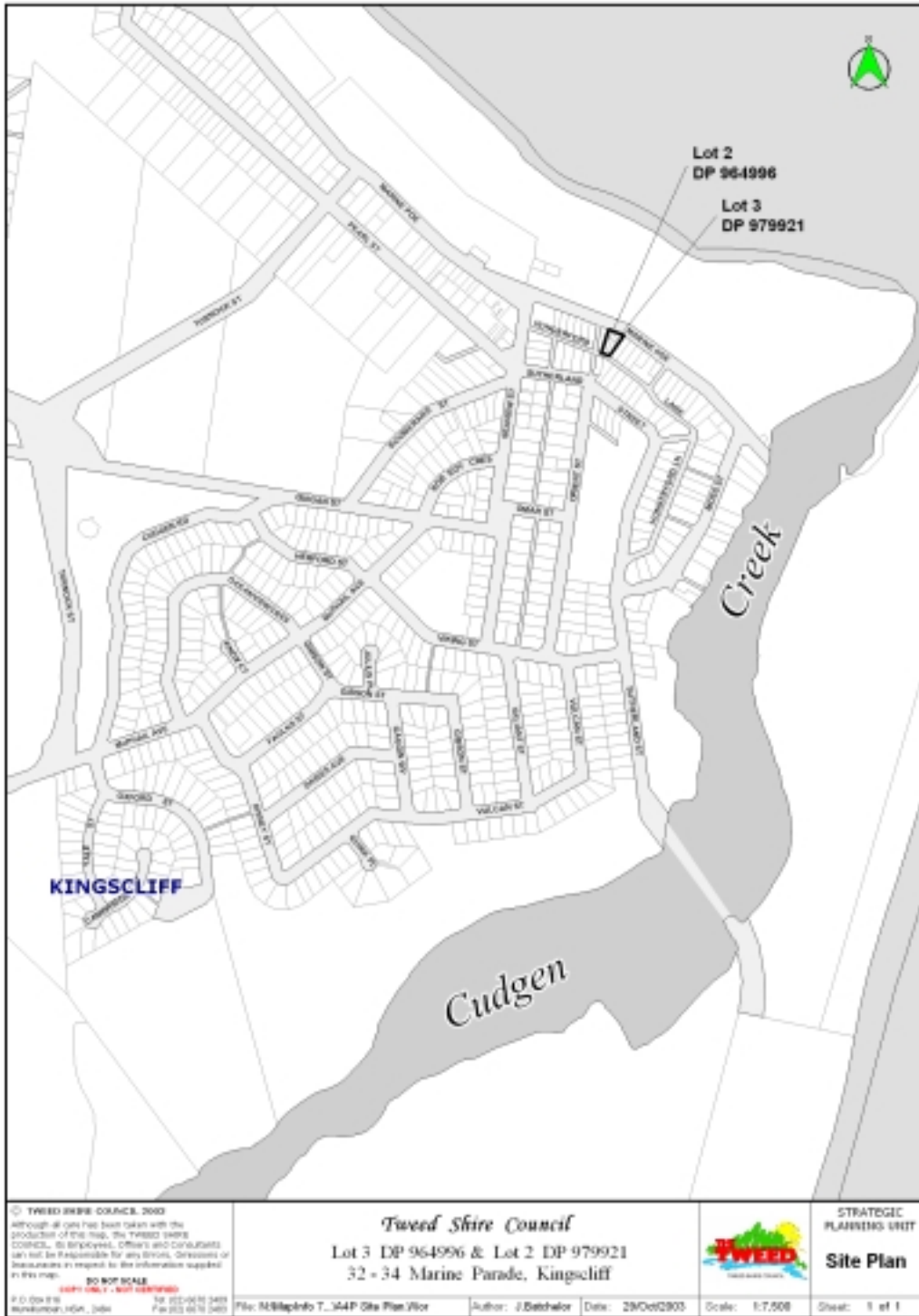
Council is now in receipt of a S96 Application, which seeks numerous variations to the conditions of consent.

The S96 Application was subsequently re-notified to the original adjoining properties that were notified in addition to the original objectors to the proposal. The application was also advertised in the Tweed Link for fourteen days between 1 October 2003 and 16 October 2003. During this time Council received eleven submissions in relation to the S96 Application. The letters mainly objected to the introduction of a lift over-run which was not originally proposed, objected to any increase in height, objected to the deletion

of those conditions enforcing the approved and future uses of the building and objected to roof penetrations on the upper most level as opposed to the lower levels along Marine Parade. These objections are discussed in more detail later in the report.

Following is an assessment of each of these requests of amendment purely on the merit of the request itself rather than re-visiting the original determination. Whilst some of the requested amendments are considered appropriate and/or necessary most of the requested amendments are not supported.

**SITE DIAGRAM:**



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

S96 of the Act specifies that on application being made by the applicant a consent authority can modify the development consent only if it is satisfied that the proposed modified development is substantially the same as the approved development and that all relevant consultations and submissions have been undertaken.

Having regard for these criteria the variations are assessed as follows:

### **Variation 1 - Amendment to the submitted drawings**

***The applicant has lodged amended drawings SK01 Revision B - SK07 Revision B which detail design changes which are largely internalised and insignificant changes in the impacts under the planning guidelines. The design changes are mainly internal and have increased the facilities for the tourist to reinforce the identity as a tourist destination.***

The amended plans makes several substantial changes to the originally approved plans, these are recognised to be:

- A revised ground floor plan which shows one single open floor plan compared to the approved smaller three commercial tenancies originally approved;
- A revised ground floor plan with a new entry point for the tourist component;
- New Balcony configurations to Units 101 & 102;
- New internal configurations to Units 101 & 102 & 103 incorporating new laundry facilities, formalised third bedrooms and the introduction of void areas to provide light into the bedrooms;
- The incorporation of a new gymnasium, theatre, sauna at the first floor level currently labelled as void area;
- New balcony configurations to Units 201 & 202 & 203;
- New internal configurations to Units 201 & 202 & 203, incorporating new laundry facilities, formalised third bedrooms and the introduction to void areas above;
- The internal configuration changes to the second level necessitate a stairwell being pushed back into the car parking area which reduces the size of car parking space No. 6;
- The amended plans indicate future access to the neighbouring 30 Marine Parade via car parking spaces 7 & 8;
- New internal configurations to Units 301 & 302, incorporating new laundry facilities a new stair well, and the reconfiguration of balconies facing Hungerford Lane;
- The amended sections and elevations are now also indicating a lift over run to a maximum height of RL 19.9m and additional roof penetrations for car exhaust ventilations and additional service pipes beyond the nominated allowable height of RL 18.4m.

Whilst some of the internal re-configurations are of little significance there are other elements that if supported would change the nature of the development to question whether it was substantially the same development pursuant to S96 of the Environmental Planning & Assessment Act 1979.

The ground floor plan was originally approved with three separate retail/commercial tenancies (not restaurant or café). The amended plans show this area as a large open floor area, which could potentially attract a completely different type of business than that originally endorsed in a three-shop layout. Furthermore the submitted amended plans do not provide the final proposed layout and leaves uncertainty to the number and nature of commercial/retail development proposed. Additionally, the S94 contributions have been calculated on the basis of three tenancies. Any change to the original layout is not supported and would change the nature of the original approval.

The incorporation of a new gymnasium, theatre, and sauna at the first floor level (currently labelled as void area) whilst in concept actually endorses the concept of the premises as tourist accommodation further reduces the space available for services such as mechanical ventilation as originally specified by the applicant. If this void area was to be removed or reduced in size the only remaining space for services would be on the roof plane of the highest most point of the building, which is the most visually prominent and the location which would cause the most disruption to the amenity of the adjoining neighbours through view loss, unpleasant outlook, smell of exhaust fumes, smell of kitchen fumes etc. Therefore any change in layout is not supported without the guarantee that all services in relation to the lift, mechanical services, kitchen exhaust, car exhaust etc are adequately catered for away from the upper most level of the roof and below the maximum nominated height of RL 18.4m

The re-configuration to the second floor plan pushes a stairwell into the nominated parking space (No. 6) which reduces the size of this space from 3.5 x 7.2m to as low as 2.4 x 5.2 which is inadequate. Furthermore, spaces No. 7 and No. 8 are marked for future disruption through the introduction of access to 30 Marine Parade via the subject site as recommended by the Council imposed Condition No. 99 i. It should be noted that Council's Development Control Plan No. 2 - Onsite Car Parking specifies that car parking for residential type use (including tourist uses) must be provided for onsite, which is why the absolute minimum number of spaces on site is 8. If space No. 6 is disrupted for the proposed stairwell and spaces 7 and 8 are removed to provide for through access this development will not meet the minimum requirements as required by Council Policy.

The original application specifically omitted any form of lift over-run. The applicant provided at public meetings that there would be no lift over run and that there would be nothing jutting above the nominated roof height. Whilst condition 2 made reference to a lift overrun not exceeding 1.5 metres above the maximum nominated height, the approved plans did not need a lift over-run and were to rely on an alternative lift design and type, which did not need a lift over-run. The reference to 1.5 metres was made in error from a standard condition and therefore, as the applicant is seeking the introduction of a lift over run Council can refuse that part of the Section 96 by not endorsing the amended plans and by deleting reference to a lift over run as part of condition No. 2.

As demonstrated above, the proposed amendments to the configuration of the building whilst presented as minor, are actually significant and could potentially result in a building not substantially the same as that originally approved. The minor internal alterations to the unit configurations could be supported, however, they cannot be endorsed via the submitted amended plans given the number of alterations that are not supported.

Subsequently it is recommended that the amended plans be refused and that no change is made to Council's originally imposed condition No. 1.

**Variation 2 - Provision for roof penetrations beyond the max roof height**

***The applicant has requested an amendment to Condition 2 to allow a maximum height of 1.6m to allow for the possibility of kitchen exhaust facilities as required under the Building Code of Australia. In addition the applicant has asked that the condition be widened to include the provision of any and all statutory required items such as vent pipes and any other roof penetrations etc.***

***However, subsequent correspondence from the applicant has indicated that they no longer request an amendment to the actual height stipulated within this condition but rather just incorporate the provision of any and all statutory required items such as vent pipes and any other roof penetrations etc.***

This effectively requires an amendment to condition 2 of the consent, which currently reads as follows:

2. The overall height of the building shall not exceed RL 18.4 metres (excluding any lift over run which shall be no greater than 1.5m above this nominated height). On completion of the building documentation from a surveyor shall be provided to ensure compliance with this condition.

This request is contrary to the applicant's original comments stating that nothing would extend above the nominated roof height. The nominated void area was intended to provide space for mechanical plant equipment and any associated services.

The applicant adamantly provided at public meetings that there would be no lift over run and that there would be nothing jutting above the nominated roof height. Now whilst condition 2 made reference to a lift overrun not exceeding 1.5 metres above the maximum nominated height, the approved plans did not need a lift over-run and were to rely on an alternative lift design and type. The reference to 1.5 metres was made in error from a standard condition and therefore, as the applicant is seeking the introduction of a lift over run Council can refuse that part of the Section 96 by not endorsing the amended plans and by deleting reference to the additional 1.5m and the mention of a lift over run as part of condition No. 2. Furthermore, Council should not be endorsing additional services to be utilising the roof space when the applicant has previously provided the void area for such services.



Therefore, it is recommended that Condition 2 of the consent, shall be amended to delete all references to a lift over run and delete reference to an additional 1.5m in height, and subsequently read as follows;

2. The overall height of the building shall not exceed RL 18.4 metres. On completion of the building documentation from a surveyor shall be provided to ensure compliance with this condition.

**Variation 3 - Demolition prior to payment of contributions**

***The applicant has requested that demolition should be permitted prior to payment of any contributions and before the issue of the construction certificate so as to enable preliminary demolition and site investigation and geotechnical examination. This will dramatically reduce any risk in assessing the impact of the construction of the proposed development on the adjoining properties to satisfy clause 22 of the DA conditions.***

The applicant has provided that this is necessary to satisfy condition 22, which currently reads as follows:

22. Provide an engineers design statement that the proposed excavation and necessary retaining can be achieved without affecting the integrity of the adjoining properties and structures thereon including the public roadway known as Hungerford Lane. The engineer is to advise in the above statement if it will be necessary to enter onto the adjoining land to carry out or do any work and if so consent from the affected landowners will be required for the specific work.

Council would not normally require a Construction Certificate for the demolition of work, however, the location of this condition (under the heading of Prior to Issue of a Construction Certificate) requires this condition to be satisfied for any Construction Certificate to be released and furthermore, contributions are also required to be paid prior to the issue of a Construction Certificate.

Therefore, it is recommended to relocate conditions 22 and 24 (which also relates to demolition) under the heading GENERAL.

Condition 24 reads as follows: -

*"24. Provide details to demonstrate that the demolition and construction on the site can be carried out in a manner to minimise nuisance to surrounding properties and that traffic control, pedestrian diversion and construction loading and storage areas are available."*

It should be further noted that Council is in receipt of a Development Application DA03/1471, which seeks separate consent for the demolition of the existing buildings on the subject site. Council has currently requested additional information from the applicant, however, any consent issued will be consistent with the conditions of consent

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imposed on this development application to ensure that the integrity of this consent is maintained and not contravened by an alternative consent.

**Variation 4 - Building Code of Australia (BCA) Classification**

***The BCA classification of 2 for the residential component is incorrect and needs to be amended to a class 3 Building Code of Australia type.***

This effectively requires an amendment to the below table which appears after all the conditions of consent which, currently reads as follows:

Building Code of Australia Building Classification:	2, 6 & 7
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The applicant has correctly stated that the BCA classification of 2 for the tourist component of the application is actually incorrect and needs to be amended to a class 3 Building Code of Australia type.

The notice of determination incorrectly stated that the BCA class was two (2). This occurred as at the time of original lodgement of the application the applicant specified that the upper floors were to be used for residential purposes which are categorised as a class 2 building for the purposes of the BCA.

When the application was amended to tourist accommodation the building class should have been amended to a Class 3 building in accordance with the BCA. Unfortunately this did not occur.

Therefore this amendment allows Council to amend a previous error and subsequently it is recommended as follows:

Building Code of Australia Building Classification:	3, 6 & 7
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**Variation 5 - Screens and associated attachments beyond property boundaries.**

***The applicant has requested that condition 87 be changed to include the proposed screens, which are attached to the pedestrian awning and also the second floor awning which anchors the screens back to the building. These designs have not changed from the previous DA approval and the applicant believes that this is an oversight within the conditions.***

This effectively requires an amendment to condition 87 of the consent, which currently reads as follows:

- 87. No part of the building other than the pedestrian awning are to protrude beyond the confines of the property boundary.

The applicant has requested that Condition 87 be changed to include the proposed screens, which are attached to the pedestrian awning and also the second floor awning, which anchors the screens back to the building. These designs have not changed from the previous DA approval and to ensure compliance with condition 87 the applicant has requested that the condition specifically mention both the screens and anchors associated with the pedestrian awnings.

This is a reasonable request and should have limited impact on any adjoining property owner, subsequently it is recommended that condition 87 of the consent, be amended to read as follows:

87. No part of the building other than the pedestrian awnings and associated screens and anchors are to protrude beyond the confines of the property boundary

**Variation 6 - Future uses require new approvals & S94 fees & parking may apply.**

**Condition 97 is superfluous and as such the applicant feels it should be removed from the DA conditions.**

This request requires the deletion of condition 97 of the consent, which currently reads as follows:

97. This application has approved 8 tourist accommodation units and 3 retail outlets. Any future change of use shall be subject to separate approval and may attract additional parking requirements and additional Section 94 contributions.

The condition merely states what the DA has granted approval for and further advises anyone who reads the consent that if a change of use is sought Council requires the lodgement of a new development application and that any new use may attract additional parking and S94 contributions.

This condition is considered prudent given that the DA as approved only provided 8 onsite parking spaces to ensure compliance with the requirements for tourist accommodation, as it is a requirement of the DCP to have all residential parking requirements onsite.

The remaining deficient 7.7 spaces for customers and staff associated with the commercial element were satisfied by a monetary contribution in lieu of the unsupplied spaces. In accordance with Section 94 Contribution Plan No. 23 the unsupplied car parking spaces were charged at \$11,500 per space. Consequently a condition of consent was imposed requiring the payment of \$92,000.

This means that without increasing onsite parking (which is not physically possible on the site) it is not possible for the Council to approve a change from tourist accommodation to permanent residential accommodation or a change from retail development to a

restaurant/café without waiving the requirements for additional parking. Any interested person should be aware of this predicament.

Furthermore, this type of condition is standard and is not considered superfluous, onerous or a burden for the applicant. Therefore its retention is strongly recommended.

**Variation 7 - Subdivision Certificate released once all conditions complied with.**

**Condition 98 is superfluous and as such the applicant feels it should be removed from the DA conditions.**

This request requires the deletion of condition 98 of the consent, which currently reads as follows:

98. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of Development Consent No DA02/1136 have been complied with.

The condition merely states that a Subdivision Certificate will not be issued by the General Manager until such time as all conditions of Development consent No. DA02/1136 have been complied with.

This condition is standard and is not considered superfluous, onerous or a burden for the applicant. Therefore its retention is strongly recommended.

**Variation 8 - Access Easement**

This variation request purely seeks to modify a typographical error that uses the word "is" instead of "if" and therefore no objection is raised.

This amendment is a reasonable request and will have no additional impact to that of the original condition, subsequently it is recommended that condition 99 i of the consent, be amended to read as follows:

99. i The creation of an access easement under Section 88B of the Conveyancing Act creating rights of ingress and egress by way of easement in favour of 30 Marine Parade if owned by the same owner as 32-34 Marine Parade or the owners are related parties. The purpose of the Section 88B instrument allowing ingress and egress is for the purposes of allowing the owner of 30 Marine Parade to utilise as a vehicle access point the entry from Hungerford Lane to 32-34 Marine Parade and to be able to access its own car park through the existing entrance and car park at 32-34 Marine Parade.

**Variation 9 - No future café/restaurant use without prior consent**

**Condition 99 ii superfluous and as such we feel it should be removed from the DA conditions.**

This request requires the deletion of conditions 99 ii of the consent, which currently reads as follows:

- 99 ii The approved retail/commercial units are not to be used for restaurant or café use without prior development consent.

This request requires the deletion of condition 99 ii of the consent, which enforces the approval by specifying that the approved retail/commercial units are not to be used for restaurant or café use without prior development consent.

As detail above this is considered to be critical as the site has been developed to the maximum level and does not have adequate onsite parking for the existing approved uses without increasing the sites intensity any further. If the smallest retail tenancy were to be converted to a restaurant or café, Council's Development Control Plan No. 2 - Onsite Parking would require an additional 11-onsite parking spaces. This is not physically possible given the extent of development that has already been approved. Council would need to consider whether accepting further S94 Contributions for unsupplied parking spaces is adequate or whether the deficiencies indicate an over development of the site. Any interested person should be aware of this predicament.

This condition is standard and is not considered superfluous, onerous or a burden for the applicant. Therefore its retention is strongly recommended.

Subject to the recommendation to partially support the proposed variations Council is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.

There were no conditions of consent imposed as a requirement of concurrence to the consent and subsequently no variation to such a condition. The S96 application was not required to be referred to the Minister or any such concurrence authority.

The S96 application was subsequently re-notified to the original adjoining properties that were notified in addition to the original objectors to the proposal. The application was also advertised in the Tweed Link for fourteen days between 1 October 2003 and 16 October 2003. During this time Council received eleven submissions in relation to the S96 Application. The following table details the areas of concerns raised in these submissions and concludes whether the issues raised requires further amendment to the application:

**Table 1 - Issues raised in objection to the S96 Application**

SUBMISSION	IMPACT ASSESSMENT	COMMENT
The building is partly four storeys and no further height addition should be supported.	The introduction of a lift over run to a height of 1.5 metres would be unacceptable given the potential impact on the amenity of adjoining residences where it can be avoided via an alternative lift.	This objection contributes to the recommendation.

SUBMISSION	IMPACT ASSESSMENT	COMMENT
Kitchen exhaust facilities should not be needed as no commercial restaurant or café has been approved.	These comments are concurred with and substantiate why standard conditions regarding the approved use should be retained.	This objection contributes to the recommendation.
Internal changes to incorporate a gymnasium and theatre raise no strong objection, however, any external change is strongly opposed.	The incorporation of a gymnasium and small theatre room actually further ensures that the proposed development would appeal to tourists as opposed to permanent residents, however, these internal changes utilise the previous void area which reduces the available spaces for technical services, and should therefore not be supported.	This objection contributes to the recommendation.
The proposed changes to condition 2 are strongly opposed. Why should kitchen exhaust facilities and other vent pipes that service commercial development be located at the highest point of the building and nearest the adjoining residential development as opposed to the lower Marine Parade elevations?	<p>These comments/concerns are concurred with.</p> <p>Council imposed a maximum height limit to the overall building, which should and can include the provision for services.</p> <p>All required services could be alternatively located on or within the building without further adversely affecting adjoining properties.</p> <p>The original submission detailed that there would be no lift over run and that services would be located within the proposed void area, if development of this void area results in a deficient area for service the S96 Application should be refused.</p>	This objection contributes to the recommendation.
The addition of a lift over-run in the amended plans is completely contrary to promises previously made by the developer.	The original application did not include the provision for a lift over run. The applicant provided that no lift overrun would be necessary and stated at a public meeting that nothing would extend above the roofline.	This objection contributes to the recommendation.
No objections raised to the request to change the BCA class.	This requested change provides Council with an opportunity to amend a previous error as a result of the change in nature of the Development Application from residential to tourist.	Therefore, it is recommended to amend the consent to reflect the correct BCA Class.
No objections raised to changes to condition 87.	The changes proposed to condition 87 are insignificant and merely clearly specify what is considered acceptable in terms of property boundary encroachments.	This amendment has been incorporated into the recommendation.

SUBMISSION	IMPACT ASSESSMENT	COMMENT
Strong objections are raised to the deletion of conditions 97, 98 & 99 ii pertaining to the approved use and any future uses. This condition enforces the claimed use, which has been granted numerous concessions.	The deletion of these condition is unnecessary, as it presents no burden to the applicant provided that they intend to comply with Council's provisions. The condition ensures that any interested party is completely aware of the applicable provisions relating to this approval.	The deletion of these conditions are not supported.

These submissions have been considered in the assessment of the S96 Application and contribute to the recommendation.

In determining this S96 modification, an assessment has been undertaken having regard to the relevantly applicable matters referred to in section 79C of the Environmental Planning & Assessment Act 1979.

The application does not raise concern having regard to any Threatened Species. It is considered that the recommended amendments will result in substantially the same development as approved and therefore can be dealt with pursuant to Section 96 (2) of the Environmental Planning & Assessment Act, 1979.

#### **OPTIONS:**

1. Endorse the recommendation, which partially approves some elements of the S96 application; or
2. Refuse the entire S96 Application.
3. Approve the S96 application (however elements of the S96 application do not appear to be substantially the same development as required by the provisions of S96 and therefore further assessment in relation to substantially the same development may be required if this option is preferred).

#### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should Council refuse the S96 Application or only partially approve the S96 Application, the applicant has a right of appeal to the Land & Environment Court.

#### **POLICY IMPLICATIONS:**

As with the original Development Application, there is potential for this S96 Application to create an undesirable precedent. The imposition of standard conditions is imperative to ensure that Council's approvals are upheld in accordance with the appropriate provisions.

Furthermore, there is a critical and urgent need for Council to finalise decision making on the draft DCP for Heights of Buildings; the draft LEP Amendment No. 46, provisions relating to tourism development; and urban design outcomes and policies for the sector

of Kingscliff bounded by Marine Parade, Seaview Street, Sutherland Street and Moss Street.

**CONCLUSION:**

Each proposed amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determination. Whilst some of the requested amendments are considered appropriate and/or necessary the majority of the requested amendments should not be supported.

Having assessed the S96 Application against the current applicable controls, the application is considered to warrant partial approval. The original conditions of consent ensure that the development operates and is constructed in accordance with the relevant controls and should therefore be upheld in accordance with the recommendation.

**UNDER SEPARATE COVER:**

Nil.

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**12 [DS] Development Application D90/0016.01 for an Amendment to Development Consent D90/0016 for the Erection of Factory Complex at Lot 3 DP 603333 (Lot 6 SP 38152) Ourimbah Road, Tweed Heads**

**ORIGIN:**

**Development Assessment**

**FILE NO: PF3970/100**

**SUMMARY OF REPORT:**

Council has received a development application for the construction of an industrial shed on a development lot (Lot 6) within Strata Plan 38152, Ourimbah Road, Tweed Heads. The Development Lot has plans approved over it under Development Consent D90/0016 (The Erection of a Factory Complex) and registered under the Strata Plan as a Development Statement. According to the Development Statement the development of this land is to be carried out as Stage 2. This Consent is still active as it was a Staged Consent with Stage 1 having been completed in the early 1990's. The proposal as originally submitted varies from the Development Statement and the applicant did not have a resolution of the Body Corporate to carry out a development contrary to what has already been approved and agreed to.

The application was reported to Council on 15 October 2003 with a recommendation for refusal, as the applicant had failed to provide Council with documentary evidence that the Body Corporate had resolved to amend the Development Statement. Council however resolved as follows: -

*"that Council defers making a decision on the application until the meeting on 5 November 2003 following receipt of a resolution from the Body Corporate confirming their support for the proposal and endorsing a new development statement for Lot 6 SP 38152."*

As the original consent is still active the applicant has resubmitted the proposal as an amendment under Section 96 of the Environmental Planning and Assessment Act 1979. The applicant has also submitted a resolution of the Body Corporate to support the amendment to the Development Statement.

The proposed development is substantially the same as that approved under D90/0016, and satisfies the provisions of Section 96 of the Environmental Planning and Assessment Act 1979. The proposal is also consistent with Council's planning controls and guidelines and it is recommended the Section 96 Application be approved subject to amended conditions of Consent.

**RECOMMENDATION:**

That Development Application D90/0016.01 for an amendment to Development Consent D90/0016 for the erection of factory complex at Lot 3 DP 603333, Ourimbah Road, Tweed Heads be approved subject to the following conditions: -

1. Condition No. 1 be amended to read
  1. Development to be generally in accordance with Plans No. 1 to 4 dated 4 February, 1990, received by Council on 6 February 1990, and Plans No. 5, 6 and 7 dated February 2003, except where varied by these conditions.
2. Condition No. 5 be amended to read
  5. The provision of thirty three (33) on site car parking spaces in accordance with Council's adopted car parking code. Car Parking Space No. 18 to be designated a staff parking space for the owner/ operator of the adjacent building. The car port over spaces No. 19 and 20 is to be designed and constructed to not affect these car space. Details to be submitted with the Construction Certificate.
3. Add New Condition as Condition 18
  18. Prior to the issue of the Occupation Certificate the Development Statement is to be amended and registered with the Land and Property Information Office

**REPORT:**

**Applicant:** Ted Hale Rowing Pty Limited  
**Owner:** Mr KC & Mrs JM Rhodes  
**Location:** Lot 3 DP 603333 (Lot 6 SP 38152) Ourimbah Road, Tweed Heads  
**Zoning:** 4(a) Industrial  
**Cost:** \$43,000.00

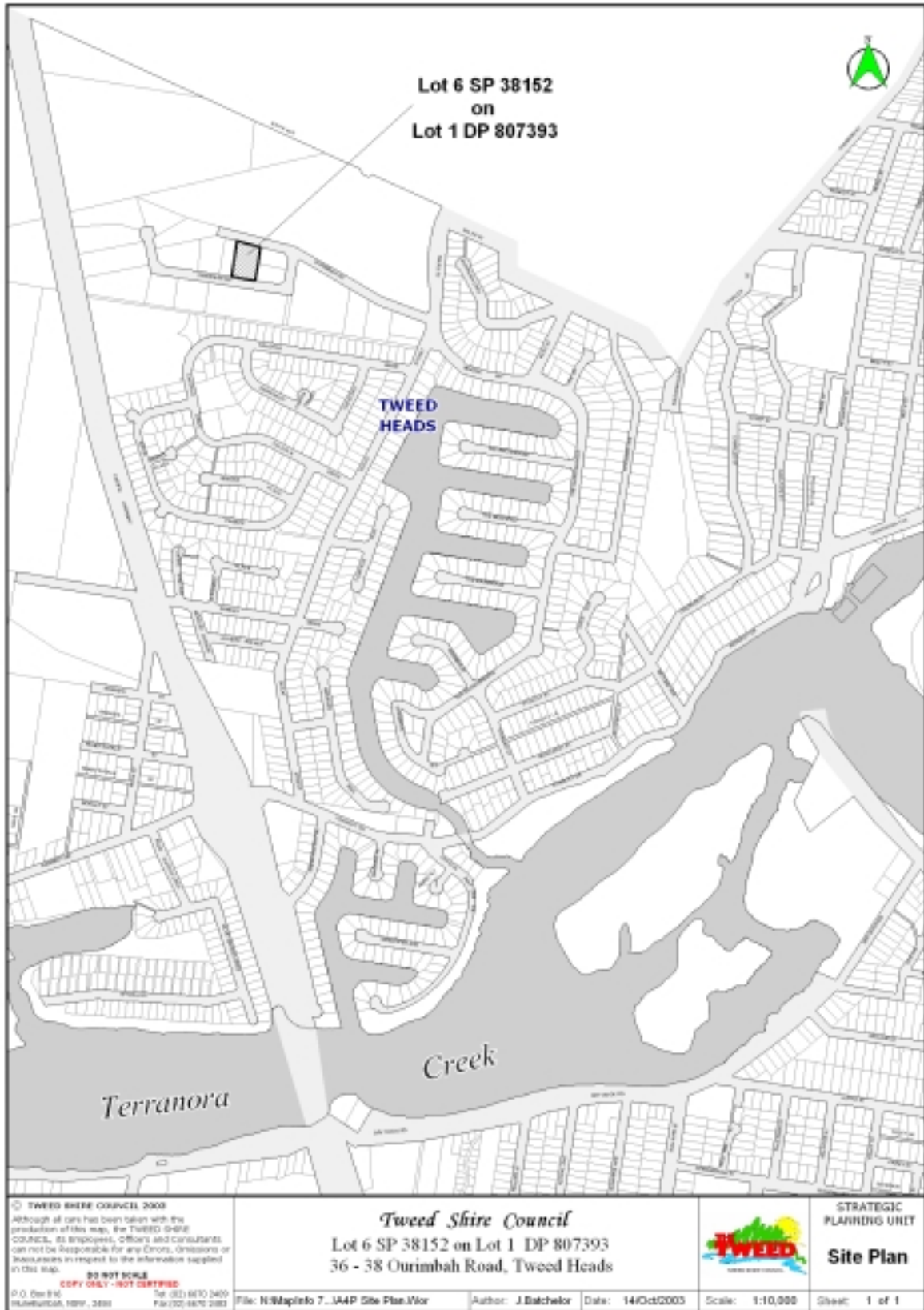
**BACKGROUND:**

Council issued Development Consent D90/0016 on 9 February 1990 for a factory complex to be constructed in three stages on land at Ourimbah Road, Tweed Heads. Council has received a Section 96 Application to amend Development Consent D90/0016 to alter the design of a shed identified as Building E on the approved Plans. The land has also been subdivided under Strata Title and a Development statement exists for the undeveloped portion of the property. The applicant has submitted a resolution from the body corporate to amend the Development Statement. It is also proposed to use the shed for the storage of Machinery and Equipment associated with an Earthmoving Business.

The proposal differs in design to what has been approved under Development Consent D90/0016 and what is registered under the Development Statement. Differences observed between the Type E Building and the current proposal include:

- The shed is larger by approximately 8m<sup>2</sup>;
- Alterations have been made to the shed in terms of the location of doors, windows and roller doors; and
- A carport has been added to the western elevation.

**SITE DIAGRAM:**



**FORM 1** WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION OFFICE USE ONLY

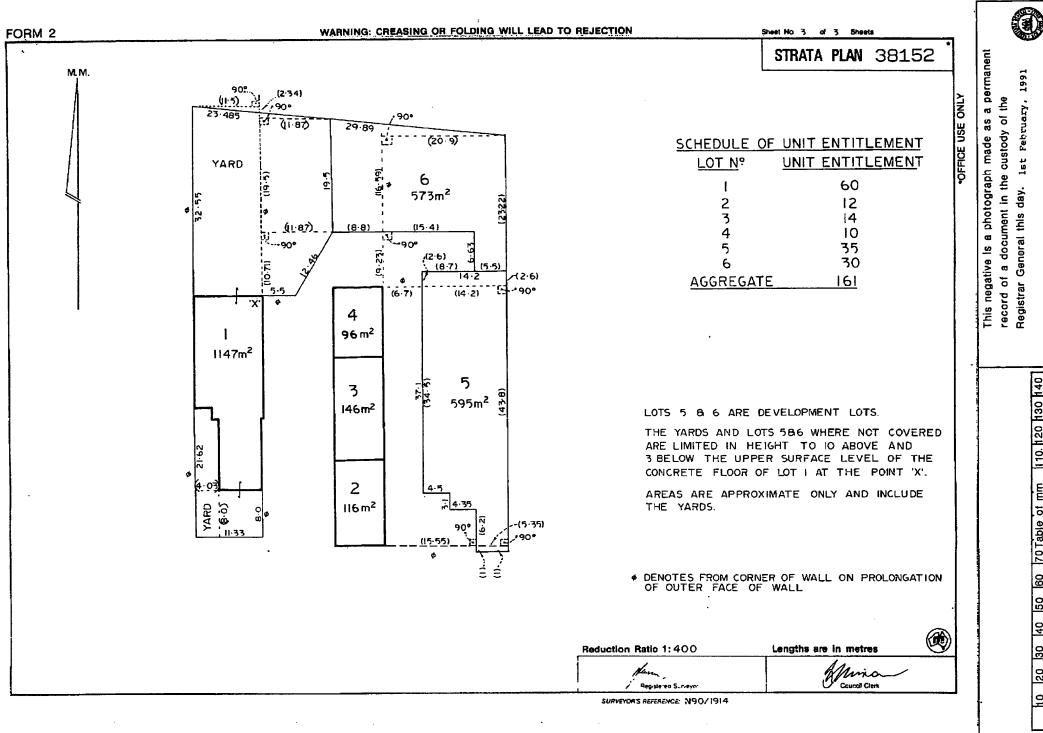
<p><b>COUNCIL CERTIFICATION</b></p> <p>The Council of the Shire of Tweed Heads has approved this plan as a development scheme under the provisions of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000.</p> <p>The Council is satisfied that the plan is consistent with the provisions of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000.</p> <p>Date: 9/11/99</p> <p>Council Clerk: <i>Amia</i></p>	<p><b>PLAN OF SUBDIVISION OF LOTS 2 &amp; 3 IN D.P. 603333 LOT 1 IN DP 807393</b></p> <p>Shire of Tweed City: TWEED Locality: TWEED HEADS</p> <p>Parish: TERRANORA County: ROUS</p> <p>Reduction Ratio 1:800 Lengths are in metres</p>	<p><b>STRATA PLAN 38152</b></p> <p>Registered 24/1/1991</p> <p>C.A. No. 83/90 OF 9/11/90</p> <p>Purpose STRATA PLAN</p> <p>Ref. Map X4975-91</p> <p>Last Plan DP 807393</p>	NOT TO SCALE
<p>Signatures, seals and statements of intention to create easements, restrictions on the use of land or positive covenants.</p> <p><i>G.H. Smith</i> <i>G. Smith</i></p> <p>THIS PLAN CONTAINS A DEVELOPMENT STATEMENT CONSISTING OF 9 SHEETS.</p>		<p>Plan Drawing only to appear in this space</p>	

**FORM 2** WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION SHEET No. 2 of 3 Sheets OFFICE USE ONLY

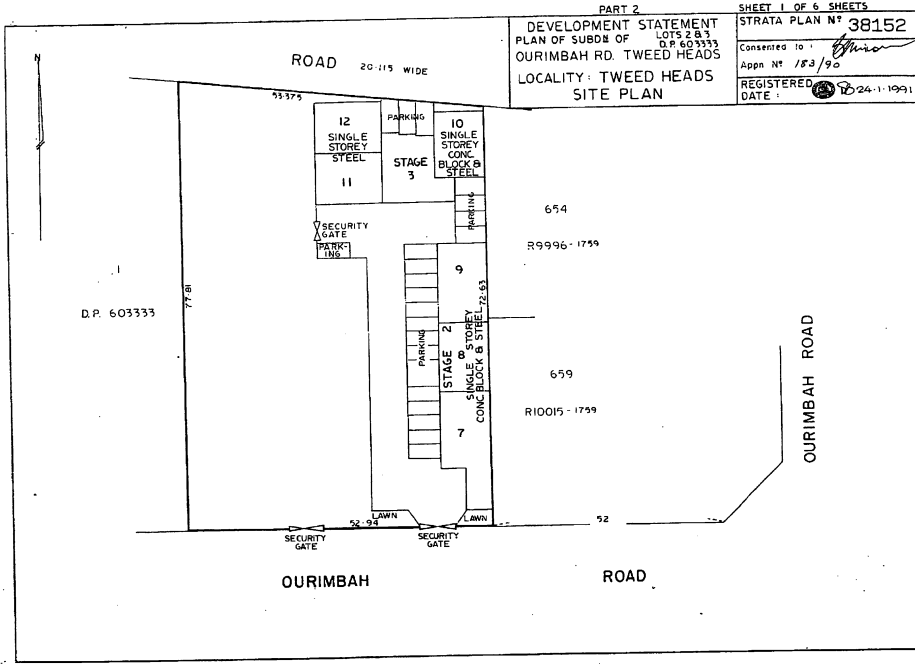
<p><b>STRATA PLAN 38152</b></p> <p>OURIMBAH ROAD</p>	
<p>OURIMBAH ROAD</p>	
<p>⊙ DENOTES DEVELOPMENT LOT ⊕ DENOTES FROM CORNER OF BUILDING ON PROLONGATION OF OUTER FACE OF WALL</p> <p>Reduction Ratio 1:400 Lengths are in metres</p> <p>Registered Surveyor: <i>Amia</i> Council Clerk</p> <p>SURVEYOR'S REFERENCE: N90/1914</p>	

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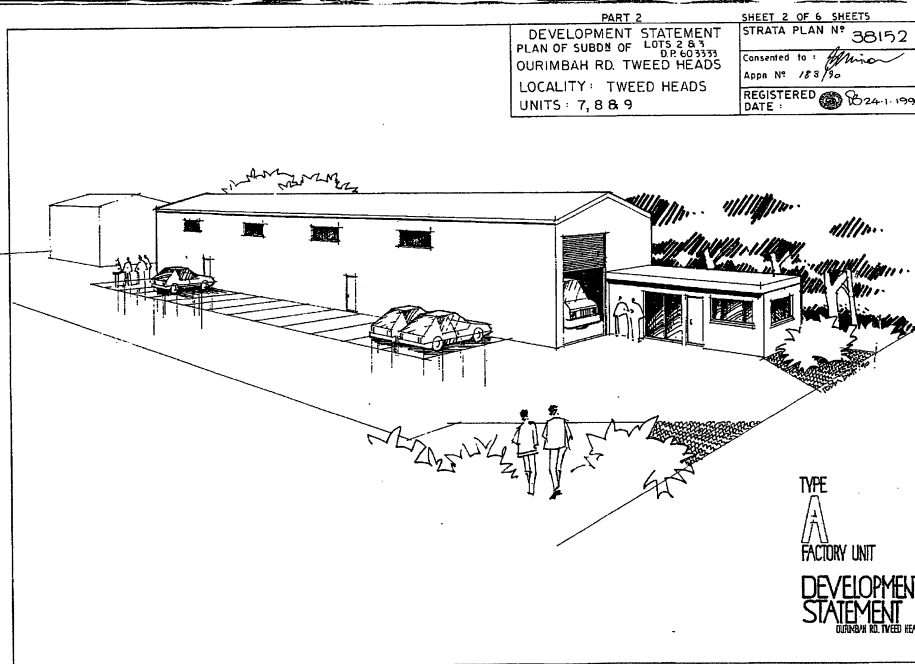
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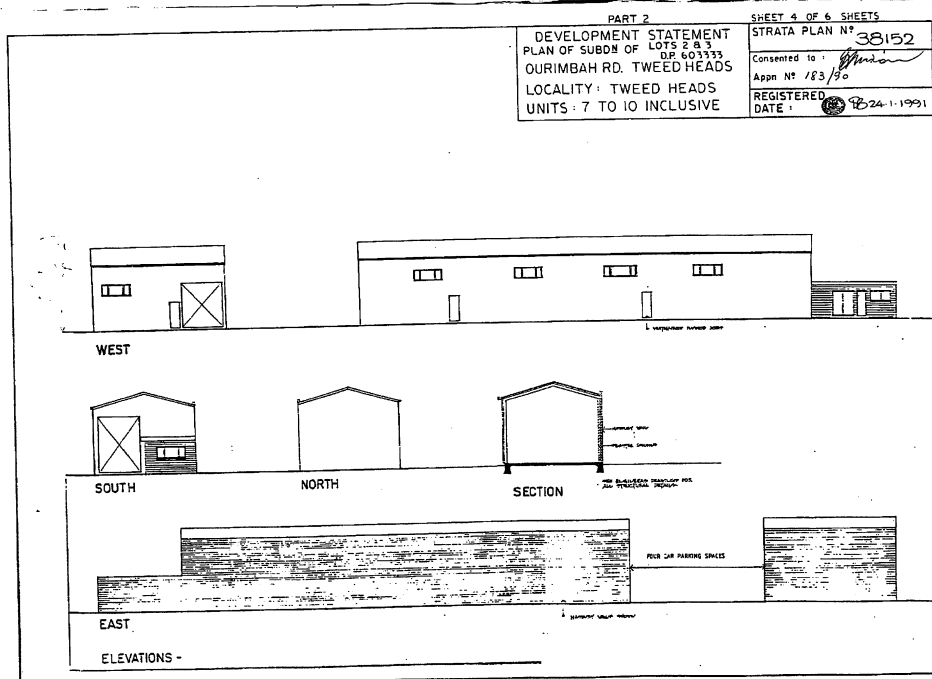
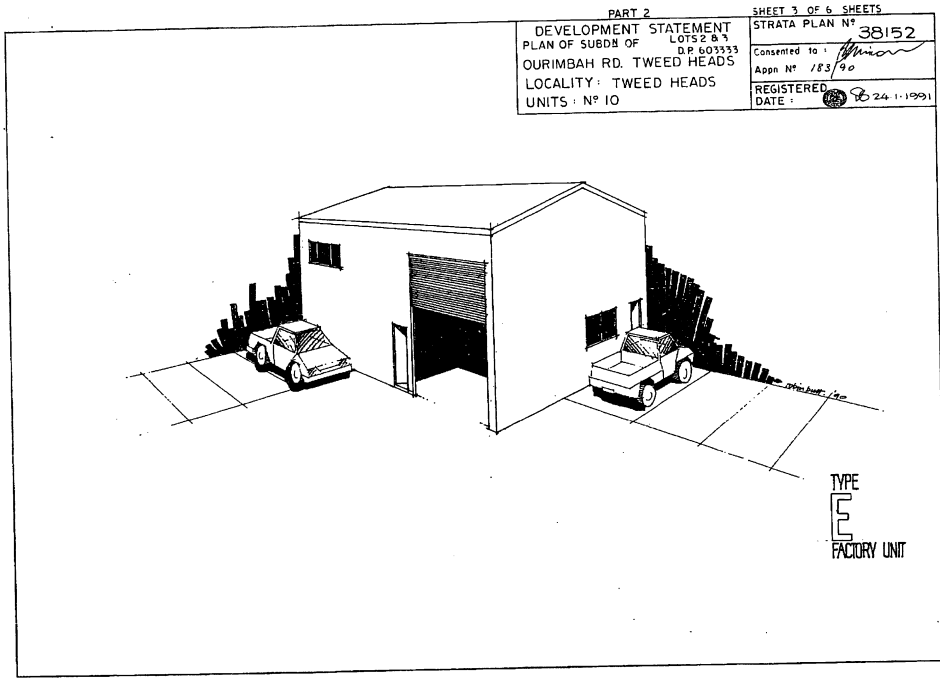
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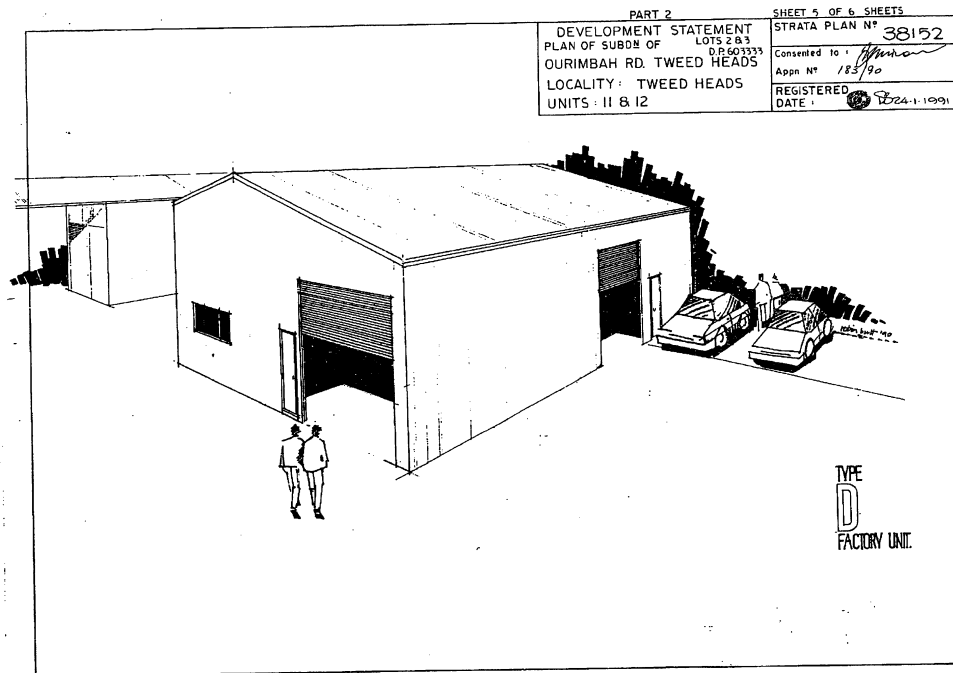


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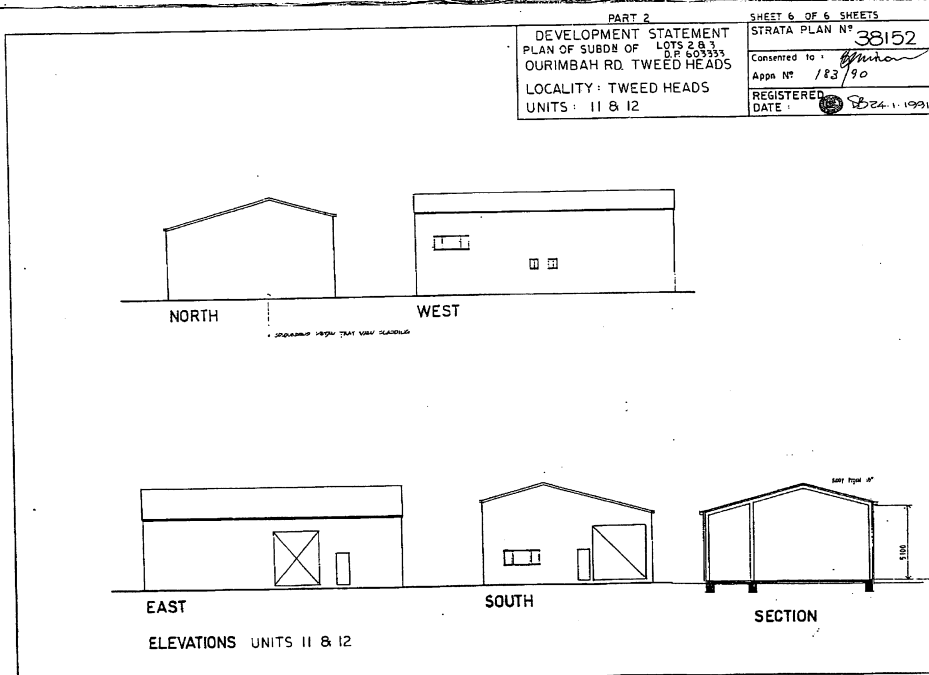


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SHEET 2 OF 3 SHEETS  
COVERED BY COUNCIL CERTIFICATE  
NO. 431/92

Form 29  
Strata Titles Act, 1973  
STRATA PLAN NO.

PART 1

STAGE 1			STAGE 2			STAGE 3		
LOT	ENTITLEMENT	UNIT	LOT	ENTITLEMENT	UNIT	LOT	ENTITLEMENT	UNIT
1	60	14	7	14	10	10	10	10
2	12	3	8	14	10	11	10	10
3	12	3	9	11	12	12	10	10
4	10	3	10	11	12	13	10	10
5	35	35	11	35	35	14	35	35
AGGREGATE TCU			AGGREGATE TCU			AGGREGATE TCU		

Unit entitlement for all stages:

Working Hours: 6.00 am. to 7.00 p.m. Monday to Saturday inclusive.  
ARRANGEMENT FOR INGRESS, EGRESS, MOVEMENT AND PARKING OF VEHICLES  
AND THE DEVELOPMENT AND PERMITTED USES  
OF COMMON PROPERTY AND DEVELOPMENT LOT:

Access created by Stage 1.  
No interference with common property in each successive stage with the exception that some restoration may be required with laying of services.  
Construction zones for Stages 2 and 3 wholly maintained within Lots 5 and 6.  
Landscaping:  
Common property areas adjacent to Ourimash Road will be turfed or landscaped for Stage 1 and 2 of the development.  
Schedule of Materials and Finishes for All Stages:  
Stages 1 & 2 All factories will consist of a combination of concrete block walls, steel framing, colourbond and galvanised iron.  
Stage 3 Factories will consist of a combination of concrete block, steel frame and colourbond.  
Access roads and car parking areas are to be of Bitum/Asph.  
Date: 12/1/92

Signature/Seal of Developer/Agent: \_\_\_\_\_  
REGISTERED 24-11-1991

SHEET 1 OF 3 SHEETS  
COVERED BY COUNCIL CERTIFICATE  
NO. 431/92

Form 29  
Strata Titles Act, 1973  
STRATA PLAN NO.

PART 1

**Warning:**  
This Statement contains details of a strata scheme which is proposed to be developed in three (3) stages on the land described within.  
Persons interested are advised that proposed scheme may be varied and may not be completed. However, any person who acquires an interest in the land after the Statement will attract the provisions of Part 11 Division 2a of the Strata Titles Act 1973.  
This Statement should not be considered alone but in conjunction with the results of the searches and inquiries normally made in respect of a lot in a strata scheme.

**Description of Land:** Lots 2 & 3 D.P. 603333. NOW BEING LEVYING DEVELOPERS

**Description of Development:** Development in 3 stages.  
1st Stage: Lots 1 to 6 inclusive as shown on Sheets 2 and 3 in above strata plan.  
2nd Stage: Subdivision of Lot 5 of Stage 1 into Lots 7, 8 and 9 and common property as shown on Sheet 1 of Part 2 of this statement. Each lot in Stage 2 will comprise cubic space within the building.  
3rd Stage: Subdivision of Lot 6 of Stage 1 into Lots 10, 11 and 12 and common property as shown on Sheet 2 of this statement. Each lot in Stage 3 will comprise cubic space within the building.  
Common property amenities in Stage 1 include access roads, car parking and landscaping.  
Common property amenities in Stage 2 include access roads, car parking and landscaping.  
Common property amenities in Stage 3 include access roads and car parking.

**Schedule of Commencement and Completion.**  
Stage 1 Commence June 1990 Complete October 1990  
Stage 2 Commence December 1990 Complete April 1991  
Stage 3 Commence June 1991 Complete September 1991

**Schedule of Lots in each proposed stage:**  
Stage 1 Lots 1 to 6 (Lots 5 and 6 as reserved lots)  
Stage 2 Subdivision of Lot 5 into Lots 7, 8 and 9  
Stage 3 Subdivision of Lot 6 into Lots 10, 11 and 12

REGISTERED 24-11-1991

This negative is a photograph made as a permanent record of a document in the custody of the Registrar General this day. 1st February, 1991

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WARNING : Electronic Document Supplied by LPI NSW for Your Internal Use Only

SHEET 3 OF 3 SHEETS

COVERED BY COUNCIL CERTIFICATE  
 NO. 183/99.....

Form 29  
 Strata Titles Act, 1973  
 STRATA PLAN NO.  
 PART 1

CERTIFICATE OF APPROVAL

It is certified:

(a) that the consent authority has approved of the development described in the Development Application No. 90/99 and

(b) that the terms and conditions of this development statement are not inconsistent with that development, as approved.

DATE: 21/1/99.....

Signature of behalf of consent authority: *[Signature]*  
 SHIRE CLERK.

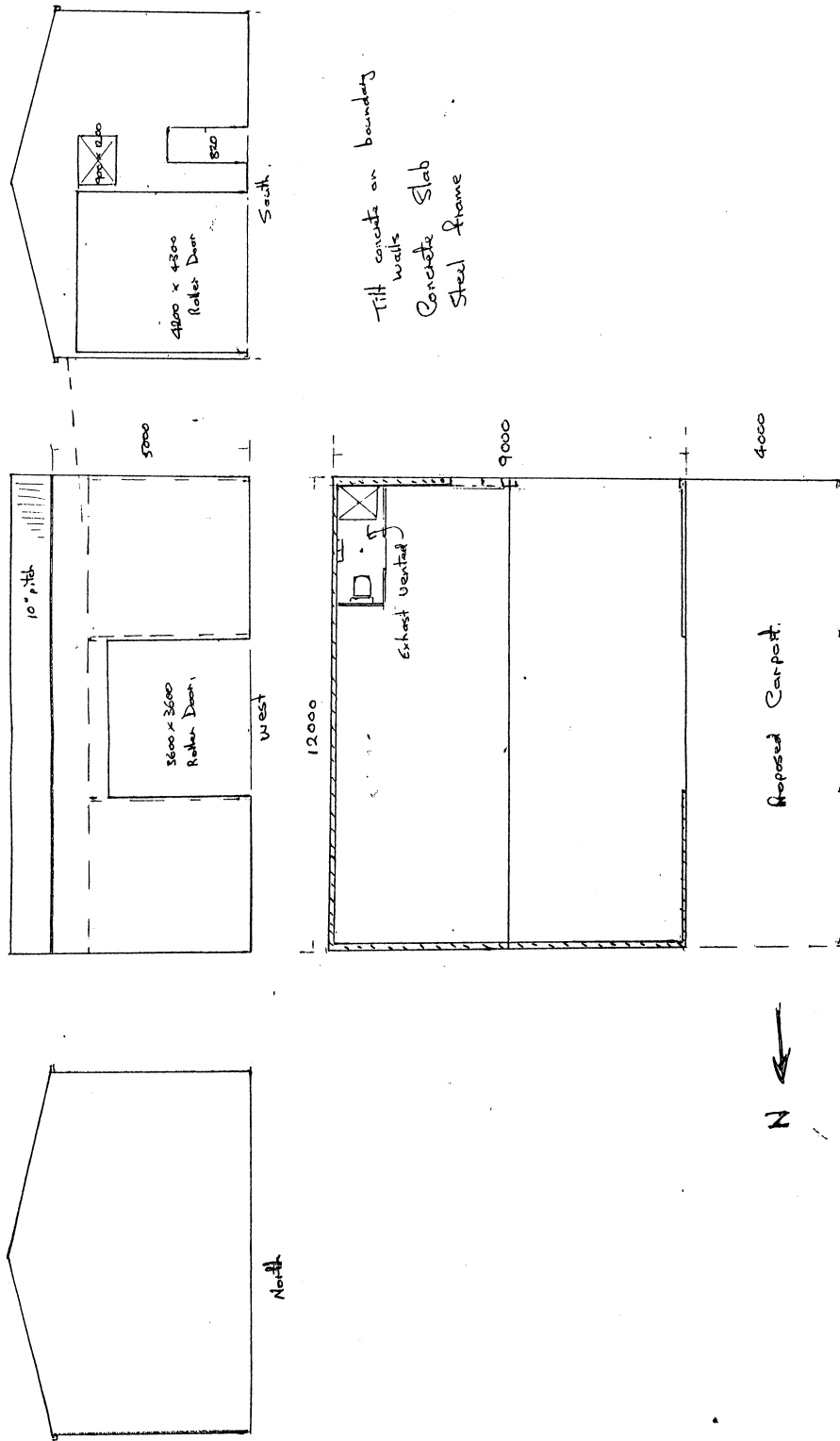
**REGISTERED** 224-1-1991

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 WARNING : Electronic Document Supplied by LPI NSW for your Internal Use Only



Storage Shed at Lot 6/38 Ourimbah Rd Tweed Heads Per K.J. Rhodes 1:100

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

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

**Section 96 of the Environmental Planning and Assessment Act 1979**

The proposed development is considered to be substantially the same development and can be determined under Section 96 of the Environmental Planning and Assessment 1979. Should Council approve this application, a condition of consent has been recommended requiring the Development Statement to be amended and registered with the Land and Property Information Office.

**Tweed Local Environmental Plan 2000**

**Clause 8 – Consent Consideration**

The subject land is zoned 4(a) Industry and the proposal being a storage shed for machinery and equipment for a backhoe hire business is defined as a Depot under Tweed LEP 2000. Depots are permissible with Consent in the Zone and the development is consistent with the primary objectives of the zone.

**Clause 15 – Availability of Essential Services**

Council's infrastructure is adequate to cater for this development.

**Clause 16 – Height of Buildings**

Proposal complies with the Three Storey Height Limit for the area.

**North Coast Regional Environmental Plan 1988**

**Clause 47 Principles for Commercial and Industrial Development**

Proposal is not inconsistent with the provisions of the REP

**SEPP No. 71 Coastal Protection**

The proposal is located on land within the Coastal Zone. The development being within an existing industrial estate does not raise any issues in relation to the planning controls under Clause 8 of the SEPP.

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

No Draft EPI's affect this proposal

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

**Development Control Plan No. 2 Site Access and Parking Code**

Under DCP 2 car parking for a depot is required at a rate of 10% of the site area. As Lot 6 has an area of 573 m<sup>2</sup>, 57 m<sup>2</sup> of the site should be put aside for car parking. With the dimensions of a car parking space equating to 5.4 m x 2.4m or 12.96 m<sup>2</sup>, the applicant is required to provide 4.38 car parking spaces. Adequate land exists on Lot 6 for the provision of 4 to 5 car parking spaces, and as already approved under Development Consent a total of 7 spaces are to be constructed.

However Development Consent D90/0016 and the Development Statement for Lot 6 within Strata Plan 38152 indicates two additional factory units are also to be constructed on the Lot with a total of 7 car parking spaces servicing the total development. As factory units these two sheds generate a minimum of two car parking spaces at a rate of 1 space per 100 m<sup>2</sup>. It is noted however, that other types of industrial uses such as a car repair station generate a much higher rate of car parking, and any application for these types of uses may not be supported by Council.

The amended proposal could impact upon the usage of the seven car spaces. The siting of the support structures for the car port are located within one of the designated car spaces. While the roller door on the southern elevation is approximately 4.2 metres wide which suggests that vehicles entering and leaving the shed will cross over at least one of the adjoining car parking spaces to the south creating a potential conflict.

Having regard to the proposed usage of the development and the ability for the operator to park a vehicle within his shed, overall car parking is considered adequate provided the support structure for the carport are sited to ensure that it does not affect the three car parking spaces to the west of the building. It is recognised operational conflicts may arise in terms of the car parking spaces to the south of the shed. To resolve this issue it is recommended that space No. 18 be designated as a staff parking space for the proposal rather than general customer parking. This will minimise the potential for conflict and will enable vehicles to be manoeuvred out of the way in the short term to facilitate access to the shed if required. Amended Conditions of Consent are recommended to address these issues.

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

The proposal does not raise any issues as prescribed by the Regulations.

**(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 development is unlikely to have an adverse impact upon the built or natural environment or the amenity of the locality. Should the application be approved appropriate conditions of consent would be recommended in relation to construction activities, and use of the shed as a depot in terms of trade waste, mechanical work and wash down of vehicles.

**(c) Suitability of the site for the development**

The site within an industrial estate does not raise any issues and is considered suitable.

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

No Submissions have been made in accordance with the Act or Regulations

**(e) Public interest**

The proposal is considered to be substantially the same development and is unlikely to prejudice or compromise the public interest.

As a resolution of the body corporate has been made supporting the amended plans and should Council approve the application a new condition is recommended requiring the Development Statement to be amended and registered with the Land and Property Information Office in accordance with Section 28J of the Strata Schemes (Freehold Development) Act 1973.

**OPTIONS:**

1. Approve this application as recommended.
2. Refuse the application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the decision he has recourse to have the matter reviewed by the Land and Environment Court, which has resource implications for Council.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed storage shed is permissible with consent in the zone, is consistent with the planning controls and guidelines for this type of development, and is considered to be substantially the same development as that approved under D90/0016. The applicant

has provided the required resolution of the body corporate in support of the proposal and an amended development statement will need to be registered with the Land and Property Information Office. It is recommended that Council support the proposed amendments and approve the Section 96 Application.

**UNDER SEPARATE COVER:**

Nil.

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**13 [DS] Tweed Shire Better Communities Program - A Crime Prevention Strategy**

**ORIGIN:**

**Strategic Town Planning**

**FILE NO:**

**SUMMARY OF REPORT:**

This report summarises progress towards a crime prevention plan for the Shire. It recommends an issue paper be circulated to gain further feedback, and that forums be held around major issues.

**RECOMMENDATION:**

That Council resolves to endorse the proposals of the Advisory Committee to consult the community by means of:

- Circulating an issue paper for feedback from local stakeholders; and
- Holding forums to discuss identified major local issues.

## **REPORT:**

### **Background:**

The Council established the Better Communities Advisory Committee by resolution at its meeting on 15 May 2003, to act as Steering Committee for the preparation of a Crime Prevention Plan for the Shire, excluding Tweed Heads (which is included in the Tweed/Coolangatta Community Safety Action Plan).

The Advisory Committee has met on four occasions between July and October, and has worked through a process of considering relevant literature and local crime and social data, developing a local community/crime profile, identifying local stakeholder organisations with which partnerships could be made, and identifying a preliminary range of crime prevention strategies that could be implemented.

### **Current Position:**

Before reporting back to Council with firm proposals for crime prevention strategies, the Committee sees a need to test its conclusions by seeking feedback from stakeholders. It has not yet had sufficient input from community organisations with special knowledge about the causes and effects of local crime, and it proposes to initiate a program of consultation.

### **Proposed Consultation:**

**Issue Paper** – The Committee has prepared an issue paper reviewing local crime issues (attached), which it proposes to circulate to a range of stakeholder organisations for their comment.

This includes reference to:

- social and economic issues in Tweed Shire,
- characteristics of the strategy area,
- local recorded crime statistics,
- local perceived crime issues,
- options for crime prevention strategies (situational strategies, social strategies, and community strategies).

**Forums** – The Committee proposes to hold a series of forums, one on each of four main crime issues identified as being locally significant:

- Drug dealing and use,
- Alcohol related crime issues,
- Youth concerns,
- Parents' responsibilities and education.

A selection of stakeholders relevant to each issue will be invited to participate, and reports prepared on the outcomes, for inclusion in the Crime Prevention Plan and its strategies.

**Conclusions:**

There is a need for feedback from local agencies and community organisations, and also a need to seek their involvement in implementing strategies. This will ensure the final proposals for crime prevention strategies are well informed, and supported by the community.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

1. Tweed Better Communities Program - A Crime Prevention Strategy
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**14 [DS] Tweed Heads West Industrial Area**

**ORIGIN:**

**Strategic Town Planning**

**FILE NO: GT1/LEP/2000/37 Pt1**

**SUMMARY OF REPORT:**

On 21 May 2003 Council resolved to fund half of the preparation of the Local Environmental Study (LES) and draft Tweed Local Environmental Plan 2000 (LEP) Amendment for a potential industrial area located at Tweed Heads West (Refer Figure 1). Also, Council resolved to engage Planning Consultants, GeoLINK, to prepare this material when all monies have been collected from the landowners.

Considering the diminishing potential area for industrial uses that the draft LEP Amendment would yield and the numerous setbacks encountered in the preparation of this draft LEP Amendment, it is considered not appropriate to invest any more time or resources in pursuing it any further.

**RECOMMENDATION:**

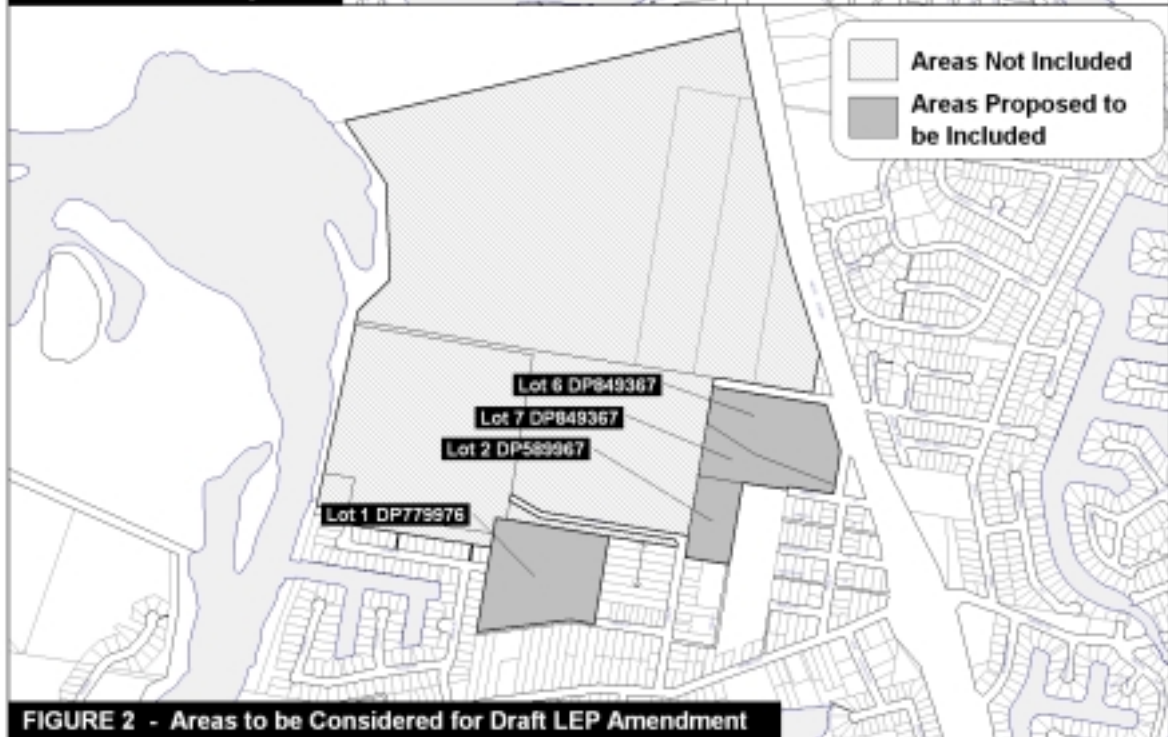
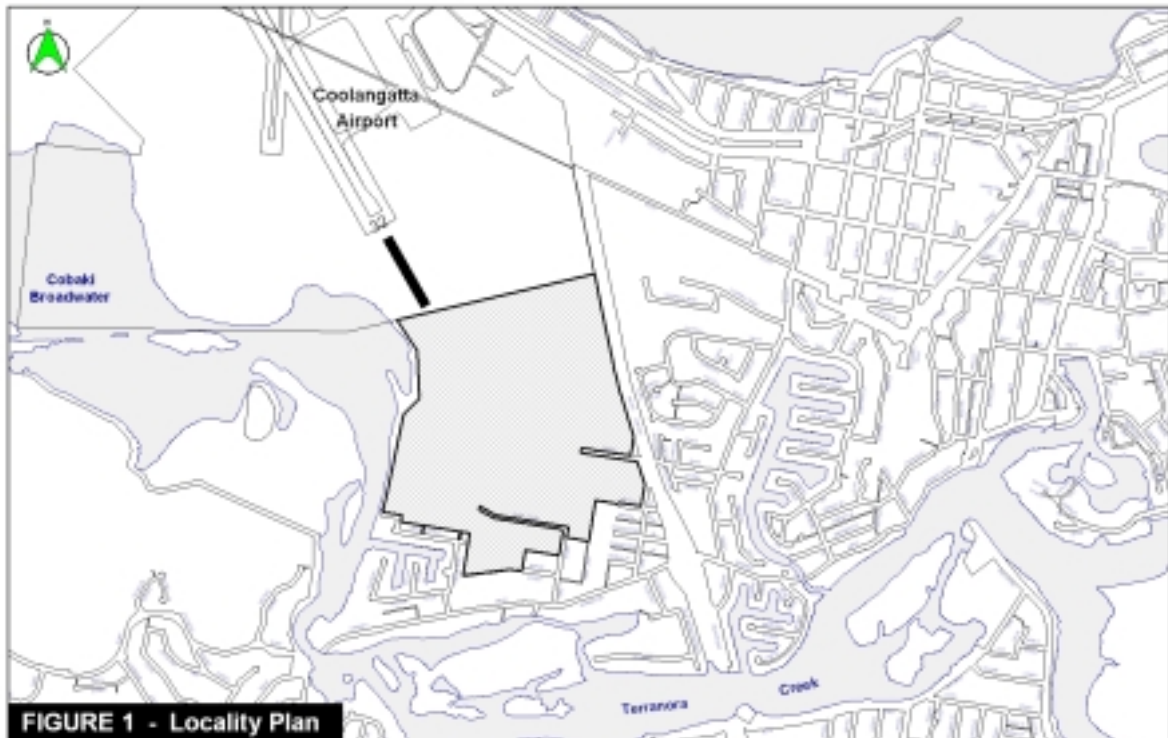
That:

1. Due to the lack of financial contribution from the landowners, Council no longer contributes 50% towards the Environmental Study and draft Tweed Local Environmental Plan 2000 for Lots 6 and 7, DP 849367, Lot 2, DP 5899967 and Lot 1, DP 779976, Tweed Heads West.
2. Council discusses with Nosworthy & Associates (Boys Bay Garden World, Lots 6 and 7, DP 849367), who have financially contributed to the Environmental Study and draft Local Environmental Plan Amendment, the options for their land holdings.

## **REPORT:**

### **Background**

On 21 May 2003 Council resolved to fund half of the preparation of the Local Environmental Study (LES) and draft Tweed Local Environmental Plan 2000 (LEP) Amendment for a potential industrial area located at Tweed Heads West (Refer Figure 1). Also, Council resolved to engage Planning Consultants, GeoLINK, to prepare this material when all monies have been collected from the landowners. The landowners' portion of the cost for preparing the draft LEP Amendment was established on a pro rata basis based on the size of the land holdings.



<p>© TWEED SHIRE COUNCIL 2003                  Although no care has been taken in the production of this map, the TWEED SHIRE COUNCIL, its employees, officers and consultants are not be responsible for any errors, omissions or inaccuracies in respect to the information supplied in this map.  <b>DO NOT SCALE</b>  <b>COPY ONLY - NOT CERTIFIED</b>                  P.O. Box 876                  Murwillumbah, NSW, 2484 Tel: (02) 6670 3400 Fax: (02) 6670 2883</p>	<p><b>TWEED SHIRE COUNCIL</b>                  Tweed Heads West - Land Included in Draft Tweed LEP 2000 Amendment No.37                  File: N:\17H West Indust..Wor Author: J.Batchelor Date: 08/Sept03</p>	<p>STRATEGIC PLANNING UNIT  </p>	<p><b>Site Plan</b>                  Sheet 1 of 1                  Revision</p>
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## **Landowner's Current Position**

Nosworthy and Associates (owners of Lots 6&7 DP 849367 Rose St, Tweed Heads West) have contributed their portion towards the preparation of the draft LEP Amendment. This site is currently operating Boyd's Bay Garden World.

Charlie Freriechs (owner of Lot 1 DP 779976 Gray St, Tweed Heads West) has been notified on numerous occasions of Council's intention to consider this parcel for a draft LEP Amendment. However, it is not clear what the intentions of the landowner are in relation to the contributions to the preparation of this Amendment. On three (3) separate occasions the owner has been contacted, but has provided no response.

Currently this parcel of land is zoned 2(a) Low Density Residential and is within 30+ dB ANEF noise contours that represent implications for any residential development on these parcels under the LEP.

Originally five (5) lots (comprising Lots 5-9 portion 4 DP 9025 Gray St, Tweed Heads West) were identified to be included into this draft LEP Amendment. These lots are currently zoned 2(a) Low Density Residential and have a development approval for 100 residential accommodation units. Construction of these units was commenced at the beginning of this year. It was considered prudent to remove these lots from the draft LEP Amendment and keep them zoned 2(a) Low Density Residential to reflect their future residential uses.

On 22 January 2003 Council considered a confidential report outlining the specific grievances put forward by the executors of the estate of Alice Freriechs (Lot 2 DP 589967 Gray St, Tweed Heads West) and their request to subdivide this parcel of land. Consideration of a more appropriate zone through this LEP Amendment would allow the requirements of the executors to be achieved.

## **Options**

This impasse in relation to the funding for the preparation of the draft LEP Amendment poses a problem to achieving an outcome. Over the history of this project the land available to be included has diminished considerably due to several factors. These include the proposed Tugun Bypass as well as identified critical habitat for rare and threatened species. If half of the remaining area is not to be considered as part of this draft LEP Amendment due to insufficient financial support from the landowner then the ultimate area for potential industrial uses would be 5.7 hectares. Currently Boyd's Bay Garden World occupies 2 hectares of this ultimate area.

Listed below are the current options available;

1. That the money contributed towards the LES and draft LEP Amendment by Nosworthy and Associates be returned and no further action be undertaken on this particular LEP Amendment to identify any lands in the area for future industrial purposes.



2. That Council undertake to fund the two owners contributions of the LES and draft LEP Amendment (\$15,509) which have not been met by the estate of Alice Freriechs and Charlie Freriechs respectively and proceed with the draft LEP Amendment.
3. That the two lots, where the respective land owners have not contributed to the preparation of the Environmental Study (being the estate of Alice Freriechs and Charlie Freriechs respectively) not be included in this draft LEP Amendment, but the draft LEP Amendment proceed with the two portions owned by Nosworthy and Associates (Boyds Bay Garden World).
4. That due to the lack of financial contribution from the landowners, Council no longer contributes 50% towards the draft LEP and Environmental Study. Currently only one landowner has contributed to the preparation of this Environmental Study and draft LEP Amendment. Also, Council would need to contact Nosworthy & Associates (Boyds Bay Garden World) to discuss future options for their land holding.

### **Conclusion**

Considering the diminishing potential area for industrial uses that the draft LEP Amendment would yield and the numerous setbacks encountered in the preparation of this draft LEP Amendment it is considered not appropriate to invest any more time or resources in pursuing it any further. Therefore, it is recommended that Option 4 be pursued.

### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

### **POLICY IMPLICATIONS:**

Nil.

### **UNDER SEPARATE COVER:**

Nil.

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**15 [DS] Development Application 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**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA03/0273 Pt2**

**SUMMARY OF REPORT:**

An assessment report was submitted to the Council meeting of 15 October 2003 in relation to the proposed development (contained in Items Deferred). Council resolved as follows: -

*"That this item be deferred to seek further legal advice and report back to the Council meeting of 5 November 2003."*

Legal advice has been provided from Council's Solicitors in relation to the meaning of the Declaration of the Minister dated 13 January 2003 in respect of State Significant Development. The advice confirms that the proposed development is not State Significant Development and consequently Council is the consent authority and is able to determine the proposed development. A copy of Council's Solicitor's advice is attached to this report.

**RECOMMENDATION:**

That this report be received and noted.

**REPORT:**

As per summary.

**UNDER SEPARATE COVER:**

1. Letter from Stacks the Law Firm dated 22 October 2003 (DW 961811).
-

## REPORTS FROM EXECUTIVE MANAGER - OFFICE OF THE GENERAL MANAGER

### 16 [OGM] Invitation to attend Youth Environment Congress 13 November 2003

#### ORIGIN:

Executive Manager

#### SUMMARY OF REPORT:

An invitation has been extended from Byron Shire Council to the General Manager, Executive, Tweed River Committee, the Mayor and Tweed Councillors to attend the Youth Environment Congress on 13 November 2003 at Byron High School.

The Congress will be attended by 12 schools and Council representatives from across the shires of Ballina, Byron, Lismore and Tweed.

Copies of the invitation have been provided to the Executive Management Team and to the Co-ordinator of the Tweed River Committee who has on-forwarded it to Committee members for them to consider attendance.

Attached is a copy of the invitation for Councillors information.

#### RECOMMENDATION:

That Councillor/s attendance at the Youth Environment Congress on 13 November 2003 at Byron High School be determined.

**REPORT:**

An invitation has been extended from Byron Shire Council to the General Manager, Executive, Tweed River Committee, the Mayor and Tweed Councillors to attend the Youth Environment Congress on 13 November 2003 at Byron High School.

The Congress will be attended by 12 schools and Council representatives from across the shires of Ballina, Byron, Lismore and Tweed.

Copies of the invitation have been provided to the Executive Management Team and to the Co-ordinator of the Tweed River Committee who has on-forwarded it to Committee members for them to consider attendance.

Attached is a copy of the invitation for Councillors information:

Page 1 of 1



BSC File No: ENG 652200 x 420900  
Your ref:  
Contact: J Mason

Tweed Shire Council  
PO Box 816  
Murwillumbah  
NSW 2484

22nd October 2003

TWEED SHIRE COUNCIL	
FILE No.	
DOCUMENT No.	
RECD	30 OCT 2003
BOX No.	
ASSIGNED TO	
HARD COPY	<input type="checkbox"/>
IMAGE	<input type="checkbox"/>

Dear Mr Griffin

**Invitation to Schools' Congress on 13th November 2003**

Enclosed is an invitation to attend our Schools' Congress that is taking place on 13th November 2003 at Byron High School at 4:00pm.

The invitation is extended to the General Manager, Executives, Tweed River Committee, the Mayor and Tweed Councillors.

The Congress will be attended by 12 schools and Council representatives from across the shires Of Ballina, Byron, Lismore and Tweed. We anticipate a good media coverage and because it is a component of the Tweed's River Festival it would be good to have in attendance some Tweed people.

Tweed schools involved in the day are : Mt St Patricks College, Murwillumbah High School, Wollumbin High School and Kingscliff High School.

The SEA Project is hosting the event. This project has been operational in the Tweed Shire for 3 yrs now conducting education and assessment for Council's Stormwater Management.

I look forward to your attendance. The students are really hoping for Tweed Shire Council's support with their work.

Yours sincerely

*J. Mason*  
Judith Mason  
SEA Project  
Stormwater Project Coordinator  
Byron Shire Council  
ph 6626 7077 mob 0408 48 1364

ALL COMMUNICATIONS TO BE ADDRESSED TO THE GENERAL MANAGER

PO Box 219 Mullumbimby New South Wales 2482  
Tel (02) 6626 7000 DX 20007 Mullumbimby  
Fax (02) 6684 3018 Email: council@byron.nsw.gov.au www.byron.nsw.gov.au  
ABN 14 472 131 473

DOCS # 420022



**Invitation to attend Youth Environment Congress**  
**.....On 13<sup>th</sup> November 2003 at Byron Bay High School at 4:00pm**

The SEA Project (Stormwater Education Assessment) has been working for the past few months with students and staff from 12 north coast high schools. They have been participating in an environmental education program '*kids, companies and creeks*' to look after our local waterways – you may have seen some stories in the local newspaper about the program.



- The SEA project is a joint partnership between the Councils of Ballina, Byron, Tweed and Lismore and has been working with Sydney based company Oz Green to bring this award winning environmental program to the north coast. The SEA project is supported by the NSW Stormwater Trust and has been operating since June 2001 - involving more than 5,258 commercial and industrial premises and more recently the building industry in an environmental assessment and education campaign.
- On the North coast over 100 Students have been involved in:
  - ◆ Conducting water quality testing and environmental assessments of our local waterways at over 60 sites.
  - ◆ Conducting interviews with over 400 businesses in the region about their environmental practices

On the 13 November the twelve schools involved in the program will meet at Byron Bay High School for an Environmental Congress to develop a vision for the future of the region and action plans to protect and restore the local area. We would like to invite you to attend this congress at 4.00pm to find out about the results of our investigations, to hear about our vision and action plans and afterwards join us for a sausage sizzle.



**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**17 [OGM] Corporate Quarterly Report - July to September 2003**

**ORIGIN:**

**Corporate Development**

**SUMMARY OF REPORT:**

The Quarterly Corporate Report covering the period July 1 2003 to September 30 2003 is presented for Council's information.

**RECOMMENDATION:**

That

1. This report be received and noted.
2. This report be placed in the libraries for public information

**REPORT:**

**BACKGROUND**

In accordance with Section 407 of the Local Government Act the General Manager must report to Council each quarter as to the extent to which the performance targets set by the Council's current Management Plan have been achieved during that quarter.

The Quarterly Corporate Report is still being progressively redeveloped to provide progress feedback on designated priorities within the principle activity categories as specified in the 2003-2006 Management Plan. These Quarterly Reports will be combined at the conclusion of the financial year and included in the annual report to the Department of Local Government, Council and the community.

## **CORPORATE QUARTERLY PERFORMANCE REPORT**

1<sup>st</sup> July to 30<sup>th</sup> September 2003

The following report details the progress during July to September of the 2003-2004 actions listed in the 2003-2006 Management Plan. These actions assist Council work towards its vision of "a premier area in which to live, work and visit".

Just some of the actions undertaken between 1<sup>st</sup> July and 30<sup>th</sup> September include:

- Meetings with various community and resident associations to discuss requirements for upgrading existing and installing new picnic and playground equipment in council parks and reserves
- Increased maintenance standards within Council Reserves
- Completed Fingal Head and Chinderah Public Toilets upgrade
- Completed Banora Point Community Centres preliminary planning
- Issued DA approval for work for the Cabarita Surf Lifesaving Club upgrade
- Held the 5<sup>th</sup> City of the Arts Gala Launch in early August
- Engaged consultants to prepare a Retail Development Strategy
- Resolved to proceed with the development of the Southern Boat Harbour Marina at Tweed Heads
- Commenced Strategic Plan Review, including holding community meetings and publishing a special edition of the Tweed Link
- Estuary Management Plan Review commenced
- Received tenders for three boat ramp upgrades
- Completed Road Works at:
  - Queen Street, Fingal Head,
  - Minnows Road,
  - Kyogle Road,
  - Numinbah Road, and
  - South Pumpenbil Bridge
- Completed Kingscliff Sewerage Treatment Plan Interim Works.

**ACTIVITY 1: RECREATION SERVICES****Objective:**

*To conserve the unique bio-diversity and scenic quality of the Tweed whilst ensuring sustainable quality development.*

**Progress towards Actions:**

<b>2003 / 2004 Actions</b>	<b>K.P.I</b>	<b>Target</b>	<b>Progress First Quarter</b>	<b>Progress Second Quarter</b>	<b>Progress Third Quarter</b>	<b>Progress Fourth Quarter</b>
Upgrade existing and install new Picnic Facilities, and playground equipment in Council Parks and Reserves	Completed by target date	June 2004	Meetings held with various community and residents associations to discuss requirements for new facilities.			
Purchase, Subdivide and Maintain Land at Chillingham for Community Purposes	Completed by target date	June 2004	Area being maintained. Draft lease for Community Association and CTC centre finalised.			
Develop Regional Botanic Gardens	Completed by target date	June 2004	Report to Council 1 October resolving on progression of next stages of gardens.			
Implement Works Program for Recreation Facilities in Development Control Plan 3	Completed by target date	June 2004	Meeting with Banora Point Residents Association to discuss proposed works program. Association to provide feedback prior to seeking broader input.			
Develop Plan of Management for Kingscliff Sportsground	Completed by target date	June 2004	On going negotiations with relevant clubs.			
Develop Plan of Management for Round Mountain Equestrian Centre	Completed by target date	June 2004	On going discussions with relevant facility users.			
Develop Plan of Management for Bilambil Sports Complex	Completed by target date	June 2004	Further liaisons with various users regarding future needs.			

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Develop Plan of Management for Knox Park	Completed by target date	June 2004	Implementation of pond remediation works.			
Develop Capital Works Program for Council Sports Facilities	Completed by target date	June 2004	Capital works program commenced.			
Develop a Beach Use Policy	Completed by target date	June 2004	Policy included in draft guidelines for use of Council controlled lands.			
Develop Skate Park Policy	Completed by target date	June 2004	Due to resource prioritisation this project will commence next financial year.			
Install Irrigation Central Control System for Council Parks and Reserves	Completed by target date	June 2004	Due to resource prioritisation this project is deferred and will be reassessed next quarter.			
Construct and Maintain firebreaks as required under Rural Fires Act.	Completed by target date	June 2004	Additional firebreaks constructed – Cabarita. DA for works in SEPP14 areas in Pottsville progressing.			
Increase maintenance standards within Council Reserves	Completed by target date	June 2004	Maintenance standards increased.			
<b>Responsible Division / Unit</b>						
Recreation Services						

**ACTIVITY 2: HEALTH AND COMMUNITY SERVICES****Objective:**

*To identify community needs and increase the wellbeing of members of the community.*

**Progress towards Actions:**

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Complete Draft Documentation for New Garbage Contract / Joint Disposal Initiative with Gold Coast City Council	Completed by target date	Dec. 2003	Legal advice being sort on contract.			
Upgrade Public Toilets	Completed by target date	June 2004	Fingal Head completed. Chinderah completed.			
Implement Sewerage Management Facilities Strategy	Completed by target date	1000	Staff appointed. Initial training completed.			
Plan and Design new SES headquarters	Completed by target date	Sep. 2003	Awaiting confirmation for purchase of RTA land.			
Obtain DA consent for SES headquarters	Completed by target date	Sep. 2003				
Build new SES headquarters	Completed by target date	June 2004				
Complete preliminary planning for Murwillumbah Civic Centre Office extensions	Completed by target date	Dec. 2003	Preliminary planning commenced.			
Complete planning for Murwillumbah Pool upgrade to regional standard	Completed by target date	March 2004	Expressions of interest for consultants called.			
Build new Art Gallery	Completed by target date	Sep. 2003	Works on target for completion December 2003.			
Upgrade Surf Lifesaving Club at Cabarita	Completed by target date	Sep. 2003	D.A. approval for works issued.			
Plan and design Banora Point Community Centre	Completed by target date	March 2004	Preliminary planning completed.			



2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Implement the 5 <sup>th</sup> City of the Arts	Completed by target date	June 2004	Gala Launch 3 August.			
Purchase new library books in accordance with Libraries Strategies	Completed by target date	June 2004	Books purchased on an ongoing basis.			
Develop and adopt Community Safety Action Plan	Completed by target date	June 2004	Committee convened, Draft Plan being prepared.			
Develop and adopt Human Services Delivery Plan	Completed by target date	June 2004	Draft Plan reviewed by consultant.			
Develop and adopt Community Facilities Policy and Program	Completed by target date	June 2004	Draft Policy prepared and submitted to Director of Development Services.			
<b>Responsible Division / Unit</b>						
Environment and Health Strategic Planning						

### ACTIVITY 3: ECONOMIC DEVELOPMENT

**Objective:**

*To encourage economic activity that enhances the standard of living of residents through the promotion of a wide range of development opportunities through the Council sponsored economic development agencies and commercial undertakings.*

**Progress towards Actions:**

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Engage Consultants to perform a contaminated land study at Lot 490 South Kingscliff (former tourism NSW site)	Completed by target date	June 2004	Yet to be commenced.			
Develop and adopt Development Control Plan 46 and Plan of Management for South Kingscliff Gateway	Completed by target date	June 2004	Council resolution sent to DIPNR for endorsement.			
Manage TEDC Contract Deliverables Quarterly	Percentage of contracted performance objectives completed to satisfaction of Council	100%	100% satisfaction. Contract performance objectives achieved and up to date.			
Manage TACTIC Contract Deliverables Quarterly	Percentage of contracted performance objectives completed to satisfaction of Council	100%	100% satisfaction. Contract performance objectives achieved and up to date.			
Update a Plan of Management for Jack Evans Boat Harbour Tweed Heads	Completed by target date	June 2004	Draft Plan being finalised.			
Develop and Adopt a Retail Development Strategy	Completed by Target date	June 2004	Consultant engaged to prepare strategy.			

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Submit Tweed Local Environmental Plan 2000 Amendment – West Tweed Heads to Minister for Planning	Completed by target date	June 2004	No response from land owners to request for contributions towards cost of Environmental Study.			
Submit Tweed Local Environmental Plan 2000 Amendment – Fernvale to Minister for Planning	Completed by target date	June 2004	No response from land owners to request for contributions towards cost of Environmental Study.			
Submit Tweed Local Environmental Plan 2000 Amendment – Melaleuca Station to Minister for Planning	Completed by target date	June 2004	Request for Section 65 certificate to exhibit Draft LEP and Environmental Study sent to Planning NSW.			
Develop Tourism Industry Infrastructure Development Strategy	Completed by target date	June 2004	Yet to be commenced.			
Develop and adopt Development Control Plan for performance based criteria for Employment Generating Development	Completed by target date	June 2004	Draft DCP prepared.			
<b>Responsible Division / Unit</b>						
Corporate Services Business Undertakings Strategic Planning						

**Additional Actions**

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Council owned land at Wardrop Valley is to be partially sold.	Completed by target date	June 2004	Progress subject to D.A. process.			

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Development of Southern Boat Harbour Marina	Completed by target date	June 2004	Report brought forward to Council. Council resolved to proceed with the project and finalise the lease agreement with the Department of Lands.			

**ACTIVITY 4: NATURAL & BUILT ENVIRONMENT**

**Objective:**

*To conserve the unique bio-diversity and scenic quality of the Tweed whilst ensuring sustainable quality development.*

**Progress towards Actions:**

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Complete Annual Survey of Development Applicants	Percentage of overall applicant satisfaction	66%	Yet to be commenced.			
Review Internal Service Level Protocols	Completed by target date	Dec 2003	Implemented Service Level Protocol Dashboard to enable managers to monitor performance against the agreed Service Level Protocols.			
Review Engineering Input into Development and other Application Processes Complete Annual Survey of Development Applicants	Completed by target date	Dec 2003	Commenced review and information collection.			
Review Internal Service Level Protocols	Completed by target date	August 2003	Implementation nearing completion.			
Complete Review of Inspections system and processes	Percentage of completed projects inspected after 3 months of completion	30%	Estimated on target, approximately 30% of completed Building Strata subdivisions inspected.			

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Prepare and Implement Complaints Protocol	Percentage of complaints resolved within 4 weeks of initial complaint	50%	Estimated above target at approximately 70% of complaints resolved within 4 weeks of initial complaint.			
Implement adopted Tweed Local Environmental Plan Review Program	Percentage of LEP amendments completed within 18 from Council section 54 Resolution	100%	Various Draft Local Environmental Plans being prepared.			
Submit Vegetation Management Plan and Draft Tweed Local Environmental Plan 2000 Amendment to Minister for Planning	Completed by target date	June 2004	Steering Committee has endorsed draft DCP - Exempt and Complying Development and Draft Vegetation Management Strategy. Zoning maps being finalised for consideration by Committee.			
Review and adopt updated Strategic Plan	Completed by target date	June 2004	Project commenced with community meetings, and special edition of Tweed Link.			
Complete Kingscliff Local Plan	Completed by target date	June 2004	Key Issues being investigated.			
Draft a Development Control Plan for Kingscliff	Completed by target date	June 2004				
Draft a Section 94 Plan for Kingscliff	Completed by target date	June 2004				
Review Village Strategy for Pottsville	Completed by target date	June 2004	No work to be completed until Retail Strategy provides data on floor space requirements for Pottsville.			
Prepare Development Control Plan for Pottsville	Completed by target date	June 2004				

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Prepare Section 94 Plan for Pottsville	Completed by target date	June 2004				
Prepare draft Development Control Plan for Cabarita for exhibition	Completed by target date	June 2004	Steering Committee set up, Draft Plan being finalised.			
Develop and Adopt Rural Villages Development Strategy	Completed by target date	June 2004	Yet to be commenced.			
Develop and adopt Residential Development Strategy	Completed by target date	June 2004	Relevant issued investigated.			
Develop and Rural Settlement Strategy	Completed by target date	June 2004	Brief prepared for consideration by LEP advisory committee.			
Submit Rural Settlement Strategy to Planning New South Wales	Completed by target date	June 2004				
Draft Local Environmental Plan Exhibited	Completed by target date	June 2004				
Submit Draft Local Environmental Plan to Planning New South Wales for Terranora Area E Urban Release Area	Completed by target date	June 2004	Consultants preparing planning framework.			
Prepare and adopt Development Control Plan for Terranora Area E Urban Release Area	Completed by target date	June 2004				
Prepare and adopt Section 94 plan for Terranora Area E Urban Release Area	Completed by target date	June 2004				

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Submit draft Local Environmental Plan for Kings Forest Urban Release Area to Planning New South Wales	Completed by target date	June 2004	Awaiting transfer of land to new owners before work commences on the project.			
Prepare and adopt Development Control Plan for Kings Forest Urban Release Area	Completed by target date	June 2004				
Prepare and adopt Section 94 plan for Kings Forest Urban Release Area	Completed by target date	June 2004				
Implement Tweed River Management Plan	Completed by target date	June 2004	Bird Monitoring Report received UQ Ecological River Health Report Received Lavender Creek Stormwater Improvements 90% complete.			
Implement Estuary Management Plan	Completed by target date	June 2004	Estuary Management Plan Review commenced.			
Commence development for Implementation of the Coastline Management Plan	Completed by target date	June 2004	Stage 1 Report Completed. Coastline Management Study and Plan 60% complete.			
Review and Revise Tweed River Flood Model and DCP5	Completed by target date	June 2004	Digital Elevation Model Project 50% complete. Interim review of DCP5 90% complete.			



2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Construct Boat Ramps	Percentage of project complete	100%	10% complete. Tenders received for 3 boat ramp upgrades.			
Construct new Flood Mitigation Facilities	Percentage of project complete	100%	0% complete. Nil Action. awaiting funding advice.			
<b>Responsible Division / Unit</b>						
Development Assessment Strategic Planning Water						

**Additional Actions**

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Uki Development Control Plan	Completed by target date	June 2004	Yet to be commenced.			

**ACTIVITY 5: INFRASTRUCTURE PLANNING****Objective:**

*To prepare strategic plans, specifications and public policies for engineering infrastructure that are consistent with Council's Strategic land use planning, reflect current best practice and are underpinned by demonstrable financial capability and coordination long term financing of key infrastructure with the release of land for urban development.*

**Progress towards Actions:**

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Implement DCP16 Development Engineering Specs	Completed by target date	June 2004	90% complete.			
Organise DCP16 Development Eg: standard drawing	Standard Drawings produced on time	June 2004	10% complete.			
Review and update as necessary DCP 16 Development Engineering Specs and Standards	Specifications and Standards completed	June 2004	Yet to be commenced.			
Draft Stormwater DCP	Completed by target date	June 2004	50% complete.			
Finalise Northern Arterial Road Network	Completed by target date	June 2004	70% complete. Report submitted to Council September 2003.			
<b>Responsible Division / Unit</b>						
Infrastructure Planning						

**ACTIVITY 6: ROADS AND TRANSPORT****Objective:**

*To provide a transport infrastructure system that allows safe, convenient and comfortable pedestrian and vehicular traffic movement to, from and within the Tweed Shire.*

**Progress towards Actions:**

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Undertake the pre-construction activities for those projects listed in the Works programme	Complete pre-construction activities 3 months prior to construction commencing	100%	25% complete. On target, pre-construction activities completed 3 months prior to construction commencing.			
Complete Urban Works Program	Percentage complete	100%	10% complete. Queen Street Fingal completed. Floral Avenue commenced. Cominan Avenue commenced with some re-design required.			
Complete Drainage Program	Percentage complete	100%	0% complete. No projects commenced at this time.			
Complete Roads to Recovery Program	Percentage complete	100%	20% complete. Minnows Road completed. Byrrill Creek Road ready to be sealed.			

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Complete ACRD Program	Percentage complete	100%	10% complete. Kyogle Road completed Numinbah Road completed Fingal Road service relocation commenced.			
Complete Bridge Program	Percentage complete	100%	10% complete. South Pumpenbil Bridge completed.			
Complete Planning for Tweed and Murwillumbah Depots upgrade	Completed by target date	June 2004	Design commenced for extension to Murwillumbah Depot Office. No funding allocated for Tweed Depot improvements.			
<b>Responsible Division / Unit</b>						
Design Works						

**ACTIVITY 7: WATER & SEWERAGE****Objective:**

*To provide a high quality and reliable water and sewerage service that meets community expectations and assists economic development.*

**Progress towards Actions:**

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Undertake the pre-construction activities for those projects listed in the Water and Sewerage programme	Complete pre-construction activities 3 months prior to construction commencing	100%	25% complete. On target, pre-construction activities completed prior to construction commencing.			
Review and Implement Asset Replacement Program	Percentage of program complete	100%	12% complete.			
Implement Capital Works Program	Percentage of program complete	100%	10% complete. Kingscliff STP Interim Works completed.			
Implement Augmentation of Hastings Point Sewerage Treatment Plant	Percentage of program complete	100%	10% complete. Tenders Received.			
Implement Augmentation of Bray Park Water Treatment Plant	Percentage of program complete	100%	5% complete. Concept Design completed.			
Develop Bulk Water Supply Strategy	Percentage of program complete	50%	5% complete. Engaged Consultant to Complete Scoping Study.			

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Obtain Community and Council endorsement for Banora Point & West Tweed Effluent Disposal Strategy	Percentage of program complete	100%	80% complete. Final Meeting Scheduled for November 2003.			
Obtain Community and Council endorsement for West Tweed & Banora Point Sewerage Treatment Plants	Percentage of program complete	100%	0% complete. Await outcome of Disposal Strategy.			
<b>Responsible Division / Unit</b>						
Design Water						

**ACTIVITY: 8 CIVIC GOVERNANCE****Objective:**

*To provide representative and responsive government, sound management of the resources of Council, ensure statutory requirements are met and provide services to the organisation in the most cost effective, safe and timely manner.*

**Progress towards Actions:**

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Continue to Facilitate and Implement Reserve Trust Resolutions in relation to Caravan Park Maintenance and Development	Percentage of Reserve Trust resolutions implemented on time and within budget	100%	100% of Reserve Trust resolutions implemented.			
Implement Freedom of Information Act	Number of complaints regarding personal details being given out by Council	Zero	Zero complaints.			
Implement Privacy and Personal Protection Act.	Number of complaints regarding personal details being given out by Council	Zero	Zero complaints.			
Implement Strategic Asset and Risk Management Program	Reduce the number of Public Liability Claims	100%	Estimated reduced number of public liability claims by 60%.			
Complete Council Safe II Program	Completed by target date	Dec 2003	90% complete.			

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Reduce workers compensation costs against 2002 benchmark	Target met.	\$2800	Report submitted to EMT.			
Implement Training Plan	Percentage of program delivered	100%	20% of program delivered. Training included chemical usage, crane & plant electrical safety, chainsaw safety and maintenance, dam safety surveillance, water fluoridation, various professional conferences and workshops and plant & equipment licences.			
Review employment selection and EEO process	Completed by target date	Feb 2004	Reformation of EEO sub-committee.			
Implement Staff Orientation Program	Completed by target date	Dec 2003	August 11 – commenced first office-based orientation program; August 18 – commenced first field-based orientation program. Program monitoring and enhancement to continue.			



2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Benchmark records management processes against local government authorities to ensure it delivers "best practice"	Percentage of processes at or above best practice standard.	50%	Estimated 10% best practice Design phase for compliance to State Records Act completed.			
Specify new information technology application requirements and support existing infrastructure	New specifications developed	March 2004	8 applications specified. Implementation of Minutes Manager / DataWorks Upgrade completed.			
	Level of customer satisfaction for existing support	50%	90% satisfaction. Aim is to continually improve customer service.			
Monitor Councils budget including timely reporting and provision of financial advise to support the decision making process.	Reports completed on time monthly	100%	100% complete. All reports are completed on time.			
	Timely advice provided	100%	100% of advice was provided in a timely manner.			
Complete relevant statutory financial reporting (annual statements, financial indicators, etc) in accordance with relative statutes.	Completed by target date	Nov 2003	Completed.			

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Provide effective and efficient costing, payroll, accounts payable, stores, debtors, rating, receipting, management, accounting, water debtors, and property services.	Percentage of satisfaction with financial services	99%	95% satisfaction. Aim is to continually improve service.			
Undertake a program of internal Audits of Councils Operations	Number of internal audits undertaken completed by the end of the financial year	30	7 audits completed.			
<b>Responsible Division / Unit</b>						
Business Undertakings Administration Services Occupational Health & Safety Human Resources Financial and Information Services						

**Additional Actions**

2003 / 2004 Actions	K.P.I	Target	Progress First Quarter	Progress Second Quarter	Progress Third Quarter	Progress Fourth Quarter
Delivery of training through RTO	Completed by target date	March 2004	10% complete.			
Retention of staff	Completed by target date	June 2004	Commenced labour turnover review			

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**18 [OGM] Tweed Economic Development Corporation (TEDC) Quarterly Performance Report - July to September 2003**

**ORIGIN:**

**Director**

**SUMMARY OF REPORT:**

The Tweed Economic Development Corporation, Chief Executive Officer's quarterly performance report for July to September 2003 is detailed in this report.

**RECOMMENDATION:**

That this report be received and noted.

## **REPORT:**

In accordance with the terms of agreement between Tweed Shire Council and the Tweed Economic Development Corporation, following is the Chief Executive Officer's report on the activities of the Tweed Economic Development Corporation for the period July to September 2003:

### **CHIEF EXECUTIVE OFFICER'S QUARTERLY PERFORMANCE REPORT:**

#### **1. TEDC/Tweed Shire Council Economic Growth Management Strategy Discussions**

Following on from the resolution of Council. Discussions between the EMT and TEDC took place on 18 June 2003. It was resolved that the CEO of TEDC and the Director of Development Services, David Broyd would meet to discuss a common approach to reviewing the economic development strategies of the two organisations.

At the TEDC Board meeting of 26 September 2003, the Board resolved to support the formation of a joint committee between Tweed Shire Council and TEDC to advance the process of reviewing the two independent economic development strategies. The proposed joint committee would consist of Bill Stainlay (Chairman of TEDC), Peter Sippel (TEDC Director and Principal of the Heilbronn Group), Tom Senti (CEO of TEDC), Doug Jardine (Strategic Town Planner, Tweed Shire Council) and Mark Tickle (Tweed Shire Council). This proposal would be put forward to a joint meeting of TEDC and the Executive Management Team of Tweed Shire Council at a meeting on 1 October 2003.

The joint meeting of TEDC/EMT on 1 October 2003 endorsed the proposal.

#### **2. Economic Input/Output Analysis Model Update**

TEDC has held discussions with the Board of Sustainable Regions following the submission of an expression of interest by TEDC. The Board of Sustainable Regions were most enthusiastic about the establishment of an economic input/output analysis model in Tweed Shire as a pilot for the rest of the sustainable regions area. David Broyd, Director of Development Services of Tweed Shire Council, attended the Sustainable Regions meeting.

Sustainable Regions has requested that TEDC meet with the General Managers and Mayors of the other local government representatives in the sustainable regions area to promote the idea of the development of economic input/output analysis models for each of the other five local government areas. This meeting is scheduled for 13 October 2003 at Lismore. A presentation will be made to the General Managers by Guy West, Senior Economist of Queensland University, who will develop the economic input/output analysis model, David Broyd, Director of Development Services representing Tweed Shire Council, and Tom Senti, CEO of TEDC. Also present at that meeting will be Geoff Provest, Chair of Sustainable Regions, and Ruth Povall, Executive Officer of Sustainable Regions.

The proposal is to establish individual and independent economic input/output analysis models for all of the local government authorities in the sustainable regions. Should all of the General Managers and Councils in the Northern Rivers Sustainable Regions area endorse the project, then this will become a project funded by Sustainable Regions with a pilot being the initial establishment of the TEDC Economic Input/Output Tweed Shire Council Model. The Model is now recognised as an invaluable tool in terms of understanding the Tweed economy and also in measuring any future growth of the economy.

### 3. Industrial Land

As Tweed Council is aware, the DA for the subdivision of the land at Wardrop Valley is before the independent planner acting for Tweed Shire Council. It is expected that this DA assessment will be put before Council mid-October and we would hope that the DA will receive favourable support from Tweed Shire Council.

TEDC continues to receive enquiries for large lot industrial land and TEDC is limited in its capacity to introduce potential industries to the Tweed by the lack of suitably priced and ready for development land. The only land that is available are four blocks in Murwillumbah, which range in price from \$210,000 for half an acre to some \$300,000 for one acre.

The Board of TEDC would like to recommend to Tweed Shire Council that it take appropriate action to identify and rezone suitable parcels of land for future large lot industry growth in Tweed Shire. From the level of enquiries received both by the developers of the land at Wardrop Valley and TEDC, it would seem that there is clearly a need for such large parcels of land into the future. The whole issue of industrial land should be a process of continued review and update.

### 4. Chinderah Bay Marina Update

As the Tweed Shire Council would be aware, TEDC has facilitated this project for the past six years and supports and endorses its approval. Whilst there have been some questions raised in relation to the ultimate size of the marina, TEDC holds the view that there is sufficient legislation in place to determine the ultimate sustainability of the Chinderah Bay Marina proposal and therefore, suggests that the proposed marina should receive endorsement of the Tweed Shire Council.

The Chinderah Bay Marina should be seen in the light of it being a key economic driver by providing a catalyst for tourism in terms of "things to do in Tweed Shire" which would complement the development of the tourist resorts proposed at Salt and also proposed at Casuarina Beach.

### 5. Tweed Heads CBD Redevelopment Task Force Update

TEDC continues to be represented as a member of the Task Force. The economic development strategy has been completed for the CBD and will be launched by the

Minister, Dianne Beamer on 24 October 2003. The Task Force is now in the process of appointing consultants to develop a master plan for the redevelopment of the CBD Tweed Heads and an announcement is expected in the very near future.

6. TEDC Economic Summit – 24 October 2003, Twin Towns

Following on from the Bernard Salt Presentation in May 2003, TEDC is hosting an Economic Summit on 24 October 2003 at Twin Towns. The summit will focus on the importance of economic development and the need to diversify the economic base in the Tweed Shire, and the other focus will be on establishing industry networks and forums with the objective of establishing industry clusters in Tweed Shire.

It needs to be understood that industries are all encompassing and include the following industries – education, health and age care, tourism, film, TV, multi media, agribusiness, IT innovation, marine and fibre glass industries through manufacturing and processing, as well as others yet to be identified. The objective behind the establishing industry clustering is to assist these industries to grow by understanding their needs as well as the opportunities that they present in terms of attracting other industries.

The keynote speakers at the Summit will be Mr Alan Rickard, Deputy Mayor of Gold Coast City Council & Chairman of REDAC, who will speak on the importance of economic development; Mr Greg Young, Director for Economic Development & Major Projects of Gold Coast City Council, who will speak on the practical aspects of economic development; Mr John Humphreys, Managing Director of Brisbane based Global Innovation Centre & internationally network organisations focused on regional innovations, including cluster development, who will speak on the various cluster models and the benefits of cluster development; and finally Mr Austin Smith of the Agribusiness Department of the Heilbronn Group will speak on a specific cluster development in the Gold Coast as a practical example of the benefits of a cluster development.

The Economic Summit will be opened by the Hon Dianne Beamer, MP Minister assisting the Minister for Infrastructure and Planning. Also in attendance will be Neville Newell, MP who will introduce the Minister. The Economic Summit will be chaired by David Broyd, Director of Development Services of Tweed Shire Council. At the end of the presentation by the various keynote speakers, there will be a Think Tank & Industry Working Group Session, which will be facilitated by Mr Stewart Moore from CRC Sustainable Tourism Services of Griffith University. The Economic Summit will commence at 8.30 am and finish at 5.00 pm.

This Economic Summit has received enormous support through sponsorship and TEDC is very pleased to be able to say that it has received sponsorships support from Telstra Country Wide, Country Energy, Daily News, Radio 97, Twin Towns Services Club and the Barking Toad Marketing Group.

TEDC sees the Economic Summit as the second of three proposed events, which it intends to facilitate by the end of June 2004, building on the first event, which with the



Bernard Salt Presentation which set the scene in terms of understanding the demography of Tweed Shire. The Summit will build on the importance of diversifying the Tweed economy and gives some direction on how this can be achieved. TEDC is optimistic that it will receive wide community support by way of attendance at the Summit and TEDC has issued some 350 invitations to various key stakeholders, inviting them to attend and included in that list of invitees are personal invitations to all of the existing Tweed Shire Councillors.

7. TEDC Website & e~Bulletin

The TEDC Website continues to be active in the global marketplace with statistics reflecting a consistent average 2,000 visits per month to the TEDC Website. Equally consistent is the interest being shown from the USA where over the last several months, it has averaged in excess of 30%. The TEDC e~Bulletin produced monthly – likewise continues to grow and when you consider that the first edition was produced in November 2002 with 35 copies being requested, and with the latest edition now totalling in excess of 500 in circulation via the internet.

8. Northern Rivers Regional Development Board

The CEO of TEDC has been appointed to the Northern Rivers Regional Development Board. The appointment is seen as a positive step in TEDC working with the regional body in the interests of both Tweed Shire and the Northern Rivers Region.

9. TEDC Annual General Meeting

The Annual General Meeting of the Tweed Economic Development Corporation will be held in late November, a date yet to be determined and Tweed Shire Council will be advised accordingly in due course.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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## REPORTS FROM DIRECTOR ENGINEERING SERVICES

### 19 [ES] Draft Development Control Plan No. 5 - Development of Flood Liable Land

#### ORIGIN:

Planning & Infrastructure

FILE NO: GT1/DCP/5

#### SUMMARY OF REPORT:

Draft DCP5 version 2.1 has been prepared as an interim update of flood development policy to acknowledge some of the key principles of the 2001 NSW Floodplain Management Manual, update definitions to be consistent with Tweed LEP 2000 and incorporate a number of housekeeping changes that clarify the range of permissible developments in a number of flood plain areas. A more comprehensive rewrite of DCP 5 is expected to be prepared in mid 2004, to incorporate the results of remodelling local flooding up to the Probable Maximum Flood (PMF) level, and to more comprehensively incorporate the principles of the 2001 NSW Floodplain Management Manual.

#### RECOMMENDATION:

That:-

1. Council adopt the draft Development Control Plan No.5 – Development of Flood Liable Land – Version 2.1, as a basis for exhibition and community discussion/consultation.
2. Draft Development Control Plan No.5,Version 2.1 – Development of Flood Liable Land, be exhibited as required by the Environmental Planning and Assessment Regulations to repeal and replace the current version.

## REPORT:

### 1. Background

The original version of DCP 5 became operational in December 1990 and was based on a number of local flood studies and the 1986 NSW Floodplain Development Manual. The current version is a 1996 amendment that permitted granny flats in low hazard areas and updated the schedule of flood levels.

A number of changes have now taken place since the adoption of the current version of DCP5.

Tweed LEP 2000 has been adopted and has changed the definition of many development terms.

In January 2001 a new Flood Plain Management Manual, was released by the NSW Government. The new manual incorporated changes that:-

- Emphasise development of floodplain risk management plans
- Emphasise the need to incorporate the above into environmental planning instruments (LEPs)
- Recognise the Probable Maximum Flood (PMF), but, recognising that the PMF should not preclude or unnecessarily hamper development
- Recognise the need for local flood plans prepared under guidance of SES to address readiness, response and recovery
- Recognise the need for house raising as a floodplain risk management measure in existing developed areas
- Recognise that site specific plans written separate from overall risk management plans are ineffectual and should not form the basis of development consent
- Include rural flooding
- Include local overland flooding
- Consider flood risk on a strategic framework to enable consideration of cumulative impacts
- Provide a basis for Councils to amend LEPs with respect to planning controls for new types of development in flood prone land not identified in existing floodplain risk management plans

- Emphasise, as part of flood modification measures, the need to maintain and enhance riverine and floodplain environments and the needs of threatened species, populations and ecological communities
- Emphasise consideration of acid sulphate soils and associated problems
- Incorporate the principles of ecologically sustainable development
- Increase emphasis on catchment considerations
- Consider Aboriginal and European cultural significance on the floodplain
- Recognise the potential of climate change on flooding behaviour (global warming)

Council has commissioned consultants WBM Oceanics to update and rerun Tweed Flood Models to determine a range of flooding probabilities up to the PMF level. This modelling should be completed by mid 2004. The modelling has updated the terrain model (flood plain levels, cross sections) to provide a more accurate terrain base and to incorporate development and landfill that has occurred since the last update. The modelling has also incorporated current best practise techniques in rainfall estimation to determine the depth of precipitation (rainfall) for a range of frequencies including the probable maximum precipitation on which the PMF is derived.

The above changes have initiated the need to revise DCP5.

## **2. Purpose of This Version**

This draft version has been prepared as an interim update of flood development policy to acknowledge some of the key principles of the 2001 NSW Floodplain Management Manual, update definitions to be consistent with Tweed LEP 2000 and incorporate a number of housekeeping changes that clarify the range of permissible developments in a number of flood plain areas.

These changes include:-

- Amending the definitions in Part 1.7 to be consistent with the Tweed LEP 2000 and the 2001 Floodplain Management Manual
- Introducing the concept and implications of the Probable Maximum Flood (PMF)
- Redefining areas 4 and 7 (Chinderah and Kingscliff) to make the realigned Pacific Highway the locality divider for the purpose of flood plain development
- Whilst remaining consistent with the previous version and supporting flood studies/models, clarifying the range of permissible developments and filling heights in the Chinderah and Kingscliff localities

- Clarifying the allowable ground floor enclosure of elevated dwellings in flood prone areas and permitting a detached garage of 36m<sup>2</sup>
- Clarifying permissible levels of roads and lot filling in flood prone areas
- Incorporating a number of housekeeping measures to clarify permissible development in other flood prone areas

The above changes will remove a number of ambiguities/inconsistencies from the present version, provide owners/developers with more certainty of outcomes and enable flood plain development to progress until a comprehensive rewrite of DCP5, expected in mid 2004.

### **3. Future Amendments and Impact of the PMF**

This report foreshadows a further substantial amendment to DCP 5 in mid 2004 to incorporate the revised flood modelling (including the PMF) and if appropriate to more comprehensively address the principles of the 2001 NSW Floodplain Management Manual.

The PMF is defined in the 2001 NSW Floodplain Management Manual as *“the largest flood that could conceivably occur at a particular location, usually estimated from probable maximum precipitation. Generally, it is not physically or economically possible to provide complete protection from this event. The PMF defines the extent of flood prone land, that is, the floodplain. The extent, nature and potential consequences of flooding associated with the PMF event should be addressed in a floodplain risk management strategy.”*

The PMF is the largest flood that can physically occur in a locality and is an extremely rare event. The 2001 manual advises that it does have relevance to floodplain risk management as:-

- It defines the maximum extent of the floodplain, the extreme limits of flood behaviour and the extent of associated flood risk
- The behaviour and consequences of floods up to the PMF level need to be investigated
- It will generally be impossible, in either a physical or economic sense, to provide general protection against such an event, however, the PMF event should form the basis for certain planning decisions eg. location of emergency services such as police, hospitals, telephone exchanges, etc above PMF levels should be considered for both new facilities and upgrading existing facilities
- Statements about development above the Flood Planning Level (Adopted Design Flood Level) but below the PMF should be carefully worded to avoid the possible misunderstanding that the development is free of any flooding risk. These properties may be subject to flooding in rare flood events

Council has modelled the flood prone areas of the shire in the past to determine flood levels for the adopted design flood (1 in100 year frequency) and these levels are printed in DCP5 versions including this draft.

Council is now carrying out a new round of flood plain modelling with updated rainfall (including probable maximum precipitation), terrain and development data. This is a lengthy process and will not be completed until some time in 2004. This modelling will predict the PMF levels for areas covered by the model.

Until this modelling is completed the PMF level cannot be determined.

When the modelling is completed, it is expected the DCP will be amended to identify PMF levels in localities covered by the modelling. The PMF levels will define a considerably enlarged flood plain as both the "flood plain" and "flood prone land" definitions in the 2001 manual are based on the land inundated by the PMF event. There may also be future (after determination of the PMF) implications for Council in issuing planning (149) certificates, and the need to advise as "flood prone" the additional land/lots affected by the PMF.

#### **4. Draft Development Control Plan No.5, Version 2.1 – Development of Flood Plain Land**

The draft DCP 5, Version 2.1 is attached with the meeting papers. It is proposed that if adopted, this version will repeal and replace the current version.

#### **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

#### **POLICY IMPLICATIONS:**

Nil.

#### **UNDER SEPARATE COVER:**

1. Draft DCP 5, Version 2.1.
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**20 [ES] Tweed River Estuary Ecosystem Health Monitoring Program 2000 - 2001**

**ORIGIN:**

**Water**

**SUMMARY OF REPORT:**

The Department of Marine Botany, University of Queensland was commissioned by the Tweed River Committee to undertake monitoring of the Tweed River Estuary ecosystem's health. Monitoring utilised traditional water quality measurements and biological indicators to better understand the estuary's pollution sources and the ecosystems response.

The monitoring program reported fair health for the Lower Estuary and Terranora System with poor health in the Mid to Upper Estuary and the Rous River.

Three sets of data monitoring were undertaken, wet summer (Feb 2000), dry winter (Aug 2000), and flood event (Feb 2001).

It is important to note that this monitoring program provides a snap shot of the ecosystem health and does not quantify changes of estuary health over time.

Impacts from the sewage treatment plants discharging into the Estuary are currently being reviewed and where possible, minimised through reuse schemes and better treatment of the sewage. This includes the current Tweed Heads/Banora Point Effluent Disposal Community Consultation project. Council's preferred strategy acknowledges the impact on the Terranora system and seeks to minimise impacts by improving the quality of effluent discharged to Terranora Creek.

Other projects include the Condong effluent reuse project, and use of treated effluent from Tumbulgum STP to irrigate a Taro crop.

**RECOMMENDATION:**

That the Tweed River Estuary Ecosystem HEAIR Monitoring Report be received and noted.

## REPORT:

The Department of Marine Botany, University of Queensland was commissioned by the Tweed River Committee to undertake monitoring of the Tweed River Estuary ecosystem's health. Monitoring utilised traditional water quality measurements and biological indicators to better understand the estuary's pollution sources and the ecosystems response.

The monitoring program reported fair health for the Lower Estuary and Terranora System with poor health in the Mid to Upper Estuary and the Rous River.

Three sets of data monitoring were undertaken, wet summer (Feb 2000), dry winter (Aug 2000), and floor event (Feb 2001).

It is important to note that this monitoring program provides a snap shot of the ecosystem health and does not quantify changes of estuary health over time.

A peer review undertaken by the Department of Infrastructure, Planning and Natural Resources that stated, *"Overall this is a comprehensive report with several variables investigated and a useful approach being utilised to portray information in an understandable manner. There are some aspects that need to be addressed and questioned, but overall the report and methods used can be considered to be going along the right track."*

*A major shortfall in this project is the lack of understanding / emphasis paid to understanding some of the physical dynamics that often underpin biological responses. This report would be more useful if these aspects were considered in tandem. There was no discussion in the report on how sampling was standardised for tidal effects and of the influence of tides for example on the determination of seagrass depth."*

The \$10 million upgrade to Murwillumbah Sewage Treatment Plant was completed during the study and the effect of the improvements to the discharge from this site are not included in this report.

Impacts from the sewage treatment plants discharging into the Estuary are currently being reviewed and where possible, minimised through reuse schemes and better treatment of the sewage. This includes the current Tweed Heads/Banora Point Effluent Disposal Community Consultation project. Council's preferred strategy acknowledges the impact on the Terranora system and seeks to minimise impacts by improving the quality of effluent discharged to Terranora Creek.

The current effluent disposal strategy was developed from modelling undertaken in 1998/99 and information provided in other reports presented around and prior to that time. A review of the Tweed River Estuary, Ecosystem Health Monitoring Program 2000 to 2001 Final Report", Marine Botany Group University of Queensland has been undertaken in relation to its contribution and relevance to the Tweed Heads – Banora Point Effluent Disposal Strategy.

Issues noted from the report that impact either positively or negatively on Council's preferred strategy are summarised below:-

University of Queensland Report with Reference to Terranora System Only	Comments
<p>Water Quality Key Processes:</p> <ul style="list-style-type: none"> <li>• pH values were well within the acceptable range for healthy ecological functions</li> <li>• Broadwater oxygen levels were good despite relatively high SS (wet season)</li> <li>• Catchment runoff is the likely cause of high levels of turbidity in the Broadwaters. Poor flushing in the Broadwaters will retain SS for long times and shallow depths and wind action will continually keep sediments suspended in the water column.</li> <li>• Mixing Plots – The input of nutrients at Banora Point STP indicates that tidal flushing diluted nutrient levels. Due to very low nutrient levels in the dry mixing plots were not performed for the dry season. High nutrient levels found at Banora Point STP outfall were diluted from the system by simple tidal flushing.</li> <li>• Chlorophyll a biomass levels were generally within acceptable ranges. In the dry season levels were generally depressed in comparison to other seasons. Broadwaters have high levels of algal biomass possibly more related to longer residence times rather than elevated nutrient concentrations.</li> </ul>	<p>The UQ report attempted to look at seasonal and spatial variability (seasonal – flood, wet summer &amp; dry winter).</p> <p>It is noted that the Wet Season monitoring undertaken by the UQ corresponded with a rainfall event of 161 mm in the Terranora system or approximately 10% of annual rainfall in one day. The Terranora Inlet and Broadwaters has a catchment area of 118 km<sup>2</sup> and for this rainfall event the discharge from Banora Pont STP would represent an extremely small proportion of the runoff volume entering the waterway.</p> <p>In terms of nutrient loading in the drier years or drier periods the relative contribution from the STPs will increase. It is considered that only the UQ comments for the Dry Season monitoring are significant to the Effluent Disposal Strategy.</p>
<p>Sediment Quality Key Processes:-</p> <p>Testing dissolved nitrogen and phosphorus fluxes across sediment-water interfaces can provide an effective indicator of eutrophication and the ability of the ability of the estuary to process increased organic loads.</p> <p>Sediment fluxes for N and P were all losses to sediment for each of the sampling periods.</p>	<p>UQ refers to the analytical techniques used in the study to be a “new experimental approach”. DLWC peer review expressed concerns about the validity of the techniques and the interpretation of the results by UQ.</p> <p>There is no discussion in the report on what the assimilative “capacity” of the sediments might be.</p>

University of Queensland Report with Reference to Terranora System Only	Comments
<ul style="list-style-type: none"> <li>• Good sediment quality in Terranora Inlet decreasing to Broadwaters.</li> <li>• Sediment quality in Terranora Inlet indicated that localised sediments are able to deal with current water column eutrophication resulting from Banora Point effluent release.</li> <li>• Signs are that Broadwater sediments are not coping efficiently with existing organic loads. Shallow depths and land runoff are implicated.</li> </ul>	
<p>Anthropogenic Nutrient Impacts:</p> <p>Bioindicators – Phytoplankton and macro algae &amp; mangroves.</p> <ul style="list-style-type: none"> <li>• Phytoplankton Communities – low counts of phytoplankton, rating “excellent”</li> <li>• Phytoplankton Response – Dry winter: phytoplankton responses during survey were low or not evident at all indicating a very low capacity to bloom in the dry season.</li> </ul>	<p>Again the link between the poor quality water in the Broadwaters due to runoff was made in respect to phytoplankton communities at site T13 (i.e. Terranora Inlet downstream of the Broadwaters confluence) and there was no evidence of sewage nitrogen uptake at this site.</p>
<p>Critical Habitats As Ecosystem Indicators:</p> <p>Bioindicators - Seagrass distributions and depth</p> <p>Ecological functions – Riparian vegetation and mangroves</p> <ul style="list-style-type: none"> <li>• Seagrass depth ranges in the Terranora system were rated as excellent</li> <li>• Streambank habitat riparian vegetation in the Terranora system rated as poor to very poor due to urbanisation and public access</li> <li>• Mangrove coverage rated good to excellent in the Broadwaters</li> </ul>	<p>Report notes that Terranora Inlet had the largest seagrass distributions and that extra nutrients from the STP may be taken up by seagrasses and fuel greater biomass.</p>
<p>Zones in Estuary Ecosystem Health:</p> <p>This is essentially the UQ report summary and is repeated verbatim.</p>	<p>“The Terranora Inlet exhibited a marked</p>

University of Queensland Report with Reference to Terranora System Only	Comments
<p><b>“Terranora Inlet Key Findings:-</b></p> <ul style="list-style-type: none"> <li>• Inlet Mouth is fairly well flushed due to proximity to lower estuary</li> <li>• Low nutrient, turbidity and chlorophyll in the Inlet Mouth</li> <li>• Exposed to sewage N in wetter periods</li> <li>• Localised nutrient hotspot near Banora Point STP</li> <li>• Nutrient enriched plants near STP</li> <li>• Sediment nutrient processes are coping well with eutrophic loads</li> <li>• Healthy seagrass beds near STP</li> <li>• Low turbidity but high light limitation indicating high bloom risk waters</li> <li>• Upper Inlet is mostly pollutant free but exposed to nutrified waters flushed out of turbid Broadwaters</li> <li>• Some healthy fringing mangroves”</li> <li>•</li> </ul> <p><b>“Broadwaters Key Findings:-</b></p> <ul style="list-style-type: none"> <li>• Shallow Broadwaters are highly turbid due to shallow depths and high catchment run-offs</li> <li>• High chlorophyll levels</li> <li>• Nutrient-rich waters</li> <li>• Nitrogen enriched signals found in aquatic plants</li> <li>• Sediment nutrient processes are stressed and are supplying nutrients to the overlaying water column</li> <li>• Some seagrass in Terranora Broadwater</li> <li>• Fairly high risk of algal blooms</li> <li>• High stream bank coverage with extensive fringing mangroves</li> <li>• Urban and rural runoff:</li> </ul>	<p>gradient in water quality due to localised eutrophic hotspot near the Banora Point STP. However, despite nutrient enriched aquatic plants, the sediments act as a nutrient sink, indicating that health in this region is largely intact. Also, extensive robust seagrass beds provide habitat that support estuarine food webs and fisheries resources. This hotspot appeared to be localised as the Inlet Mouth was flushed to a certain extent throughout the year and the upper inlet remained in fairly good health, despite being exposed to nutrified waters being flushed out of the Broadwaters”.</p> <p>“The Broadwaters were generally in fair health yet did exhibit some warning signs, such as the supply of nutrients to the water column from sediments and a fairly high risk of algal blooms. Poor flushing abilities and longer water residence times are inherent features of the Broadwaters. To improve ecosystem health, catchment and urban runoff reduction could be a high priority as this region is highly valued for its habitat, aesthetic qualities and food harvesting yield (oysters). Future identification of turbidity sources could be a monitoring priority to aid effective ‘at source’ sediment control”.</p>

It can be calculated that the sewage treatment plants in the Tweed River catchment contribute 11% of the total nitrogen load in the river and estuary and 40% of the total phosphorus load.

The Terranora Inlet was assigned an “intermediate” priority for remedial actions. The good health of this section is attributable to good tidal flushing. Key recommended

actions are to reduce both N and P loading from Banora Point STP and increase water reuse schemes. The effluent disposal strategy addresses these issues.

Following the proposed plant upgrades, the concentrations of phosphorous and total nitrogen discharged to the Terranora Creek will be reduced.

The Broadwaters were assigned a "high" priority for remedial actions. These actions are primarily directed at reducing the impact on the waterways from stormwater runoff.

Council is also addressing reuse opportunities from sewage treatment plants that include the Condong effluent reuse project where 100% of dry weather flows from the Murwillumbah STP will be reused in the cogeneration project and reduce discharges from the Rous River. Treated effluent from Tumbulgum STP will also be used to irrigate a Taro crop at Tumbulgum again reducing phosphorous and nitrogen discharges to the Tweed River System.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**21 [ES] Closure of Pathway Created in DP238224 - Blue Waters Crescent, Tweed Heads South**

**ORIGIN:**

**Design**

**FILE NO: GR3/12/7 Pt2**

**SUMMARY OF REPORT:**

An application has been received from Mrs Dorothy Evans, who resides at 10 Blue Waters Crescent, Tweed Heads to close and purchase an unused pathway located along the northern boundary of her property between number 10 and number 8.

To date the pathway has been maintained by Mrs Evans' neighbour, Mr Tomkins who resides at number 8. Mr Tomkins has provided his consent to the closure and purchase by Mrs Evans, and in his letter of consent, advises that he had declined an offer from Council to acquire the pathway. Mr Tomkins has been maintaining the pathway as part of his garden, but due to failing health, he is agreeable to Mrs Evans closing and purchasing the pathway.

An inquiry was made with the owners of the land located immediately to the north of the pathway, now being SP 33102, whose land is accessible via the pathway, as to whether they had any objections to the closure of the pathway. The Owners Corporation of SP 33102 responded to the effect that no objection to the closure was made by any residents of the Strata Plan at the last general meeting.

It is to be noted that a pathway is defined in section 2 of the Traffic Act, 1909, as a "public street" where any "place open to or used by the public" falls within the definition of a road, therefore providing that this application comes within the provisions of the Roads Act.

**RECOMMENDATION:**

That:-

1. Council approves the closure of the pathway between Lots 26 & 27 in DP 238224 located at Blue Waters Crescent, Tweed Heads under the provisions of the Roads Act 1991 and the Roads Regulations;
2. The applicant bears all the survey and legal costs and purchases the subject land as determined in value by the State Valuation Office;
3. The title of the pathway be consolidated with the applicant's land;

4. Easements be created over public authority reticulation services, if any; and
5. All necessary documentation be executed under Common Seal of Council



**REPORT:**

An application has been received from Mrs Dorothy Evans, who resides at 10 Blue Waters Crescent, Tweed Heads to close and purchase an unused pathway located along the northern boundary of her property between number 10 and number 8.

To date the pathway has been maintained by Mrs Evans' neighbour, Mr Tomkins who resides at number 8. Mr Tomkins has provided his written consent to the closure and purchase by Mrs Evans, and in his letter of consent, states that he had declined an offer from Council to acquire the pathway. Mr Tomkins has been maintaining the pathway as part of his garden until recently, and due to failing health, Mrs Evans has taken up the maintenance of the area.

The pathway leads to the south-eastern boundary of SP 33102, whose property fronts the foreshore of Terranora Creek. Any person who uses the pathway to access the foreshore has to cross the common property of SP 33102.

Written advice from the Owners Corporation SP 33102 has been received stating that the Owners Corporation do not object to the closure of the pathway.

It is to be noted that a pathway is defined in section 2 of the Traffic Act, 1909, as a "public street" where any "place open to or used by the public" falls within the definition of a road, therefore providing that this application comes within the provisions of the Roads Act and its Regulations.

The pathway is not used by the public, nor any residents of the Owners Corporation. Verbal advice from the Secretary of the Owners Corporation confirmed that it would be preferable to close the pathway to avoid vagrancy and vandalism on the foreshore.

Copies of letters from Mr Tomkins and Strata Title Management, representing SP33102, follow this report, noting no objections to the closure of the pathway.

Also following is a plan showing the location of the pathway:-

8 Bluewaters Cr.  
Tweed Heads 2485.  
29/01/03.

To Tweed Shire Council.

Your Reference: Pathway shown on DP238224 Parish of Terranora,  
County of Rous between No. 8 and No. 10 Bluewaters Cr. Tweed Heads.

Some years ago Tweed Shire Council asked me if I wished to purchase the area of land described above as the Pathway and add it to my existing Title, but I declined the offer. During the whole period of my residency at No. 8 Bluewaters Cr., I have mowed the grass and maintained this area of land at no cost whatsoever to the Council. Due to failing health this job has become too much for me.

During a conversation with my neighbour and owner of the adjoining property No. 10 Bluewaters Cr., Dorothy Evans, I related to her my previous discussions with Council. Ms. Evans has agreed to take over the mowing and maintenance of this area of land between us and has expressed interest in purchasing this Pathway area of land from Council at a reasonable price.

My purpose in writing this letter is to inform Council that I have absolutely no objection whatsoever To Ms. Evans purchasing this strip of land and thereby permanently relieving me of the maitenance thereof.

Yours Sincerely,

F.W. Tomkins.



29.1.2003



# Strata Title Management

(TWEED HEADS) PTY LTD.

## Professional Body Corporate Managers

ABN 45 087 730 210 ACN 087 730 210

Cnr Bay & Enid Streets  
P.O. Box 134  
Tweed Heads NSW 2485

www.stratatitlemanagement.com  
Email: customerservice@stratatitlemanagement.com

Phone: (07) 5536 2  
Fax: (07) 5536 769

1 October 2003

The General Manager  
Tweed Shire Council  
PO Box 816  
MURWILLUMBAH NSW 2484

ATTENTION: Mr Ian Munro - Manager, Design

Dear Mr Munro

**SP 33102 – 106 Kennedy Drive, TWEED HEADS 2487**

**RE: Your Ref: GR3/12/7 Pt 2 - DW899052 – Closure of Pathway**

*Lot 2 DP616914*

We acknowledge receipt of your letter of 22 September 2003, requesting the outcome of a recent Annual General Meeting of the above Strata Plan concerning closure of the pathway referred to in your letter of 7 April 2003.

We are pleased to advise that SP 33102 have no objection to this closure and wish to confirm that this has been recorded in the minutes of their Annual General Meeting of 3 September 2003.

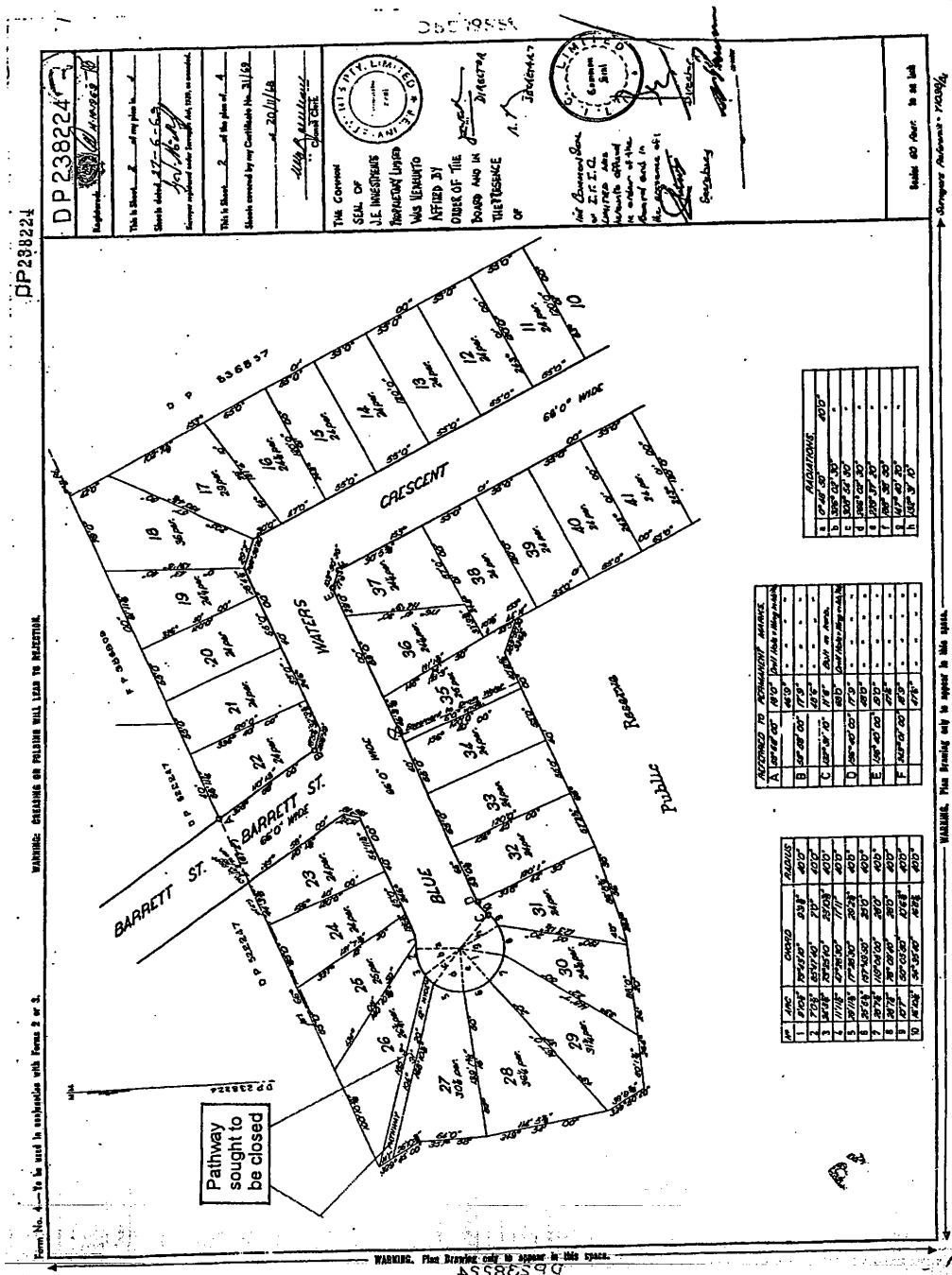
Should you require any further information regarding this, please contact me on (07) 5536 2100.

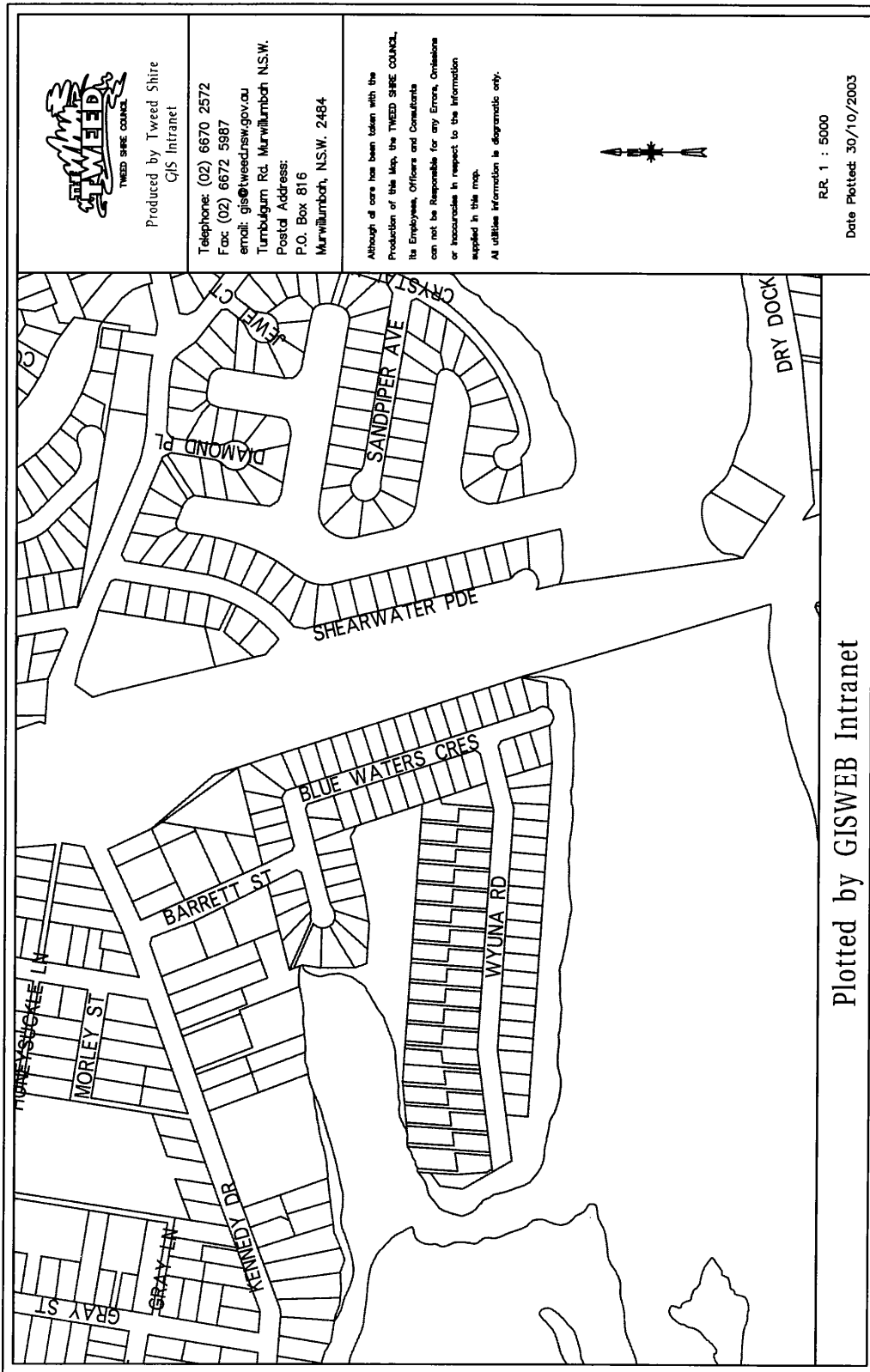
Yours sincerely  
STRATA TITLE MANAGEMENT

Billie Nicol  
Strata Manager

19783

TWEED SHIRE COUNCIL	
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Produced by Tweed Shire  
GIS Intranet

Telephone: (02) 6670 2572  
Fax: (02) 6672 5987  
email: [gis@tweedshire.nsw.gov.au](mailto:gis@tweedshire.nsw.gov.au)  
Turnbulgum Rd, Murwillumbah NSW.  
Postal Address:  
P.O. Box 816  
Murwillumbah, NSW. 2484

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supplied in this map.  
All utilities Information is diagrammatic only.



R.R. 1 : 5000  
Date Plotted: 30/10/2003

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**22 [ES] Federal Assistance Grant - Roads Allocation**

**ORIGIN:**

**Works**

**SUMMARY OF REPORT:**

Council has received advice that the Roads component of the Federal Assistance Grant is \$106,000 more than that approved in the Infrastructure Program for 2003/04.

Last financial year these additional funds were allocated to Council's share of gravel roads sealing where the residents were making contributions. Currently Council has sealed Cedar Creek Road this year and has indications from Pinnacle Road, McConnells Road, Stoddards Road and Nobbys Creek Road that contributions will be made.

It is again recommended that these additional funds be allocated for Council's share of the sealing of gravel roads where contributions are being made.

**RECOMMENDATION:**

That the additional \$106,000 approved in the September Quarterly Budget Review of the Federal Assistance Grant Roads component for 2003/04 be allocated to the sealing of gravel roads where residents are making contributions to the works as per the existing Policy.

**REPORT:**

Council has received advice that the Roads component of the Federal Assistance Grant is \$106,000 more than that approved in the Infrastructure Program for 2003/04.

Last financial year these additional funds were allocated to Council's share of gravel roads sealing where the residents were making contributions. Currently Council has sealed Cedar Creek Road this year and has indications from Pinnacle Road, McConnells Road, Stoddards Road and Nobbys Creek Road that contributions will be made.

Construction of these roads will require more than the \$150,000 allocated in the current budget for this type of work.

Over the past couple of years the following roads have had some sealing work completed with residents contributions:-

- Hattons Road
- Bryens Road
- Hopkins Creek Road
- Mt Burrell Road
- Cadell Road
- Everests Road
- Kanes Road
- Kellys Road
- Old Lismore Road
- Hazelbrook Road
- South Pumpenbil Road

It is recommended that the additional funding from the Federal Assistance Grant Road component be allocated to the sealing of gravel roads where residents are making contributions.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**23 [ES] Tweed Shire Coastline Management Study Stage 2 - Management Objectives**

**ORIGIN:**

**Water**

**SUMMARY OF REPORT:**

The attached report is the Draft Tweed Shire Coastline Management Study Stage 2. This report details the management options and actions that have been developed for issues relating to the whole of coastline and individual compartments thereof.

The Project is now moving into the Management Plan development phase. The Management Plan will identify the preferred options for each issue and provide an implementation strategy.

The next community workshop is scheduled for Tuesday 25 November 2003 at 6.30pm at the Kingscliff Amenities Hall. The purpose of this workshop is to discuss the management options and objectives proposed in the Stage 2 Report and seek feedback from the community.

**RECOMMENDATION:**

That this report be received and noted.

## **REPORT:**

Umwelt Australia was commissioned by Council to develop the Tweed Shire Coastline Management Study and Management Plan in accordance with the NSW Government's Coastline Management Plan Process. A grant for 50% of this project has been received from Department of Infrastructure, Planning and Natural Resources.

The Tweed Coastline Hazard Study was completed in October 2001. This Study provided updated immediate, 50 year and 100 year erosion hazard lines for the Tweed Coastline.

A series of community and Council workshops have been conducted to provide input into the process and management options for coastline erosion issues which were presented and discussed. The major short-term impact from coastal erosion is at Kingscliff Beach. Several options have been developed for this section of coastline.

The study attached to this report is the draft Tweed Shire Coastline Management Study Stage 2. This report details the management options and actions that have been developed for the whole of coastline and individual compartments.

The Project is now moving into the Management Plan development phase. The Management Plan will identify the preferred options for each issue and provide an implementation strategy.

The next community workshop is scheduled for Tuesday 25 November 2003 at 6.30pm at the Kingscliff Amenities Hall. The purpose of this workshop is to discuss the management options and objectives proposed in the Stage 2 Report and seek feedback from the community.

Following this workshop, a Preliminary Management Plan will be produced in early December for review by the Coastline Management Plan Steering Committee.

It is envisaged that a Draft Management Plan will be presented to Council in February 2004 prior to public exhibition and finalisation of the Tweed Coastline Management Plan.

## **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

## **POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

1. Draft Tweed Shire Coastline Management Study Stage 2.
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**24 [ES] Fish Unlimited Project - Habitat Restoration Works in the fingal Peninsular Wetlands**

**ORIGIN:**

**Water**

**SUMMARY OF REPORT:**

This report summarises recent progress in the Fish Unlimited project, a joint initiative of Council, DIPNR, NSW Fisheries and Wetland Care Australia under the Department of Tourism and Regional Sustainability, Sustainable Regions Program. A major component of works proposed under this scheme will be restoration of the Fingal Peninsular wetlands, with strategies to achieve this being developed in consultation with the Tweed Byron Local Aboriginal Land Council.

**RECOMMENDATION:**

That this report be received and noted.

## REPORT:

On the 2 April 2003 Council resolved to offer the following support and contributions to Wetland Care Australia for the Fish Unlimited Project through the Department of Tourism and Regional Sustainability, Sustainable Regions Program:-

1. Allocations from the Fingal Peninsular Wetland Rehabilitation budget for works that attain the objectives of the Kerosene Inlet and Sponsors Lagoon Rehabilitation Plan.
2. Contributions for other on-ground wetland enhancement or creation works within the Tweed River Estuary.
3. A cash contribution of up to \$5, 000 toward the salary of a dedicated wetland officer to assist with the development of wetland enhancement projects.
4. In-kind support through access to GIS mapping, aerial photography and other information held by Council.

The Federal Government through the Department of Tourism and Regional Sustainability under its Sustainable Regions Program, announced funding and funding recipients on the 2 September 2003.

Funding for the project is as follows:-

Federal Government	\$213,752
NSW Fisheries	\$60,000
Tweed Shire Council (Tweed River Committee)	\$290,000
Other Contributions	\$175,000
<b>TOTAL</b>	<b>\$738,752</b>

The funding recipient, Wetland Care Australia, is a not for profit organisation dedicated to the enhancement and conservation of wetlands. The group works nationally to bring governments, landholders and volunteer resources together to achieve practical, on-ground wetland repair.

Wetland Care Australia, Tweed Shire Council and NSW Fisheries are the major project partners.

Wetland Care Australia will manage the project under the guidance of the project Steering Committee, which is made up of Wetland Care Australia, NSW Fisheries, DIPNR and Tweed Shire Council Officers.

A portion of the project involves rehabilitation of wetlands on property owned by the Tweed Byron Local Aboriginal Land Council. To maximise the benefit of the available funds it is proposed that Wetland Care Australia will enter a stewardship agreement with the Land Council who will undertake the work and ensure its ongoing maintenance by

utilising Land Council bush regeneration trainees. Wetland Care Australia would therefore be charged with responsibility, under the direction of the Project Steering Committee, for the allocation and payment of the landholders for work undertaken in accordance with the stewardship agreements. Funding for this portion of the project will be in part by TSC through Wetland Care Australia.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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## REPORTS FROM DIRECTOR ENVIRONMENT & COMMUNITY SERVICES

### 25 [EC] David Rankin Exhibition 1967-2003

#### ORIGIN:

Environment & Health Services

FILE NO: Art Gallery

#### SUMMARY OF REPORT:

This report details the development and touring of a major exhibition of the work of internationally acclaimed Australian Artist, David Rankin. The exhibition will tour nationally after opening at the Tweed River Art Gallery. The Galley has secured significant sponsorship for the exhibition. It is proposed that the Art Gallery secure the service of internationally respected author and art critic, Dore Ashton to curate the exhibition. The curator and artist currently reside in New York and funding has been obtained for the Art Gallery Director to meet and discuss with the artist and curator the nature and terms of the exhibition.

#### RECOMMENDATION:

That Council resolves to:

1. Accept the sponsorship for the exhibition and votes to expend the funds for the purpose of development and touring of an exhibition of Australian artist David Rankin.
2. Authorise the Art Gallery Director to meet and discuss in New York with the artist and curator the nature and terms of the exhibition.

## **REPORT:**

### **Vision:**

The proposed exhibition will survey the work of David Rankin 1967-2003. Works will be drawn from the artist's studio and private and public national & international collections. The exhibition will be shown at the Tweed River Gallery in 2005 plus additional venues.

### **Historical Perspective:**

The work of David Rankin has been included in a number of group exhibitions that have been curated and exhibited by public galleries (1980, *Philip Morris Grant*-Australian National Gallery, and 1984 *Surface for Reflection*-Art Gallery of New South Wales). This has placed the artist's work in the context of current and historical art developments.

The artist has also had numerous solo exhibitions with a number of commercial galleries (Watters Gallery, Powell St Gallery, Macquarie Galleries and Adrian Slinger Galleries). These exhibitions have shown the artist's current work in a commercial context.

The artist has been the subject of a number of very significant published articles and monographs (Doré Ashton, Michael Brenson, Victoria Lynn and Margaret Sheffield). This provides an art historical basis for the study and appreciation of the artist's work and recognises the artist's significance to Australian art history.

The time is right for an important survey of the artist's work that will be an opportunity for the artist's peers, students of art and critics to assess the art of David Rankin.

### **Management of the Exhibition:**

The Tweed River Art Gallery will manage the exhibition and subsequent tour. The Tweed River Art Gallery in conjunction with the participating venues will arrange the Public Program.

### **Time Span & Venues:**

It is planned to open the exhibition in mid 2005 and tour until late 2006. Four venues have confirmed exhibition dates:

QUT Art Gallery, Brisbane  
Hazelhurst Gallery & Arts Centre, Gympie  
Broken Hill Regional Art Gallery  
Bendigo Art Gallery

### **Curator: Doré Ashton.**

The Tweed River Art Gallery proposes that the curator of this exhibition will be Doré Ashton. Doré Ashton has also confirmed that she is available for a national lecture tour to selected participating venues.

**Scope of Exhibition:**

It is proposed that the exhibition survey the work of the artist from 1967 to 2003 and include paintings, drawings, prints and works on paper. The exhibition will consist of 40 works.

Paintings:	25
Prints:	5
Drawings and works on paper:	10

*The Work and Life of David Rankin 2001*, Doré Ashton is a comprehensive review of the artist's work and will be a basis for the current proposed exhibition.

The aim of the exhibition is to present the work of the artist in all media over the period 1967-2003.

**Public Program:**

It is proposed that a series of public programs be developed that will provide a greater understanding of the artist's work.

**Funding Sources:**

Funding will be sourced from private sponsors (confirmed), The NSW Ministry for the Arts (Development costs: application pending 2003), Australia Council (Catalogue costs: application pending 2004). The funds from the Tweed Shire Council are a mix of cash and in-kind and will be sourced from within the current funding allocation..

**Travel Arrangements:**

It is proposed that the Art Gallery Director meet with Doré Ashton (Curator), David Rankin (artist)) in New York to discuss the exhibition and the terms under which the contributors will be contracted. Sponsors will fund the airfare of the Art Gallery Director with the Gallery's existing Travel budget funding accommodation, meals, incidentals etc.

**Benefits:**

1. The project will significantly raise the profile of the Gallery as a cultural centre of excellence that has the expertise and resources to conduct an internationally sourced exhibition.
2. The project will significantly raise the profile of the Tweed Shire as an outward looking community that is creating links and networks within Australia and overseas.
3. The exhibition and subsequent public program will attract national publicity and large attendances from South East Queensland (incl. Brisbane). This is the first survey exhibition of the artist's work.
4. Professional development opportunities for Gallery staff.

5. Provide opportunities to solicit support from sponsors and patrons to further the aims and programs of the Gallery. This could be manifested in the support of public programs or exhibitions.
6. Provide opportunities for collaborative projects with private collectors and sponsors. One such area would be in the acquisition of works or funds towards the acquisition of works.

Accordingly it is recommended that Council authorise the travel of the Art Gallery Director to discuss with the artist and the curator the nature and terms of the exhibition.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**26 [EC] Enclosure of Buildings Contrary to the Provisions of Development Control Plan No 5 - Development of Flood Liable Land**

**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 50m<sup>2</sup> 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 50m<sup>2</sup> 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.

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**27 [EC] Travel Funding for Disability Access Committee Members**

**ORIGIN:**

**Environment & Health Services**

**SUMMARY OF REPORT:**

At the Council meeting held 9 September 2003 it was resolved that a report be brought forward on the impact of allocating a proportion of the Disability Access budget to reimburse travel costs for Committee members with a disability who require special transport (disability taxi, modified vehicle) to attend meetings. Council should be mindful that the resolution must be specific to the Disability Access Committee for members with a disability who require special transport, lest there be a flow on to other committees.

The Disability Access budget is \$10,000 per annum. In the past two (2) years there have been sufficient funds remaining at end of financial year to fund travel reimbursement for members with a disability, although this was not done. There are six (6) Disability Access Committee meetings a year, which alternate between Tweed & Murwillumbah. Currently there are six (6) Committee members who, because of disability, require special transport to attend Disability Access Committee meetings and pursue Committee tasks. The following takes into account: special transport is costly, some members have taxi vouchers or mobility allowance for reduced cost travel, and taxi use may be pooled.

**RECOMMENDATION:**

That Council allocates \$1,000.00 of the Disability Access budget to provide reimbursement only to Disability Access Committee members with a disability who require special transport to attend Disability Access Committee meetings, and that this issue be reviewed annually.

## **REPORT:**

At the Council meeting held 9 September 2003 it was resolved that a report be brought forward on the impact of allocating a proportion of the Disability Access budget to reimburse travel costs for Disability Access Committee members with a disability who require special transport to attend meetings. Council should be mindful, when making a decision, that the resolution must be specific to the Disability Access Committee lest there be a flow on effect to other Committees.

The Disability Access budget is \$10,000 per annum. The funds are used to undertake projects that will improve awareness of disability and disability access in the community. In the past two (2) years there have been sufficient funds remaining at end of financial year to have funded travel reimbursement for members with a disability who require special transport, although this was not done.

There are six (6) Disability Access Committee meetings a year, which alternate between Tweed and Murwillumbah. It is essential that people with a disability are represented on the Disability Access Committee.

Currently there are six (6) members of the Disability Access Committee who, because of disability, require special transport (disability taxi or modified vehicle) to attend Disability Access Committee meetings and pursue Committee tasks.

The following are taken into account:

- Special transport is costly – return Tweed Heads to Murwillumbah is approx. \$65 plus booking fee.
- Some members have taxi vouchers for reduced cost travel.
- Some members have mobility allowance.
- Taxi use may be pooled.

It is estimated that, initially, \$1000 is an adequate amount to set aside from the annual Disability Access budget to provide reimbursement only for Disability Access Committee members with a disability who require special transport. This issue to be reviewed annually.

## **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

## **POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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## **28 [EC] Vandalism of Dune Vegetation at Casuarina**

### **ORIGIN:**

**Recreation Services**

### **SUMMARY OF REPORT:**

At its meeting held 15 October 2003, Council considered a recommendation of the Tweed Dune Care Advisory Committee to install signs offered by the Department of Infrastructure, Planning and Natural Resources in the dunes at Casuarina as a result of persistent tree poisonings.

Council resolved to refer the recommendation to the Casuarina Dune Management Committee for consideration. The committee considered the recommendation at its meeting held 20 October 2003 resolving to seek Council's cooperation, support and assistance to deter further vandalism, by:

- Assisting in erecting signs, supplied by the Department of Infrastructure, Planning and Natural Resources, at the locations of most concern.
- Publishing an article in the Tweed Link addressing the concerns.
- Producing and posting flyers to Casuarina residents and landowners, that include further supporting information in relation to dune care and vandalism.

### **RECOMMENDATION:**

That Council assist in deterring further vandalism of vegetation within the dunes at Casuarina as requested by the Casuarina Beach Dune Monitoring Committee by:

1. Assisting in erecting signs, supplied by the Department of Infrastructure, Planning and Natural Resources, at the locations of most concern.
2. Publishing an article in the Tweed Link addressing the concerns.
3. Producing and posting flyers to Casuarina residents and landowners, that include further supporting information in relation to dune care and vandalism.

**REPORT:**

At its meeting held 15 October 2003, Council considered a recommendation of the Tweed Dune Care Advisory Committee to install signs offered by the Department of Infrastructure Planning and Natural Resources (DIPNR) in the Dunes at Casuarina as a result of persistent tree poisonings.

Council resolved to refer the recommendation to the Casuarina Dune Management Committee (the committee) for consideration. The committee considered the recommendation at its meeting held 20 October 2003. The committee expressed concern at the continuing vandalism and observed that the pace of vandalism is increasing. The committee forwarded the following list of vandalism that has occurred at Casuarina.



APPENDIX 1

Illegal Clearings have occurred in the following areas:

Area	Date	Damage
<b><u>Southern Precinct</u></b>		
W18	Dec 19,2001	Bitou clearing Mature banksias cut down with chainsaw Plantings removed
W17	Dec 19,2001	Bitou clearing Mature Casuannas and Macarangas removed
W16	Apr 2,2002	Bitou clearing Macarangas damaged
	Nov 15,2002	Macarangas branches broken off,plants trampled
	Mar 19,2003	Macarangas,Banksias branches broken off,plants trampled
	Sep 1,2003	Large Macarangas & small figs drilled & poisoned,plants pulled out
<b><u>Central Precinct</u></b>		
W12	Apr 1,2002	Bitou clearing Wattle cut back Plantings removed
W11	Jul 6,2001	Plantings removed
	Aug 7,2001	Mature Banksias poisoned
	May 1,2002	Mature Banksias snapped in half Plantings removed
W10	Jun 2,2002	Roundup sprayed on plantings
	May 15,2002	Bitou clearing Wattle removed Casuannas chainsawed zone 4 to zone 1
	Jun10,2003	Mature bloodwoods destroyed 20+ plants pulled out
	Jan 19,2002	Bitou clearing Wattle removed Casuannas removed
W9	Apr.4,2003	Wattle and Casuannas removed to NE & SE
	Apr 29,2003	Banksias, Tuckeroos, Macarangas chopped out
	Apr.29,2003	DLWC Tim Rabbage inspects damage
W8	Nov.25,2001	Bitou clearing Plantings removed
	Aug 21,2002	Wattle & Banksias cut down, 30 plants pulled up
	Jul17,2003	Mature Casuannas felled,Figs & Banksias pulled out Wattle and Macarangas cut down
W7	Dec 26,2001	Bushfire damage to Zone 1,2,3 and 50% of Zone 4
W6	Dec 26,2001	Bushfire damage to Zone 1,2,3 and 50% of Zone 4

Area	Date	Damage
<b><u>Northern Precinct</u></b>		
<b>W4B</b>	Sep23,2003	Advanced Banksias broken and trampled x 10 Plants pulled out of ground x 15
<b>W3</b>	Mar 5,2002	Wattle uprooted and dragged about
	May26,2002	Stolen gate
<b>W2</b>	Oct.16,2001	Irrigation system vandalized Plantings removed Bitou clearing
	Mar3,2003	Roundup sprayed on western edge of Lot 500 every plant Damage to Bloodwoods, Callitns, Leptospermums etc
<b>W1</b>	Mar3,2003	Roundup sprayed on western edge of Lot 500 every plant Damage to Bloodwoods, Callitns, Leptospermums etc
	Apr.15,2003	Wattle removed, plants damaged and pulled out x 100 Plantings sprayed with Roundup
	Apr 29,2003	DLWC Tim Rabbage inspects damage
	May30,2003	Figs sprayed with Roundup Corkwood chopped out
	Jul 9,2003	Figs, Macarangas, Banksias, Kamala sprayed with Roundup

The Committee believes that a significant deterrent is required to deter further vandalism. Subsequently, the committee resolved to seek Councils cooperation, support and assistance to deter further vandalism, by:

- Assisting in erecting signs, supplied by the Department of Infrastructure, Planning and Natural Resources, at the locations of most concern.
- Publishing an article in the Tweed Link addressing the concerns.
- Producing and posting flyers to Casuarina residents and landowners, that include further supporting information in relation to dune care and vandalism.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Erection of Signs	\$200.00
Production and postage of flyers	\$350.00

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**29 [EC] Proposed Dedication of 20 Metre Firebreak - Bogangar**

**ORIGIN:**

**Recreation Services**

**SUMMARY OF REPORT:**

Council has received a request to agree to the acceptance of the dedication of a 20m wide firebreak as open space to allow a 3 lot subdivision of Lot 20 DP 1009550, Kurrajong Ave, Bogangar, and a 2 lot subdivision of lot 2 DP 873399, Poinciana Ave, Bogangar.

**RECOMMENDATION:**

That Council notifies Darryl Anderson Pty Ltd that it is not prepared to accept dedication, as open space, of a 20 metre wide firebreak (within Lot 20 DP 1009550) at the rear of the western lots within the village of Bogangar.

## REPORT:

Council is in receipt of Development Application DA03/1005-3 Lot subdivision of Lot 20 DP1009550, Kurrajong Ave, Bogangar (figure 1). Additionally, a proposed 2 Lot subdivision of Lot 2 DP 873399, Bogangar is subject of an application to the Minister to waive the requirement for a master plan under the provisions of State Environmental Planning Policy No 71 (figure 2).

With reference to DA03/1005, as the subject development application is integrated development; the application was forwarded to the NSW Rural Fire Service (RFS) for general terms of approval. The RFS indicated it is not prepared to issue a Bush Fire Safety Authority for the proposed subdivision as an asset protection zones could not be contained within the allotment.

With reference to the proposed 2 lot subdivision of Lot 2 DP 873399, the RFS have also indicated they are not willing to issue a Bush Fire Safety Authority.

However, The applicant has stated that the RFS is prepared to reconsider its position with regard both applications if Council is prepared to accept dedication, as open space, of a 20m wide fire break (within Lot 20 DP 1009550) at the western lots within the village of Bogangar (figure 3).

Were Council to accept the dedication of this firebreak, it would assume the responsibility for maintenance of the firebreak and any other issues that may ensue. The RFS has indicated the requirement for a hardened fire trail of 4 metres carriageway included within the 20m firebreak. In addition to the requirement for regular mowing of the firebreak, Council has experienced issue in other parts of the Shire where hardstand carriageways have been required, both in maintenance of the carriageway and as a result of restricted water discharge from adjoining properties.

Council may consider accepting this liability were there a demonstrable benefit to the community in doing so. The proposed 3 lot subdivision of Lot 20 creates 1 additional allotment for residential purposes (768m<sup>2</sup>), and 2 Rural lots, one being 64.14ha zoned 7a and 7l and the other 18.37ha zoned 1a. This produces no obvious benefit to the community. Council is not in receipt of a Development Application for the proposed 2 Lot subdivision of Lot 2 DP 873399 and therefore cannot comment on the potential benefits of the proposal.

It may be considered that the creation and maintenance of this easement will provide benefit in that the properties adjoining lot 20 are offered protection in the case of fire. However, under the provisions of the Rural Fires Act, the current owners of the land are required to provide such protection and the RFS have advised that it will issue an order for the owner to undertake the required works. Consequently, the benefit of the protection from a firebreak will be offered regardless of whether the land is dedicated to Council.

In summary, it is apparent that were Council to accept the dedication of this area as open space for the purposes of a firebreak, it would be accepting a liability that offers little demonstrable benefit. Consequently, it is recommended Council refuse the offer.

Figure 1

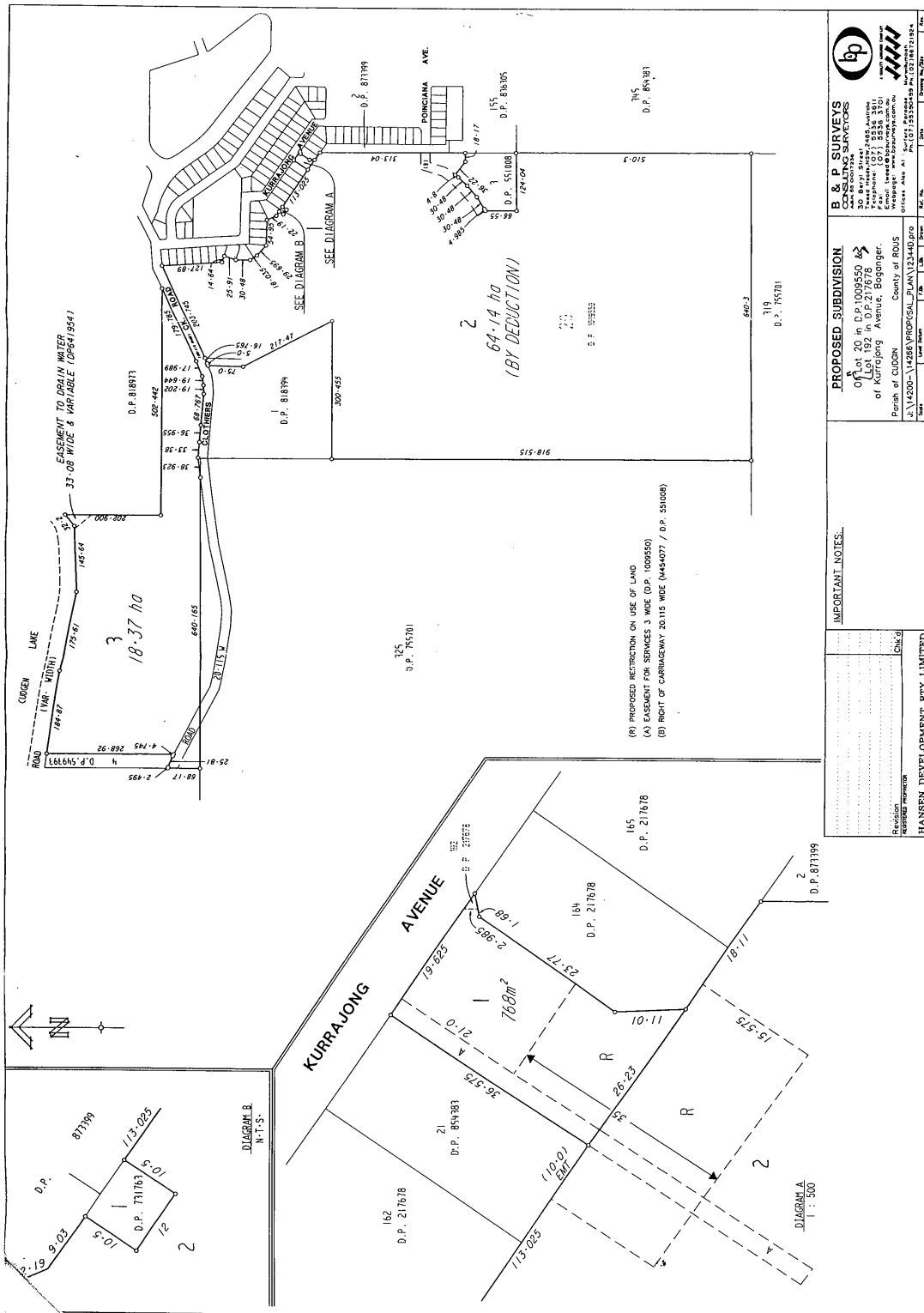
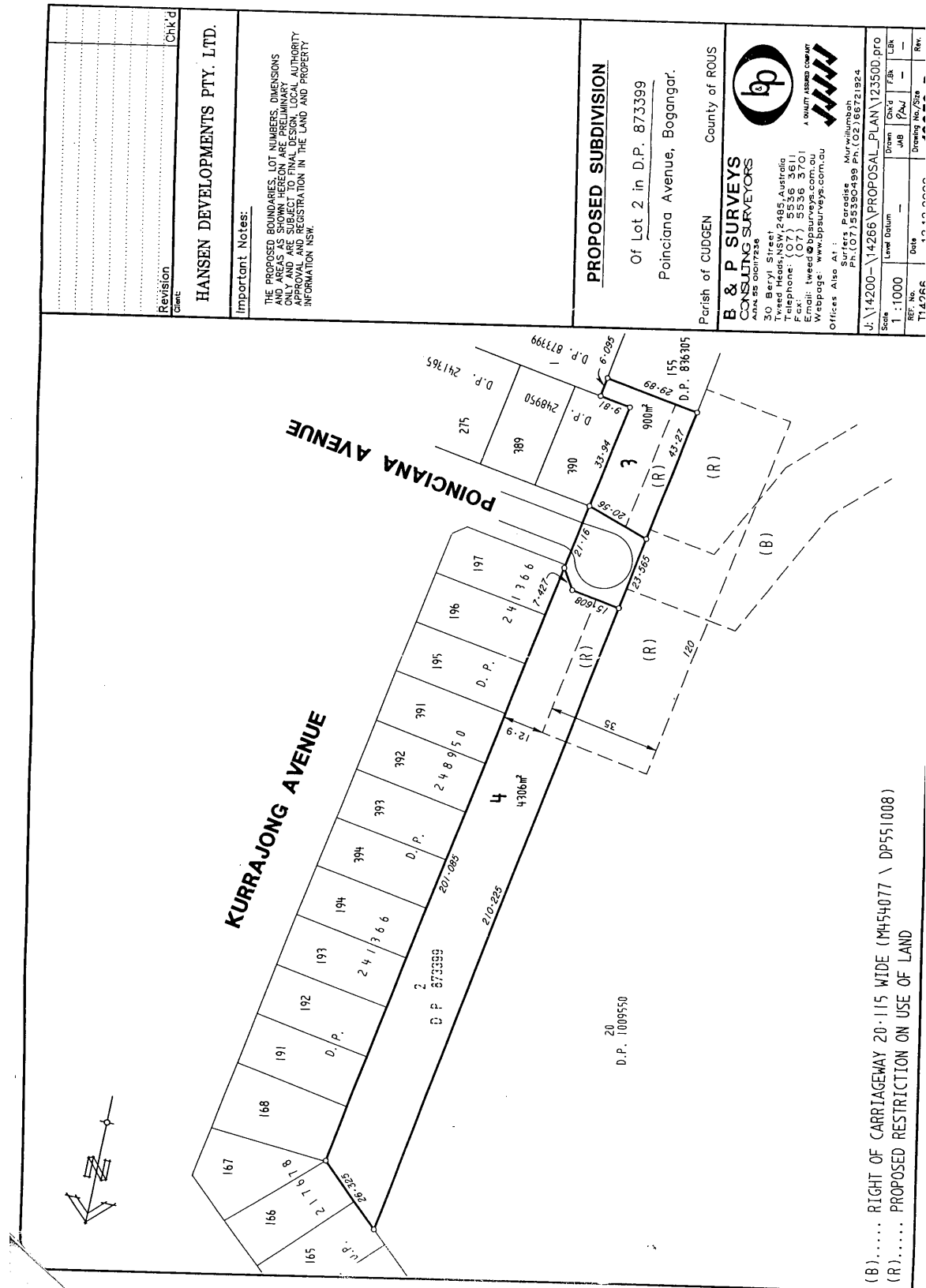


Figure 2







**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**30 [EC] Conducting a Disability Access Survey in Tweed Shire**

**ORIGIN:**

**Environment & Health Services**

**SUMMARY OF REPORT:**

At the Tweed Disability Access Committee meeting of 17 July 2003 the Committee made a recommendation to Council that a shire-wide access survey be conducted via the Tweed Link. Council subsequently resolved, on 9 September 2003, that a report be brought forward on conducting an access survey.

Council is advised that a Disability Access Survey, if conducted, should be professionally undertaken by an accredited organisation in order that all possible issues are canvassed and that Occupational Health and Safety issues and legalities are not overlooked. This would be an expensive consideration and could utilise the Disability Access budget (\$10,000 per annum) for several years, and in so doing stop the Disability Access Committee from funding current projects.

Council's Disability Access Committee continually receives notification from the public and other Council departments and committees on disability access issues in Tweed Shire. Members of the Disability Access Committee also submit issues for consideration

**RECOMMENDATION:**

That Council maintains the present system of addressing and/or funding current issues and new issues as they arise, and that Council does not nominate staff or members of the Disability Access Committee to be part of a Disability Access Survey.

## **REPORT:**

At the Tweed Disability Access Committee meeting of 17 July 2003 the Committee made a recommendation to Council that a shire-wide access survey be conducted via the Tweed Link. Council subsequently resolved, on 9 September 2003, that a report be brought forward on conducting an access survey.

Council is advised that a Disability Access Survey, if conducted, should be professionally undertaken by an accredited organisation in order that all possible issues are canvassed and that Occupational Health and Safety issues and legalities are not overlooked. This would be an expensive consideration and could utilise the Disability Access budget (\$10,000 per annum) for several years, and in so doing stop the Disability Access Committee from funding current projects.

Council's Disability Access Committee continually receives notification from the public and other Council departments and committees on disability access issues in Tweed Shire. Members of the Disability Access Committee also submit issues for consideration

The Disability Access Committee currently has the following list of projects requiring attention and/or funding:

- Disability Action Plan
- Draft Footpath Trading Policy
- MLAK key installation on disability toilets
- Improving disability toilets
- Access to Crabbes Creek Hall
- Access ramp in Ewing Street
- Access ramp Pottsville Community Hall
- Mobility Map
- Access to cafes in Murwillumbah
- Noble Park bus stop
- Reimbursement of funding to Committee members
- Beach Wheelchairs

It is recommended that the present system of addressing and/or funding current issues and new issues as they arise be maintained, and that Council does not nominate staff or members of the Disability Access Committee to be part of a Disability Access Survey.

## **LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

## **POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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## REPORTS FROM SUB-COMMITTEES/WORKING GROUPS

### 1 Minutes of the Aboriginal Advisory Committee Meeting held Tuesday 12 September 2003

#### FOR THE CONSIDERATION OF COUNCIL:

##### VENUE:

South Sea Islander Room, Tweed Heads Civic Centre

##### TIME:

10.15 a.m.

##### PRESENT:

Cr Max Boyd (TSC), Franc Krasna (AECG), Lesley Buckley (TSC), Michelle Rogers (DOCS), Jill Eddington (Northern Rivers Writers Centre), Russell Logan (Centrelink, TBLALC), Jenny Jones (DET, AECG), Stephen Jamieson (NCITAFE), Janette Saunders (TRHS, STHDS, AECG), Jenni Funari (TSC), Deborah Bates (Jobfutures)

##### APOLOGIES:

Jacki McDonald (AECG), Geoff Edwards (TSC), Christine Morgan (TRHS, AECG)

Cr Boyd declared the Chair vacated and called for nominations. Russell Logan was nominated to chair this meeting.

**Moved: Jenny Jones**

**Seconded: Franc Krasna**

Mr Logan was unanimously elected Chairman of the Aboriginal Advisory Committee for this meeting.

#### MINUTES OF PREVIOUS MEETING:

**Moved: Jenny Jones**

**Seconded: Janette Saunders**

**RESOLVED** that the Minutes of the Aboriginal Advisory Committee meeting held 4 April 2003 be accepted as a true and accurate record of the proceedings of that meeting.

**Carried**

The notes from the meetings of 2 May 2003, 4 July 2003 and 15 August 2003 were received and noted by the Committee. Mr Logan requested that the notes from 2 May 2003 be amended to reflect his part-attendance at the meeting.

---

Mr Logan welcomed Michelle Rogers from Department of Community Services, Jill Eddington from Northern Rivers Writers Centre and Deborah Bates, of Jobfutures.

Mr Logan advised that the Committee will be addressed by a guest, Ms Jill Eddington from the Northern Rivers Writers Centre, and Lesley Buckley, Cultural Development Officer, Tweed Shire Council, to speak on the matter of the Tweed Shire Fifth City of the Arts ATSI Arts Project (Lit Link) as the first item on the agenda.

Jill Eddington outlined aspects of the Lit Link Project. Northern Rivers Writers Centre have received funds from the Australia Council to engage a professional writer and oral historian to work with members of the Tweed Aboriginal community to teach them the art of writing, collecting and recording community local stories.

To identify project participants and to launch the Fifth City of the Arts Aboriginal and Torres Strait Islander Program a Community Information Session will be held on Tuesday 28 October, from 6 p.m. in the South Sea Islander room. Jill and Lesley will co-ordinate the event and will organise the advertising as soon as possible. All members of the Committee agreed to get the information out to their individual networks.

Ms Eddington left the meeting at 11.15 a.m.

Lesley Buckley spoke of the need to consolidate the Working Party for the Fifth City of the Arts ATSI Program. Membership of the Steering Committee was discussed. Jenny Jones and Stephen Jamieson indicated their willingness to join the Committee. Russell Logan will contact the remainder of the Committee to gauge the level of commitment and report back to Lesley.

Lesley Buckley left the meeting at 11.30 a.m.

Jenni Funari introduced Deborah Bates from Jobfutures at Tweed Heads South, who provided draft copies of an Indigenous information booklet prepared by Work for the Dole clients. Information had been researched mostly via Internet articles and the Committee's opinion was sought as to the relevance of some entries. Stephen Jamieson and Franc Krasna volunteered to edit the document and provide advice to Ms Bates prior to the cut-off time for publication.

Ms Bates left the meeting at 11.50 a.m.



## **BUSINESS ARISING:**

### **1. Border Caravan Park Site**

Aboriginal Matter; Aboriginal Advisory Committee

Cr Boyd advised the Committee that Council will consider submissions for naming when the new management plan is adopted when determination has been made as to what part of the area will be open space or other use. Cr Boyd asked that the Committee prepared submissions and follow the matter through with Geoff Edwards.

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### **2. Administrative Support**

Aboriginal Matters; Aboriginal Advisory Committee

Council has accepted the offer from Yabur Yelgun Aboriginal Corporation to fund a support position for the Aboriginal Advisory Committee for two days per week. Council is to be included in the selection process. Jenni Funari advised that there is office space in Strategic Planning. Russell Logan and Jenni Funari are to draft the position description.

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### **3. NAIDOC Week Competition**

Aboriginal Matters; Aboriginal Advisory Committee

The Committee was advised that the competition was not run due to the illness of the organiser.

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## **GENERAL BUSINESS**

### **4. Meeting Survey**

Aboriginal Matters; Aboriginal Advisory Committee

Following a suggestion by Russell Logan, an attendance survey was distributed to members with the last meeting notice. The following is a break down of results.

No of surveys distributed		32
Surveys returned		3
Preferred meeting date	1 <sup>st</sup> Friday/month	2
	2 <sup>nd</sup> Friday/month	1
Preferred meeting venue	HACC Room, South Tweed Heads	2
	South Sea Islander Room, Tweed Heads	2
Preferring meeting time – 10 a.m.		3

Low attendance at meetings and unrepresentative survey results were discussed. Michelle Rogers from DOCS indicated a commitment to attend each meeting. Russell Logan suggested a flyer to each committee member outlining past achievements, current issues and inform that the Committee would soon be resourced with a dedicated administrative support.

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**5. Local Government Aboriginal Network Conference, Wollongong**

Aboriginal Matters; Aboriginal Advisory Committee

**Moved: Franc Krasna**

**Seconded: Jenny Jones Carried**

**RECOMMENDATION:**

That Council sponsor Russell Logan and one other member nominated by the Aboriginal Advisory Committee, to attend the 16th Annual NSW Local Government Aboriginal Network Conference, "Talkin up, Movin on" from 22-24 October 2003.

---

**NEXT MEETING:**

The next meeting of Aboriginal Advisory Committee will be held 10.00 a.m. 3 October 2003.

The meeting closed at 12.30 p.m.

**DIRECTOR'S COMMENTS:**

**5. Local Government Aboriginal Network Conference, Wollongong**

Council resolved on 17 September 2003 to send Mr Russell Logan and another member to the 16<sup>th</sup> Annual NSW Local Government Aboriginal Network Conference and no further action is required.

**DIRECTOR'S RECOMMENDATIONS:**

**5. Local Government Aboriginal Network Conference, Wollongong**

That Council notes the resolution of 17 September 2003 to send Mr Russell Logan and another member to the 16<sup>th</sup> Annual NSW Local Government Aboriginal Network Conference and that no further action is required.

**UNDER SEPARATE COVER:**

Nil.

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**2 Minutes of the Tweed Shire Council Disability Access Committee Meeting held Thursday 18 September 2003**

**FOR THE CONSIDERATION OF COUNCIL:**

**VENUE:**

HACC Meeting Room, Tweed Heads South

**TIME:**

1.00 p.m.

**PRESENT:**

Cr Max Boyd, Cr Barbara Carroll, Maggie Groff, Bill McKennariey, Ron Douglas, Steve Pollitt, Paige Ridgway, Stefan Zak, Una Cowdroy, Jeff Needham, Kerry (name not given), Jeff Baldwin, Graham Williams, Pam Veness (Minutes)

**APOLOGIES:**

Cr Wendy Marshall, Shirley Pigram

**MINUTES OF PREVIOUS MEETING:**

**Moved: Cr Max Boyd**

**Seconded: Jeff Baldwin**

**RESOLVED** that the meeting of the Tweed Shire Council Disability Access Committee held Thursday 17 July 2003 be accepted as a true and accurate record of the proceedings of that meeting, with the following amendment:

**AMENDMENT TO PREVIOUS MEETING:**

**Item 10 of General Business, Tumbulgum Public Toilet**

Mr Baldwin was not requested to investigate this matter.

**CARRIED**

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**BUSINESS ARISING:**

**2. Draft Footpath Trading Policy**

Copies of Tweed Shire Council's Draft Footpath Trading Policy were sent to all Committee members on 9 September 2003. The Committee expressed concern regarding the final date for submission of written comment on the draft policy (24<sup>th</sup> September, 2003). The Committee decided members would address points of concern as well as points of commendation to Council on an individual basis.

**Moved: Cr Max Boyd**  
**Seconded: Jeff Baldwin**

**RECOMMENDATION:**

That Council give approval to extend the period for public comment on the Draft Footpath Trading Policy for a period of one month from the existing date.

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**5. Group Homes Tweed Shire**

Information on group homes funding is not available as the Department of Ageing, Disability and Home Care are restructuring and reviewing funding. Discussion held on the lack of information available. Bill McKennariey offered DAISI as the first point of contact for future information. Maggie noted that the Tweed Aged Interagency is gathering statistical information on young people with disabilities living in Nursing Homes. Jeff Baldwin noted that the Royal College of Nursing in Sydney has performed research in this area.

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**8. Regional Access Meeting and Survey of Access Needs**

The Committee discussed reasons for, and feasibility of, attending quarterly Regional Access meetings as, at this point, no group focal issues have been raised. Lismore Access Committee has contacted Maggie re this issue and advised they do not have resources to pursue quarterly meetings and have referred the matter to Ballina Council who made the initial suggestion. The Committee noted that Paige Ridgeway attends Disability Access meetings in the Northern Rivers Region. Paige has agreed to provide a summary of key issues from other Access Committees.

With regard to a Shire-wide survey of access needs, the Committee notes the Director's comments that a report be brought forward on conducting an access survey. The Committee felt that committee members could canvas a range of access issues in the Shire. Jeff Baldwin offered to survey the Pottsville area. The Committee was reminded that individuals were not representatives of Council and would need a staff member to accompany them.

**Moved: Cr Max Boyd**  
**Seconded: Stefan Zak**

**RECOMMENDATION:**

That Council consider the request of this Committee to nominate five members who are able to conduct a survey of the disability access needs of the Shire with an accompanying Council officer from Engineering, Works (Road Safety) or Environment and Health departments.

---

**13. International Day of People with a Disability**

Maggie outlined the progress in planning the 2-day Disability Arts Forum:

Day 1 – Showcasing disability arts with input from people with a disability, their carers, arts groups and service providers.

Day 2 – Strategic Planning facilitated by Accessible Arts to identify projects for the 2-year Disability Arts project.

Funding has been sought to provide transport, a signer and refreshments for the Forum.

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**15. Murwillumbah Railway Station**

It was decided to refer this matter to the Traffic Committee.

**Moved: Cr Max Boyd**

**Seconded: Ron Douglas**

**RECOMMENDATION:**

That Council refer the matter of reinstatement of the pedestrian crossing for access to the Murwillumbah Railway Station to the Traffic Committee.

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**1. Access to Council Chambers**

The Director's comments are noted.

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**7. Access Committee Meetings - Venue**

The Director's comments are noted.

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## 8. Travel Funding for Committee

The Directors comments are noted. Costs of taxi/car/bus travel for members were discussed.

ACTION: Maggie to prepare a report for Council on the impacts of allocating a proportion of funds to reimburse Committee members from the Disability Access budget.

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## 9. Mobility Map

Paige Ridgeway will provide copies of the Lismore and Maclean mobility maps. Maggie will contact DAISI regarding costs of updating the Tweed Shire's mobility map.

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## 10. Tumbulgum Toilet

The Committee was advised the process of public comment on proposed sites was under way.

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## 11. Computer for Chairperson

The Chair expressed gratitude to the Council and all involved in the process of supplying the new computer to assist with his work for this Committee and his many other volunteer commitments.

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## CORRESPONDENCE:

### 1. Letter – Jeff Baldwin

Previous Minutes discussed with Maggie. Letter of response sent. Mr Baldwin satisfied with outcome.

### 2. Letter – Jeff Baldwin – copy of correspondence to Tweed Bowls Club re access. Mr Baldwin has resolved this issue.

### 3. Letter – Jeff Baldwin – copy of correspondence to Manager – Environment & Health Services re suggestion of equipment for New Art Gallery.

### 4. Letter – Jeff Baldwin – copy of correspondence to Strategic Planning re Hydrotherapy Pool. Matter to be raised with Manager – Environment & Health Services Unit.

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5. **Letter – Commonwealth Carelink** – requesting details for web site. Maggie and Bill McKennarney will supply information.
6. **Letter – Australian Quadriplegic Association** - advising name change to Spinal Cord Injuries Australia.
7. **Email – Paige Ridgeway - re concern over MLAK facility in Coffs Harbour.** Paige advised that the issue was not MLAK. It involved a locked shopping centre toilet.
8. Letter - **DAISI** – information update. Maggie to respond.
9. **Email** – Trish Shantz – re Regional Access Committee meetings – discussed at Item 8 in Business Arising.
10. **Letter – Jeff Needham** – requesting membership of Committee.
11. **Telephone** – Shirley Pigram – advising returning to meetings after lengthy absence due to ill health.
12. **Letter – Paige Ridgeway** – requesting membership as the replacement representative for Spinal Cord Injuries Australia following Anna Fishers resignation.

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**GENERAL BUSINESS:**

**13. Committee Agenda format**

Discussion was held as to the Committee's preference for complete or abridged Agenda notices.

**Moved: Una Cowdroy**

**Seconded: Jeff Baldwin**

**RESOLVED** that all items and correspondence be listed on Agenda notices to allow time for members to research points.

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**14. Pottsville Needs Analysis**

Item is to be held over so that Needs Analysis data can be collated.

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**15. Tweed Heads Footpath Access**

Steve Pollitt supplied photographs of impeded footpath access. Council Officers are currently addressing this issue.

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## **16. Committee Membership**

The Terms of Reference note that Committee membership will remain current during the current Council term, which has been extended to March 2004.

The Committee is aware that three members have not attended meetings for over twelve months and made no apologies. The Committee's Terms of Reference note that membership of the Committee will cease if absence is recorded at three consecutive meetings without an apology having first been received.

**Moved: Una Cowdroy**

**Seconded: Ron Douglas**

**RESOLVED** that the Terms of Reference of the Committee should be reviewed with regard to attendance at meetings and membership after March 2004.

### **RECOMMENDATION:**

That Council agrees that the positions of three absentee members be declared vacant in order to accept the following into the positions created:

- Paige Ridgeway, representing Spinal Chord Injuries Australia.
- Cr Barbara Carroll, representing Tweed Valley Respite Service.
- Jeff Needham, previous Committee member.

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Steve Pollitt and Jeff Needham left the meeting at 4.05 p.m.

## **17. Impeded Pedestrian Access - Petrol Station driveways**

Mr Douglas raised the issue of queuing traffic at petrol outlets impeding pedestrian access across driveways. The Committee noted that complaints should be directed to Council's Environment and Health Services.

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### **NEXT MEETING:**

The next meeting will be held Thursday 20 November, 2003, at 1 p.m. at the HACC Centre South Tweed.

The meeting closed at 4.10 p.m.



**DIRECTOR'S COMMENTS:**

**2. Draft Footpath Trading Policy (Business Arising)**

The period for submission of written comment is extended to 24 October 2003

**8. Regional Access Meeting and Survey of Access Needs (Business Arising)**

A report has been prepared for the Council meeting to be held on 5 November 2003 titled "Conducting a Disability Access Survey in Tweed Shire".

**DIRECTOR'S RECOMMENDATIONS:**

That the Committee's recommendations be endorsed.

**UNDER SEPARATE COVER:**

Nil.

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**3 Minutes of the Tweed Coastal Committee Meeting Held Wednesday 8 October 2003**

**FOR THE CONSIDERATION OF COUNCIL:**

**Venue:**

Canvas and Kettle Restaurant, Murwillumbah.

**Time:**

1.30pm

**Present:**

Cr Wendy Marshall (Chair), Cr Henry James, Jason Pearson (Kingscliff), Terry Kane (Cabarita Beach-Bogangar), Rhonda James (Caldera Environment Centre), Peter Harding (Pottsville Beach), John Harbison (Mooball), Richard Hagley (Department of Infrastructure Planning and Natural Resources), Justine Elliot (Fingal Head); Jane Lofthouse (Tweed Shire Council); Tom Alletson (Tweed Shire Council).

**Apologies:**

Cr Max Boyd; David Oxenham; Stewart Brawley; Neville Newell (Member for Tweed); Gary Thorpe (Hastings Point), Lance Tarvey (NSW National Parks and Wildlife Service), Tim Rabbidge (Department of Lands).

**Minutes of Previous Meeting:**

**Moved:** Cr Henry James

**Seconded:** Rhonda James

**RESOLVED** that the minutes of the meeting held Wednesday 13 August 2003 be accepted as a true and accurate record of the proceedings of that meeting.

**Business Arising:**

**1. Cudgen Creek - Farm Management Practices; Report from the first Steering Group Meeting**

Cudgen Creek / Pollution - Water

Meeting held 24 September 2003 with five representatives from Department of Agriculture, Peter Boyd (DIPNR); three representatives from Cudgen Vegetable Growers and Council officers. Preliminary meeting with the objective to create a forum of key stakeholder groups in the Cudgen area discussing erosion and appropriate farm management practices to reduce pollution.

One issue is looking at alternate crops.

Cr Henry James advised that Council resolved to undertake event based water quality testing in Cudgen Creek.

The next meeting will be held on site 22 October 2003

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**2. Cudgen Creek Spur Wall - Council Resolution 17 September 2003**

Dredging / Cudgen Creek

Cr Henry James advised the issue was to be considered in the review of the management plan. Options to include the removal of the spur wall.

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**3. Estuary Management Plan Review - Project Update**

Estuary Management

Jane Lofthouse advised that the tender from Australian Wetlands had been accepted, first preliminary meeting to be held on Monday.

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**4. Overall Drive Reserve POM - Project Update**

Mooball Creek / Riverbank Erosion

Appointed Envite to prepare a Management Plan for a section of foreshore reserve.

A first draft report will be circulated within three weeks, containing recommendations for addressing bank erosion, access and vegetation management.

Copies of report to be issued to Cr Henry James, Peter Harding, John Harbison and Rhonda James.

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**5. Canoe Trail Report - Project Update**

Adventure Education have been appointed to develop the Canoe Trail Report and signage.

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**Agenda Items:**

**1. Design for Bank Erosion Management and Access to Cudgen Creek**

Cudgen Creek

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\$8,000 has been allocated to works at Cudgen Headland. Council Officers have prepared a design to provide access stairs and a revetment wall to address bank erosion. Recreation Services will contribute any monies required over \$8,000.

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**2. Duranbah Beach Dune Management Plan - Tom Alletson**

Dune Management Plans / Duranbah Beach / Beaches - Erosion

Principal objective to provide a means and a process to maintain and improve the environmental and social values of Duranbah Beach and its foreshore areas.

The beach is receding despite a supply of sand greater than what it will receive in the long term. This will eventually remove the existing dune.

Recommendations from the Management Plan are to: artificially create a new dune and move infrastructure behind the new dune.

Estimates for priority works total is \$54,000 plus annual maintenance of \$7,000. Short term priority is for fencing and signage.

Large community interest, Plan needs to go to Council then back to community.

Cr Wendy Marshall raised concerns about the goat track and related dangers. A budget item to be allocated from TCC or Recreation Services to address this.

**Moved: Cr Henry James**

**Seconded: Cr Wendy Marshall**

**RESOLVED** that the Final Draft Duranbah Beach Dune Management Plan be received and noted.

**RECOMMENDATION:**

That Council:-

1. Receive and note the final draft of the Duranbah Beach Dune Management Plan.
  2. Place the draft Duranbah Beach Dune Management Plan on public exhibition.
-

**3. Coastline Management Plan Workshop - Brad Snedden (in Council Chambers, commencing at 3.00pm)**

Coastal Management Plan

Brad Snedden, Umwelt Australia, presented the draft Tweed Shire Coastline Management Study Stage 2, Management Options to Councillors and the Tweed Coastal Committee.

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**Correspondence In:**

**1. Letter of Objection – Development of Sea Rescue Squad Boat Shed, Peninsular Street Hastings Point**

LN: 41178

Cr Henry James advised that Council has resolved to support the application in principal.

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**Correspondence Out:**

Nil.

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**General Business:**

**1. Access Stairs to Pottsville Beach between 23 and 25 Elanora Avenue Pottsville**

Beaches - Access

Peter Harding brought to the Committee the condition of stairs accessing beach.

Recreation Services to investigate.

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**2. Update of Water Quality at Pottsville Canal**

Water Quality - Monitoring / Catchment

Peter Harding brought forward the issue of decreasing marine life especially prawns and requested water quality results be obtained for the area.

Jane Lofthouse to action.

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**Next Meeting:**

The next meeting of the Committee is to be held on 10 December 2003, venue to be announced.

The meeting was adjourned at 2.35pm to attend a workshop at Council Chambers.

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**DIRECTOR'S COMMENTS:**

**Nil**

**DIRECTOR'S RECOMMENDATIONS:**

**As per report.**

**UNDER SEPARATE COVER:**

Nil.

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**4 Minutes of the Tweed River Committee Meeting held Wednesday 8 October 2003**

**FOR THE CONSIDERATION OF COUNCIL:**

**VENUE:**

Canvas & Kettle Restaurant, Murwillumbah Civic Centre

**TIME:**

10.00am.

**PRESENT:**

Cr Wendy Marshall (Chair), Cr Henry James (Tweed Shire Council), Rhonda James (Caldera Environment Centre), Richard Hagley (Department of Planning Infrastructure and Natural Resources), Robert Quirk (Tweed River Advisory Committee & NSW Cane Growers' Association) Bret Ryan (Waterways Authority), Tom Alletson (Tweed Shire Council), Jane Lofthouse (Tweed Shire Council) Susan Davidson (Tweed Shire Council).

**APOLOGIES:**

Cr Max Boyd (Tweed Shire Council), David Oxenham (Tweed Shire Council), Tim Rabbidge (Department of Lands), Bob Loring (NSW Fisheries), Carl Cormack (Waterways Authority), Dugald Gray (Ecoroc), Lance Tarvey (National Parks and Wildlife Service), Graham Judge (Tweed Shire Council), Neville Newell (State Member for Tweed), Geoff Edwards (Tweed Shire Council).

**MINUTES OF PREVIOUS MEETING:**

**Moved:** Cr Henry James

**Seconded:** Robert Quirk

**RESOLVED** that the Minutes of Meeting held Wednesday 13 August 2003 be accepted as a true and accurate record of the proceedings of that meeting.

**BUSINESS ARISING:**

**1. Stotts Channel Draft Vegetation Management Plan**

Tweed River Management Plan

The DRAFT document was distributed with agendas and minutes. Proposed changes were discussed in the meeting, written feedback should be provided to Tom Alletson by 22 October 2003.

Councillor Henry James suggested measurements of the widths of the channel be recorded and a maximum and minimum width requirement established, in conjunction with NSW Fisheries.

Duranbah Swamp Drainage Union is the relevant drainage union.

Bret Ryan advised that Waterways Authority Policy is to keep dead material in channels but brush it to the side and keep it as habitat.

Tom Alletson to liaise with NSW National Parks & Wildlife Service on threatened species issues and channel dimensions. A revised draft should be circulated within one month.

Tom Alletson reported that the plug of sediment was surveyed in the downstream outlet of Stotts Channel and the extent of sediment was found to be 60 x 25 x 1 meters.

Councillor Wendy Marshall suggested that budget allocations be checked and an estimate prepared to remove this sediment. Tom Alletson to obtain a quote and develop a management strategy and report back to the Committee at next meeting.

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**2. Tweed River Dredging Meeting Notes - Sub Committee Meeting Date 13 October 2003 – Peter Boarder Meeting Room**

Dredging

Copies of notes from this meeting are available upon request.

Name change to Navigation Sub-Committee.

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**3. Tweed River Festival - Update (minutes included)**

Tweed River Festival

Update provided by Jane Lofthouse and Councillor Wendy Marshall. Anyone wishing to participate in the Festival please contact Jane or Wendy. Looking for activities and help with the Lantern Parade.

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**4. Tweed River Boating Plan of Management - Report from first Steering Committee Meeting**

Boating

Report on progress provided by Jane Lofthouse.



Jane advised that the status is at discussion paper stage, and that a copy would be sent out with the next minutes.

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**AGENDA ITEMS:**

**1. Video Presentation - Tweed River Committee National River Prize Finalists**

Tweed River Committee

To be brought forward to the next meeting.

Presentation very well received at the River Symposium, encouragement by International Judges and hopeful to apply again in the future.

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**2. Bilambil Creek Reserve Riparian Rehabilitation Proposal - Tom Alletson**

Riparian Projects

An opportunity exists to undertake rehabilitation works on the banks of Bilambil Creek adjacent to the Pony Club. Tom Alletson presented an overview of the site and related factors, and sought endorsement from the Committee to work towards implementing a project on the site.

*Nicola Thomas arrived at 10.45am.*

**Moved: Cr Wendy Marshall**

**Seconded: Richard Hagley**

**RESOLVED** that the Committee endorses implementing a Riparian Rehabilitation project on public land adjacent to Bilambil Creek.

---

**3. Tweed River Estuary Health Report, Synopsis and Possible Future Actions - Tom Alletson / Nicola Thomas**

Estuary Management

Council has been in receipt of the Tweed Estuary Health Assessment for some time. Council should receive and note the document before it is made available to public.

Nicola Thomas presented a proposal for ongoing communication of the Reports' findings to the community as a means of improving estuary health.

Councillor Wendy Marshall advised the need for more works on the ground rather than reports. Councillor Henry James made the observation that it is not a unique model – has been done before.

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Tom Alletson to write and thank Nicola Thomas and send her presentation to Mike Rayner and David Oxenham for consideration.

Jane Lofthouse and Tom Alletson to pursue quotes for printing of the synopsis.

The Tweed River Estuary Health Report will be forwarded to the Council meeting of 5 November 2003 for Council's information.

**Moved: Cr Wendy Marshall**

**Seconded: Rhonda James**

**RESOLVED** that the Committee receive and note the Final Report Tweed River Estuary Ecosystem Health Monitoring Program 2000-2001.

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#### **4. International Riverfoundation - Tom Alletson**

Tweed River Committee

The International Riverfoundation is a non-government organisation that was launched at the Brisbane River Symposium in September. The aims of the foundation were presented to the Committee, and the option of supporting the foundation raised. Membership is \$100.

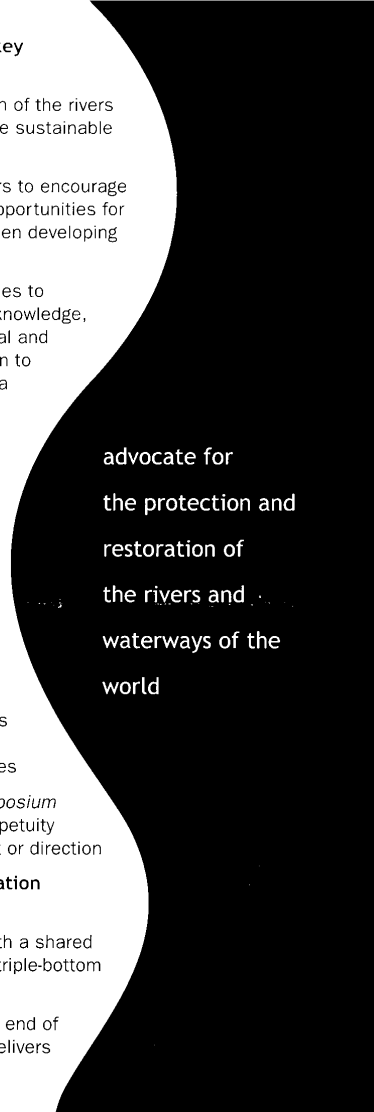
The International Riverfoundation key objectives are:-

Specifically the International Riverfoundation key objectives are:

- To advocate the protection and restoration of the rivers and waterways of the world and to achieve sustainable use of a scarce and degraded resource
- To network among world experts and peers to encourage the sharing of knowledge and to create opportunities for cooperative long-term relationships between developing and developed countries
- To fund delegates from developing countries to attend the *Riversymposium* to share the knowledge, case studies and expertise of international and Australian experts with particular attention to the developing countries of Asia and Africa
- To promote cooperative long-term relationships between developing and developed countries in terms of river management
- To engage relevant national and international associations and organisations (including international aid agencies) on the importance of sustainable river catchment management and triple-bottom-line objectives
- To develop international cultural links and exchanges between *Riverprize* winners and the establishment of Sister City River programs with cities in developing countries
- To ensure that the International *Riversymposium* and *Riverprize* visions are delivered in perpetuity irrespective of future Government support or direction

In order to achieve these objectives the Foundation aims to:

- Bring together like-minded contributors with a shared vision of long term sustainability and the triple-bottom line
- Achieve a total Trust of \$30 million by the end of 2010 to sustain an income stream that delivers key program objectives



advocate for  
the protection and  
restoration of  
the rivers and  
waterways of the  
world

## RECOMMENDATION:

That Council resolve to support the International Riverfoundation by becoming a member.

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## 5. Estuarine Bird Monitoring Report - Summary of Recommendations and Discussion of Implementation Options - Jane Lofthouse

Tweed Estuary Nature Reserve / Monitoring - Birds

David Rohweder has submitted his final report. Jane presented a summary of its recommendations.

Tom Alletson suggested that the Committee adopt an Implementation Strategy outlining tasks to be undertaken and short and long term priorities developed to be reviewed at the next meeting.

Councillor Wendy Marshall suggested that signage in key areas should be considered as a short term priority.

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## 6. Project Updates – Tom Alletson

Riparian Projects

- Byangum Green Corps Project  
Fencing riverbank from livestock to revegetate area, Council reserve.

Area fenced would be grazed by one horse and a few cattle, to reduce long term costs in maintenance.

Councillor Henry James suggested looking at utilising tractor slashing and fencing on a different alignment to completely exclude stock.

The committee raised its concerns in relation to the configuration of fencing proposed for the project. Councillor Wendy Marshall, Tom Alletson and Rhonda James to pursue the matter urgently.

- Fingal Wetlands (Fish Unlimited)  
Tom Alletson briefed the meeting on progress being made at Fingal and opportunities being pursued to implement on ground works, that being, creation of a bush regeneration team by the landholder (TBLALC) and work being undertaken by them under a Fish Unlimited Project Stewardship Agreement.
- Lower Oxley Bank Erosion Management

A workshop with Councillors, affected landholders and personnel responsible for the implementation of this project will be organised so that concerned community members can present questions regarding riverbank fencing.

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## CORRESPONDENCE IN:

### Email from Mr B Upton – Membership of Tweed River Committee

Tweed River Committee

Mr Upton suggests that there is no representation by people who live on the river at the Committee.

This matter was discussed and it was determined that existing representation is sufficient to act upon concerns of residents if they are brought to the Committee.

It was determined that Tom Alletson would draft a reply to thank Mr Upton for his interest and advise him of the normal procedure to apply when vacancies are

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created. Further, Mr Upton would be invited to report concerns and issues to the Tweed River Committee and they will be reviewed.

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**CORRESPONDENCE OUT:**

Nil.

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**GENERAL BUSINESS:**

**1. Natural Resource Management Regional Co-ordination**

Natural Resource Management

Rhonda James raised the issue of co-ordination of effort amongst all organisations presently undertaking NRM in the Tweed Catchment, particularly with respect to maximising funding opportunities and creating shared awareness of on-ground rehabilitation projects. It was determined that the Tweed River Committee should organise a workshop to address these issues. Tom Alletson to action.

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**2. River Bank Stabilisation Works**

Rous River / Riverbank Erosion / Dulguigan Road

Richard Hagley made comments relating to a Development Application for River Bank Stabilisation works proposed by Council in the Rous. He noted his Department's comments that the design could be modified to achieve a better environmental outcome.

Councillor Wendy Marshall raised concerns regarding the process in place to allow Tweed River Committee review of river related Development Applications.

Jane Lofthouse will review the previous resolutions regarding this matter and report to the next meeting.

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**Next Meeting:**

The next meeting of the Committee is to be held on 10 December 2003, venue to be announced.

The meeting closed at 12.35pm

**DIRECTOR'S COMMENTS:**

Nil.

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**DIRECTOR'S RECOMMENDATION:**

That the Committee's recommendations be endorsed.

**UNDER SEPARATE COVER:**

Nil.

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**5 Minutes of the Local Traffic Committee Meeting Held Thursday 16 October 2003**

**FOR THE CONSIDERATION OF COUNCIL:**

**VENUE:**

Peter Border Room

**TIME:**

Commencing at 9.00am.

**PRESENT:**

**Committee Members:** Lance Vickery, Roads and Traffic Authority; Sgt Bill Darnell, NSW Police.

**Informal:** Chairman: Mr Paul Morgan, Mr Ray Clark and Judith Finch Tweed Shire Council.

**APOLOGIES:**

Cr George Davidson, Tweed Shire Council, Mike Baldwin, Roads and Traffic Authority, Mr Neville Newell, MP, Member for Tweed, Mr Don Page MP, Member for Ballina.

**MINUTES OF PREVIOUS MEETING:**

**RESOLVED** that the Minutes of the Local Traffic Committee Meeting held Thursday 18 September 2003 were tabled at the meeting and accepted by the Committee as a true and accurate record of the proceedings.

**BUSINESS ARISING:**

**14. Ourimbah Road, Tweed Heads West**

R3970 Pt2; B-Doubles; Ducat Street; Kennedy Drive; Ourimbah Road

This item (Item 14) was discussed at the Local Traffic Committee meeting held 21 August 2002 and is reproduced as follows:-

*“Late item. Application received for B-Double use of Ducat Street. The Committee raised concerns with the use of Minjungbal Drive due to traffic congestion already in existence. Legislation does not allow time restrictions to be placed on approvals and even if an individual operator agreed to certain time restrictions the route approval enables any B-Double operator to utilise it once approved. Whilst the proposed use by the Applicant of only one movement at night other operators could take advantage of the approval which is undesirable due to existing congestion in the area. It is considered that the potential impact on traffic flow along Minjungbal Drive and on Kennedy Drive is unacceptable and that the B-Double route approval is in existence only because these roads were previously the Pacific Highway and the approvals not recorded when the Bypass was completed. The Committee*

*considered that an alternative route may be available through Queensland and suggests the applicant pursue this option.  
For Council's information."*

It was again discussed at the meeting held on 12 December 2002 (Item 14) and is reproduced as follows:-

*"A further letter has been received and is tabled for further comment at today's meeting.  
The Committee noted that there had been an increase in B-doubles throughout the Shire as well as related accidents.  
The Committee did not support the request based on its discussion on the issue at the previous meeting.  
For Council's information."*

The following is from Local Traffic Committee meeting held on 18 September 2003:-

*"The matter has been referred to the Local Traffic Committee for further consideration and advice as to whether another application for B-Doubles should be submitted.  
The Committee noted that restricted hours of access is required between 5:00am to 7:00am and 6:00pm to 11:00pm because of the residential development adjacent to Ducat Street it would not be acceptable to enable these vehicles access to Ducat Street at night.*

**RECOMMENDATION:**

*That:-*

- 1. A B-double route be approved on Ducat Street (from Kennedy Drive to Ourimbah Road) and Ourimbah Road provided that:-*
- 2. Sufficient area is leased to enable to manoeuvring of the b-double on site so that it enters and leaves the premises in a forward direction and the applicant supplies documentary evidence in this regard.*
- 3. Restricted hours of operation are between 5:00am to 7:00am and 6:00pm to 11:00pm for B-doubles on Ducat Street and Ourimbah Road."*

The above recommendation is from the Local Traffic Committee meeting held 18 September 2003 and is brought forward for further discussion in relation to the following resolution which was made at the Council meeting held on 1 October 2003:-

*"RESOLVED that this item be referred back to the Local Traffic Committee to reconsider the restricted hours of operation for B-doubles on Ducat Street and Ourimbah Road."*

Subject to (2) above the applicant should demonstrate that the B-Double can make the turns into and out of Ourimbah Road and from Ducat Street. Sight distance exiting Ourimbah Road is of concern to the Committee.



The Committee confirmed that hours of operation for B-Doubles on Ourimbah Road and Ducat Street between Kennedy Drive and Ourimbah Road are recommended to be 5:00am to 7:00am and 6:00pm to 11:00pm.

The Committee requested that the approval be renewed for two (2) years only and then reviewed.

**RECOMMENDATION:**

That:-

1. A B-double route be approved on Ducat Street (from Kennedy Drive to Ourimbah Road) and Ourimbah Road provided that:-
2. Sufficient area is leased to enable to manoeuvring of the b-double on site so that it enters and leaves the premises in a forward direction and the applicant supplies documentary evidence in this regard.
3. Hours of operation for B-doubles on Ducat Street and Ourimbah Road are between 5:00am to 7:00am and 6:00pm to 11:00pm.
4. The approval be renewed for two (2) years only and then reviewed.

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**6. Covent Gardens Way, Banora Point**

R1393 Pt1; Parking Zones

This item is brought forward from the meeting held 14 August 2003 (item 6) for further discussion. The item is reproduced below:-

*"Brought forward from the meeting held 19 June 2003 (item 6) as follows:-*

*Request received for the installation of "No Parking" signage on Covent Gardens Way at the Day Care Centre. It is reported that vehicles are parking on the road and that the on-site parking area at the Day Care Centre is not being utilised. It is reported that sight distance is being affected by vehicles parking on the road.*

*The Committee decided that the Road Safety Officer should conduct a site visit with the Day Care Centre to discuss the safety issues arising before regulatory signage is installed and report back to the Committee.*

*For Council's information.*

*The Road Safety Officer advised that he had spoken to the Director of the Child Care Centre and she did agree that there was a problem with parents parking on the road and crossing on the curve.*

*After discussion about the impact on local residents the Committee supported the provision of "No Stopping" signs on the southern side of Covent Gardens Way between Honeymyrtle Drive and the Reserve.*

**RECOMMENDATION:**

*That "No Stopping" signs be erected on Covent Gardens Way on the southern side between Honeymyrtle Drive and the Reserve."*

The Road Safety Officer advised that Cr Marshall had requested that this item be brought up for further comment as she was concerned that pedestrians could not see around the curve of the road.

**RECOMMENDATION:**

That double centre lines be provided on Covent Gardens Way on the curve between Honeymyrtle Drive and the public reserve.

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**6. Banora Terrace & Yvonne Crescent, Bilambil Heights**

R0410 Pt1; R6080 Pt1

Brought forward from meeting held 24 July 2003 (item 6).

The item is reproduced as follows:-

*"Request for Local Traffic Committee assistance at the intersection of Banora Terrace and Yvonne Crescent Bilambil Heights. It is suggested that conditions have changed since the completion of the road reconstruction by Council.*

*Mr George West, Mr Orr and Mr Byron were met on-site.*

*The Committee considered the issues raised on site. The main concerns were that the 'entrance' is too narrow and that vehicles exiting left or right could be hit if entering vehicles 'cut' the double centre lines. Sight distances for vehicles exiting the cul-de-sac were also raised. The Committee noted that the intersection priority had changed, giving priority to the Banora Terrace (south) / Yvonne Crescent route whereas previously Yvonne Crescent gave way to Banora Terrace. Sight distances for vehicles turning right into Yvonne Crescent would be the same regardless of the intersection configuration. The Committee agreed that due to the road grades care needs to be taken and recommends a 'Stop' sign be placed on the exit from Banora Terrace cul-de-sac. A stormwater manhole protrudes above the footpath level which if lowered would improve vision of traffic in Banora Terrace (south). It was noted that only 5 drawings are serviced by the Banora Terrace (cul-de-sac) therefore the potential for waiting cars to be hit by entering traffic is remote. The Committee noted that the kerb near the stormwater manhole could be moved out by 0.5m to make the cul-de-sac road wider but would cost about \$5,000.*

**RECOMMENDATION:**

*That:-*

- 1. A 'Stop' sign be erected on the Banora Terrace 'cul-de-sac' leg of the intersection with Yvonne Crescent.*
- 2. The stormwater manhole on the north east corner of Banora Terrace be lowered to footpath level."*

Given the submission from Engineering Services the Committee agrees that the benefits of lowering the manhole would be minimal.

**RECOMMENDATION:**

That the manhole on the north east of Banora Terrace remain as is.

---

**7. Chinderah Bay Drive and Waugh Street B Double Routes**

R1071 Pt3; R5860 Pt1; B-Doubles; Chinderah Bay Drive; Waugh Street; DW948164

Brought forward from meeting held 18 September 2003 (item 7) at the request of the Police Representative and reproduced as follows:-

*"Request received from for authorisation of B Double routes along Chinderah Bay Drive / Fingal Bay off ramp and Waugh Street / Chinderah Bay Drive to Motorway.*

*The Traffic Committee agreed that the B-double route be extended for another 5 years. The applicants be advised that Chinderah Road south of Waugh Street is not a B-double route and will be enforced.*

**RECOMMENDATION:**

*That the B-double route along Chinderah Bay Drive from Fingal Road to Waugh Street, Fingal Bay off ramp to Chinderah Bay Drive and Waugh Street be approved and extended for another 5 years."*

A further issue was raised by the Police Representative being the conflict between the increasing number of B-Doubles and the school buses.

**RECOMMENDATION:**

That the Local Traffic Committee recommendation of 18 September 2003 (item 7) be amended for B-doubles not to travel along Chinderah Bay Drive from Fingal Road to Waugh Street, Fingal Bay off ramp to Chinderah Bay Drive and Waugh Street during school bus hours, being 8:00 - 9:30am and 2:30 - 4:00pm Monday to Friday.

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**11. Chinderah Bay Drive and Waugh Street B Double Routes**

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R1071 Pt3; R5860 Pt1; B-Doubles; Chinderah Bay Drive; Waugh Street; DW944345

Brought forward from meeting held 18 September 2003 (item 11) at the request of the Police Representative and reproduced as follows:-

*"Request received from for renewal of B Double Notice No. 5/1999. This involves B Doubles travelling on the following currently gazetted routes: Chinderah Bay Drive, starting Fingal Road off ramp (also known as Tweed coast Way) to the BP (700 metres) to Waugh Street (1.2km) for southbound journeys and access to Chinderah Bay Drive from the Pacific Highway Motorway exit to the BP service station (2.4km) and back to Waugh Street (northbound journey).*

*The Traffic Committee agreed that the B-double route be extended for another 5 years. The applicants be advised that Chinderah Road south of Waugh Street is not a B-double route and will be enforced.*

**RECOMMENDATION:**

*That the B-double route along Chinderah Bay Drive from Fingal Road to Waugh Street, Fingal Bay off ramp to Chinderah Bay Drive and Waugh Street be approved and extended for another 5 years."*

A further issue was raised by the Police Representative being the conflict between the increasing number of B-Doubles and the school buses.

**RECOMMENDATION:**

That the Local Traffic Committee recommendation of 18 September 2003 (item 11) be amended for B-doubles not to travel along Chinderah Bay Drive from Fingal Road to Waugh Street, Fingal Bay off ramp to Chinderah Bay Drive and Waugh Street during school bus hours, being 8:00 - 9:30am and 2:30 - 4:00pm Monday to Friday.

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**GENERAL BUSINESS:**

**PART A**

**1. Fingal Road, Fingal Head**

R2060 Pt4; DW938142; Traffic - Committee; Traffic - Speed Zones

Request received for:-

1. A reduction in the speed limit on Fingal Road to 50kph.
2. Double centreline marking on Fingal Road from No. 8 to No. 10 Fingal Road, similar to Fingal Road Stage 2.

The Road Safety Officer advised that the matter of double centreline marking had been addressed separately.

The Committee decided that the speed limit on Fingal Road will be reviewed in 6 months time when speed limits within the Shire are generally reviewed in accordance with Roads & Traffic Authority Speed Zoning Policy relating to the 50kph urban speed limit.

For Council's information.

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## **2. Marine Parade, Kingscliff**

Traffic - Parking Zones; Surf Life Saving; Markets - Kingscliff

Request received for five reserved car parking spaces close to the front of the Cudgen Headland Surf Life Saving Club. It is reported that patrol members are finding it difficult to park on weekends.

The Committee noted that parking is at a premium in Kingscliff and did not support the loss of five general car park spaces that will only be used part of the time. The Committee also noted that such signs have no legal meaning under the Australian Road rules but if required by Council the Committee supports a reduced number of spaces.

The Committee agreed that two (2) car spaces be reserved for Cudgen Headland Surf Life Saving Club. Five were considered to be excessive due to continued complaints on the shortage of car parking within Kingscliff.

### **RECOMMENDATION:**

That two (2) reserved car parking spaces close to the front of the Cudgen Headland Surf Life Saving Club be installed by linemarking.

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## **3. Piggabeen Road, Tweed Heads West**

R4300 Pt8; DW952284; Traffic - Speed Zones

Petition received in relation to speeding vehicles along Piggabeen Road.

The Police Representative advised that on the 24 September he attended Piggabeen Road and spoke to Mr Fairley. Enforcement was undertaken in his presence and infringement notices were issued. Further enforcement was agreed upon on a resource basis. Further enforcement occurred on the 16 October 2003.

For Council's information.

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#### **4. Machinery Drive, Tweed Heads South**

R3250 Pt3; DW953014; Traffic - Local Area Traffic Management

Request received for review of the traffic flow in the Machinery Drive "loop".

The Committee did not agree that one way traffic flow in the "loop" was acceptable because of increasing traffic within the loop and restrictions on westbound movement in Machinery Drive near Amber Road. Also, Amber Road traffic heading west has a very inefficient circuitous route which introduces weaving problems. There is a potential for vehicle conflict at the intersection points particularly from Amber Road heading west. The loop itself has significant industrial traffic movements, which if mixed with through traffic would be undesirable.

#### **RECOMMENDATION:**

That the applicant be advised that one way traffic flow in the Machinery Drive loop is unacceptable because of:-

1. Restrictions on westbound movement in Machinery Drive near Amber Road.
2. Amber Road traffic heading west has a very inefficient circuitous route which introduces weaving problems.
3. There is a potential for vehicle conflict at the intersection points particularly from Amber Road heading west.
4. The loop itself has significant industrial traffic movements which if mixed with through traffic would be undesirable.

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#### **5. Marine Parade, Kingscliff**

R3340 Pt5; Traffic - Parking Zones

Request received for a review of the "No Parking" signage near the Church on Marine Parade, Kingscliff. It is reported that it is now difficult for churchgoers to go to the church for weddings, funerals etc without having to move their vehicles during the service. Adjacent residents also have advised that they acknowledge a problem exists but 1 hour is not enough however they could accept a 2 hour parking limit.

The Committee recognised that one (1) hour parking was too short for the above reasons and decided that two (2) hour parking should be installed and would still prevent all day parking.

**RECOMMENDATION:**

That two hour parking be installed on Marine Parade from Turnock Street to the zebra crossing to the north.

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**6. Bonnydoon Road and Braeside Drive, Uki**

R0622 Pt1; R0728 Pt1; Traffic - Speed Zones

Request received for a 50 km/h speed zone on Bonnydoon Road and Braeside Drive Uki as children use this road. It is reported that traffic travels in excess of 80 km/h especially when driving down the hill.

The Committee agreed that the Road Safety Officer should discuss with the complainant to develop an awareness campaign of speeding issues in the community.

For Council's information.

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**7. Burringbar Road (Main Street), Burringbar**

R0860 Pt1; Traffic - Local Area Traffic Management

Request received for appropriate signage to warn drivers on Burringbar Road that they are approaching the intersection with Tweed Valley Way.

The Committee noted that it is a "T" intersection, which is clearly visible and therefore signage is not warranted as the Road Rules cover 'T' intersections.

For Council's information.

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**8. Park Street, Tweed Heads**

R4130 Pt1; Traffic - Parking Zones

It is reported that there is 45 degree nose to kerb parking adjacent to the Croquet Club. There are no bollards or wheel stops to prevent cars dropping approximately 1m to the croquet field. It is suggested that the parking signage be changed or appropriate barriers be installed.

The Committee suggested that the matter be referred to the Manager Recreation Services to assess the need for a fence along the front of the car park at the Croquet Club in Park Avenue to stop vehicles and pedestrians dropping on to the Croquet Court.

The Committee also agreed that the "No Parking" signs on the "nose-in" parking are not required and parking should be permitted.

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**RECOMMENDATION:**

That the "No Parking" signage on Steep Street adjacent to the Croquet Club be designated as "90° nose to kerb" parking.

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**9. Terranora Road, Terranora**

R5431 Pt5; traffic - weight of vehicles

The Police Representative advised that there are increased heavy weight vehicles using Terranora Road.

It was decided that traffic counters should be placed on Terranora Road and that the item be brought forward for further discussion.

For Council's information.

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## Part B

**1. Wardrop Valley Road, South Murwillumbah**

R5810 Pt 1; DA02/1685

An application has been received for a 57 lot industrial subdivision at Wardrop Valley Road. Local Traffic Committee comments are requested as this subdivision is in excess of 50 lots.

The Committee considered that:-

1. There is a potential impact from the predicted traffic generated from the site and that a detailed traffic analysis for the following intersections should be performed for the ultimate development scenario:-
  - Tweed Valley Way with Reserve Creek Road
  - Reserve Creek Road with Quarry Road
  - Quarry Road with Wardrop Valley Road
2. The section of Wardrop Valley Road that is currently not constructed to industrial standards should be widened to Council's industrial standard road cross section.
3. The internal roads are designed for B-doubles however the roads between the site and Tweed Valley not are not and any assumption that a B-double route would be approved cannot be made unless a detailed B-double route assessment is undertaken as part of the development application.



4. All road grades within the subdivision should comply with Council's road design standards.
  5. The Wardrop Valley Road extension should be realigned to give priority to Road 1/Wardrop Valley Road.
- 

**NEXT MEETING:**

The next meeting of the Local Traffic Committee will be held on Thursday 20 November 2003 in the Peter Border Room commencing at 9.00am.

The meeting closed at 12:05pm.

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**DIRECTOR'S COMMENTS:**

**Nil**

**DIRECTOR'S RECOMMENDATIONS:**

**As per report.**

**UNDER SEPARATE COVER:**

Nil.

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6 Minutes of the Tweed Futures Steering Committee Meeting held Tuesday 21 October 2003

**FOR THE CONSIDERATION OF COUNCIL:**

**VENUE:**

Canvas & Kettle

**TIME:**

5.00pm

**PRESENT:**

A/Prof Graham Sansom	Independent Facilitator (Chair)
Clr Lynne Beck	Tweed Shire Council
Clr Henry James	Tweed Shire Council
Mr Barry Longland	Community Representative
Mr Robert Quirk	Community Representative
Mr Brian Ray	Business Representative
Mr Robert Wesener	Business Representative
Mr David Broyd	Director, Development Services
Mr Doug Jardine	Project Leader

**APOLOGIES:**

Councillors Warren Polglase and George Davidson.

**AGENDA ITEMS:**

**1. Welcome and Introductions**

On behalf of the Mayor, Bavid Broyd welcomed members of the Committee and introduced the Independent Facilitator, Graham Sansom, Director of the UTS Centre for Local Government. Mr Sansom briefly outlined his background and experience and his intended approach to the role. He also advised that he would be carrying out the project jointly with Stephanie Knox, a highly experienced planner and facilitator with considerable previous experience in Tweed Shire. Ms Knox will be conducting the community consultation program.

Committee members then introduced themselves and commented on how they see the Tweed Futures project progressing. Key points raised were:

- The need to develop a clear, coherent vision through good communication with all key stakeholders
- The importance of producing a plan that is user friendly, action-oriented and highly practical
- The need for the plan to include performance indicators so that progress in implementation can be assessed, but also for flexibility to respond to changing circumstances

- The need to ensure balanced consideration of issues
- The need to protect the environment and mitigate adverse impacts of growth and change
- The need to link the plan firmly with Council's corporate planning and resource allocation.

The Committee noted the points raised.

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## 2. Background Briefing on Tweed Futures

David Broyd summarised the background to the Tweed Futures project and work completed to date, including the first round of community consultation and the special issue of 'Tweed Link'.

The Committee noted the information.

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## 3. Role of the Committee

Graham Sansom outlined his views on the role of the Committee. He highlighted the following points:

- That it is a precisely a steering committee with the primary function of keeping the project on track
- This will involve:
  - Advice to the Facilitator and Project Leader on the work program and key issues
  - Providing a 'sounding board' for the Project Leader
  - 'Quality control' (eg Are issues papers clear? Do they cover all the key issues?)
  - Promoting the credibility of the process
- The Committee is also a two-way conduit for community (in the broad sense) views to be taken fully into account and referred to Council, and for information to be fed back to the community
- At a later stage, the Committee will also play a key role in providing policy advice to Council as it finalises the draft strategic plan
- Council remains the decision-maker.

The Committee endorsed this summary of its role, subject to fine-tuning as the project progresses.

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Committee members also discussed the issues involved in their community liaison role.

The Committee agreed that:

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- Members would be active in promoting consultation with their constituencies, in addition to the community meetings and workshops already planned, and would encourage submissions
  - Cllrs Beck and James would support a request to Council for community and business representatives on the Committee to receive assistance in-kind (printing etc) as well as some re-imburement of expenses incurred in promoting consultation and involvement in the planning process.
- 

Mr Ray sought the views of other members on his position as a Committee member, given his well-known business interests in the Shire and the potential for perceived conflicts of interest.

The Committee noted that Mr Ray had been duly appointed by Council, and agrees that provided any specific conflicts of interest were properly handled, he would make a valuable contribution in communicating a developer perspective and promoting a necessary focus on implementation issues.

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#### **4. Role of the Facilitator**

Graham Sansom outlined his views on the role of the Independent Facilitator, based on the brief provided by Council. This included:

- Being Chair and manager of business for the Steering Committee
- Maintaining focus and momentum in the work program
- Providing professional support to the Project Leader and team
- Undertaking community consultation (this would primarily fall to Stephanie Knox)
- Promoting balanced consideration of issues
- Ensuring the independence and credibility of the planning process, subject to Council's right to make final decisions as it sees fit.

Mr Sansom emphasised that his appointment was not subject to any conditions other than those set out in the public tender documents, and that he had not received any further instructions from Council. He indicated that he would do everything possible to ensure that all views were heard and respected, and properly brought to Council's attention before decisions were taken.

The Committee endorsed the role of the Independent Facilitator as proposed.

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#### **5. Links to the Community**

Members discussed concerns expressed regarding the balance of representation on the Committee, and also the 'Community Summit' meeting to be held on 22 October.

The Committee agreed:

- To ensure that all views expressed were faithfully reported to Council
  - That further 'Community Summits' should be held during the course of the project, properly organised as workshops and attended by as many Committee members as possible, to provide opportunities for community organisations of all types to present their views directly to the Committee.
- 

## 6. Committee Procedures

Members discussed various issues relating to the conduct of Committee business.

The Committee agreed that:

- The quorum for meetings would be six (6) voting members
  - The Committee would operate by consensus, with voting kept to a minimum, but in the event of a tied vote the Mayor would have a casting vote
  - Agendas would be circulated at least three days before meetings
  - Minutes of meetings would be circulated as soon as possible after meetings and also forwarded directly to Council for inclusion in business papers, subject to confirmation by the Chair
  - Community/business representatives on the Committee should have the right to address Council and participate in Councillor workshops on the strategic plan
  - Public comment on matters discussed at Committee meetings would normally be limited to the Chair, and other members would consult with the Chair before any public comment of their own if they considered it essential to do so
  - The Chair would release a media statement after each meeting
  - Any urgent matters between meetings would be handled by the Chair in consultation as required with the Mayor and Project Leader
  - The Chair would table a Code of Practice for adoption at the next meeting based on the discussion, including provisions for conflict of interest, impartiality, maintaining order at meetings etc.
-

## 7. Work Program

The Committee discussed a draft work program to March 2003. It also considered the desirability of conducting a community survey to complement the consultation process.

Members expressed concerns about the adequacy of resources allocated by Council to undertake the strategic planning process, particularly in light of the resignation of David Broyd and the anticipated delay in a replacement appointment.

The Committee:

- Endorsed the work program as attached
  - Requested the Chair and Cllrs Beck and James to convey to Council its concerns regarding the adequacy of resources available to undertake the strategic planning process
  - Requested the Chair and Project Leader to investigate options for a community survey, including in particular a telephone survey of a properly selected sample of households, and to circulate the proposed survey instrument to members for comment and discussion at the next meeting.
- 

## 8. Future Meetings

The Committee agreed that further meetings would be held on 11 November, 18 November and 18 December, each commencing at 4pm, as indicated in the adopted work program:-

### ADOPTED WORK PROGRAM TO MARCH 2003

Until 11/11	Prepare Issues Papers
11/11	4pm Steering Committee information session on Issues Papers
18/11	4pm Steering Committee meeting: sign-off Issues Papers, consider format and broad content of strategic plan
24/11	Release Issues Papers
25/11?	Commence community survey?
Until 16/12	Further develop plan format and broad content
18/12	4pm Steering Committee meeting: finalise plan format and broad content
2/12-18/12	First-round consultation on Issues Papers

January	Continue plan development
27-30/1	Second-round consultation (and finalise community survey?)
February	Finalise Draft Planning Framework
17/2 (tbc)	Steering Committee information session: Draft Planning Framework
24/2(tbc)	Steering Committee meeting: sign-off Draft Framework
27/2	Circulate Draft Framework to Councillors
3/3	Draft Framework considered by Council

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**NEXT MEETING:**

The next meeting of Tweed Futures Steering will be held 11 November 2003.

The meeting closed at 7.00pm

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**DIRECTOR'S COMMENTS:**

The Committee has raised two issues which require Council's consideration, namely:

- Resources to complete the Tweed Futures Project
- Support for Community and Business representatives

The former will be considered in a report to Council on 19 November 2003 in the review of the Strategic Planning Work Program.

**DIRECTOR'S RECOMMENDATIONS:**

**3. Role of the Committee**

That Council supports Community and Business representatives on the Committee with assistance in kind (printing etc) as well as reimbursement of out of pocket expenses incurred in providing consultation and involvement in the Tweed Futures Steering Committee.

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**7 Minutes Circulated to Councillors with this Agenda not Requiring a Council Decision**

**UNDER SEPARATE COVER:**

1. Minutes of the Cabarita Beach Bogangar Advisory Steering Committee Meeting held on Thursday 4 September 2003.
  2. Minutes of the Cabarita Beach Bogangar Advisory Steering Committee Meeting held on Thursday 18 September 2003.
  3. Minutes of the Tweed Shire Council Consultative Committee Meeting held on Thursday 25 September 2003.
  4. Minutes of the Cabarita Beach Bogangar Advisory Steering Committee Meeting held on Thursday 2 October 2003.
  5. Minutes of the Community Cultural Development Advisory Committee Meeting held on Thursday 2 October 2003.
  6. Minutes of the Aboriginal Advisory Committee Meeting held Friday 3 October 2003.
  7. Minutes of the Tweed Shire Council Occupational Health & Safety Committee Meeting held on Thursday 9 October 2003.
  8. Minutes of the Tweed Shire Council Consultative Committee Meeting held on Thursday 16 October 2003.
  9. Minutes of the Australia Day Committee Meeting held on Monday 20 October 2003.
-



## **ORDERS OF THE DAY**

### **1 [NOR] Seaside City - Local Environmental Study and Draft Local Environmental Plan**

#### **NOTICE OF RESCISSION:**

Councillor G J Lawrie, W M Marshall and P C P Youngblutt move:

That Council resolution at Minute No 908 in relation to Item 1 of the Extraordinary Meeting held on 22 October 2003 being:-

*"...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."*

**be rescinded.**

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### **2 [NOM] New Strategic Plan**

#### **NOTICE OF MOTION:**

Councillor M R Boyd moves:

That as an integral part of the development of a new strategic plan, Council undertakes to conduct a comprehensive questionnaire survey to obtain the widest possible collection of Tweed people's opinions on the direction that want to seek the Tweed take for the future.

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### **3 [NOM] Scientific Forum - New Strategic Plan**

#### **NOTICE OF MOTION:**

Councillor M R Boyd moves:

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That a scientific forum be convened as part of the consultation program in the development of a new strategic plan to seek out and identify those issues of a scientific nature which could have significance for future generations of Tweed residents.

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#### **4 [NOM] Membership of Tweed Futures Steering Committee**

##### **NOTICE OF MOTION:**

Councillor B J Carroll moves:

That the membership of the Tweed Futures Steering Committee be expanded to include Terry Watson as a further business representative and Steve Dale as a further community representative.

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## **CONFIDENTIAL MATTERS**

### **CONFIRMATION OF MINUTES**

#### **Minutes of the Confidential Council Meeting held 15 October 2003**

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### **REPORTS THROUGH GENERAL MANAGER IN COMMITTEE**

#### **REPORTS FROM DIRECTOR DEVELOPMENT SERVICES IN COMMITTEE**

##### **1 [DS] Terranora Village Shopping Centre**

#### **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 DIRECTOR ENGINEERING SERVICES IN COMMITTEE**

##### **2 [ES] Water Pumping Station 13A Contract No. EC2003-139 Pumping Station Building and Associated Works and Contract No. EC2003-152 Mechanical and Electrical Works**

#### **REASON FOR CONFIDENTIALITY:**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (d) commercial information of a confidential nature that would, if disclosed:
    - (i) prejudice the commercial position of the person who supplied it, or
    - (ii) confer a commercial advantage on a competitor of the council, or
    - (iii) reveal a trade secret
-

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**3 [ES] Tender - Hastings Point Sewage Treatment Plant - Augmentation - EC2003-107**

**REASON FOR CONFIDENTIALITY:**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (d) commercial information of a confidential nature that would, if disclosed:
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret

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**4 [ES] Acquisition of Land for the Purposes of a Reservoir at Duranbah**

**REASON FOR CONFIDENTIALITY:**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

## **REPORTS FROM DIRECTOR ENVIRONMENT & COMMUNITY SERVICES IN COMMITTEE**

### **5 [EC] Unauthorised Enclosure of Ground Floor of Dwelling in a Flood Liable Area**

#### **REASON FOR CONFIDENTIALITY:**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(b) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (b) the personal hardship of any resident or ratepayer
- 

### **6 [EC] Naming of Open Space at Banora Point - Tuckeroo Springs**

#### **REASON FOR CONFIDENTIALITY:**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(a) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (a) personnel matters concerning particular individuals (other than councillors)
- 

### **7 [EC] Naming of the Park in Jack Evans Boat Harbour, off Coral Street (old Water World Site) Tweed Heads as "John Follent Park"**

#### **REASON FOR CONFIDENTIALITY:**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(a) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (a) personnel matters concerning particular individuals (other than councillors)
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**8 [EC] - Regulatory Action - Tweed Heritage Caravan Park**

**REASON FOR CONFIDENTIALITY:**

This report is **CONFIDENTIAL** in accordance with Section 10A(2(a) and (g) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (a) personnel matters concerning particular individuals (other than councillors)
  - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege
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