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SCHEDULE OF OUTSTANDING RESOLUTIONS

Schedule of Outstanding Resolutions

FOR COUNCILLOR'S INFORMATION:

17 March 2004

REPORT FROM DIRECTOR ENGINEERING SERVICES

21 [ES] Proposed Water Reservoirs Adjacent to Koala Beach Estate

202

Councillor H James

Councillor B M Luff

RESOLVED that Council investigates the further option of constructing the proposed Reservoir at a location on the Mooball-Pottsville Road.

Current Status: Reassessing technical aspects including alternative sites.

5 May 2004

REPORTS FROM SUB-COMMITTEES/WORKING GROUPS

Minutes of the Aboriginal Advisory Committee Meeting held Thursday 1 April 2004

[MOS] 4. Far Western Tugun Bypass Route

Councillor M R Boyd

Councillor R D Brinsmead

RESOLVED that an invitation be extended to Mr George Beattie and Mr Bruce Campbell to address a Community Access meeting of Council.

Current Status: To be arranged.

19 May 2004

REPORTS FROM THE DIRECTOR PLANNING & ENVIRONMENT

- 1 [DS] Development Application DA03/1038 for a 7 Lot Subdivision at Lot 121 DP 755701, No. 50 Chinderah Bay Drive, Chinderah**

308

Councillor R D Brinsmead

Councillor G B Bell

RESOLVED that this item be deferred to allow landowners to further address the concerns outlined in the report with Development Staff.

Current Status: Awaiting advice from applicant.

MAYORAL MINUTE

Mayoral Minute

Councillors,

1. Resort Corp

4 June - Deputy Mayor, Cr. Lynne Beck, in my absence attended the unveiling of Soraya, Dreamtime Beach, Kingscliff apartment project

2. Wintersun

4 June - Deputy Mayor, Cr. Lynne Beck, in my absence attended the Gold Coast Airport Official Wintersun Ball at Greenmount Resort

3. World Environment Day

5 June – In my absence, Cr. Henry James represented Council at the World Environment Day Celebrations held in Knox Park Murwillumbah

4. Lifeworx Christian Church

6 June – attended the Lifeworx Christian Church 10th Anniversary Service at Tweed Heads

5. Tweed Heads South Public School

7 June - Deputy Mayor, Cr. Lynne Beck, in my absence attended Tweed South Public Performing Arts Morning

6. Bangalor Retreat

7 June - Deputy Mayor, Cr. Lynne Beck, in my absence attended the official opening of Bangalor Retreat at Bilambil Heights by the Federal Minister for Ageing, The Hon. Julie Bishop MP

7. RTA

8 June – attended RTA Community Information Session held at Banora

8. Johnny O’Keefe Statue

10 June – unveiling of Johnny O’Keefe Statue at Tweed Heads

9. Casino/Murwillumbah Rail Line Closure

10 June – give evidence at hearing into the closure of the North Coast railway branch line between Casino and Murwillumbah being conducted by the NSW Legislative Assembly.

10. JOK Statue Celebrations

10 June – JOK Statue Celebration Concert at Twin Towns

11. IFEA

11 June – Opening lunch for IFEA Downunder Festivals & Events Conference

12. Murwillumbah Theatre Company

11 June – Murwillumbah Theatre Company production “Rumours”

13. Chillingham Public School Centenary

12 June – Chillingham Public School Centenary Celebration Day

14. Border Park Galaxy

14 June – Border Park Galaxy at Border Park Racecourse

15. Citizenship Ceremony

15 June – Public Citizenship Ceremony at Tweed Heads

INVITATIONS ACCEPTED:

- 18 June – meet with Country Energy representatives to discuss proposed sub transmission stations at Cobaki & Kings Forest
- 19 June – Rotary Club of Mt. Warning AM – changeover lunch at Duranbah
- 19 June – St. Joseph’s College Deb. Ball
- 20 June – Lindisfarne Thanksgiving & Farewell Service for Peta Smith
- 21 June – Northern Rivers Arts Meeting at Kyogle
- 21 June – Launch CDAT (Tweed Community Drug Action Team) Murwillumbah CC
- 22 June – Murwillumbah Lions Changeover Dinner
- 23 June – Twin Towns Friends Assoc. – Volunteer Awards
- 24 June – meet with GM & representatives SCU to discuss expansion plans
- 25 June – BEX Awards Dinner
- 27 June – Tweed Rotary Changeover Lunch – Banora
- 28 June – Rotary of Murwillumbah Changeover Dinner
- 29 June – Murwillumbah Central Rotary Changeover Dinner
- 30 June – Welcome Annual Ex-Servicemen’s Reunion Twin Towns

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

- S.U.C.C.E.S.S. (Stakeholders Uniting Communities and Catchments Exchanging Sustainable Strategies – Greening Australia Workshops: Farm Forestry for Catchment Solutions **18 June Tamworth** ; Biodiversity – Remnant Vegetation & Soil health **24 June Orange**; Biodiversity Conservation in the Tweed and Brunswick Area **29 June Tweed Valley**
- Local Government Learning Solutions (Councillor Professional Development Program) one day Workshop/Councillors’ Forums **17 June Sydney**, or **4 August Canberra**
- Fourth National Mainstreet Conference “getting down to business” **26-29 September Melbourne**

ABSENCES FROM SHIRE BY EXECUTIVE, AND COUNCILLORS:

Executive

Name	From	To	Location	Details
DECS	16 June 2004	21 June 2004	Sydney	Various meetings
GM	18 June 2004		To be Advised	NOROC Meeting
GM	21 June 2004		Bilinga	Meeting with Gold Coast Airport Ltd

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ITEMS DEFERRED

[ID] [DS] Draft Development Control Plan No. 5 - Development of Flood Liable Land

ITEM DEFERRED FROM MEETING HELD:

17 March 2004

Councillor L F Beck
Councillor W M Marshall

RESOLVED that this item be deferred.

THIS ITEM IS THE SUBJECT OF A FURTHER REPORT FROM DIRECTOR ENGINEERING AND OPERATIONS TITLED "TWEED VALLEY FLOODPLAIN RISK MANAGEMENT STUDY" AT ITEM NO 17 OF THIS AGENDA AND A FURTHER REPORT FROM DIRECTOR PLANNING & ENVIRONMENT TITLED " APPLICATION TO MODIFY DEVELOPMENT CONSENT 98/79 INVOLVING UNAUTHORISED ENCLOSING OF GROUND FLOOR OF DWELLING IN A FLOOD PRONE AREA" AT CONFIDENTIAL ITEM 1 OF THIS AGENDA

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. The draft DCP has been publicly exhibited. Two submissions were received and further amendments have been made to the exhibited draft to address concerns raised in the submissions. It is now recommended for approval.

Council is currently remodelling Tweed Valley flood behaviour. In accordance with the 2001 NSW Floodplain Management Manual, the results of this modelling, including predicted heights of the Probable Maximum Flood (PMF) level will then be addressed in a "Flood Plain Risk Management Study" and lead to the adoption of a new "Floodplain Risk Management Plan". Part of the implementation of this Floodplain Risk Management Plan will be the subject of a further comprehensive revision of DCP 5.

RECOMMENDATION:

That Council: -

1. Pursuant to Clause 21 of the Environmental Planning and Assessment Regulation 2000, adopts Development Control Plan No. 5 (Version 2.1) - Development of Flood Liable Land with the alterations to the exhibited draft as detailed in the amended draft attached to this report.
2. Gives public notice in the Tweed Link of its decision in accordance with the Environmental Planning and Assessment Regulation 2000, specifying that the amended Development Control Plan will come into effect on the date of the notice.

REPORT:

1. Background

The original version of DCP 5 was adopted on 18 June 1986 and was based on a number of local flood studies and the 1986 NSW Floodplain Development Manual. There have been 7 amendments since initial adoption the latest being in 1996 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 1996 amendment of DCP5.

- Tweed LEP 2000 has been adopted and has changed the definitions 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:-
 - Increase emphasis on “management” of the full range of flood risks including existing, future and continuing risks within a broad risk management hierarchy of
 - o avoidance (where risks are considered unacceptably high),
 - o minimisation (using planning controls where risks are controllable), and
 - o flood risk mitigation (for alleviating existing flood problems)
 - Prescribe the following floodplain risk management process:-
 - o Establish Floodplain Risk Management Committee
 - o Flood study
 - o Floodplain Risk Management Study
 - o Floodplain Risk Management Plan
 - o Management Plan Implementation (land use planning -LEPs, DCPs etc; mitigation works; catchment management; flood warnings and response; environmental rehabilitation etc)
 - Recognise the need for local flood plans prepared under guidance of SES to address readiness, response and recovery
 - Recognise the probable maximum flood (PMF), but, recognising that the PMF should not preclude or unnecessarily hamper development
 - Recognise that site specific plans written separate from the overall risk management plan are ineffectual and should not form the basis of development consent
 - Consider flood risk on a strategic framework to enable consideration of cumulative impacts

- Provide a basis for Council's to amend LEPs with respect to planning controls of types of development in flood prone land not identified in existing floodplain risk management plans
- Recognise the need to acknowledge and consider the links between floodplain management and environmental, ecological, social and cultural issues and the principles of ecologically sustainable development
- Recognise the potential of climate change on flooding behaviour (global warming)
- Council has commissioned consultants WBM Oceanics to update and rerun Tweed valley flood models to determine a range of flooding probabilities up to the PMF level. This modelling should be completed by mid 2004.

It is considered that DCP 5 should be amended in a two phase process:-

The first phase, this draft DCP amendment, incorporates the key principles of the 2001 NSW Floodplain Management Manual, updates 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.

The second phase will be a comprehensive revision of DCP 5 in accordance with the prescribed process in the 2001 NSW Floodplain Management Manual. This would include the following elements:-

Element	Description	When?
Establish Floodplain Risk Management Committee	The 2001 manual advises that the committee typically includes Council elected members, relevant council staff, community representatives, industry representatives, DIPNR representative, SES representative, and Catchment management board (superseded by CMA?) representative.	Council's existing Flood Plain Management Committee is generally consistent with this model. A Catchment Management Authority representative may be appointed when the Authority is established.
Flood Study	Technical investigation of flood behaviour. <i>Determination of flood discharges, levels, velocities for floods of varying severity. Determine hydraulic (floodway, flood storage or flood fringe) and hazard (low, high) categories for different areas of floodplain. Full range of flood events up to PMF. Modelling used as an analytical tool.</i>	Commenced 2002, expected to be completed mid 2004
Floodplain Risk Management Study	Identify and compare options. <i>Having regard to the Flood Study; examine and assess existing policies, mitigation plans, warning/response plans and</i>	Will follow Council consideration of the flood study and preparation of an

Element	Description	When?
	<i>development controls; identify options for potential development areas within floodplain for assessment; identify and assess flood plain risk management measures including development restrictions; assess impacts of options (economic, social, ecological); identify required modification to current policies in light of above.</i>	appropriate brief. Could cost \$150,000+, subsidies for study available from DIPNR
Floodplain Risk Management Plan	Preferred options from the Risk Management Study. Coordinated mix of measures to address flood risks.	After consideration of all options, preferred options adopted by Council
Implementation of Plan	Implement above mix of measures. Includes planning controls (amendments of LEPs, DCPs); mitigation works; flood warning, readiness and response plans; environmental rehabilitation; ongoing data collection and monitoring etc	Follows above. The major revision of DCP5 would be part of this process. The new DCP5 would reference mapping, flood heights and hazard categories derived from the flood study.

2. Purpose of this Version of DCP5

This draft version of DCP5 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 general 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 high hazard flood prone areas and permitting in addition a detached garage of 36m²
- Clarifying permissible levels of roads and lot filling in flood prone areas
- Requiring the cumulative impact of development on flood plain areas to be assessed

- 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 there is a comprehensive revision of DCP5, following completion of the current remodelling of flood levels and completion of a new Flood plain Risk Management Study and Plan.

3. Impact of the PMF

The Probable Maximum Flood (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 does not yet have any PMF levels. In the past, flood prone areas of the Shire have been modelled to determine flood levels for the adopted design flood (1 in 100 year frequency) and these levels are printed in DCP5.

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 expected to be completed mid 2004. This modelling will predict the PMF levels for areas covered by the model.

PMF levels will be considered in the proposed “Floodplain Risk Management Study” and “Floodplain Risk Management Plan” referred to in section 1 of this report. The future comprehensive revision of DCP5 arising from implementation of this study/plan will identify PMF levels for flood prone localities and address landuse and other policy and operational issues arising from identification of the PMF levels.

In the future comprehensive revision of DCP5, to be consistent with the definitions the “flood plain” and “flood prone land” in the 2001 NSW Floodplain Management Manual, the PMF levels will be used to define the extent of the (considerably enlarged) flood plain. This will also impact on issue of planning (149) certificates, and the need to advise as “flood prone” the additional land/lots encompassed by the PMF.

4. Public Exhibition of Plan and Response to Submissions

The draft DCP was exhibited for 28 days during November/December 2003 and two submissions were received. Following closure of the exhibition period, consultation meetings have been held with the authors of the submissions and Council staff to address issues of concern. A number of further amendments are proposed to the draft DCP which now resolve these issues. Details of issues and the further amendments are detailed in the following table:-

Author	Issues Raised in Submissions	Comments	Proposed Response
Olga Vidler	The DCP should include maps clearly defining flood prone areas.	The DCP now references maps held by Council. These have not been updated since the original issue of DCP5 in 1986. New mapping including both the design flood (1 in 100 year) and the PMF will be available when the current flood modelling exercise is completed.	Include full range of flood maps based on new modelling in the future comprehensive revision of DCP5
	1.2 Definitions of flood liable land and design flood should be inserted early in document to help in understanding its intent by clarify these terms	Agreed	Definitions of flood liable land and design flood included (consistent with definitions elsewhere) in this section
	5. Incorrect use of locality “Fingal”	Agreed	Error corrected. “Fingal “ substituted with “Fingal Head”.
	4 and 5. Questions location of Chinderah/Fingal Head section boundary at No.51 Fingal Rd	More logical boundary would be at southern end of village proper. It is also consistent with flood level contours.	Change section 4/5 boundary from south of No.51 Fingal Road to south of No.45 Fingal Road
	Building materials sections not adequately enforced for areas below design flood	This is a compliance issue outside the scope of this DCP	No change

Author	Issues Raised in Submissions	Comments	Proposed Response
	Criteria on road levels and cumulative impacts of development supported		No change
	5. There should be controls for other land on Fingal Peninsula which is not zoned urban.	Section 5 only includes urban zoned land in Fingal Head. All other land in the area which is flood liable defaults to the generic requirements in section 10.	No change
	7. Concerned about development on flood liable land in West Kingscliff	Has been the subject of previous studies. 2(c) land subdivision is required to fill to above design flood. In industrial zones the site area of buildings and improvements in flood flows are limited to 50%	No change to 2(c) land. See comments and proposed response on section 7.5 in Jim Glazebrook & Assoc submission for application of 50% rule in industrial area.
	Concerned about impact of Chinderah Motorway.	Impacts of the Chinderah Bypass on flooding were addressed by WBM in 1994 as part of motorway EIS. The new flood modelling will account for the cumulative impact of the bypass and Yelgun/Chinderah Motorway.	For consideration in future comprehensive revision of DCP5
	3.1 – 9.1. Inconsistent wording of “application” clauses	Exhibited version had inconsistent application clauses in each locality section. It was agreed to amend them to be consistent across Sections 3 – 8 to apply to urban zoned land (except where specifically altered) in the various localities. No amendment needed to Sections 9 and 10 as Section 9 appropriately applies to villages and Clarrie Hall dam catchment and section 10 appropriately applies to all flood liable land not specified in sections 3 - 9.	“Application” clauses amended where necessary for consistency.

Author	Issues Raised in Submissions	Comments	Proposed Response
Jim Glazebrook & Assoc for Gales Holdings	No new technical data to support revisions. Proposed pre-empt conclusions of the current review of floodplain modelling.	This "housekeeping" DCP5 revision does not significantly alter flood levels. The new technical data available from the current flood modelling exercise will be used in the process that leads to the preparation of the future comprehensive revision of DCP5.	Include new section 2.4 that outlines the role of the current flood plain modelling exercise and the process outlined in the 2001 Manual to revise the Floodplain Risk Management Plan which will result in a future comprehensive revision of DCP5, other Council flood policies and programmes.
	2.12. The last three dot points about application of the PMF are confusing	Agreed. This DCP revision introduces the concept of the PMF as it is now a significant issue in the 2001 Manual, however as the Tweed PMF levels are not yet defined this additional information is inappropriate.	Delete last three dot points
	3.2, 4.2, 5.2, 6.2, 7.2, 8.2, 9.2. Object to deletion of reference to maps held by Council.	It is agreed that it is difficult to interpret the DCP without reference to these maps. The reference to the maps was deleted from the exhibited draft due to incomplete coverage of current urban zoned areas.	The words referencing the maps has been reinstated and a note has been added that now explains the limits of the mapping
	7.2. Object to reference to "small areas of floodway"	This is a drafting error that arose from rearrangement of Kingscliff and Chinderah sections in the exhibited version of DCP5	Delete reference to "small areas of floodway"
	7.5. Exhibited requirements for West Kingscliff are too prescriptive and do not allow for innovative site and flood behaviour specific solutions.	The exhibited draft attempted to provide a practical means to interpret the existing 50% area limit for structures and improvements in the flood flow in industrial areas of Chinderah and west Kingscliff. It is agreed however that the exhibited draft may be too prescriptive and limit other innovative and site specific solutions. It was further agreed with the author of the submission that this issue can be resolved by keeping the existing 50% rule as a performance criteria and designating the detailed prescriptive measures as an "acceptable solution".	50% area limit rule reinstated from current version as a "performance criteria". The more complex requirements in the exhibited version are now listed as an example of an "acceptable solution".

Author	Issues Raised in Submissions	Comments	Proposed Response
Council staff internal review	Current and exhibited versions did not contain full history of past Versions/Editions of DCP5	Log should be included	Include log of all amendments

5. Report to Council Meeting 4 February 2004

The Director of Environment & Community Services presented a report to Council on 4 February 2004 addressing difficulties in ensuring compliance with the DCP5 requirement for not enclosing more than 50m² of the lower section of dwellings in high hazard, flood prone areas.

Council resolved to conduct a future workshop on DCP5 relating to this issue. This DCP revision was exhibited in November and issues raised in submissions have been satisfactorily resolved. The report recommending adoption of this DCP5 revision has not been delayed pending the outcome of the above workshop as the workshop essentially relates to compliance issues which are beyond the scope of the DCP document.

6. Draft Development Control Plan No.5, Version 2.1 – Development of Flood Plain Land

Draft DCP 5, Version 2.1 as amended (post exhibition) is included as an attachment with the meeting papers. It is proposed that if adopted, this version will replace the current version.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

1. Development Control Plan No. 5 - Draft Version 2.1, 4 - March 2004 "Post Exhibition" after consideration of submissions and internal review and as recommended for approval.

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM DIRECTOR PLANNING & ENVIRONMENT

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] Development Application DA03/1702 for a Proposed Community 4 Lot Subdivision at Lot 1 DP 1043885, Carool Road, Carool

ORIGIN:

Development Assessment

FILE NO: DA03/1702 Pt1

SUMMARY OF REPORT:

Council is in receipt of an application for a community title subdivision over the land the subject of the Penny Ridge development.

The proposed subdivision is permissible under the Tweed Local Environmental Plan 2000. Through the public exhibition of the proposed subdivision a submission was received that raised the issue of permissibility as well as the extent of development in the rural locality.

Council's technical officers have assessed the proposed subdivision, and recommended conditions including compliance with the development consent over land prior to Council's endorsement of the proposed final plan of subdivision.

RECOMMENDATION:

That Development Application DA03/1702 for a proposed community 4 lot subdivision at Lot 1 DP 1043885, Carool Road Carool be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plans NosN5/2/DA-NOV03/DA-NOV03 prepared by McLauchlan Surveying and dated November 2003, except where varied by these conditions.
 2. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within the subject property. [GEN0010]
 3. The subdivision is to be carried out in accordance with Development Control Plan No 16 - Subdivisions Manual. [GEN0030]
 4. The proposed future development of proposed Lot 4 must be subject to and consistent with relevant development consents. This development consent does not permit any uses identified in the Draft Community Management Statement that have not been approved by separate development consent. [GEN0040]
- [GEN0110]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

5. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of Development Consent No K99/1450 relevant at the time of approval of the certificate and Development Consent DA03/1702 have been complied with.
6. 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.

[PSC0010]

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.

[PSC0020]

7. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Councils Surveyor within two months of the issue of the Subdivision Certificate.
8. Prior to registration of the plan of subdivision, a **Subdivision Certificate** shall be obtained.

[PSC0060]

- (i) The following information must accompany an application:
 - original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
 - relevant development consent
 - detailed subdivision engineering plans endorsed with a construction certificate (where applicable)
 - evidence that the applicant has complied with all conditions of consent, that it is required to comply with before a subdivision certificate can be issued (where applicable)
 - a certificate of compliance from the relevant water supply authority (where applicable)
 - for subdivision involving subdivision works evidence that:
 - the work has been completed, or
 - agreement reached with the relevant consent authority regarding payment of the cost of work or as to the time for carrying out the work, or

- security given to the consent authority with respect to the completion of the work
 - Work as Executed Plans for **ALL** works
- (ii) Documentary evidence that **all** matters contained in Section 109J of the Act have been complied with.
- (iii) Written evidence from Council that the proposed road/street names have been approved.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0090]

9. Prior to the issue of a Subdivision Certificate, a properly dimensioned plan shall be lodged with Council showing the relative position of existing fences, road formation and boundaries. Any encroaching road boundary fence is to be relocated to the correct alignment prior to issuing a Subdivision Certificate. Any road widening deemed necessary following submission of the plan shall be dedicated at no cost to Council.

[PSC0120]

10. The production of written evidence from Telstra Australia certifying that satisfactory arrangements have been made for the provision of underground telephone supply.

[PSC0170]

11. The production of written evidence from Country Energy certifying that the reticulation of overhead electricity (rural subdivisions) has been completed.

[PSC0180]

12. The two water supply bores and water treatment plants as identified in Watertech correspondence dated 25th February 2004 shall be located entirely within Community Land.

13. The Community Management Statement shall only refer to and identify plans that relate to development consents issued over the subject land. The Community Management Statement shall only allow the tourist accommodation on the site to be used for short term tourist occupation.

[PSCNS01]

REPORT:

Applicant: Penny Brothers
Owner: Penny Brothers Pty Ltd
Location: Lot 1 DP 1043885, Carool Road Carool
Zoning: 1(a) Rural
Cost: Nil Stated

BACKGROUND:

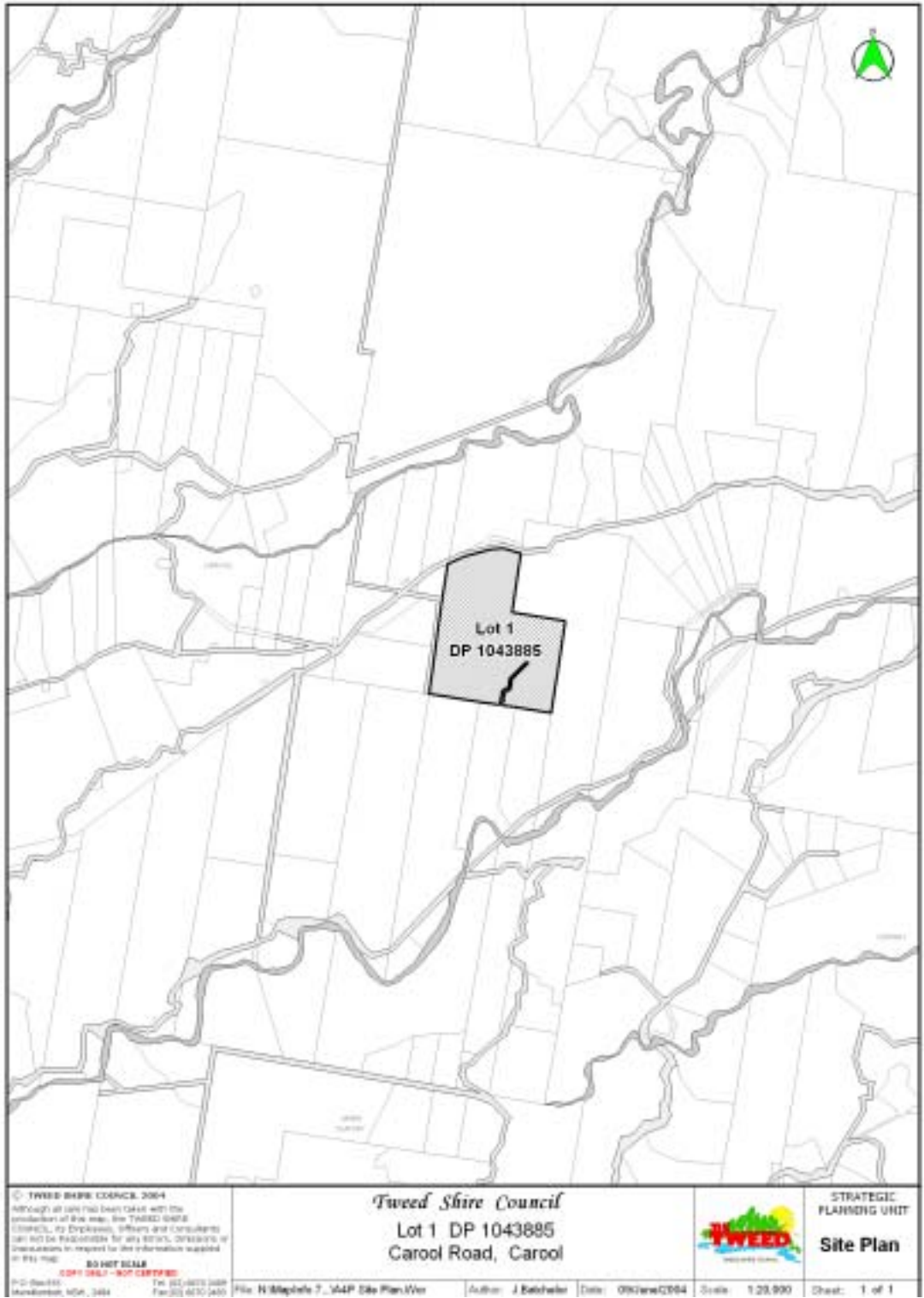
Council is in receipt of an application to undertake a community title subdivision over the subject land. The proposed subdivision involves the creation of four allotments. The following table details the uses to be contained in each of the proposed community title lots.

Lot Number	Lot Area	Lot Schedule
1	2.8 hectares	Community Property - This includes the access and driveway, car parking areas and the effluent disposal areas.
2	22 hectares	Tourism Uses - Managers residence, golf course, clubhouse, adjoining restaurant, tennis court and pool.
3	0.4 hectares	Tourist Accommodation - Four Bungalows, three grouped and one remote.
4	4.2 hectares	Development Lot - to contain winery building and other approved tourist accommodation

The applicant has submitted a draft Community Management Statement, that was reviewed with this application, however such does not form part of the development application.

The subject land has had a number of approvals relating to the tourist development over the lot. The Community Management Statement is recommended to be conditioned to ensure the development undertaken is in accordance with previous development consents.

SITE DIAGRAM:



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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 1(a) Rural under the Tweed Local Environmental Plan 2000. The primary objectives of the zone include:

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

Given Council's past approvals on the land the proposed subdivision is not considered to be in conflict with the objectives of the zone. The community title subdivision does not impact further on the rural character and amenity of the locality. The proposed subdivision does not increase the development over the site. The allotments proposed are to support various components of the development approved by Council.

Clause 20 of the TLEP relates to subdivision and has the objective:

To prevent the potential for fragmentation of ownership of rural land that would:

- i) Adversely affect the continuance or aggregation of sustainable agricultural units, or*
- ii) Generate pressures to allow isolated residential development, and provide public amenities and services, in an uncoordinated and unsustainable manner.*

Clause 20(3) of the TLEP states:

Despite subclause (2), consent may be granted to the subdivision of land where an allotment to be created is less than 40 hectares, or 10 hectares in the case of Zone 1(b1), if the consent authority is satisfied that the allotment will be used for the purpose, other than for an agricultural or residential purpose, for which consent could be granted.

The proposed subdivision is over a tourist development. The proposed subdivision and allotments created are for uses other than agricultural or residential use, and therefore the proposed community title subdivision is permissible with consent under Clause 20(4) of the TLEP.

The proposed development is considered to have satisfied the provisions of the TLEP.

North Coast Regional Environmental Plan 1988

The proposed subdivision does not require assessment under specific clauses under the REP.

State Environmental Planning Policies

The subject land and proposed development are not affected by any State Environmental Planning Policies.

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

There are no draft environmental planning instruments that affect the proposed development.

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

Development Control Plan No.16 - Subdivision Manual

Council's Development Engineer has assessed the proposed community title subdivision, and raises no objections.

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

The subject land is not affected by the NSW Coastal Policy. There are no further matters under the regulations applicable to the proposal.

(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 community title subdivision is not considered likely to generate significant impacts to the environment, as the subdivision does not involve any works. The proposed plan nominates community lot No.1 for the access car parking and effluent disposal areas. These areas are common to the needs of all of the proposed lots and as such the management of these areas will ensure environmental outcomes are achieved.

The title arrangements are not considered likely to result in adverse impacts to the environment or rural amenity in the local area.

(c) Suitability of the site for the development

The subject land is considered to be suitable for the proposed subdivision. It is not considered that the site constraints limit the ability for the proposed community title subdivision.

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

The proposed subdivision was notified to adjoining property owners and one submission was received. The following table addresses the issues raised in the submission.

Issue	Comment	Assessment
Permissibility	Proposed subdivision results in lots smaller than the requirements under the TLEP.	The proposed subdivision is permissible under TLEP Clause 20. This is further addressed in this report. The proposed does not warrant refusal on this issue.
Separate Ownership	Separate ownership of the bungalows may lead to them being used as residences.	The recommended conditions of consent limit the use of the accommodation for tourist purposes, otherwise such would not be consistent with the requirements of Clause 20 of the TLEP or the original approval for the development on the land. The proposed does not warrant refusal on this issue.
Precedent	The proposed subdivision will create a precedent in rural areas.	The proposed subdivision is utilising a provision in the TLEP that is available for uses that are not agricultural or residential. It is not considered that this is a miss use of the TLEP. The proposed does not warrant refusal on this issue.

(e) Public interest

The proposed subdivision does not compromise the wider public interest, in that the proposal is utilising an existing provision of the TLEP. The intention with the clause is to enable subdivision where the use is not agricultural or residential. This provides the opportunity for separate title on developments where the subdivision of land can be managed.

The proposed community title subdivision requires a Community Management Statement that forms part of the title and to that end can regulate the use of the proposed allotment. Conditions are recommended to ensure the development contained on the allotments is consistent with approvals issued.

OPTIONS:

1. Approve in accordance with recommended conditions.
2. Refuse the proposed subdivision.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has a right of appeal in the NSW Land and Environment Court if dissatisfied with the determination of the application.

POLICY IMPLICATIONS:

The proposed subdivision is not considered to have any policy implications.

CONCLUSION:

The proposed community title subdivision is considered to be permissible under Council's statutory instrument. The development of the site to date has had issues in relation to compliance with conditions of consent.

In recommending approval for the community title subdivision, the applicant will need to demonstrate compliance with all conditions of the original consent over the site prior to the release of any subdivision certificate. The recommended conditions of consent are considered to regulate Council's interests in ensuring the site and its development meets the standards and requirements of Council.

UNDER SEPARATE COVER:

Nil.

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2 [DS] Development Application DA04/0127 for a 2 Lot Subdivision at Lot 813 DP 1013074, No. 32 Donegal Court, Banora Point

ORIGIN:

Development Assessment

FILE NO: DA04/0127 Pt1

SUMMARY OF REPORT:

Council considered a report assessing the proposed subdivision at its' meeting of 2 June 2004 and resolved: -

"That the matter be deferred for Council staff to bring forward appropriate reasons and/or conditions for refusal."

As such the following report is provided with draft reasons for refusal in the event that Council determines the application by way of refusal. The report also includes the previously recommended conditions for approval.

RECOMMENDATION:

That Council determines the application.

REPORT:

Applicant: McLauchlan Surveying Pty Ltd
Owner: Mr H Etehad and P Etehad
Location: Lot 813 DP 1013074 No. 32 Donegal Court, Banora Point
Zoning: 2(c) Urban Expansion
Cost: Nil stated

BACKGROUND:

This application was considered at the Council meeting on 2 June 2004 and it was resolved as follows: -

"That the matter be deferred for Council staff to bring forward appropriate reasons and/or conditions for refusal".

The report to the Council meeting on 2 June 2004 recommended that the application be approved subject to the following conditions: -

GENERAL

1. *The development shall be completed in accordance with the Statement of Environmental Effects and DWG No.37495 prepared by McLauchlan Surveying, 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 subdivision is to be carried out in accordance with Development Control Plan No 16 - Subdivisions Manual.*
[GEN0040]
4. *Prior to commencement of work pursuant to this consent a **Construction Certificate** shall be obtained for the works proposed and required by this consent.*
 - a) *copies of compliance certificates relied upon*
 - b) *four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:*
 - *remove road pavement*
 - *road pavement*
 - *road furnishings*
 - *landscaping works*
 - *the approved Traffic Control Plan*
 - *the relevant maintenance manuals (eg. G.P.T's, water pump station)*

Note: *The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.*

[GEN0140]

5. *The subdivision is to be undertaken in accordance with the recommendations of the Soil Stability Assessment prepared by Soils Surveys and dated April 2004.*

[GENNS01]

6. *Earthworks are restricted to a maximum of 1.0 metres for cuts and fills in accordance with the recommendations of the Site Stability Report prepared by Soil Surveys and dated April 2004.*

[GENNS02]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

7. *Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works (minimum \$1,000).*

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the Director, Development Services.

The bond will be refunded, if not expended, when the final Subdivision Certificate is issued.

[PCC0080]

8. *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]

9. *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]

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 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]

11. *The "battle-axe" Right of Carriageway shall be designed in accordance with Council's Development Control Plan No. 16 and Development Design Specification D1- Road Design.*

[PCCNS01]

12. *The Engineering Plans and specifications to accompany the Construction Certificate application shall provide for:-*

- i. *The installation of Town Water to each lot including a minimum size 25mm outside diameter water service terminated a minimum of 1.0m beyond the head of the right of carriageway inside proposed lot 2 and a separate minimum size 25mm outside diameter water service terminated a minimum 1.0m inside the property boundary of proposed lot 1, in accordance with DCP16 - Subdivisions Manual.*
- ii. *The installation of Sewer to each lot including a minimum 150mm diameter sewer junction terminated a minimum of 1.0m beyond the head of the right of carriageway, inside proposed lot 2 and a separate minimum 150mm diameter sewer junction terminated a minimum of 1.0m inside the property boundary of proposed lot 1, in accordance with DCP16 - Subdivisions Manual.*
- iii. *The installation of stormwater pipework to convey roofwater and interallotment drainage for proposed lot 2 within the proposed right of carriageway, with discharge into road drainage pits in Donegal Court, if available, or to kerb and gutter along the frontage of the site. The interallotment drainage network shall include a bund and concrete lined spoon drain located within proposed lot 2, along the boundary of proposed lot 1 and 2, suitable sized and graded to convey upstream overland flow (up to a Q20 storm event) towards the head of the right of carriageway. The interallotment drainage network shall also include a standard Tweed Shire Council field inlet, suitable sized to capture the upstream overland flow (up to a Q20 storm event) located within proposed lot 2 near the head of the right of carriageway, connected to the pipe network within the right of carriageway.*

[PCCNS02]

PRIOR TO COMMENCEMENT OF WORK

13. *Subdivision work in accordance with a development consent must not be commenced until:-*

- (a) *a construction certificate for the subdivision work has been issued by:*
- (i) *the consent authority, or*
- (ii) *an accredited certifier, and*
- (b) *the person having the benefit of the development consent:*
- (i) *has appointed a principal certifying authority, and*
- (ii) *has notified the consent authority and the council (if the council is not the consent authority) of the appointment, and*

(c) *the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the subdivision work.*

[PCW0020]

14. *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]

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]

DURING CONSTRUCTION

17. *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]

18. *No soil, sand, gravel, clay or other material shall be disposed of off the site.*

[DUR0030]

19. *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]

20. *The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate.*

[DUR0150]

21. *Prior to the application for a **Subdivision Certificate** a Compliance Certificate or Certificates shall be obtained from Council **OR** an accredited certifier for the following:-*

- (i) Compliance Certificate - Water Reticulation*
- (ii) Compliance Certificate - Sewerage Reticulation*
- (iii) Compliance Certificate - Drainage*

Note:

1. Where Council is requested to issue compliance certificates, applications for such certificates must be accompanied by documentary evidence from the Developers Supervising Consulting Engineer certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, DCP16 - Subdivision Manual and good Engineering Practice.
2. Where Council is requested to issue the construction certificate all compliance certificates and a Subdivision Certificate, Council will carry out the following inspections as deemed necessary by Council based on the rates contained in Council's current Fees and Charges:-

Roadworks

- a. Pre-construction commencement erosion and sedimentation control measures
- b. Completion of earthworks
- c. Excavation of subgrade
- d. Pavement - sub-base
- e. Pavement - pre kerb
- f. Pavement - pre seal
- g. Pathways, footways, bikeways - formwork/reinforcement
- h. Final inspections - on maintenance
- i. Off Maintenance inspection

Water Reticulation, Sewer Reticulation, Drainage

- a. Excavation
- b. Bedding
- c. Laying/jointing
- d. Manholes/pits
- e. Backfilling
- f. Permanent erosion and sedimentation control measures
- g. Drainage channels
- h. Final inspection - on maintenance
- i. Off maintenance

Sewer Pump Station

- a. Excavation
- b. Formwork/reinforcement
- c. Hydraulics
- d. Mechanical/electrical
- e. Commissioning - on maintenance
- f. Off maintenance

Council's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

3. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".

[DUR0360]

22. *All proposed works within the subdivision shall be designed and constructed in accordance with the development consent plans **AND** the relevant provision of DCP No. 16 - Subdivisions Manual, except where varied by the conditions of this consent.*
[DUR0400]
23. *Construction of the right of carriageway serving lots 1 and 2 to a 3 metre minimum wide concrete/bitumen sealed standard, in accordance with the provision of DCP16 - Subdivision Manual.*
[DUR0410]
24. *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]
25. *Provision of adequate vehicular access in accordance with Council's "Access to Property" pamphlet.*
[DUR0460]
26. *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]
27. *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]

28. *All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution.*
[DUR0870]
29. *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]
30. *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]

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

[DUR0920]

32. *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]

33. *All earthworks undertaken on site shall be undertaken in accordance with the restrictions/conditions as set out in Soil Surveys Engineering "Stability Assessment" report dated April 2004.*

- i. Earthworks shall be restricted to a maximum of 1.0m for cuts and fills with all cuts retained by an engineered designed retaining wall.*
- ii. The earthworks shall be carried out in accordance with AS 3798, "Guidelines on Earthworks for Commercial and Residential Developments". In general, material shall be placed in layers not exceeding 300mm (excluding service trenches) in depth, watered and compacted to achieve the specified density ratio as monitored in Table 5.1 - Guidelines for Minimum Relative Compaction.*
- iii. Backfilling of service trenches shall be placed in uniform layers over the full width of the excavation in layers not exceeding 200mm thickness, loosely placed. All service trench excavations shall be capped with a clay layer or equivalent to prevent ingress of water into the backfill.*
- iv. The earthworks program shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with Appendix B, AS 3798-1996. In addition, the frequency of field density testing shall be to a Type 1 standard in accordance with Table 8.1 of AS 3798. The geotechnical report shall be accompanied by a certificate from a registered Geotechnical Engineer certifying that the earthworks operations comply with AS3798.*

[DURNS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

34. **A certificate of compliance (CC)** under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council.

*Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall **NOT** be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.*

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water: one (1) lot @ \$4,110 \$4,110
 Sewer: one (1) lot @ \$3,290 \$3,290

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]

35. Section 94 Contributions

- (i) *Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.*

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 94 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" signed by an authorised officer of Council.

These charges will remain fixed for a period of 12 months from the date of this consent and thereafter in accordance with the rates applicable in the current version/edition of the relevant Section 94 Plan current at the time of the payment.

A copy of the Section 94 contribution plans may be inspected at the Civic and Cultural Centres, Tumbulgum Road, Murwillumbah and Brett Street, Tweed Heads.

- | | | |
|----|---|----------------|
| a. | <i>Banora Point West/Tweed Heads South (DCP3)
Open Space Passive (Casual):
S94 Plan No. 1</i> | <i>\$1,571</i> |
| b. | <i>Banora Point West/Tweed Heads South (DCP3)
Open Space Active (Structured):
S94 Plan No. 1</i> | <i>\$2,075</i> |
| c. | <i>Tweed Road Contribution Plan:
S94 Plan No. 4 (Version 4.0)
(Sector 2 - Tweed Heads South)</i> | <i>\$1,684</i> |
| d. | <i>Shirewide Library Facilities:
S94 Plan No. 11</i> | <i>\$688</i> |
| e. | <i>Eviron Cemetery/Crematorium Facilities:
S94 Plan No. 13</i> | <i>\$126</i> |
| f. | <i>Emergency Facilities (Surf Lifesaving)
(REMSHIRE)</i> | <i>\$215</i> |

- g. S94 Plan No. 16
Extensions to Council Administration Offices
& Technical Support Facilities \$344.81
S94 Plan No. 18
- h. Regional Open Space (Structured) \$1,177
S94 Plan No. 26
- i. Regional Open Space (Casual) \$221
S94 Plan No. 26

[PCC0050/PSC0005]

36. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of Development Consent No DA04/0127 have been complied with.

[PSC0010]

37. 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 right of carriageway shall be provided benefiting Lot 1 over the proposed "Battle Axe" driveway in Lot 2.
- iii. The interallotment drainage network within Lot 2 shall be contained within an easement in accordance with Council's Design Specification D5 - Stormwater Drainage System. The easement shall also cover the drainage network contained within the battle-axe driveway, terminating at a legal point of discharge.
- iv. Restriction on Use - Any future dwelling proposed on the subject parcel of land shall be constructed in accordance with the construction techniques as noted in Soil Surveys Engineering - Stability Assessment - April 2004, in particular Section 6.3 and 6.4 or approved alternative.
- v. Restriction on Use - Earthworks on each lot created shall be limited to a maximum of 1.0 metre cut and fill as recommended in the Site Stability Report prepared by Soil Surveys and dated April 2004.

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.

[PSC0020]

38. Prior to the issue of a Subdivision Certificate, Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council.

[PSC0040]

39. *Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Councils Surveyor within two months of the issue of the Subdivision Certificate.*

[PSC0060]

40. *Prior to registration of the plan of subdivision, a **Subdivision Certificate** shall be obtained.*

(i) *The following information must accompany an application:*

- *original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees.*
- *relevant development consent*
- *detailed subdivision engineering plans endorsed with a construction certificate (where applicable)*
- *evidence that the applicant has complied with all conditions of consent, that it is required to comply with before a subdivision certificate can be issued (where applicable)*
- *a certificate of compliance from the relevant water supply authority (where applicable)*
- *for subdivision involving subdivision works evidence that:*
 - *the work has been completed, or*
 - *agreement reached with the relevant consent authority regarding payment of the cost of work or as to the time for carrying out the work, or*
 - *security given to the consent authority with respect to the completion of the work*
- *Work as Executed Plans for **ALL** works*

(ii) *Documentary evidence that **all** matters contained in Section 109J of the Act have been complied with.*

(iii) *Written evidence from Council that the proposed road/street names have been approved.*

Note: *The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.*

[PSC0090]

41. *Prior to the issue of a **Subdivision Certificate**, Works as Executed Plans shall be submitted in accordance with the provisions of DCP16 - Subdivisions Manual.*

*The plans are to be endorsed by a Registered Surveyor **AND** a Consulting Engineer Certifying that:*

- (i) *all drainage lines, sewer lines and structures are wholly contained within the drainage easement created by the subdivision;*
- (ii) *the plans accurately reflect the Work as Executed.*

Note: *Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed plans.*

[PSC0100]

42. *Prior to the issue of a **Subdivision Certificate** a defect liability bond (in cash or unlimited time Bank Guarantee) shall be lodged with Council.*

The bond shall be based on 5% of the value of the works which will be held by Council for a period of 6 months from the date on which the Subdivision Certificate is issued and will be refunded following the remedying of any defects arising within the 6 month period.

[PSC0110]

43. *The production of written evidence from Telstra Australia certifying that satisfactory arrangements have been made for the provision of underground telephone supply.*

[PSC0170]

44. *The production of written evidence from Country Energy certifying that reticulation of underground electricity (residential) has been completed to both lots.*

[PSC0190]

45. *Prior to issuing a Subdivision Certificate, Town Water shall be provided to each lot including a minimum size 25mm outside diameter water service terminated a minimum of 1.0m beyond the head of the right of carriageway, inside proposed lot 2 and a separate minimum size 25mm outside diameter water service terminated a minimum 1.0m inside the property boundary of proposed lot 1, in accordance engineering with plans to accompany the Construction Certificate application. The reticulation shall be designed and constructed in accordance with DCP16 - Subdivisions Manual.*

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.*

[PSCNS01]

46. *Prior to issuing a Subdivision Certificate, outfall sewerage reticulation shall be provided to all lots within the subdivision including a minimum 150mm diameter sewer junction terminated a minimum of 1.0m beyond the head of the right of carriageway, inside proposed lot 2 and a separate minimum 150mm diameter sewer junction terminated a minimum of 1.0m inside the property boundary of proposed lot 1, in accordance with engineering plans to accompany the Construction Certificate application. The reticulation shall be designed and constructed in accordance with DCP16 - Subdivisions Manual.*

Council does not permit the building of structures over Council's sewers. When structures are located in close proximity to the sewer, detailed plans of footing types, location and depth relative to the sewer are required to be included with the Construction Certificate Application.

Note: *The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.*

[PSCNS02]

47. *Submission for approval by the Principal Certifying Authority design detail including surcharge loads for any retaining walls to be erected on the site in accordance with AS 4678, DCP 47 and Councils adopted Design and Construction Specifications. Design detail is to be supported by certification of adequacy of design from a suitably qualified structural engineer.*

[PSCNS03]

REPORT

In accordance with the Council resolution the following reasons for refusal are provided: -

1. The proposed subdivision is not in keeping with the amenity and character of the locality .
2. The proposed subdivision is not considered acceptable given the intent of the original subdivision and the 88B instrument that prohibits dual occupancy developments.
3. The topography and geotechnical constraints limit the dwelling types which could be constructed on the land.
4. The proposed subdivision may result in an unacceptable impact on Donegal Court with on street car parking due to the gradient of the accessway to the subdivision lots and limited on street parking.
5. The weight of public objection to the proposal from other landowners in Donegal Court.

CONCLUSION

The matter is resubmitted to Council for determination.

UNDER SEPARATE COVER

Nil.

3 [DS] Development Application DA03/1731 for Proposed Alterations and Additions to an Existing Shopping Centre and Boundary Adjustment at Lot 4 DP 616206 and Lot 1 DP 793260, Meridian Way Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA03/1731 Pt2

SUMMARY OF REPORT:

Council has received a development application seeking consent for a boundary adjustment, demolition of part of the site, and re-construction to facilitate a 450m² Independent Grocers' of Australia (IGA) Supermarket. In order to accommodate this the proposed development also seeks consent for the necessary parking and access facilities, minor alterations to the rear of the existing hairdresser to cater for an amenity block, and the rearrangement of some existing tenancies resulting in changes of use.

The application was referred to the Local Traffic Committee in accordance with the provisions of State Environmental Planning Policy No. 11 – Traffic Generating Developments. The committee noted that of the several issues raised previously, this proposal would resolve the last of the Committee's concerns regarding the project but some planning issues still remained regarding the loading dock facilities. On receipt of revised drawings Council's Traffic and Transport Engineer has now been satisfied that the proposal is capable of being supported.

The site does have numerous constraints, which makes it difficult to create a balanced design that will also be successful economically. However, it is now considered that the issues previously raised have been adequately addressed to enable conditional approval of the development application. The proposed works (in accordance with the recommended conditions) should revitalise the existing centre.

RECOMMENDATION:

That Development Application DA03/1731 for a proposed alterations and additions to an existing shopping centre and boundary adjustment at Lot 4 DP 616206 Lot 1 DP 793260, Meridian Way Tweed Heads be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos WD3.01, WD3.02, WD5.01 - Floor Plan, WD5.01 - Roof Plan prepared by Lightwave Corporation Pty Ltd and dated October 2003 and Plan No. 30711_1F Revision B dated 5/4/2004 prepared by TTM Consulting Pty Ltd, 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. In pursuance of the provisions of the Disability Discrimination Act, 1992 (Commonwealth) the design of the proposed development shall facilitate access for the disabled in accordance with the relevant provisions of AS1428- Design for Access and Mobility. [GEN0050]
4. Additional advertising structures/signs to be the subject of a separate development application, where statutorily required. [GEN0070]
5. The proposed future changes of use must be the subject of a separate approval. [GEN0110]
6. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia. [GEN0120]
7. The erection of a building in accordance with a development consent must not be commenced until:
 - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
 - (b1) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
 - (b2) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[GEN0150]

8. The development shall be carried out in accordance with the provisions of the Noise Impact Assessment Report prepared by Greg Alderson and Associates Pty Ltd Report No. 04292 dated 4 March 2004.

[GENNS01]

9. All signage is to be fitted with necessary devices capable of permitting the change in intensity of illumination of the sign in order to regulate glare or other like impacts.

[GEN0160]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

10. A detailed plan of landscaping is to be submitted and approved by Council's Director, Planning & Environment prior to the issue of a Construction Certificate. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building.

[PCC0010]

11. Any carparking floodlighting shall not spill beyond the boundaries of the site. A plan of the lighting shall be approved by the Director Planning & Environment **PRIOR** to the issue of a Construction Certificate.

[PCC0030]

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. 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: \$1,860.20
S94 Plan No. 4 (Version 4.0)
(Tweed Heads)

[PCC0050/PSC0005]

14. Permanent Stormwater Quality Treatment

- (a) Permanent stormwater quality treatment shall comply with "*Tweed Urban Stormwater Quality Management Plan*" (adopted by Council 19 April 2000) section 5.5.3 "Stormwater Objectives During the Post Construction or Occupational Phase of Development" . New development is required to comply with table 5.4 of the plan and demonstrate compliance by modelling in accordance with section 5.5.4. Section 5.5.5 of the plan further advises that treatment that is in accordance with the "deemed to comply" provisions of *Appendix E - Tweed Shire Council, Aus-Spec D7 - Stormwater Quality* is deemed to comply with the objectives in 5.5.3.
- (b) Water sensitive design practices shall be adopted. Where it is practical, water quality features are to be designed into the land development site rather than rely on special end of pipe devices to strip pollutants and nutrients from stormwater prior to discharge. Typical water quality features that can be designed into the site development include use of porous pavements, directing runoff over filter strips or grass swales in landscaped areas, utilising landscaping as an integral part of stormwater quality management, maximising use of infiltration and stormwater reuse (eg. Rainwater tanks). These features can be complemented by site management practices which minimise creation of stormwater pollutants and nutrients and provide for appropriate operation, cleaning and maintenance of water quality control devices.
- (c) The Construction Certificate Application must include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.
- (d) Specific requirements:
- (i) All new private stormwater services provided to convey runoff from redeveloped hardstand or car park catchments require treatment according to Council's Development Design Specification D7 - Stormwater Quality prior to discharge into the public realm. In cases where the impervious catchment of an existing drainage catchment is reconstructed or extended, stormwater quality control measures shall be inserted into this system prior to discharge to the public realm.

[PCC0230]

15. (a) 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.

- (b) The Section 68 application shall include all attachments as specified on the application form and Council's Development Design Specification D7 - Stormwater Quality. The applicant shall also specifically address the following stormwater issues:
- i. Identify all new and existing site drainage, including outlets to the public stormwater system;
 - ii. Identify all new and existing stormwater quality control/treatment devices;
 - iii. Identify all erosion and sediment control measures required during construction;
 - iv. Verify that the existing point of discharge for stormwater runoff to the public realm is satisfactory.
- [PCC0240]
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*.
- [PCC0320]
17. Prior to the issue of a construction certificate a schedule of fire safety measures both existing and proposed to be installed in the building is to be prepared and submitted to Council with the Construction Certificate.
18. All works that are to occur in the road reserve for Kennedy Drive including the bus bay, signage and the splitter island must be subject to a Section 138 application which must be accompanied with detailed engineering plans and should reflect works shown on Plan No. 30711_1F Revision B.
19. The proposed footpath from the existing nursery to the proposed pedestrian crossing is to have a link to the existing footpath on Kennedy Drive. Plans detailing such should be submitted to and approved by Council as part of the Construction Certificate process.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

20. 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]

21. **Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003**, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[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 or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW0210]

25. 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]

26. A minimum 3.0m high acoustic fence shall be constructed along the northern and eastern boundaries of the site in the location as indicated on Plan Exhibit No. 2 dated 14/11/02. The acoustic fence shall be constructed of gapless timbers or similar of minimum 19mm thickness. Pedestrian access shall be restricted to the location as indicated on plan Exhibit No. 2 dated 14/11/02 and a self-closing gate shall be provided which shall be constructed of the same acoustic material as the acoustic fence. This acoustic fence shall be constructed and positioned in place prior to any other construction works commencing on the site and shall be subject to certification by a qualified acoustic engineer.

[PCWNS01]

DURING CONSTRUCTION

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).

[DUR0010]

28. 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]

29. The provision of 54 off street car parking spaces, with one space to be allocated to the medical centre for an emergency vehicle. Prior to issue of the Occupation Certificate this space is to be signposted accordingly and inspected by Council. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls.

[DUR0050]

30. 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]

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

[DUR0090]

32. 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]

33. All demolition work 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]

34. The principal certifying authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the principal certifying authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

[DUR0170]

35. 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]

36. 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.

37. Any premises used for the storage, preparation or sale of food are to comply with the relevant provisions of the Food Act, 1989 and Council's adopted Code for the construction of Food Premises. Details of fittings and equipment are to be submitted to the Principal Certifying Authority prior to installation. [DUR0220]

38. 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. [DUR0310]

39. 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. [DUR0430]

[DUR0490]

40. 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 Kennedy Drive. 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]
41. Provision to be made for a flood free storage area for stock and equipment susceptible to water damage. [DUR0680]
42. 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]
43. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles. [DUR0880]
44. Construction site work including the entering and leaving of vehicles is to be restricted to between 7.00 am and 7.00 pm Monday to Saturday and no work on Sundays or public holidays. [DUR0900]
45. 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 and prior to occupation of the building. [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. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993. [DUR1090]

48. 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]

49. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-

- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- * 50⁰C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

[DUR1160]

50. 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]

51. 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]

52. Three speed humps should be provided over the length of the rear service lane with details of such being shown on the engineering plans to accompany a Section 138 application.

53. The following signage is to be installed on Kennedy Drive:-

- i. Relocate bus zone signs from the western side of the western driveway to the east side of the driveway.
- ii. Installation of 'No Stopping' signs for the remainder of the site on the north side of Kennedy drive.
- iii. Installation of 'No Right Turn' signs at the eastern driveway for westbound traffic on Kennedy Drive.

[DURNS01]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

54. Submission of a further Development Application(s) for the first use of any new shops and professional suites, such to be approved by Council prior to their use or occupation.

[POC0010]

55. 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 and conditions of Consent.

[POC0020]

56. 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]
57. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards. [POC0050]
58. Prior to occupation of the building **or** the issue of a Subdivision Certificate, all disused invert crossings are to be removed and replaced with kerb and gutter and all disused driveway across the footpath are to be removed and replaced with topsoil and turf to the satisfaction of the Director, Engineering Services. [POC0080]
59. All existing essential fire safety measures are to be certified by a qualified person to the effect that each of the fire safety measures has been assessed and were found to be performing to a standard not less than that to which it was originally designed. [CON0020]
60. Appropriate arrangements acceptable to Council's Director of Environment and Community Services shall be made for the storage and disposal of waste for all tenancies.
61. The proponent shall provide written confirmation from the Tweed Shire Council waste services contractor confirming that the rear access of the development is able to be accessed and serviced by their vehicles.
62. Prior to issue of the occupation certificate the applicant shall lodge an application for a subdivision certificate with Council in accordance with the relevant conditions of consent. [POCNS01]

USE

63. The use being restricted to the floor area designated on the approved plan. [USE0010]
64. 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]
65. No items or goods are to be stored or displayed outside the confines of the premises. [USE0050]
66. All loading/unloading to take place within the boundary of the subject property. [USE0130]
67. A person must not commence a change of building use for the whole or any part of an existing building unless an occupation certificate has been issued in relation to the building or part (maximum 25 penalty units). [USE0150]
68. 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]
69. Any delivery trucks that are required to remain on site for periods in excess of three (3) minutes shall have their engines turned off.

70. Delivery of goods to the premises shall be restricted to between the hours of 7.00am to 6.00pm Monday to Saturday and 8.00am and 6.00pm Sundays and Public Holidays.
71. The servicing of waste facilities shall be limited to between the hours of 7.00am to 6.00pm Monday to Saturday and 8.00am to 6.00pm Sundays and Public Holidays.
72. The noise power level when measured 1.0m in the northerly direction of each air conditioning and refrigeration unit shall not exceed 55dBA.
73. All air conditioning units, refrigeration units and other fixed mechanical plant shall be acoustically treated where required to the satisfaction of Council's Director of Environment and Community Services so as to avoid the creation of intrusive or unreasonable noise nuisance to any occupant of a neighboring or adjacent residential premises.
74. The noise generated by the operation of any business on the property shall not exceed the noise design criteria as referenced in the Noise Impact Assessment Report prepared by Greg Alderson and Associates Pty Ltd Report No. 04292 dated 4 March 2004 for the dwelling located at 30 Meridian Way, Tweed Heads.
75. All externally fitted artificial lights including security lights shall be shielded where required to the satisfaction of Council's Director of Environment and Community Services so as to prevent the spill of any light and/or glare causing a nuisance to the occupant of any neighboring or adjacent residential premises.
76. Any premises used for the storage, handling or preparation of food for sale are to comply with the requirements of the Food Standards Code.
77. The rear service/vehicular lane is to remain open for vehicular movement at all times. Trucks should be unloaded from the rear only and any forklift usage should be limited to within the loading bay themselves to ensure the laneway is kept clear for customers and reduce the potential for customer and delivery vehicle conflict.
78. The western entry/exit is to provide unrestricted access to the site with entry and exit permissible from both a left and right turn.
79. The eastern entry/exit is to provide unrestricted exit to the site with entry to the site limited to a left turn only.
80. Service vehicles for the development (including the nursery) are not to restrict access to incoming vehicles. This may necessitate the use of large rigid vehicles instead of semi trailers.
81. The proposed 'chemist/doctors surgery' is to have only one consulting room. Any change to the approved plans requires separate development approval.
82. No vehicular access to the site is permissible from Meridian Way.

[USENS01]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

83. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of Development Consent No DA03/1731 have been complied with.
84. 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:

[PSC0010]

- i. Easements for sewer, water supply and drainage over **ALL** services on private property.
- ii. Right of way for vehicular access to proposed Lot 2 via car parking spaces 51-54.

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.

Note. The right of way over spaces 51-54 are to be deleted in the event of future development over proposed Lot 1 for access purposes.

[PSC0020]

85. Prior to registration of the plan of subdivision, a **Subdivision Certificate** shall be obtained.

- (i) The following information must accompany an application:
 - original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
 - relevant development consent
 - detailed subdivision engineering plans endorsed with a construction certificate (where applicable)
 - evidence that the applicant has complied with all conditions of consent, that it is required to comply with before a subdivision certificate can be issued (where applicable)
 - a certificate of compliance from the relevant water supply authority (where applicable)
 - for subdivision involving subdivision works evidence that:
 - the work has been completed, or
 - agreement reached with the relevant consent authority regarding payment of the cost of work or as to the time for carrying out the work, or
 - security given to the consent authority with respect to the completion of the work
 - Work as Executed Plans for **ALL** works
- (ii) Documentary evidence that **all** matters contained in Section 109J of the Act have been complied with.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.

[PSC0090]

86. Prior to the issue of a Subdivision Certificate, a properly dimensioned plan shall be lodged with Council showing the relative position of existing fences, road formation and boundaries. Any encroaching road boundary fence is to be relocated to the correct alignment prior to issuing a Subdivision Certificate. Any road widening deemed necessary following submission of the plan shall be dedicated at no cost to Council.

[PSC0120]

REPORT:

Applicant: Kennedy Plaza
Owner: Kennedy Plaza Pty Ltd
Location: Lot 4 DP 616206 and Lot 1 DP 793260, Meridian Way Tweed Heads
Zoning: 3(b) General Business
Cost: \$950,000.00

BACKGROUND:

Council is in receipt of its second development application seeking consent to revitalise and expand the Endless Summer Shopping Centre.

The subject sites are located on the northern side of Kennedy Drive 1.8km to the south west of the Tweed Heads CBD area, and are centrally located to the existing Endless Summer and West Tweed Heads residential area. The site immediately adjoins residential development, with particular reference to existing residences located to the north of the site with access from Meridian Way. Existing residential dwelling houses are also opposite to the site to the south.

The site has a frontage to Kennedy Drive of 268.5 metres and an average depth of 39 metres to create a total site area of approximately 7000m². The current centre is located on Lot 4 with facilities such as outdoor eating and parking areas being located on Lot 1. The existing centre provides for an existing gross floor area of 1600m² and 49 onsite parking spaces. There are two existing access points off Kennedy Drive with both points providing for entry and exit facilities. The subject site is generally level with a services easement (5.0 metres wide), which runs parallel to the northern property boundary. There is no significant vegetation with the exception of two Eucalypts, which will be retained as part of this application.

Council received the first development application (DA02/1695) on 14 October 2002. Despite the lodgement of two sets of amended plans (and extensive feedback to the applicant) the application failed to satisfy Council's concerns regarding the application. The application was reported to the Council meeting of 2 April 2003 with a recommendation for refusal. Prior to Council discussing this report the applicant withdrew the application.

Since the withdrawal of DA02/1695 numerous pre lodgements meetings were undertaken between the applicant and Council staff members. This consultation resulted in the lodgement of DA03/1731, which provides for a simpler means of upgrading the existing centre to improve the commercial viability of the centre.

DA03/1731 now seeks consent for a boundary adjustment, demolition of part of the site, and re-construction to facilitate a 450m² Independent Grocers' of Australia (IGA) supermarket. In order to accommodate this the proposed development also seeks consent for the necessary parking and access facilities, minor alterations to the rear of the existing hairdresser to cater for an amenity block, and the rearrangement of some existing tenancies resulting in changes of use. The proposal is summarised below:

- Boundary adjustment between Lot 1 in DP 793260 and Lot 4 in DP 616206 to leave a vacant residue parcel (on proposed Lot 2) as follows:

	Existing Land Size	Proposed Land Size
Lot 1 DP 793260 (Proposed Lot 1)	2139m ²	5713.05m ²
Lot 4 DP 616206 (Proposed Lot 2)	4861m ²	1290.56m ²

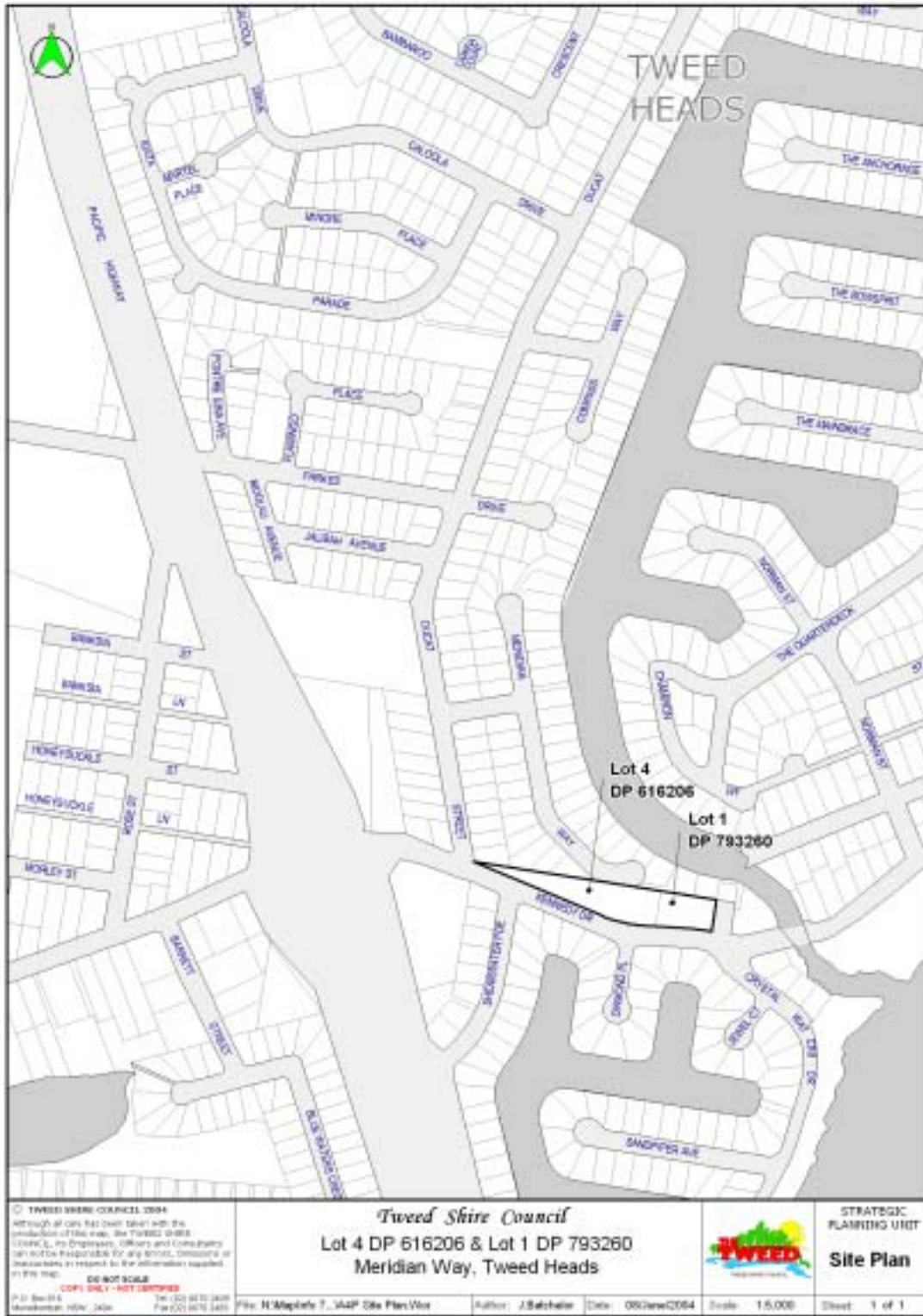
The applicant has provided that *"the Development concepts for proposed lot 2 have not progressed at this stage, however, the proposed allotment remains in a form and configuration that is capable of accommodating a variety of development concepts in the future"*;

- Demolition of Shops 1 and 2 (as indicated by Town Planning Permit 9027), and demolition of the Thai restaurant located within the eastern most portion of that component constructed pursuant to TP4999. This demolition will total 416m² of existing gross floor area (GFA);
- Construction of a 446.24m² IGA Convenience Shopping Store resulting in a net increase in GFA of 30.24m²;
- A total of five additional parking spaces to create 54 onsite parking spaces;
- The relocation of an existing bus bay east of the most western driveway access;
- The provision of centralised loading bays that are capable of accommodating two large rigid vehicles or one semi trailer;
- The provision for bicycle parking;
- Site Landscaping and pedestrian access throughout the site; and
- Replacement of the existing public toilet and amenity facilities.

Access to the site is proposed via a designated road (Kennedy Drive) and seeks to accommodate two ingress/egress points. The western access adjoins the existing Endless Summer Garden Centre and provides unrestricted access to and from the site. The eastern entry seeks left in only with unrestricted exit capacity. The application has been accompanied with full directional and necessary traffic signage. Additionally the application was referred to the Local Traffic Committee in accordance with the provisions of State Environmental Planning Policy No. 11 – Traffic Generating Developments.

The assessment of this application and the issues raised by the Traffic Committee are addressed later in this report.

SITE DIAGRAM:



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

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

Tweed Local Environmental Plan 2000

The subject site is located within the 3(b) General Business 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 3 (b) zone is as follows:

“To provide business centres in which the community’s shopping, business, welfare and social needs can be met.”

“To provide business locations within residential areas, and to ensure that the scale and type of development is compatible with the character and amenity of the surrounding residential areas.”

The secondary objectives of the 3(b) zone is:

‘To provide for tourist orientated development.’

The proposed shopping centre re-development is considered to be compatible with the primary objectives of the zone. The centre is commercial in nature, and will provide local shopping services to the adjoining residential area. This application is not considered to be an overdevelopment of the site given the support of the proposal from the Local Traffic Committee and the numerical compliance having regard to car parking and access. The application is consistent with the character and amenity of the surrounding residential areas.

The proposed development is considered to be compatible with the primary objective of the subject zone.

The proposed development is also considered to be compatible with Clause 8 of the LEP.

Clause 15 Availability of Essential Services of TLEP 2000 requires adequate services to be available for the proposed development. Centralised water, sewer and drainage services service the subject site, no constraints are envisaged in this regard.

Clause 16 Height of Buildings requires compliance with the three-storey statutory height limit that is applicable to the site. The proposed development is single storey and satisfies Clause 16

Clause 17 Social Impact Assessment requires Council to consider the potential social and economic impact that a development will have. See further comments under Development Control Plan 45.

Clause 22 Development Near Designated Roads requires the consent authority to have regard to a number of matters. The following two points are relevant to the proposal:

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 onsite traffic movement and parking arrangements, would ensure that through traffic movement on the designated road is not impeded.*

The application as proposed has the support of the Local Traffic Committee and Council's Traffic and Transport Engineer. It is considered that the issues previously identified have been satisfied through the lodgement of amended plans. The application therefore satisfies Clause 22 of Council LEP.

Clause 23 controls the access to designated roads by specifically nominating that any access to a designated road must not be constructed without prior approval by development consent. As mentioned above the application was referred to the Local Traffic Committee who determined that the amended plans are satisfactory, subject to suitable conditions of consent.

Clause 34 Flooding requires Council to minimise future potential flood damage. It is recommended that a condition of consent be imposed requiring the provision for flood free storage, with details of such to be provided to and approved by Council prior to issue of a Construction Certificate.

Clause 35 Acid Sulphate Soils, the subject site is identified as possessing Class 3 Acid Sulfate Soils on Council's ASS Planning Maps. The proposed development will not result in the carrying out of works greater than 1m below the ground surface, nor will the re-development of the shopping centre result in the lowering of the water table within the locality.

Clause 50 Floor Space Ratio's in Zones 3(a) and 3(b) at Tweed Heads specifies set FSR requirements. Compliance with this Clause is achieved with a proposed FSR of 0.29:1 (and 0.03:1 for restaurant use) based on the revised site area for proposed Lot 1.

North Coast Regional Environmental Plan 1988

Clause 47 of REP 1988 relates to plan preparation for commercial development. The proposal is considered to be consistent with the provisions of the North Coast Regional Environmental Plan 1988.

State Environmental Planning Policies

SEPP 11 – Traffic Generating Development

An assessment of the subject application has been undertaken in accordance with the provisions of State Environmental Planning Policy No. 11 (SEPP 11) – Traffic Generating Developments. In accordance with the SEPP the proposed development requires referral to Council's Development Committee (Traffic Advisory Committee) as development listed in Schedule 2 (c) as follows:

“The erection of a building for the purpose of shops and commercial premises where the gross floor area of the building is or exceeds 1000m² or the enlargement or extension of a building used for the purposes of shops and commercial premises where the gross floor area of that enlargement or extension is or exceeds 1000m²”

The existing gross floor area (GFA) of the complex is approximately 1600m² with 49 on-site parking spaces. The amended proposal will result in a total floor area of 1630m², with 54 on site parking spaces.

The application was therefore referred to Council's Development Committee (Traffic Advisory Committee) to provide comment on, access to the site, the impact that the proposed centre will have on the road network; the impact that the proposed centre will have on the intersection of Kennedy Drive and the Pacific Highway exit and the proposed provisions for service vehicles.

The application has been referred to the Traffic Committee three times since its lodgement with amended plans being considered at each meeting. Each of these meeting minutes are detailed below:

Minutes from Traffic Committee from 11 December 2003

The Committee was concerned with large rigid vehicles accessing the site. The Committee considered the application and had some major concerns with the documentation and information regarding the development.

The traffic report is considered inadequate as it failed to clearly demonstrate how service vehicles, either rigid or semi trailers, could access the site without compromising on site traffic movement and traffic movements on Kennedy Drive. Detailed turning paths need to be provided at a scale of 1:200 showing existing kerb line, lane lines, driveways and any other infrastructure on Kennedy Drive that is affected by the proposal. Given the traffic report states access at the eastern driveway is left in left out the Committee was concerned that the report shows a turning path for a vehicle exiting to the west via a right turn.

Other issues of concern are the failure to have two sections of the car park linked via on site access roads as failure to do this encourages people to use Kennedy Drive as a car parking access aisle conflicting with its heavy through traffic movements. The one way link between the car parks prevents vehicles in the east car park from accessing the unrestricted access at the western end of the site thereby significantly restricting on site traffic flow and may be in conflict with DCP 2 and AS1158. The Committee also expressed concerns at the number of car parking spaces provided compared to the proposed uses. Given that current shop tenants have advised that deliveries are received by semi trailer the applicant should demonstrate how these deliveries will be received in the future as a result of the proposed development as failure to provide proper access for these vehicles could have a major impact on traffic flows in Kennedy Drive.

The applicant also needs to demonstrate that the potential for Kennedy Drive to operate as a four lane road is not jeopardised by the proposed concrete centre median at the eastern end of the site and the adequacy of the western access for unrestricted turning movements into and out of the site.

Minutes from Traffic Committee from 19 February 2004

Given that tenencies of the existing development will remain receiving deliveries by semi trailer it is not considered appropriate to support a development that prevents these vehicles from accessing the site due to the obvious consequences of potential traffic conflict with semi trailers trying to manoeuvre into the site or parking on Kennedy Drive to make deliveries. The turn paths submitted by the applicant have been checked with Austroads Standards and turning paths which demonstrate semi trailers cannot access the site without having major impacts on traffic flow in Kennedy Drive. It appears impossible to manoeuvre through the site to the exit. The parking nodes were discussed and the Committee noted that there was no opportunity for overspill parking on Kennedy Drive.

The link between the two car parks should be two-way to avoid recirculation on Kennedy Drive. The statement by the applicant that the western car park will only be used by staff does not satisfactorily address the issue because if they dedicate these spaces for staff only then they have to create more car parking spaces. Given that there are two sections of public customer car parking, the link on site between them should be two-way to avoid vehicles having to use Kennedy Drive to circulate between the 2 car parks. The current car park allows for circulation on site.

Minutes from Traffic Committee from 20 May 2004

Mr Alan Black addressed the Committee at 11:55am.

Mr Black requested if it was possible that Kennedy Drive be left as is for 6 months, monitored and then address any issues created by the development, if approved, at that time. Mr Black advised that rigid trucks out of hours make deliveries to IGA and not semi-trailers as advised by letter from IGA.

The Committee considered plans submitted by the applicant's traffic engineer to ban right turns from Kennedy Drive into the eastern entrance to the development in lieu of the previous proposal of a concrete central median. The median is deemed inappropriate because it would prevent full access to two houses opposite the development.

Given that vehicles can turn right from Kennedy Drive into the western driveway, it was proposed that signage at the eastern driveway would be a sufficient deterrent. The Police Representative did not agree given the crash history in the location.

The Police Representative raised concerns with the crash history of the area.

After discussion the Committee considered that if a triangular shaped island installed in the easternmost driveway to physically prevent right turns from Kennedy Drive into the driveway of Endless Summer Shopping Centre in conjunction with 'No Right Turn' signs for westbound traffic on Kennedy Drive would eliminate the concerns of the Traffic Committee.

The Committee noted that of the several issues raised previously, this proposal would resolve the last of the Committee's concerns regarding the project but some planning issues still remained regarding the loading dock facilities.

The applicant undertook to submit revised drawings as a matter of urgency. The Committee agreed that if the drawings are deemed satisfactory by the Director Engineering Operations they can be forwarded to the Director Planning & Environment for inclusion in a report to Council on the subject development application.

RECOMMENDATION:

That subject to a DA approval that may be given the following signage be installed on Kennedy Drive:-

- 1. Relocate bus zone signs from the western side of the western driveway to the east side of the driveway.*
- 2. Installation of 'No Stopping' signs for the remainder of the site on the north side of Kennedy drive.*
- 3. Installation of 'No Right Turn' signs at the eastern driveway for westbound traffic on Kennedy Drive.*

As detailed above the Traffic Advisory Committee can now support the application subject to conditions of consent being imposed. The amended concept has been formally lodged with Council, and has been considered satisfactory by Council's Traffic and Transport Engineer subject to the recommended conditions of consent.

State Environmental Planning Policy 64 - Advertising & Signage

The proposed signage is permissible in accordance with Clause 8 –Granting of Consent to Signage of the Policy. The proposed signage is consistent with the objectives of the policy in that it provides clear and effective advertising, which is suitable for the use. The proposed signs will not detract from the amenity, will not distract motorists (as the content on the signs is minimal and the signs and logos are familiar to people), and is therefore consistent with other commercial advertising across the Shire. Furthermore, the signs are considered to be satisfactory having regard to the matters of consideration in Schedule 1.

SEPP 71 Coastal Protection

The subject site located within the Coastal Policy area and is therefore subject to assessment in accordance with SEPP 71. The site is further located within 100m of a sensitive coastal location as land within 100m above mean high water mark of the sea, a bay or an estuary.

Clause 18 of SEPP 71 requires the preparation of a master plan for subdivision within a residential or rural residential zone. However, as advised by DIPNR on the 2 December 2003 Clause 18 does not apply to commercially zoned land. Furthermore, the buildings are less than two storeys in height and therefore do not require referral to the Department under Clause 9 or 11. Therefore, the subject application does not require referral to the Department, however, Council is still obligated to undertake an assessment of the application against Clause 8 of the Policy.

Clause 8 details 16 matters for consideration of which most matters relate to maintaining public access to and along the coastal foreshore, and ensuring the scenic qualities of the coast are protected. Therefore they are not specifically applicable to this application. Clause 8 (d) is considered to be the most relevantly applicable provisions, which reads as follows:

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

As briefly mentioned above the application is considered to have addressed all previous identified issues and is now considered an acceptable proposal for the site. The proposed refurbishment will create a functional centre that would increase community facilities and be generally in the public interest.

The application is considered to comply with SEPP 71.

It should also be noted that the site is within 26 metres of the northern man made drainage reserve and 200 metres of Tweed River, however Department of Infrastructure Planning & Natural Resources (DIPNR – formally the Department of Land and Water Conservation - DLWC) did not consider it necessary to classify the proposal as Integrated Development under the Rivers & Foreshores Improvement Act 1948. If consent were to be granted a condition of consent would be required specifying that if excavation occurred within 40 metres of the drainage reserve a 3A permit would be required to be lodged and approved by the Department of Land and Water Conservation.

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

Whilst Draft LEP Amendment No. 46 is applicable to the site further assessment against this Draft is not required as the building is single storey and complies with Clause 16 of the LEP.

There are no other Draft Environmental Planning Instruments applicable to this application.

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

Development Control Plan No. 2 – Car Parking

This application seeks approval for alterations to the existing centre while incorporating a new IGA supermarket within a similar floor space to that already existing. The gross floor area is increased by only 30m², however, the location and nature of certain uses (specifically the new supermarket) must be examined having regard to the criteria detailed in DCP No. 2.

Therefore, the below table represents what the uses would currently generate having regard to DCP No. 2. The car parking rates have been worked out by dividing each individual use contained within the centre, and by further acknowledging that certain areas such as the restaurants/café have only been calculated on the dining area not the total GFA.

Table 1 – Car Parking Rates in accordance with DCP 2

<u>Use</u>	<u>GFA</u>	<u>DCP 2 Classification</u>	<u>Staff Requirement</u>	<u>Customer Requirement</u>
T1 Chemist	72.4m ²	Item C19 Retail	0.5 spaces per 100m ² = 0.362	3.5 spaces per 100m ² = 2.534
T2 Chemist	57.2m ²	Item C19 Retail	0.5 spaces per 100m ² = 0.286	3.5 spaces per 100m ² = 2.002
T3 Surgery	67.6m ² (1 consulting room only)	Item H3 Health	2 spaces per room = 2	4 spaces per room = 4
T4 Hairdresser	76.4m ²	Item C10 Retail	0.5 spaces per 100m ² = 0.382	3.5 spaces per 100m ² = 2.674
T5 & T6 Restaurant/ Takeaway	173.2m ² (Dining area = 77.6m ²)	Item D15 Dining	0.5 per staff = 1	1 spaces per 7m ² = 11.086
T7 IGA	460.4m ²	Item C19 Retail	0.5 spaces per 100m ² = 2.302	3.5 spaces per 100m ² = 16.114
T8 Butcher	95.2m ²	Item C19 Retail	0.5 spaces per 100m ² = 0.476	3.5 spaces per 100m ² = 3.332
T9 Bottle- shop	166.4m ²	Item C4 Retail	0.5 spaces per 100m ² = 0.832	3.5 spaces per 100m ² = 5.824
T10 Bakery	88.4m ²	Item C19 Retail	0.5 spaces per 100m ² = 0.442	3.5 spaces per 100m ² = 3.094

T11 Garden Centre	30m ² (700m ²)	Item C15 Retail	0.5 per staff = 2	1space per 500m ² (min) = 5
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Total Staff Spaces Required = 10.082

Total Customer Spaces Required = 55.66

Grand Total of On-Site Car Spaces Required = 65.742

Clause 4.11 of DCP No. 2 supports reduced car dependent principles by encouraging bicycle parking areas and access to public transport facilities, and therefore allows an 80% reduction to the generation rate. An 80% reduction of 65.742 spaces is a reduction of 13.1484 spaces, taking the onsite parking requirement to 52.5936 spaces.

80% Grand Total of On-Site Car Spaces Required = 53

The applicant has provided 54 on site parking spaces and a bus drop off zone on Kennedy Drive. The application as submitted complies with the onsite parking spaces as reduced in accordance with Clause 4.11 of DCP No. 2.

Council's Traffic and Transport Engineer has provided the following comments in relation to the application:

"It is noted that the loading docks and traffic access isles don't strictly comply with Development Control Plan No. 2, however, given the minor nature of the shopping centre expansion (30m²) and the poor shape of the allotment there appears to be few options. As noted by the traffic committee obstruction of this access is not likely to cause queuing back onto Kennedy Drive. Whilst it may cause minor delays on site it is unlikely to have any impact on traffic flow of Kennedy Drive.

It is also noted that delivery vehicles servicing the nursery may obstruct 7 car parking spaces but this should be minimal and again given the poor site and the fact that it is an existing situation it is still possible for entering vehicles to manoeuvre around a service truck. However, deliveries to the nursery via a single unit truck would improve this situation.

Given the shared use of the one way access road by customers and delivery vehicles three speed humps should be provided over its length with this being applied as a condition on any consent that may be issued.

The proposed car parking layout and number of spaces is considered acceptable having regard to DCP No.2.

It is considered necessary to impose the following special conditions (in addition to the standard conditions of consent) of consent to ensure that the site is utilised in accordance with the application as submitted:

- # *The provision of 54 off street car parking spaces, with one space to be allocated to the medical centre for an emergency vehicle. Prior to Issue of the Occupation Certificate this space is to be signposted accordingly and inspected by Council. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls.*
- # *The rear service/vehicular lane is to remain open for vehicular movement at all times. Trucks should be unloaded from the rear only and any forklift usage should be limited to within the loading bay themselves to ensure the laneway is kept clear for customers and reduce the potential for customer and delivery vehicle conflict.*
- # *The western entry/exit is to provide unrestricted access to the site with entry and exit permissible from both a left and right turn.*
- # *The eastern entry/exit is to provide unrestricted exit to the site with entry to the site limited to a left turn only.*
- # *Service vehicles for the development (including the nursery) are not to restrict access to incoming vehicles. This may necessitate the use of large rigid vehicles instead of semi trailers.*
- # *Three speed humps should be provided over the length of the rear service lane with details of such being shown on the engineering plans to accompany a S138 Application.*
- # *All works that are to occur in the road reserve for Kennedy Drive including the bus bay, signage and the splitter island must be subject to a S138 Application which must be accompanied with detailed engineering plans and should reflect works shown on 30711_1F Revision B.*

Subject to the above conditions being incorporated into any consent the proposed parking spaces, parking layout, and loading facilities are considered to be satisfactory, having regard to DCP No. 2.

Development Control Plan No. 5 – Flood Liable Land

The subject site is identified as flood prone pursuant to the provisions of DCP No.5. In this regard, DCP No.5 identifies an adopted Design Flood Level of 2.65m AHD for residential development. Commercial development is not subject to this criterion, however, the development must be capable of providing flood free storage. Therefore it is recommended to incorporate a condition of consent requesting detail of the proposed flood free storage prior to the Construction Certificate being issued.

Development Control Plan No.15 – Advertising Structures

The Plan specifies that there should be no more than five signs for one premise with only one of these being a pole sign. The proposed application seeks a variation to this control by seeking consent for two pole signs and general directional signs. However, these signs advertise all the developments on the site, which could have sought individual advertising structures. The proposed number, heights, styles and sizes of signs are not uncommon for local shopping complexes and are not considered inappropriate for the location. Justification for the variation includes the appropriateness of the signage for the locality, the suitable distance between the signs, and finally the signs would not distract drivers as limited amount of information contained on the signs reduces the risk of driver distraction.

The application is considered satisfactory having regard to DCP 15.

Development Control Plan No. 16 - Subdivision Manual

The subject development application incorporates a boundary adjustment that will result in the proposed centre being located entirely on Proposed Lot 1 (5713.05m²) with a vacant residue parcel remaining with a total area of 1290.56m² (proposed lot 2). Whilst it is not known what the vacant allotment will be used for in the future the site will have adequate access to necessary services and will have the benefit of a right of way for vehicular access through proposed lot 1. DCP 16 does not provide a minimum lot size for commercially zoned sites but it does provide that the size and shape are to be commensurate with the proposed uses and zone objectives. The remaining rectangular parcel is considered capable of accommodating a variety of uses given its size and shape and subsequently this minor boundary adjustment is considered satisfactory

Development Control Plan No. 45 – Socio Economic Impact Assessment

Having regard to the provisions of DCP No.45, a detailed social impact assessment is technically required for a retail development exceeding 1500m². The applicant has requested a variation from this criterion stating that the proposed development incorporates the re-development of an existing shopping complex, resulting in the erection of an additional 30m² of GFA only and further that the proposed development is not considered to be of scale or nature requiring the preparation of a formal socio-economic impact statement.

Clause 5.2 of DCP 45 specifies that Council may determine that a Socio-Economic Impact Assessment is not required, if it is determined that the application will have limited impact.

In this instance the proposed retail redevelopment of an additional 30m² is excused from requiring the lodgement of a Socio Economic Impact Assessment, as Council's Economic Planner considers that the net increase of 30m² does not significantly alter the nature of the existing retail structure in the locality.

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

The NSW Coastal Policy 1997 applies to the proposed development. The proposed development is considered to be generally consistent with the strategic actions and principals of this Policy.

Council's Senior Building Surveyor has reviewed the application having regard to Clause 94 of the Environmental Planning & Assessment Act Regulations and has applied appropriate conditions of consent having regard to this.

(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

Bulk Scale & Design

The original application DA02/1695 indicated a very plane design that did not present well to the street. However, through the lodgement of amended plans the now proposed amendments show a significant improvement to the operation of the proposal and provide considerable improvement to the aesthetic appeal of the complex.

The proposed development incorporates a single storey building that stretches for a length of approximately 92m out of the sites total 268 metres (including the remaining residue lot). The amended plans have provided more articulation to this elevation by creating more depth variation than that originally proposed.

The proposed design in terms of visual integrity is considered satisfactory.

Traffic/Access

The proposed development satisfies numerous Council requirements and Australian Standards and has obtained concurrence from Council's Local Traffic Committee and Council's Development Engineer. The application in its current form can now be supported on traffic grounds.

Flora & Fauna

The subject site is absent of any significant vegetation with the exception of two Eucalypts, however this application does not involve the removal of these trees.

Social & Economic

As detailed above Clause 5.2 of DCP 45 specifies that Council may determine that a Socio-Economic Impact Assessment is not required, if it is determined that the application will have limited impact.

In this instance the proposed retail redevelopment of an additional 30m² is excused from requiring the lodgement of a Socio Economic Impact Assessment, as Council's Economic Planner considers that the net increase of 30m² does not significantly alter the nature of the existing retail structure in the locality. Furthermore, the size of this development identifies it as servicing a local catchment. There is significant shortfall of retail floor space in the Tweed Heads West/Bilambil area. Any proposed increase in local retail facilities in the locality will be servicing a local demand.

Amenity & Noise

The application seeks consent for an expansion to an existing centre, which is in the vicinity of residential properties. Whilst this application must consider the potential impacts on amenity for nearby residence it is concluded that the proposed 30m² increase in gross floor area will not have a detrimental impact on neighbouring properties subject to compliance with the recommended conditions of consent. The application has been accompanied by a detailed acoustic report that has been reviewed by Council's Environmental Health Officer. Subject to the recommended conditions of consent the proposed application is considered satisfactory on amenity and noise issues.

(c) Suitability of the site for the development

The zoning of the land and the existing use of the land for commercial purpose indicates that the site is capable of accommodating the proposed use. Having regard to the site constraints, the amended plans are considered to have addressed these constraints adequately to enable the proposed redevelopment of the site. The proposed development (subject to the recommended conditions of consent) is considered permissible and suitable.

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

The proposal was advertised and notified for a period of 14 days from 10 December 2003 to 24 December 2003. However, Council received a submission requesting an extension to the advertising period for the development application by 28 days. A 28 day extension was considered unwarranted, however, having regard to the Christmas/ New Year period Council considered it reasonable to extend the time for receipt of submissions until Wednesday 14 January 2004. This was a three-week extension and was considered appropriate.

Council received a total of one hundred and eighty eight (188) submissions objecting to the application. This comprised of 12 individual letters of objection and 176 signed form letters. However this form letter provided the individual with the option of providing individual comments. Almost all of these submissions utilised this opportunity and provided specific comments about the application.

Whilst Council received amended plans on numerous occasions they were not amendments that warranted re advertising. The amendments primarily related to engineering drawings that clarified matters rather than changing the nature of the application.

The grounds for objection are discussed in the below table.

Table 1 - Issues raised in objection to the proposal

OBJECTION	IMPACT ASSESSMENT	COMMENT
Restricted access to and from the centre will encourage customers to shop elsewhere.	The Local Traffic Committee have reviewed the application and strongly recommended restricted access to the eastern entry point on safety grounds. Unrestricted access as the western end of the centre should adequately cater for customer needs.	This objection does not warrant amendment or refusal of the application.

OBJECTION	IMPACT ASSESSMENT	COMMENT
Kennedy Drive has major traffic problems and this development will exacerbate them.	The application only seeks approval for an additional 30m ² of gross floor area. Following amended plans the application is considered satisfactory on traffic grounds.	This objection does not warrant amendment or refusal of the application.
All loading should occur on the subject site and not from adjoining residential streets.	This comment is concurred with and will be enforced through the recommended conditions of consent.	This comment is concurred with and will be enforced through the recommended conditions of consent.
A noise and sight-screening fence should be compulsory to the northern boundary of the site adjoining Meridian Way.	The application has been accompanied with an acoustic report detailing an acoustic fence to the northern boundary.	This comment is concurred with and will be enforced through the recommended conditions of consent.
The proposed IGA will attract far more traffic than existing businesses and the proposed 54 spaces is inadequate.	The application has been considered satisfactory by the Local Traffic Committee and Council's Traffic and Transport Engineer and furthermore the application satisfies the provisions of DCP No. 2 – Parking.	This objection does not warrant amendment or refusal of the application.
The eastern access is opposite Crystal Waters Drive and will cause further traffic problems on Kennedy Drive.	The eastern access is not opposite Crystal Waters Drive it is approximately 20m east of Crystal Waters Drive. The restricted entry to the eastern access will reduce the potential for congestion at this point.	This objection does not warrant amendment or refusal of the application.
The proposed median strip will restrict access to properties.	The application has been amended by deleting the previously proposed median strip.	This objection does not warrant amendment or refusal of the application.
Staff will be allowed to park on site forcing customers to park in neighbouring residential streets.	The application has satisfied Council's Development Control Plan No. 2, which has provisions for both staff and customers.	This objection does not warrant amendment or refusal of the application.

OBJECTION	IMPACT ASSESSMENT	COMMENT
The two advertising signs are 11m and 6.5m in height and are excessive	The application details two signs one being a clock tower, which, advertises the IGA supermarket and the seven other tenancies, the other sign being a centre sign which advertises the centre as a whole. These are considered business identification signs and actually amalgamate signage for the businesses.	This objection does not warrant amendment or refusal of the application.
The area is well serviced by shopping centres at Tweed Heads and Tweed Heads South and we do not need further shopping centres.	Council's Economic Planner acknowledges that there is significant shortfall of retail floor space in the Tweed Heads West/Bilambil area. Any proposed increase in local retail facilities in the locality will be servicing a local demand.	This objection does not warrant amendment or refusal of the application.
A gross overuse of the site	As discussed in the bulk of the report the application is no longer considered to be an overdevelopment of the site given the application merely seeks a 30m ² expansion.	This objection does not warrant amendment or refusal of the application.
Insufficient onsite parking	The application satisfies the provisions of DCP No. 2 and is 1 car parking space in excess of the required on site parking.	This objection does not warrant amendment or refusal of the application.
Limited manoeuvrability space for trucks and cars on site	Council's Traffic and Transport Engineer and the Local Traffic Committee have now supported the application subject to the recommended conditions of consent.	This objection does not warrant amendment or refusal of the application.
Negative impact on adjoining residential streets and Kennedy Drive	The amended application has provided sufficient onsite parking for both staff and customers in accordance with the provisions of Development Control Plan No. 2.	This objection does not warrant amendment or refusal of the application.
Entry into the car park will bottle neck onto Kennedy Drive	Council's Traffic and transport Engineer has addressed this concern through conditions of consent.	This objection does not warrant amendment or refusal of the application.

OBJECTION	IMPACT ASSESSMENT	COMMENT
Service trucks will be noisy and impact on the local residents	The difficulty in having commercial zoned land in the vicinity of residential properties is the potential land use conflict. The proposed conditions of consent address hours of operation and overall noise outputs.	This objection has some merit but is not grounds for refusal.
There are not enough amenities proposed to cater for all the shops	Council's Building Surveyor has reviewed this situation and determined that compliance with the requirements of the BCA is achievable and could be conditioned.	This objection does not warrant amendment of the application.
There is no room in the service lane for necessary equipment	The service lane is narrow (5 metres), and it would be difficult to accommodate forklifts, gas cylinders and any additional materials in that lane without restricting truck movements. Therefore the application has been conditioned to ensure this laneway is kept clear at all times with additional facilities located within the shop areas themselves.	This objection does not warrant amendment or refusal of the application.
The area is flood prone	Floor free storage is required and accordingly the application has included an appropriate condition of consent.	This objection does not warrant amendment of the application.
Pedestrian access unsafe onsite	The Traffic Committee and Council's Traffic and Transport Engineer have required additional footpaths and pedestrian crossings located throughout the centre.	This objection does not warrant amendment of the application.
The application does not provide enough landscaping.	The application seeks approval for an additional 30m ² and provides significant improvement works to the site. The proposed landscaping is considered sufficient.	This objection does not warrant amendment of the application.
A large supermarket will clog inadequate delivery bays and commandeer the parking	The proposed supermarket is permissible with consent, and achieves complete compliance with Council's parking code.	This objection does not warrant amendment of the application.

OBJECTION	IMPACT ASSESSMENT	COMMENT
The application encroaches upon leased land and a lawful consent cannot be issued	Council's obligation in accordance with the Environmental Planning and Assessment Act 1979 was to obtain "owners consent" for the lodgement of this application. This legal obligation has been satisfied, any further discretion regarding the legalities of a lease compared with ownership will need to be resolved as a private matter between the lessee and owner, outside the development application process.	This objection does not warrant amendment of the application.
The application has not been submitted with sufficient information.	The application as proposed has provided sufficient information to enable Council to determine the application.	This objection does not warrant amendment of the application.

(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 are strongly opposed to the re-development due to the potential traffic implications. However, both the Local Traffic Committee and Council's Traffic and Transport Engineer have comprehensively addressed the issues raised.

The applicant has reduced the scale of the development significantly since the original date of lodgement of DA02/1695 and has had better regard to the site constraints and the relevant controls.

The proposal provides benefits to the local community through employment during construction and operation. There are associated multipliers effects from a development of this nature.

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 application in accordance with the recommendation.
2. Refuse the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Should the applicant be dissatisfied with the determination of this application they may seek an appeal with the Land & Environment Court.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The proposed re-development of this site has been a difficult process due to the physical constraints of the property. However, through the lodgement of numerous sets of amended plans the applicant has been able to satisfy the concerns of the Local Traffic Committee and Council's Traffic and Transport Engineer. This application proposes numerous site works but must be kept in context by acknowledging that the application only seeks consent for a gross floor area increase of 30m². The proposed works are considered appropriate for the site having regard to all the issues raised in this report.

UNDER SEPARATE COVER:

1. Plans of the development
-

4 [DS] Development Application DA03/1359 for Multi-Dwelling Housing Comprising 6 Dwellings at Lot 355 DP 755701, No. 13 Murphys Road, Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA03/1359 Pt1

SUMMARY OF REPORT:

Council is in receipt of an application for a multi dwelling housing development containing 6 units at Murphys Road Kingscliff. The proposed building is three storeys in height and is provided with a roof deck to the eastern elevation. The roof deck is accessed by external stairs from the top floor units. The proposed development is similar in design to the development completed at No.7 Murphys Road, Kingscliff.

The redevelopment of the site raised issues in relation to bushfire management to the coastal reserve on the eastern side, shadow of the coastal reserve on the eastern side, building line variation to the road reserve on the northern side and the design of the development in terms of building envelope encroachments.

The proposed development has been assessed and is considered to be a suitable development for the 2(b) Medium Density zone land at Murphys Road Kingscliff.

RECOMMENDATION:

That: -

- A. The State Environmental Planning Policy No. 1 objection to Clause 32B of the Regional Environmental Plan be approved in accordance with the assumed concurrence of the Director General of the Department of Infrastructure, Planning and Natural Resources.
- B. Development Application DA03/1359 for multi-dwelling housing comprising 6 dwellings at Lot 355 DP 755701 No. 13 Murphys Road, Kingscliff be approved subject to the following conditions: -

"DEFERRED COMMENCEMENT"

This consent shall not operate until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within 12 months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 67 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

SCHEDULE "A"

Conditions imposed pursuant to Section 80(3) of the Environmental Planning and Assessment Act, 1979 and Section 67 of the Regulations as amended.

- A. The applicant shall submit to Council detailed plans in triplicate of the proposed method of construction to adequately demonstrate that the design of the proposed buildings will ensure compatibility to withstand erosion events as a result of foreshore recession. The building foundation design plans are to be certified by a suitably qualified engineer to withstand the design conditions set out in Coastal Hazard Management Plan prepared by BG Group Consulting Engineers dated August 2003, and be approved by the Director of Planning and the Environment.

SCHEDULE B

NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plans Nos A03-001 Sheets 1 to 8 inclusive prepared by Pacific Projects and dated 9/9/2003, 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. No retaining walls or similar structures are to be constructed over Council's sewer main. [GEN0090]
4. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia. [GEN0120]
5. The erection of a building in accordance with a development consent must not be commenced until:
 - (a) a construction certificate for the building work has been issued by the consent authority, the council (if the council is not the consent authority) or an accredited certifier, and
 - (b) the person having the benefit of the development consent has:

- (i) appointed a principal certifying authority for the building work, and
 - (ii) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case, and
- (b1) the principal certifying authority has, no later than 2 days before the building work commences:
- (i) notified the consent authority and the council (if the council is not the consent authority) of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (b2) the person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
- (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential work is involved, and
 - (ii) notified the principal certifying authority of any such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspection and other inspections that are to be carried out in respect of the building work.

[GEN0150]

6. Pedestrian access from the subject land to the east shall be denied (except for one pedestrian gate to be accessed for fire fighting purposes only) until such time as a formalised access network within the coastal reserve is provided. Details of the proposed masonry fence is to be submitted and approved by Director of Planning and the Environment prior to the issue of a construction certificate for the development.
7. No works are to occur on the adjoining crown reserve to the east or the adjoining road reserve to the north. All fencing on the boundary is to be contained wholly within the subject land. No clearing is to be carried out on the adjoining crown reserve or road reserve.

BUSHFIRE

8. The existing house drainage line is to be capped off at the junction point by a licensed plumber prior to demolition of the existing dwelling.
9. Construction shall comply with AS3959 - 1999 level 3 'Construction of Buildings in bushfire prone areas'. [GENNS01]
10. Roofing shall be gutterless or have leafless guttering and valleys are to be screened to prevent the build up of flammable material.
11. The proposed structure shall be located no closer than 6 metres from the eastern boundary.
12. The entire property shall be managed as an "Inner Protection Area" as outlines within section 4.2.2 in Planning for Bushfire Protection 2001.
13. All fencing shall be constructed from non-combustible materials.

14. A 1.8 metre high masonry radiant heat shield shall be constructed along the eastern and north boundary adjacent to the fire hazard. A pedestrian access gate is to be provided along this boundary. A bushfire sprinkler system is to be mounted on top of the radiant heat shield. This is to be supplied by a dedicated water supply of at least 10000 litres.
15. Pedestrian access to be provided surrounding the entire structure. [BFPNS01]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

16. A detailed plan of landscaping is to be submitted and approved by Council's Director, Development Services prior to the issue of a Construction Certificate. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building. [PCC0010]
17. 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]
18. 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)
(Kingscliff - Sector 6) | \$4,732.00 |
| b. | Open Space (Structured):
S94 Plan No. 5 | \$2,280.00 |

c.	Open Space (Casual): S94 Plan No. 5	\$487.00
d.	Shirewide Library Facilities: S94 Plan No. 11	\$2,012.00
e.	Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$396.00
f.	Community Facilities (Tweed Coast) (North Coast) S94 Plan No. 15	\$2,460.00
g.	Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16	\$690.00
h.	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$1,224.63
i.	Cycleways S94 Plan No. 22	\$470.00
j.	Regional Open Space (Structured) S94 Plan No. 26	\$3,437.00
k.	Regional Open Space (Casual) S94 Plan No. 26	\$643.00

19. 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. [PCC0050/PSC0005]

Pursuant to Clause 146 of the Environmental Planning and Assessment Regulations, 2000, a Construction Certificate shall **NOT** be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

Annexed hereto is an information sheet indicating the procedure to follow to obtain a Certificate of Compliance:

Water: \$14,385.00
Sewer: \$11,515.00

These charges to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an Accredited Certifier.

[PCC0070/PSC0004]

20. 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.

Driveways 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%. Driveway entrances must be graded to ensure Q100 stormwater runoff from Murphys Road does not enter the site.

[PCC0190]

21. 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) Roofwater
- (i) All roof drainage is to be discharged to infiltration trenches/devices. Infiltration trenches/devices shall be designed in accordance with the following criteria:
- As a minimum requirement, trench/devices are to be sized to accommodate the ARI 3 month storm (deemed to be 40% of the ARI one year event) and infiltrate this storm within a 24 hour period, with a safety factor of 2, before surcharging occurs
 - Surcharge overflow from the infiltration area is to be to the street gutter by visible surface flow.
 - Runoff is to be pre treated prior to discharge to infiltration areas. (to minimise periods between major cleaning/maintenance overhauls).
 - If the site is under strata or community title, the strata/community title plan is to ensure that the infiltration area(s) are contained within common areas that remain the responsibility of the body corporate (to ensure continued collective responsibility for site drainage).
- (e) Infiltration
- (i) Infiltration areas are to be sized with a safety factor of 2 (this is to allow for long term deterioration in infiltration rate).
- (ii) Runoff entering infiltration trenches/basins shall be pre-treated to remove sediment and gross pollutants.
- (iii) The infiltration rate for infiltration devices shall be determined as follows:
- Conduct percolation tests on the site in accordance with Appendix B of A.S. 1547-1994, Disposal Systems for Effluent from Domestic Premises,
 - If the above calculation yields a result <6m/day, this rate may be used for design,
 - If the result is >6m/day, the rate for design may not exceed 6m/day unless this rate is confirmed by independently determining the coefficient of permeability of the soil in accordance with AS 1289.6.7.3. Notwithstanding these tests, the maximum infiltration rate that may be used for design and sizing purposes is 12m/day.
- (f) Runoff from the car wash bay is to be discharged into an infiltration pit on the site.

- (g) Basement runoff is treated in accordance with the requirements and sizing criteria of section 7.12.2 of Development Design Specification D7 - Stormwater Quality. Basement runoff is to be collected and pumped in accordance with the requirements of section 8 of AS/NZ 3500.3.2 1998. Pumped basement runoff is to be discharged into the infiltration devices referred to in (d) and (e) above.

[PCC0230]

22. 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]

23. The peak stormwater flow rate that may be discharged from the site to the public realm, in events of intensity up to the ARI 100 year design storm, shall be 200 l/s/ha. This may be achieved by on site detention (OSD), on site retention or a combination of both. Detention storage may be incorporated into surface depressions in landscaping or aboveground car parking areas. The maximum water depth under design conditions in aboveground vehicle parking areas shall be 200mm. OSD devices including discharge control pits (DCP) are to comply with standards in The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook, Third Edition, December 1999" except that permissible site discharge (PSD) and site storage requirements (SSR) in the handbook do not apply to Tweed Shire. All these works and the connection to Councils drainage system shall be constructed in accordance with design calculations, plans and specifications to be submitted with the construction certificate application and approved by the Director of Engineering Services.

[PCC0260]

24. Pursuant to Section 68 of the Local Government Act, 1993 to ensure there is no unacceptable discharge to Councils sewerage system an approved pre-treatment device (eg. Oil/grease traps, separators, etc) shall be installed to details approved prior to the issuing of a Construction Certificate. The development will be required to meet discharge standards in accordance with Councils Trade Waste Policy.

[PCC0290]

25. Erosion and Sediment Control During the Construction Phase of Development
- (a) Construction phase stormwater quality treatment (erosion and sediment control) shall be designed and constructed in accordance with detailed engineering plans to be submitted and approved with the Construction Certificate. Erosion and sediment control shall be in accordance with *the "Tweed Urban Stormwater Quality Management Plan"* (adopted by Council 19 April 2000) section 5.5.2 "Stormwater Objectives During the Construction Phase of New Development". This section requires all new development to comply with Appendix E of the Plan *"Tweed Shire Council Aus-Spec D7 - Stormwater Quality"* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works". Erosion and sediment controls shall remain in place until final approval is given and the maintenance bond (if required) has been released.
- (b) The Construction Certificate Application must include a detailed erosion and sediment control plan (ESCP) for the construction phase of development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.

[PCC0320]

26. 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]

27. Prior to the issue of a construction certificate detailed plans are to be provided to the satisfaction of and approval by the Director of Engineering Services detailing kerb and gutter to the frontage of the site to Murphys Road. The plans shall detail the widening of the road shoulder to the new kerb line and sealing. Details of the pavement depth are to be indicated on the plans.
28. The kerb and gutter and sealed road shoulder is to be extended (and a 6m wide reinforced layback crossing provided for the un named road) to the north to join with the existing kerb and gutter and sealed shoulder adjacent to No. 17 Murphy's Road, provided Council is satisfied there is sufficient fall for the kerb and gutter to drain to the north. If Council considers there is insufficient fall the following alternative works are required: -
- A stormwater collection pit is required in the kerb and gutter adjacent to the development site, to be provided with a 375mm diameter pipeline extending under Murphy's Road to the adjacent playing field with discharge headwall and scour protection.

Working drawings (consistent with Council's Development Design Specifications) of the works required above must be approved by the Director of Engineering Services prior to the issue of a construction certificate.

[PCCNS01]

PRIOR TO COMMENCEMENT OF WORK

29. Please note that while the proposal, subject to the conditions of approval, may comply with the provisions of the Building Code of Australia for persons with disabilities your attention is drawn to the Disability Discrimination Act which may contain requirements in excess of those under the Building Code of Australia. It is therefore required that these provisions be investigated prior to start of works to determine the necessity for them to be incorporated within the design.

[PCW0010]

30. 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]

31. 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]

32. 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]

33. 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]

34. **Where prescribed by the provisions of the Environmental Planning and Assessment Amendment (Quality of Construction) Act 2003**, a sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (a) showing the name, address and telephone number of the principal certifying authority for the work, and
- (b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

[PCW0070]

35. 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]

36. 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]

37. 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]

38. 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]

39. An application to connect to Council's sewer or carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW0210]

40. 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]

41. The subject land shall be provided with fencing during construction which is to contain all construction activity on the subject land. The fence shall not impact on the adjoining coastal reserve or road reserve. The fence along the southern boundary shall be provided with a dust screening material to reduce the nuisance impacts to the adjoining residential property.

[PCWNS01]

DURING CONSTRUCTION

42. 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]

43. 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]

44. The provision of 12 off street car parking spaces. Two of the off street car parking spaces are to remain in common property and be marked for visitors. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls.

[DUR0050]

45. 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]

46. All demolition works are to observe the guidelines set down under the Environment Protection Authority publication "A Renovators Guide to the Dangers of Lead" and the WorkCover guidelines on working with and handling of asbestos. [DUR0100]
47. 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]
48. The principal certifying authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the principal certifying authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979. [DUR0170]
49. 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]
50. 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]
51. 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]
52. 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]

53. 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.
54. 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. [DUR0430]
55. 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 Murphys Road. 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. [DUR0470]
56. 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 [DUR0520]
57. 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. [DUR0670]
58. 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. [DUR0850]
- [DUR0870]

59. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles. [DUR0880]
60. 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]
61. 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]
62. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited. [DUR0920]
63. 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]
64. 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]
65. 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 and prior to occupation of the building. [DUR1020]
66. 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]
67. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR1040]
-

68. 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]
69. 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]
70. All new hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding:-
- * 43.5⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
 - * 50⁰C in all other classes of buildings.

A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works.

- [DUR1160]
71. 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]
72. 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]

73. 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]
74. 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]
75. Backwash from swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9. [DUR1290]
76. Acid sulfate soils shall not be exposed or disturbed during works.
77. The site shall not be dewatered.
78. Lighting shall not be permitted to impact the amenity of any premise.
79. All wastes shall be collected, stored and disposed to the satisfaction of the Director of Environment and Community Services. Wastes shall be placed at the kerb in wheelie bins for collection.
80. The kerb and gutter works to the frontage of Murphys Road and the widening and sealing to the new kerb line shall be completed in accordance with the plans approved by Engineering Services Division. [DURNS01]
81. All demolition work 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]
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82. 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]

83. The proposed units shall be constructed in accordance with the NatHers Certificate prepared by Mark Thomas date 9/9/2003.

[DUR1000]

84. The footpath area is to be graded to the kerb and turfed for the full frontage of the site.

[DUR0510]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

85. 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 and conditions of Consent.

[POC0020]

86. 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]

87. The building is not to be occupied or a final occupation certificate issued until a fire safety certificate has been issued for the building to the effect that each required essential fire safety measure has been designed and installed in accordance with the relevant standards.

[POC0050]

88. Prior to occupation of the building **or** the issue of a Subdivision Certificate, all disused invert crossings are to be removed and replaced with kerb and gutter and all disused driveway across the footpath are to be removed and replaced with topsoil and turf to the satisfaction of the Director, Engineering Services.

[POC0080]

USE

89. 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]

90. All trade materials, product and plant to be kept within confines of the building at all times.

[USE0120]

91. A Strata Certificate shall not be issued for a Strata Plan or a Strata Plan of Subdivision unless the provision of the Strata Schemes (Freehold Development) Act 1973 and/or the Strata Schemes (Leasehold Development) Act 1986 have been complied with.

[USE0140]

92. 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]

REPORT:

Applicant: Pacific Projects Group
Owner: usher Powell Developments
Location: Lot 355 DP 755701 No. 13 Murphys Road, Kingscliff
Zoning: 2(b) Medium Density Residential
Cost: \$2,100,000

BACKGROUND:

Council is in receipt of the proposed development being a multi dwelling housing development being three storeys in height and containing 6 dwelling units. The proposed development includes a basement with 12 car parking spaces.

The subject land is accessed from Murphys Road and backs onto the Coastal Reserve in the east. To the north of the site is an unformed road reserve in Council ownership that is vegetated. On the western side of Murphys Road are the sporting fields. The subject land adjoins one residential property located on the southern side.

The section of Murphys Road from No.13 Murphys Road to the intersection with Wommin Bay Road has been the subject of redevelopment recently. No.7 Murphys Road has recently been completed being a 3 storey multi dwelling housing development containing 6 units. Also No.1 to 3 Murphys Road has been approved for redevelopment into 4 separate buildings over the site being 2 and 3 storeys in height, with a total of 15 residential units. These developments are changing the Murphys Road precinct. The urban design is modern and the developments have the location benefit of adjoining the coastal reserve in the east.

The proposed development was advertised for two weeks during which two submissions were raised. The submissions raised a number of issues, one being the shadow impacts to the property on the southern side during winter. The shadow impacts are assessed and it is noted that the orientation of the properties down Murphys Road have the effect of over shadowing neighbouring land on the southern side.

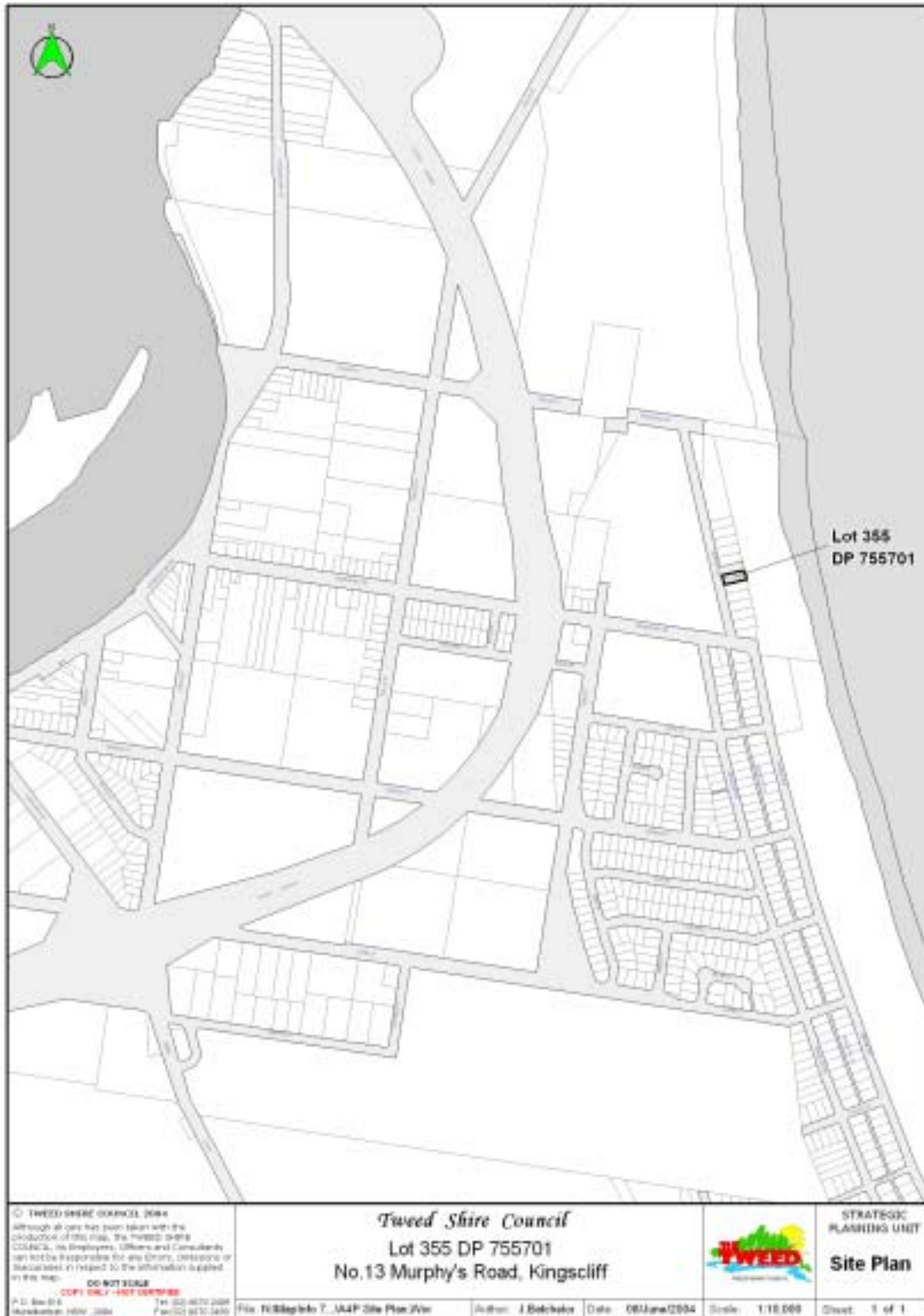
Other issues that were raised during the assessment of the application include:

- Bushfire Hazard
- Coastal Erosion
- Shadowing of the Coastal Reserve
- Access to the Coastal Reserve
- Urban Design and the Building Envelope

The development application is accompanied by an objection under State Environmental Planning Policy No.1 - Development Standard to the Regional Environmental Plan 1988 standard for shadow times on the coastal foreshore. The application is also accompanied by a building line variation to the unformed road reserve on the northern boundary.

The following report addresses these issues.

SITE DIAGRAM:



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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 2(b) Medium Density Residential under the Tweed Local Environmental Plan 2000. The primary objective of the zone is:

To provide and encourage development for the purpose of medium density housing that achieves good urban design outcomes.

The proposed development is multi dwelling housing under the TLEP and is considered to achieve medium density development over the site.

The urban design outcomes from the development are assessed in detail in this report. The proposed development is considered to maximise the density within the zone and achieves a high standard residential development. The proposal seeks variation to the building envelope and given the site location and neighbouring property attributes, the proposal is considered acceptable and to that end the proposed development is considered to achieve a good urban design outcome for the site.

Clause 15 of the TLEP ensures that development does not occur without water, sewage and drainage services to be available to the site or alternative arrangement made. The subject land has the benefit of services.

Clause 16 of the TLEP relates to building height and ensures that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.

The subject land is in a three storey height limitation area. The proposed development does not exceed three storeys. The basement does not extend more than 1.5 metres above natural ground level, and the multi dwelling housing building is no more than three storeys. The proposed building is considered to comply with Council's height requirements.

Clause 17 of the TLEP relates to social and economic impact assessment. The objective is to ensure that a proper consideration of development that may have a significant impact is undertaken. The proposed development is not of a scale or nature that would require a social impact assessment.

Clause 35 of the TLEP relates to the management of acid sulfate soils. The site is mapped as Class 5 acid sulfate soils. The excavation of the basement is not considered likely to adversely impact on acid sulfate soils. The applicant has advised that no dewatering is required and Council's Environmental Health Surveyor has not raised any objection in relation to this issue with the proposed development.

Clause 36 of the TLEP relates to coastal erosion outside of the 7(f) zone. The applicant submitted a Coastal Hazard Management Plan. This was referred to Department of Infrastructure Planning and Natural Resources for comment in relation to the coastal erosion hazards. This report further addresses the coastal erosion issue with assessment comments provided.

Clause 40A of the TLEP relates to bushfire protection and minimising the bushfire risk to assets and people and to reduce bushfire threat. The proposed development was referred to the local NSW Rural Fire Service for comment in relation to the proposal. The proposed structure has been designed to meet the requirements of the NSW Rural Fire Service. Details in relation to this issue are further examined in this report.

There are no further clauses under the TLEP applicable to the proposed development.

North Coast Regional Environmental Plan 1988

Clause 32B of the REP relates to development of coastal lands. The clause states that Council shall not consent to development on land within Kingscliff that would result in beaches and adjacent open space being overshadowed before 3pm midwinter or 6.30pm midsummer.

The applicant has submitted an objection under State Environmental Planning Policy No.1 - Development Standards in relation to the impact of overshadowing on the foreshore. The assessment of the development standard and the impacts of the proposal are fully addressed under SEPP1 in this report.

The application to vary the development standard has been supported for reasons detailed.

This clause also requires Council to take into account when considering development on such land:

- The NSW Coastal Policy
- The Coastline Management Manual, and
- The North Coast: Design Guidelines.

In relation to the NSW Coastal Policy, the proposed development is not considered to be in conflict with the policy strategic objectives. There is one strategic action in the Coastal Policy relating to waterfront open space that is further examined in the SEPP1 submission section of this report. Council has prepared a Coastline Hazard Definition Study for the Shire and the issues of coastal erosion are addressed in this report.

The North Coast Design Guidelines

The guidelines include direction for larger developments and residential buildings such as the proposal. For larger developments recessive colours, breaking up the building form and intensive planting is recommended. Medium rise form of no more than three storeys is preferable.

The proposed development meets the height and density identified. The applicant is nominating to landscape the site and intensive planting can be conditioned. Colours for the development should be submitted for the Director of Planning and the Environment satisfaction prior to issue of a construction certificate. It is considered that the colours adopted could reduce the bulk of the building and impacts to the streetscape.

There are no other matters in the Design Guidelines for the proposed type of development.

Clause 33 of the REP relates to coastal hazards and states that before consenting to development Council shall take into account Coastline Management manual, and condition any consent to rehabilitate disturbed foreshore areas and condition access across foredune areas to be confined to specified point.

Council has prepared a Coastline Hazard Definition Study that has not as yet been adopted. The coastal erosion hazard has been commented on by Department of Infrastructure Planning and Natural Resources and Council's Manager of the Water Unit. This issue is addressed in full in this report.

Clause 51 of the REP relates to tall buildings and the need for the Director of Infrastructure Planning and Natural Resources for buildings greater than 14 metres in height. The proposed building does not exceed 14 metres in height and therefore does not require a variation to this standard.

Clause 81 of the REP relates to development on land adjacent to the ocean. Council needs to be satisfied that:

- there is sufficient foreshore open space which is accessible to the public in the vicinity,
- Buildings being erected will not detract from the amenity of the waterway, and

- Development is consistent with the foreshore management plan applying to the area.

The proposed development does not reduce access to the foreshore. Access to the dune and beach areas is provided by identified tracks in the locality. The proposed building is setback approximately 100 metres from the beach area as the dune width and coastal vegetation in this location is significant. The height of the coastal vegetation increases the further distanced from the frontal dune and as such taller vegetation and dunes screen the majority of the building from the ocean.

The amenity for the beach and ocean in this location is afforded by the extensive dune and vegetation in the coastal reserve, which highlights the importance of management of this resource. There is no foreshore management plan for this area.

State Environmental Planning Policies

State Environmental Planning Policy No.1 - Development Standards

The applicant has submitted shadow diagrams and details in relation to the extent of the shadow cast onto the coastal reserve from the proposed building. The reason for needing the SEPP1 is that the REP sets the standard for overshadowing of beaches and adjacent open space in Kingscliff, being free of shadow before 3pm midwinter or 6.30pm midsummer. In summary the following details are provided by the applicant: -

Date/Time	Shadow Area (m ²)
December 22	
6.30pm	702.66
5.30pm	289.99
4.30pm	156.25
3.30pm	88.69
2.30pm	40.37
1.30pm	1.99
June 21	
3pm	379.72
2pm	124.2
1pm	21.89

The objectives of the development standard include:

- To ensure that overshadowing of public areas such as beaches and foreshore open space does not occur at such times of day as would effect the amenity and enjoyment of these areas by the public;
- To ensure that these public areas are not alienated from public use by inappropriate overshadowing caused by urban development.

The applicant has submitted that the development standard is unreasonable and unnecessary in the circumstances for the following reasons:

- The area likely to be overshadowed prior to 3pm mid winter is 379.72m² and prior to 6.30pm mid winter is 702.66m² are numerically insignificant given the total foreshore and beach area available at Kingscliff;
- Existing vegetation on the foreshore area already creates shadows;
- The shadows do not extend to the high water mark and therefore will not impact on sunbathers and surfers;
- The area to be shadowed is not used by the public for picnics, sunbathing or recreational activities because it is vegetated and poorly accessed.

The principle contained in the Coastal Policy relevant to this submission is:

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

- *In cities or large towns, no overshadowing before 3pm mid winter and 6.30pm summer daylight saving time;*
- *Elsewhere, no overshadowing before 4pm mid winter and 7pm midsummer daylight saving time.*

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

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

The applicant submits that strict compliance with the development standard for overshadowing is not appropriate where the site adjoins waterfront open space or beach areas in urban environments.

Comments

The subject land adjoins a section of the coastal reserve that is approximately 100 metres wide with vegetation before the beach commences. The vegetation is relatively thick and established immediately joining the subject land. Due to the distance from the beach the proposed development does not adversely impact on the beach or ocean swimming area with shadow.

The impact of the development is the shadow onto the coastal reserve as detailed in the table above. It is noted that in midwinter the development casts shadow onto the reserve from approximately 1pm with a shadow of 21m², and by 3pm in midwinter the shadow has increased to approximately 380m².

Therefore the majority of the coastal reserve is able to access sunlight until 1pm with a minor shadow impacting on the area immediately adjoining the development through to 3pm. As the section of coastal reserve is not a public picnic area and does not get used for outdoor recreation, the shadow impacts are not considered to be on the public, rather the vegetation.

The coastal reserve vegetation will be able to access sunlight for the majority of the day. The period of the day that shadow would be cast is not considered to be of a significant length or duration to impact on the growth of the coastal reserve.

The shadow impact to the coastal reserve in the mid summer period is relatively minor from 1.30pm to 3.30pm with shadow increasing up to approximately 90m². The shadow over the coastal reserve at 6.30pm is approximately 700m², and while this is a relatively long shadow the impacts do not extend into areas of recreational use, or reduce the access of the coastal reserve to adequate sunlight for vegetation survival.

The subject land is not able to be redeveloped without having a shadow impact on the coastal reserve due to the orientation and proximity of the development site.

The application under SEPP1 is considered to have demonstrated that the development standard is unreasonable and unnecessary in relation to the proposal as the coastal reserve is approximately 100 metres wide in this location, areas of public reserve used by the public will not be affected, and the coastal vegetation will not be prevented from access to an adequate duration of sunlight to maintain growth.

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

SEPP 65 applies as the proposed development is 3 or more storeys in height and contains 4 or more self contained dwellings. The applicant has submitted a detailed response to the design quality principles contained in the SEPP.

Principle	Requirement	Complies/variation
Context	New buildings will contribute to the quality and identity of the site	Complies - the development will contribute to the streetscape.
Scale	The proposed bulk and height needs to achieve the scale identified for the desired future character of the area	Complies - Site is in a medium density precinct refer to DCP 43.

Built Form	Appropriate built form in terms of building alignments, proportions, building type and the manipulation of building elements	Complies - the design achieved building elements.
Density	Density appropriate for the site and its context in terms of floor space yields	Generally complies, refer to DCP 6 requirements
Resource Energy and water	Efficient use of natural resources energy and water through out its full life cycle including construction	Complies, refer to DCP 39 requirements
Landscape	Landscape design should optimise useability privacy and social opportunity equitable access and respect for neighbours amenity and provide for practical establishment and long term management	Complies - useable private areas in the building design.
Amenity	Provide amenity through the physical spatial and environmental quality of a development	Complies.
Safety and Security	Optimise safety and security both internal to the development and for the public domain	Complies, surveillance of the street is provided, secure basement and entry.
Social Dimensions	The development should optimise the provision of housing to suit the social mix and needs of the future community	Complies, development is of a standard for permanent occupation.
Aesthetics	Aesthetics should respond to the environment and context and contribute to the desired future character of the area	Complies, the proposal is of a high standard and will improve the built form of the Murphy's Road.

State Environmental Planning Policy No.71 - Coastal Protection

The subject land is affected by SEPP71. The land is not identified as being in a sensitive coastal location. As the development does not exceed 13 metres in height and is not caught by Schedule 2, Council may determine the application.

Clause 8 contains matters for consideration, and those relevant to this application are addressed.

- d) the suitability of development given its type, location and design and its relationship with the surrounding area,
- e) any detrimental impact that development may have on the amenity of coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,

- j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,

Comments

The proposed development is considered to be suitable for the location and design in the surrounding area. The proposed development is in a precinct zoned for medium density residential development. The streetscape is characterised with a combination of units developments and single dwelling houses. All of the existing lots join the coastal reserve. The proposed development is not considered to create an unreasonable relationship with the surrounding area given the existing and future developments of the Murphys Road precinct.

The proposed development does result in shadow on the coastal reserve. The assessment of the extent of the shadow has been detailed in this report. The amenity of the coastal foreshore is not considered to be impacted upon by significant overshadowing. The proposed development does not block any foreshore views. Given the distance of the site to the beach and ocean it is considered that the views from the public recreation areas will not be significantly impacted.

The coastal hazards affecting the site have been assessed and it is considered that the proposal can be designed with appropriate footings to withstand any coastal erosion impacts that may arise in the future.

The proposed development is considered to have satisfied the provisions of Clause 8 of SEPP71.

(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 amends the definition of a storey to reflect the finished ground level (excluding basement) rather than natural ground level.

The proposed development will comply with the proposed draft and remain as a three storey development.

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

Development Control Plan No.2 - Access and Car Parking

Standard	Requirement	Complies/Variation
On site Car Parking	1.5 per dwelling 25% for visitors = 9 required with 2 for visitors.	The proposal complies with 12 in the basement.

The proposed development provides 12 car parking spaces in a basement with a separate car wash bay provided at street level. DCP 2 only requires 9 spaces and the development exceeds this requirement.

Council's requirements are met by the proposal however a condition is recommended that a minimum of 2 spaces be provided in common property and marked and made available as visitor spaces. This will ensure their use and availability for visitors to the development.

Development Control Plan No.6 - Multi Dwelling Housing

The following table addresses the requirements of DCP 6.

Standard	Requirement	Variation/complies
Floor Space Ratio	0.5:1.0	Variation. As the development has a GFA of 1182m ² the floor space ratio is 1.17:1. This requirement for multi dwelling housing is only applicable to dual occupancy development. The proposal is considered to achieve a floor space ratio expected for medium density residential development.
Landscaped Area	80m ² per unit = 480m ²	Complies 486m ² .
Setbacks from street boundary	6.0m to Murphy's Road	Complies, the development is setback 8.0 metres from Murphys Road.
Setback from the secondary frontage	3m to Unformed Road Reserve	Variation addressed below.
Side setbacks	3.0m	Complies, 3.0 metres to southern boundary and 3.5 metres to northern boundary.
Front fences and walls	1.2m max if solid	Complies.
Building Envelope	45° from 3.5m high at the boundary	Variation addressed below.
Car Wash Areas	1 required per 10 units = 1	Complies.

Building Envelope

The proposed development seeks a variation on the building envelope. The building envelope is proposed to be varied with the third level, as the design of the building is angular and modern, with each level being the same. The proposal provides a greater front and side setback than required to reduce bulk to the street and neighbour impacts however in achieving the height for the precinct and medium density development, the building envelope is not complied with.

The subject land adjoins an unformed vegetated road reserve to the north and as such the dwelling located on No.11 Murphys Road is the only residence impacted upon.

To vary the building envelope the applicant has demonstrated achieving the following performance criteria for the assessment of the building envelope.

Amenity and Character	Assessment
Setbacks that are progressively increased as wall heights increase to reduce bulk and overshadowing while maintaining adequate daylight and sunlight.	The proposed development does not increase setbacks as height increases, rather the development provides a variation for the entire length of the building with side setbacks being 6.8, 5.6, 5.0, 4.8 and 3.6. This provides a reduction in the bulk of the building to adjoining sites and reduced the shadow impacts to the neighbouring dwelling. Satisfies Performance Criteria.
Building siting and height that are related to land form, with minimal cut and fill.	The site is level and the earthworks do not exacerbate any building envelope non compliance. Satisfies Performance Criteria.
Building forms that enable a sharing of views with neighbours	Proposal does not obstruct neighbour views. Satisfies Performance Criteria.
Building bulk that is generally distributed to reduce impacts to the neighbours and the public street.	This is achieved by an 8.0 metre front setback and the variations through the side setbacks, reduce the bulk of the development to both the streetscape and neighbouring dwelling. Satisfies Performance Criteria.

<p>Building height similar to others in the street, with higher buildings out of direct view from the street.</p>	<p>Proposal is similar in height to No.7 Murphys Road and No.1-3 Murphys Road. There are other older developments in the street of significant height. The height complies with the LEP requirements for the site. There are no taller buildings to be placed out of direct view from the street. Satisfies Performance Criteria.</p>
<p>Boundary walls limited in length and height to reduce impact on neighbours</p>	<p>Proposal does not include boundary walls. Satisfies Performance Criteria.</p>
<p>Building to the boundary which maximises privacy.</p>	<p>Proposal does not building to boundary. Satisfies Performance Criteria.</p>
<p>Adequate separation between facing dwellings for privacy.</p>	<p>The only adjoining dwelling is located on No.11 Murphys Road. The dwelling is located towards the eastern boundary and is provided separation from the proposed development with setbacks of 6.1, 5.0 and 3.0 metres for the length of the wall. This separation and level variation reduces privacy impacts. Satisfies Performance Criteria.</p>

The proposed design is considered to achieve a good urban design outcome for the site and given the separation of the development from adjoining residential development the proposed building envelope is considered to be acceptable.

Building Line Variation to Second Road Frontage

The subject land has a primary road frontage to Murphys Road for which the development has been designed with an 8.0 metre setback. The second frontage is to the unformed road reserve on the northern side of the allotment. The proposal is to vary this setback as the building includes screens and awnings to 2.7 metres instead of the required 3.0 metres.

Council's Building Inspector has assessed the proposed building line variation and raises no objection. Council's Traffic Engineer has also advised that the encroachment to the road reserve is not an issue as it is unlikely to be built in any form. In the event that Council closes this road in the future for development purposes the proposal and the building line variation would not limit the development of land to the north.

Shadow Impacts

The subject land has an east west orientation that results in the property to the south being impacted upon by shadow from the proposed development. The mid winter shadow impacts on the property to the south through out the day. The shadow moves across the site with the eastern boundary and existing dwelling being afforded sunlight and day light in part through to 12.00 noon, after which the shadow moves east and the Murphys Road western frontage and garden receive sunlight.

The requirement in DCP 6 is that sunlight to the principal area of ground level open space not be reduced to less than two hours between 9.00am and 3.00pm on June 21.

The adjoining property receives the requirement of 2 hours over the day with the shadow moving through to different section of the southern property.

The proposed development reduces shadow impacts by being setback 8.0 metres from Murphys Road. It is not considered that there are any alternative design measures that could remedy the orientation of the blocks, and achieve the intended density of development.

Development Control Plan No.39 - Energy Efficient Housing

The applicant has submitted Nathers Certificates for the proposed multi dwelling housing development and meets the 3.5 star and higher rating for each dwelling.

Development Control Plan No.43 - Kingscliff

The subject land is in the Kingscliff North Precinct. The precinct objectives are:

- Develop the precinct primarily as a residential area, with pedestrian access to neighbourhood shops;
- Improve pedestrian and visual linkages between residential areas and the beach;
- Facilitate the development of Marine Parade as a medium density housing area with a distinctive building aesthetic which reflects the coastal location and improves the streetscape quality;
- Facilitate the gradual development of Kingscliff and Pearl Streets for medium density housing which improves streetscape quality and respects the dominantly low key residential character of these streets;
- Retain the low key residential character of land west of Kingscliff Street.

There are no specific strategic objectives for the Murphys Road precinct. The subject land is identified as being a Type 3 Building type, which is the building design type that the applicant has lodged with this application.

The provisions of DCP43 are considered to have been satisfied.

Development Control Plan No.47 - Cut and Fill

DCP 47 limits depth of cut and fill to no more than one metre. The proposed development exceeds this with a basement. The applicant has submitted the required management plans that have been assessed by Council's Infrastructure and Planning Engineer. The proposed development is able to be condition to meet Council's requirements.

Development Control Plan No.51 - Tweed Coast Strategy

The subject land is in the area affected by DCP 51. The Plan sets objectives in relation to future development and public services and design principles. The proposed development does not require further assessment under this DCP.

Draft Development Control Plan No.48 - Tweed Coast Building Heights

The draft plan nominates 9 metres as the height for three storey residential development. A further two metres can be provided for the roof design. The proposed development when measured from the underside of the top most ceiling to the finished ground level would comply with the nine metres. The development is a further two metres in height due to the roof design and access to a roof deck. The proposal is not in conflict with the provisions of the draft plan.

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

Coastal Policy

The subject land is affected by the NSW Coastal Policy. The policy contains strategic objectives including that beaches and waterfront open space will be protected from overshadowing. This aspect of the development has been assessed and it is considered that the proposed development is not in conflict with the policy.

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

Streetscape

The Murphy's Road streetscape is a combination of multi dwelling housing and single dwelling houses. The streetscape is changing with redevelopment of sites in accordance with the identified residential density in the precinct. The impact of the proposed development on the streetscape is significant in that it will replace older structures with a modern development of high architectural design.

Residential Design

The residential design is considered to be of a high standard and utilises the attributes of the site and Council's controls to maximise the residential units. This results in a variation to the building envelope that has been assessed in this report. The variation to the building envelope is considered to be acceptable as a good urban design outcome is achieved with the building providing variation on side setbacks and the building line to reduce the bulk and scale of the development.

Shadow Impacts and Amenity

The proposed development results in shadow impacts to the adjoining residence due to the orientation of the land. The shadow impacts have been assessed and it is considered that the adjoining land achieves the amount of daylight and sunlight hours as provided for in DCP 6.

In redeveloping the land along Murphys Road to reach the intended medium density precinct, property on the southern side of any lot will be impacted upon by shadow. The proposal has attempted to reduce this impact by setting the building back to 8.0 metres from Murphys Road instead of the 6.0 metre standard.

As the proposal results in shadow impacts to the coastal reserve the applicant lodged a SEPP1 submission that has been addressed in this report. The application was also referred to the NSW Coastal Council (when still existed) and the comments provided suggested that the building should be setback as far as possible from the eastern boundary. To achieve the required design principles the architects have designed the building to have a reduced impact to the public space, being the Murphys Road frontage and reduced shadow impact to the adjoining dwelling house.

Maintaining a reasonable amenity to the adjoining residence is considered to be of more significance than reducing the shadow impacts to the coastal reserve as the width of vegetation in this section substantial.

Local Road Network

The proposed development will require the formation of the Murphys Road frontage in accordance with Council's Engineers requirements. Council's Traffic Engineer has advised that the unformed road reserve is unlikely to be formed in the future and may be closed in the future for development.

Coastal Reserve Access

The subject land joins the coastal reserve and as this area has not as yet formalised the pedestrian north south links for residences, it is considered that the proposal should be limited with no access to the east until such time that the pedestrian links are formalised.

This is to prevent erosion and impacts on the coastal vegetation area. The Department of Lands provided comment on the development application. A number of limitations have been identified to ensure that the development does not impact on the coastal reserve.

(c) Suitability of the site for the development

Coastal Erosion

The subject land was identified as being affected by Coastal Erosion under Draft DCP 8 - Coastal Hazards. The applicant has submitted an engineers report addressing this hazard and foundation design to ensure coastal erosion issues in the future do not impact on the structure.

Council's Water Unit Manager has assessed this issue with the proposal and advises that the setback adopted on other developments along Murphys Road should apply. The proposal is the same setback as No.7 Murphys Road. Conditions would need to be imposed to ensure the appropriate foundation design is adopted.

Bushfire Hazard

The proposed development was referred to the local NSW Rural Fire Services for comment. A detailed response was provided with conditions in relation to the construction methods and site management to ensure the issue of bushfire hazard is managed. The applicant has reviewed these requirements and is satisfied that they can be achieved during the construction of the proposed development.

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

The proposed development was advertised for a two week period, during which two submission were received. The following table addresses the issues raised in the submissions.

Issue	Comment	Assessment
Vehicle Access	Concern was raised that the vehicle access should be on the northern side of the lot or off Council's unformed road reserve.	Council does not intend to form the unformed road reserve and as such the proposed development is to gain access from Murphys Road. It is not considered that a conflict will be created between the proposed driveway and property to the south. The proposal does not warrant refusal for this issue.
Visitor Parking	Concern was raised that there is no visitor car parking.	The proposed development complies with the on site car parking requirements. The proposal does not warrant refusal for this issue.
During Construction	Concern was raised that during construction the excavation may effect the adjoining buildings. Also concern was raised in relation to dust impacts during construction to other residences.	There are a number of conditions recommended that address issues of impacts to adjoining properties during construction. The proposal does not warrant refusal for this issue.
Shadow Impacts	Concern was raised that the proposed development will result in shadow impacts to the southern properties during winter.	The proposed development does result in shadow impacts to the southern property and these have been assessed in the DCP 6 section of this report. The proposal has been designed to reduce these amenity impacts however the orientation of the lot results in shadow impacts.

		<p>While this issue is considered to be valid the proposal meets Council's requirements in relation to daylight hours.</p> <p>The proposal does not warrant refusal for this issue.</p>
Threatened Species	<p>Concern was raised that the unformed road reserve and crown reserve to the east do contained threatened species and that mitigation measures will be required to prevent the development from impacting on these adjoining property areas.</p>	<p>The proposed development will be required to be contained wholly on the subject land. During construction all materials and machinery will be required to be kept on the subject land. Conditions will be imposed to ensure the vegetation on the adjoining road reserve is not impacted upon during construction.</p> <p>The proposal does not warrant refusal for this issue.</p>

State Government Agency Comments

- Coastal Council

Comments were provided and it was highlighted that Council needs to considered the Coastal Policy when assessing the proposed development. Also it was raised that the proposed development should be sufficiently setback from the coastal reserve.

- Department of Infrastructure Planning and Natural Resources

DIPNR provided comments on the coastal hazard issue and the Crown reserve. Council's Water Unit Manager when assessing the coastal hazards considered the comments made.

- NSW Rural Fire Service

The Local office provided specific construction requirements for the development application that have been incorporated into the recommended conditions.

(e) Public interest

The proposed development is not considered to be in conflict with Council's intended development for this precinct. It is considered that the proposed redevelopment is not in conflict with the general public interest, however it is noted that the adjoining property owners will experience changes through the redevelopment of the site.

Conditions are recommended to reduce and management impact that may arise during the construction of the proposal.

OPTIONS:

1. Approve the proposed development in accordance with the recommendation.
2. Refuse the development application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

In the event that the applicant is not satisfied with the determination they have a right of appeal in the NSW Land and Environment Court.

POLICY IMPLICATIONS:

The proposed development does not raise policy implications for Council.

CONCLUSION:

The proposed development seeks to vary the building envelope for the site. However it is considered that the extent of the variation can be supported due to the site adjoining the coastal reserve, an unformed road reserve and being opposite the sporting fields. The subject land adjoins one lot with a dwelling and the impact on that site has been considered in the design. It is considered that the proposal achieves a maximum use of the medium density site and achieves a good urban design outcome.

UNDER SEPARATE COVER:

Nil.

5 [DS] Draft Management Plan - Building Services Unit Fees

ORIGIN:

Building Services

FILE NO: GA12/6 Pt1

SUMMARY OF REPORT:

A submission has been received from Mark Stapleton and Associates Pty Ltd (MSA) requesting Council to increase the construction certificate fees to industry levels prior to adopting the general rate for 2004/2005.

This report reviews the historical background to this matter and responds to the issues raised.

RECOMMENDATION:

That Council advises Mark Stapleton and Associates Pty Ltd that their submission has been reviewed and that Council is satisfied that Building Services Unit fees and charges proposed in the 2004/2005 Management Plan Budget are equitable and reflect Council's costs in providing these Services.

REPORT:

BACKGROUND:

A request has been received from Mark Stapleton and Associates Pty Ltd, Accredited Building Certifiers and Consultants as follows: -

"I refer to the proposed fees and charges to be levied for the year 2004-2005 and provide comment in regard to the fees proposed by the Building Services Unit.

Firstly, it should be noted that the estimate yield for the Building Unit for this period is approximately \$490,000. This yield does not cover the wages of the Building Surveyors in the unit, let alone the costs like cars and administration staff. Given the Council's proposal to have the general rates rise at some 7%, cost recovery for individual Council units should be looked at in more detail.

The proposed fees and charges again quote a figure of \$110.00 for Council's construction approval of a dwelling of any value, which includes Council's recording and archiving fee.

Following is a step by step process from when the application is lodged with Council until it gains approval and details just how many people are involved in the process.

- 1. The application is received and receipted at the offices of Tweed Shire Council.*
- 2. If the application is lodged at the Tweed Heads Office, it is sent to the Murwillumbah office by courier.*
- 3. The file is transferred to the Records Department for registration and file creation.*
- 4. The file is sent to the Building Unit and booked to the Area Team Meeting.*
- 5. File goes to the Area Team meeting for consideration with representatives of Building Control, Development Control and Engineering Services.*
- 6. File goes back to the administration staff for allocation to the Building Surveyor and registration.*
- 7. Registered on data base. Send out letter if further information is required.*
- 8. File given to Building Surveyors for assessment and certification.*
- 9. File returned to administration staff for typing of approval.*

10. *File given back to Building Surveyor for signature on Construction Certificate.*
11. *File back to administration staff for issuing of approval.*

All of the above is carried out for a fee of \$110.00, which also has to include a 10 year responsibility for the project.

In comparison to the above, Council charges \$110.00 for an energy assessment check, which takes approximately half an hour to complete.

At a time when Council is struggling to maintain it's services and needs to apply to the Minister for an above average increase in its rates, the Council should be looking to increase revenue from this department without it being subsidised from the General Fund.

I have listed below some of the Construction Certificate charges from adjoining Councils who provide the same service, being the building approval and 6 inspections.

Council Area	Cost(\$)
<i>Tweed Shire</i>	<i>590.00</i>
<i>Byron Shire</i>	<i>1,500.00-2,000.00</i>
<i>Ballina Shire</i>	<i>880.00</i>
<i>Coffs Harbour</i>	<i>876.00</i>
<i>Gold Coast</i>	<i>1,032.00</i>

As can be seen from the above, the fees charged by Tweed Shire Council is considerably less than those of neighbouring Shires carrying out the same services.

We formally request Council to consider levying Construction Certificate fees to industry standards, prior to increasing the general rates.

Should you require any further information, please do not hesitate to contact me at your convenience."

Council's Corporate Performance Audit Officer has requested that this request be reported to Council.

Historical Background

An extended history exists involving Council receiving submissions from Mark Stapleton and Associates Pty Ltd in relation to Council's Draft Management Plan proposed Building Services Unit fees when such are advertised for comment each year, and prior to adoption by Council.

The matters raised in previous submissions and Council's responses are important in gaining an understanding of the issues involved, following the introduction of the Environmental Planning and Assessment (Amendment) Act 1979 on 1 July 1998. Copies of some relevant correspondence together with a copy of a report submitted to Council on 1 July 1998 relating to this issue, are attached to this Business Paper for Council's information as follows: -

Attachment 1

Report to Council on 1 July 1998 entitled "Revision of Building Services Unit Fees to respond to the Environmental Planning and Assessment (Amendment) Act, 1979".

Attachment 2

Letter from Council to the members of the Building Industry in general (including MSA) dated 19 February 1999 advising details of the introduction of the new legislation and Council's proposed response.

Attachment 3

Letter from the Australian Competition and Consumer Commission to Council dated 23 March 1999 following a complaint made by MSA against Council relating to possible contraventions of the Trade Practices Act 1974.

Attachment 4

Letter from Council to the Australian Competition and Consumer Commission dated 15 April 1999 responding to the issues made by MSA.

Attachment 5

Letter from the Australian Competition and Consumer Commission dated 10 September 1999 advising that the Commission has considered the issues raised and that there appears to be no contravention of the Trade Practices Act 1974.

Attachment 6

Letter from MSA to Council dated 4 June 2001 contesting the Draft Management Plan 2001/2004 Building Services Unit fees alleging subsidisation from the General Fund to minimise private sector competition and anti competitive behaviour.

Attachment 7

Letter from Council to MSA dated 16 July 2001 responding to allegations and justifying proposed fees.

Attachment 8

Letter from MSA to Council dated 27 May 2003 contesting the Draft Budget 2003/2004 Building Services Unit proposed fees and alleging subsidisation from the General Fund.

Attachment 9

Letter from Council to MSA dated 20 June 2003 responding to issues raised and justifying proposed fees.

The above comprises a portion of the correspondence contained on Council's files relating to this matter, but identify MSA's concerns.

The issues raised by MSA focus on their belief that Council's Building Services Unit is being subsidised from General Fund resources and that the pricing of Council's Building Services Unit fees are structured in an anti competitive manner to disadvantage their business.

It is considered that the responses to MSA and the Australian Competition and Consumer Commission in the past vindicate Council's previous actions in relation to the fee structure established, and this is reinforced by the advice from the Australian Competition and Consumer Commission that there appears to be no contravention of the Trade Practices Act 1974 and no further action is proposed by the Commission in this regard.

Current Submission - Building Unit Income

The current submission relates to the proposed Building Services Unit fees and charges for the forthcoming 2004-2005 year.

The information quoted by MSA does not accurately identify the situation when it is stated that *"the estimate yield for the Building Unit for this period is approximately \$490,000"*.

It would appear that this figure of \$490,000 has probably been sourced by MSA from the Part E - Revenue Policy component of the Management Plan which deals with fees and charges and addressing only items 36 to 65 inclusive which generally relates to Building Services Unit activities.

Council is advised that in addition to these fees, Council's Building Services Unit also receives substantial fee income from Item 20 Development Application Fees, identified in Part E - Revenue Policy.

These fees are transferred to the Building Services Unit from the Development Assessment Unit and relate to fees paid in regard to the Development Application which are assessed and determined by the Building Services Unit. For the ten month period from 1 July 2003 until 30 April 2004 this income totalled \$463,933.60.

The actual financial situation relating to Council's Building Services Unit, as detailed in the Tweed Shire Council Draft 2004/2005 Budget for Environment, Natural and Built Environment, Building Control C019, is that for 2004/2005, the direct cost income estimate will be \$978,300 while the direct cost expenditure estimate will be \$968,950. This effectively provides for a small credit balance prior to the deduction of Council's internal charges of \$604,804 which are basically internal activity based costs levied by Council's Financial Unit to offset costs such as Information Technology, Financial Support with receipting etc, Human Resources, Corporate Services, Environment and Community Services Support Staff and Civic Building Costs.

Current Submission - Construction Certificate Fees

The fee of \$110 for Council's Construction Certificate application and approval process is considered appropriate and adequately covers Council's costs involved in the process.

This issue has previously been raised and responded to, and a detailed explanation for this costing is contained in Attachment 7 to this report.

In essence, the eleven steps identified by MSA for Construction Certificate processing are basically duplicated resulting from the Development Application processes, which are carried out concurrently by Council, in discharging its mandatory regulatory role in assessing Development Applications.

Any comparison of this process with an energy assessment check lacks purpose as the objectives, processes, staff resources and time involved are not comparable. The \$110 fee involved in the energy assessment check is considered to reflect Council's staff time and resources involved.

The claim of subsidisation of the Building Services Unit from the General Fund is refuted as detailed previously in this report, and more detailed explanation is contained in the Attachments to this report, particularly Attachment 4, 7 and 9.

The comparison with other Council's fees for Construction Certificates has been previously raised and responded to by Council (See Attachment 7 and 9).

Enquiry to other Council's has revealed that Construction Certificate fees for building proposals other than single dwelling houses are reasonably consistent with those charged by Tweed Shire Council. The major issue of concern for MSA appears to be the fact that Tweed Shire Council charges a \$110 flat fee for any Construction Certificate relating to a new dwelling, where as other Council's charge an incremental fee based on the construction cost of the proposal. As identified in Attachment 7, it is not considered necessary or justified to charge a variable fee based on an increasing construction cost value as assessment times and costs are basically fairly constant and there would be higher administration costs with variable fees.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The above report details and attachments address all of the issues raised by MSA in their submission.

The issues raised are long standing dispute matters between MSA and Council's Building Services Unit and have been previously addressed on numerous occasions. The issues raised by MSA have been reviewed by the Australian Competition. Council's actions have been endorsed by this Independent review authority.

In these circumstances it is recommended that Council advise MSA that their submission has been reviewed and that Council is satisfied that Building Services Unit fees and charges proposed in the 2004/2005 Management Plan Budget are considered to be equitable and fairly reflect and recoup Council's costs in providing Services.

UNDER SEPARATE COVER:

1. Report to Council on 1 July 1998 entitled "Revision of Building Services Unit Fees to respond to the Environmental Planning and Assessment (Amendment) Act, 1979".
2. Letter from Council to the members of the Building Industry in general (including MSA) dated 19 February 1999 advising details of the introduction of the new legislation and Council's proposed response.
3. Letter from the Australian Competition and Consumer Commission to Council dated 23 March 1999 following a complaint made by MSA against Council relating to possible contraventions of the Trade Practices Act 1974.
4. Letter from Council to the Australian Competition and Consumer Commission dated 15 April 1999 responding to the issues made by MSA.
5. Letter from the Australian Competition and Consumer Commission dated 10 September 1999 advising that the Commission has considered the issues raised and that there appears to be no contravention of the Trade Practices Act 1974.
6. Letter from MSA to Council dated 4 June 2001 contesting the Draft Management Plan 2001/2004 Building Services Unit fees alleging subsidisation from the General Fund to minimise private sector competition and anti competitive behaviour.

7. Letter from Council to MSA dated 16 July 2001 responding to allegations and justifying proposed fees.
 8. Letter from MSA to Council dated 27 May 2003 contesting the Draft Budget 2003/2004 Building Services Unit proposed fees and alleging subsidisation from the General Fund.
 9. Letter from Council to MSA dated 20 June 2003 responding to issues raised and justifying proposed fees.
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6 [DS] Draft Tweed Local Environmental Plan 2000, Amendment No 52 - Multi-Dwelling Houses in Zones 3(a) and 3(b)

ORIGIN:

Strategic Town Planning

FILE NO: GT1/LEP/2000/52

SUMMARY OF REPORT:

Council resolved on Wednesday 4th February 2004, to adopt Tweed LEP 2000 Amendment No 52 and to forward the Plan to the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) to make the Plan in accordance with Section 70 of the Environmental Planning and Assessment Act 1979.

The Parliamentary Counsel's Office considers the draft Amendment too subjective to be effectively implemented. They suggest that greater detail, particularly the listing of the streets affected by the provisions of the Plan, need to be provided making the Plan clear and equitable.

In light of this it is recommended that the adopted draft Tweed LEP 2000 Amendment No 52 be amended to provide more detail by listing the streets affected by the provisions of the Plan; and by providing a clearer definition of acceptable multi-dwelling development in zones 3(a) and 3(b) that ensures the commercial use of the land and the objectives of the zones are not undermined.

It is considered that the proposed LEP, as amended, can be forwarded to the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) to make the Plan.

RECOMMENDATION:

That Council:

- (a) Amends Clause 4 of the adopted draft Tweed Local Environmental Plan 2000 Amendment No 52 by omitting the following:

"Tweed Local Environmental Plan 2000 is amended by omitting the current reference to multi-dwelling housing in item 4 of the Land Use Table for zones 3(a) and 3(b) and inserting in its place the following:

Multi-dwelling housing (unless attached to shops, commercial premises or other non-residential development and provided that no residential dwelling constructed at ground level fronts a primary and/or secondary street having a streetscape consistent with that of a commercial district)”

And replacing it with the following:

“Tweed Local Environmental Plan 2000 is amended as set out in Schedule 1.”

- (b) Inserts Schedule 1 into draft Tweed Local Environmental Plan 2000 Amendment No 52 as follows:

"Schedule 1 Amendments

[1] Clause 11 The Zones

Omit “(unless located above non-residential ground floor level development)” wherever occurring in the matter relating to multi-dwelling housing in Item 4 for Zone 3(a) and 3(b) in the Table to the clause and insert in its place the following:

“(unless referred to in clause 51B)”

[2] Clause 51B

Insert after clause 51A:

51B Multi-dwelling housing in Zone 3(a) and 3(b)

(1) Objective

The provisions of this clause allow multi-dwelling housing on land zoned 3(a) or 3(b) provided that the multi-dwelling housing meets certain criteria to ensure the development does not undermine the commercial use of the land and the objectives of the zones.

(2) This clause applies to land within zones 3(a) and 3(b)

(3) Despite the Table to clause 11, a person may, with the consent of the Council, carry out development on land within zone 3(a) or 3(b) for the purpose of multi-dwelling housing, subject to subclause (4).

(4) The multi-dwelling housing on land to which this clause applies:

- a. *Must be attached to shops, commercial premises or other non-residential development on the same site, and*
- b. *If located at ground level or within 2.4 metres of ground level no dwelling or car parking area is permitted to occupy frontage of any street listed in schedule 9 (Commercial Streets).*

[3] Schedule 9

Insert after Schedule 8

“Schedule 9 (Commercial Streets)

<i>(Clause 51B)</i>	<i>Simpson Drive</i>	<i>Bilambil Heights</i>
	<i>Hastings Road</i>	<i>Bogangar</i>
	<i>Rosewood Avenue</i>	<i>Bogangar</i>
	<i>Tweed Coast Road</i>	<i>Bogangar</i>
	<i>Palm Avenue</i>	<i>Cabarita Beach</i>
	<i>Pandanus Parade</i>	<i>Cabarita Beach</i>
	<i>Marine Parade</i>	<i>Fingal Head</i>
	<i>Prince Street</i>	<i>Fingal Head</i>
	<i>Marine Parade</i>	<i>Kingscliff</i>
	<i>Pearl Street</i>	<i>Kingscliff</i>
	<i>Seaview Street</i>	<i>Kingscliff</i>
	<i>Sutherland Street</i>	<i>Kingscliff</i>
	<i>Turnock Street</i>	<i>Kingscliff</i>
	<i>Brisbane Street</i>	<i>Murwillumbah</i>
	<i>Commercial Road</i>	<i>Murwillumbah</i>
	<i>King Street</i>	<i>Murwillumbah</i>
	<i>Murwillumbah Street</i>	<i>Murwillumbah</i>
	<i>Queen Street</i>	<i>Murwillumbah</i>
	<i>Queensland Road</i>	<i>Murwillumbah</i>
	<i>Wharf Street</i>	<i>Murwillumbah</i>
	<i>Wollumbin Street</i>	<i>Murwillumbah</i>
	<i>Coronation Avenue</i>	<i>Pottsville</i>
	<i>Elisabeth Street</i>	<i>Pottsville</i>
	<i>Overall Drive</i>	<i>Pottsville</i>

<i>Philip Street</i>	<i>Pottsville</i>
<i>Banks Avenue</i>	<i>Tweed Heads</i>
<i>Bay Street</i>	<i>Tweed Heads</i>
<i>Beryl Street</i>	<i>Tweed Heads</i>
<i>Boyd Street</i>	<i>Tweed Heads</i>
<i>Brett Street</i>	<i>Tweed Heads</i>
<i>Ducat Street</i>	<i>Tweed Heads</i>
<i>Enid Street</i>	<i>Tweed Heads</i>
<i>Florence Street</i>	<i>Tweed Heads</i>
<i>Frances Street</i>	<i>Tweed Heads</i>
<i>Keith Compton Drive</i>	<i>Tweed Heads</i>
<i>Recreation Street</i>	<i>Tweed Heads</i>
<i>Sands Street</i>	<i>Tweed Heads</i>
<i>Stuart Street</i>	<i>Tweed Heads</i>
<i>Terranora Terrace</i>	<i>Tweed Heads</i>
<i>Wharf Street</i>	<i>Tweed Heads</i>
<i>Kennedy Drive</i>	<i>Tweed Heads/Tweed Heads West</i>
<i>Dry Dock Road</i>	<i>Tweed Heads South</i>
<i>Kirkwood Road</i>	<i>Tweed Heads South</i>
<i>Minjungbal drive</i>	<i>Tweed Heads South</i>
<i>Scenic Drive</i>	<i>Tweed Heads West</i>
<i>Gull Place</i>	<i>Tweed Heads West</i>

- (c) Forwards the amended draft Local Environmental Plan 2000, Amendment No. 52, to the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) and requests the Minister to make the Plan in accordance with section 70 of the Environmental Planning and Assessment Act 1979.

REPORT:

Introduction

At its Ordinary Meeting of 20th March 2002 Council, pursuant to Section 54 of the Environmental Planning and Assessment Act 1979, resolved to prepare a draft Local Environmental Plan Amendment – Housekeeping Stage 2. At the time of Council's resolution the draft Housekeeping LEP Amendment included approximately 14 separate housekeeping matters, one of which having issues relating to multi-dwelling houses in zones 3(a) and 3(b).

Background

Council, pursuant to the current provisions of Tweed LEP 2000, cannot, grant approval for multi-dwelling housing on land zoned 3(a) Sub-regional Business or 3(b) General Business unless it is located above non-residential ground floor level development effectively requiring the whole ground floor of any site to be developed for shops, commercial premises etc.

Tweed LEP 1987 provided that within zones 3(a) and 3(b) residential flat buildings were prohibited "other than those attached to shops or commercial premises". Upon reflection, the repealed LEP provided better urban design outcomes and flexible merit based assessment on a case-by-case basis.

The purpose of the Amendment is to allow, with the consent of Tweed Shire Council, the development of multi-dwelling housing within zone 3(a) or 3(b) provided that:

- It is attached to shops, commercial premises or other non-residential development; and
- Residential dwellings at the ground floor level do not front a primary and/or secondary street having a streetscape consistent with that of a commercial district.

The intention of the Amendment is to allow multi-dwelling development on the ground floor level where commercial sites adjoin residential areas and result in a blending of landuses in these fringe areas to provide for better urban design.

Council last resolved on Wednesday 4th February 2004, to adopt the Plan and to forward it to the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) and request that the Plan be made in accordance with Section 70 of the Environmental Planning and Assessment Act 1979.

Making of the Plan

The New South Wales Parliamentary Counsel's Office working on behalf of the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) consider the draft Amendment is too subjective to be effectively implemented.

The Parliamentary Counsel submits that the Amendment to be clear should provide greater detail. In particular the Amendment should list or identify which streets the provisions of the Plan would affect and in what way multi-dwelling housing should address these streets. In doing so this would ensure the community is fully aware of where and of what form multi-dwelling housing is permissible in Zones 3(a) and 3(b).

Recommendation

Following the advice received from the New South Wales Parliamentary Counsel's Office it is recommended that draft Tweed LEP 2000 Amendment No 52 be amended to provide more detail by listing the streets affected by the provisions of the Plan; and providing a clearer definition of acceptable multi-dwelling development with respect to zones 3(a) and 3(b) that ensure the commercial use of the land and the objectives of the zones are not undermined.

It is recommended that the current Item 4 of the Land Use table of Tweed LEP 2000 for Zones 3(a) and 3(b) with reference to multi-dwelling housing be amended to omit "*unless located above non-residential ground floor level development*", and that a separate clause be inserted after clause 51A as follows:

"51B Multi-dwelling housing in Zone 3(a) and 3(b)

(1) *Objective*

The provisions of this clause allow multi-dwelling housing on land zoned 3(a) or 3(b) provided that the multi-dwelling housing meets certain criteria to ensure the development does not undermine the commercial use of the land and the objectives of the zones.

(2) *This clause applies to land within zones 3(a) and 3(b).*

(3) *Despite the Table to clause 11, a person may, with the consent of the Council, carry out development on land within zone 3(a) or 3(b) for the purpose of multi-dwelling housing, subject to subclause (4).*

(4) *The multi-dwelling housing on land to which this clause applies:*

(a) *Must be attached to shops, commercial premises or other non-residential development on the same site, and*

- (b) *If located at ground level or within 2.4 metres of ground level no dwelling or car parking area is permitted to occupy frontage of any street listed in schedule 9 (Commercial Streets)."*

It is recommended that Schedule 9 (Commercial Streets) be inserted in Tweed LEP 2000 as follows:

"Schedule 9 (Commercial Streets)

(Clause 51B)

<i>Simpson Drive</i>	<i>Bilambil Heights</i>
<i>Hastings Road</i>	<i>Bogangar</i>
<i>Rosewood Avenue</i>	<i>Bogangar</i>
<i>Tweed Coast Road</i>	<i>Bogangar</i>
<i>Palm Avenue</i>	<i>Cabarita Beach</i>
<i>Pandanus Parade</i>	<i>Cabarita Beach</i>
<i>Marine Parade</i>	<i>Fingal Head</i>
<i>Prince Street</i>	<i>Fingal Head</i>
<i>Marine Parade</i>	<i>Kingscliff</i>
<i>Pearl Street</i>	<i>Kingscliff</i>
<i>Seaview Street</i>	<i>Kingscliff</i>
<i>Sutherland Street</i>	<i>Kingscliff</i>
<i>Turnock Street</i>	<i>Kingscliff</i>
<i>Brisbane Street</i>	<i>Murwillumbah</i>
<i>Commercial Road</i>	<i>Murwillumbah</i>
<i>King Street</i>	<i>Murwillumbah</i>
<i>Murwillumbah Street</i>	<i>Murwillumbah</i>
<i>Queen Street</i>	<i>Murwillumbah</i>
<i>Queensland Road</i>	<i>Murwillumbah</i>
<i>Wharf Street</i>	<i>Murwillumbah</i>
<i>Wollumbin Street</i>	<i>Murwillumbah</i>
<i>Coronation Avenue</i>	<i>Pottsville</i>
<i>Elizabeth Street</i>	<i>Pottsville</i>
<i>Overall Drive</i>	<i>Pottsville</i>
<i>Philip Street</i>	<i>Pottsville</i>
<i>Banks Avenue</i>	<i>Tweed Heads</i>
<i>Bay Street</i>	<i>Tweed Heads</i>
<i>Beryl Street</i>	<i>Tweed Heads</i>
<i>Boyd Street</i>	<i>Tweed Heads</i>
<i>Brett Street</i>	<i>Tweed Heads</i>
<i>Ducat Street</i>	<i>Tweed Heads</i>
<i>Enid Street</i>	<i>Tweed Heads</i>
<i>Florence Street</i>	<i>Tweed Heads</i>
<i>Frances Street</i>	<i>Tweed Heads</i>
<i>Keith Compton Drive</i>	<i>Tweed Heads</i>
<i>Recreation Street</i>	<i>Tweed Heads</i>
<i>Sands Street</i>	<i>Tweed Heads</i>
<i>Stuart Street</i>	<i>Tweed Heads</i>
<i>Terranora Terrace</i>	<i>Tweed Heads</i>

*Wharf Street
Kennedy Drive

Dry Dock Road
Kirkwood Road
Minjungbal Drive
Gull Place
Scenic Drive*

*Tweed Heads
Tweed Heads /
Tweed Heads West
Tweed Heads South
Tweed Heads South
Tweed Heads South
Tweed Heads West
Tweed Heads West"*

Attached for your information (Appendix 1) are maps showing the location of the streets affected by the proposed Amendment.

CONCLUSION

The adoption of the draft Plan, as amended, will provide for better urban design and flexible merit based assessment on a case-by-case basis. The provisions will permit, with the consent of Council, the development of multi-dwelling housing on the ground floor level in zones 3(a) Sub-regional Business and 3(b) General Business.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

1. Draft TLEP 2000, Amendment No 52, maps of affected streets.
-

7 [DS] SALT External Sewer Rising Main - Acceptance of a Bond as Security for Uncompleted Works

ORIGIN:

Development Assessment

FILE NO: DA02/1422 Pt27

SUMMARY OF REPORT:

At its meeting on the 23rd April 2003 Council resolved to approve Development Application DA02/1422 being for a 473 lot subdivision known as the SALT development. Outfall sewerage reticulation from the development will be conveyed to the Kingscliff sewerage treatment plant via three separate rising mains. Two (2) of these rising mains have been recently constructed. The third is an older 150dia main which conveys effluent along Old Bogangar Road to the treatment plant.

The Director Engineering & Operations Division has advised that this 150dia main will require upgrading to a 375dia. sewer rising main in the near future to cater for the hydraulic load from the Casuarina Beach and the SALT developments. The Director has further advised that some capacity still exists in the 150dia. main but this capacity is limited to approximately a six(6) month life span.

To ensure that adequate sewerage infrastructure exists, a Part 5 application to upgrade the existing 150dia. sewer rising main to a 375dia. rising main has recently been approved.

The applicants for the SALT development have recently lodged the Subdivision Certificate for stages 1A1 and 1A2. The upgrade of the 150dia. rising main to a 375dia. main is a conditional requirement of DA02/1442.

To facilitate the issue of the Subdivision Certificate for stages 1A1 and 1A2 of the SALT development the applicants have requested that Council accept a bond valued at \$1,232,343.00 as security for the construction of the uncompleted 375dia sewer rising main.

Although bonding of uncompleted essential service infrastructure is not usually accepted, the Director Engineering & Operations Division has endorsed acceptance of this bond for the construction of the rising main as he considers that Council's exposure to risk in this situation to be minimal.

RECOMMENDATION:

That Council endorses the Applicants request to accept a bond for the uncompleted works as security for the construction of the 375dia. sewer rising main.

REPORT:

BACKGROUND:

At its meeting on the 23rd April 2003 Council resolved to approve Development Application DA02/1422 being for a 473 lot subdivision known as the SALT development. To provide outfall sewerage reticulation to the development a sewage rising main has been constructed from the SALT development to the intersection of Old Bogangar Road and Cudgen Road. This rising main is known as the SALT rising main. A regional pump station has also been constructed at the SALT development. At the time of drafting this report the pump station and SALT rising main have not been fully commissioned and accepted by Council.

The SALT sewage rising main connects to an existing 225dia. traversing Old Bogangar Road. This 225dia. main services the Casuarina Beach development and is known as the Casuarina Beach rising main. The Casuarina Beach rising main then discharges to a small pump station located at the northern end of Cudgen village. The transport system for sewerage from Casuarina and SALT is then pumped to the Kingscliff Sewerage treatment plant by this small pump station via a 150dia sewer rising main.

Consultation

The Director Engineering & Operations Division has advised that the existing transport system (150dia. sewer rising main) has adequate capacity to cater for the approved allotments in Casuarina Beach. These allotments are estimated to generate 394 ET.

Furthermore, the Director has advised that the existing load generated by Casuarina Beach is approximately 271 ET and therefore spare capacity is available to cater for some additional demand for a short period of time. This time period is estimated to be approximately six (6) months.

To ensure that adequate sewerage infrastructure exists a Part 5 application to upgrade the existing 150dia. sewer rising main to a 375dia. sewer rising main has recently been approved. This approval allows for the construction of the 375dia rising to the Kingscliff sewerage treatment plant via Old Bogangar Road. The Director Engineering & Operations Division has advised that this new main will adequately service the SALT and Casuarina Beach developments.

Bonding request

The applicants have advised that they intend to commence construction of the 375dia. sewer rising main within two weeks (2) and that the construction time for the main will be approximately ten (10) weeks.

The applicants for the SALT development have recently lodged the Subdivision Certificate for stages 1A1 and 1A2. The upgrade of the 150dia. rising main to a 375dia. main is a conditional requirement of DA02/1442.

To facilitate the issue of the Subdivision Certificate for stages 1A1 and 1A2 the applicants have requested that Council accept a bond as security for the construction of the uncompleted sewer rising main.

Although the bonding of uncompleted essential service infrastructure is not usually accepted, the Director Engineering & Operations Division has advised that the acceptance of a bond will expose Council to minimal risk given that the Part 5 approval for the rising main has been issued. Furthermore, engineering drawings for the construction of the rising main have been assessed and approved by Council officers.

The Director Engineering & Operations Division has therefore endorsed the acceptance of a bond as security for the uncompleted works. This bond is valued at \$1,232,343.00.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

Given the circumstances the acceptance of an uncompleted works bond to the value of \$1,232,343.00 to secure the construction costs associated with the 375dia sewer rising main is considered satisfactory. In the event of that the applicant cannot construct the rising main, Council would be well placed to "call up" the bond and construct the main. This construction could occur relatively quickly given that all necessary approvals are in place and that Council holds sufficient money to fully fund the construction costs.

Finally, the applicant will be lodging future Subdivision Certificates applications for stages 1A3, 2, 3, 4 and 5. If the 375dia. sewer rising main is not constructed when these applications are lodged, Council could legitimately refuse the applications.

UNDER SEPARATE COVER:

Nil.

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8 [DS] Draft Development Control Plan No 50 - Bogangar/Cabarita Beach Locality Plan

ORIGIN:

Strategic Town Planning

FILE NO: GT1/DCP/50

SUMMARY OF REPORT:

The Bogangar/Cabarita Beach Advisory Steering Committee has completed the preparation of a Locality Plan for Bogangar/Cabarita Beach. The Locality Plan has two main objectives:

1. Establishing a strategic planning framework for the locality; and
2. Introducing development controls for the study area to regulate local development.

The document is now ready to be placed on public exhibition. However, there are two elements that Council officers recommend amending due to the future planning implications for the area. The two issues are:

1. Development of Council owned land (car park) situated on Pandanus Parade.
2. Implementation of development controls to regulate both multiple dwelling units and tourist accommodation under the same consistent guidelines.

Both of these issues are discussed within the report. It is recommended that DCP 50 be amended accordingly and exhibited for public comment.

RECOMMENDATION:

That: -

1. The Draft Development Control Plan No 50 be amended in accordance with Option 4 of the report which includes provisions relating to the Pandanus Parade Precinct, and for the tourist accommodation development controls to be consistent with multi-dwelling unit controls.
2. The Draft Development Control Plan No 50 (as amended) be exhibited in accordance with Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Regulations.

REPORT:

Background

The Bogangar/Cabarita Beach Steering Committee was established to guide the development of a Development Control Plan for the designated study area of Bogangar and Cabarita Beach. The Committee has finalised a Locality Plan that provides for more than a traditional DCP and establishes a Planning Framework for the coordinated desirable future development in the area. The Plan establishes a framework to address infrastructure issues such as car parking, walkways/cycleways, foreshore improvements, traffic management and streetscape improvements. The Plan also provides traditional design guidelines and development control measures to be used in conjunction with other DCPs.

Issues

The document has been finalised by the Committee and is now presented to Council to enable the document to be placed on public exhibition. The document provides:

- A sound planning framework (preferred outcomes, objectives and policies);
- Development control provisions;
- Infrastructure management framework;
- A preferred future land use plan for its precincts.

The document provides a vision for the study area which is supported by a Structure Plan and Objectives. The study area has been divided into seven distinct Precincts, being:

1. Coastal Foreshore Precinct;
2. Residential Precinct A;
3. Residential Precinct B;
4. Pandanus Parade Precinct;
5. Tweed Coast Road Business Precinct;
6. Hastings Road Commercial Precinct.

Each of these Precincts has distinct Objectives, Policies and Preferred Outcomes. These elements help determine the preferred future land uses within each Precinct. The Precincts are also supported by Design Guidelines to obtain desirable residential and commercial development within the locality.

Two issues that require further consideration by Council are the Pandanus Parade Precinct and the design guidelines for tourist accommodation.

1. **Pandanus Parade Precinct** - the current Plan sets up a framework envisaging the area to be developed primarily for the purpose of a "village square" creating a focal point and central hub for local residents and tourists. It provides for limited mixed use development over part of the Precinct, and proposes to retain car parking. The main emphasis is to retain the majority of the land in public ownership for public purposes.

Given the prime focal location of the site it is considered there is an opportunity to use the site for more integrated mixed use development (for example, retail/commercial uses at ground level complemented by multi residential accommodation above). There is also potential for the area to be developed into a dynamic focal point for the village and the whole of the Tweed Coast. Public space to create a "village square" can be obtained by closing all or part of Pandanus Parade and designing a streetscape or mall plan to create a public focal point for the village. Areas adjoining the village square can be developed to complement the village square and enhance to the vibrancy and usage of the square.

It is acknowledged the Precinct should contain a public/community purpose to be utilised as a "village square". However, it is also considered that the Precinct has the ability to be designed to include mixed retail/residential development that will complement the vibrancy of the "village square". The other significant issue in the Precinct, car parking, can be incorporated by the provision of underground car parking. Car parking requirements can ensure the existing number of car parks is retained and additional parking is provided to accommodate any new development. Detailed urban design can also address other issues such as emergency vehicle access, surf club vehicle access, service vehicle access etc.

Providing for more integrated mixed use will ensure maximum use is made of a prime unique location. It is recommended that Council amends DCP 50 by incorporating the following changes:

1. Allowing mixed use development (retail/commercial on ground level and residential accommodation above) over all the allotments instead of restricting development to the front four allotments adjoining the foreshore Precinct.
2. Providing for the creation of a restricted pedestrian way along Pandanus Parade. This would involve closing all or part of Pandanus Parade to create an open mall. This would be supported by the preparation of a streetscape/village square urban design plan.
3. Providing the majority of car parking below ground.

- 2. Development Controls** - residential development controls within the DCP are currently restricted to multiple dwelling units. The DCP remains silent with respect to tourist accommodation development. Currently, Council has few controls regulating tourist accommodation. This makes it difficult for Council's Development Assessment Officers to assess such developments, and usually leads to a lot of debate and confusion when attempting to manage such development.

The issue of applying multi-dwelling unit development controls to tourist accommodation was discussed amongst the Committee. Whilst initially receiving support from some members of the Committee the concept was not adopted by the Committee for inclusion within the DCP. Adopting the same development controls for both multi-dwelling units and tourist accommodation has the following benefits:

- Provides consistency when applying uniform development controls to these two similar styles of development;
- Provides certainty to all concerned (developers, Council and general public);
- Establishes controls for Council officers providing guidelines upon which tourist accommodation development can be assessed;
- Establishes a degree of control to ensure development is consistent with the character and amenity of the area;
- Provides certainty to a desirable outcome for the area.

OPTIONS

The options available to Council include:

- Option 1: exhibit DCP 50 without any amendment.
- Option 2: exhibit DCP 50 by amending provisions relating to Pandanus Parade as referred to above.
- Option 3: exhibit DCP 50 by amending provisions relating to tourist accommodation development controls.
- Option 4: exhibit DCP 50 by amending provisions relating to the Pandanus Parade Precinct and include tourist accommodation development control, consistent with the multi-dwelling unit controls.

It is recommended that Option 4 be approved by Council.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

1. Draft DCP 50 - Locality Plan for Bogangar/Cabarita Beach
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REPORTS FROM EXECUTIVE MANAGER - OFFICE OF THE GENERAL MANAGER

9 [OGM] Sustainable Finances - Health Check Workshops

ORIGIN:

Administration Services

SUMMARY OF REPORT:

Local Government Managers Australia have advised Council that workshops have been organised for various Local Government areas at venues across the State to deal with "*Sustainable Finances - Health Check Workshops*". A workshop is scheduled to be held at Tweed Heads on Monday 5 July 2004.

RECOMMENDATION:

That Councillor(s) interested in attending the Workshop to be held at Tweed Heads on 5 July 2004 should advise Council's Manager Administration Services.

REPORT:

Local Government Managers Australia have advised Council that workshops have been organised for various Local Government areas at venues across the State to deal with "*Sustainable Finances - Health Check Workshops*". A workshop is scheduled to be held at Tweed Heads on Monday 5 July 2004.

Attached below is a copy of the flyer forwarded to Council for the information of Councillors and staff.



Sustainable Finances Health Check Workshops

As an elected member of the Governing Body of a council or General Manager you are legally responsible for directing and controlling the affairs of your Council and for ensuring its financial viability.

You need to be able to demonstrate that you have independently assessed information supplied to you by others from the perspective of your own knowledge of the council you direct.

These workshops compliment a series of workshops held for financial professionals, managers and councils in 2003 and has the endorsement of the Department of Local Government. Workshops will be facilitated by John Petty, Vice President of CPA Australia and the practical techniques taught during this workshop are easily learned and can be quickly and profitably applied.

Participants will learn how to:

- Identify the key financial and non-financial indicators to view the true financial health of your Council.
- Use the key financial and non-financial indicators to:
 - ✓ Test information provided to you by your professional advisors.
 - ✓ Test the Department of Local Governments assessment of the financial health of your Council.
 - ✓ Compare your performance against other Councils.
- Communicate the financial health of your Council to your citizens and the media in an easy to understand manner.
- Use these indicators and your interpretation of them to help you guide your Council towards financial sustainability.

During the workshop you will work with information that is specific to your Council. You will also have the opportunity to discuss important issues and share experiences with other elected representatives and managers.



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GOVERNMENT
MANAGERS
AUSTRALIA

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- Department of Local Government
- Local Government Auditors Association
- Local Government Association & Shires Association
- CPA Australia.

The LGMA is dedicated to continually improving management in Local Government and to maintaining the professional and ethical standards that the community expects.

Sydney - Parramatta
22 June 2004

Tweed Heads
5 July 2004

Sydney - Forestville
27 July 2004

Coffs Harbour
12 August 2004

Tamworth
31 August 2004

Narromine
15 September 2004

Griffith
6 October 2004

Eurobodalla
20 October 2004

Sydney - Nth Sydney
3 November 2004

**\$150.00
per person
(including GST)**

**Group Discounts
Available**



Any Councillor interested in nominating to attend the Workshop to be held at Tweed Heads on 5 July 2004 should advise Council's Manager Administration Services.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

10 [OGM] Management Plan 2004/2008 and Budget 2004/2005

ORIGIN:

Corporate Performance

SUMMARY OF REPORT:

Council Management Plan for 2004/2008 has been on public exhibition for twenty-eight days. The Plan includes the Revenue Policy Fees and Charges and Budget of 2004/2005. The Minister for Local Government has set a limit of 3.5% for increase in General Purpose income for rating year commencing 1 July 2004.

The Management Plan contains a proposal to make application to the Minister for Local Government for a variation to General Income of 4% for the period of seven (7) years for the purpose of allocation \$932,000 in the first year, being \$466,000 for sealing rural roads, which contain school bus routes and \$466,000 for asset management - improvements to roadworks \$316,000, drainage \$100,000 and footpaths \$50,000.

The Management Plan contains a further proposal from Casuarina Town Hall for Council to make application to the Minister for Local Government for a variation of 0.43% above the allowable limit to raise \$109,000 for a Special Rate in the Casuarina Beach locality for the purpose of providing additional asset maintenance.

RECOMMENDATION:

That :-

1. Council's 2004/2008 Management Plan and 2004/2005 Budget be adopted;
2. An application be made to the Minister for Local Government for a variation to General Income of 4% above the allowable limit of 3.5% for the period of seven (7) years for the purpose of allocation \$932,000 in the first year, being \$466,000 for sealing rural roads, which contain school bus routes and \$466,000 for asset management - improvements to roadworks \$316,000, drainage \$100,000 and footpaths \$50,000.
3. A further application be made to the Minister for Local Government for a variation of 0.43% above the allowable limit to raise \$109,000 for a Special Rate in the Casuarina Beach locality for the purpose of providing additional asset maintenance.
4. An "*opinion*" in accordance with Section 495 (2) of the Local Government Act 1993 has been formed on the Special Rate proposed to be levied in 2004/2005.

REPORT:

MANAGEMENT PLAN 2004/2008 AND BUDGET 2004/2005

Background

Meeting community needs is a major challenge facing Council. This year's Management Plan focuses on delivering essential services whilst maintaining assets at an improved standard. In relative terms, the Tweed Shire has continued to grow at a steady rate. This growth brings with it many challenges, placing increased demands on the resources of Council.

The Management Plan is the core corporate and strategic document that Council applies in determining its resourcing priorities and therefore is an important document in the systematic evaluation of service levels, objectives and performance achievement.

Council Management Plan for 2004/2008 has been on public exhibition for twenty-eight days. The Plan includes the Revenue Policy Fees and Charges and Budget of 2004/2005. The Minister for Local Government has set a limit of 3.5% for increase in General Purpose income for rating year commencing 1 July 2004.

Variation to General Income for 2003/04

The Management Plan contains a proposal to make application to the Minister for Local Government for a variation to General Income of 4% above the allowable limit of 3.5% for the period of seven (7) years for the purpose of allocation \$932,000 in the first year, being \$466,000 for sealing rural roads, which contain school bus routes and \$466,000 for asset management - improvements to roadworks \$316,000, drainage \$100,000 and footpaths \$50,000.

Casuarina Beach Special Rate

The Management Plan contains a further proposal from Casuarina Town Hall for Council to make application to the Minister for Local Government for a variation of 0.43% above the allowable limit to raise \$109,000 for a Special Rate in the Casuarina Beach locality for the purpose of providing additional asset maintenance.

Special Rates - Council to form an "Opinion"

Section 495 of the Act enables Council to make a special rate for or towards meeting the cost of any "works, services, facilities or activities" provided or undertaken, or proposed to be provided or undertaken, by Council within the whole or any part of Council's area, other than "domestic waste management services".

By virtue of Section 495 (2), the special rate is to be levied on such rateable land in Council's area as, in Council's "opinion":

- Benefits or will benefit from works, services, facilities or activities, or
- Contributes or will contribute to the need for the works, services, facilities or activities;
or
- Has or will have access to the works, services, facilities or activities.

Council is required to form a certain "opinion" as a necessary precondition to the making and levying of a special rate.

The opinion relates to the land which will benefit from, contribute to the need for, or have access to the particular works, services, facilities or activities the subject to the rate.

Management Plan

The Management Plan provides a 4-year program aimed at effectively meeting the expected needs of the community. The Plan clearly states Council's vision and mission, the core values and prioritised principal activities providing a clear indication of Council's intention for the coming 12 months and the following 3 years.

The Management Plan is structured to describe what Council will be undertaking this year, its performance targets and how it would measure its level of performance. Statutory performance indicators requirements are supported by an additional range of management performance measures. These will form the basis of the General Manager's quarterly reports and the annual report to the community. The 4-year Plan is a complete document and therefore needs to be read in its totality to appreciate the strategic direction and priorities.

Public Consultation

In accordance with Section 405 of the Local Government Act 1993, Council must give public notice of its Draft Management Plan after it has been prepared.

The Draft Management Plan went on public display on 15 May 2004 and the Management Plan consultation process involves seeking comments from the ratepayer/community of the Tweed as to their expectation of the Plan. To facilitate this approach, Council has placed copies of the Draft Management Plan and supplementary documents on public display at the Civic Centres, libraries and Council's internet site. Furthermore, the Draft Management Plan has been advertised in the Daily News and Tweed Link, and ratepayers were invited to make comment on the document, as well as residents were given an option to address Community Access on 9 June 2004.

Public Comments Received

Comments received up to Wednesday, 9 June 2004 are attached to this report. Any comments received after this date and up until 15 June 2004, will be provided to Council on Wednesday, 16 June 2004.

Budget Revenue Policy

Council has the option at this meeting to amend the Management Plans and Budget as well as vary the fees and charges.

Council's Financial Position (2004/2005) – Budget

The Budget as presented is balanced. If any surplus funds become available from operations during the year, these should be applied to increase the level of accumulated funds so that Council has a sound financial platform on which it can build.

Program Budgeting used in the Plan provides both a financial and management analysis of the individual programs and services offered by Council and in conjunction with the various program objectives and performance measures allows an ongoing review of services related back to the individual program objective. Extensive use of activity based costing is used to support this process.

The objectives of the 2004/2005 Budget are:-

- To maintain a balanced budget;
- To maximise income from all sources, subject to the stated policies of Council;
- To provide works and services at levels commensurate with budget allocation;
- To restrain expenditure, wherever possible;
- To achieve economy of operation; and
- To optimise the return on funds and investments.

Submission for increased funding

Increased funding submissions have been received from:

1. Tweed and Coolangatta Tourism Inc. (TACTIC)

Request	\$500,000
Draft Budget allocation	\$278,900

2. Tweed Economic Development Corporation (TEDC)

Request	\$450,300
Draft Budget allocation	\$269,214

Changes to the Draft Budget since consideration by Council on 12 May 2004

- | | |
|--|-------------|
| 1. TEDC - additional support | \$50,000 + |
| 2. Road program | \$50,000 - |
| 3. Respite Centre loan funds
not required 2004/05 | \$495,000 - |
| 4. Upgrade old SES/RFS building | \$100,000 + |
| 5. Records storage -stat. requirement | \$300,000 + |
| 6. Old Art Gallery refit | \$40,000 + |
| 7. Asset maintenance - Civic Centre | \$55,000 + |

Draft Budget for 2004/2005

General Fund	\$73.3 million
Water Fund	\$37.6 million
Sewerage Fund	<u>\$30.3 million</u>
Total	<u>\$141.2 million</u>

Public Consultation Meetings

Councillor Dot Holdom arranged for public meetings to be held at the Tweed and Murwillumbah Civic Centres, as well as Kingscliff and Uki. Attached to this report is a summary of the discussions of the Tweed and Murwillumbah meetings. In respect of Kingscliff and Uki, this summary will be presented to Council on Wednesday, 16 June 2004.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

1. Summary of Public Comments & Consultation Meetings.
-

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11 [OGM] Festival Funding - Kingscliff Art, Food & All That Jazz Festival

ORIGIN:

Corporate Performance

SUMMARY OF REPORT:

The Kingscliff & District Chamber of Commerce has presented to Council an income and expenditure statement and a description of project outcomes, as well as advice that there was no surplus or loss pertaining to the 2003 Kingscliff Art, Food and All That Jazz Festival.

The presentation of these documents is required as a condition of Council's assistance to the 2003 Festival.

It is suggested that the Chamber of Commerce be advised that any future applications for funding will be considered in accordance with this Policy.

RECOMMENDATION:

That:

1. The Kingscliff & District Chamber of Commerce be advised that any future application for funding will be considered in accordance with the Festivals Policy.
2. This report be received and noted.

REPORT:

Council at its meeting of 21 May 2003 resolved to donate an amount of \$4,000 to the Tweed Coast Business Corporation to assist with the "Art, Food & All That Jazz Festival", which was held in August 2003.

The conditions of Council's Festivals Policy is that the recipient for assistance must report to Council within two months after completion of the activity with an expenditure statement and statement of outcomes. A recipient shall also provide a statement identifying any surplus or loss resulting from the activity for which a donation or in kind assistance was received from Council.

The Kingscliff & District Chamber of Commerce has presented to Council an income and expenditure statement and a description of project outcomes, as well as advice that there was no surplus or loss pertaining to the 2003 Kingscliff Art, Food and All That Jazz Festival.

The presentation of these documents is required as a condition of Council's assistance to the 2003 Festival.

The income and expenditure statement for the festival has not been audited, but will form part of the annual audit of the financial records of the Kingscliff & District Chamber of Commerce.

The President of the Chamber is concerned that comments made publicly, due to the time delay in submitting the expenditure statement and statement of outcome, could affect any future application for funding from Council for the Kingscliff & District Chamber of Commerce.

It is suggested that the Chamber of Commerce be advised that any future applications for funding will be considered in accordance with this Policy.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Festivals Policy

UNDER SEPARATE COVER:

1. Income and Expenditure Statement (Confidential)
 2. Statement of Project Outcomes (Confidential)
-

12 [OGM] Monthly Investment Report for Period Ending 31 May 2004

ORIGIN:

Financial Services

SUMMARY OF REPORT:

This report is provided to Council to advise details of monies Council has invested in accordance with Section 625 of the Local Government Act 1993.

RECOMMENDATION:

That this report be received and noted.

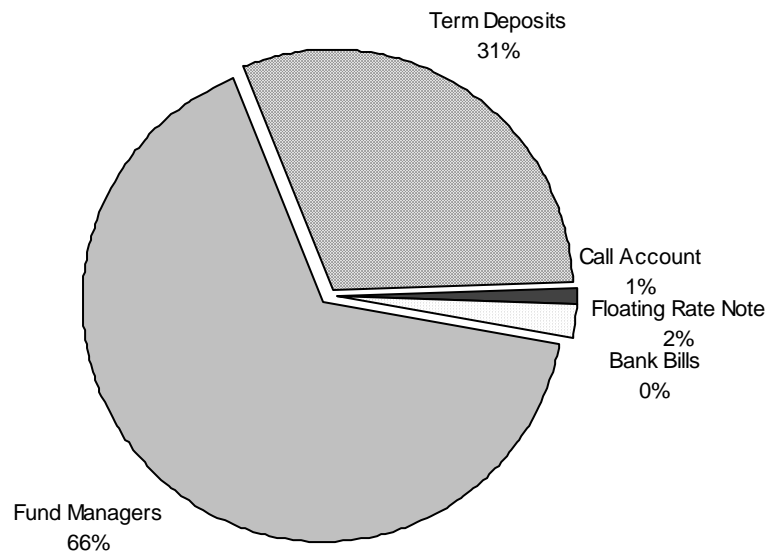
REPORT:

Report for Period Ending 31 May 2004

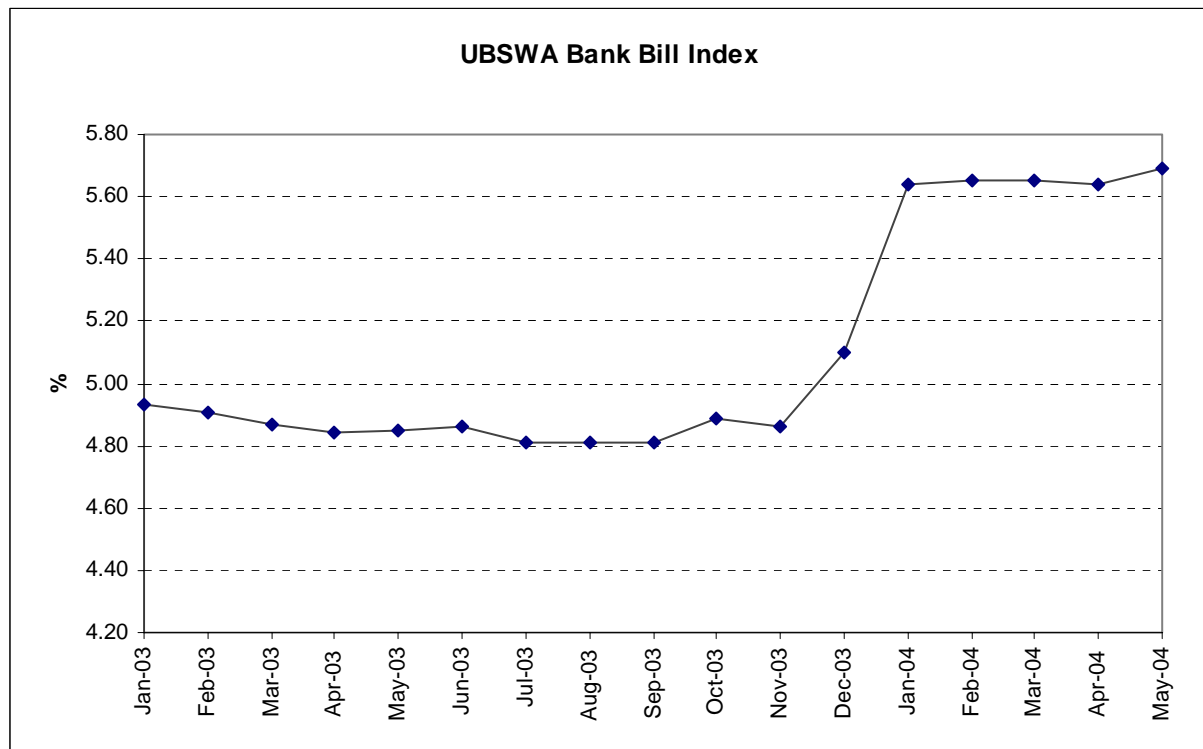
The "Responsible Accounting Officer" must report monthly to Council, setting out details of all the funds Council has invested and certification has been made in accordance with the Local Government Act (1993), the Regulations and Council policies.

1. CURRENT INVESTMENT PORTFOLIO BY CATEGORY

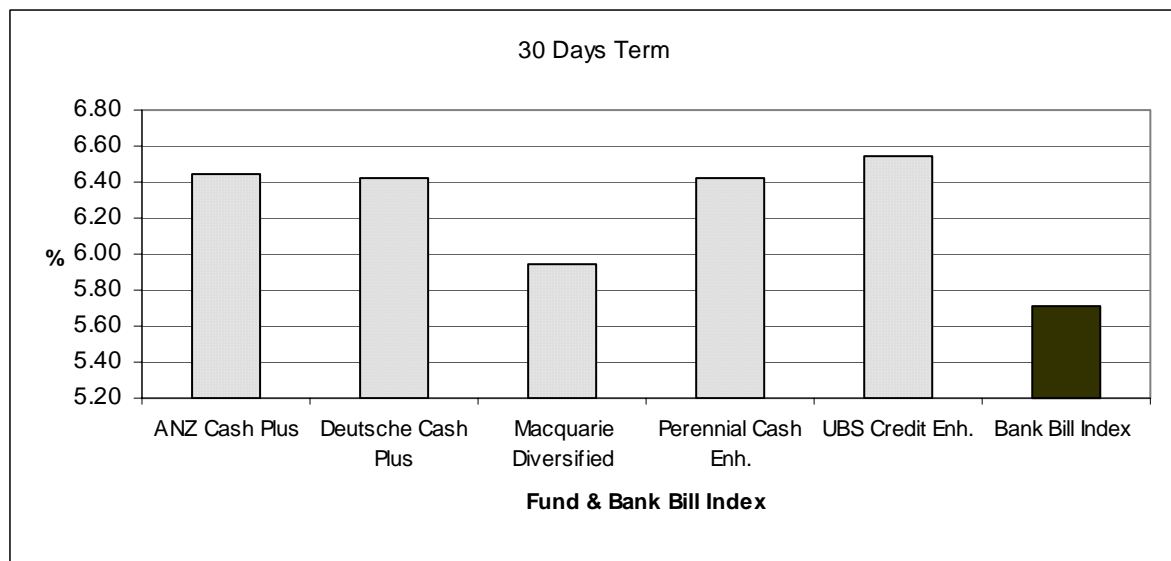
% of Funds Invested by Category



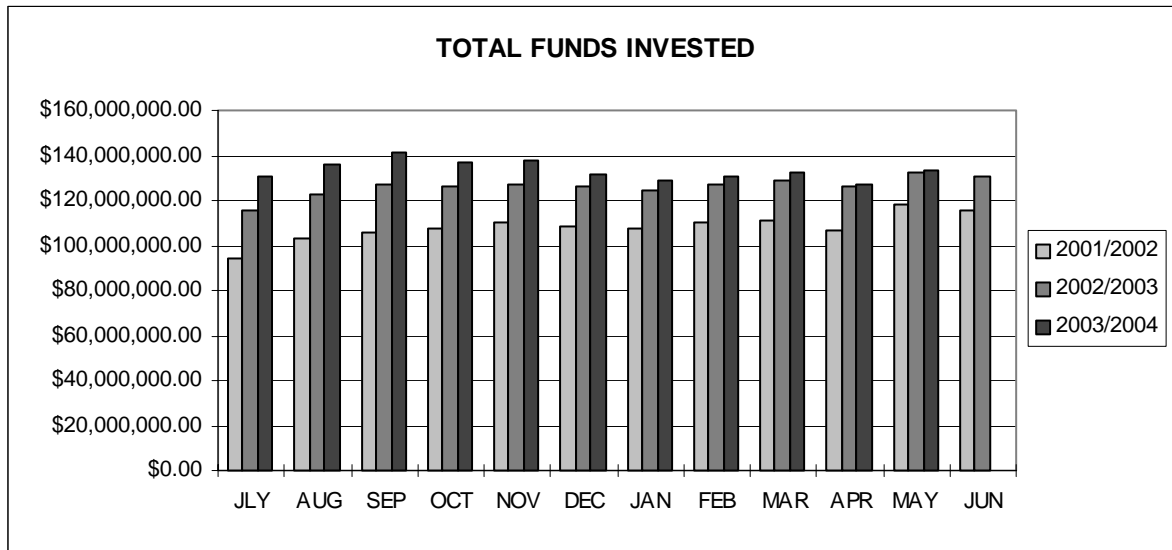
2. INVESTMENT RATES - 90 DAY BANK BILL RATE (%)



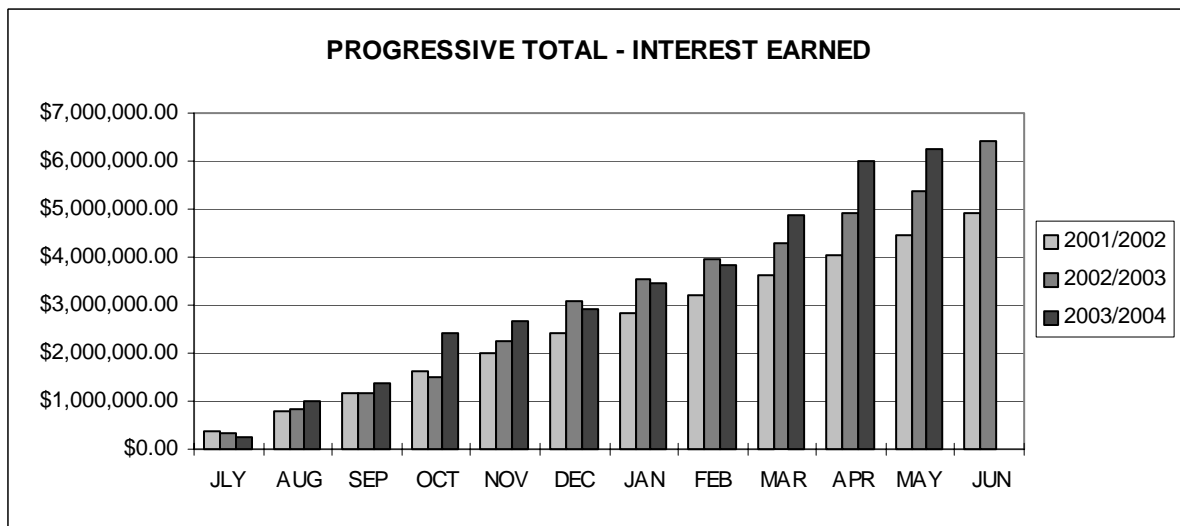
3. ANNUALISED RATE OF RETURN FOR FUNDS MANAGERS - NET OF FEES



4. MONTHLY COMPARISON OF TOTAL FUNDS INVESTED



5. ANNUAL PROGRESSIVE TOTAL OF INTEREST ON TOTAL FUNDS INVESTED



6. MARKET COMMENTARY

The Australian economy is growing modestly at a time when there is evidence of a slower housing market. The Reserve Bank of Australia Statement of Monetary Policy in May commented "a turning point appears to have been reached in the housing market after the overheated levels of late last year, though it is still unclear how this will evolve."

May's Federal Government Budget contained \$1.9 billion in tax cuts and \$3.4 billion in incentives for families. The Government's forecasts indicated a slowing economy with emerging signs of inflation contained by the relative strength of the Australian dollar. Tax reductions in the Budget should encourage further consumer spending and may counteract any adverse effects from expected declines in dwelling construction and related services.

Further rises in interest rates depend on the future course of inflation. While a strong Australian dollar is containing inflation, rising commodity and oil prices along with domestic wage pressure could cause the rate of inflation to rise.

While United States interest rates remain at 1%, many economic indicators such as employment growth and rising GDP mean rates should begin to climb soon.

Interest rates in the United Kingdom rose 0.25% during the month to 4.25%.

7. INVESTMENT SUMMARY AS AT 31 MAY 2004

GENERAL FUND

TERM DEPOSITS	20,824,000.00	
FUND MANAGERS	22,172,181.92	
FLOATING RATE NOTE	0.00	
CALL	<u>1,600,000.00</u>	44,596,181.92

WATER FUND

TERM DEPOSITS	3,000,000.00	
FUND MANAGERS	<u>40,114,275.80</u>	43,114,275.80

SEWERAGE FUND

TERM DEPOSITS	17,000,000.00	
FUND MANAGERS	25,943,024.60	
FLOATING RATE NOTE	<u>3,000,000.00</u>	45,943,024.60

TOTAL INVESTMENTS **133,653,482.32**

It should be noted that the General Funds investments of \$44.5 million are not available to be used for general purpose expenditure. It is virtually all restricted by legislation and council resolution for such purposes as unexpended loans, developer contributions, unexpended grants and various specific purpose reserves such as domestic waste, land development and employee leave entitlements.

Statutory Statement - Local Govt Financial Management Regulations (Sect.19)

I certify that Council's investments have been made in accordance with the Local Government Act 1993, the Financial Management Regulations and council's Investment policies.



Responsible Accounting Officer
TWEED SHIRE COUNCIL

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

REPORTS FROM DIRECTOR ENGINEERING AND OPERATIONS

13 [ES] Classification of Land as Operational

ORIGIN:

Design

FILE NO: GS4/94/53 Pt 6

SUMMARY OF REPORT:

In the plan of subdivision of Lots 51 in DP 828862 and Lot 74 in DP 841709 at Lamington Way, Murwillumbah, a drainage reserve, proposed Lot 80 is to be transferred to Council as a drainage reserve.

It is necessary to classify the land pursuant to the provisions of section 31 of the Local Government Act.

RECOMMENDATION:

That :

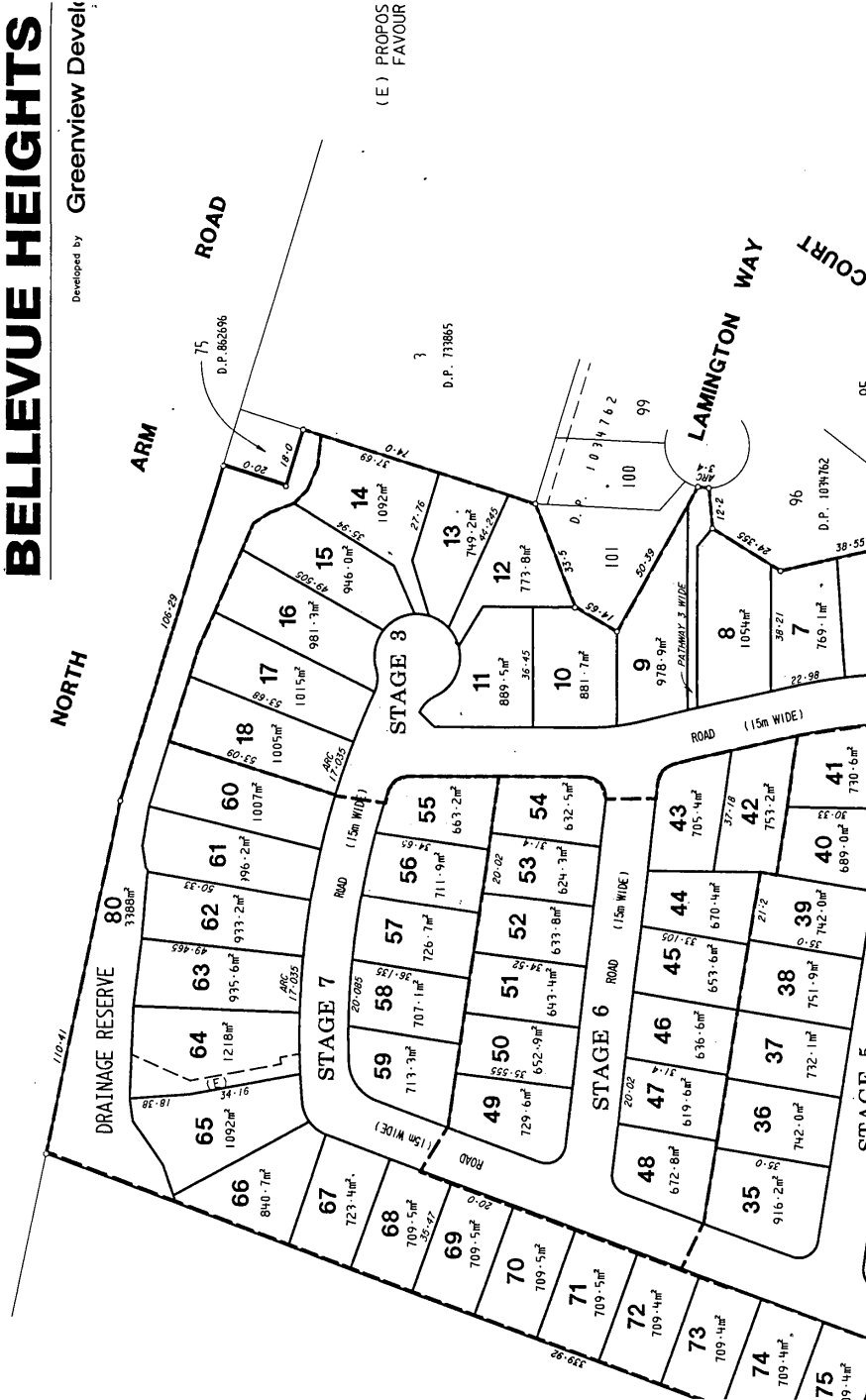
1. The land proposed to be transferred to Council as a Drainage Reserve, described as proposed Lot 80 in the subdivision of Lots 51 in DP 828862 and Lot 74 in DP 841709 be classified as "operational" pursuant to section 31 of the Local Government Act, 1993; and
2. All necessary documentation be executed under the common seal of Council.

REPORT:

As per Summary of Report.

BELLEVUE HEIGHTS

Developed by **Greenview Developments**



LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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14 [ES] Deferral of Works Program Project

ORIGIN:

Works

SUMMARY OF REPORT:

While some funding was received from the State Government for clearing after the major storm, which damaged parts of Murwillumbah in March, considerable more funds have been spent on roads and private property clearing.

The over expenditure is \$70000. These funds cannot be borne by the road maintenance budget. To accommodate the over expenditure it is recommended that one rural road project be deferred to the 2004/05 Works Programme.

RECOMMENDATION:

That Council defers the programmed works on McAuleys Road to the 2004/2005 Works Program and that the \$70,000 be allocated to the storm damage funding.

REPORT:

While some funding was received from the State Government for clearing after the major storm, which damaged parts of Murwillumbah in March, considerable more funds have been spent on roads and private property clearing.

The over expenditure is \$70,000. These funds cannot be borne by the road maintenance budget. To accommodate the over expenditure it is recommended that one rural road project be deferred to the 2004/2005 Works Program.

Due to land acquisition negotiations not being completed the road widening at the slip on McAuleys Road has not been commenced and it is recommended that this project be deferred to the 2004/2005 Works Program.

It should also be noted that the two minor flood events, which occurred early this year, were not declared Natural Disasters by the State Government and were therefore not eligible for any funding assistance. The road maintenance budget has had to absorb all costs associated with these events. The cost of the two floods being \$321,000.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Transfer of funding between Programs.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

15 [ES] Provision of Sewer Main through Crown Reserve

ORIGIN:

Design

FILE NO: DA04/0115 Pt1

SUMMARY OF REPORT:

Tweed Shire Council proposes to upgrade the existing sewer rising main between Hastings Point and Pottsville on the Tweed Coast to allow for additional residential development along the Pottsville coastal zone. Approval for the construction of a 375 diameter sewer rising main located within the road reserve has been received, however, one section between Cudgera Avenue at Pottsville and the Shell Service Station at Hastings Point is very crowded with existing services. Council proposes to move the sewer rising main pipe location westward a maximum of 5 metres beyond the road reserve boundary for a length of some 700 metres. Such a move would impact on two adjacent crown reserves. The change in alignment will mean some clearing of vegetation is necessary along the edge of the reserves.

RECOMMENDATION:

That Council:-

1. Endorses this proposal and notes the benefit the main may provide to any future development on the subject land.
2. Commences negotiations with the Department of Lands to acquire an easement over the pipeline and to negate monetary compensation for the easement via in-kind on-ground restoration work for the reserve.

REPORT:

Council recently received conditional approval for construction of a 375 diameter sewer rising main from Centennial Avenue, Pottsville to the sewer pump station at Creek Street, Hastings Point to allow for additional residential development along the Pottsville coastal zone. The original proposed alignment was entirely within the road reserve, however, in attempting to set out the works on the ground, constraints arose with the location of existing services in the road corridor.

Accordingly, Council wishes to locate the sewer rising main on an alignment located within 5m of the boundary fronting Tweed Coast Road. This new alignment means the pipe would run through "Council-controlled Crown land".

Consent has been sought from the Department of Lands for these works to proceed, with the view to creation of an easement over the land. This report seeks agreement from Council to obtain an easement over the land in question. Negotiations will be held with the Department of Lands in the hope that any compensation for an easement can be used to fund restoration works (primarily weed control) on the reserves. The location of the change in alignment is within two lots fronting the Tweed Coast Road at Pottsville (see locality drawing reproduced at the end of this report):-

- Lot 531 DP 844174, being part of Crown Reserve R1001008, reserved for the purpose of Public Recreation and Coastal Environmental Protection and
- Lot 7006 DP 1056641, being Crown Reserve R76125, reserved for the purpose of Housing for the Aged

The "Tweed Coast Reserve Draft Plan of Management" indicates that the intention for these two lots is for "Recreation purposes" and it is understood that the Reserves Trust would like the land kept for future sportsground development. The anticipated date of commencement of works (from the Centennial Avenue end) is mid June 2004 with the expected duration of the project to be around 13 weeks.

This sewer rising main would have capacity for small scale development within the Crown Reserve.

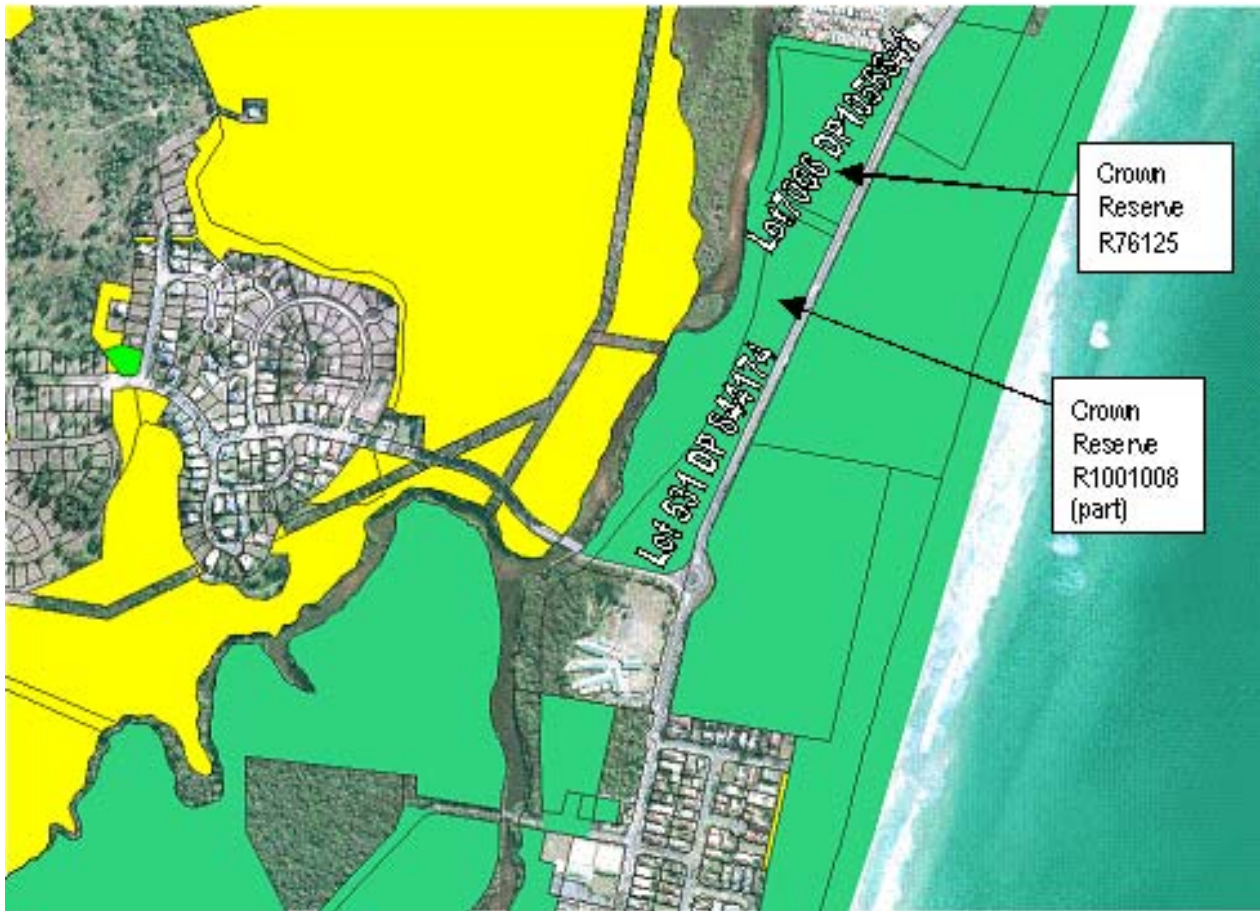


Figure 2: Council-controlled Crown land (green) and Council-owned community land (yellow).

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The project is funded in the current budget and moving the pipeline will reduce the cost of construction and delays to traffic using the Tweed Coast Road.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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16 [ES] Draft Plan of Management for Banora Point Community Reserve

ORIGIN:

Recreation Services

FILE NO: DA1393/320 Pt2

SUMMARY OF REPORT:

At its meeting held Wednesday 28 April 2004, Council resolved to place the draft Plan of Management for the Banora Point Community Reserve on public exhibition, and to hold a public meeting in accordance with the Local Government Act 1993.

The draft plan was on public exhibition from 3 May to 16 June 2004, with the public meeting held 2 June 2004. No submissions have been received at the time of preparation of this report (9 June 2004). The public meeting was attended by only 2 people, who raised no objections to the plan. Should any submissions be received between now and the closing date of 16 June, they will be tabled at the meeting.

RECOMMENDATION:

That the draft Plan of Management for the Banora Point Community Reserve, being Lot 1 DP1009649 on Leisure Drive, Banora Point, be adopted.

REPORT:

At its meeting held Wednesday 28 April 2004, Council resolved to place the draft Plan of Management for the Banora Point Community Reserve, being Lot 1 DP1009649 Leisure Drive, Banora Point, on public exhibition, and to hold a public meeting in accordance with the Local Government Act 1993.

The draft plan was on public exhibition from 3 May to 16 June 2004, with the public meeting held 2 June 2004. No submissions have been received at the time of preparation of this report (9 June 2004). The public meeting was attended by only 2 people, who raised no objections to the plan. Should any submissions be received between now and the closing date of 16 June, they will be tabled at the meeting.

Accordingly, it is recommended that the draft Plan of Management for the Banora Point Community Reserve, being Lot 1 DP1009649 Leisure Drive, Banora Point be adopted.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

17 [ES] Tweed Valley Floodplain Risk Management Study

ORIGIN:

Planning & Infrastructure

FILE NO: GT1/DCP/5

SUMMARY OF REPORT:

A new Tweed Valley "Flood Study" has almost been completed by Consultants WBM. The flood study estimates flood discharges and levels for a range of severities including the 1% (100 year) event (Council's Design Flood Level) and the statistically biggest event called the Probable Maximum Flood (PMF). It is now proposed to continue with the next stage in the flood plain management process prescribed in the 2001 NSW Floodplain Management Manual of preparing a "Floodplain Risk Management Study". A Workshop on the Floodplain Management process is to be conducted on 14 July 2004.

RECOMMENDATION:

That:-

1. Subject to availability of subsidy from the Department of Planning Infrastructure and Natural Resources, Council commences preparation of a "Floodplain Risk Management Study".
2. One representative each from the CMA and DIPNR be invited to join the Floodplain Management committee.

REPORT:

1. Background

NSW Government policy for floodplain management was set out in the December 1986 "Floodplain Development Manual". This manual prescribed a process which contained the following general steps:-

- Establish Floodplain Management Committee
- Conduct Flood Study
- Adopt Flood Standard
- Carry out Floodplain Management Study
- Adopt Floodplain Management Plan (Generally the preferred options from above study)
- Implementation –
 - Supply flooding data/levels and conduct awareness and education programmes
 - warning & evacuation schemes
 - flood mitigation programmes

Council's floodplain management activities predated the 1986 manual. A number of flood studies were carried out for Murwillumbah and the Lower Tweed prior to the manual's publication. Council initially adopted "DCP5 - Development of Flood Liable Land" 18 June 1986 as its principal policy document for flood plain management. Since that time there have been a number of amendments to DCP5 being:-

First Amendment	Adopted 16/9/87, changes to caravan park requirements
Second Amendment	Adopted 15/6/88, to reflect changes to recently approved TLEP1987
Third Amendment	Adopted 14/9/88, design flood levels at Murwillumbah
Fourth Amendment	Adopted 19/12/90, amended flood levels
Fifth Amendment	Adopted 15/7/92, industrial land south of Ozone Street, Chinderah 50% rule
Sixth Amendment	Adopted 21/4/93, Tyalgum levels
Seventh Amendment	Adopted 6/3/96, to permit genuine "granny flats" in low flood hazard areas, but, prohibit "dual occupancy" and revise schedule of flood levels

As DCP5 predated the 1986 NSW manual, and has been Council's chief floodplain management instrument, Council's floodplain management process has never been entirely consistent with the process prescribed in the manual. Subsequent amendments to DCP5 generally dealt with detailed development or flood level issues and did not address the floodplain management system itself.

In 2001 the NSW Government issued a new "Floodplain Management Manual". This manual prescribes process steps similar (to the 1986 manual) being:-

- Establish Floodplain Risk Management Committee
- Flood Study
- Floodplain Risk Management Study
- Floodplain Risk Management Plan
- Management Plan Implementation
 - Publish a floodplain risk management policy (summary of the Floodplain Risk Management Plan) containing flood extents & planning levels
 - Amendments to Tweed LEP & DCP5 detailing planning controls for development in flood prone land, s149 (planning) certificate changes.
 - Amended programme of mitigation and related works (voluntary property purchase, house raising etc)
 - Link to local flood plan (prepared by SES)

Council is currently part way through the above process for the Tweed Valley floodplain. There is an existing Floodplain Management Committee and a new "Flood Study" of the Tweed Valley floodplain, being prepared by WBM is almost completed.

A preliminary approach has been made to DIPNR for a grant for part funding of the next stage of the process being the preparation of a "Floodplain Risk Management Study" and Council's Draft 2004/05 budget provides for an amount of \$210,000 for the project.

On receipt of the "Flood Study" and advice of a grant being available from DIPNR Council may proceed to this next step.

Note: At this stage there are no proposals for new "Flood Studies" for the Coastal Creek floodplains.

2. NSW Floodplain Management Policy

NSW government floodplain policy and the process of floodplain management is detailed in the 2001 "Floodplain Management Manual".

It sets out a process by which Councils can plan and manage landuse, infrastructure, mitigation works and flood events on flood liable land.

Council's that act in "good faith" relating to flooding advice, actions, preparation of planning instruments, determination/conditioning of DAs of flood prone land, carrying out flood mitigation works etc are granted an exemption from liability by Section 733 of the Local Government Act 1993. Section 733(4) advises that Councils are taken to have acted in "good faith" if they have acted substantially in accordance with the principles of the relevant manual notified under s733(5).

Part 1 of the 2001 "Flood Plain Management Manual" advises "This manual replaces the 1986 Floodplain Development Manual as the NSW Government's Manual relating to the management of flood liable land in accordance with Section 733 of the Local Government Act 1993".

Acting in accordance with the manual provides Councils not only a systematic methodology for managing flood plain issues, but also provides liability immunity for Councils that act in substantially in accordance with its principles.

The almost completed Flood Study is consistent with the process prescribed in the manual and will be a major input for the next phase the "Floodplain Risk Management Study".

Council has a standing "Floodplain Management Committee" that can function as the "Floodplain Risk Management Committee" identified in the manual for the purpose of acting both as a focus and a forum for the discussion of technical, social, economic, ecological and cultural issues and for the distillation of these viewpoints on the issues into the final Floodplain Management Plan. Council's current committee membership is generally in accordance with the manual, but to be compliant should be expanded to include one representative each from DIPNR and the new Catchment Management Authority.

3. The Tweed Valley Floodplain Risk Management Study

3.1 General Content of the Floodplain Risk Management Study

The "Floodplain Risk Management Study" seeks to balance a variety of differing factors for generation of the "Floodplain Risk Management Plan".

The "Flood Study" is the starting point, from a calibrated computer model it will provide flood levels, extent and velocities for floods of various severities including the 1 in 100 year flood and the Probable Maximum Flood (PMF).

The "Floodplain Risk Management Study" will:-

- examine existing flood plain policies to ensure consistency with each other and the manual
- determine and map hydraulic (flood fringe, flood storage and floodway) and hazard (high hazard or low hazard) categories. This process will require further running of the flood computer model used in the "Flood Study".
- Determine Flood Planning Levels
- examine existing warning and flood readiness/response/recovery systems relative to SES disaster planning requirements
- identify potential development and landuse planning options, including any associated necessary land use planning (LEP, DCP5 etc) modifications, within the floodplain
- identify, assess and compare various risk management options. This includes an assessment of their social, economic, ecological and cultural impacts, together with opportunities to enhance river and floodplain environments. Rank options and recommend preferred options.

3.2 The Probable Maximum Flood (PMF)

The PMF is defined in the 2001 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 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, above PMF levels should be considered for 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.

3.3 Flood Planning Levels

Currently Council's Flood Planning Level (FPL) is the 1 in 100 year (or 1%) flood. The manual advises that different FPLs may be appropriate to different classes of development (eg. general residential compared to aged care centre or key infrastructure such as hospitals, telephone exchanges, police stations etc).

The manual also advises that FPLs do not represent the maximum flood or the maximum extent of flood prone land, which is represented by the PMF. This distinction should be a principal feature of ongoing education, awareness and readiness programs.

3.4 Risks to be Managed

Three specific risks need to be addressed:-

1.Existing Risk

Structural flood modification measures (eg levees, floodgates etc) are the traditional means of mitigating damage to existing properties at risk. Council's existing and planned levees and other options need to be assessed for feasibility, effectiveness, cost and environmental, social impacts. The flood model developed in the Flood Study is needed to test these options to ensure such measures do not significantly increase risk elsewhere.

2. The Future Risk

Land use and development controls can ensure future development is compatible with flood risk. Planning measures are often contentious to the local community and some groups or areas may be disadvantaged whilst others may benefit. Planning measures are implemented through amendments (including possible rezonings) to the Tweed LEP and amendments to DCP5.

3. The Continuing Risk

Larger floods such as the PMF will ultimately overwhelm normal measures put in place to reduce danger to personal safety and property damage. The SES is responsible for preparation of local flood plans that deal with flood readiness, response and recovery. There is a pressing need to make the community flood aware through continuing effective communication and education and for the community to be able to respond appropriately in the event of flood emergencies. This is one of the greatest challenges facing flood risk managers and one cannot rely on the next flood to re-educate the community.

3.5 Land Use Strategies

The preparation of a Floodplain Risk Management Study (and subsequent plan) involves a realistic appraisal of desired and realisable future land uses.

The Floodplain Risk Management Study should encompass an analysis of existing/permitted land use and investigation of proposals for new development areas or changes to permissible uses. At this stage areas where higher use and re-zonings have been proposed by landowners/developers include Chinderah, West Kingscliff and South of Oxley Cove. Some urban zoned infill areas, partly on the floodplain, around Murwillumbah also need some further analysis.

Filling in the floodplain is likely to change the flow pattern of a flood. Limits might be placed on the location, level and quantity of fill. The determination of these limits must take into account the cumulative effect of filling projects across the whole floodplain. The flood model provided in the "Flood Study" can be used to examine scenarios of cumulative changes to the flood pattern arising from proposed land use and filling options.

The desired or likely mix of future land use needs to be considered with the need to reduce the rate of exposure of persons and property to flood damage. These factors also need to be balanced with social, economic and ecological impacts.

An associated issue will be the most appropriate format and information to be included on s149 (planning) certificates. These certificates are the formal means by which flooding information is conveyed to prospective property purchasers. The manual suggests that s149 certificate review be referred for legal advice.

After adoption of the Floodplain Risk Management Plan, applications may be received for types of development that are not identified as appropriate in the plan and associated LEP/DCPs etc. The manual advises that these applications generally fall into two categories, those not foreseen, or those that have been rejected in the floodplain risk management study/plan process. The first type of application may trigger a review of the floodplain risk management plan and consequently of Council's LEP/DCPs. The second type of application is much more difficult, and if considered at all will need to be based on an in depth review that addresses the full range of issues considered in the floodplain risk management study/plan and will need to be assessed on both a cumulative and individual basis to ensure:-

- it will not increase the danger to personal safety or flood damage to other properties or adversely affect them in any way
- it will not adversely impact on the social, economic, cultural or environmental requirements of the flood plain and
- permanent, failsafe, maintenance free measures are incorporated in the development to ensure the timely, orderly and safe evacuation of people from that area and that the displacement of these people will not significantly add to the overall cost and community disruption caused by the flood.

3.6 Floodplain Risk Management Measures

The Floodplain Risk Management Study will examine the ways of managing flood risk to avoid losses which include:-

- Property Modification
 - modifying existing properties (eg house raising, flood proofing buildings, voluntary purchase, improved flood access) and/or
 - imposing controls on property and infrastructure development
- Response Modification
 - modifying the readiness and response of the population at risk to better cope with a flood event
- Flood Modification
 - modify behaviour of the flood itself - construct levees, retarding basins, bypass floodways, channel modifications, floodgates

3.7 Evaluating the Options

The "Floodplain Risk Management Study" considers all the various options concerning flood, property and response modification measures, together with an assessment of their social, economic, cultural and environmental consequences. Each option including the final recommended option for adoption as the formal "Floodplain Risk Management Plan", will inevitably be a compromise aimed at achieving multiple and often conflicting objectives.

4. Why Go Through This Process?

Council's current policy (DCP5) is out of date, inconsistent with the 2001 NSW Floodplain Management Manual and does not incorporate the flood level predictions (including the PMF) of the latest "Flood Study".

The benefits of Council proceeding through the process outlined in the NSW Floodplain Management Manual are:-

- Management of the floodplain and associated risks are done in a comprehensive and methodical manner which ensures all competing issues are investigated, analysed and prioritised before adoption of the final plan.
- The public are better informed of likely flood behaviour, associated risks and better able to respond to flood events
- Flood risk, future damages and costs to the community are minimised
- In the absence of this process it is unlikely that significant modification of permissible land uses, rezoning for higher uses or consideration of new development areas in the floodplain that require changes to the LEP will be permitted
- Council obtains protection from liability under section 733 of the Local Government Act

5. Conclusion

The "Flood Study" being prepared by WBM is expected to be completed in July 2004. Council's formal commitment to the next stage, preparing the "Floodplain Risk Management Study" is requested.

Council is also requested to enlarge the membership of the Floodplain Management Committee to include one representative each from the Catchment Management Authority and the Department of Planning Infrastructure and Natural Resources.

It is anticipated that DIPNR will announce a grant for commencement of the "Flood Plain Risk Management Study" towards the end of 2004. When this is confirmed a report and recommendations on project management of the study will be presented to Council's Floodplain Management Committee for their consideration prior to referral to Council.

6. Other Outstanding Floodplain Management Issues

(a) Floodplain Building Compliance – Report to Council 4 February 2004

The Director Environment & Community Services presented a report to Council 4 February 2004 regarding investigation and compliance matters relating to dwellings erected on flood liable lands contrary to the requirements of Development Control Plan No 5 - Development of Flood Liable Land. It was resolved at that meeting that Council:-

- "1. Looks into engaging a person to investigate potential buildings within the Shire that do not comply with the approval issued incorporating the provisions Development Control Plan No 5.*
- 2. Erects flood markers in affected areas of the Shire which will display the height of the 1954 flood.*
- 3. Brings forward a report that indicates an appropriate program of education.*
- 4. Conducts a workshop dealing with Development Control Plan 5."*

Item 1 above is a building compliance issue and the domain of the Director Planning & Environment and the Manager Building Services.

The flood marker program is being implemented.

The matters of flood education programs and any proposed changes to development standards for buildings in flood prone areas would be dealt with as elements to be considered in the "Floodplain Risk Management Study".

The DCP5 workshop has been scheduled for 14 July 2004. Whilst Council has not designated the precise content of this workshop, it is presumed that it was intended to primarily concentrate on building compliance issues in the floodplain. It is proposed that the workshop be expanded to include the following:-

- An overview of the Floodplain Management process (referencing the 2001 NSW Floodplain Management Manual)
- An overview of this Council's progress on floodplain management to date to include
 - Current flood plain management policy
 - a preview of the current WBM flood study and 2 dimensional flood prediction model
- A preview of the proposed "Floodplain Risk Management Study"
- Liability issues for
 - flood information given by Council
 - private property flood damage arising from Council approved development
 - Building compliance issues on the floodplain

(b) Draft DCP 5 – Development of Flood Liable Land Version 2.1

An interim update of "DCP5 – Development of Flood Liable Land", 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 was prepared, presented to Council and exhibited for 28 days during November/December 2003. Two submissions were received and consultation meetings with the authors of the submissions and Council staff were held to amend the draft and successfully address these issues.

A detailed report proposing the statutory adoption of DCP5 Version 2.1 was presented to the Council Meeting 17 March 2004 where it was resolved the matter be deferred.

This deferred item could be dealt with at this meeting or could be further deferred until after the 14 July Workshop.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

18 [ES] Tweed Valley Way - Burringbar Range Slope Stability

ORIGIN:

Works

FILE NO: R4031 Pt18

SUMMARY OF REPORT:

As part of the Tweed Valley Way handover agreement with the Roads and Traffic Authority, a funding allocation was made to reduce the risk to road users of a slope failure on the Burringbar Range. A report was presented to Council in December 2003 to close a portion of the passing lane. This was approved but a subsequent Council resolution in February 2004 requested that the RTA provide additional funds to retain the full passing lane. The RTA has now responded. A copy of the various reports and the RTA response form part of this report.

It should be noted that the reduction of the passing lane is from 3.2 to 2.4 kilometres which is still well in excess of the level of service provided for other roads in the Shire with similar traffic volumes, for example Terranora Road, Cudgen Road and Scenic Drive.

RECOMMENDATION:

That Council proceeds with the option 4 treatment (i.e. the partial lane closure) recommended by the Roads and Traffic Authority for the Burringbar Range slope.

REPORT:

As part of the Tweed Valley Way handover agreement with the Roads and Traffic Authority, a funding allocation was made to reduce the risk to road users of a slope failure on the Burringbar Range. A report was presented to Council in December 2003 to close a portion of the passing lane. This was approved but a subsequent Council resolution in February 2004 requested that the RTA provide additional funds to retain the full passing lane. The RTA has now responded. A copy of the various reports and the RTA response form part of this report.

The RTA has indicated that it agrees that the passing lane can be reduced in length in view of the reduction in traffic volumes on the Range since the opening of the Motorway. Traffic has reduced from 11,050 vehicles per day to 5,053 vpd.

When Council agreed to the lane closure in December 2003 some of the necessary materials were purchased in preparation for the work. Fencing materials and the concrete barriers have been acquired at a cost of \$25,000. The concrete barriers costing \$11,400 can be reused as safety barriers on other construction work. There is no immediate use for the fencing but it may have alternative uses in the future.

While the earthworks option may be the desired solution it is not going to be funded by the RTA and Council would need to find the balance \$82,000 from its budget. The earthworks cannot be completed in two separate sections as has been suggested by other sources. The entire length of the cutting is potentially unstable and would need to be done as one project.

With the limits on road funding it is still recommended that Council proceed with the lane closure option

The previous report from 3 December 2003 is reproduced below:-

"TITLE: *Final Ordinary Agenda 160604*

ORIGIN:

Works

FILE NO: R4031 Pt18

SUMMARY OF REPORT:

As part of the Tweed Valley Way handover agreement with the Roads & Traffic Authority, a funding allocation was made to reduce the risk to road users of a slope failure on the Burringbar range. This report details the options considered by the Roads & Traffic Authority to address the issue.

RECOMMENDATION:

That Council proceeds with the Option 4 treatment recommended by the Roads & Traffic Authority for the Burringbar Range slope.

REPORT:

Prior to maintenance responsibility for the Tweed Valley Way being handed over to Council, the Roads and Traffic Authority (RTA) had for some time been monitoring a roadside cutting on the Burringbar range for its stability. Whilst to date no rock fall of a serious nature that would cause injury or property damage has occurred, the Authority's geotechnical engineers held concerns over the long-term safety of the slope. An inspection of the slope in March 2001 by the RTA determined it as being in the "Assessed Risk Level 1" category, which is the highest risk rating that slopes can be classified as.

The slope concerned is located approximately 1.3km north of the speed camera at the southern end of the range. As part of the hand-over negotiations for the Tweed Valley Way, the RTA agreed to commission a geotechnical options report for the slope to identify treatment options and limit Council's public liability exposure. A copy of this report follows at the end of this report for Council's information.

The RTA recommended treatment option (Option 4 in report) involves a reduction in the length of the southbound overtaking lane at the slope in order create the necessary width to install a rock protection fence and concrete barriers. As the traffic volumes on this section of road have significantly reduced since the opening of the Yelgun to Chinderah freeway, the reduction in the length of the overtaking lane is considered acceptable. As stated in the RTA report, the overtaking lane would still be 2.4km long after it is reduced in length.

Council officers have fielded some informal objections by Burringbar residents to the Option 4 treatment. The main basis of the objections is the view that reducing the total road width from three lanes to two may compromise safety of motorists at the cutting, and that other options should be investigated.

In order to further investigate the other three options listed in the RTA report, contact was made with the report's author. The additional information provided for each of the other options is as follows:-

Option 1 Widen cutting

Involves the excavation of 8500 cubic metres from the face of the embankment so that a mid-height bench no greater than 4m high to catch fallen rocks could be placed.

Estimated cost \$132000

Option 2 Meshing the face

Involves scaling the face of the embankment with a long reach excavator to remove loose rocks and covering the face with a heavy duty mesh anchored with rock bolts to prevent large sized material coming away from the face.

Estimated cost \$188000

Option 3 Reduce risk at two worst sections

Involves use of gabion and 'H' piled retaining walls to 4m in height over the more dangerous overhanging sections. This option only offers protection at the two most at risk areas.

Estimated cost \$113000

A design to implement Option 4 has been completed by Council staff. The altered linemarking involves a painted chevron marked centre lane to keep opposing traffic separated by 3m south of the slope, with a double centreline for 350m past the protection fenced length. As the size of potential rock falls are expected to be significant, concrete barriers and a tensioned protection fence past the cutting have been designed in accordance with the RTA recommendation to prevent spills from coming to rest on the roadway. In recognition of Burringbar residents' concerns the widths of the travel lanes in the design have been kept identical to the width of the existing lanes and a 2m wide clear zone is provided between the northbound lane and the barrier. An estimate of cost for this treatment option is \$68,000. Council has already received a funding allocation of \$50,000 in the Tweed Valley Way hand-over grant for this embankment and the RTA has indicated that a further grant may be forthcoming to meet the additional costs for the recommended treatment.

Following, for Council's consideration, are photographs of the slope and also of similar linemarking and protective fencing treatments as proposed for this site.



Photograph 1. *Overhanging rock section at distance 120m*



Photograph 2. *Overhanging rock section at distance 60m*



Photograph 3. *Example of proposed linemarking to keep opposing traffic separated south of the slope*



Photograph 4. *Indicative view of roadway past cutting with recommended barrier*

OLD SH10 MUWILLUMBAH ROAD BRRRINGBAR CUTTING
SLOPE 140 LINK 3310 5.2km to 5.47km

The cutting at Burringbar has been regularly monitored for several years, and no serious rockfall has occurred. There is fairly frequent dropping of rocks up to 250mm in size, but most of these break up to some extent when impacting the drain.

The edge drain, while only being narrow, slopes steeply back as a result of the asphalt base, and has been very effective in keeping a high proportion of the smaller rocks from getting onto the pavement.

A close inspection has been made of the cutting, with the following assessment:

- The cutting is approximately 270m long, with the northern 40m being <2m high and of little risk.
- The next 45m is up to 4m high, but is not showing signs of major instability or weathering
- The most dangerous area is located between 45m and 80m from the southern end. Large overhanging blocks are present, with poor joint orientation, and failure is likely, triggered by adverse rain events
- The other problem area is located 118m to 125m from the southern end. Very weathered rock has slid to produce a near vertical scarp that continues to shed material onto the pavement.

Treatment Options

1. Widen cutting, with a bench at half height

The top of the cutting is relatively level, then drops downwards 8 to 15m behind the crest of the cutting. The earthworks for this option would be substantial, but not excessive, as the cutting would not have to be increased in height.

The main disadvantage is that private land would need to be resumed.

2. Mesh the face

This option would involve meshing the entire face of the cutting, and securing at the top, and with intermediate rock bolts. Some earthworks would be necessary to re-shape areas of the cutting and remove overhangs

Shotcrete could also be applied

The disadvantage of this option are high cost, possibly more than option 1

3. Reduce the risk of the two worst sections

The road could be protected along the overhang section (45m to 80m) by a piled wall, or a concrete buttress structure, again very expensive

The section between 118m and 125m could be protected by a gabion wall, probably 4 gabions high. This would catch all material shed from this area. There may be OH&S problems with construction however.

The treatment of these two sections would eliminate the worst areas, but still leave the rest of the cutting subject to smaller rockfall, and possible larger slips as the material weathers further.

4. Construction of a rockfall fence

This is the recommended treatment from the Contract rating that was done in 2001. There is insufficient room to build a functional rockfall fence without narrowing the pavement. This was not an alternative when the road carried the full Pacific Highway traffic, but now there are few trucks, and less need for such a long overtaking lane.

The distances along the southbound overtaking lane were measured as follows:

Start of lane	0km
Burringbar Cut	2.45km to 2.7km
Merge sign	3.1km
End of O/T lane	3.25km



If the road was narrowed to 2 lanes through the cutting, this would mean the loss of 800m of overtaking lane, but still leave 2.4km.

Recommendation

Option 4 is the recommended treatment.

It is therefore proposed that the road be narrowed to allow the construction of a rockfall fence for the southern 230m of the cutting

The fence should be constructed of steel mesh and steel posts set in concrete footings. It should be a minimum of 1m in height, and 4 steel wire ropes should be woven between the posts and then tensioned.

It is further recommended that concrete new-jersey barriers, anchored to the road formation, be installed over a 30m length adjacent to the rock overhang section, and also over a 10m length at the 65km sign (at 120m).

These should prevent any mass slide from flattening the fence and pushing rocks out on to the road.



J. S. Taylor
Geotechnical Services Manager

17.10.02

**Slope Risk Assessment
Summary Report**



Slope Identification No: 140		File No:	
Completed by: D J Warren-Gash		Date: 21/3/01	
Location			
Road No: 10	Roadloc Link: 3310	CWay Code: A	L or R: L
	Start distance 5.2	Finish distance 5.47	Length 268
Plan Reference No.	Plan chainage	Plan Cut or Fill No.	Locality Name
MGA Coordinates	Easting	Northing	RL(AHD)
GPS Coordinates (GDA Format) Degrees Decimal (DDD.ddddd)	Latitude E: 153.44685	Longitude S: 28.40638	Elevation 91
Hazard/Failure Mechanism	1 Slip/fall	2 Topple	3
Scale of Failure Rating			
- For Volume (S1 - S5)	S4		
- For Block Size (S1 - S5)		S1	
Rate of Failure Rating (R1 - R5)	R1	R1	
Likelihood Rating (L1 - L6)	L2	L2	
Consequence Classes			
Temporal probability (T1 - T5) (for loss of life only)	T2	T2	
Vulnerability (V1 - V5) (for loss of life only)	V2	V2	
- Consequence class for loss of life (C1 - C5)	C1	C1	
- Consequence class for property damage etc (C1- C5)	C5	C5	
Risk Assessment Parameters			
Slope Attribute Score	123	123	
Event Magnitude (M1 - M5)	M2	M1	
Hazard Classification (H1 - H5)	H2	H1	
Assessed Risk Level (ARL1 - ARL5)	ARL1	ARL1	
Possible Remedial Measures (Type(s))			
Need for further investigation (Y/N)			
Reports Available (Y/N) (if Y, list separately)			
Comments: Attachment 10-1 Reach road = 1			

438 5346 (3100AC)
Brett Butcher

Tweed Valley Way

TWEED SHIRE COUNCIL
FILE No <i>R4031 PTB</i>
DOCUMENT No
REQD <i>03</i> / <i>2004</i>
ASSIGNED TO <i>Part 5</i>
LINK <input checked="" type="checkbox"/> IMAGE <input type="checkbox"/>



Roads and Traffic Authority
www.rta.nsw.gov.au

ABN 64 480 155 255

Pacific Highway Office

21 Prince Street
Grafton NSW 2460
Telephone (02) 6640 1000
Facsimile (02) 6640 1001
PO Box 546
Grafton NSW 2460

The General Manager
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

LINK TO 1001060
29 APR 2004

Attention: Mike Rayner

SUBJECT: MR679 Tweed Valley Way. Slope 140 Burringbar Range.

Dear Sir

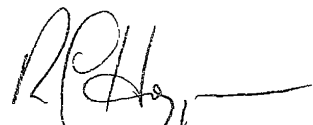
I refer to your letter dated 12 February 2004 and I regret the delay with this response. The Roads and Traffic Authority (RTA) has reviewed the treatment options as detailed in the report by RTA Geotechnical Services Manager, and the information provided by Council.

The treatment option 4 involves a reduction in the length of the southbound overtaking lane by approximately 800m, and leaves a 2.4km long overtaking lane. This option allows for a rock-fall protection fence to be installed with sufficient width for a buffer from traffic, and also allows the existing drainage and roadside furniture to remain unaltered and removes the need for risky earthworks and the potential for property adjustments. Given the significantly reduced traffic volume now using this road, RTA does not believe Council's preference to retain the whole of the overtaking lane is necessary.

With regard to Council's request for additional funding from RTA, it appears that Council's estimate for treatment option 4 does not significantly vary from the original handover estimate. The handover payment to Council was on the basis that Council has discretion to best determine and manage the works within the scope of the total handover package. Council also received a significant increase to its annual Regional Road Block Grant payment to assist with ongoing management of MR679. As such, the request for additional funding is not agreed. Should Council wish to pursue other treatment options then this would be at Council's discretion, and any shortfall in funding to be provided by Council.

Please contact Mr Brett Butcher on telephone (02) 66401338 should any further information be required.

Yours faithfully


Robert (Bob) Higgins
Manager, Pacific Highway

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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19 [ES] Coastline Management - Draft Plan, Financial Implications and Public Exhibition

ORIGIN:

Water

SUMMARY OF REPORT:

Part A - The Plan

Severe coastal storms in the late 1960s and 1970s focused attention on the NSW Coastline as houses, roads and infrastructure were lost or threatened by the sea. Coastal storms in May 1996 and mid 1999 again highlighted the threat to developments.

With continuing development pressures and the need to protect and improve coastline values and assets, it was determined that a balanced, integrated and sustainable Coastline Management Plan for Tweed Shire was required.

The 37 kilometre long Tweed coastline comprises long sandy beaches that extend over 96% of the coastline with rock headlands and river and creek entrances making up the rest.

Development of the Tweed Shire Coastline Management Plan, including determination of the Hazard lines, has been a four year process. The Draft Management Plan provides a management framework for the entire coastline of Tweed Shire. Extensive research and community consultation has been undertaken to develop this Draft Plan.

The Tweed Coastal Committee has considered the Draft Tweed Shire Coastline Management Plan and recommends to Council that it be placed on Public Exhibition for a period of eight (8) weeks.

Copies of the Draft Plan will be available in the Civic Centres and Libraries and on Council's website.

A workshop on the Draft Plan was held with Council on 26 May 2004.

Part B - Financial Implications

The Coastline Management Plan process has, through an extensive consultation program, identified a wide range of actions and works that have a significant capital cost in excess of \$12M.

If the agreed program is to be delivered in any form it will be necessary to commit to a deliverable business plan. This report details overall financial implications and presents generic funding options.

Subsequent to adoption of the plan after exhibition it is intended to bring forward more detailed funding options, specifically in regard to Lot 490 and the expansion of the Tweed Coast Holiday Park business.

RECOMMENDATION:

That Council:-

1. Notes the Plan has identified over \$12M of works following extensive community consultation over a 18 month period.
2. Adopts in principle the philosophy of developing commercial opportunities within the Tweed Coast Reserve to enable the identified Coastal Management Plan works to be implemented.
3. Acknowledges that the primary sources of funding could include realising opportunities through:-
 - a. Lot 490
 - b. Expansion of the Tweed Coast Holiday Parks business
 - c. Levying of a special rate in the Kingscliff CBD
 - d. Increasing Council rates shire wide
4. On the recommendation of the Tweed Coastal Committee, places the Draft Tweed Shire Coastline Management Plan on Public Exhibition for eight weeks from Monday 21 June to Monday 16 August 2004.

REPORT:

PART A - THE PLAN

Severe coastal storms in the late 1960s and 1970s focused attention on the NSW Coastline as houses, roads and infrastructure were lost or threatened by the sea. Coastal storms in May 1996 and mid 1999 again highlighted the threat to developments.

With continuing development pressures and the need to protect and improve coastline values and assets, it was determined that a balanced, integrated and sustainable Coastline Management Plan for Tweed Shire was required.

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Copies of the Draft Plan will be available in the Civic Centres and Libraries and on Council's website.

A workshop on the Draft Plan was held with Council on 26 May 2004.

This Draft Management Plan is the culmination of a process taking several years and undertaken in accordance with the Coastline Management Policy of the NSW Government. This process commenced with the formation of the Tweed Coastal Committee in 1999. Stage 1, the *Tweed Shire Coastline Hazard Definition Study*, (WBM Oceanics Australia, 2001) was completed in 2001. Umwelt Environmental Consultants were commissioned to undertake Stages 2 and 3, the Tweed Shire Coastline Management Study and Management Plan.

The coastline hazards and underlying coastal processes affecting the Tweed Shire coastline have been identified and defined by the *Tweed Shire Coastline Hazard Definition Study* (TSC, 2001). The Study delineates the landward extent of the hazard zones for the Immediate, 50 year and 100 year planning timeframes. Of the natural processes investigated, the significant issue identified and mapped for the Tweed Coastline Management Plan project is the potential for coastal erosion and foreshore recession. In assessing the risks to existing development, it has been determined that the 50 year planning period was appropriate. In assessing risk to undeveloped land, a 100 year planning period has been adopted.

While the majority of the coastal hazard risks on the Tweed coastline do not presently warrant any significant structural mitigation measures, the beachfront development at Kingscliff is recommended for protection through the extension of the existing seawall. Sand nourishment is integral to this strategy for maintaining beach amenity in accordance with the principles of Ecological Sustainable Development (ESD), as directed by the NSW Coastal Policy (1997). The estimated capital cost of this strategy is over eight million dollars.

While coastal hazards at Cabarita Beach within the 50 year planning period do not warrant any significant protective works, a combination of environmental planning (planned retreat), development control (requiring deep piled foundations) and hazard line review within 10 years, are required for the beachfront properties at Cypress Crescent and Pandanus Parade.

To achieve a more sustainable use of the Tweed coastline as a whole, it is a high priority for Council to continue its integrated planning and management of the individual beaches and coastline reserve that make up the Tweed coastline. This has been recently initiated with the construction of a continuous coast cycleway/walkway and the provision of bus shelters for public (or private) transport. Further essential planning and integrated management strategies recommended within this Plan include:

preparation of Master Plans or Locality Plans for key locations, or activity nodes, and adjoining streets, to provide implementation of the Coastline Management Plan in regard to planning of shade, shelter, recreational and visual amenity aspects.

An integral part of this is the integration of existing Plans of Management, which include areas of the coastline covered by the Coastline Management Plan. Some of these plans may need to be updated to ensure the guiding principles of the Coastline Management Plan are included in such Plans of Management. These Plans of Management include the Draft Tweed Coast Reserve Plan of Management; Draft Tweed Coast Estuaries Management Plan; Draft Durambah Beach Dune Management Plan, numerous Vegetation Management Plans and SEPP 26 Management Plans:-

- retention of the 7(f) zone in its current alignment;
- all new tourist and residential developments to be located landward of the 7(f) zone or landward of the 100 year hazard line where the 7(f) zone does not apply;

- where necessary, a Coastline Development Control Plan (DCP), or revised DCP 48 and 51, to address the high aesthetic and recreational value of the coastline, the desired character of the coastline corridor, the preservation of views, and the height and scale of future development;
- the preparation of a Landscape Structure Plan (LSP), or Vegetation Management Development Control Plan, or similar, to confirm strategic principles and priorities for landscaping the coastline corridor; and
- a reduction of off-leash dog exercise areas and Permit Holder Vehicle (4WD) areas from stretches of the coastline that can no longer support such activities in light of the increased population pressures associated with the beaches.

The time frame for the program of works identified by the Coastline Management Plan is in excess of 15 years and up to 20 years. Within this 20 year time period, priorities and completion timeframes have been set for all works and actions relating to the Tweed Coastline Management Plan. The Plan also makes provision for a review and reporting process to enable the broader community to be informed and proposed actions and priorities refined as necessary.

The Coastline Management Study and Plan will be on public display for eight (8) weeks. During that period comment from the community and Government agencies is sought. Following the display period, the Plan will be modified, where necessary, and then finalised for adoption by Council and the relevant State Minister.

Management Actions

Following are examples of Management Actions from the Management Plan for the Whole of Coastline and specific areas.

*Note that the costings are "Indicative Capital Costs" and do not include amounts for implementation of vegetation management plans and rehabilitation of coastal vegetation including SEPP 26 areas.

Examples of Management Plan Actions for the **Whole of Coastline** costed* at \$2,614,500 include:-

WC1 Implement SEPP 26 Management Plans and Vegetation Management Plans

WC2 Finalise the Emergency Action Plan for coastal erosion hazards

WC5 Prepare a Landscape Structure Plan to confirm strategic principles and priorities for landscaping the coastline corridor

WC6 Empower Council lifeguards with the authority to fine offenders of unauthorised activities

WC12 Remove redundant infrastructure and replace with consistent design (or theme)

WC23 Close and rehabilitate all inappropriate car parking areas and unnecessary public access points

WC27/28 Cycleway linkages to main beach access points and commercial centres

WC29 Initiate targeted residential education program about residential encroachment onto public land

WC33 Retain 7(f) Zone within Tweed LEP 2000 on current alignment

WC38 Ensure integration of relevant plans of management e.g. Tweed Coast Reserve Plan of Management, Duranbah Beach Dune Management Plan, Vegetation plans of Management and Tweed Coastal Estuaries Management Plan

WC39 Preparation of Master or Locality Plans for key locations to provide implementation of all the Plans of Management

WC42 Prepare guidelines for the management and operation of facilities within public reserves including leasing arrangements

Examples of Management Plan Actions for the **Point Danger – Fingal Head Area** costed* at \$220,500 include:-

FH1 Expand the Cook Island Aquatic Reserve to include Fingal Head rock platform

FH6 Install relocatable signs and fencing to protect threatened species (wader birds and turtles) habitat sites

FH14 Provision of sand at Duranbah Beach from the TRESBP in sufficient quantities to sustain the existing dune, ensure surf quality and maintain sand cover over 2nd level rocks and Tyalgum wreck

FH15 Implement appropriate sections of Duranbah Beach Dune Management Plan

FH16 Investigate need for public safety measures for Fingal Head Point

Examples of Management Plan Actions for the **Kingscliff – South Kingscliff Area** costed* at \$8,222,500 include:-

KC1 Extend existing seawall from Bowls Club south, with sand nourishment program

KC2 Management of Cudgen Creek entrance in accordance with revised Estuary Management Plan

KC5 Redesign stormwater system with Kingscliff Holiday Park upgrade for no concentrated stormwater flows on the beach

KC6 Increase penalties for clearing of vegetation to improve views from private property

KC8 Remove beach Off-Leash Dog Exercise Area at South Kingscliff

KC9 Remove Authorised Permit Holders Vehicles Permitted area at South Kingscliff

Examples of Management Plan Actions for the **Bogangar – Cabarita Beach Area** costed* at \$629,000 include:-

BC3 For beachfront properties aligned with the 50 year hazard line, initiate combination of:-

- Detailed review of hazard lines in 10 & 20 years
- Long-term planned retreat with purchase/leaseback system
- Foundation requirements for new development within next 10 years

BC4 Public amenities building removed and provided in the Surf Club building

BC5 Finalise DCP8 (Coastal Lands) or develop new DCP to include Plan recommendations regarding Cabarita Beach-front development

BC6 Increase foreshore facilities such as BBQ's, shelters and seating

BC8 Maintenance of site of Aboriginal cultural significance near Norries Head

BC12 Implement stormwater outlet maintenance program

BC13 Investigate alternative sites for proposed Holiday park and determine need for park

BC15 Implement Norries Headland Improvement Plan

Examples of Management Plan Actions for the **Hastings Point Area** costed* at \$455,000 include:-

HP2 Install educational signage at rock platform entrances

HP5 Detailed review of hazard lines in 20 year intervals

HP6 Provide shade facilities at Creek foreshore

HP10 Install further picnic facilities and playground at headland park area

HP12 Restrict use of PWC in the Creek entrance to access to ocean waters only

HP13 Erect warning signs regarding the dangers of crossing the Cudgera Creek entrance to access beach

HP16 Increase public reporting of monitoring data for the Hastings Point Dune Disposal System proposed extension

Examples of Management Plan Actions for the **Pottsville - Wooyung Area** costed* at \$55,000 include:-

PW1 Implement Pottsville Vegetation Management Plan

PW3 Investigate installation of viewing platform at Potts Point for viewing of surf and beach conditions to help manage large number of beach access paths

PW5 Formalise existing car parking at Ambrose Brown Park

PW7 Remove beach Off-Leash Dog Exercise Area from Mooball Beach

PW9 Reduce area for Authorised Permit Holders Vehicles Permitted Vehicles, to between Black Rocks and northern extremity of Wooyung Nature Reserve

PW10 Provide all-weather disabled access at Potts Point

PW11 Increase Council ranger presence in the area due to the beaches remoteness

PART B - FINANCIAL IMPLICATIONS

1. Introduction

The Tweed Coastline Management Plan has identified a wide range of actions to be implemented consistent with establishing and maintaining the coastline within the social, economic and environmental values espoused by the community through an extensive consultation process over an 18 month period.

Many of the desired outcomes result in the direct or indirect need of requiring considerable financial resources.

While by no means exhaustive, the indicative cost of such works, on a precinct basis is detailed below:-

• Whole of Coastline	\$2,614,500
• Pt Danger - Fingal Head	\$220,500
• Kingscliff - Casuarina Beach	\$8,222,500
• Bogangar - Cabarita Beach	\$629,000
• Hastings Point	\$455,000
• Pottsville Wooyung	\$55,000
Total:	\$12,196,500.00

2. Tweed Coastal Reserve - Existing Financial Management

1.	Current Single Coastal Reserve Expenditure		\$1,671,040
	Funded by:		
1a.	Contributions from TCHP	\$896,600	
1b.	General Rates	<u>\$773,440</u>	<u>\$1,671,040</u>
	Funds in Balance		\$0
2.	Required Expenditure past 2003/2004		
	Made up of:-		

	Existing costs		\$1,671,040
2c.	Kingscliff Protection Works Amort 25 years	\$492,420	
2d.	Kingscliff Protection Works Annual R & M	\$50,390	
	Total Proposed Kingscliff Works:		\$542,810
2e.	Allowance for other non-Kingscliff Works		\$180,000
	Total Required Expenditure past 2003/2004		\$2,393,850
	Current Funding		\$1,671,040
	Estimated Shortfall		(\$722,810)

3. Tweed Coastline Capital Works Program

Year	Works Description	Note 1 Capital Cost	Economic Life in Years	Interest Cost at 7.00%	Capital Repayment over Life	Total Finance Cost
1	Kingscliff Sea Wall & Sand Nourishment	\$8,250,000	20	\$577,500	\$412,500	\$990,000
2	10% of CLMP Works	\$400,000	10	\$605,500	\$452,500	\$1,058,000
3	10% of CLMP Works	\$400,000	10	\$633,500	\$492,500	\$1,126,000
4	10% of CLMP Works	\$400,000	10	\$661,500	\$532,500	\$1,194,000
5	10% of CLMP Works	\$400,000	10	\$689,500	\$572,500	\$1,262,000
6	10% of CLMP Works	\$400,000	10	\$717,500	\$612,500	\$1,330,000
7	10% of CLMP Works	\$400,000	10	\$745,500	\$652,500	\$1,398,000
8	10% of CLMP Works	\$400,000	10	\$773,500	\$692,500	\$1,466,000
9	10% of CLMP Works	\$400,000	10	\$801,500	\$732,500	\$1,534,000
10	10% of CLMP Works	\$400,000	10	\$829,500	\$772,500	\$1,602,000
11	10% of CLMP Works	\$400,000	10	\$857,500	\$812,500	\$1,670,000
12				\$577,500	\$772,500	\$1,350,000
13				\$577,500	\$732,500	\$1,310,000
14				\$577,500	\$692,500	\$1,270,000
15				\$577,500	\$652,500	\$1,230,000
16				\$577,500	\$612,500	\$1,190,000
17				\$577,500	\$572,500	\$1,150,000
18				\$577,500	\$532,500	\$1,110,000
19				\$577,500	\$492,500	\$1,070,000
20				\$577,500	\$452,500	\$1,030,000
		<u>\$12,250,000</u>		<u>\$13,090,000</u>	<u>\$12,250,000</u>	<u>\$25,340,000</u>

Note 1: Based on the costed indicative Capital Costs in Tables 3.3, 3.5, 3.7, 3.9, 3.11 and 3.13. These allowances are considered minimum figures as some CLMP works are uncosted and demand for increased services and community facilities is not included

4. Tweed Coastline - Financial Position

Year	Current Reserve Maintenance Cost pa	Note 1 CLMP Embellish Maintenance Cost pa	CLMP Capital Works Cost pa	Total Forecast Reserve Maintenance Cost pa	Current Annual TCHP Contribution	Forecast Annual Funding Shortfall	Note 2 Shortfall as a % of Gen Rate
0	\$1,671,040	\$0	\$0	\$1,671,040	\$897,600	(\$773,440)	3.87%
1	\$1,671,040	\$345,500	\$984,840	\$3,001,380	\$897,600	(\$2,103,780)	10.52%
2	\$1,671,040	\$345,500	\$1,052,662	\$3,069,202	\$897,600	(\$2,171,602)	10.86%
3	\$1,671,040	\$345,500	\$1,120,483	\$3,137,023	\$897,600	(\$2,239,423)	11.20%
4	\$1,671,040	\$345,500	\$1,188,305	\$3,204,845	\$897,600	(\$2,307,245)	11.54%
5	\$1,671,040	\$345,500	\$1,256,126	\$3,272,666	\$897,600	(\$2,375,066)	11.88%

Year	Current Reserve Maintenance Cost pa	Note 1 CLMP Embellish Maintenance Cost pa	CLMP Capital Works Cost pa	Total Forecast Reserve Maintenance Cost pa	Current Annual TCHP Contribution	Forecast Annual Funding Shortfall	Note 2 Shortfall as a % of Current Gen Rate
6	\$1,671,040	\$345,500	\$1,323,948	\$3,340,488	\$897,600	(\$2,442,888)	12.21%
7	\$1,671,040	\$345,500	\$1,391,769	\$3,408,309	\$897,600	(\$2,510,709)	12.55%
8	\$1,671,040	\$345,500	\$1,459,591	\$3,476,131	\$897,600	(\$2,578,531)	12.89%
9	\$1,671,040	\$345,500	\$1,527,412	\$3,543,952	\$897,600	(\$2,646,352)	13.23%
10	\$1,671,040	\$345,500	\$1,595,234	\$3,611,774	\$897,600	(\$2,714,174)	13.57%
11	\$1,671,040	\$345,500	\$1,663,055	\$3,679,595	\$897,600	(\$2,781,995)	13.91%
12	\$1,671,040	\$345,500	\$1,343,895	\$3,360,435	\$897,600	(\$2,462,835)	12.31%
13	\$1,671,040	\$345,500	\$1,304,000	\$3,320,540	\$897,600	(\$2,422,940)	12.11%
14	\$1,671,040	\$345,500	\$1,264,105	\$3,280,645	\$897,600	(\$2,383,045)	11.92%
15	\$1,671,040	\$345,500	\$1,224,210	\$3,240,750	\$897,600	(\$2,343,150)	11.72%
16	\$1,671,040	\$345,500	\$1,184,315	\$3,200,855	\$897,600	(\$2,303,255)	11.52%
17	\$1,671,040	\$345,500	\$1,144,420	\$3,160,960	\$897,600	(\$2,263,360)	11.32%
18	\$1,671,040	\$345,500	\$1,104,525	\$3,121,065	\$897,600	(\$2,223,465)	11.12%
19	\$1,671,040	\$345,500	\$1,064,630	\$3,081,170	\$897,600	(\$2,183,570)	10.92%
20	\$1,671,040	\$345,500	\$1,024,735	\$3,041,275	\$897,600	(\$2,143,675)	10.72%
Note 1: Based on costed Annual Maintenance Costs in Tables 3.3, 3.5, 3.7, 3.9, 3.11 and 3.13. These allowances are considered maximum figures							
Note 2: Based on General Rate increase of \$100,000 equalling 0.5%							

5. Funding Options

- Special rate for Kingscliff business sector
- Increase general rates shire wide
- Increase TCHP business
 - Redevelop Kingscliff North, Kingscliff Beach and Hastings Point parks
 - Develop a new park at Norries Head
- Develop Lot 490 to provide substantial income
- Any combination of the above

6. Discussion

Each finance option is founded upon the principle that the Single Coastal Reserve should become a self-funding entity.

1. The Special Rate to be levied on the Kingscliff CBD recognises that approximately 2/3rds of the total proposed capital expenditure is to be spent at Kingscliff. These works will improve the amenity of and provide protection for businesses situated on Marine Parade.
2. A General Rate levied on all Tweed Ratepayers allocates the expenditure across all shire based beneficiaries / users. This option suggests that proximity to Crown land does not create a superior right and responsibility over that of others who may reside further away.
3. Maximising the return from TCHP creates a sustainable income stream and improves the operating efficiency of this long-standing business unit. The improvements contemplated will also assist Tweed tourism by diversifying the available product range and strengthening product quality.

4. The suggestion that significant income be derived from Lot 490 recognises that it has always been ear-marked as an income source and that due to its size and location has major potential in this context.

For reasons of equity and affordability a combination of a number of the finance options may be deemed most appropriate.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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20 [ES] Banora Point Western Drainage Scheme - Maintenance

ORIGIN:

Works

SUMMARY OF REPORT:

Council at its meeting of 5 May 2004 called for a report to be brought forward on the maintenance of the Western Drainage Scheme. This report details maintenance activities carried out to the drainage scheme this financial year and constraints on these activities.

RECOMMENDATION:

That this report be received and noted.

REPORT:

Council at its meeting of 5 May 2004 called for a report to be brought forward on the maintenance of the Western Drainage Scheme. This report details maintenance activities carried out to the drainage scheme this financial year and constraints on these activities.

Council allocated \$79600 for the maintenance of the Western Drainage Scheme in its 2003/04 Budget. These funds have been fully expended this year on activities listed in Table 1 at the end of this report. These activities were carried out in accordance with the Operational Management Plan that received an amended Development Consent from Council in October 2003. This management plan was originally prepared to formalise intervention levels for works, and also in response to operational constraints imposed by the NSW *Threatened Species Conservation Act* due to a population of Comb-crested Jacanas habituating in the drain. This bird species is listed as vulnerable under the state legislation and the National Parks and Wildlife Service have identified this local population as being one of the more important in NSW. The Management Plan negates the need to submit development applications or seek various State Government department's approvals each time works are required to the drain and will be operational until August 2006.

The management plan imposes timetables for when various types of work can be carried out to the drain's waterway. Generally, disruptive works such as dredging, excavations and large-scale weed removal are only permitted during the August to October period to minimise impacts on the Jacana's breeding and fledgling season. Also, such works are recommended to take place in the cooler months to limit impacts on the drain's frog populations. As Jacanas rely on a large coverage of water lilies for foraging and roosting, it is a requirement that lilies are not to be removed when carrying out such works unless it is absolutely unavoidable. The removal of noxious weeds, however, is permitted all year round provided impacts to Jacanas can be avoided. Blooms of noxious weeds including *Salvinia* and *Azolla* have required removal at least once per year from the drainage network. Removal of these weeds in the past has been carried out using both mechanical harvesters and the introduction of an ant-sized weevil that feeds on *Salvinia* during the warmer months.

The present weed infestation does not have a significant adverse impact on the hydraulic performance of the drainage system. Due to this and the abovementioned environmental constraints and lack of available funds no further weed or siltation removal from the drain is proposed until August 2004. Subject to a sufficient funding allocation, works planned in the 2004/05 year are listed in Table 2 at the end of this report. Also, as Council has now been granted an easement over the moat surrounding Club Banora's golf course the length of waterway to be maintained by Council has increased significantly which will further dilute maintenance allocations over the network.

Table 1 - Works completed in 2003/04 (at a total cost of \$94130 to date)

Item No.	Description
1	Salvinia, red azolla & weed removal Vintage Lakes using mechanical harvester
2	Salvinia removal Vintage Lakes using weevil
3	Salvinia & weed removal from within channel beside Sth Tweed football fields, Riversdale Blvd, Avondale Dr, Birkdale Crt & Advocate Pl
4	Weed spraying of drain banks by Far North Coast Weeds Authority
5	Excavation of siltation pond opposite Banora Cove
6	Excavation of outlet at Ballymore Crt

7	Excavation of outlet Botanical Cct
8	Excavation of siltation ponds Botanical Cct
9	Repairs to rock lined channel Botanical Cct
10	Excavation of pipe outlet into pond Kildare Dr

Table 2 - Works proposed for 2004/05

Item No.	Description
1	Desilting of drain west of Fraser Dr
2	Desilting of drain between Riversdale Blvd and Foxhill Place
3	Desilting of pond Kildare Dr
4	Weed removal Darlington Dr to Riversdale Blvd
5	Weed removal Avondale Dr
6	Weed removal Vintage Lakes
7	Excavation of siltation ponds Botanical Cct

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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REPORTS FROM DIRECTOR ENVIRONMENT & COMMUNITY

21 [EC] Policy Amendment - Sale of Dog/Cat to New Owner

ORIGIN:

Environment & Health Services

FILE NO: Revenue - Fees & Charges

SUMMARY OF REPORT:

Council resolved on 4 February 2004 to continue operation of the animal impounding facility at Leddays Creek Road Stotts Creek. Accordingly Council officers have liaised with the Friends of the Pound to achieve a beneficial service to the community in supplying desexing, microchipping, heart worm check, health check and vaccinations for all animals being sold from the pound at a reduced cost.

To recoup the costs associated with these veterinarian procedures a report was submitted to Council proposing to charge a fee of \$160 for the purchase of a dog and \$110 for the purchase of a cat from Council's impounding facility. The resolution that stemmed from the meeting was to publicly exhibit the fee of \$160 for the purchase of a dog and \$110 for the purchase of a cat from Council's impounding facility for a period of 28 days. It was also resolved to change the fees in the interim period to assist in the rehoming of animals.

RECOMMENDATION:

That the following fees be adopted:-

1. The fee of \$160 for the purchase of a dog from Council's impounding facility;
2. The fee of \$110 for the purchase of a cat from Council's impounding facility;
3. A microchipping fee of \$30 for animals released back into the care of their owners.

REPORT:

Council resolved on 4 February 2004 to retain the operation of the animal impounding facility at Leddays Creek Road Stotts Creek, accordingly Council officers have had extensive discussions with the Friends of the Pound to achieve a beneficial service to both Council and the community in supplying desexing, microchipping, heart worm check, health check and vaccinations for all animals being sold from the pound at a reduced cost.

Council's impounding facility houses approximately 1000 animals each year at an increasing rate.

The total number of animals impounded for this financial year to May is 977. Of this number, 239 were released back into the care of their owners, 61 were released to animal welfare organisations such as the RSPCA for the purpose of rehoming, 607 were sold to new owners and 70 were euthanised for various reasons, eg. animal aggressive, had severe behavioural problems and/or health reasons.

The fees were adopted during the interim period of the public advertising and to date the new fees and process have been extremely successful. Approximately 60% of all impounded animals are resold to the public. Prior to an animal being sold it is vet checked and temperament assessed. The temperament assessment involves the pound attendant and Council's Rangers advising the vet of their observations concerning the behaviour of the animal. Other supporting documents associated with the animals temperament are also provided. These may include statements from the public or a surrender form submitted by the owner.

Murwillumbah Vets and King Street Vets have offered the veterinarian services at the same price offered to the RSPCA. It is proposed that there be a single fee for the sale of dogs and a separate fee associated with cats. The set fees would be:

Dog (male and female) - \$160	Does not include registration
Cat (male and female) - \$110	Does not include registration

Although the above price includes desexing, if a person does not wish to have the animal desexed they are still required to pay the full price as listed above, plus the registration fee of a non-desexed animal, therefore an incentive is created to have the animal desexed when purchasing from the impounding facility. This has previously been resolved as an objective of Council while not being compulsory.

Registration Costs:

Desexed animal	\$35
Desexed animal owned by a Pensioner	\$15
Non-desexed animal	\$100

There are no additional fees retained by Council during the sale of an animal and the associated fee for the sale of the animal covers the expense associated with the veterinarian service, however, there are variations that may occur during a sale (such as the animal already being microchipped, desexed, vaccinated or any combination) and this would result in Council retaining the associated funds. In the circumstance where animals are assessed and not sold this would be a cost to Council. It is envisaged that this would be a very minimal number of animals as the vet and behavioural assessment will result in purchasers receiving a quality animal from the pound.

The new sale system has alleviated many problems associated with the sale of animals from the pound. The price structure is now simplified and it encourages a more responsible owner to purchase an animal inevitably reducing complaints by members of the community and will also result in less unwanted pup and cat litters. This process has also reduced complaints generated from the public who have purchased an animal from the pound and have the burden of additional vet fees due to an unknown ailment or behavioural problem associated with the animal. In the long term this system will be beneficial to both the community and Council.

Approximately 25% of impounded animals are released back into the care of their owners from the impounding facility and are required to be microchipped and registered in accordance with the Companion Animals Act. Currently a microchipping voucher is issued to those owners who require the service for the animal at a cost of \$50. Registration is also paid at the time of the release. There are many complications associated with this process and with the appointment of a full time pound attendant it is envisaged that they would be trained in the microchipping procedure.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER:

Nil.

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ORDERS OF THE DAY

1 [NOM] Modification Works on the Clarrie Hall Dam

NOTICE OF MOTION:

Councillor M R Boyd moves:

That in view of the latest knowledge on maximum probable floods and the forecast of potential higher incidence of such events, that Council requests NSW Public Works to bring forward the commencement date proposed for the modification works on the Clarrie Hall Dam.

2 [NOM] Findings Covering Mammals and biodiversity on the Land West of Gold Coast Airport

NOTICE OF MOTION:

Councillor M R Boyd moves:

That Council extends an invitation to Dr Stephen Phillips, Lecturer, Ecology and Conservation Biology, Griffith University, to address Council on his findings covering mammals and biodiversity on the land west of Gold Coast Airport.

3 [NOM] Information in Relation to the Land Affected by the C4 Route West of the Gold Coast Airport

NOTICE OF MOTION:

Councillor M R Boyd moves:

That Council request the Queensland Department of Main Roads to make available to Council all the latest relevant environmental and archaeological information it has in relation to the land affected by the C4 route west of the Gold Coast Airport.

4 [NOM] Surf Life Saving

NOTICE OF MOTION:

Councillor M R Boyd moves:

That Council takes all appropriate steps to ascertain from the Surf Life Saving authorities what basis of truth there is to the allegations made by Mr Garry Raso in his presentation to Council on 9 June 2004.

5 [NOM] Advertising Space-Tweed Link - Disability Service Providers

NOTICE OF MOTION:

Councillor M R Boyd moves:

That:-

1. In view of the extremely important work done by a diverse range of disability service providers in the Tweed Community, Council suitably acknowledges their invaluable work by providing each service with free space in the Tweed Link equivalent to 200 words in which it can provide a brief summary of the most significant aspects of its service.
 2. Each disability service provider be invited to compile its 200 words on a roster basis.
-

CONFIDENTIAL MATTERS

REPORTS THROUGH GENERAL MANAGER IN COMMITTEE

REPORTS FROM DIRECTOR PLANNING & ENVIRONMENT IN COMMITTEE

- 1 **[DS] Application to Modify Development Consent 98/79 Involving Unauthorised Enclosing of Ground Floor of Dwelling in a Flood Prone Area**

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 AND OPERATIONS IN COMMITTEE

- 2 **[ES] EC2004-073 Supply and Delivery of Pressure Pipe and Various Water Service Fittings**

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
-

3 [ES] Industrial Relations Commission Claim - Tweed Shire Council Vs Shang

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)
-

4 [ES] EC2004-085 Expressions of Interest - Wetland Restoration Works and Environmental Monitoring for the Piggabeen Road Deviation

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
-

5 [ES] EC2004-080 Concept Road Design of Kirkwood Road Tweed Heads South

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
-

6 [ES] EC2004-091 Supply & Spraying of Bituminous Surfacing at Various Locations

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
-

7 [ES] EC2004-072 Supply of Pavement Linemarking Services

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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