

## ITEMS FOR CONSIDERATION OF COUNCIL:

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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.

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**16 June 2004**

#### **REPORT FROM DIRECTOR PLANNING & ENVIRONMENT**

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

**432**

**Councillor M R Boyd**

**Councillor S M Dale**

**RESOLVED** that this item be deferred.

**Current Status:** Meeting to be arranged.

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## 7 July 2004

### REPORTS FROM 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

460

Cr R D Brinsmead

**RESOLVED** that this item be deferred pending a workshop on DCP5 and interested parties be invited to attend.

**Current Status:** Amended application received. A report to be prepared for Council meeting of 1 September 2004.

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## 21 July 2004

### ORDERS OF THE DAY

- 1 [NOM] Compulsory Desexing

#### NOTICE OF MOTION:

523

Cr D M Holdom

Cr B J Carroll

**RESOLVED** that Council officers bring forward a report on the opportunity for Council to introduce compulsory desexing of animals sold from Council's dog and cat pound.

**Current Status:** Report being prepared.

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## 4 August 2004

### REPORTS FROM DIRECTOR ENGINEERING & OPERATIONS

- 19 [ES] Draft Development Control Plan No. 5 - Development of Flood Liable Land

1

Cr G J Lawrie

Cr J F Murray

**RESOLVED** that this matter be deferred for a further Workshop.

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**Current Status:** Workshop scheduled for Wednesday 25 August 2004.

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**2 [NOM] Section 149 Certificates**

**NOTICE OF MOTION:**

**2**

**Cr G J Lawrie**

**Cr L F Beck**

**RESOLVED** that a report be prepared on "puting in place" a procedure for the processing of URGENT applications for S149 Certificates to be made available to the applicant within, say, two (2) hours of lodgement of the application and appropriate fee, in lieu of the current forty-eight (48) hours.

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

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**3 [NOM] Grey Water Reuse**

**NOTICE OF MOTION:**

**3**

**Cr G J Lawrie**

**Cr L F Beck**

**RESOLVED** that a report be brought forward about the feasibility/possible incentive(s) for encouraging ratepayers to collect and divert household grey water for garden use in lieu of entering the sewerage system.

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

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**5 [NOM] Old Tweed River Art Gallery Site**

**NOTICE OF MOTION:**

**4**

**Cr G J Lawrie  
Cr R D Brinsmead**

**RESOLVED** that a report be prepared on possible uses after June 2005 for the old Art Gallery in Tumbulgum Road and that the public be invited to have input into the future use of the building.

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

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**ITEMS DEFERRED IN COMMITTEE**

**[ID][DS] Application to Modify Development Consent 98/79 Involving Unauthorised Enclosed 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

**C 123 RESOLUTION:**

That this matter be deferred following the DCP Workshop and after a decision has been made on the DCP.

**Current Status:** Workshop scheduled for Wednesday 25 August 2004.

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## **MAYORAL MINUTE**

### **Mayoral Minute for Meeting held 18 August 2004**

Councillors,

#### **1. Regional Arts NSW**

5 August – attended meeting of Northern Rivers Arts Committee at Murwillumbah

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#### **2. Uki Sewerage System**

5 August – attended opening of Uki Sewerage System

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#### **3. NSW Sugar Mills**

6 August – attended funding announcement at Condong sugar Mills

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#### **4. Tweed Red Cross**

6 August – attended the Annual General Meeting of Tweed Red Cross organisation

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#### **5. Tweed Financial Planning Services**

6 August – attended opening of new office of Tweed Financial Planning Services & Derepas Accounting in Tweed Heads

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#### **6. Leukaemia Foundation**

6 August – attended Tackle Leukaemia Ball at Seagulls

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#### **7. Water Management Conference**

9-12 August – attended Water Management Conference in Moama

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## **8. Northern Rivers Symphony Orchestra**

14 August – attended performance by Northern Rivers Symphony Orchestra at Seagulls

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## **9. Mooball Village**

15 August – attended opening of Mooball Toilet Block

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## **10. Murwillumbah Wollumbin High School**

16 August – attended assembly at Wollumbin High School Murwillumbah

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## **11. Murwillumbah Hospital Auxiliary**

16 August – Murwillumbah Hospital Auxiliary AGM

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## **12. National General Assembly of Local Government**

7-10 November – Cr. Warren Polglase has indicated an interest in attending the National General Assembly of Local Government being held in Canberra from 7- 10 November 2004. Costs involved are - Registration fee \$725; air fare (estimate) \$350; accommodation \$540. Approval for his attendance is requested.

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### **INVITATIONS ACCEPTED:**

- 19 August – Tweed Futures Steering Committee – Murwillumbah
- 20 August – opening Greenmount Timber Building Supplies
- 22 August – (Banana Festival) All Saints Anglican Church Thanksgiving Service
- 23 August – Northern Rivers Arts – Board of Directors Meeting
- 23 August – Sports Advisory Committee – Sports Field Bus Tour
- 25 August – Twin Towns Friends Association (Sing-a-long & Lunch)
- 26 August – Lot 490 Steering Committee Mtg
- 27 August - TEDC Board Meeting
- 27 August – Launch Tweed Heads CBD Masterplan by Minister Diane Beamer
- 27 August – Lindisfarne “World of Business Luncheon” at Banora
- 1 September – Muwillumbah Legacy, lay wreath (legacy week activities)

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

- 4<sup>th</sup> National and 1<sup>st</sup> Trans-Tasman Mainstreet Conference "Getting Down to Business" **26-29 September** Melbourne
- NSW Tourism Industry Council "Tourism Focus" **2/3 September** Polkolbin Hunter Valley
- Lismore City Council Workshop An Introduction to the NSW Planning System for New Councillors **9 September** Lismore (Cr Holdom has indicated her interest in attending)
- 2004 Local Government Road Safety Conference "Our Business, Everyone's Responsibility" **8 and 9 September** Sydney.

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

**Executive**

<b>Name</b>	<b>From - To</b>	<b>Location</b>	<b>Details</b>
DECS	20 August 2004	Lismore	SCU Meeting
DECS	23 August 2004	Casino	Arts Northern Rivers Arts Board meeting
EM	19 August 2004	Ballina	Governance Health Check Workshop
EM	31 August 2004	Brisbane	Corporate Governance Symposium 2004
GM	19 August 2004	Ballina	Governance Health Check Workshop

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## ITEMS DEFERRED

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

### ITEM DEFERRED FROM MEETING HELD:

**7 July 2004**

**460**

***Cr R D Brinsmead***

***Cr J F Murray***

*RESOLVED that this item be deferred pending a workshop on DCP5 and interested parties be invited to attend.*

### ORIGIN:

**Development Assessment**

**FILE NO: DA03/1038 Pt1**

### SUMMARY OF REPORT:

Council considered a report in relation to the proposed subdivision at its meeting of 19<sup>th</sup> May 2004 and resolved:

*"That this item be deferred to allow landowners to further address the concerns outlined in the report with Development Staff."*

The applicant and consultants attended a meeting with the Director of Planning and Environment and staff to discuss the submitted report and indicated that they would seek legal advice in terms of interpretation of the Development Control Plan No.5 - Flood Liable Lands and the Tweed Local Environmental Plan 2000.

The applicant has submitted a copy of his legal advice to Council. A copy of this is provided as an attachment in the Confidential part of this Agenda. A response is provided in this report.

The previous report to Council has been reproduced to enable determination of the matter.

**RECOMMENDATION:**

That Development Application DA03/1038 for a 7 lot subdivision at Lot 121 DP 755701, No. 50 Chinderah Bay Drive, Chinderah be determined in accordance with the recommendation contained in the previous report detailed as follows:-

*That Development Application DA03/1038 for a 7 lot subdivision at Lot 121 DP 755701, No. 50 Chinderah Bay Drive, Chinderah be refused for the following reasons: -*

- 1. The subdivision proposal has not demonstrated that the subject land is outside the extreme flood hazard zone as defined by the Cameron McNamara Report dated September 1984 and as such has not been able to satisfy the requirements of Development Control Plan No.5 - Flood Liable Land.*
- 2. The proposed subdivision does not adequately satisfy the matters contained in Clause 34 - Flooding of the Tweed Local Environmental Plan 2000.*
- 3. The subdivision proposal is unacceptable in its design with seven lots accessing from a right of way and as such does not satisfy the requirements of Development Control Plan No.16 - Subdivision Manual.*
- 4. The subdivision proposal and resultant fill of the site is considered to result in on flow stormwater impacts that will result in an unacceptable cumulative impact. Inadequate information has been provided in relation to the impacts from filling of the land to assess this issue.*
- 5. The proposed subdivision is not considered to be in the general public interest as it is inappropriate development of the flood plain.*

**REPORT:**

**Applicant:** Chris Lonergan & Associates Planning Consultants  
**Owner:** Geographe Point Pty Ltd and Rivercolt Pty Ltd  
**Location:** Lot 121 DP 755701 No. 50 Chinderah Bay Drive, Chinderah  
**Zoning:** 2(a) Low Density Residential  
**Cost:** \$400,000.00

**BACKGROUND:**

**Response to Applicants submission and legal advice**

**1. Objectives of Environmental Planning and Assessment Act 1979**

The applicant's solicitor has referred to the objectives of the act in relation to encouraging orderly and economic use and development of land. The recommended reasons for refusal do not include inconsistency with the objectives of the Act. While it is debatable whether the development is consistent with the objective of the Act or not, the purpose of Part 4 of the legislation is to enable assessment of development under matters for consideration which includes those contained in the report.

**2. The Tweed local Environmental Plan 2000 permits the development by way of the zone.**

The subject land is zoned 2(a) Low Density Residential. The applicant's solicitor has submitted that as the use is permissible with consent in the zone the fact that the land is in an extreme hazard zone in relation to flooding does not prohibit the development. While the proposed subdivision is permissible in the zone a merits assessment is still required and in this case the proposed subdivision is not considered to be able to be supported.

**3. Inconsistent with Clause 34 of the Tweed local Environmental Plan 2000**

Clause 34 of the TLEP refers to Development Control Plan No.5 - Flood Liable Land and requires Council to only consent to development with consideration of this DCP. The DCP contains matters for consideration including the extreme hazard zone.

**4. Development Control Plan No. 5 - Flood Liable Land provides standards for Flood Liable land and these should prevail**

As the proposed development is a residential subdivision on flood liable land the provisions of DCP 5 are applicable in the assessment of the proposal. The DCP refers to mapping that helps identify risk and enables Council's Engineers to assess the suitability or otherwise of development. In this case following technical assessment the proposed subdivision is recommended for refusal.

**5. Extreme Hazard zones are used out of context.**

The applicant appears to be making a point in relation to interpretation and the question over whether DCP5 rationally refers to extreme hazards zone. Comments provided in the report are not considered to require any review based on the applicants submission.

**6. Extreme Hazards zone is not a rational reason for prohibition of development.**

Council's Manager of the Water Unit has provided advice in relation to the proposed subdivision and does not consider that this contention requires review of DCP5 on the basis of the applicants submission. Flood plain development and the issue of flood risk is a matter for consideration in relation to the proposed development.

**Conclusion**

Given the applicants submission it is considered that the following report may now be determined.

**"SUMMARY OF REPORT:**

*Council is in receipt of a development application for a seven (7) lot subdivision of the subject land. The subject land is zoned 2(a) Low Density Residential under the Tweed Local Environmental Plan 2000. The subject land is also identified as being Flood affected and as such the provisions of Development Control Plan No. 5 - Flood Liable Land need to be satisfied.*

*Council's Manager of the Water Unit has advised that the proposed subdivision does not satisfy the requirements in relation to residential development on flood liable land. The applicant has not demonstrated that the proposal is outside the extreme hazard zone. The information provided indicates that the ground levels are in the vicinity of RL 1.0m AHD. The Design Flood Level for this location is RL 3.3m AHD.*

*Council's Development Engineer has advised that the proposed subdivision does not meet the requirements of Development Control Plan No.16 - Subdivision Manual in relation to the number of allotments that will gain access from a Right of Way. Council's Policy states a maximum of five lots may be accessed by a right of way, rather than the proposed seven lots.*

*The above two points have raised concern with Council's Engineers in relation to the proposed development and as such the subdivision on the flood plain is not considered warranted.*

**RECOMMENDATION:**

*That Development Application DA03/1038 for a 7 lot subdivision at Lot 121 DP 755701, No. 50 Chinderah Bay Drive, Chinderah be refused for the following reasons: -*



1. *The subdivision proposal has not demonstrated that the subject land is outside the extreme flood hazard zone as defined by the Cameron McNamara Report dated September 1984 and as such has not been able to satisfy the requirements of Development Control Plan No.5 - Flood Liable Land.*
2. *The proposed subdivision does not adequately satisfy the matters contained in Clause 34 - Flooding of the Tweed Local Environmental Plan 2000.*
3. *The subdivision proposal is unacceptable in its design with seven lots accessing from a right of way and as such does not satisfy the requirements of Development Control Plan No.16 - Subdivision Manual.*
4. *The subdivision proposal and resultant fill of the site is considered to result in on flow stormwater impacts that will result in an unacceptable cumulative impact. Inadequate information has been provided in relation to the impacts from filling of the land to assess this issue.*
5. *The proposed subdivision is not considered to be in the general public interest as it is inappropriate development of the flood plain.*

**REPORT:**

**Applicant:** *Chris Lonergan & Associates Planning Consultants*  
**Owner:** *Geographe Point Pty Ltd and Rivercolt Pty Ltd*  
**Location:** *Lot 121 DP 755701, No. 50 Chinderah Bay Drive, Chinderah*  
**Zoning:** *2(a) Low Density Residential*  
**Cost:** *\$400,000.00*

**BACKGROUND:**

*Council is in receipt of a development application for a seven lot subdivision of the subject land. The subject land is a parcel with an area of 9662m<sup>2</sup> and is in the 2(a) Low Density Residential zone. Chinderah has a number of larger parcels of land in the 2(a) Low Density Residential zone, however these have not been subdivided historically due to the impacts of flooding in Chinderah.*

*Development Control Plan No. 5 - Flood Liable Land is applicable to the subject land as it is flood liable. Chinderah experiences inundation as a consequence of river flooding. The adopted design flood level for Chinderah is 3.30m AHD and as such the adopted minimum floor level for residential development is 3.60m AHD.*

*Council's Engineering Services Division has assessed the suitability of the subject land for the proposal and conclude the proposal cannot be supported.*

*The proposed seven lot subdivision involves the creation of six residential lots ranging in size from 455m<sup>2</sup> to 661m<sup>2</sup>. The larger lot of 6330m<sup>2</sup> may in the future support a car park to service the Chinderah marina in the event that Department of*

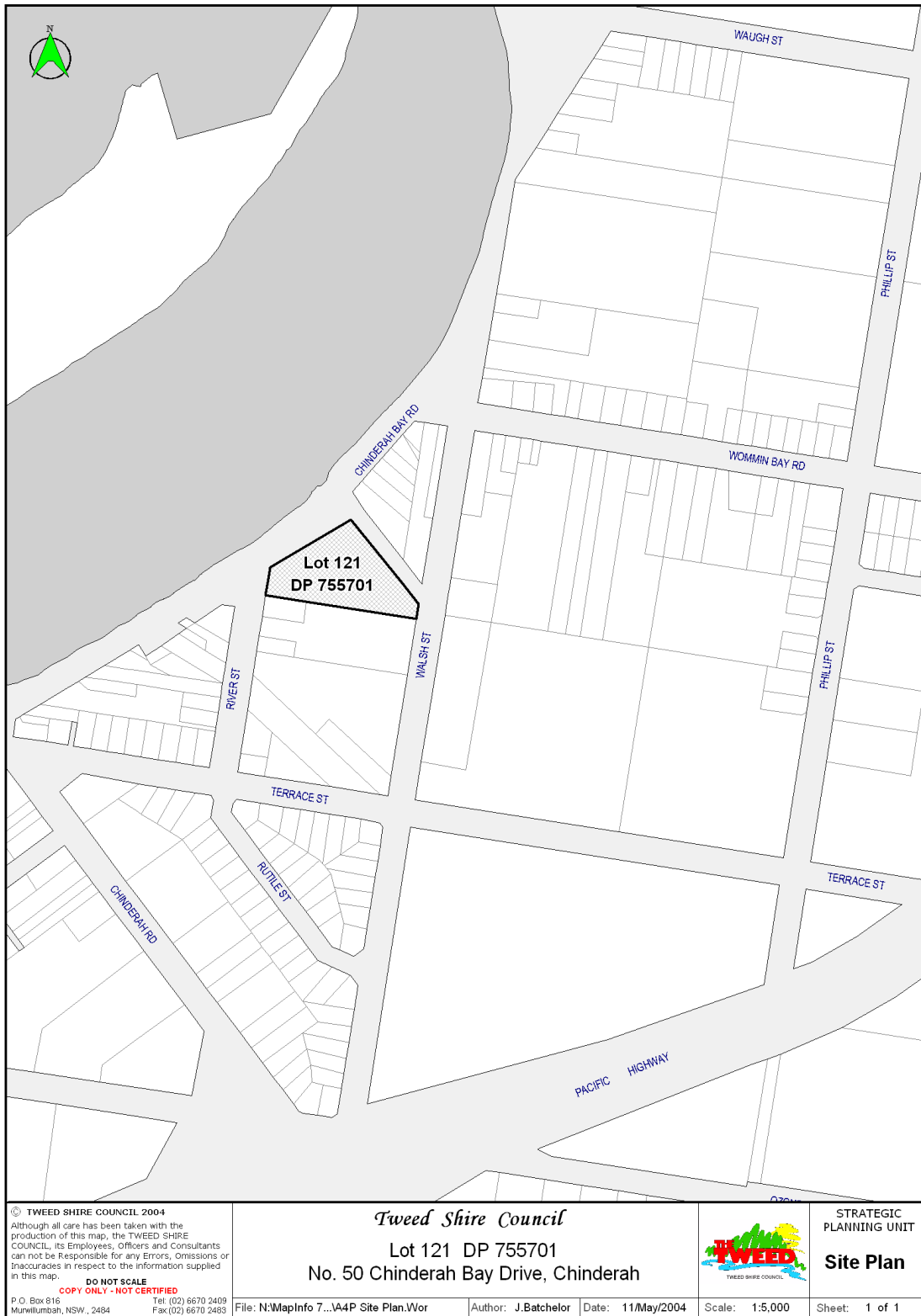
*Infrastructure Planning and Natural Resources favourably determine the application, alternatively it will remain as residential land. The six residential lots are accessed from a right of carriageway at the rear of the allotments.*

*The subdivision required a waiver of Master Plan under the provisions of State Environmental Planning Policy No.71. The application was held in abeyance rather than being rejected and following the receipt of the Department of Infrastructure Planning and Natural Resources advice to waive the Master Plan the application commenced processing.*

*At the time of lodgement the proposed subdivision triggered the Integrated Development provisions in relation the Rivers and Foreshore Improvement Act as the proposal includes works within 40 metres of the bank of a waterway. However the application was not identified as Integrated Development in relation to the Rural Fires Act 1997. With the gazettal of the new fire risk map in February 2004 the subject land is identified as being fire prone and as such to favourably consider the proposal, the general terms of approval from the NSW Rural Fire Service would be required.*

*The application is not accompanied by the required fire assessment and rather than requesting the applicant to go to the expense of engaging a consultant to complete the required report it is considered that the application should be determined. In the event that Council does not agree with Council's Engineers assessment and the recommendations of this report the applicant would be required to provide a bushfire assessment report and necessary fee for the NSW Rural Fire Service to assess and determine whether general terms of approval should be provided.*

**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(a) Low Density Residential zone under the Tweed Local Environmental Plan 2000. The primary objective of the zone is:*

*To provide for and maintain a low density residential environment with a predominantly detached housing character and amenity.*

*The proposed subdivision is not considered to be in conflict with the primary objective of the zone, as the allotments created would be able to support single dwelling houses and thereby provide a low density residential environment.*

*Clause 11 of the TLEP requires minimum lot sizes of 450m<sup>2</sup>. The proposed subdivision involves the creation of 7 lots. The six residential lots being created range in size from 455m<sup>2</sup> to 661m<sup>2</sup>, and therefore comply with the minimum lot size.*

*Clause 22 of the TLEP provides for development near designated roads. Chinderah Bay Drive is a Council designated road and as such Council may only grant consent to development of the land if satisfied, in summary, that:*

- The development is unlikely to constitute a traffic hazard,*
- The access would ensure through traffic on the designated road is not impeded,*
- Proposed access will not prejudice future improvements to the designated road,*
- The development type is not sensitive to traffic noise,*
- The development will not detract from scenic values from the point of road users,*
- Where practicable the access will be made from another road that is not designated.*

*While the subject land has frontage to a Council designated road the proposed subdivision is intended to be access from a right of carriageway at the rear of the residential lots. The proposal does not include access directly from Chinderah Bay Drive. The proposal is not likely to detract from scenic values of road users or prejudice future road improvements.*

*The proposed subdivision is not considered to be in conflict with the provisions of Clause 22 of the TLEP.*

*Clause 34 of the TLEP relates to flooding of land. The objectives of this clause are:*

- *To minimise future potential flood damage by ensuring that only appropriate compatible development occurs on flood liable land.*
- *To minimise the adverse effect of flooding on the community.*

*The clause states that Council must not grant consent to development on flood liable land unless it has considered:*

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

*In assessing the proposed development in relation to this clause Council's Manager of the Water Unit has not been able to be satisfied that the proposed subdivision is suitable based on the provisions of Development Control Plan No.5 - Development of Flood Liable Land.*

*Clause 34 of the TLEP has not been satisfied in that the applicant has not been able to adequately demonstrate the clause requirements for Council to be certain that the objectives of this clause are achieved.*

*Clause 35 of the TLEP provides for the management of acid sulfate soils. Council's Environmental Health Surveyor has assessed the submitted management plan and recommended that in the event that the subdivision is to be approved works would need to be undertaken in accordance with the plan. No further assessment of impacts to acid sulfate soils is required.*

*In summary the proposed development is not considered to have satisfied Clause 34 of the TLEP.*

#### *North Coast Regional Environmental Plan 1988*

*Clause 32B of the North Coast REP requires the consideration of the NSW Coastal Policy, Coastline Management Manual and North Coast*

*Design Guidelines. The NSW Coastal Policy is relevant to the proposed development, and is addressed in this report.*

*Clause 43 of the North Coast REP provides development control in relation to residential development and requires densities to be maximised, road widths to not be excessive and public transport encouraged. The proposed subdivision is considered to maximise the density with a residue lot created that may in the future support further residential development.*

*The proposed subdivision is not considered to be in conflict with the provisions of the North Coast REP.*

#### State Environmental Planning Policies

##### State Environmental Planning Policy No.55 - Remediation of Land

*The applicant submitted a contaminated land assessment report and Council's Environmental Health Surveyor has assessed this report and does not raise any objection to the proposal in relation to contaminated lands.*

##### State Environmental Planning Policy No.71 - Coastal Protection

*SEPP 71 states that a consent authority must not grant consent for a subdivision of land within a residential zone if part of the land is in a sensitive coastal location. As the subject land is mapped in a sensitive coastal location the applicant sought a waiver from the Minister for the need for a master plan.*

*The Department of Infrastructure Planning and Natural Resources provided written advice on 10<sup>th</sup> November 2003 that the requirement for a Master Plan was waived.*

*In considering the proposed development Council needs to have regard to the relevant matters contained in Clause 8 of SEPP71. The proposed subdivision is not considered to be in conflict with the provisions of Clause 8 of SEPP 71.*

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

*The proposed development is for a residential subdivision. The nature of the development does not require assessment in relation to the existing draft environmental planning instruments.*

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

*Development Control Plan No.5 - Flood Liable Land*

*The subject land is identified as being Flood Liable and as such the proposed subdivision is required to meet the requirements of DCP5.*

*The application states that the current level of the land is approximately 1.0m AHD and it is proposed to fill the land to 1.61m AHD being the centreline level of Chinderah Bay Drive. The adopted design flood level for the land is 3.30m AHD and the adopted minimum floor level for residential development for the site is 3.60m AHD.*

*From these levels it is clear that the subject land experiences significant flooding, and any future dwellings will be of elevated design to allow flood waters to flow across the site.*

*Subdivision of land is only permitted under DCP 5 if it is to existing roads and where each allotment has a minimum frontage of 17 metres. The proposal complies with the minimum frontage requirements and fronts an existing road. However access to the subdivision is not proposed from the existing road, rather a right of carriageway at the rear.*

*The proposed right of carriageway does not meet the requirements of DCP 16 and as such Council's Development Engineers would require such to be constructed and dedicated to a public road standard. To this end the proposed subdivision would not appear to be able to be designed to gain access from an existing public road. The creation of roads for subdivision is in conflict with DCP5.*

*There is also a requirement that infill development of residentially zoned land will be permitted with the exception of allotments within the extreme hazard zones identified in the Cameron McNamara report of September, 1984.*

*Council's Manager of the Water Unit has advised that the applicant has not demonstrated that the proposed development is outside the extreme hazard zone. The survey plan provided indicates ground levels in the vicinity of RL 1.0m AHD. The Design Flood Level for this location is RL 3.3m AHD.*

*Given the levels of the site and the applicant not adequately demonstrating the sites suitability for infill development it is considered that the proposal can not be supported. It is noted that upon requesting the applicant to demonstrate this aspect of the development minimal information was provided, and therefore Council's Engineers can not be satisfied in relation to the suitability of the site for subdivision and the provisions of DCP5*

*The proposed subdivision is considered unacceptable given the inability to demonstrate compliance with DCP5.*

Development Control Plan No.16 - Subdivision Manual

*Council's Development Engineer has assessed the proposed subdivision in relation to compliance with DCP 16 and has advised the following:*

*"The right of carriageway proposed for the subdivision is not in accordance with DCP 16 - subdivisions manual; which states the maximum number of lots utilising a right of carriageway is 5. The subdivision has proposed 7 lots.*

*Greater than 5 lots requires a public road constructed to DCP 16's current road specification standards. If a public road is proposed, the application still does not comply with DCP 5 for proposed subdivisions to have frontage to existing roads only in the Chinderah / Fingal area.*

*The application is unclear in regards to the pavement width and construction methods for the road. A plan titled "proposed site and layout plans" prepared by Chris Lonergan & Associates states the right of carriageway is 8.5 metres wide (variable width). Martin Findlater & Associates also provided advice in a report titled Engineering Impact Assessment dated 24 April 2003. The report states "access to the residential allotments on site is proposed via a 6.5m wide reciprocal right of way, shared with the carpark".*

*As the proposed subdivision would require the construction of the right of carriageway to a public road standard and dedicated accordingly the development would result in the creation of a new road. The creation of new roads to service the proposed subdivision would be in conflict with the provisions of Development Control Plan No.5 - Development of Flood Liable Land.*

*Council's Development Engineer has advised:*

*"Access is not possible via Chinderah Bay Drive due to the constraints of Kingscliff Creek. The Kingscliff Creek and associated drain runs parallel and adjacent to the property boundary of Lot 121 DP 755701. Large culverts and a deep drainage canal are located in the road reserve in front of Lot 121, preventing direct access to Chinderah Bay Drive."*

*Based on the above assessment the proposed subdivision would appear to have no alternative means of access than from the rear.*

*The proposed subdivision does not meet the requirements of DCP 16 as seven allotments are to be serviced by a right of carriageway, and then*



*the requirement to construct this to a public road standard and dedicate as a public road is in conflict with DCP 5.*

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

NSW Coastal Policy 1997

*There are no reasons contained within the strategic goals of this policy to refuse the subdivision.*

**(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**

Impacts from Fill and Earthworks on Kingscliff Creek

*The applicant has submitted that the filling operations are to occur in such a manner that the perimeter of the site is filled first, creating a perimeter bund. This is to control stormwater runoff from impacting on Kingscliff Creek during construction.*

*Department of Infrastructure Planning and Natural Resources did issue general terms of approval for the excavation associated with services trenches and drainage located adjacent to Kingscliff Creek.*

*It is noted that Council's Development Engineer has advised that this would seem to be an impractical solution as it will create a large sedimentation pond covering the entire site. The proposed stormwater bund would require an outlet with a sedimentation and erosion device, discharging to Kingscliff Creek.*

*In the event that Council is of the view the proposed subdivision has merit it may be necessary for further detail to be submitted to justify this construction method and satisfy Council's Engineers in terms of mitigation measures.*

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

Flooding

*From the assessment of the proposal contained under DCP 5 it is apparent that flooding is a significant issue for the site. Council has adopted controls for development on the flood plain within DCP 5. The applicant has not adequately addressed compliance with Council's controls for development on the flood plain and as such it is considered that the proposal can not be supported.*

*Department of Infrastructure Planning and Natural Resources have advised in correspondence on this application that the cumulative flood impacts due to intensification of development in Chinderah may be significant and may not be consistent with the NSW State Government Flood Policy.*

*The proposal raises a more strategic issue in relation to development of the flood plain and Council's controls in the area.*

**Bushfire**

*The subject land is identified as being bushfire prone and as such will require the general terms of approval from NSW Rural Fire Service for the subdivision to be approved.*

*As the land was not identified to be bushfire prone until February 2004 the applicant did not submit the necessary assessment or referral fee. In the event that Council considers the proposal warrants approval the applicant should be requested to provide a bushfire assessment report and referral fee as the subdivision can not be favourably determined without the general terms of approval from the NSW Rural Fire Service.*

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

*The proposed development was notified for a two week period during which no submissions were received.*

**(e) Public interest**

*In the absence of adequate justification for the proposed subdivision and the uncertainty as a result of DCP 5 not being demonstrated to be complied with it is considered that the proposed subdivision can not be supported. It is not in the general public interest for Council to vary from the controls in place for development on the floodplain.*

**OPTIONS:**

- 1. Refuse the proposal for the recommended reasons.*
- 2. Request the applicant to prepare a Bushfire Assessment Report and submitted the required fee for the NSW Rural Fire Service to enable the application to be assessed and if appropriate general terms of approval be obtained.*

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

*Should the applicant be dissatisfied with the determination he may seek to have the matter remedied in the NSW Land and Environment Court.*

**POLICY IMPLICATIONS:**

*Council's policy in relation to development of flood liable land has not been satisfied by the submitted engineering assessment. The policy implications of approving a subdivision that undermines Council's Development Control Plan No.5 - Development of Flood Liable Land are significant as such may result in an increase in residences in extreme flood hazard areas.*

**CONCLUSION:**

*The proposed subdivision is not considered to have demonstrated compliance with Council's controls for the site. Council's Engineers have assessed the technical issues raised by the proposal and conclude that the application should not be supported for the reasons recommended.*

**UNDER SEPARATE COVER:**

*Nil."*

**OPTIONS:**

See above options contained in report.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Council is able to determine the application. The report details the legal implication.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The legal opinion provided by the applicant did not result in Council's Engineering Services Division changing previous advice. As such the report to Council and recommendation are resubmitted for determination.

**UNDER SEPARATE COVER:**

1. Confidential Attachment - Letter from applicant's Solicitors Bartier Perry dated 21 June 2004
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## 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 DA04/0583 for Multi Dwelling Unit Development - 12 Storey Apartment Building Comprising 27 Units at Lot 3 DP 9173 and Lot 4 DP 9173, No. 20-22 Thomson Street, Tweed Heads**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA04/0583**

**SUMMARY OF REPORT:**

Council is in receipt of an application for a multi unit development at 20 – 22 Thomson Street. Tweed Heads. The development comprises the demolition of the two existing dwellings and the construction of a twelve storey residential flat building comprising of 27 two and three bedroom (plus study) units with three basement car parking levels providing on site parking for 43 vehicles.

The land is zoned 2(b) Medium density residential under Tweed Local environmental Plan 2000 and is identified under Development Control Plan No.18 Tweed Heads as a high-density residential precinct.

The application incorporates a front fence height variation, has minor encroachments into the building envelope, presents overshadowing to adjoining properties to the south, restricts some ocean and scenic views and raises privacy concerns for some adjoining residences. However, despite these issues the application is considered to warrant a recommendation for approval on the architectural merits of the building in addition to the high-density nature of the area.

The application attracted six individual objections and one objection in the form of a petition containing 42 signatures.

This application is one of three applications currently before Council seeking consent for multi storey rise development in the immediate vicinity. The other two applications are detailed as follows:

- The Trustees of the Roman Catholic Church have lodged an application over 11-17 Frances Street, Tweed Heads. DA04/0631 seeks consent for the demolition of the existing structures and erection of a 12 storey mixed use development comprising administration, meeting and function rooms and 30 residential units.
- Cabra-Vale Ex-Active Servicemen's Club Limited have lodged an application over 13 Enid Street, Tweed Heads. DA04/0646 seeks consent for a 12 storey mixed use apartment building comprising 62 dwellings and 6 commercial tenancies.

These applications are being assessed and will be reported to Council at a later date.

Given the proximity of these proposed buildings to one another this application has considered the cumulative impact of these applications, on adjoining residences, throughout the assessment process.

## RECOMMENDATION:

That Development Application DA04/0583 for multi dwelling unit development - 12 storey apartment building comprising 27 units at Lot 3 DP 9173 and Lot 4 DP 9173, No. 20-22 Thomson Street, 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 as follows as prepared by Ferro Muller Partnership Architects:

- DD-A01 Issue B dated 14/07/2004;
- DD-A02 Issue B dated 14/07/2004;
- DD-A03 Issue C dated 09/08/2004;
- DD-A04 Issue B dated 14/07/2004;
- DD-A07 Issue B dated 14/07/2004; and
- DD-A08 Issue ø dated 08/07/2004;

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. Front external wall of the building is to stand a minimum of 6 metres from the front boundary of the property.
- [GEN0080]
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.
6. The side boundary fence on the southern property boundary is to be reduced in height from 1.8m to ensure adequate site distances can be achieved for the driveway in accordance with the Australian Standards. [GEN0150]
7. The building shall not exceed a height of 41.1m AHD in accordance with the submitted plans. [GENNS01]

[GENNS02]

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

8. 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: | \$18,321 |
| S94 Plan No. 4 (Version 4.0)     |          |
| <b>Sector1_4</b>                 |          |

#### **Heavy Haulage Component**

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 4.1 prior to the issue of a

construction certificate or subdivision certificate, whichever occurs first. The contribution shall be based on the following formula:-

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

where:

$\text{\$Con}_{\text{TRCP - Heavy}}$  heavy haulage contribution

and:

Prod. projected demand for extractive material to be hauled to the site over life of project in tonnes

Dist. average haulage distance of product on Shire roads (trip one way)

$\text{\$Unit}$  the unit cost attributed to maintaining a road as set out in Section 6.4 (currently 2.5c per tonne per kilometre)

Admin. Administration component - 5% - see Section 6.5

- |    |   |            |
|----|---|------------|
| b. | Open Space (Structured):<br>S94 Plan No. 5  | \$12,209   |
| c. | Open Space (Casual):<br>S94 Plan No. 5  | \$2,609    |
| d. | Shirewide Library Facilities:<br>S94 Plan No. 11  | \$10,775   |
| e. | Bus Shelters:<br>S94 Plan No. 12  | \$440      |
| f. | Eviron Cemetery/Crematorium Facilities:<br>S94 Plan No. 13  | \$2,097    |
| g. | Emergency Facilities (Surf Lifesaving)<br>(REMSHIRE)<br>S94 Plan No. 16                           | \$3,642    |
| h. | Extensions to Council Administration Offices<br>& Technical Support Facilities<br>S94 Plan No. 18 | \$6,372.85 |
| i. | Cycleways<br>S94 Plan No. 22  | \$2,515    |

- |    |   |          |
|----|---|----------|
| j. | Regional Open Space (Structured)<br>S94 Plan No. 26 | \$18,410 |
| k. | Regional Open Space (Casual)<br>S94 Plan No. 26     | \$3,446  |

[PCC0050/PSC0005]

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

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

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

Water: 18.25 ET @ \$4325 \$78,931  
Sewer: 18.25 ET @ \$3490 \$63,693

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

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

[PCC0070/PSC0004]

10. 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]

11. Permanent Stormwater Quality Treatment
- (a) Permanent stormwater quality treatment shall comply with "*Tweed Urban Stormwater Quality Management Plan*" (adopted by Council 19 April 2000) section 5.5.3 "Stormwater Objectives During the Post Construction or Occupational Phase of Development". New development is required to comply with table 5.4 of the plan and demonstrate compliance by modelling in accordance with section 5.5.4. Section 5.5.5 of the plan further advises that treatment that is in accordance with the "deemed to comply" provisions of *Appendix E - Tweed Shire Council, Aus-Spec D7 - Stormwater Quality* is deemed to comply with the objectives in 5.5.3.
  - (b) Water sensitive design practices shall be adopted. Where it is practical, water quality features are to be designed into the land development site

rather than rely on special end of pipe devices to strip pollutants and nutrients from stormwater prior to discharge. Typical water quality features that can be designed into the site development include use of porous pavements, directing runoff over filter strips or grass swales in landscaped areas, utilising landscaping as an integral part of stormwater quality management, maximising use of infiltration and stormwater reuse (eg. Rainwater tanks). These features can be complemented by site management practices which minimise creation of stormwater pollutants and nutrients and provide for appropriate operation, cleaning and maintenance of water quality control devices.

- (c) The Construction Certificate Application must include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*.
- (d) Specific requirements:
- (i) The proposed basement oil/grit separator shall have a minimum retained volume of 1000L (1m<sup>3</sup>), in order to satisfy the "deemed to comply" sizing requirements of Council's Development Design Specification D7 - Stormwater Quality.
  - (ii) Uncovered car wash bays should be provided according to the architectural drawings, or other nominated external location as approved by Council officers. The car wash bays shall be constructed of pervious durable materials, and should be graded to direct contaminated runoff to grassed filter strips and landscaping, to promote infiltration and remove runoff pollutants. Car wash bays may only be approved in undercover basement levels if they are bunded to avoid contamination of basement stormwater, and the runoff is treated and disposed of to sewer as trade waste, requiring a Tweed Shire Council Trade Waste Application.
- [PCC0230]
12. A construction certificate application for works that involve any of the following:-
- connection of a private stormwater drain to a public stormwater drain
  - installation of stormwater quality control devices
  - erosion and sediment control works

will not be approved until prior separate approval to do so has been granted by Council under section 68 of the Local Government Act 1993.

Applications for these works must be submitted on Council's standard s68 stormwater drainage application form accompanied by the required attachments and the prescribed fee.

- [PCC0240]
13. An on site detention (OSD) system shall be installed in the permanent stormwater system for the site to limit post-development discharges to the public realm to pre-development levels. OSD devices, including discharge control pits, are to comply with standards in the Upper Parramatta River Catchment Trust on-site Detention Handbook, Third Edition Revision 2 June

2004, except that permissible site discharge and site storage requirements in the handbook do not apply to Tweed Shire. All these works and connection to Council's drainage system shall be constructed in accordance with design calculations, plans and specifications to be submitted with the construction certificate application and approved by the Director of Engineering Services. The construction certificate application shall also include a detailed justification of the nominated peak site discharge limit and storage tank capacity, including all relevant engineering calculations.

[PCC0260]

14. Any premises proposing to discharge into Council's sewerage system a waste water other than domestic sewage, shall submit to Council a completed application for a Trade Waste Licence. This application is to be approved by Council's Manager Water and concurrence received from the Department of Land and Water Conservation, if required, PRIOR to the issuing of a Construction Certificate to discharge to Council's sewerage system.

[PCC0280]

15. 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]

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

16. 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]

17. **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]

18. 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]

19. 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]

20. 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]

21. 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]

22. Prior to the commencement of works on the site all required erosion and sedimentation control measures are to be installed and operational to the satisfaction of the Principal Certifying Authority.

In addition to these measures an appropriate sign is to be clearly displayed on the most prominent position of the sediment fence or erosion control device which promotes awareness of the importance of the erosion and sediment controls provided.

Please note that this sign is to remain in position for the duration of the project.

[PCW0280]

23. Prior to the commencement of any demolition works all house drainage connections are to be suitably capped off by a licenced plumber and an inspection of the work obtained from Council.

- [PCW0300]
24. After demolition but prior to commencement of construction the applicant is to submit to Council for approval an appraisal carried out by a Geotechnical Consultant of the effect of the proposed excavation including any precautions considered necessary to protect such properties from damage in accordance with Tweed Shire Council's Building Excavation Dewatering Policy. Additionally, the applicant shall submit to Council documentation demonstrating General Public Liability Insurance to the value of \$5,000,000 which includes loss of support to neighbouring properties which is attributed to excavation vibration associated with the project in accordance with Tweed Shire Council's Building Excavation Dewatering Policy.

[PCWNS01]

#### **DURING CONSTRUCTION**

25. 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]
26. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742-1991 (Manual for Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.
- [DUR0040]
27. The provision of forty three (43) off street car parking spaces, ten (10) of which are to be allocated for visitor use only and sign posted accordingly. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls.
- [DUR0050]
28. All retaining walls in excess of 1.2 metres in height must be certified by a Qualified Structural Engineer verifying the structural integrity of the retaining wall after construction.
- [DUR0060]
29. Provision shall be made for the collection of builder's solid waste in accordance with the following requirements:
- a. A temporary builder's waste chute is to be erected to vertically convey builder's debris to a bulk container.
  - b. The chute shall be located in a position approved by the Principal Certifying Authority.
  - c. A canopy shall be provided to the chute outlet and container to reduce the spillage of materials and nuisance caused by dust.
- [DUR0070]
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. 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]
37. 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]
38. Provision to be made for the designation of two durable and pervious car wash-down area/s. The area/s must be identified for that specific purpose and be supplied with an adequate water supply for use within the area/s. Any surface run-off from the area must not discharge directly to the stormwater system. [DUR0240]
39. The provision of adequate vehicular access in accordance with Council's "Vehicular Access to Property Construction Specification" pamphlet, including the provision of an invert crossing at the kerb and gutter where required and



paving of the driveway across the footpath to the front alignment to the satisfaction of the Director, Engineering Services. Twenty four (24) hours notice is to be given to Council's Engineering Services Division before placement of concrete to enable formwork to be inspected. Failure to do so may result in rejection of the vehicular access and its reconstruction. Paving bricks are not acceptable unless laid on a 100mm thick concrete base.

[DUR0470]

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 Thomson. 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. 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]

42. Suitable covering and protection is to be provided to ensure that no material is removed from the site by wind, causing nuisance to neighbouring properties.

[DUR0850]

43. 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]

44. The burning off of trees and associated vegetation felled by clearing operations is not permitted unless such burning is carried out in a specially constructed pit provided with an air curtain over the top. Separate approval is required prior to any burning.

[DUR0890]

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

[DUR0900]

46. 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]
47. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited. [DUR0920]
48. The burning of builders waste on site by open fire is prohibited. [DUR0940]
49. Any proposed cooling tower installation must also include details on the proposed means of back flow prevention to the water supply prior to installation. [DUR0970]
50. 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]
51. 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]
52. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR1040]
53. 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]
54. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993. [DUR1090]
55. 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]

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

[DUR1130]

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

- \* 43.5<sup>0</sup>C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
- \* 50<sup>0</sup>C in all other classes of buildings.

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

[DUR1160]

58. In the event that Council is not utilised as the inspection/Certifying authority, within seven (7) days of building works commencing on the site a Compliance Certificate in the prescribed form is to be submitted to Council together with the prescribed fee, by the nominated principal certifying authority to certify the following:

- i. All required erosion and sedimentation control devices have been installed and are operational.
- ii. Required toilet facilities have been provided on the site.
- iii. A sign has been erected on the site identifying:
  - Lot number
  - Builder
  - Phone number of builder or person responsible for site.
- iv. All conditions of consent required to be complied with prior to work commencing on the site have been satisfied.

[DUR1200]

59. 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]

60. 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]

61. 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. [DUR1280]
62. Backwash from swimming pool is to be connected to the sewer in accordance with Australian Standard AS 3500.2 Section 10.9. [DUR1290]
63. Any use of a crane or other equipment that may exceed a top RL of 49.5 metres AHD would intrude into the prescribed airspace of Gold Coast Airport, and therefore represent a "controlled activity" under the Airports (Protection of Airspace) Regulations. The proponent must obtain the approval of the Secretary, Department of Transport and Regional Services. An application for the Secretary's approval must be given to the airport lessee company (ie Gold Coast Airport Limited) at least 28 days before the intended commencement of the controlled activity. [DURNS01]
64. The proposed works are to occur solely within the confines of the subject property. Access to the site via any adjoining property is not permissible without the prior written authorisation of that/those owner/s. [DURNS02]
65. All sheet piling is to occur within the confines of the subject property and are not to protrude beyond the property boundary without the prior written authorisation of that/those owner/s. [DURNS03]
66. The building shall be finished with non reflective materials that are earthy in tone to compliment the streetscape. [DURNS04]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

67. 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]
68. 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]
69. 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]
70. 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]
71. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate, a final

inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC0170]

72. Prior to the issue of an occupation certificate, a "satisfactory inspection report" issued by Council must be produced for s68h2 permanent stormwater quality control devices. This inspection report must be obtained from Council prior to backfilling of any of the s68h2 approved devices.

[POCNS01]

73. The lots are to be consolidated into one (1) lot under one (1) title. The plan of consolidation shall be registered with the Lands Titles Office prior to issue of the occupation certificate.

[POCNS02]

## USE

74. 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]

75. 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]

76. 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]

77. Owners of buildings served by plant involving the operation of "cooling towers", "evaporative condensers" or "tepid water systems" must submit to Council, half yearly, a report detailing the maintenance, cleansing and chemical treatment of such plant every three (3) months in accordance with Part 6 of the NSW Public Health Act.

[USE0180]

78. Swimming Pools (Building)

A. It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required regardless of and in response to any activity or construction on the adjoining premises. Due regard must be given to the affect that landscaping will have on the future effectiveness of the security fencing. (Section 7 Swimming Pool Act 1992).

B. The resuscitation poster must be permanently displayed in close proximity to the swimming pool. (Section 17 Swimming Pool Act 1992).

[USE0250]

79. All artificial lighting including security lighting shall be shielded where required to prevent the spill of light or glare causing a nuisance to the occupants of any neighbouring or adjacent residential premises. Any such shielding shall be to the satisfaction of Council Director of Environment & Community Services.

[USENS01]

**REPORT:**

**Applicant:** Olive Group (Int) Pty Ltd  
**Owner:** Olive Group (Int) Pty Ltd  
**Location:** Lot 3 DP 9173 & Lot 4 DP 9173, No. 20-22 Thomson Street Tweed Heads  
**Zoning:** 2(b) Medium Density Residential  
**Cost:** \$5,400,000

**BACKGROUND:**

The subject site is presently occupied by two, two-storey dwelling houses known as 20 and 22 Thomson Street. These dwellings are constructed of masonry and timber cladding with sheet iron roofs.

The land has a total area of 1230m<sup>2</sup> with a road frontage of 25.373 metres to Thomson Street and an average depth of 56m. The site has a moderate to steep slope from the Thomson Street frontage at approximately RL 15.8m down to the rear boundary at approximately RL 6.8m with a cross fall from north to south.

Vegetation on the site includes various trees and shrubs, however, none of this vegetation is of ecological significance or provides habitat for rare or threatened species.

The application currently before Council seeks consent for the erection of a multi-dwelling housing development comprising 27 units within a twelve-storey building. Twenty-six (26) of these units have three bedrooms (four with an additional study) with the remaining unit containing only two bedrooms.

Vehicular access to the site is via a driveway off Thomson Street. This driveway leads to a three-tier basement car park, which accommodates forty-three (43) spaces in total. Basement level one contains five spaces, basement level two contains fourteen visitor spaces and a further four spaces, and basement level three contains the remaining twenty car parking spaces and the two car wash bays.

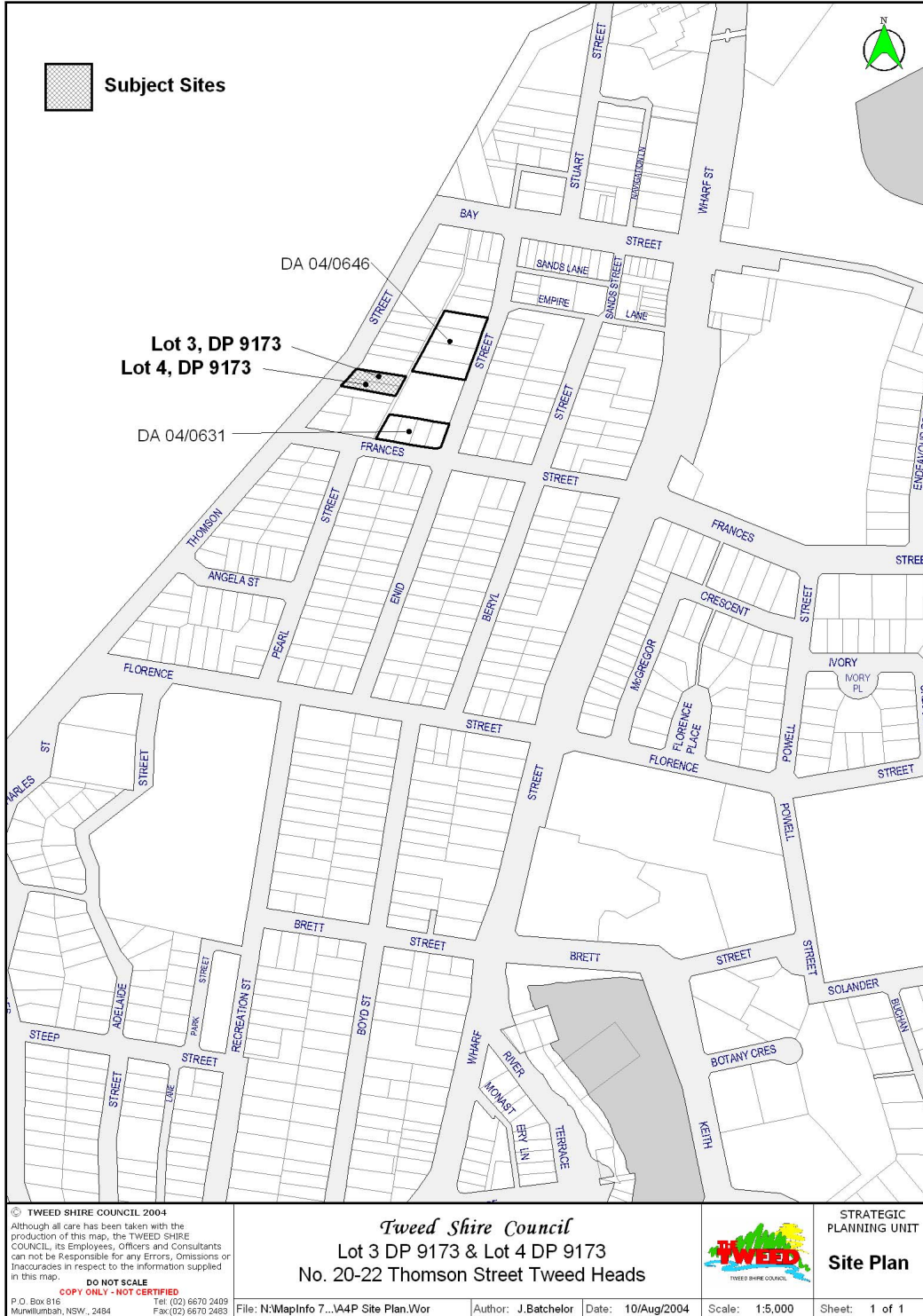
The proposed development incorporates balconies for each unit in addition to a common open space area incorporating a pool, BBQ and a recreational area to Thomson Street.

The proposed unit development is an attractive contemporary design with strong articulation through the use of a combination of materials including cantilevered balconies, shaded verandah space, variation in cladding materials and attractive projected roof forms at the upper levels.

The building has responded to the slope of the land by incorporating units at the exposed eastern end of basement level 1. These units provide a pleasant outlook over the adjacent park and break up the continuation of a car-parking podium, reducing the bulk of the building by activating the eastern elevation at the lower levels.

Generous setbacks have been provided to all site boundaries with decent sized balconies in the form of north, east and west facing decks. Small Juliet type balconies are also evident on the south and north elevation, however, these are considered more of a design element rather than functional space.

**SITE DIAGRAM:**



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*Tweed Shire Council*  
 Lot 3 DP 9173 & Lot 4 DP 9173  
 No. 20-22 Thomson Street Tweed Heads

File: N:\MapInfo 7...JA4P Site Plan.Wor Author: J.Batchelor Date: 10/Aug/2004



STRATEGIC PLANNING UNIT  
**Site Plan**  
 Scale: 1:5,000  
 Sheet: 1 of 1

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

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

The subject site is located within the 2(b) Medium Density Residential zone pursuant to the provisions of TLEP 2000.

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

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

One of the secondary objectives of the zone is to discourage the under-utilisation of land for residential purposes, particularly close to the Tweed Heads sub – regional centre.

The proposal to construct a 12 storey residential flat building on two parcels of land (with a total area of 1230m<sup>2</sup>) is considered to be high-density development as permitted by the zone.

The site is within walking distance to the Tweed Heads sub regional centre, and the development is of a scale, which utilises the land appropriately for residential purposes. Whilst the design of the development does not detract from the built environment (as it replaces two older dwelling houses) the issues resulting from such a change are discussed in this report.

It is considered the development is consistent with Clause 8, the primary objective of the zone and the applicable secondary objective relating to residential development.

Clause 15 of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. The subject land has the benefit of services and is considered able to support the proposed development. Appropriate conditions of consent are recommended for treatment of stormwater prior to disposal to Councils stormwater network.

Clause 16 of the TLEP requires development to be carried out in accordance with the height limitation plan. The subject land is identified as having a 50m AHD height limitation with an objective to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.

It is considered that the proposed building complies with the 50m AHD height limit by providing a building, which contains twelve levels (including a three tier basement), reaching a maximum height of 41.1m AHD. The proposal



complies with the numerical height requirements and has good urban design principles with interesting and appealing articulation.

Clause 17 of the TLEP requires a Social Impact Assessment to be submitted for residential development comprising 50 units or more. As the development is for only 27 units it is considered that the proposal in terms of these guidelines will not have a significant social or economic impact upon the area, and a SIA is not required.

Clause 33 of the TLEP requires Council to consider any current obstacle limitation surface plan or procedures for aircraft navigation services. Council received the following comments on the application from Mr Ian Rigby who acts for the Gold Coast Airport Limited (GCAL):

*"If the finished building height (including all above-roof structures, aerials, etc) is not more than about 44 metres, which seems to be about the maximum from your message, there will be no need for any approval under the Airports (Protection of Airspace) Regulations.*

*A condition imposing the proposed maximum height of the building as applied for would probably be appropriate, so that the applicant will be aware of airspace implications and the possible need for an application if height intentions change later.*

*It is a requirement of the Regulations that the proponents make an application for any temporary intrusion into the airspace. The equipment does not need to be detailed at this stage. An appropriate condition would draw the attention of the applicants to the need to submit an application pursuant to the Regulations, along the lines of the following:*

*"Any use of a crane or other equipment that may exceed a top RL of 49.5 metres AHD would intrude into the prescribed airspace of Gold Coast Airport, and therefore represent a "controlled activity" under the Airports (Protection of Airspace) Regulations. The proponent must obtain the approval of the Secretary, Department of Transport and Regional Services. An application for the Secretary's approval must be given to the airport lessee company (ie Gold Coast Airport Limited) at least 28 days before the intended commencement of the controlled activity."*

The above-recommended condition has been incorporated into the conditions of consent in addition to a condition restricting the top height of the building.

Clause 35 of the TLEP requires an acid sulfate soils management plan be assessed where the proposed development is likely to interfere with acid sulfate soils. The subject site is identified as possessing Class 5 Acid Sulphate Soil levels. Council's Environment & Community Services Division, have advised that as the excavations do not extend below RL 5.0m (where

ASS are likely to occur) and therefore there is no need for an Acid Sulphate Soils Management Plan, or a dewatering permit. However, appropriate conditions of consent have been recommended.

#### North Coast Regional Environmental Plan 1988

In accordance with Clause 32B of the REP the proposal is considered to be generally consistent with the relevant provisions of the NSW Government Coastal Policy 1997 and the Coastline Management Manual.

The proposal does not incorporate any physical restriction of access to a foreshore area or detrimental impacts upon the coastal character and amenity of the site. Nor does the development overshadow any area of beach or waterfront open space. Accordingly the proposal fully complies with this clause of the REP.

Clause 43 of NCREP 1988 provides guidelines for Council when considering residential development. These controls discuss density, the environmental constraints of the land and road widths.

The proposed density is considered to be a reasonable response to the proposed land use character of the area and will not result in the creation of any adverse physical impacts upon the locality. This is demonstrated through general consistency with the numerical requirements of Council's Local Environmental Plan and Council's numerous Development Control Plans. Further, the existing road widths are adequate for the function of the proposal with a detailed sedimentation and erosion control plan to be enforced in relation to the construction.

Clause 51 of NCREP 1988 relates to buildings greater than 14m in height and requires such buildings to obtain concurrence from the Director General of the Department of Infrastructure Planning and Natural Resources. However Council has been given authority to assume the Directors Concurrence.

Clause 51 states that in deciding whether to grant concurrence to an application the Director (or Council due to our assumed concurrence) shall take into consideration the likely regional implications of the development as regards its social, economic and visual effect and the effect, which it will or is likely to have on the amenity of the area.

It is considered the proposal will not have an adverse social, economic or visual impact regionally, and in local terms, the proposal will not have an adverse impact upon the amenity of the neighbourhood. The issues considered to conclude this involve overshadowing, privacy, loss of view, traffic impacts, bulk and scale and the objectives for the area. Each of these issues are assessed in detail later in this report.

The proposal is considered to be consistent with the provisions of the North Coast Regional Environmental Plan 1988.

### State Environmental Planning Policies

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

The applicant has submitted a statement addressing the 10 design principles under the SEPP. The following comments are provided on these design principles.

### **Context and Built Form**

The development is considered to be consistent with the desired future character of the area as stated under DCP 18, Tweed Strategy 2000+, and the Draft Tweed Heads Town Centre Master Plan. The area and in particular Thomson Street is characterised by numerous residential flat buildings, with remaining undeveloped parcels or older building pressured by market forces to be re-developed. The proposal is contemporary in design and does not detract from the built environment.

### **Scale and Density**

The proposed building having regard to the size of the land and the 50m AHD height limit is suitable in terms of bulk and scale. Whilst the north and south elevations are elongated due to the shape of the land the architect has placed emphasis on articulation to these elevations to make them features of the building thus adding architectural merit to the building. Various elements in the design of the proposal including cantilevered balconies, shaded verandah space, variation in cladding materials, attractive projected roof forms at the upper levels and general compliance with the building height plane results in a design that is consistent with the high density planning controls applicable to the site and a building that is appropriate in terms of bulk, scale and character.

### **Resource Energy and Water**

The applicant has submitted a NatHERS Certificates demonstrating that the development is sound in terms of energy efficiency. Each unit has adequate to good solar access provided to the living areas.

### **Landscaping**

Submitted landscaping plans indicate that the development will be suitably landscaped at ground level and on the podium with native trees and shrubs, to satisfy the provisions of DCP 18. Additionally, the development incorporates a common recreational area, which includes a pool, and BBQ area. Appropriate conditions of consent have been imposed to ensure that landscaping will be completed prior to occupation of the development.

## Amenity

Neighbouring residences have raised concern that the proposal will adversely overshadow adjoining properties to the south and sterilize this land from being redeveloped for medium density purposes. Of particular concern is the expected shadow on 24 and 28 Thomson Street, which both contain a two storey dwelling house and 19 Francis Street, which contains seven single and double storey units in a partially attached format.

This issue was raised with the applicant who supplied revised shadow diagrams depicting the proposed shadow over an aerial photograph to demonstrate the extent of the shadow. The following table summarises the approximate expected shadow on the properties to the south at various times of the year:

Table 1: Approximate Shadow

Address	22 December (Summer) Approx % of property in shade			22 June (Winter) Approx % of property in shade		
	9am	12 Noon	3pm	9am	12 Noon	3pm
24 Thomson Street	Nil	Nil	Nil	83%	72%	63%
28 Thomson Street	Nil	Nil	Nil	92%	4%	Nil
30 Thomson Street	Nil	Nil	Nil	35%	Nil	Nil
19 Francis Street	Nil	Nil	Nil	27%	54%	22%
Jack Chard Park	Nil	Nil	10%	Nil	1%	26%

From the above table it is evident that overshadowing from the proposed building will be negligible on the Jack Chard Park. Furthermore, whilst 30 Thomson Street, and 28 Thomson Street, would be overshadowed during the winter months during the early morning hours, these land parcels receive adequate solar access as the day progresses, and from noon onwards the existing structures will be all but free of the buildings shadow.

However, the proposed building will impact on the immediately adjoining property to the south being 24 Thomson Street, and No. 19 Francis Street the most.

No. 24 Thomson Street accommodates a two-storey dwelling house on a parcel of land with a moderate to steep slope from Thomson Street down to Jack Chard Park. The property is located immediately to the south of the

subject land and thus severely impacted upon by the proposed building shadow.

The applicant has provided that on several occasions over a period of at least two months the owners of the subject land tried to purchase No. 24 Thomson Street. The applicant has further provided that a generous final offer was made based on higher than market value prices paid per square metre for the site, plus an additional \$40,000. The offer was declined and subsequently the current application proceeded over the two parcels of land rather than three.

As a result No. 24 Thomson Street is now severely impacted upon by the proposed building.

The development at 19 Francis Street is also impacted upon, however, it should be acknowledged that this property also overshadows itself given the design of the complex. The complex involves seven units. Four units are two storeys in height on the northern side of the property with a common driveway separating this two-storey component from three single storey dwellings on the southern side of the property. In addition to the two storey component overshadowing the single storey component of this property the northern property boundary itself is partially a retaining wall measuring some 4m in height at the western end. This retaining wall creates a shadow over the subject property and currently impacts upon the amenity of the existing tenants.

In determining whether the subject application unreasonably impacts upon the amenity of the adjoining properties Council must consider the intended character of the area. The area is a nominated high density area with a 50m AHD height limitation. The amenity of one or two properties that are both due for re-development must be weighed up against the future development potential of the property, which is now impacted upon by shadow. In this regard the applicant has provided that there are a number of other future options available for re-development involving the properties to the south. These options may include the possible amalgamation with the adjacent detached dwellings or a wide scheme involving the re-development of part or all of the single storey medium density property to the southeast, as the present development of these properties does not represent the highest or best use of the land.

Having regard to the applicable planning controls and the desired future urban form of the area it is considered the proposal does not unreasonably detract from the amenity of the area, nor restrict the ability of adjoining parcels to be developed for similar purposes.

In terms of privacy the architect has provided that the proposed building offers a number of design elements to ensure appropriate amenity for residents visitors and neighbours.

The key elements comprise the focus of the main living areas and private open space areas to the street and park frontages with generous door and window openings to provide adequate ventilation and natural sunlight.

The amenity of privacy sensitive rooms has been addressed by the provision of appropriate sized window openings away from active frontages and the inclusion of narrow balconies to some bedrooms break sightlines from levels below and provide physical separations from adjacent properties.

These measures are considered acceptable to satisfy the amenity objectives of SEPP 65.

### **Safety and Security**

Proposed development includes the following measures for safety and security.

- Units fronting Thomson Street provide adequate means for casual surveillance of the street from units;
- Access into the building will be by way of an intercom device to screen visitors;
- Security Access into the car park;
- An easily recognisable and visible direct pedestrian access; and
- Open space areas will be fenced and appropriately lit.

### **Social Dimension**

Socially the development represents good utilisation of land zoned for medium density development within walking distance to shops, beaches, clubs and other recreational opportunities in the Tweed - Coolangatta Central Business District's.

### **Aesthetics**

The proposal does not detract from the streetscape or the aesthetics of the locality and makes a positive contribution to the area. The building incorporates roof forms with vertical and horizontal articulation on the four elevations. Appropriate conditions of consent recommended to ensure the proposed building materials are non – reflective.

The overall aesthetics of the building provide a desirable 'Modern or Contemporary' development, which is in keeping with the future character of the surrounding area. It is considered that the proposed building will be prominent, however the height of the building (bulk) will be offset by good urban design and articulation that has been incorporated.

### State Environmental Planning Policy No. 71 – Coastal Protection

Clause 8 of the Policy details sixteen matters for consideration for land within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development is considered compatible with the intent for the development of the locality.

### Draft Tweed Heads Town Centre Master Plan

The Master Plan establishes a vision for the Town Centre of Tweed Heads which describes the desired future character for Tweed Heads and provides urban guidelines for each precinct together with indicative plans and sections to illustrate the principal planning objectives and design intent. Public exhibition of the Draft commenced on 11 May 2004 and continued for a month before refinement and referral of the document to the Minister of The Department of Infrastructure Planning and Natural Resources. Whilst the document is still in draft format it is important to note that the proposed application is consistent with the objectives and numerical requirements as detailed in the Plan.

The subject site is located in the Ridgeline High Density Residential precinct and is restricted to a 12-storey height limit in accordance with the draft. The Plan specifically nominates Thomson Street as the ridgeline with development encouraged to accentuate to topography of the land. The architecture is encouraged to be distinctive contemporary forms reflective of the sub tropical environment and coastal location.

The proposed design of the subject development clearly complies with all aspects of the Draft Master Plan. The building has a distinctive base, middle and top with all elevations having strong vertical and horizontal articulation. The roof design is considered a feature of the building that adds to the overall aesthetics of the building.

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

Draft Tweed Local Environmental Plan No. 46 was exhibited between 16 April 2003 and 14 May 2003 and detailed an amendment to the definition of a storey to reflect the finished ground level rather than the natural ground level in addition to incorporating that any space in excess of 4.5 metres should be categorised as two storeys. This amendment does not have an affect on the assessment of this application and would not create any area of non-compliance as the subject site is affected by an AHD level not the number of storeys in the building.

Having reviewed the Draft amendment it is considered that the proposed changes to the LEP do not alter the assessment or subsequent recommendation for this application.

**(a) (iii) Development Control Plans (DCP's)****Development Control Plan No.2 – Access and Car Parking**

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

<b>Standard</b>	<b>Requirement</b>	<b>Complies/variation</b>
On site car parking	1.5 per dwelling = 40.5 Council has also consistently applied a merit based assessment for the provision of 25% of this parking to be allocated to visitor parking. Therefore this development would generate the need for 10 visitor spaces to form part of the 40.5spaces.	The basement contains forty three (43) unconstrained spaces. Of these 43 spaces fourteen (14) of them have been marked for visitor use. This is considered acceptable subject to a condition of consent confirming the need for a minimum of ten visitor spaces that are clearly signposted accordingly.

The proposed development is considered satisfactory having regard to the amended plans and DCP No. 2 and ensures that there is adequate parking on site for each unit and their visitors.

**DCP No. 18 – Tweed Heads****Part 6 – High Density Residential Precinct**

The land is identified under the DCP as a high-density residential precinct and is within walking distance to the Tweed Heads/ Coolangatta CBD, clubs, sporting facilities and other recreational opportunities. The proposal being the consolidation of two properties and the construction of 12 storey residential flat building containing 27 units is consistent with the precinct objectives and the vision for Tweed Heads.

**Part 9 - Building Height Plane**

The proposal seeks a variation to the building height plane as stipulated under Part 9.3 of the Policy, which requires the development to be setback 1 metre from the boundary for every 3 metres of building height. From the plans submitted the following encroachments are observed

- Level 2 incorporates 1m<sup>2</sup> of encroachment to the south eastern elevation which accommodates the dining area;
- Level 3 incorporates 9m<sup>2</sup> of encroachment to the south eastern and north eastern corners of building which accommodates the kitchen and dining area;
- Level 4 incorporates 33m<sup>2</sup> of encroachment to the southern and northern elevation which accommodates the kitchen and dining area;



- Level 5 incorporates 2m<sup>2</sup> of encroachment to the southern elevation which accommodates the study and kitchen area;
- Level 6 incorporates 17m<sup>2</sup> of encroachment to the southern elevation and northern elevation which accommodates the dining and living area and kitchen study and bathroom area;
- Level 7 incorporates 11m<sup>2</sup> of encroachment to the southern elevation which accommodates living and dining area and the lift shaft; and
- Level 8 incorporates 22m<sup>2</sup> of encroachment to the southern and northern elevation which accommodates the bedrooms and lift motor room.

The applicant has submitted that the encroachments are minor and total 95m<sup>2</sup> only. The plan further provides that the building actually leaves a total of 2289m<sup>2</sup> of additional available building envelope unused. Furthermore the encroachments occur at the eastern end of the of the building where the slope of the land is most extreme. In addition the shadow diagrams, which indicate the difference between the proposal and a fully complying building envelope demonstrates that the proposal does not result in any significant change to shadow impact.

Having regard to the difficulties presented by the slope and shape of the site and the generous setbacks, which start at over 4m to all boundaries at ground level and progressively increase with height, it is considered that the proposal represents a sensible and well-balanced approach to the building envelope control. Furthermore, the development complies with intent of the planning controls with the bulk of the building falling within the building height plane. Considering the minor nature of the encroachments a variation to the Building Height Plane is supported in this particular instance.

### **Part 11 – Residential Design**

The following matters apply to residential buildings comprising 4 storeys or more

#### **Building Mass**

The proposal utilises various building elements to break up the bulk and mass of the building. The elevation to the street is articulated providing visual variation and is aesthetic.

#### **Energy efficiency**

The applicant has submitted Nathers Certificates demonstrating the proposed units are energy efficient.

### **Wind Mitigation and Overshadowing**

Due to the design of the building and the incorporation of generous setbacks from all boundaries the development will not generate adverse wind conditions, which would affect the public domain or neighbouring properties.

The proposal overshadows 26% of Jack Chard Park at 3pm in the middle of winter. This level of overshadow is considered acceptable having regard to the size of the park and its proximity to the subject site. The potential shadow of the other Development Applications has also been reviewed and it is considered that DA 04/0646 will shadow parts of the park during winter, however the cumulative impact of shadow from the subject DA and DA04/0646 still affords the park with adequate direct sunlight even during winter.

### **Roof Lines**

The roof of the building like the walls incorporates different elements to add visual interest to the design of the proposal.

### **Privacy**

The units on each floor have been orientated in such a way that balconies and living areas maintain some degree of privacy. In terms of neighbouring properties concern was raised in relation to the balconies on the southern and northern boundary, and there impact upon the privacy of the adjoining residents. In this regard it is noted that these juliet balconies are not directly accessible from the living areas, with the main views to the east and north towards Coolangatta Beach or to the southeast towards the mouth of the Tweed River. As such the balconies on the southern and northern elevations are likely to be limited in use. To maintain privacy the applicant has proposed to landscape the podium level to reduce ground floor intrusion with the upper floors exhibiting a combination of solid masonry balustrades and clear glass balustrades, however, further privacy can be achieved through the use of planter boxes to obscure overlooking, but not prevent distant views.

### **Security**

The development provides good surveillance opportunities of the street with living areas and balconies on all levels overlooking the street and park. Other security measures include security access to the basement car park and an intercom device at the entrance lobby. Appropriate conditions of consent have been recommended in relation to lighting.

### **Materials and Colours**

The proposal will incorporate rendered and painted surfaces. Appropriate conditions of consent have been recommended to ensure materials and colours are earth tone and non-reflective.

### **Access and Parking**

Car parking complies with the requirements of the policy with adequate car wash bays incorporated.

### **Open Space and Balconies**

DCP 18 stipulates the requirements for both ground level landscaping and private open space in the form of balconies. The application incorporates a pool and recreational area, some ground level landscaping and extensive podium areas, which incorporate planter boxes, to assist soften the development. The subject application satisfies this criteria and is considered appropriate having regard to useable open space areas.

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

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

<b>Standard</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Complies</b>
Unit Energy rating	3.5 stars minimum	3.5 –5 stars	YES

### Development Control Plan No. 47 – Cut & Fill

The plan limits the depth of cut and fill to 1m unless it can be demonstrated that the earthworks are compatible with the natural landform and will not adversely affect adjoining properties while achieving the objectives of the plan.

The proposed development involves excavation for the basement and will clearly extend beyond 1 metre, however this is considered consistent with recently approved developments. The applicant has substantiated the request with an erosion and sediment control plan, and a stormwater management plan that have been assessed and considered appropriate. Council’s Environmental Health Officer, Council’s Infrastructure Engineers and Council’s Building Surveyor have all reviewed these plans, with no objections raised subject to the recommended conditions of consent.

In all other regards the applicant provides that appropriate measures will be in place to ensure that the proposal is consistent with the objectives of the plan. However, appropriate conditions of consent have been imposed to ensure adequate geotechnical reports are submitted and approved prior to the commencement of construction.

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

### **Coastal Policy**

The land is identified under the Coastal Policy. However, the site is significantly landward from the Coastal Erosion Zones, and is unlikely to be affected by the coastal processes, overshadowing of the foreshore reserves or restricting public access to the coast. Therefore, the proposed development is

not considered to be in conflict with the policies and strategies contained in the coastal policy.

### **Demolition**

The proposal requires the demolition of two existing dwellings. The applicant has submitted a demolition plan, which has been assessed as adequate, and appropriate conditions of consent have been recommended to control demolition activities.

**(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**

It is considered the proposed development will not have an adverse impact upon the natural environment as the site is currently developed for residential purposes. In terms of the built environment the proposed residential flat building will replace two, two-storey dwellings, and as such the development will have an impact upon the built environment. The following issues are raised.

### **Character of the area**

The area is made up of a mix of medium density development comprising mainly residential flat buildings some that have only recently been constructed and older dwelling houses. The area is currently undergoing a transition phase as these older dwellings come under market pressures to be demolished and the land redeveloped for higher density residential development as encouraged under the applicable planning controls. The proposal is considered not to be out of character with the area and is consistent with the future built form as per Tweed LEP 2000, DCP No. 18 – Tweed Heads, and the Draft Tweed Heads Town Centre Master Plan.

### **Front Fence Height Variation**

The plans submitted identify a 1.5m high fence across the front of the property with a pedestrian entry and an opening for driveway access along a portion of the southern section. A 1.8m high fence is then proposed along the side and rear boundaries. Subject to a condition of consent to remove part of the 1.8m high fence to obtain adequate site distances from the driveway the proposed fence height variation has been supported by Council's Manager of Building Services in accordance with his delegations as it was determined that the design of the fence would compliment the development.

### **Views**

DCP 18 acknowledges that views provide a sense of place and identity, and that key view corridors should be retained. The Senior Commissioner in the Land & Environment Court in *Tenacity Consulting Pty Ltd v Warringah Council*

adopted the following four-stage test to assess the reasonableness of view sharing:

1. The first step is the assessment of views to be affected;
2. The second step is to consider from what part of the of the property are the views obtained (an expectation to retain side views and sitting views would be unreasonable);
3. The third step is to assess the extent of the impact (the extent of the impact should be assessed for the whole of the property not just for the view that is affected. This could be done by ranking the affect from negligible to devastating); and
4. The fourth step is to assess the reasonableness of the proposal that is causing the impact (it may be unreasonable if it comes about as a result of non compliance with planning standards).

The proposed development will affect the views from 16-18 Thomson Street to the south towards Tweed Heads South and the views from 30 Thomson Street to the north towards Coolangatta Beach.

The views would be obtained from the upper floors of both buildings (maximum fifth storey). The view form 16-18 Thomson Street would be obtained from side facing windows from bathrooms, bedrooms and living areas, while the development at 30 Thomson Street would obtain this view from external balconies, bedrooms, living and dining areas when standing up.

The impact on 16-18 Thomson Street would be a sense of enclosure and loss of distant views, which provide a higher level of amenity, however this impact would be considered acceptable given the sideways views. The impact on 30 Thomson Street would also be considered acceptable given the panoramic views that this property experiences. The view to the north is only one aspect of their view and could therefore allow for a reasonable sharing of views.

In assessing the reasonableness of the proposed application it has been determined that the building satisfies the intent for the character of the area, while complying with the height and satisfying Council that the application has had adequate regard for the amenity of adjoining property in terms of shadow, privacy and general amenity.

Therefore, it is concluded that the loss of view that will result from the construction of the proposed building is not unreasonable despite the impact it will have on adjoining properties.

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

The subject site is within close proximity to the commercial business districts of Tweed Heads and Coolangatta, which provide for a variety of shopping, dining, and recreational opportunities. The area is also serviced by medical facilities including the Tweed Heads Hospital and various professional consulting rooms in Boyd Street.

The subject site has been nominated as a designated high-density residential area to utilise the areas facilities as detailed above. Additionally the site has the benefit of a 50m AHD height limitation, which further encourages high-density development for the area. The existing public infrastructure is adequate to service the proposed residential flat building, as the area is not subject to any known hazard such as slip, flood or bushfire. The site of the proposed development is considered suitable for this type of development and encouraged through our strategic plan for the area.

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

The proposal was advertised and notified for a period of 14 days from 2 June 2004 to 17 June 2004. During this period Council received six individual objections and one objection in the form of a petition with 42 signatures on it.

The grounds for objection are discussed in the below table.

OBJECTION	IMPACT ASSESSMENT
<i>The precinct objectives for DCP 18 require new high-density developments to respect existing residential amenity.</i>	The new development will change the built form of this section of Thomson Street, however, through careful design the proposal has adequately considered the relevant statutory controls including the buildings impact on the existing residential amenity. These issues namely overshadowing, privacy and view loss have been addressed in the above report. Following the necessary merit assessment this objection does not warrant further amendment or refusal of the application.
<i>The proposal involves encroachment of the building envelope restrictions.</i>	The applicant has provided a floor-by-floor plot of the building envelope encroachments, which demonstrates a total encroachment of only 95m <sup>2</sup> (over seven levels of the building). This level of encroachment would have a negligible impact on the amenity of the adjoining properties having regard to shadow, privacy and loss of view. Given the slope of the land in addition to the size of the site this minor level of encroachment is considered acceptable. This objection does not warrant further amendment or refusal of the application.
<i>The building has considerable bulk especially when viewed from the north and south, with the basement extending along the southern property boundary reducing the opportunity for plantings to soften</i>	The size and shape of the site has resulted in an elongated elevation to both the north and south. However these elevations are stepped and articulated as a direct result of the slope of the land and the high design quality of the building. The variety in materials used and the sectioning of these elevations soften the impact of these elevations and result in an attractive building. The application incorporates a 1.5m landscaping strip for the first 26m along the southern property boundary. Beyond this point the slope of the land drops off significantly which suits the proposed basement configuration. Landscaping is then

OBJECTION	IMPACT ASSESSMENT
<i>the impact.</i>	reintroduced at the rear of the site to soften the visual impact from the park. Having regard to the slope of the site and compliance with the landscaping provisions within DCP 18 the application is considered reasonable. This objection does not warrant further amendment or refusal of the application.
<i>Only 318m<sup>2</sup> of landscaping is achieved at ground level.</i>	DCP 18 stipulates the requirements for both ground level landscaping and private open space in the form of balconies. The application incorporates a pool and recreational area, some ground level landscaping and extensive podium areas, which incorporate planter boxes, to assist soften the development. The subject application satisfies this criteria and is considered appropriate having regard to useable open space areas. This objection does not warrant further amendment or refusal of the application.
<i>The basement structure protrudes from the ground by greater than 500mm and adds bulk to the building when viewed from the park. Both DCP 6 and SEPP65 discourage this type of arrangement.</i>	Development Control Plan No. 6 is not applicable to high-rise development in the Tweed Heads area and is not restricted to the criteria pertaining to basement structures. The provisions of SEPP 65 have been addressed in the above report and conclude that the building has architectural merit and satisfies the design criteria. Furthermore, the building has responded to the slope of the land by incorporating units at the exposed eastern end of basement level 1. These units provide a pleasant outlook over the adjacent park and break up the continuation of a car-parking podium, reducing the bulk of the building by activating the eastern elevation at the lower levels. This objection does not warrant further amendment or refusal of the application.
<i>A density of 1 dwelling per 45m<sup>2</sup> of site area (or 1 bedroom for 15m<sup>2</sup> of site area) is excessive as high density could still be achieved with a density of 1 bedroom per 25m<sup>2</sup> of site area.</i>	DCP No. 18 does not nominate a specific density requirement; rather it relies on the building envelope, car parking, landscaping and a general merit assessment of the application to set the ultimate density. Having regard to all these other considerations the application is considered to warrant a recommendation for approval. This objection does not warrant further amendment or refusal of the application.
<i>The height of the development is considered excessive.</i>	The proposed development comprises a twelve-storey building totalling a maximum height of 41.1m AHD. This is consistent with the nominated height controls and the objectives for the area. All associated issues pertaining to bulk and scale have been adequately considered in the above report. This objection does not warrant further amendment or refusal of the application.
<i>This development will affect view corridors</i>	View loss has been addressed in the above report. Having regard to the way in which the Court deals with issues of view loss, this application is considered appropriate and warrants a recommendation for conditional consent. This objection does not warrant further amendment or refusal of the application.
<i>The townhouse complex at 19 Francis Street will receive less natural light and be overshadowed extensively.</i>	This issue has been addressed in the above report. This objection does not warrant further amendment or refusal of the application.
<i>Properties to the south</i>	Some degree of privacy loss will be experienced for residents to

OBJECTION	IMPACT ASSESSMENT
<i>will lose privacy.</i>	both the north and south. However, some loss of privacy must be expected in any high-density area. The architect has adequately considered this aspect in the design of the main living areas and open space areas being orientated to the park or the street frontage rather than to the north or south. Subsequently, this objection does not warrant further amendment or refusal of the application.
<i>Good economic growth does not necessarily mean building scores of medium to high rise apartment buildings more modest developments would achieve the same outcomes.</i>	Whilst more modest buildings may be more desirable for some adjoining residences, Council has an obligation to determine the subject application. Given the high design standard of the building and the compliance with the nominated controls the application is considered to warrant conditional consent. This objection does not warrant further amendment or refusal of the application.
<i>The report mentions tourist accommodation and the surrounding area is predominantly owner occupied or permanent rental residents.</i>	The application has been lodged as multi dwelling housing and has been assessed accordingly. No assessment concessions have been given, as the application is not for tourist-orientated development. This objection does not warrant further amendment or refusal of the application.
<i>The building work will be disruptive to the amenity of the area. Dust and noise would be of significant concern to Council.</i>	During construction the amenity of the adjoining properties will always be impacted upon. To mitigate these measures Council has formulated standard conditions of consent, which limit both the construction hours and the permissible noise levels during construction. Conditions of consent are recommended.
<i>The building has been designed on maximum capacity.</i>	Whilst the building encroaches into the building envelope for 95m <sup>2</sup> the applicant has provided that there is capacity to utilise a further 2289m <sup>2</sup> of space as permitted by the building envelope. Furthermore, the application details a building height of 41.1m AHD when in fact there is potential to go to 50m AHD. Therefore whilst the development is considered to have adequately utilised the land in accordance with the objectives of the Tweed Local Environmental Plan, the application has not been designed purely on maximum capacity. This objection does not warrant further amendment or refusal of the application.
<i>The design is twelve floors of concrete stretched to its four boundaries. The design also looks like a needle sticking up into the air.</i>	The application has addressed the sites constraints and the numerical requirements of Council's controls while trying to provide an architecturally pleasing building. However, the architectural merits of any application are always going to be in the eye of the beholder. In this instance the application has adequately considered all aspects of the development and warrants conditional consent. This objection does not warrant further amendment or refusal of the application.
<i>Access for emergency services has not been considered.</i>	The common driveway provides access to a three-tier basement with access to all levels of the building through both emergency stairwells and a lift. Additionally there is a pedestrian entry to the site from Thomson Street. The application will be conditioned to ensure that the property is adequately signposted in terms of numbering to ensure emergency vehicles and the like can easily identify the site address. Conditions of consent are recommended.



OBJECTION	IMPACT ASSESSMENT
<i>The units will appear like a wall to the Park.</i>	The building has responded to the slope of the land by incorporating units at the exposed eastern end of basement level 1. These units provide a pleasant outlook over the adjacent park and break up the continuation of a car-parking podium, reducing the bulk of the building by activating the eastern elevation at the lower levels. This objection does not warrant further amendment or refusal of the application.
<i>The development will result in a wind tunnel effect</i>	High-rise development can certainly increase the effect of wind when in a highly built up area. The proposed development represents only one of few taller buildings in the immediately adjoining area and the increased tunnelling effect from wind will be considered negligible at this stage. This objection does not warrant further amendment or refusal of the application.
<i>The building will cast shadow on the park.</i>	The applicants shadow diagrams indicate that the adjoining park will only be partially overshadowed from 3pm in the middle of winter and 6pm in the middle of summer. These shadow impacts are not considered excessive and only affect a small portion of the park. It should further be noted that even when considering the other two Development Applications currently before Council (DA04/0646 & DA04/0631) the impacts on the park from shadow are considered negligible. This objection does not warrant further amendment or refusal of the application.
<i>The building will be a blot on the landscape from every angle across Coolangatta.</i>	The subject site is positioned prominently on the ridgeline. Any development utilising the potential height limitation will be seen from many different positions throughout the immediate Tweed Heads area. However, considering the architectural merit of the application the DA is recommended for conditional approval. This objection does not warrant further amendment or refusal of the application.
<i>The developer should not be able to access the adjoining property to the north or use the nature strip opposite the site once construction begins.</i>	Appropriate conditions of consent will be imposed to protect the amenity of the adjoining property owners during construction.
<i>A building of this size would ruin the ambience of the area.</i>	Council's nominated plans (including the Draft Tweed Heads Town Centre Master Plan) identify the site as a high-density residential area with the capacity to support a twelve storey building. The area is currently undergoing a change to accommodate this desired future outcome and with this comes a change in ambience. This objection does not warrant further amendment or refusal of the application.
<i>The site is too narrow for such a development.</i>	The architectural plans for the development have strived to design the building having regard to the elongated nature of the site. These elevations have been appropriately articulated and have resulted in a generally compliant building. Considering the architectural merit of the application the DA is recommended for conditional approval. This objection does not warrant further amendment or refusal of the application.
<i>The development will lower the value of my</i>	This is not matter of consideration under the Environmental Planning & Assessment Act 1979.

<b>OBJECTION</b>	<b>IMPACT ASSESSMENT</b>
<i>property.</i>	
<i>The site should be utilised for a three storey development not 12.</i>	Council has an obligation to assess the subject application that is currently before Council. The application warrants a recommendation of approval based on the merits of the application. This objection does not warrant further amendment or refusal of the application.
<i>The development will result in a loss of sunlight to adjoining properties.</i>	The proposed development will overshadow adjoining properties to the south, however, this issue has been addressed in the above report. All other adjoining development should still experience a similar amount of sunlight to that currently enjoyed. This objection does not warrant further amendment or refusal of the application.
<i>The shadow cast will impact on amenity.</i>	This issue has been addressed in the above report. This objection does not warrant further amendment or refusal of the application.
<i>The development will increase traffic congestion and make parking difficult.</i>	The proposed development proposed 27 units and forty-three on-site car parking spaces. This level of on site car parking is consistent with the requirements of Council's Development Control Plan No. 2, which caters for both residents and visitors. This objection does not warrant further amendment or refusal of the application.
<i>The existing quiet residential street will change.</i>	Council's nominated plans (including the Draft Tweed Heads Town Centre Master Plan) identify the site as a high-density residential area with the capacity to support a twelve-storey building. The area is currently undergoing a change to accommodate this desired future outcome and with this comes a change in character. This objection does not warrant further amendment or refusal of the application.
<i>Streets are losing individuality</i>	The proposed design is quite unique to the area and will add character to the streetscape. The loss of individuality between streets is a personal opinion, which does not warrant further amendment or refusal of the application.

**(e) Public interest**

Despite the objections received to this application the proposal is not considered to be in conflict with the general public interest in the locality. The proposed development adequately reflects the provisions of the controls and the intended development for the locality.

**OPTIONS:**

1. Approve the application in accordance with the recommended conditions.
2. Refuse the application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant has a right of appeal to the Land and Environment Court.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed development has provided high density residential development in an area nominated for such a use given its close proximity to the commercial business districts of Tweed Heads and Coolangatta, which provide for a variety of shopping, dining, and recreational opportunities.

The existing public infrastructure is adequate to service the proposed residential flat building, as the area is not subject to any known hazard such as slip, flood or bushfire. Furthermore, the local road network surrounding the site is suitable for such a development especially when basement car parking is provided.

The merit assessment of the applicable issues relating specifically to the building envelope, front fence heights, landscaping, privacy and loss of views are not considered to be unsustainable or result in an over development of the site.

The site of the proposed development is considered suitable for this type of development and encouraged through Council's strategic planning documents for the area. Having had regard for the proposed development and controls provided for the site it is considered that conditional consent is warranted.

**UNDER SEPARATE COVER:**

1. A3 Perspective Drawing
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**2 [DS] Section 96 Application DA02/0988.02 for an Amendment to Development Consent DA02/0988 for the Erection of an Agricultural Storage Shed and Greenhouse Structures at Lot 11 DP 835413, Boulder Close, Byangum**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA02/0988 Pt3**

**SUMMARY OF REPORT:**

A Section 96 application has been received for the greenhouse structures and shed at Boulder Close, Byangum. The greenhouses and shed have not been constructed in accordance with the development consent, as such an amended application has been lodged for consideration by Council.

**RECOMMENDATION:**

That Section 96 application DA02/0988.02 for an amendment to Development Consent DA02/0988 for the erection of an agricultural storage shed and greenhouse structures at Lot 11 DP 835413 Boulder Close, Byangum be amended as follows: -

1. Amend Condition No. 1 to read: -
  1. The development shall be completed in general accordance with the Plan No. 1A Amended Layout Plan, Plan No. 1A shed, Plan No. 1 Large Greenhouse and Plan No. 2 Small Greenhouse dated April 2004 and the Statement of Environmental Effects included in the application, except where varied by these conditions of consent.
2. New Condition under Heading "GENERAL" to read: -

"Stormwater runoff from the agricultural storage shed and green houses is to be collected and discharged to the table drain west of the property access on Kyogle Road. An approval from Council, under Section 68 of the Local Government Act 1993 must be obtained prior to commencement of drainage works on or connecting to the road reserve. An application for Section 68 stormwater drainage approval must contain engineering details of proposed outlet pipe (location, size, class, levels), associated headwall and scour protection works. The application is to be submitted to Council within 7 days of the date of this consent."

**REPORT:**

**Applicant:** Mr A & Mrs Z Mishtler c/ Northpoint Planning  
**Owner:** Mr A Mishtler  
**Location:** Lot 11 DP 835413 Boulder Close, Byangum  
**Zoning:** 1(a) Rural  
**Cost:** \$20,000

**BACKGROUND:**

Council issued development consent for an agricultural storage shed and greenhouse structures on 6 December 2002 subject to 18 conditions. The greenhouses consist of two structures. The greenhouses are used for growing vegetables.

Council considered a report on 17 March 2004 regarding a course of action to deal with non-compliance with conditions of consent for the development. Council had received written and verbal complaints from adjacent residents about non-compliance with conditions of consent.

On 17 March 2004 Council resolved the following: -

*"that the owners be advised in writing that: -*

- 1. A Section 96 application is required to be lodged with Council within fourteen (14) days of being given notice for the adjusted position of the northern greenhouse or Council will commence proceedings for non-compliance with the development consent.*
- 2. The landscaping is to be maintained to the satisfaction of Council and inspections of the landscaping will be carried out. Failure to maintain the landscaping will result in action from Council including on the spot fines.*
- 3. A report is to be submitted to Council within fourteen (14) days of being given notice demonstrating that the existing stormwater system does not have an unacceptable impact on adjoining property. Alternatively, a Section 68 stormwater application under the Local Government Act, 1993 is to be submitted to Council within fourteen (14) days of being given notice. If an alternative stormwater management system is proposed the development consent is to be amended accordingly.*
- 4. Written confirmation is to be provided to Council within fourteen (14) days of being given notice that the reticulated watering system is used to convey water only and it is not used as a fertilising system."*

On 6 April 2004 an on site meeting was held with the applicants consultant where he was advised that the preferred stormwater disposal method was to convey the stormwater to Kyogle Road. The proponents have advised in this application that a Section 68

application will be lodged to divert all stormwater away from the adjoining property to the Kyogle Road Reserve. This condition is to be amended to require the Section 68 application to be lodged within 7 days.

The Section 96 application has been lodged to comply with point one above and the proponents have advised that they are not operating a fertigation system and the system is a water filtration system.

## **Proposed Amendments**

### Greenhouses

The northern larger greenhouse has been built 1.5m from the eastern boundary. The approved plan indicates that the north-east corner of the greenhouse was proposed to be 6m from the boundary. The approved dimensions of the larger greenhouse are 60m x 30m. This greenhouse has been constructed with dimensions of 55.2m x 36m. The roofline has also altered from the approved rolled roofline to a sawtooth or wave roofline.

The smaller southern greenhouse was approved with dimensions of 36m x 29m. The as built dimensions are 36m x 28m. The roofline has also been altered from a sawtooth or wave roofline to a rolled roofline.

### Shed

The shed was originally approved with three bays. The shed has been constructed with four bays.

The amendment includes adding awnings to the northern and western sides of the shed. The northern awning is proposed to be 2.5m wide and the western awning is proposed to be 3m wide.

**SITE DIAGRAM:**



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TWEED SHIRE COUNCIL  
 Lot 11 DP 835413  
 Boulder Close, Byangum



**Site Plan**  
 Sheet 1 of 1

Revision

File: N:\MapInfo 7...\Site Plan.Wor Author: J. Batchelor Date: 24/Sept/02

TWEED SHIRE COUNCIL



**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 provisions of Tweed LEP 2000. The agricultural use is permitted without consent from Council however the structures require consent from Council. The 30m setback to Kyogle Road is maintained as a result of the amendments. Stormwater is collected in tanks and the overflow is proposed to be conveyed to the table drain system.

State Environmental Planning Policies

Not applicable.

**(a) (ii) The provisions of any draft Environmental Planning Instruments**

Not applicable.

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

Not applicable.

**(a) (iv) Any matters prescribed by the Regulations**

Not applicable.

**(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 greenhouse structures have changed the outlook when viewed from adjacent properties. The reduced setback does not affect the change that has already occurred as a result of the greenhouses given the size of the allotments and the location of the existing dwellings. The existing dwelling on the adjoining lot is located approximately 140m from the location of the greenhouse.

It is considered that the reduced setback does not produce any new or additional unacceptable impacts given the scale of the development, the size of the lots and the location of existing dwellings.

The amendments to the rooflines and dimensions are considered to be minor and no additional adverse impacts are likely as a result of these alterations.

The shed was originally approved with dimensions of 11.73m x 7.5m with a wall height of 2.4m. The additional bay increases the length of the shed to 16m. The wall height is now 3.0m. It is also proposed to add awnings to the front and side of the shed. The additional bay has been built with sliding glass doors rather than a roller door and is used as an ancillary area to the agricultural use.

It is considered that the shed and additions are of a scale and nature that are commonly associated with agricultural enterprises of this scale and no additional unacceptable impacts are produced as a result of the amendments.

The applicants advise that the reduced setback of the northern greenhouse to the eastern boundary from 6m to 1.5m occurred due to the presence of an optic fibre cable that traverses the property. An amendment to the consent should have been proposed when this was discovered however Council is still able to consider an amended application at this stage.

It should be noted that the 1.5m setback is a minimum as the structure angles away from the boundary along its length.

The approved landscaping plan indicates species that grow up to 1.1m high. The landscaping is to be in several groups along the boundary. The reduced setback will not significantly affect the approved landscaping. The type of species along the eastern boundary would not completely screen the greenhouses as they would only provide a soft edge to the structures. Whilst the landscaping is not at an adequate level and general maintenance needs to be improved the reduced setback does not compromise the functioning of the landscaping.

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

The proposed amendment does not affect the suitability of the site for the development.

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

The application was exhibited in the Tweed Link and adjoining and adjacent landowners were notified. Nine submissions were received as a result of the exhibition. Council is not required to notify everybody who made a submission to the original application. This is only required by the Regulations for State Significant and Designated Development.

It should be noted that an objection was submitted by the Uki Village and District Residents Association. Following an inspection of the site by the President and a committee member of the Association, the Association has withdrawn their objection. The Association advises that there are no sufficient reasons to object to the proposed amendments, particularly regarding effluent, runoff and setbacks.

The matters raised in the submissions are summarised below. Comments regarding the submissions follow:

- Affects dam
- Sediment build up from site
- Should be deconstructed
- Too close to boundary
- Construction standards not met
- Mechanical noise created by equipment
- Stormwater runoff to Kyogle Road could cause accident
- No formal or appropriate compliance by private certifier
- Undesirable precedent for non-compliance
- Should be made to comply
- Structural safety
- Effluent control
- Changed zoning from open space
- Visual amenity
- Lack of toilets for workers
- Flooding
- Water abstraction without approval
- No licensed builder present
- No CC issued
- Screening not adequate
- Cladding and batons blown off by wind
- Glare
- Undesirable precedent using Section 96
- No building insurance
- Not built according to manufacturers instructions
- Structures don't comply with BCA
- Additional workers than originally stated - toilet facilities
- Shed -fire requirements
- Fertigation system installed
- Section 96 fees not correct
- Roof lining unacceptable
- Shed larger than that approved
- Shed bay 4 enclosed not roller door
- Electrical system not shown on plans

### Comments

- The development is the subject of Mark Stapleton and Associates Construction Certificate No. CON/02/1036 which authorises construction.

The building has been classified as class 10a under the Building Code of Australia as a greenhouse and no requirements exist for the builder to be licensed or insured under the provisions of the Home Building Act.

Compliance with the Building Code of Australia and structural adequacy are issues which are the responsibility of the Accredited Certifier issuing the construction certificate.

- In the event that three additional persons were using toilet/amenity facilities installed in the dwelling during the day, this additional load is considered unlikely to have any significant detrimental effect on the waste treatment systems operation.

The buildings have been assessed as Class 10a and not Class 8. The Building Code of Australia does not provide for such buildings to be provided with work place amenities, or fire resistance levels for construction components of Class 10a buildings.

- Any alleged failure of the structure due to wind loadings or fabric decays are issues associated with the construction certificate and should be addressed by the Accredited Certifier determining the construction certificate.
- The validity of the construction certificate is not a matter for Council. Council receives and registers and archives these documents from the Accredited Certifier. Council does not have a role in reviewing or checking these documents. The objection has identified that a complaint has been lodged with DG Planning NSW and this is the correct procedure for any perceived deficiencies to be reviewed/pursued.
- The applicant has advised that there are two employees inclusive of the landowner and from time to time additional staff is employed on a seasonal "as needed" basis.

Toilet and washing facilities are provided for staff within the ground floor of the existing dwelling. The facilities are approximately 70m from the packing shed.

The applicant has provided the following information regarding the use of the shed: -

*"We understand that Council has concerns in relation to the classification of the existing shed (under the BCA) on the basis that it is being used as a commercial office. It is evident that the existing shed and the additional 4<sup>th</sup> bay in particular, are not being used as an office and that this area is simply used for the purposes of ancillary storage, lunchroom facilities and ancillary administration operations.*

*Our client had previously had a computer in the shed, however this has been removed as given the dirty nature of packing facilities, all electrical equipment was in danger of being damaged. Subsequently, the proponent now carries out all paperwork related activities within their house to the west. The only remaining 'office' related item in the shed is a facsimile machine. This machine is kept within the shed simply so that all orders can be directly noted and actioned from the fax to the packing room floor. The provision of a fax within the shed and the carrying out of ancillary administration duties such as responding to orders and the like is consistent with the duties carried out within any agricultural enterprise and in no way represents a formal commercial use.*

*It is also pertinent to note that the existing operations are that of a wholesale agricultural enterprise. Accordingly, no commercial visitors come to the site in order to purchase goods, nor do visitors come to the site for the purposes of picking goods up for transport. In this regard, all purchases/orders are made by phone/fax and all deliveries are made to the markets/distributors, by the proponents themselves."*

It is considered that adequate amenities are available for the enterprise and the 10a classification of the shed is appropriate

As previously advised, it is not considered that these structures are residential building works within the meaning of the Home Building Act.

- The issue of an Occupation Certificate is the responsibility of the Principal Certifying Authority (Accredited Certifier) for their consideration and determination.
- Structural Safety Deficiency of Present and Proposed Structures.

Any perceived deficiencies in this regard are issues associated with the construction certificate to be addressed by the Accredited Certifier, and are not matters for Councils consideration of the Development Application.

- Contrary to the claim, the structures are the subject of Mark Stapleton and Associates Construction Certificate No. CON/02/1036, issued 24/1/2003.

It is likely that some cladding has been damaged/removed from the site by wind. This is because of the fabric nature of the materials involved and is considered to be a likely recurring maintenance issue.

The cladding material claimed to be dislodged is a constructional issue likely to result from inadequate fastenings. This is a Construction Certificate issue to be addressed by the Accredited Certifier.

- Issues relating to the Construction Certificate are matters for the Accredited Certifier.
- The Class 10a classification was adopted as being most representative. No other classification exists for these types of structures which would be more appropriate.
- Historically, the Department of Fair Trading has advised that machinery, storage sheds and the like are not considered as residential related structures subject to the Home Building Act requirements for Licensed Builders and Insurance provisions.
- Council's Development Consent Condition 16 provides for the issue of a Compliance Certificate. At the time of issue of this consent, the Environmental Planning and Assessment Act at Section 109n and Regulations 156 provided for concessions for Class 1 and 10 buildings for the issue of Occupation Certificates.
- The main issue regarding the adjoining dam relates to the stormwater overflow which is currently directed to the adjoining property. As stated previously this will be solved with the stormwater conveyed to Kyogle Road.
- See previous assessment regarding the setback.
- Whilst non-compliances are not desirable, procedures are in place to deal with such issues. Council is required to consider amendments on merit. A precedent for non-compliance is not likely to be set as a result of this use.
- Council has the option to refuse the amendments and enforce compliance, however this is not recommended in this instance due to the nature and impact of the proposed amendments.
- Irrigation is via a drip system which does not produce significant runoff. There is no evidence of effluent runoff however stormwater requires improved management.
- There has not been any zoning change relating to this development.
- The proposed amendments do not alter the visual amenity issues.
- Flooding was dealt with in the original assessment, the amendments do not produce any additional flooding issues.

- Water abstraction is dealt with by the Department of Infrastructure, Planning and Natural Resources. This issue does not relate to the proposed amendments.
- It is generally agreed that the landscaping is not adequate, however this is an ongoing assessment issue for the proponents and an ongoing monitoring issue for Council. The amendments do not relate to the landscaping.
- The glare from the greenhouses was dealt with in the 17<sup>th</sup> March 2004 report. The section of the report is reproduced below.

"Reflectivity

*As a result of ongoing complaints regarding the reflectivity of the greenhouse cover material Council had the material tested by the Optics and Radiometry Laboratory at the University of New South Wales. The application submitted information stating that the material (Solarshield) has an 84% absorption/transmission rate when new and as the material ages reflected light would halve from 16% to 8%.*

*The test revealed that reflectance of the material is 14.21% ( $\pm$  0.20%).*

*The test report makes the following statement: -*

*"We have tested and examined the shade cloth and found that in some situations, eg. At some angles between the observer, the shade cloth, and the light source, the reflectance will be higher than the figure stated in our test report. However, this is entirely typical and does not happen more so for this material than for other common building materials, such as glass."*

*It is considered that no further action should be taken by Council on this issue given that the reflectivity of the material reduces over time and reflectivity above the tested level is normal for building materials depending on the angle of the sun and the location of the observer."*

- The proponents have reiterated that they are not operating a fertigation system. The system is a water filtration system to filter particles from the water before it is conveyed to an above ground watering system within the greenhouses. The purpose is to restrict clogging of the spray mist nozzles.

- See previous comments regarding roof lines.

**(e) Public Interest**

Council is required to consider the proposed amendments on merit. It is in the public interest for Council to consider the amended application.

**OPTIONS:**

1. Approve the amended application as per the recommendation.
2. Refuse the amended application. If this option was taken Council would be required to take appropriate action for non-compliance which could result in legal proceedings.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil if option 1 is adopted. If option 2 is pursued Council would incur legal expenses.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The case represents a conflict between agriculture and rural lifestyle dwellers. The proposed amendments are not significant in the context of agricultural uses however given the proximity of the site to rural residential development the performance demands on such an enterprise are high.

It is considered that the proposed amendments are acceptable and that additional unacceptable impacts are not likely as a result of the modifications.

**UNDER SEPARATE COVER:**

Nil.

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**3 [DS] Section 96 Application DA02/1422.18 for an Amendment to Development Consent DA02/1422 for a 488 Lot Subdivision at Lot 194 DP 755701, Lot 301 DP 755701, Lot 312 DP 755701, Lot 490 DP 47021 & Lot 500 DP 727420, Tweed Coast Road, Kingscliff**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA02/1422 Pt26**

**SUMMARY OF REPORT:**

Council has received an Section 96 amended application for the Salt subdivision development. The main component of the amended application involves modifying the masterplan and subdivision plans by deletion of medium density sites and replacing them with standard residential lots. The proposed amendments result in an additional 121 residential lots and 124 less medium density dwellings. The other amendments relate to dual occupancy site nomination, setbacks, bushfire and the ongoing demonstration of the ratio of resort rooms to residential lots.

Council's legal advice and the applicants report and legal advice in support of the application are provided in the attachments. Council's legal advice is that the Section 96 planning mechanism is not appropriate to amend the Masterplan.

The alternate course of action for the applicant is to lodge a fresh masterplan and development application for the proposal with the Department of Infrastructure Planning and Natural Resources (DIPNR). DIPNR would be the consent authority under the provisions of State Environmental Planning Policy No.71 Coastal Protection.

In view of the significance of the Salt development to the Tweed the facts of the proposed amendment are submitted for Council's consideration.

**RECOMMENDATION:**

That:-

A. Section 96 Application DA02/1422.18 for an amendment to Development Consent DA02/1422 for a 488 lot subdivision at Lot 194 DP 755701, Lot 301 DP 755701, Lot 312 DP 755701, Lot 490 DP 47021 & Lot 500 DP 727420, Tweed Coast Road, Kingscliff be approved subject to the following amended conditions: -

1. Condition No. 12 - Delete
2. Condition No. 99 to read-

99. The creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including the following:
- i. Easements for sewer, water supply and drainage over **ALL** services on private property.
  - ii. A restriction as to user requiring that all roofwater from buildings or structures shall be discharged to an approved infiltration pit located on the subject property. The infiltration pit shall be approved by the Principal Certifying Authority.
  - iii. A right of carriageway shall be registered over the private portion of the car park located within lot 170 as shown on Plan No. 8145-35 prepared by Michel Group Services and dated 8<sup>th</sup> April 2003.
  - iv. Provision of building setbacks of 3m from the 7(f) zone boundary to the outermost projection of structures excluding proposed Lot 170 and 172. **Structures other than the main dwelling shall comply with the setback requirements and other design standards contained in Part 2 Clause 13(f) of the Draft Section 88B Instrument.**
  - v. A public right of access of sufficient width to accommodate a 7m wide vehicular carriageway and an additional 2m wide cycleway. The public access shall extend from the southern boundary of Road No. 8 to the northern boundary of Road 25. The terms of this right of public access shall be as follows: -
    - i. Members of the public may by any means enter upon and pass the lot burdened within site of this easement with or without animals and with or without vehicles.
    - ii. The owner of the lot burdened must not erect over the site of this easement any fence, gate or other obstruction or do anything else which interferes with use of this easement by the members of the public.
    - iii. The owner of the lot burdened shall maintain the site of this easement at its own cost to a standard whereby it remains safe at all times for members of the public to enter upon and pass with or without animals or with or without vehicles within site of this easement.

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.

3. Condition No. 115 - Delete
4. Condition No. 127 - Part (a) of Stage 2 (open space) to read -

**Drainage Works in Public Open Space on Stage 2**

- (a) The configuration of drainage works (location, whether surface or underground, levels, footprint, surface finish, bank slopes etc.) within proposed Pocket Park 126.5 and the open space lot **221** must be compatible with the proposed dual open space/drainage landuse. In this regard the written agreement of the Manager Recreation Services to the configuration of drainage works must accompany a construction certificate application for works associated with Stage 2.

5. **General Terms of Approval under Section 100B of the Rural Fires Act 1997**

**Condition 7 to read-**

7. All fencing in the residential and commercial areas of the subdivision which abut bushfire hazard areas or that are contained within Asset Protection Zones on the perimeter of the site shall be constructed in non-combustible materials. In this instance either masonry or colorbond type fences will be acceptable and should be provided to areas as required in the above consent item.
- B. Council seeks approval from the Department of Infrastructure, Planning and Natural Resources for delegation to Council to deal with a Development Application for the proposed amendments to the Salt Masterplan and conditions.

**REPORT:**

**Applicant:** Ray Group Pty Ltd  
**Owner:** South Kingscliff Developments Pty Ltd, Tweed Shire Council and Conservation & Land Management  
**Location:** Lot 194 DP 755701, Lot 301 DP 755701, Lot 312 DP 755701, Lot 490 DP 47021 & Lot 500 DP 727420 Tweed Coast Road, Kingscliff  
**Zoning:** 2(f) Tourism  
**Cost:** Nil

**BACKGROUND:**

The Salt development consists of a mix of residential lots medium density development and tourist resort accommodation.

The currently approved breakdown of lots and uses is as follows-

Residential lots	453
Medium density sites	10 consisting of 202 dwellings
Tourist Resort sites	2 consisting of 664 rooms
Parks/miscellaneous	23
Total lots	488

The proposed amended breakdown is as follows-

Residential lots	531
Medium density sites	2 consisting of 60 dwellings
Tourist Resort sites	2 consisting of 664 rooms
Parks/miscellaneous	24
Total lots	559

The additional residential lots are achieved by replacing eight of the medium density sites with standard residential lots. The additional miscellaneous lot is proposed for a LPG gas tank site. A separate development application has been lodged for the tank site which consists of an underground tank and compound. The proposal is to supply reticulated gas to the Salt development.

The original breakdown is as follows-

Residential lots	410
Medium density/duplex sites	34 consisting of 202 dwellings
Tourist Resort sites	5 consisting of 614 rooms
Parks/miscellaneous	24
Total	473

The original consent was amended in March 2004 to consolidate the tourist sites and the medium density sites as per the current approved breakdown above.

It should also be noted that when considering a S.96 amended application it must be assessed against the original development consent and not any subsequent amendments. In this case the current s.96 amendment is required to be assessed and compared to the original consent. The key criteria is that Council must be satisfied that the development is substantially the same as originally approved

The main issue regarding the proposed amendment is that there are an additional 121 residential lots to that originally approved and 142 less medium density/duplex dwellings.

Council's legal advice points out that the original development application with the master plan was fundamental to the approval and the change from medium density lots to single residential lots cannot be considered to maintain substantially the same development as approved.

The proponents put forward that the proposal can be considered as a section 96 because-

- The proposal as modified is still for a mixed residential/tourist development;
- The basic road layouts have not changed significantly;
- The basic open space layout and areas have not significantly changed;
- The proposed changed to the mix and distribution of tourist/resort sites and medium density sites is, at a master planning level, of no planning consequence;
- The variation in the total number of lots and total yield from the site is numerically immaterial and does not give rise to any significant environmental impacts.

There have been a number of submissions to Council on this and other approved developments in the Shire using the Section 96 mechanism. There are subjective tests to be considered when a Section 96 application is lodged with Council. The alternative to a Section 96 application is the lodgement of a new development application. Developers in the Tweed and in other Council's subject to the SEPP71 planning legislation are generally reluctant to submit a new development application because of the extensive delays being experienced where the State Government is assessing development applications.

Some development applications being processed by the State Government under the SEPP71 legislation are taking up to 2 years to obtain approval.

The Salt development has been controversial with some sections of the community and on this basis the proposed Section 96 planning mechanism to amend the Salt Masterplan was forwarded to Council's solicitors for advice. Council's solicitors have advised that the Section 96 planning mechanism is not appropriate in this instance, however, they also concurred with the applicants barrister that Council can take a different view on the facts of the application and approve the application.

The issue is a difficult one in that the advice provided by Council's solicitors is normally followed rather than the advice submitted by the applicant for development proposals.

In this instance there is unlikely to be many objections to the proposed change from medium density development to single dwelling allotments particularly given there is not a significant change in the overall population density of the development. The point being that if a new development application was lodged for the changes now being sought it is considered that it would be recommended for approval. The applicants concern that any new development application has to be referred to the State Government for approval with substantial inherent delays is not a valid planning consideration. Nevertheless, the Salt development is a major development with significant tourist implications for the Shire.

Council needs to consider the facts of this application and resolve accordingly.

### **Other proposed amendments.**

#### **Condition 12**

Condition 12 relates to dual occupancy site nomination on the master plan. The dual occupancy sites were removed from the master plan in the previous modification and the condition should have been deleted at the point. No objection is raised to the deletion of the condition.

#### **Condition 99**

Condition 99 relates to easements and title restrictions. The proponents wish to amend part (iv) and add a part (vi) to the condition.

Part (iv) regulates the rear setback for the beachfront lots. A setback of 3 metres is required. The amendment involves permitting decks and pool edges to within 1.2 metres of the rear boundary and controlling the height to 1.2 metres above the batter slope at any one point and restricting works to 50% of the width of the lot.

It is considered that the amendment is acceptable. Dwellings will be at least setback to the top of the batter and low ancillary structures will be setback 1.2 metres from the rear boundary. The proposed ancillary structures and controls will minimise the impact on the adjoining beachfront reserve.

#### **Proposed Part (vi)**

Lots 359 to 372 and lots 458 and 459 adjoin the southern boundary of the site. A ten metre wide building exclusion zone exists on the rear of these lots for bushfire protection purposes. The proponents wish to reduce the building from 6 metres to 4 metres on these lots to enable an adequate building envelope and to avoid having to apply for building line variations for each site.

It is considered that there is adequate area available for a building envelope within the 10 metre rear restriction and the 6 metre building line. The allotments are 35 meters approx. deep and 15m wide which leaves 19 metres of depth for a dwelling. Whilst splayed, lots 458 and 459 are up to 39 metres deep. DCP-16 indicates that building envelopes for a 450m<sup>2</sup> block should be at least 10mx15m. It is considered that there is suitable area within the lots for dwellings.

In addition to the above the proposed title restriction would not prevent the requirement to seek individual building line variations as a section 88B instrument could not replace Council's Building Line Policy. In this case any building line variations should be considered on merit when and if an application is made.

It should also be noted that the bushfire hazard may only be temporary given that the potential development of the Seaside City Estate may remove the hazard.

The addition to condition 99 is not supported.

### **Condition 115**

The Tweed LEP requires that the number of tourist units/rooms exceed the number of dwellings in the SALT development. Condition 115 seeks to regulate the number of lots released compared to the number of resort units/rooms constructed.

The applicant has provided the following justification for deletion of the condition-

*"The Salt development site is the subject of special development provisions as specified in Schedule 3 of Tweed LEP 2000. The relevant Schedule 3 provision is stated as follows:*

*"(1) An application made pursuant to this item must not be granted unless the consent authority is satisfied that the development, whether or not to be carried out in stages, will include a hotel, motel or tourist resort as the primary development and the number of units/rooms in that hotel, motel or tourist resort will at all times exceed the number of dwellings or dwelling houses included in the completed development."*

*Condition 115 of Consent 02/1422 is drafted to relate to the LEP 2000 Schedule 3 provision and is in the following terms:*

*"115. Prior to the issue of each subdivision certificate for each stage, the applicant shall provide evidence that the total number of resort rooms substantially commenced exceeds the total number of dwellings capable of being erected at the release of the subject stage. For the purpose of satisfying Council that the resort rooms have been substantially commenced at least 50% of construction works will need to have been completed."*

*Given the current status of work completed on the subdivision and the approved tourist resorts, it has been established that Condition 115 of the consent will stall the residential component of the development at Stage 4(a) until the Peppers Resort can be 50% constructed. This is considered to be unreasonable for the following reasons:*

- 1. The residential component of the project is the financially successful part of the project and as such financially allows the development of the Tourist Resorts which are not viable in their own right as was proven to the previous Director of Planning at Tweed Shire Council, Mr David Broyd , as part of the development application process.*
- 2. Receipt of funds from the sale of land is necessary to fund the construction of the resorts.*
- 3. All of the proposed 664 tourist resort rooms are to be provided in two quality major resorts which require significant expenditure and greater construction time to achieve 50% completion.*
- 4. Building two quality major resorts reduces the “staging” relationship with the completion of the residential subdivision works and release of staged subdivision certificates.*
- 5. The Peppers Resort development application was lodged with the Minister as required by SEPP 71, which has resulted in significant delays and holding costs for the Peppers Resort.*
- 6. Condition 115 as it currently stands requires 50% completion of both the Outrigger and Peppers Resorts prior to the release of a subdivision certificate for any stage beyond Stage 4(a).*
- 7. The Outrigger Resort will be 100% complete prior to the Peppers resort achieving 50% completion;*
- 8. Appropriate measures are now in place to ensure compliance with Condition 1 of Tweed LEP 2000 Schedule 3, described as follows:*
  - Construction of the 318 room Outrigger Resort is 60% complete and is due to open for Christmas 2004.*
  - Construction of the 346 Peppers Resort is ensured by the Development Approval granted on 3 May 2004, the construction contract now executed with Barclay Mowlem Constructions Ltd for the entire construction of the Peppers Resort, construction funding in place with Capital Finance Australia Ltd, Tweed Council issuing the construction certificate for the Peppers basement construction works, site works have commenced on the Peppers site, and the arrangements in place for Peppers Resorts Aust Pty Ltd. to manage the Peppers Resort.*



9. *Condition 115 is unreasonably preventing the settlement of approximately 107 residential allotments in stages 2A , 4A ,5A , 6 and 7A1 ( based on the latest master plan ) which will be completed prior to the 50% completion of the Peppers Resort.*
10. *Even after these 107 lots are delivered and settled , it should be noted that the remaining 122 residential lots in stages 7 and 8 will not be delivered and settled until the Peppers Resort is more substantially completed because these final stages are controlled by the sand pumping earthworks fill operations which are planned to occur between Sept 2004 and late 2005 , which gives Council more comfort that the resort component of the project will be substantially completed before the total residential component is completed.*
11. *If subdivision work is stalled at Stage 4(a) then approximately 110 construction jobs will be affected with possible unexpected social implications related to a split in the construction programme.*

*Notwithstanding all of the above points, it is considered that the existing master plan approval and the statutory planning controls of Tweed LEP 2000 - Schedule 3 are sufficient to ensure that development of the site must contain an additional resort. In relation to the release of subdivision certificates, it is considered to be of little significance whether the resorts are operational or not. At all times the number of designated rooms within the two resorts will easily exceed the number of dwellings or dwelling houses to be included in the completed development.*

*Accordingly, to ensure that the project is permitted to proceed with minimal unnecessary economic and social cost and to demonstrate commitment to completion of the resorts, it is requested that Condition 115 of the development consent be deleted because in essence it has been complied with given the current status of commitment to construction of the two major resorts."*

The implication for removing the condition is that the number of lots could potentially exceed the number of tourist units/rooms if the resort developments are not completed. If this was to occur the LEP would not be complied with.

It is considered that given the stage that the development is up to and that the construction of the tourist resorts is well advanced the chance of this occurring is remote.

Deletion of condition 115 is supported.

### **Condition 127**

Condition 127 relates to drainage. Part of the condition relates to the open space lots in stage 2 which has been referenced by lot 224. This lot has been incorporated into a larger open space lot now referenced as lot 221. The proposal seeks to update the lot number.

No objection is raised to amending condition 127.

**Condition 7 of the General Terms and Conditions under the Rural Fires Act.**

Condition 7 under the Rural Fires Act relates to fencing within the SALT development.

The applicant provides the following justification for the proposed amendment: -

*Condition 7 is in the following terms: -*

*"7. All fencing in the residential and commercial areas of the subdivision shall be constructed in non-combustible materials."*

*The SALT site has been cleared and does not contain any bushfire hazard areas. It should be noted that the new Bushfire Hazard Maps approved by the commissioner of the Rural Fire Service in March 2004 does not map the SALT site as bushfire prone land. Adjoining vegetated land is mapped. This condition is therefore manifestly unreasonable and inappropriate as there is no risk to properties other than perhaps those immediately abutting the hazards on adjoining land."*

*This condition should therefore only apply to the perimeter of the site adjacent to potential bush fire hazard areas. Modification of the condition is therefore proposed as follows: -*

***7. All fencing in the residential and commercial areas of the subdivision which abut bushfire hazard areas or that are contained in Asset Protection Zones on the perimeter of the site shall be constructed in non-combustible materials."***

The amendment was referred to the Rural Fire Service and they have agreed to the amendment and have added construction materials to the above condition.

Amendment of the condition is supported.

**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 provisions of the Tweed LEP are complied with as result of the amendments.

North Coast Regional Environmental Plan 1988

The provisions of the REP are not affected as a result of the amendments.

State Environmental Planning Policies

The amendments do affect any SEPP.

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

None applicable

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

There are no DCP's affected.

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

The amendments do not affect the application or assessment of the prescribed matters.

**(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 amendments would not have a significant impact on the environment.

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

The site is suitable for the development.

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

The application was advertised and no submissions were received.

**(e) Public interest**

Whilst the alternative for the applicants is to lodge an application and master plan with DIPNR for the modified development which is likely to produce unsatisfactory delays is not desirable Council's legal advice is that this process should be followed. The potential delay to the Salt development has significant implications for the Shire.

**OPTIONS:**

1. Approve all of the requested amendments subject to conditions.
2. Refuse all of the requested amendments on the basis that the proposed changes need to be advertised as a new development application.
3. Resolve to approve some of the requested amendments and facilitate the Salt development by seeking approval from DIPNR for Council to process the development application by delegation. The basis for seeking exemption from the DIPNR process being the applicants need for the Salt development to be completed to a stage sufficient for the coming peak tourist season and that all the State Government issues associated with the development have already been comprehensively addressed.

Option 3 is recommended.

If option 1 was resolved various procedural amendments to conditions would be required, eg. plan numbers, lot numbers and contributions and this could be processed under delegated authority.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The Salt development is a major development with significant tourist implications for the Shire. Council needs to consider the proposed amendments based on the facts of the application.

**UNDER SEPARATE COVER:**

1. Council's legal advice
  2. DAC Consulting submission
  3. Proponents legal advice
-

**4 [DS] Banora Point Community Centre - Establishment Worker**

**ORIGIN:**

**Strategic Town Planning**

**FILE NO: GT1/S94/3**

**SUMMARY OF REPORT:**

The construction of the Banora Point Community Centre has commenced. It is envisaged that this Centre will be completed by January 2005. In the lead up to the completion of the Centre and its subsequent operation there is a requirement that an establishment work program for this initial operation and management be undertaken. It is proposed that an establishment worker be employed part time for a period of 6 months to undertake this task. It is estimated that it will cost approximately \$16,000 to employ this worker.

Section 94 Plan No 3 will not require amending as the Plan allows for establishment costs. There are funds in the Plan to accommodate the cost of this worker. S94 funding does not allow for recurrent funding, however, it would appear that a contracted position for a fixed length of time would comply with the intent of the scheme.

**RECOMMENDATION:**

That Council:

1. Approves the employment of a part-time establishment worker at the Banora Point community for a period of 6 months at a cost of \$16,000;
2. Votes the expenditure of \$16,000 to be funded from Section 94 Contribution Plan No 3.

## **REPORT:**

The construction of the Banora Point community centre has commenced. It is envisaged that this Centre will be completed by January 2005. In the lead up to the completion of the Centre and its subsequent operation there is a requirement that an establishment work program for this initial operation and management be undertaken. It is proposed that an establishment worker be employed for a total of 6 months part-time to undertake this task. It is estimated that it will cost \$16,000 to employ this worker. Specifically the worker would undertake the following:

- Prepare a Work Plan for the establishment of the Community Centre;
- Consult with the community and prospective community group users to promote the centre and determine interest in the Centre;
- Establish Council's role and responsibility in relation to the new Centre;
- Establish time frames and performance indicators for intended outcomes in the operation and management of the Centre;
- Organise and run a public meeting to inform the public of the establishment of the Centre and its management;
- Draft a final report that sets out the initial operation and management of the Centre;
- Seek community input to establish a Management Committee;
- Develop a draft constitution for the Management Committee and draft a report to Council for appointment;
- Liaise with the Department of Community Health to formulate agreement to their role on provision of a contact point for use of rooms within the Centre;
- Determine conditions and hire fees for the rooms within the Centre.

Section 94 Plan No 3 will not require amending as the Plan allows for establishment costs which this worker can be considered a part. Section 94 funding does not allow for recurrent funding, however, it would appear that a contracted position for a fixed length of time would comply with the intent of the development contributions scheme, particularly as it relates to the provision or benefit of a public facility. The successful establishment of the Pottsville Community Centre was undertaken on a similar basis, with the preparation of a Pottsville Beach Neighbourhood Centre Management Plan that overviewed the consultation and establishment process.

There are funds in the Plan to accommodate the cost of this worker.

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

The position of the establishment worker will be funded from Section 94 Contribution Plan No 3.

## **POLICY IMPLICATIONS:**

The expenditure of \$16,000 will be funded from Section 94 Contribution Plan No 3.

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**UNDER SEPARATE COVER:**

Nil.

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**5 [DS] Tweed Local Environmental Plan 2000, Draft Amendment No 56 - Definition of Bed and Breakfast**

**ORIGIN:**

**Strategic Town Planning**

**FILE NO: GT1/LEP/2000/56**

**SUMMARY OF REPORT:**

On 28 April 2004 Council considered the implications of amending the Tweed Local Environmental Plan 2000 (LEP). It was resolved to draft an LEP Amendment to the definition to Bed and Breakfast.

This draft LEP Amendment was exhibited and is now ready to be forwarded to the Department of Infrastructure, Planning and Natural Resources (DIPNR). This report reviews the draft LEP Amendment and any submissions and recommends the draft Plan be forwarded to DIPNR to be considered for gazettal.

**RECOMMENDATION:**

That Council:

1. Endorses the preparation of a report, prepared under delegation, to the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), in accordance with Section 69 of the Environmental Planning and Assessment Act.
2. Forwards draft Tweed Local Environmental Plan 2000, Amendment No 56, to the Department of Infrastructure, Planning and Natural Resources and requests the Minister to make the Plan in accordance with Section 70 of the Environmental Planning and Assessment Act 1979.

## REPORT:

### Background

On 28 April 2004 Council resolved:

*"that the definition for "Bed and Breakfast" be amended to read:*

*"An approved dwelling, used as a principal place of residence which is also used for the provision of:-*

- a) *Short term accommodation.*
- b) *Meals and ancillary services, provided by the permanent resident or residents of the dwelling which are incidental to the use of the dwelling for the short term accommodation".*

### Changes to the Adopted Draft Amendment

Internal consultation identified that there was a need to provide a better definition to an Approved Dwelling. This led to an amendment to the draft that was adopted by Council and presented above.

The modified draft that was exhibited reads:

***"bed and breakfast** An approved dwelling, used as a principal place of residence which is also used for the provision of:-*

- a) *short term accommodation, and*
- b) *meals and ancillary services, provided by the permanent resident or residents of the dwelling which are incidental to the use of the dwelling for the short term accommodation.*

*For the purpose of this definition an approved dwelling means a dwelling that has 'existing use' rights or 'continuing use' rights or has a 'development consent' or 'building approval' in accordance with the provisions of the Act."*

This change is considered minor to the intent of the definition and was subsequently not reported to Council.

### Public Exhibition

The draft LEP Amendment was exhibited for 30 days from 30 June to 30 July at the Tweed Heads Civic Centre and the Murwillumbah Offices.

## **Public Submissions**

There have been no submissions received in relation to the draft LEP which was exhibited.

## **Consultation**

Due to the minor nature of the Amendment no consultation was conducted with State Government Agencies in accordance with Sections 62 and 64 of the Environmental Planning and Assessment Act.

## **Conclusion**

This is a minor Amendment that will ensure any proposed Bed and Breakfast development has adequate approval as a Dwelling before it can be approved.

It is recommended in this report that Council prepare a report to the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), in accordance with Section 69 of the Environmental Planning and Assessment Act under delegation.

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

Nil.

## **POLICY IMPLICATIONS:**

Nil.

## **UNDER SEPARATE COVER:**

Nil.

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## REPORTS FROM EXECUTIVE MANAGER - OFFICE OF THE GENERAL MANAGER

### 6 [OGM] Delegated Authority by Council to Senior Executive Officers to Approve Contract Variations

#### ORIGIN:

Corporate Performance

#### SUMMARY OF REPORT:

In accordance with the Local Government 1993, Council must by resolution approve all contracts which have a tendered price over \$ 100,000. The General Manager has the delegated authority to approve contracts and expenditure up to \$ 100,000 under the Local Government Act 1993.

The Council resolution usually gives delegated authority to the General Manager, Directors or Executive Manager to approve contract variations up to 20% of the initial contract price. This delegated authority requirement is outlined in Council's Procurement Policy.

The delegated authority allows the relevant Senior Executive Officer to effectively manage the contract, as variations have to be resolved promptly and usually there is no time available to seek Council approval, as the contactor is unable to proceed, unless approval is given.

It is considered that for good governance, Council should give delegated authority to the relevant Senior Executive Officer to approve contract variations, however there should be a percentage, based on tender threshold contract price amounts. The suggested scale and threshold amounts being: -

\$100,001 to \$500,000	20%
Over \$500,000 the total of variations be limited to \$100,000	

In respect of contracts where variations exceed \$100,000, a report will be prepared seeking further delegation from Council.

#### RECOMMENDATION:

That Council adopts a percentage to Senior Executive Officers to approve contract variations based on tender threshold contract price amounts of: -

\$100,001 to \$500,000	20%
Over \$500,000 the total of variations be limited to \$100,000	

**REPORT:**

In accordance with the Local Government 1993, Council must by resolution approve all contracts which have a tendered price over \$ 100,000. The General Manager has the delegated authority to approve contracts and expenditure up to \$ 100,000 under the Local Government Act 1993.

The Council resolution usually gives delegated authority to the General Manager, Directors or Executive Manager to approve contract variations up to 20% of the initial contract price. This delegated authority requirement is outlined in Council's Procurement Policy.

The delegated authority allows the relevant Senior Executive Officer to effectively manage the contract, as variations have to be resolved promptly and usually there is no time available to seek Council approval, as the contactor is unable to proceed, unless approval is given.

Such action reduces the likelihood of additional contract cost claims against Council due to time delays in approving the proposed variation. Furthermore, some contractors might not wish to do business with Council, if they had to wait for a resolution to approve contract variations or they could inflate their prices as a precaution to cover potential contract variations.

It is considered that for good governance, Council should give delegated authority to the relevant Senior Executive Officer to approve contract variations, however there should be a percentage, based on tender threshold contract price amounts. The suggested scale and threshold amounts being: -

\$100,001 to \$500,000	20%
Over \$500,000	the total of variations be limited to \$100,000

In respect of contracts where variations exceed \$100,000, a report will be prepared seeking further delegation from Council.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Local Government Act - Section 377

**POLICY IMPLICATIONS:**

Delegation of Power, Authority and Duty  
Procurement Policy

**UNDER SEPARATE COVER:**

Nil.

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**7 [OGM] Local Government Week**

**ORIGIN:**

**Administration Services**

**SUMMARY OF REPORT:**

Two hundred (200) Shire residents took part in the Local Government Week Bus Tours. All expressed appreciation for the tours and were impressed with the amount of projects being undertaken by Council.

The Tweed Schools Debate was again an outstanding success.

An innovation to this year's program was the Tweed Coast Family Fun Bike Day.

**RECOMMENDATION:**

That Council continues to support Local Government Week.

**REPORT:**

Local Government Week from 1-7 August 2004 was celebrated on the Tweed with two days of bus tours, including the opening of the Uki Sewerage Scheme, the Tweed School Debate and the inaugural Tweed Coast Family Fun Bike Day.

As usual the bus tours were very popular. Reducing the time to school hours and not serving morning tea has reduced the cost but the overall cost (including catering for an extra 100 at Uki) was approximately \$5,000.

The Family Fun Bike Day, which drew attention to our expanding cycleways, cost approximately \$2500.

The Tweed Schools Debate cost approximately \$800 but is subsidised by Solo Resource Recovery for \$500 and provision of athletic drink bottles, which were also used on the Bike Day.

There have been many calls and letters of thanks and congratulations from those who took part. The input of Councillors such as Max Boyd, Henry James and Bernie Bell was appreciated. A number of staff assisted in providing the commentary on the buses.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

---

**8 [OGM] Quarterly Budget Review - 30 June 2004**

**ORIGIN:**

**Financial Services**

**SUMMARY OF REPORT:**

This is the fourth quarter statutory budget review for last financial year and summarises the major expenditure and income changes to the 2003/04 Budget. This statutory report is prepared in accordance with Local Government Financial Management Regulations Section 6 and 7. Council will have a balanced budget in the General, Water and Sewer Funds in accordance with the original budget expectations.

**RECOMMENDATION:**

That :-

1. The Quarterly Budget Review Statement as at 30 June 2004 be adopted.
2. The expenditure and income, as detailed within the body of the report, be voted and adjusted in accordance with the revised total expenditure and income for the 2003/04 financial year.

**REPORT:**

**Budget Review 30 June 2004 (Quarterly Budget Review)**

The following Financial Statement is submitted in accordance with the Local Government Act 1993 – Financial Management Regulations Sections 6 and 7 and shows details of Council’s financial position for the period ending 31 March 2004 and estimated end of year financial position as at 30 June 2004.

This statutory Budget Review is prepared at the close of each quarter and shows the financial result between budgeted income and expenditure adopted by Council and the revised total expenditure and total income on present trends for the year.

<b>GENERAL FUND</b>	<b>POSITIVE (Contribute to Surplus)</b>	<b>NEGATIVE (Contribute to Deficit)</b>
<b><u>Loan Funds</u></b>		
Bilambil Sports Field	44,086	
Flood Mitigation	115,256	
Open Space	225,413	
Boat Ramps	71,551	
Saleyards	12,000	
Drainage	93,799	
Public Toilets	40,938	
Office Extensions	467,307	
Loan Funds		(1,070,350)
<b><u>Reserves</u></b>		
Southern Boatharbour	667,853	
Rural Planning Strategy	20,000	
Beach Vehicle Access	56,100	
Kingscliff Hall Refurbishment	30,000	
Waterways Projects	74,075	
Signage – Risk Management	27,502	
North Arm Road	94,821	
Pedestrian Facilities	9,500	
Reserve Funds		(979,851)

**General Fund**

The General Fund result is within budget expectations.

**Water Fund**

The Water Fund remains in a sound financial position with sufficient reserves to meet any unexpected costs.

## Sewer Fund

The Sewer Fund remains in a sound financial position with sufficient reserves to meet any unexpected costs.

**Statutory Statement – Local Government Financial Regulations  
(Sections 6 & 7) by “Responsible Accounting Officer”**

The responsible accounting officer of a council must: -

6. (b) *If any instance arises where the actual income or expenditure of the council is materially different from its estimated income or expenditure, report the instance to the next meeting of the council.*

7. (1) *Not later than 2 months after the end of each quarter, the responsible accounting officer of a council must prepare and submit to the council a budget review statement that shows, by reference to the estimate of income and expenditure set out in the management plan that the council has adopted for the relevant year, a revised estimate of the income and expenditure for that year.*

(2) *A budget review statement must include or be accompanied by:*

(a) *a report as to whether or not the responsible accounting officer believes that the statement indicates that the financial position of the council is satisfactory, having regard to the original estimate of income and expenditure, and*

(b) *if that position is unsatisfactory, recommendations for remedial action.*

**Statutory Statement**

**I consider that the financial position of Council is satisfactory “having regard to the original estimate of income and expenditure”.**



M A Chorlton

**“Responsible Accounting Officer”**

**Chief Financial Officer**

**Tweed Shire Council**

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

As discussed in the report.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**9 [OGM] Commencement of the Local Government Amendment (Mayoral Elections) Act 2004**

**ORIGIN:**

**General Manager**

**SUMMARY OF REPORT:**

Following is correspondence received from the Director General, Department of Local Government relating to the term of office of councillor elected mayors and the impact in the optional office of deputy mayors.

**RECOMMENDATION:**

That Council determines this report.

**REPORT:**

Following is correspondence received from the Director General, Department of Local Government relating to the term of office of councillor elected mayors and the impact in the optional office of deputy mayors.



dlg | circular to councils

Circular No 04/35  
Date 23/07/2004  
File No AF04/0030

Contact Helen Guerman  
02 4428 4212  
helen.guerman@dlg.nsw.gov.au

**COMMENCEMENT OF THE LOCAL GOVERNMENT AMENDMENT  
(MAYORAL ELECTIONS) ACT 2004**

The *Local Government Act 1993* was amended on 6 July 2004 by the *Local Government Amendment (Mayoral Elections) Act 2004* in relation to the term of office of councillor elected mayors following the ordinary elections held on or after 27 March 2004 but before September 2004.

Councillors and council staff would be aware that a mayor elected by councillors holds office for 1 year and that a popularly elected mayor holds office for 4 years.

Section 290 provides that the first election of the mayor by the councillors is to be held within 3 weeks after the ordinary election with subsequent annual mayoral elections in September.

The amendments will remove the requirement to conduct elections of mayors by the councillors in September 2004 and provide for a one-off 12 month extension of the term of office for those mayors with the effect that their term will expire in September 2005 rather than in September 2004.

Such an extension will allow those mayors sufficient time to negotiate and implement their policy programs consistent with the business of council.

The amendments will not affect the term of office of deputy mayors.

Under the Act the office of a deputy mayor is optional. Section 231 of the Act states that the term of the deputy mayor is to be determined by the councillors. The term may be equivalent to the mayoral term or a shorter term.

Therefore, it is a discretionary matter for councils to decide whether or not to extend the term of office of the deputy mayor to September 2005 or to elect a new deputy mayor in September 2004.

This Circular supersedes Circular No 04/02.



**Garry Payne  
Director General**

Department of Local Government  
5 O'Keefe Avenue NOWRA NSW 2541  
Locked Bag 3015 NOWRA NSW 2541  
T 02 4428 4100 F 02 4428 4199 TTY 02 4428 4209  
E [dlg@dlg.nsw.gov.au](mailto:dlg@dlg.nsw.gov.au) W [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au) ABN 99 567 863 195

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**10 [OGM] Monthly Investment Report for Period Ending 31 July 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.

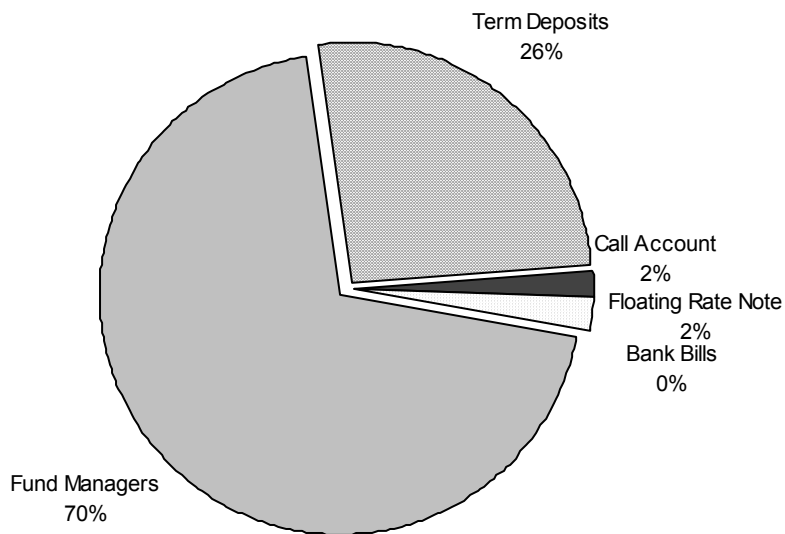
**REPORT:**

**Report for Period Ending 31 July 2004**

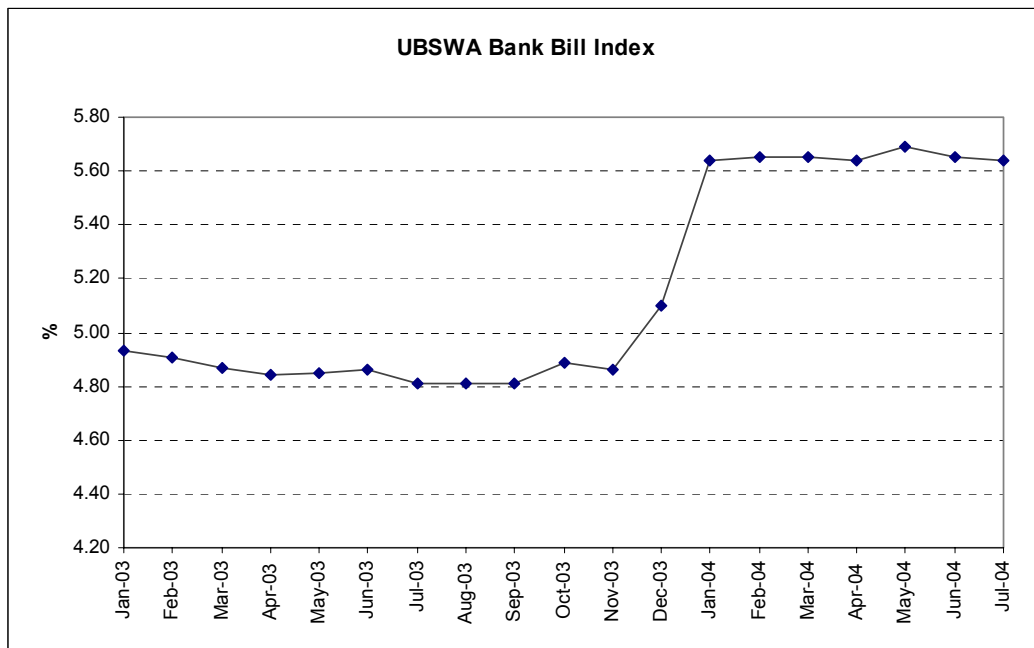
The Chief Financial Officer being the "responsible accounting officer" must report monthly to Council, setting out details of all the funds Council has invested and certification has been made in accordance with the Local Government Act (1993), the Regulations and Council policies.

**1. CURRENT INVESTMENT PORTFOLIO BY CATEGORY**

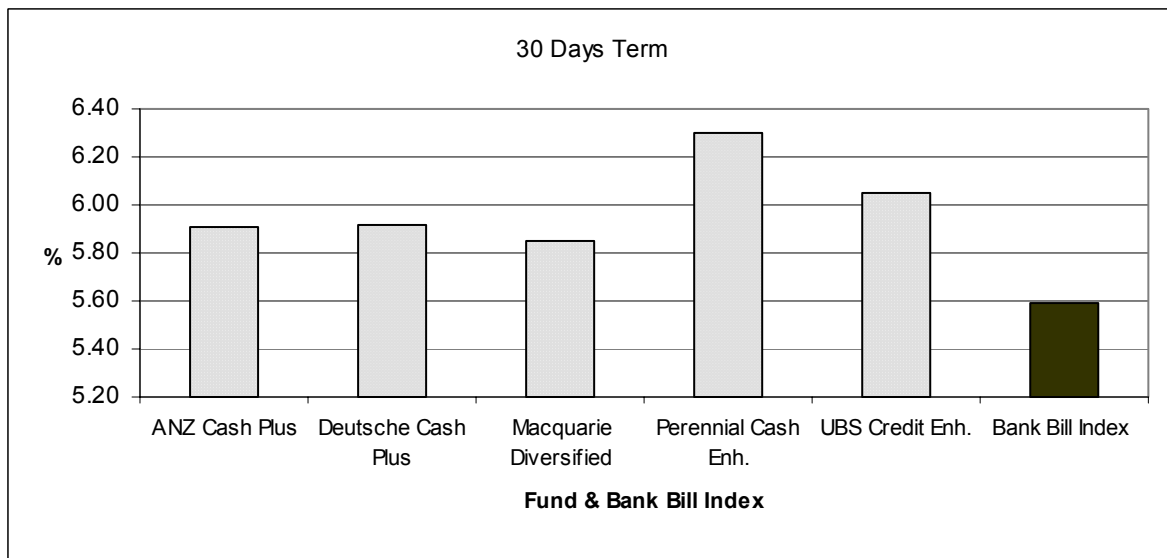
**% of Funds Invested by Category**



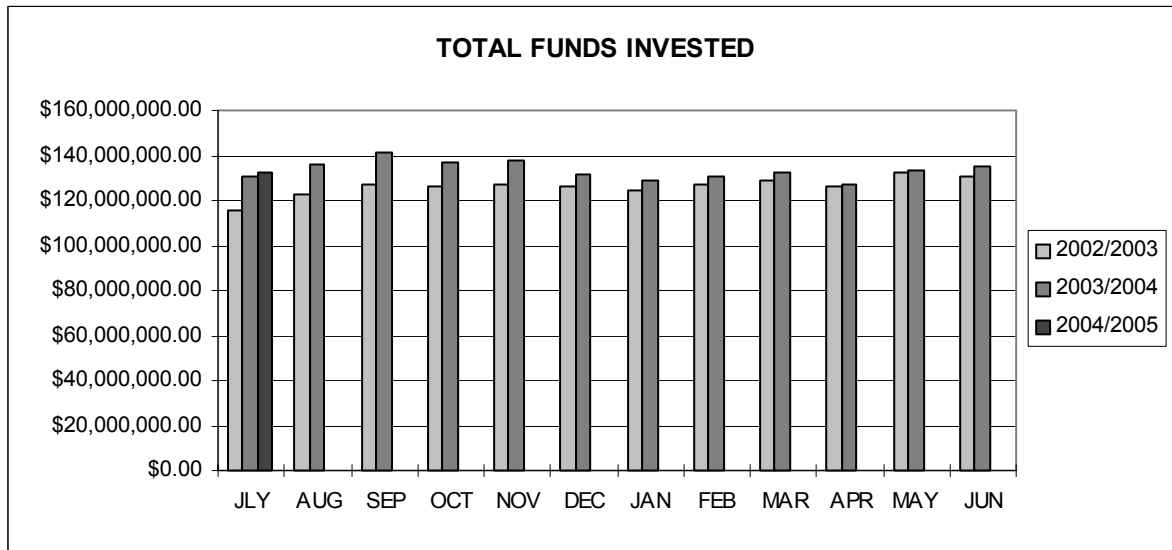
**2. INVESTMENT RATES - 90 DAY BANK BILL RATE (%)**



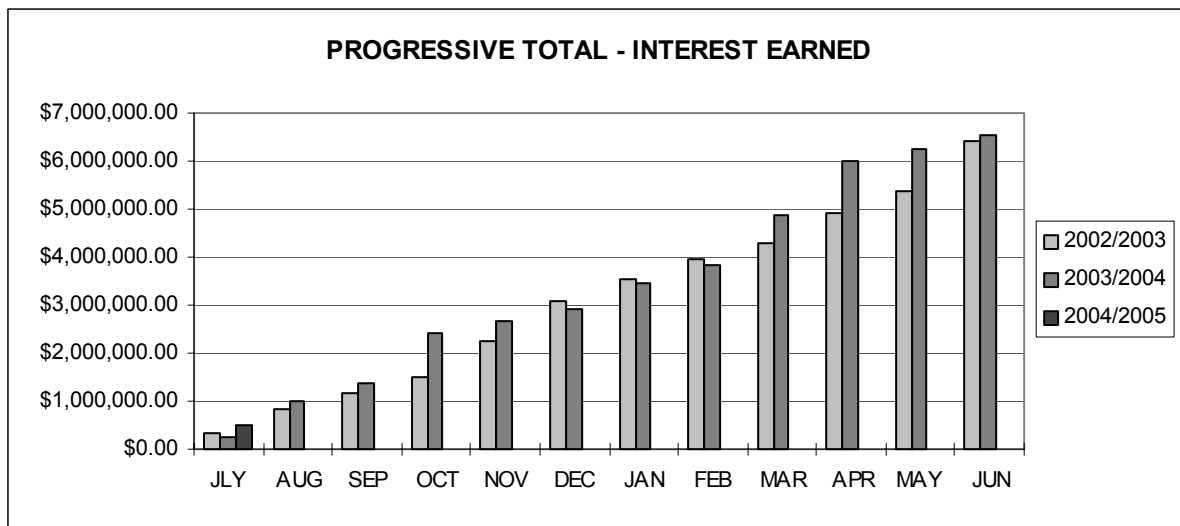
**3. ANNUALISED RATE OF RETURN FOR FUNDS MANAGERS - NET OF FEES**



**4. MONTHLY COMPARISON OF TOTAL FUNDS INVESTED**



**5. ANNUAL PROGRESSIVE TOTAL OF INTEREST ON TOTAL FUNDS INVESTED**



**6. MARKET COMMENTARY**

June quarterly inflation figures were slightly weaker than the market expected, rising only 0.5% following a 0.9% rise in the March quarter. The annual inflation rate accelerated to 2.5% from 2.0%, which is right in the middle of the Reserve Bank of Australia's 2-3% target band. At this level, inflation is currently at comfortable levels, which helps explain the Reserve Bank's decision to maintain interest rates at 5.25% following its monthly board meeting.

Building approvals rose 1.5% in June, once again defying the Reserve Bank's preference for a fall. Housing credit growth rose 1.3% in the month, its smallest monthly growth rate since the beginning of the year. Most economists are surprised at the housing sector's resilience but continue to expect a decline as the year unfolds.

The financial markets were softer this month. Australian shares returned 0.19% for the month. International shares fell -2.95% (fully hedged) and Australian bonds posted 0.43%, underperforming cash, which did 0.46%. Listed property was the best performer, with 2.72% for the month. Expectations of slower second half-yearly growth, rising oil prices and terrorist fears all played a part in the weaker results.

Federal Reserve Chairman Alan Greenspan delivered the central bank's semi-annual testimony on monetary policy in July. The speech was interesting as it suggested that the economy was performing very well and that inflation was firmly under control. Some of the key points from the speech included the observations that economic expansion had become broader based and that softer consumer spending was largely a function of higher energy prices. It was the Federal Reserve's view that current consumer-spending weakness will be short lived and that the economy was well prepared for an increase in interest rates predicted to take place over the course of the year.

The Bank of England raised interest rates by 0.25% to 4.75% this month. It cited continued strong growth leading to rising inflationary pressures for its decision. The Bank committee judged that the increase was necessary to keep CPI inflation on track to meet its 2% target in the medium term.

**7. INVESTMENT SUMMARY AS AT 31 JULY 2004**

<b>GENERAL FUND</b>				
	TERM DEPOSITS	16,824,000.00		
	FUND MANAGERS	27,943,420.32		
	FLOATING RATE NOTE	0.00		
	CALL	0.00	<b>44,767,420.32</b>	
<b>WATER FUND</b>				
	TERM DEPOSITS	2,200,000.00		
	FUND MANAGERS	38,922,120.90	<b>41,122,120.90</b>	
<b>SEWERAGE FUND</b>				
	TERM DEPOSITS	15,800,000.00		
	FUND MANAGERS	26,185,929.37		
	CALL	2,000,000.00		
	FLOATING RATE NOTE	3,000,000.00	<b>46,985,929.37</b>	
		<b>TOTAL INVESTMENTS</b>	<b>132,875,470.59</b>	

It should be noted that the General Funds investments of \$44.7 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.



**Chief Financial Officer (Responsible Accounting Officer)**

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.



**UNDER SEPARATE COVER:**

Nil.

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## REPORTS FROM DIRECTOR ENGINEERING AND OPERATIONS

### 11 [ES] Application to Close and Purchase Road Reserve - Kennedy Drive, Tweed Heads

#### ORIGIN:

Design

FILE NO: GR3/12/7 Pt 3

#### SUMMARY OF REPORT:

An application to close and purchase part of a road reserve has been received from Darryl Anderson Consulting Pty Ltd acting on behalf of Mr Alan Black, the owner of the Endless Summer Shopping Centre on Kennedy Drive, Tweed Heads. The applicant has requested that in the event that the application to close the road was refused that the area be leased to him.

Mr Black is pursuing a development application whereby the area proposed to be closed would be incorporated as an extension to the existing car park for the shopping centre.

The initial application addresses some criteria forming part of Council's "Policy on Road Closures and Private Purchase", however, due to ongoing traffic concerns and proposals to widen Kennedy Drive, it is recommended that the application be refused.

#### RECOMMENDATION:

That Council does not approve the application to close and purchase or lease part of an unformed road reserve attached to Kennedy Drive, Tweed Heads.

**REPORT:**

An application to close and purchase part of a road reserve has been received from Darryl Anderson Consulting Pty Ltd acting on behalf of Mr Alan Black, the owner of the Endless Summer Shopping Centre on Kennedy Drive, Tweed Heads. The applicant has requested that in the event that the application to close the road was refused that the area be leased to him.

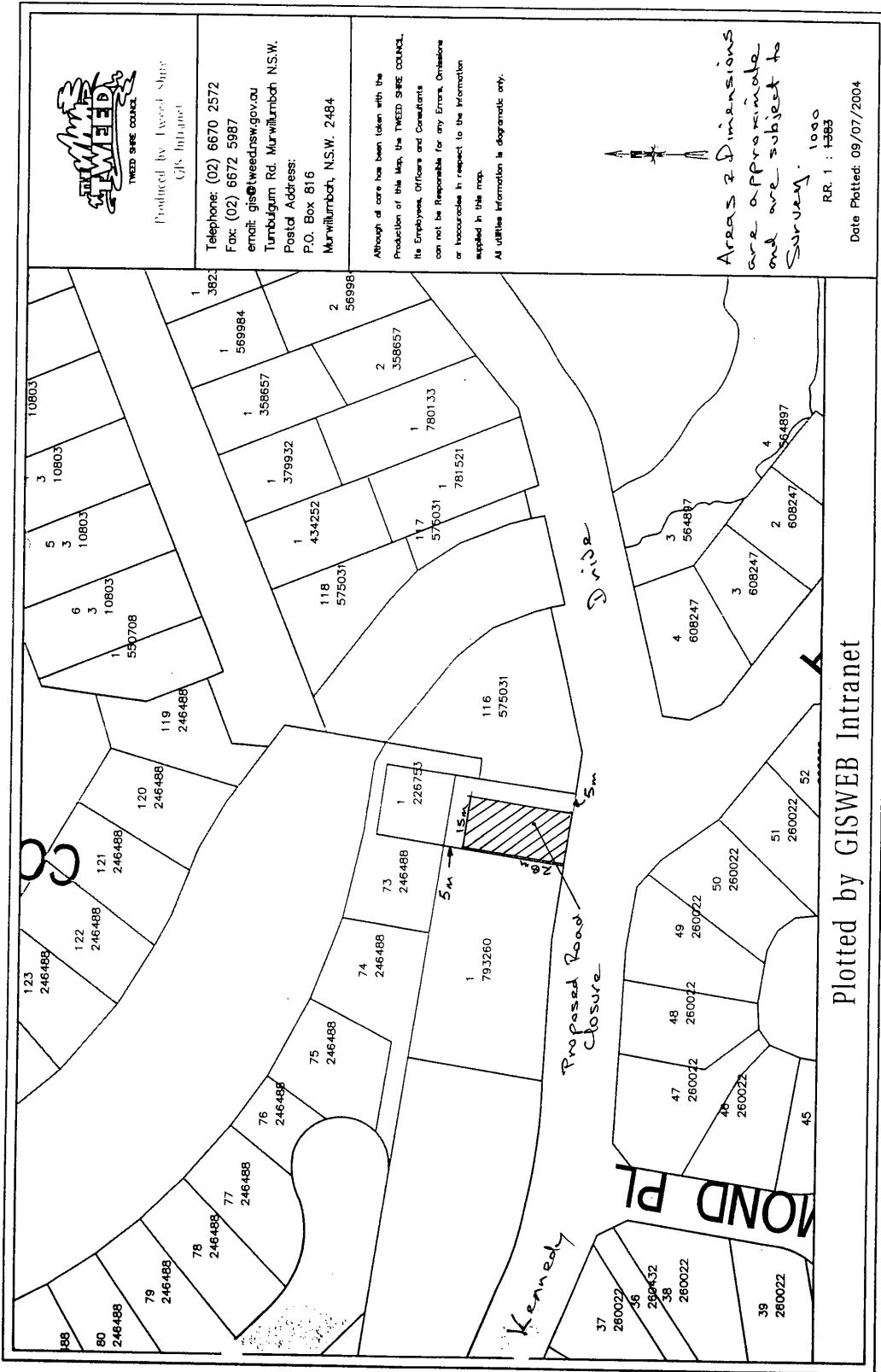
Mr Black is pursuing a development application whereby the area proposed to be closed would be incorporated as an extension to the existing car park for the shopping centre.

Mr Black has made various submissions to Council and the Local Traffic Committee in relation to the development contributing to the greater number of service vehicles, either rigid or semi-trailers, that will service the centre. Other concerns have been raised in relation to the ingress and egress onto and from Kennedy Drive to the centre. The application as drawn intends to leave a 5 metre access passage for Council vehicles to the pump station. A plan marked "A", which formed part of the application, follows this report. It is to be noted from the plan that access to the Pump Station may be constructed straight off Kennedy Drive, which is not an acceptable option due to the high volume of traffic at this point approaching the Ducat Street intersection.

The unformed road reserve is adjacent to a Council Sewer Pump Station and access to the Pump Station is through the road reserve. The road reserve physically forms part of three Public Reserves adjacent to the canal and contains some mature eucalypt trees.

The initial application addresses part of the criteria forming part of Council's "Policy on Road Closures and Private Purchase", however, due to ongoing traffic concerns and proposals to widen Kennedy Drive, it is recommended that the application to both close and purchase the road or the leasing of the road reserve be refused.

(A)



**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**12 [ES] Classification of Land as Operational, Terranora**

**ORIGIN:**

**Design**

**FILE NO: DA02/1159**

**SUMMARY OF REPORT:**

Proposed Lots 14 and 34 in the subdivision of Lot 12 in DP 1005206 on Terranora Road, Terranora, known as the Azure Terranora Estate, are to be transferred to Council as Drainage Reserves following registration of the plan of subdivision.

It is necessary to resolve to classify these parcels as “operational” pursuant to the provisions of the Local Government Act, 1993.

**RECOMMENDATION:**

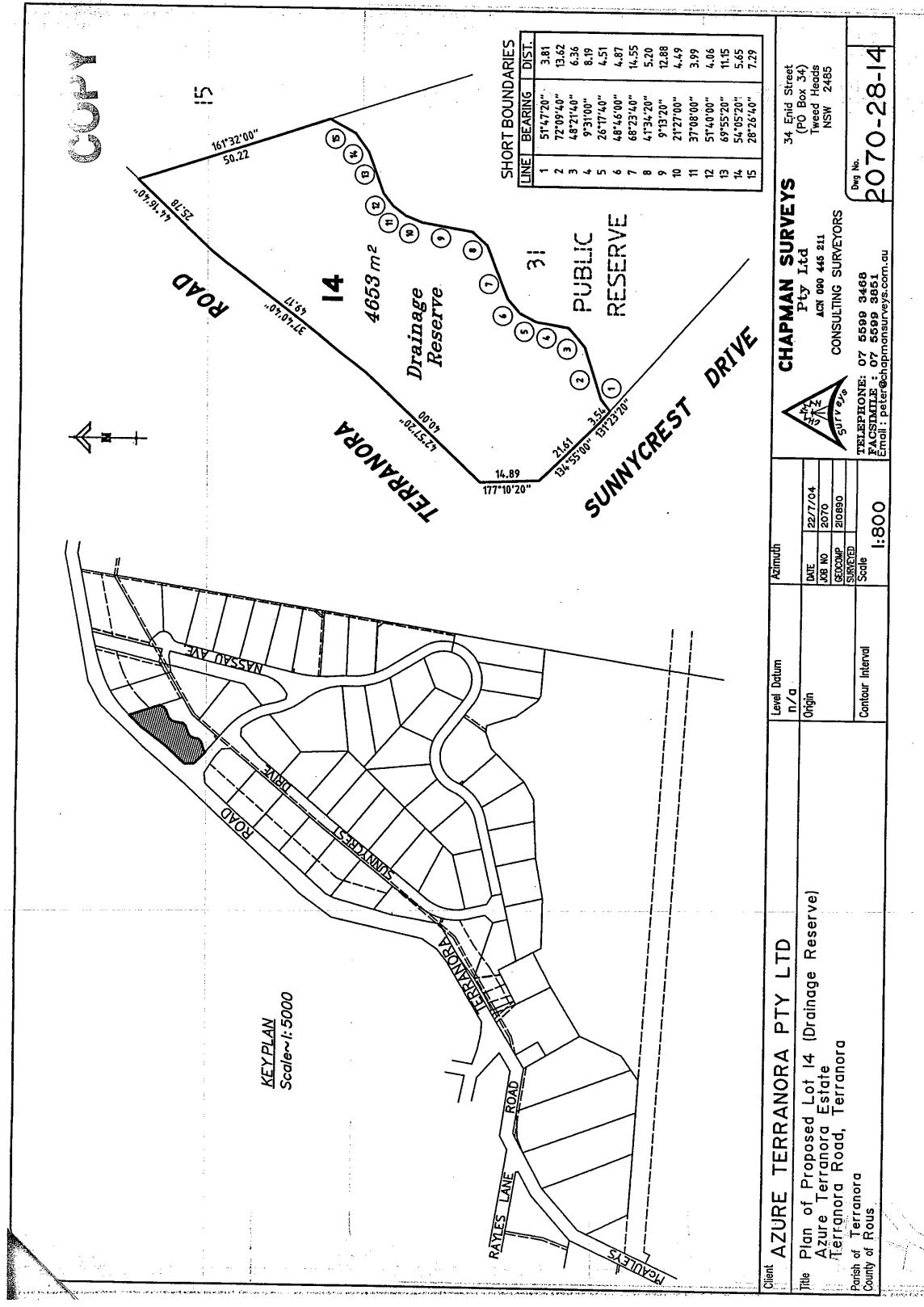
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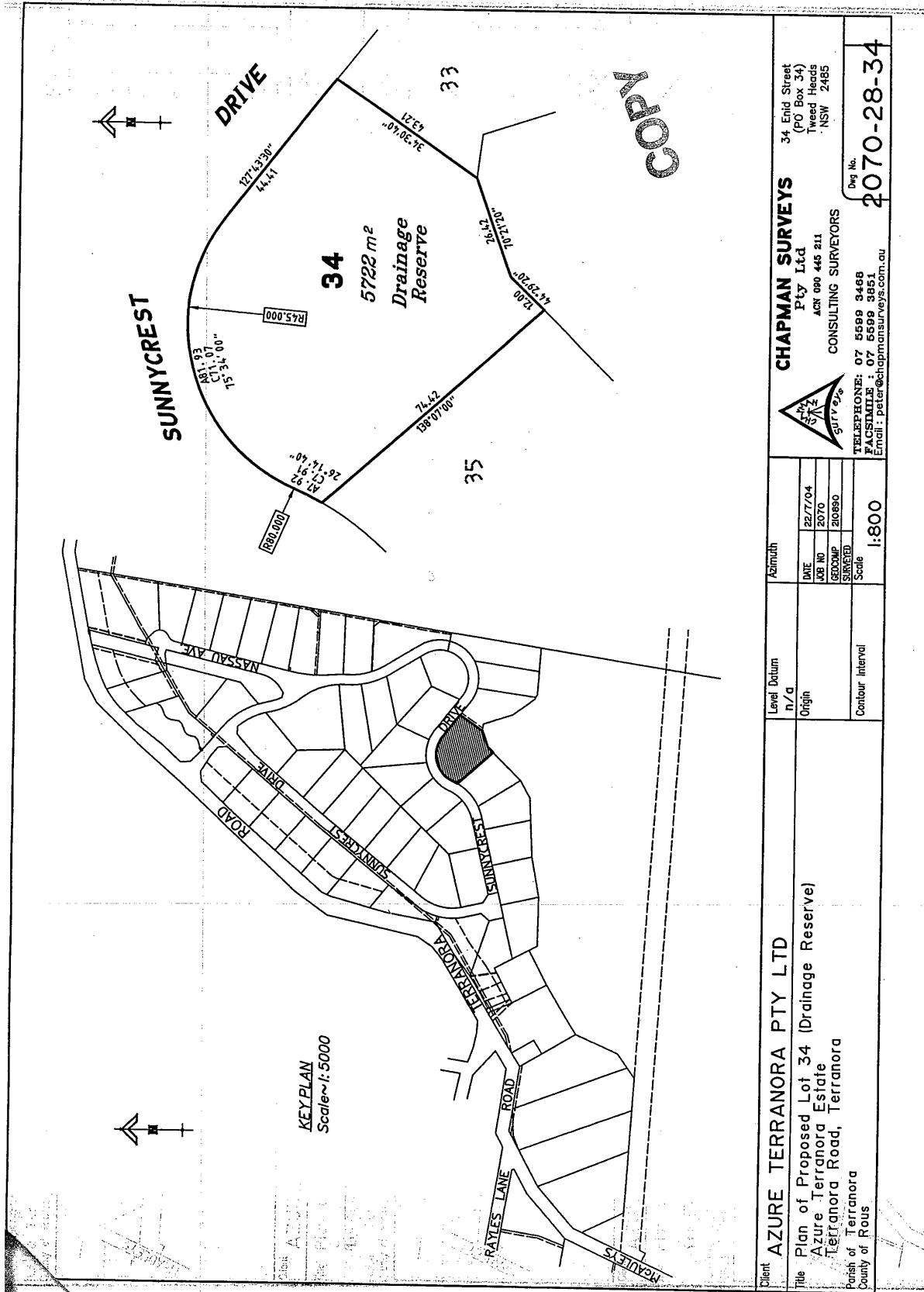
1. Council approves the transfer of proposed Lots 14 and 34 in the subdivision of Lot 12 in DP 1005206 at Terranora to Council as Drainage Reserves;
2. Proposed Lots 14 and 34 be classified as ‘operational’ pursuant to section 31 of the Local Government Act, 1993; and
3. All necessary documentation is executed under the common seal of Council.

**REPORT:**

As per summary. Copies of plans identifying the proposed Lots follow this report.







Client	AZURE TERRANORA PTY LTD	
	Plan of Proposed Lot 34 (Drainage Reserve)	
Title	Azure Terranora Estate	
	Terranora Road, Terranora	
Parish of Terranora		
County of Rous		
Level Datum	n/a	
	Origin	
Azimuth	DATE	22/7/04
	JOB NO	2070
Scale	GEOMAT	20880
	SURVED	
Contour Interval		1:800

**CHAPMAN SURVEYS**  
 Pty Ltd  
 ACN 090 445 211  
 CONSULTING SURVEYORS

34 End Street  
 (PO Box 34)  
 Tweed Heads  
 NSW 2485

TELEPHONE: 07 5599 3468  
 FACSIMILE: 07 5599 3861  
 Email: peter@chapmansurveys.com.au

Dwg No. **2070-28-34**

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**13 [ES] Nominations for Burringbar Sewerage Community Reference Group**

**ORIGIN:**

**Water**

**FILE NO: GS6/9 Bbar**

**SUMMARY OF REPORT:**

Council has previously established the Burringbar Sewerage Community Reference Group. Recently Council invited expressions of interest from current and other interested members of the community for membership of the Burringbar Sewerage Community Reference Group. New nominations from the community have been received for inclusion in the Burringbar Sewerage Community Reference Group.

**RECOMMENDATION:**

That Council accepts the following newly nominated members for the Community Reference Group in addition to the existing group members:-

- Andy Yeomans                      Resident of Burringbar and President of Burringbar-Mooball Catchment Landcare
- Jeff Baldwin                        Resident of Pottsville
- Len Greer                            President of Pottsville Community Association Inc

## REPORT:

Council has previously resolved to establish a Community Reference Group to input into the Burringbar-Mooball Sewerage Study. The Community Reference Group was established in September 1998 through an invitation to nominate advertised in the Tweed Link.

Following concerns from some members of the Mooball community that they were under represented on the Community Reference Group five new members were accepted by Council in September 2003 for inclusion in the Community Reference Group.

Current members of this group are as follows:-

- Mr Tom Tabart                                      Burringbar
- Mr Stuart Cahill                                    Burringbar
- Mr Bruce Douglas                                Burringbar
- Mr Bob McTackett                                Burringbar
- Mr Ross Lynn                                      Mooball
- Miss Adrienne Bowden                         Mooball
- Mr Patric Cerato                                 Mooball
- Mr Craig Anderson                              Mooball
- Dr Paul Malouf                                    Mooball
- Mr Peter Ainsworth                              Tweed Shire Council
- Councillor Warren Polglase                  Tweed Shire Council
- Mr Mike Rayner                                 Tweed Shire Council
- Ms Alexandra Abedrabbo                      Tweed Shire Council

Recently Council invited Expressions of Interest from current and other interested members of the community for membership of the Burringbar Sewerage Community Reference Group.

The nominations have been received from members of the community and existing members of the Reference Group.

The nominations received are as follows:-

- Mr Andy Yeomans                                Resident of Burringbar and President of Burringbar-Mooball Catchment Landcare
- Mr Jeff Baldwin                                 Resident of Pottsville
- Mr Len Greer                                     President of Pottsville Community Association Inc
- Mr Ross Lynn                                    Resident of Mooball, current member of Reference Group
- Mr Patric Cerato                                Resident of Mooball, current member of Reference Group

- Miss Adrienne Bowden Resident of Mooball, current member of Reference Group
- Mr Craig Anderson Resident of Mooball, current member of Reference Group
- Dr Paul Malouf Resident of Mooball, current member of Reference Group

This report recommends the acceptance of the new nominations for inclusion in the Community Reference Group.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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## 14 [ES] Country Towns Water Supply and Sewerage Program

### ORIGIN:

Director

### SUMMARY OF REPORT:

The Country Towns Water Supply and Sewerage Program has been a key element in the provision of water supply and sewerage services to regional NSW, providing in a general sense some \$88M of Government subsidy per year towards the provision of such services.

The Minister of Energy, Utilities and Sustainability, Mr Frank Sartor, has recently announced new program guidelines.

The most significant changes that impact on Tweed Shire are:-

1. A subsidy reduction from 70% to 50% for the Burringbar-Mooball Sewerage Scheme. (approx \$1 million)
2. A maximum subsidy of 20% (previously 50%) for any approved schemes.

Schemes currently affected are:-

- (i) Kingscliff STW - \$1.0M reduction;
- (ii) Clarrie Hall Dam - \$0.75M reduction
- (iii) Tyalgum Water Supply - \$0.33M reduction
- (iv) Keilvale Sewerage - \$0.502M reduction

The estimate for the immediate impact on projects throughout the state is in the order of \$60 - \$100M.

### RECOMMENDATION:

That Council:-

1. Notes the Government advice in relation to reduced subsidy levels
2. Formally reviews the feasibility of the preferred option and timing for the sewerage of the villages of Burringbar and Mooball.

## **REPORT:**

### **Background**

The Program has been one of the key elements in the continual improvement of local water and sewerage services in rural and regional NSW. It is recognised as one of the single most important factors protecting the public health of 30 percent of the state's population living in rural areas.

Local Government has been constantly concerned about:-

- The lack of guaranteed forward funding for the Program from year to year to allow for long term planning and for the smooth completion of each stage of a project.
- The structure and transparency of the Program's operations.

A revision of the administration of the Country Towns Water Supply and Sewerage Program has been consistently sought by the Associations and the Local Government Water Directorate.

Funding for the Program was agreed in 1995 at \$88 million per year each from State and Local Government for ten years. In more recent years, the State Government contribution fell to around \$50m per year. To address this reduced commitment the State Government announced in 2001 an increase of \$60m over the next four years, making the total expenditure of the Program around \$70m per year.

Many small communities will continue to need assistance through the Country Town Water Supply and Sewerage Program, due to their inability to raise funds locally for renewal and replacement because of their economies of scale.

In late November 2003 the Minister for Energy and Utilities, Hon Frank Sartor MP, announced the appointment of an independent task force to investigate, review and report him on the management of the Program. It was disappointing that the Associations, the Water Directorate and individual councils were not actively engaged in this review process.

As part of the review process the Minister placed a moratorium on the funding program. This has resulted in a delay in the funding program over 2004/2005.

### **Review Findings**

The Minister for Energy, Utilities and Sustainability, Mr Frank Sartor, has recently announced new program guidelines as a consequence of that review.

It is understood that the review itself is a cabinet minute and as such will not be available to local government.

### **Program Changes**

In announcing the changes to the funding program the Minister stated that *"The Program will continue in the future and the \$878 million the Government has committed to the*

*Program will not be reduced."* The four page communiqué from DEUS is an attachment to this report.

Some of the key elements of the review include new program criteria that will include:-

- A 50 percent subsidy for small water utilities towards the cost of approved capital expenditure for backlog works;
- A 20 percent subsidy for large water utilities with revenue greater than \$10 million per year for approved capital expenditure on backlog works. This reflects the fact that larger water utilities with substantial customer bases have a greater capacity to pay for the cost of capital works;
- A 50 percent subsidy for sewerage improvements in 150 small towns, regardless of the size of the local water utility, as part of the Small Town Sewerage Program; and,
- Streamlining and improving administration for the Program to ensure residents see the benefits from projects sooner.

Other key changes include:-

- Government will no longer provide financial assistance for scoping activities.
- Financial assistance for constructions costs and pre-construction costs will only be made available after council owned water authorities have adopted a preferred option and it has been approved by the Minister.
- To be eligible for financial assistance councils will need to demonstrate substantial compliance with the each of the criteria in the Best Practice Management of Water Supply and Sewerage Guidelines.

The Water Directorate has identified a brief but not exhaustive list of issues associated with these changes which are detailed below:-

1. Subsidy for small town schemes reduced from 75% to 50%.
2. For large towns (greater than \$10 million turnover) subsidy has been reduced to 20%.
3. There has been no impact assessment on Council Owned Water Utilities (COWU's) of the new requirements particularly the financial ability of COWU's to now fund previously identified schemes.
4. COWU's are not represented on the Project Prioritisation Committee either at LGSA or Water Directorate level.
5. COWU's will now manage all land matters, removing any avenue to use the Public Works Act. The consequence of this is that compensation payments for land acquisition (not required under the Public Works Act) will significantly increase project costs.
6. The guidelines stipulate that COWU's will be the Principal in all Contracts. This needs to be clarified, since it effectively eliminates the Department of Commerce. Many councils may not have the necessary expertise to undertake such a role, particularly in large projects.
7. Prioritisation Criteria. A transparent formula needs to be developed to allow COWU's to determine where projects may sit within the priority list. This is

significant in that subsidy ranking will not be determined until a preferred concept has been developed.

8. The role of DEUS needs to be clarified.
9. There is no longer any subsidy for investigation and concept development activities undertaken prior to identification of a preferred option.
10. The impact of the qualifying charge of \$350 per property needs to be assessed.

On a more positive note the new requirements acknowledge the Water Directorate's and Association's position of moving to a transparent priority based process, simplifying the approval process and giving COWU's more flexibility in project management.

### **Working Group**

The LGSA and the Water Directorate resolved in July 2004 to establish a working group to review the new program requirements of the Country Town Water Supply and Sewerage Program (CTWSSP), the Guidelines for Best Practice Management of Water Supply and Sewerage and compliance with the newly established water supply tariff structure.

The objective of this working group is to develop practical tools, advice and support to council owned water utilities as they move forward to implement the State Governments' new requirements as they relate to the revised CTWSSP provisions and the Guidelines for Best Practice.

### **Project Overview**

The table below provides a summary of the impact the Program changes will have on Council's current and forecast projects:-

<b>A. ALL CURRENT PROJECTS</b>							
<b>Project</b>	<b>Phase</b>	<b>Estimate</b>	<b>Previous Subsidy Forecast</b>	<b>Revised Subsidy Forecast</b>	<b>Status of Works</b>	<b>Comments on Impact</b>	
<b>KINGSCLIFF SGE</b>	Project has a number of components as follows						
	Existing STP – Upgrade plant to 25,000EP; all phases complete	\$797,000	\$398,500	\$398,500	Complete	Nil	
	Existing STP – Interim Upgrade: Stage 1. All capital works complete. Contract in DLP	\$548,000	\$219,200	\$219,200	99% complete	Assumes 40% 'interim subsidy' agreement won't change	
	Existing STP – Interim Upgrade: Stage 2. Design & Construction	\$275,500	\$55,100	\$55,100	Works just started	Assumes 40% 'interim subsidy' agreement won't change	
	Existing STP – Contaminated Site Investigation	\$45,000	Not subsidised	Not subsidised	Works just started	NA	
	New STP – Concept Design (incl survey, geotech, CC, etc)	\$300,000	\$120,000	\$120,000	80% complete	Assumes 40% 'interim subsidy' agreement won't change	
	New STP – Detail Design	\$955,000	\$382,000	\$191,000	Works just started	Previous subsidy forecast based on continuation of 40% 'interim subsidy'. Revised subsidy forecast based on 20%.	
	New STP – Construction	\$40,530,000	\$1,600,000	\$800,000	Call tenders April 05	Previous subsidy forecast based on 40% of residual value of existing STP (\$4.0m?). Revised subsidy forecast based on 20% of same.	
	<b>TOTALS</b>	<b>\$43,406,000</b>	<b>\$2,392,800</b>	<b>\$1,401,800</b>		<b>\$991,000 reduction</b>	
<b>MURWILLUMBAH SGE</b>	2 Components						
	STP Upgrade	\$9,000,000	\$2,430,000	\$2,430,000	99% complete	Nil	
	Effluent Reuse scheme; design, construction	\$900,000 subsidised, \$3,494,000 unsubsidised	\$243,000	\$243,000	2% complete	Nil	
	<b>TOTAL VALUE</b>	<b>\$13,654,000</b>	<b>\$2,673,000</b>	<b>\$2,673,000</b>		<b>No change</b>	

Project	Phase	Estimate	Previous Subsidy Forecast	Revised Subsidy Forecast	Status of Works	Comments on Impact
<b>HASTINGS POINT SGE</b>	2 Components					
	Upgrade STP to 16,000EP, all phases (Unsuccessful)	\$963,000	\$481,500	\$481,500	Complete	Nil
	Upgrade STP to 16,000EP, all phases	\$3,000,000	Not subsidised	Not subsidised	75% complete	Nil
	<b>TOTALS</b>	<b>\$3,963,000</b>	<b>\$481,500</b>	<b>\$481,500</b>		<b>No change</b>
<b>UKI SGE</b>	Preconstruction	\$700,000	\$497,000	\$497,000	Complete	Nil
	Construction	\$2,665,000	\$1,892,150	\$1,892,150	98% complete	Nil
	<b>TOTAL VALUE</b>	<b>\$3,365,000</b>	<b>\$2,389,150</b>	<b>\$2,389,150</b>		<b>No change</b>
<b>Clarrie Hall Dam</b>	2 components: -					
	Spillway Upgrade					
	Feasibility Study	\$70,000	\$35,000	\$35,000	Complete	Nil
	Concept & Design	\$210,000	\$105,000	\$105,000	2% complete	Nil
	Construction	\$2,500,000	\$1,250,000	\$500,000	Start in 2008	\$750,000 reduction, 50% to 20% drop
	Raise Dam Wall					
	Concept & Design	\$443,000 unsubsidised	Nil	Nil	Not started	Nil
	Construction	\$3,000,000	Nil	Nil	Start in 2008	Nil
	<b>TOTALS</b>	<b>\$6,223,000</b>	<b>\$1,390,000</b>	<b>\$640,000</b>		<b>\$750,000 reduction</b>
<b>Tyalgum WS</b>	Investigation & concept design	\$60,000	\$30,000	\$30,000	80% complete	Nil
	Design & Construction	\$1,100,000	\$550,000	\$220,000	Start in early 2005	\$330,000 reduction, 50% to 20% drop
	<b>TOTALS</b>	<b>\$1,160,000</b>	<b>\$580,000</b>	<b>\$250,000</b>		<b>\$330,000 reduction</b>
<b>Tweed Area Sge Stage 2 (Banora Pt STP Upgrade)</b>	All	\$18,793,000 subsidised \$456,000 unsubsidised	\$9,396,500	\$9,396,500	All work effectively complete	Nil
	<b>TOTALS</b>	<b>\$19,249,000</b>	<b>\$9,396,500</b>	<b>\$9,396,500</b>		<b>Nil</b>

Project	Phase	Estimate	Previous Subsidy Forecast	Revised Subsidy Forecast	Status of Works	Comments on Impact
Burringbar-Mooball Sge	Investigation & concept design	\$150,000	\$112,500	\$112,500	75% complete	Nil
	Design & construction	\$5,000,000	\$3,500,000	\$2,500,000	Start 05/06?	\$1,000,000 reduction. Assumes 70% subsidy on previous program conditions. Drop to 50%
	<b>TOTALS</b>	<b>\$5,150,000</b>	<b>\$3,612,500</b>	<b>\$2,612,500</b>		<b>\$1,000,000 reduction</b>
Bray Park WTP Upgrade	Preconstruction	\$1,000,000	Not subsidised	Not subsidised		Nil
	Construction	\$30,000,000	Not subsidised	Not subsidised		Nil
	<b>TOTAL VALUE</b>	<b>\$31,000,000</b>	<b>\$0</b>	<b>\$0</b>		<b>No change</b>
Kielvale	Preconstruction	\$600,000	\$402,000	\$300,000		\$102,000 reduction. Assumes 67% subsidy on previous program conditions. Drop to 50%
	Construction	\$2,400,000	\$1,600,000	\$1,200,000		\$400,000 reduction. Assumes 67% subsidy on previous program conditions. Drop to 50%
	<b>TOTAL VALUE</b>	<b>\$3,000,000</b>	<b>\$2,002,000</b>	<b>\$1,500,000</b>		<b>\$502,000 reduction</b>
<b>TOTAL FOR TWEED PROJECTS</b>		<b>\$130,143,000</b>	<b>\$24,917,450</b>	<b>\$21,344,450</b>		<b>\$3,573,000 reduction</b>

## Impact on Project Feasibility

Project	Impact
Kingscliff STW	\$991,000 reduction
Clarrie Hall Dam	\$750,000 reduction
Tyalgum Water Supply	\$330,000 reduction
Burringbar - Mooball Sewerage	\$1,000,000 reduction
Keilvale	\$502,000 reduction
<b>Total Reduction:</b>	<b>\$3.573M</b>

The loss of some \$3.5m of potential subsidy may have a significant impact of Council's ability to deliver its Capital Works Program in accordance with the adopted program.

Of particular relevance is the Burringbar-Mooball Sewerage Scheme. On 18 December 2002, Council adopted a preferred option for the sewerage of both of the villages of Burringbar and Mooball. In that report to Council the estimated cost of the preferred scheme was \$4.5M. The scheme will service approximately (205 lots) at a per tenement cost of \$22,000.

At the time of adopting the preferred option the Government subsidy level was 70%. The project was to be funded by:-

- Grant Subsidy	\$3.15M
- Special Sewerage Levy	\$0.72M
	(\$3500 /tenement)
- Shire Wide Sewerage Rates	\$0.63M
	Total \$4.5M

The current estimate for the Burringbar-Mooball Scheme is \$5.15m. This is a significant increase bought on largely as a result of increased construction costs reflective of a buoyant construction industry.

Coupled with the subsidy reduction to 50% the financial viability and timing of this project should be reassessed. If the scheme proceeds, project funding would be:-

- Government Subsidy	\$2.8M
- Sewerage Levy	\$0.72M
- Shire wide rate	\$1.85M
Total	\$5.15M

The cost of this project is now estimated at \$25,000/tenement.

With the advancements in technology, reduced subsidy and increased construction costs it is considered that a review of the scheme options and timing should be undertaken.





**Country Towns Water Supply and Sewerage Program**

**Conditions of Financial Assistance to LWUs  
for Provision of Capital Works**

The NSW Government's Country Towns Water Supply and Sewerage (CTWS&S) Program is now managed by the Department of Energy, Utilities and Sustainability (DEUS).

The provision of appropriate water supply and sewerage services remains the responsibility of the Local Water Utility (LWU). The LWU needs to consult appropriately with its community.

Following a review of the CTWS&S Program, the NSW Government has approved new conditions of financial assistance under the program. This assistance is provided to local government LWUs towards the capital cost of the backlog component of approved water supply and sewerage infrastructure. The new conditions are set out in this brochure and supersede those on pages 23 to 28 of the brochure *Country Towns Water, Sewerage and Drainage Program – Technical and Financial Assistance Available to Councils, 1996*.

To be eligible for financial assistance under the CTWS&S Program, all LWUs now must comply with the *Best-Practice Management of Water Supply and Sewerage Guidelines, May 2004*.

All LWUs now take on additional roles and responsibilities for the planning and delivery of water supply and sewerage infrastructure.

The **Program goal** remains:

*"Appropriate, affordable, cost-effective and well managed water supply and sewerage services in urban areas of country NSW which meet community needs, protect public health and achieve sustainable environmental outcomes whilst making best use of regional resources."*

**Availability of Assistance**

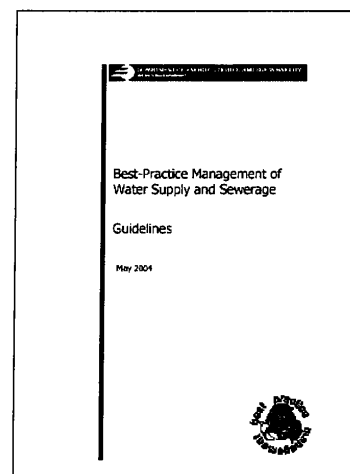
Financial assistance is available towards the capital cost of the backlog component of approved water supply and sewerage infrastructure.

LWUs shall commission and fund all necessary scoping activities in order to identify a preferred project. The Government will not provide financial assistance for these costs, including investigations, strategy studies, community consultation, preliminary environmental investigations and options studies, prior to adoption of a preferred option by the LWU.

After adoption of a preferred option by the LWU and project approval by the Minister, financial assistance will be available for the construction cost and pre-construction activities of an approved project. This includes concept design, survey, project management, design, community

consultation, environmental assessments, preparation of tender documents, construction management, risk management and land acquisition.

However any reworking of pre-construction activities as a result of a deficient scoping study will need to be fully met by the LWU.



## FINANCIAL ASSISTANCE

### Limits to Assistance

A means test has been introduced to distribute the available funds more equitably and to reflect the ability of LWUs to contribute to the cost of their project. Accordingly, financial assistance will be limited to:

1. 50% of the backlog cost for LWUs with a turnover of less than \$10M/a (for water and sewer combined) or \$5M/a (for water only or sewer only).
2. 20% of the backlog cost for LWUs with a turnover greater than \$10M/a (for water and sewer combined) or \$5M/a (for water only or sewer only).
3. The maximum capital cost eligible for financial assistance for provision of a sewerage service to an unsewered town will be capped at \$30,000 per equivalent tenement. LWUs will need to meet the remainder of the cost.
4. If an unsewered town is listed in the Small Town Sewerage Program, it will be eligible for 50% of the backlog cost of the project irrespective of the turnover of the LWU.
5. Financial assistance will generally be provided on the basis of the capital cost of the project less any external grants obtained by the LWU for the project.
6. The amount of financial assistance will not exceed that necessary to reduce the typical residential bill to the qualifying charge determined from time to time (currently \$350 per property).

### Amalgamations of LWUs

LWUs that increase their turnover to exceed \$10M/a as result of amalgamation will not be disadvantaged with respect to their eligibility for financial assistance. The relevant turnover for such LWUs will be deemed to remain the same as that which would have applied prior to the amalgamation. For those LWUs that have already amalgamated, this concession will apply until 1 July 2007. For the remainder of LWUs, this concession will apply for a period of 3 years from the date of amalgamation.

### Backlog works

Backlog works are those required to meet demands and/or prevailing standards as at 1996. They include provision of services to towns that had no water supply or sewerage service in 1996. They also include situations where the existing water supply or sewerage system had deficiencies at 1996 in drinking water quality, capacity to meet reasonable 1996 water demands, water licence environmental flow requirements, adequate drought security, dam safety requirements, effluent quality or capacity to treat reasonable 1996 sewage loads.

Financial assistance is provided towards the capital cost of the least present value option to meet reasonable community needs. Funding is not provided for works to cater for growth, works to meet increased standards beyond those applicable at 1996, and asset renewal or replacement works. In addition, financial assistance is not provided for any operation, maintenance or administration costs.

#### ***For Unserviced Towns backlog works are defined as***

- The provision of basic water supply and/or sewerage systems for existing premises at January 1996 within defined town boundaries.

#### ***For Serviced Towns backlog works are defined as***

- Works necessary for those services to satisfactorily meet relevant requirements of regulatory authorities at January 1996; and
- Works necessary to address agreed reasonable operational levels of service at January 1996; and
- Works necessary to extend supply and provide reasonable operational levels of service to unserviced premises at January 1996 within existing serviced areas.

Works eligible for financial assistance would normally form part of an overall capital works program which would be set out in the LWU's Strategic Business Plan. Financial assistance will be determined for each scheme component on the basis of the proportion of capacity required to overcome the backlog.

**REQUIREMENTS**

**Eligibility**

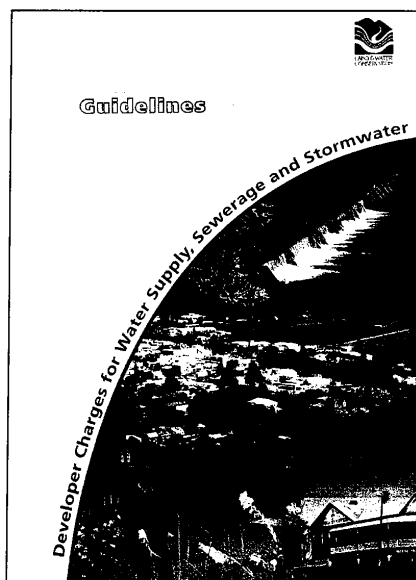
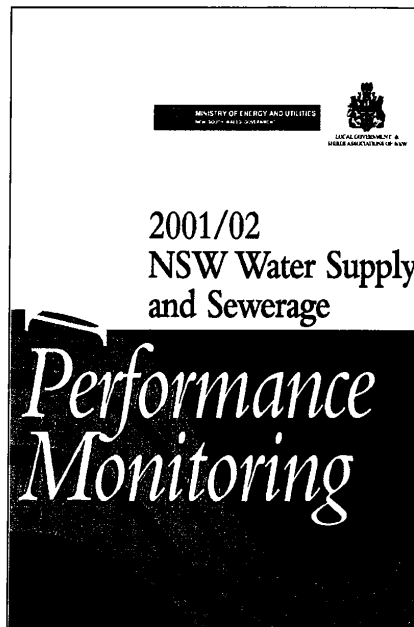
Financial assistance is dependent on:

- 1) Substantial compliance by the LWU with each of the criteria in the *Best-Practice Management of Water Supply and Sewerage Guidelines*.
- 2) The assessed typical residential bill per property for the service (in the years immediately after construction of the works) exceeding a qualifying charge. The assessed typical residential bill per property for each service will be determined by DEUS from projection of the LWU's expenses and revenues, assets and liabilities and cash flows. As noted on page 2, the qualifying charge for 2004/05 is \$350 per property. This figure may be reviewed in the future.
- 3) The works being part of a comprehensive capital works program which includes a significant backlog component.
- 4) Funding for backlog capital works will only be provided where the LWU's program of works makes adequate and sensible provision for reasonable growth and meets increases in regulatory standards beyond 1996. Subsidy will not generally be made available for isolated and relatively minor backlog problems.
- 5) Funding is available where the LWU substantially owns the works at project completion.

**Amount of Assistance**

The Minister for Energy and Utilities will determine the amount of any financial assistance to address the backlog component of individual country town water supply and sewerage projects. The provision of financial assistance will take into account the following factors:

- Degree of deficiency of the water supply or sewerage service with regard to security of supply, public health and environmental impacts
- Affordability
- The level of community acceptance
- Regional/state significance.



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## PROCESS

### Priority

An independent **Prioritisation Committee** involving DEUS, NSW Health, the Department of Environment and Conservation, the Department of Local Government, the Department of Infrastructure, Planning and Natural Resources and the Department of Aboriginal Affairs has been established to review the priority of all projects.

A priority ranking will be assigned on the basis of security of supply, public health and environmental impacts.

LWUs will be advised of the priority ranking assigned to their proposed projects to allow them to plan for future works. Available funding will be provided to the highest priority projects in each year.

In exceptional circumstances, the Minister may approve funding to address circumstances of significant and extreme hardship outside the control of an LWU or the community. These cases will be dealt with on a case by case basis.

### Roles and Responsibilities

Roles and responsibilities have been modified so that those that are best placed to manage risks are accountable to do so.

All LWUs will be the Principal in contracts for procuring capital works and will be responsible for securing access to sites and for land acquisition. The LWU will also be responsible for project investigation, risk management, project management, contract management and contract payments.

LWUs that consider themselves not to have the skills, staff and processes to undertake these activities will be required to demonstrate this to the Minister. Alternative arrangements will be approved by the Minister only in highly exceptional circumstances.

### Process for Financial Assistance

The financial assistance process will be in 3 stages.

- **Stage 1** - The Minister for Energy and Utilities' approval for a project must be obtained prior to commencing any pre-construction activities. DEUS will determine whether the LWU is eligible for financial assistance, the project is suitable, the project scope is soundly based and the LWU has adopted a preferred option. The priority ranking of the project will be determined and advised to the LWU.

- **Stage 2** – After obtaining the necessary statutory approvals, the Minister's approval must be obtained prior to calling tenders for construction to ensure that the developed project remains soundly based and that funds are available. At this stage the Minister will provide a commitment to financial assistance for a nominated percentage of the estimated capital cost.
- **Stage 3** – Immediately after receiving the Minister's approval in Stage 2 above, the LWU must proceed through to calling and reviewing tenders, at the end of which the Minister must be notified. The Minister will then approve a fixed dollars grant for the contract on the basis of the percentage assistance indicated in Stage 2 above.

Financial assistance for Stages 1 and 2 will be paid on award of the first construction contract. Assistance for Stage 3 will be made available at approved project milestones.

Financial assistance will only be provided towards tendered contract prices for the approved project. Any variations or amendments to a project after award of contract will not receive any financial assistance. LWUs are encouraged to arrange tenders concurrently. Where this is not practical the LWU will need to seek separate Stage 3 approvals for later contracts.

### Timely Completion of Works

Financial assistance will be contingent on completion of approved projects within an approved time period. Project delays within the control of the LWU may result in financial assistance being reduced or withdrawn.

In any event, LWUs will be required to complete the works within three years of the receipt of the Stage 3 offer unless the Minister determines otherwise. All land matters shall be completed within 12 months of completing the last contract. Land matters not completed within that period will be paid for on the basis of the assessed cost provided by the Valuer General's Department, after which the project will be immediately finalised and closed.

### Integrated Water Cycle Management (IWCM)

As IWCM is an important new initiative to identify water management problems and determine appropriate management responses to manage the impacts of these problems so that social, environmental and economic objectives are met at least cost to NSW, financial assistance will be made available towards the cost of an LWU's first IWCM strategy. The subsidy level available will be as for other projects funded by the Program.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

As detailed in the report.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**15 [ES] Tweed River Committee and Tweed Coastal Committee Community Representation**

**ORIGIN:**

**Water**

**SUMMARY OF REPORT:**

At the meeting of 5 May 2004, Council called for nominations for community representatives on a number of Council Committees. The Tweed River Committee and Tweed Coastal Committee subsequently advertised for positions. This report details the nominations received for these two Committees.

**RECOMMENDATION:**

That Council accepts:-

1. Renomination of Robert Quirk, Rhonda James and Dugald Gray as existing representatives on the Tweed River Committee and invite Claire Masters and a representative from the Tweed River Charter Operators Association to join the Tweed River Committee as community and industry representatives.
2. Renominations from Rhonda James, Terry Kane, Gary Thorpe, John Harbison, Peter Harding, Jason Pearson and Justine Elliott as community representatives on the Tweed Coastal Committee.

**REPORT:**

At the meeting of 5 May 2004, Council called for nominations for community representatives on a number of Council Committees. The Tweed River Committee and Tweed Coastal Committee subsequently advertised for positions. This report details the nominations received for these two Committees.

**Tweed River Committee**

Council, at the meeting of 5 May 2004 called for nominations for community representation on the Tweed River Committee.

Table 1 below summarises the nominations received from community members.

Table 1: Tweed River Committee – Nominations for community representation

<b>Name</b>	<b>Affiliation</b>	<b>Comment</b>
<b>Current Members</b>		
Robert Quirk	Tweed Canegrowers representation, Northern Rivers CMA representation, ASS research	Foundation member of committee, CMA representative
Dugald Gray	Action Sands Pty Ltd	Member since March 2002, represents local dredging industry, nominates Martin Dobney as alternative
Rhonda James	Caldera Environment Centre	Member since 1995, represents broad environmental issues, expertise in vegetation rehabilitation, farming interests
<b>New Nominations</b>		
Mary Lilly Grant	Seabird Rescue, Tweed Valley Wildlife Carers	Represents specific environmental concerns
Claire Masters	Tweed LandCare Inc	Represents upper catchment and vegetation rehabilitation issues, community involvement in rehabilitation
Not yet specified	Tweed River Charter Operators Association	Represents commercial boat owners / operators
Not yet specified	Banora Point Residents Association	Represents specific area

Copies of the nominations for new members are a confidential attachment to this report. (DW NO. 1067875, 1072868, 1066304, 1079103, 1069836).



The Tweed River Committee recently resolved to increase the scope of its charter to include the catchment area of the Tweed River and its tributaries. Previously the committee was mainly concerned with issues within the estuary. Given this expanded scope, the Committee resolved to invite representation from upper catchment / rehabilitation interests and estuarine industry groups in addition to existing community and industry representation.

It is recommended that the existing Committee members be retained. Mr Robert Quirk is a highly valued member of this Committee and provides direct links with the Northern Rivers Catchment Management Authority and Acid Sulfate Soils works and research. Rhonda James represents the Caldera Environment Centre and provides high level advice on rehabilitation and revegetation issues as well as having farming interests. Dugald Gray represents the dredging industry and can provide timely advice on dredging issues.

New nominations received include Mary Grant, an active member of the Sea Bird Rescue Unit of Tweed Valley Wildlife Carers. Ms Grant has specific interests and may provide limited input into the broader issues dealt with by the Committee. Therefore, it is recommended that this nomination not be accepted.

The Banora Point Residents Association nomination represents a specific location. There are no other specific locations represented on the Committee. Therefore, it is recommended that this nomination not be accepted.

The nomination from Claire Masters, representing Tweed LandCare Inc. enables the Committee to expand its contacts and expertise to include upper catchment rehabilitation interests.

The Tweed River Charter Operators Association represents a large industry group in the estuary. With Council developing the charter boat operator's wharf, it is timely to have a representative on the Tweed River Committee. The charter operators also bring a high level of knowledge on navigational and recreational issues within the Tweed River.

It is therefore recommended that the nominations from Claire Masters representing Tweed Landcare Inc and the Tweed River Charter Operators Association be invited to join the Tweed River Committee as community representatives.

### **Tweed Coastal Committee Nominations**

The existing community representatives of the Tweed Coastal Committee expressed interest in maintaining a position on the Committee. These members were originally selected primarily based on location, to provide broad representation from each of the Coastal villages and coastal estuaries. These representatives were also selected because of involvement in various community and / or industry associations.

Table 2: Tweed Coastal Committee – Nominations for community representation

<b>Name</b>	<b>Affiliation</b>	<b>Comment</b>
<b>Current Members</b>		
Rhonda James	Caldera Environment Centre	Member since 1995, represents broad environmental issues, expertise in vegetation rehabilitation, farming interests
Justine Elliott	Fingal Head	Supported by Fingal Head Community Association, Fingal Head Dune Care
Jason Pearson	Kingscliff	Supported by Kingscliff Boardriders Club and Cudgen Headland SLSC
Terry Kane	Cabarita Beach - Bogangar	Supported by Cabarita Beach - Bogangar Residents Association
Gary Thorpe	Hastings Point	Supported by Hastings Point Dune Care, Hastings Point Residents Association, Tweed Coast Air Sea Rescue
Peter Harding	Pottsville	Supported by Pottsville Community Association, Pottsville Dune Care
John Harbison	Mooball	Supported by Tweed Coast Cane Growers and Drainage Union representation
<b>New Nominations</b>		
Mary Lilly Grant	Seabird Rescue, Tweed Valley Wildlife Carers	Represents specific environmental concerns
Amie Nugent	Local resident, worked with Wetland Care Australia	Qualifications and interests in Coastal Management, lives at Kingscliff

Mary Grant represents specific environmental concerns (sea birds) and does not live within the area covered by the Tweed Coastal Committee. Ms Grant does not represent any other associations or groups.

Amie Nugent has interests and qualifications in coastal management but does not demonstrate any involvement in local community groups or associations.

It is recommended that the existing members of the Committee be maintained with no additional members.

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

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Dataworks documents 1067875, 1072868, 1066304, 1079103, 1069836.

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## REPORTS FROM DIRECTOR ENVIRONMENT & COMMUNITY

### 16 [EC] St Josephs Community Pre School - Lease and Construction Certificate - Part of Banora Point Community Centre Site

#### ORIGIN:

Environment & Health Services

FILE NO: DA04/0469 Pt3

#### SUMMARY OF REPORT:

Council at its meeting of 17 December 2003 resolved to allow the submission of a development application for use of part of the Banora Point Community Centre site for the construction of a 40 place Pre School. A development application was submitted by St Josephs Community Pre School Inc and has been approved.

The Pre School have now requested that Council consent to their application for a construction certificate to allow work to commence and also to enter into a lease agreement for use of that part of the site on which the Pre School and play areas will be located. They request a 10 year lease with a 10 year option and agree to be responsible for funding all these responsibilities such as sewer, water, maintenance etc, for payment of a peppercorn rental.

The above proposal is considered satisfactory and accordingly it is recommended that Council agree to give its consent for the application to apply for the issue of the construction certificate and to enter into a lease generally in the terms of the above. It is advised that a lease of greater than 5 years on community land requires public notification prior to finalisation and accordingly this process will occur.

#### RECOMMENDATION:

That Council:

1. Consents to submission of an application for a Construction Certificate for St Josephs Community Pre School on part of the Banora Point Community Centre site for the purpose of erecting a Community Pre School.
2. Proceeds with the necessary notification of its intention to enter into a lease agreement with St Josephs Community Pre School for use of that part of the Banora Point Community Centre site that will be occupied by the Pre School for a period of 10 years with a 10 year option at a peppercorn rental.

3. Finalises the lease agreement should no objection be received.
4. All necessary documentation be executed under the Common Seal of Council.

**REPORT:**

As per summary.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**17 [EC] Tweed Shire Council Waste Collection & Disposal Strategy**

**ORIGIN:**

**Environment & Health Services**

**SUMMARY OF REPORT:**

Council at its meeting of 17 December 2003 adopted a Draft Waste Collection & Disposal Strategy. Since that time the NSW Department of Environment & Conservation has released a consultation paper on waste avoidance for local government. The results of a residents survey was reported to Council and Council resolved to offer a new five year contract to Solo Waste. The aims and goals of all these reports have now been assimilated to form the Tweed Shire Council Waste Collection & Disposal Strategy.

**RECOMMENDATION:**

That the Tweed Shire Council Waste Collection & Disposal Strategy detailed in this report be adopted.

**REPORT:**

Council at its meeting of 17 December 2003 received and adopted a Draft Waste Collection & Disposal Strategy. The draft strategy identified a number of alternate waste collection systems and a Waste & Recycling Collection Survey was circulated to residents by way of the Tweed Link, to identify the preferred collection system.

Towards the end of 2003, the NSW Department of Environment & Conservation (formerly Environment Protection Authority) released a consultation paper titled "NSW Waste Avoidance & Resource Recovery Strategy Action Plan for Local Government". The action plan set out targets, opportunities and actions for councils to implement to reduce the amount of material being disposed of to landfill. The majority of opportunities and actions outlined in the action plan are already included in the Draft Waste Collection & Disposal Strategy and the others could be included as they become relevant to Council activities. The report on this action plan was received and noted by Council at its meeting of 21 January 2004. This report included the results of the Waste & Recycling Survey.

A copy of the report is reproduced hereunder for Council's information.

**REPORT:**

*Council at its meeting of 17 December 2003 adopted a draft Waste Collection & Disposal Strategy. The draft strategy made reference to a Waste & Recycling Collection Survey which had been circulated to residents by way of the Tweed Link. The results of this survey are as follows: -*

*Total number of responses - 1262, which equates to a response rate of 4.2%, which can be considered a very good response rate. An overwhelming number of the responses were very complimentary of the existing service provided.*

- 1. 46% of respondents considered the existing collection bin to be adequate.*
- 2. 49% considered the existing recycling section too small.*
- 3. Of these 49%, almost 50% preferred a 50/50 garbage/recycling split instead of the 70/30 split.*
- 4. 45% of respondents preferred a separate 240 litre recycling bin serviced fortnightly.*
- 5. Only 32% of respondents were prepared to pay an extra \$35 per year for this extra bin.*
- 6. 34% of respondents were prepared to accept a 140 litre garbage bin collected weekly.*
- 7. 44% of respondents indicated they would utilise a fortnightly garden waste collection service.*
- 8. Only 33% indicated that they would be prepared to pay \$35 extra for the garden waste service.*

9. *89% of respondents indicated their satisfaction with the biannual clean up service with over 65% indicating a preference for the collection to be held May and November.*

### **Garbage & Recycling**

*Further analysis of these results indicated that 46% are happy with the existing service, however a similar percentage, 49%, indicated that the recycling section was too small.*

*Of those respondents who indicated that the recycling section was too small, 49% indicated that they would prefer a 50/50 garbage/recycling split, 240 litre bin while 45% indicated a preference for a separate 240 litre recycling bin serviced fortnightly, however only 32% of the respondents indicated that they would be prepared to pay an extra \$35 per year for this service.*

*Only 34% of respondents indicated an acceptance of a 140 litre garbage bin to be serviced weekly.*

*The NSW Department of Environment & Conservation consultation paper titled "NSW Waste Avoidance & Resource Recovery Strategy, Action Plan for Local Government" targets the need to increase waste recovery and waste avoidance strategy.*

*The bin configuration that would best achieve the targets of that Action Plan would be either:-*

- a) a 50/50 garbage recycling split bin which would provide 120 litres each week for both garbage and recycling; or*
- b) a separate 240 litre recycling bin serviced fortnightly or 120 litres per week and a 140 litre garbage bin serviced weekly.*

*The second alternative has the same volume for recycling and a slightly higher volume for garbage, however only 32% of residents would pay extra for this service.*

*As a comparison, the existing 240 litre split 70/30 garbage bin provides only 72 litres for recycling and 168 litres for garbage.*

*Therefore, the best options which achieves the target of the Action Plan for Local Government is the 240 litre bin split 50/50 garbage/recycling, closely followed by a 240 litre recycling bin serviced fortnightly and a 140 litre garbage bin serviced weekly.*

*The existing 70/30 split bin is not considered a viable option to achieve the goals of the Action Plan for Local Government.*

### **Garden Waste**

*Further analysis of these results show that 44% of respondents indicated that they would use a fortnightly green waste collection service and that 33% of respondents would be prepared to pay an additional \$35 per year for this service.*

*These results were then broken down into postcode areas which provided the following information: -*

*2484 ~ Murwillumbah & Surrounds*

<i>Responses</i>	<i>197</i>
<i>Use garden waste service</i>	<i>30%</i>
<i>Pay for garden waste service</i>	<i>23.5%</i>

*2485 ~ Tweed Heads/Tweed Heads West*

<i>Responses</i>	<i>200</i>
<i>Use garden waste service</i>	<i>35.5%</i>
<i>Pay for garden waste service</i>	<i>24%</i>

*2486 ~ Banora Point/Tweed Heads South/Terranora*

<i>Responses</i>	<i>575</i>
<i>Use garden waste service</i>	<i>49.75%</i>
<i>Pay for garden waste service</i>	<i>37.6%</i>

*2487 ~ Kingscliff/Chinderah*

<i>Responses</i>	<i>135</i>
<i>Use garden waste service</i>	<i>40%</i>
<i>Pay for garden waste service</i>	<i>32.6%</i>

*2488 ~ Bogangar/Hastings Point/Pottsville*

<i>Responses</i>	<i>130</i>
<i>Use garden waste service</i>	<i>53%</i>
<i>Pay for garden waste service</i>	<i>42%</i>

*These responses indicate a strong acceptance rate of a green waste collection service, particularly in Banora Point, Tweed Heads South, Terranora and the Tweed Coast, and it is considered that the establishment of such a service should be pursued in the near future as it would substantially reduce the amount of waste material disposed of to landfill.*

*It is considered that these results from the Waste Collection & Disposal Strategy have provided valuable information which can be used in the preparation of specifications for the new waste contract, while also supporting the NSW Department of Environment & Conservation consultants paper and Action Plan for Local Government.*

*It is recommended that the results of this survey and the preferences shown for garbage bin configuration be included in Council's Draft Waste Collection & Disposal Strategy and the matter be further considered as part of the development of waste contract documents.*

Consideration of the Waste Avoidance Action Plan and the results of the Waste Collection & Disposal Survey indicated that the best domestic collection option that achieves the targets of the action plan and satisfies the wishes of the resident survey is the 240 litre mobile garbage bin split 50/50 garbage/recycling. Council resolved to

include the results of this survey in its Draft Waste Collection & Disposal Strategy and the results be further considered as part of the development of waste contract documents.

During this same period, Council had received a submission from Solo Waste seeking a five year extension of the Waste Contract.

The Waste Avoidance & Resource Recovery Strategy Action Plan for Local Government, and the results of the Waste Collection & Disposal Survey, were used as a basis for negotiations with Solo Waste on their contract submissions. The result of these negotiations resulted in a further report to Council on 21 January 2004 where Council resolved, in part, to enter into a contract with Solo Waste generally in accord with the Option A proposal as set out in the body of the report. Option A was considered the option of best fit for both the NSW Waste Avoidance & Resource Recovery Strategy Action Plan for Local Government and the results of the Waste Collection & Disposal Survey.

Council has engaged consultants to prepare contract documents for the new Waste Collection & Disposal Contract and the documentation is well advanced.

It is considered that Council should formalise its Waste Avoidance & Resource Recovery Disposal Strategy for the next five years.

It is recommended that the following strategy be adopted:-

1. *Waste Avoidance*

**Aim**

To encourage all sectors of the community to participate in waste avoidance as a strategy towards more sustainable waste management.

**Action**

Implement suitable Shire wide education programs.

2. *Resource Recovery*

**A) Domestic**

**Aims**

- i) To increase the amount of recyclable material removed from the domestic waste stream.
- ii) To reduce the amount of garden waste being disposed of to landfill.

**Actions**

- i) Relocate the divider in the existing 70/30 split bin to a 50/50 garbage/recyclable split.

- ii) Provide a designated recycling service to multi unit dwellings as requested.
- iii) Implement a voluntary green waste collection service to domestic properties.

## **B) Commercial & Industrial**

### **Aims**

- i) To increase the amount of recyclables recovered from the commercial and industrial waste stream.
- ii) To reduce the amount of commercial/industrial green waste disposed of to landfill.
- iii) To reduce the amount of inert waste disposed of to landfill.

### **Actions**

- i) Target specific industry groups to increase the amount of recycled material removed from the commercial industrial waste stream.
- ii) Provide a predisposal sorting area at Stotts Creek Landfill to sort green waste from the commercial/industrial waste stream.
- iii) Provide a predisposal sorting area to sort out reusable and recyclable material from the commercial/industrial waste stream.
- iv) Review waste disposal charges to encourage recycling/reuse of materials.

## **C) Construction/Demolition**

### **Aims**

- i) To increase the amount of recyclable material recovered from the construction/demolition waste stream.
- ii) To reduce the amount of construction/demolition waste disposed of to landfill.

### **Actions**

- i) Review landfill charges to encourage source separation, particularly masonry and tiles.
- ii) Provide a predisposal sorting area at Stotts Creek to remove green waste from the construction/demolition waste stream.
- iii) Provide a predisposal sorting area at Stotts Creek to sort out reusable recyclable material from the construction/demolition waste stream.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**18 [EC] Entomological Control Report for Period May to July 2004 and Annual Summary**

**ORIGIN:**

**Environment & Health Services**

**SUMMARY OF REPORT:**

The following report outlines nuisance insect and vermin control carried out during May to July 2004 and an annual summary of activity.

**RECOMMENDATION:**

That this report be received and noted.

## REPORT:

### BITING MIDGE

#### Seasonal activity

There were 9 biting midge related enquiries over the report period. Biting midge larval sampling carried out prior to spraying in July indicated moderate numbers of *Culicoides molestus* larvae present in the major canals.  
Control

Biting midge larval control sprays were applied with boom spray apparatus during July to canal estate beaches at; The Anchorage, Crystal Waters, Endless Summer, Blue Waters, Tweed Waters and Oxley Cove Estates. Excellent spray results were achieved at all sampled sites with an average midge larval reduction of 93% by 48 hrs post spray. These treatments should substantially reduce the mass spring emergence of biting midges from canal beaches.

Non-target organism sampling with a 1mm mesh sieve was carried out pre and post spray at sprayed and unsprayed control sites to confirm non-target safety for crabs and other small crustaceans.

### MOSQUITOES

#### Seasonal activity

Due to the extremely dry conditions and cooler weather, very little mosquito breeding occurred over the report period. Carbon dioxide baited traps recorded low to moderate numbers of mosquitoes over the report period. The salt to brackish water breeding *Culex sitiens* was the most commonly trapped mosquito followed by the saltmarsh mosquito *Ochlerotatus vigilax* and the container fresh water breeding *Oc. notoscriptus*.  
Control

No ground based or aerial mosquito larvicide control was necessary over the report period.

#### Arbovirus

There were 5 notified Ross River virus cases in the shire over the period May – July 04, (6.57 per 100,000 pop.) and 3 Barmah Forest virus cases (3.9 per 100,000 pop.). *Total arbovirus = 10.5 cases per 100,000 pop.* The peak month for arbovirus notifications was May.

## Other Pests

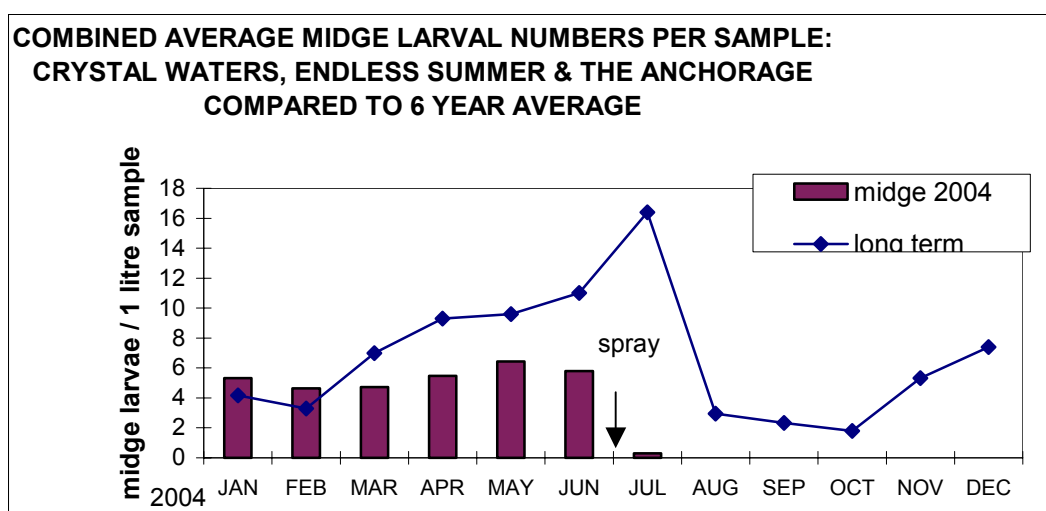
There were 44 miscellaneous requests for information and services over the report period. The most common enquiries related to ants, rodents and termites.

## ANNUAL SUMMARY OF BITING INSECT CONTROL

### Biting Midge

#### Seasonal abundance

Biting midge complaint numbers were below average most months of the year. Midge larval numbers monitored in canals were also below average during most of the year (see graph below).



#### Control

Biting midge larvicide treatment was carried out to midge-infested canals during December 2003 and July 2004. Post-spray testing confirmed very good control at all sprayed sites.

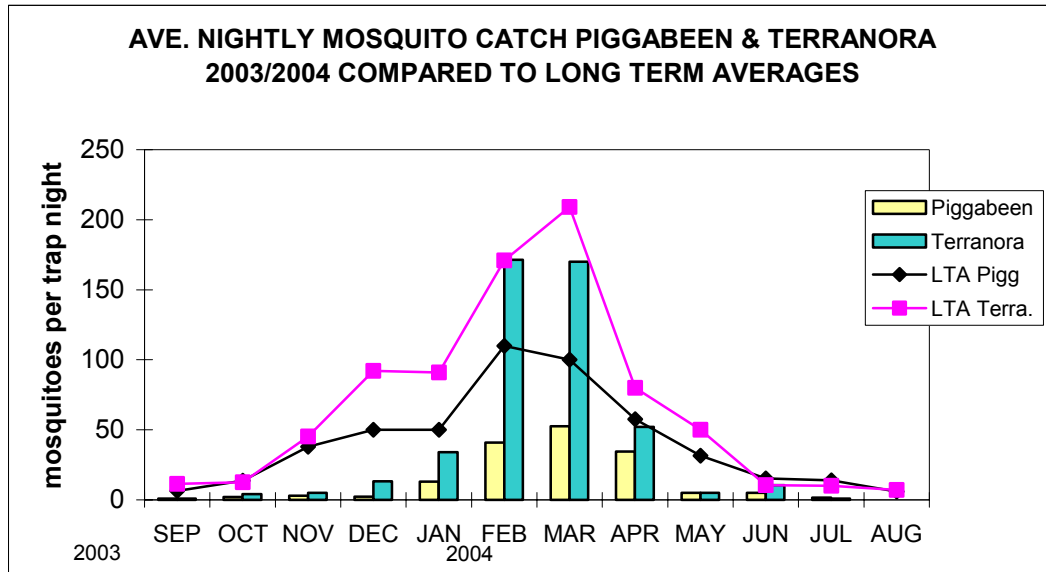
### Mosquitoes

#### Seasonal abundance

The 2003/2004 mosquito-season was quiet, with adult mosquito numbers below average in most areas of the shire throughout the year.

Mosquito complaints from residents were also low

The following graph depicts average nightly mosquito catches from carbon dioxide baited traps at West Tweed Heads and Terranora this season compared to long-term averages.



## Mosquito Control

Control activity included ground based application and the use of fixed wing aircraft. Ground based spraying utilised the biological larvicide Bti and the insect growth regulator methoprene, applied to *Ochlerotatus vigilax* and *Verrallina funerea* breeding areas.

Five aerial applications to control saltmarsh mosquitoes were necessary during the season (see following table)

Date	Site	Time	Chemical & rate	Hectares & amt. used	Weather	Target species	Pre spray dip ave.	Post spray dip ave
30-Oct-03	Mahers Lane	800	Abate	13ha	Fine	Oc. vigilax	>20/dip	0
			1.2 kg/ha	15 kg	5k SE	Cx. sitiens		
30-Oct-03	Charles Bay	830	Abate	18 ha	Fine	Oc. vigilax	>10/dip	0
			1.2 kg/ha	20 kg	5k SE			
30-Oct-03	N. Tumbulgum	740	Abate	11ha	Fine	Oc. vigilax	>7/dip	0
			1.2 kg/ha	13kg	5k SE	V. funerea		
26-Dec-03	Mahers Lane	1330	Abate	13ha	Fine	Oc. vigilax	15/dip	0
			1.2 kg/ha	15kg	15k N	Cx. Sitiens		
26-Dec-03	Charles Bay	1350	Abate	9ha	Fine	Oc. vigilax	7/dip	0.2
			1.2kg/ha	11kg	15k N			
6-Feb-04	N. Tumbulgum	740	Abate	11ha	Fine	V. funerea	>10	0
			1.2 kg/ha	15kg	5k SE	Oc. vigilax		
6-Feb-04	Mahers Lane	800	Abate	12ha	Fine	Oc. vigilax	>5	0
			1.2 kg/ha	16kg	5k SE	V. funerea		
6-Feb-04	Charles Bay	820	Abate	22ha	Fine	Oc. vigilax	>10	0
			1.2 kg/ha	29kg	5k SE	V. funerea		
27-Feb-04	N. Tumbulgum	1030	Abate	11ha	Fine	Oc. vigilax	>5	0
			1.2kg/ha	13kg	12K SE	V. funerea		
27-Feb-04	Mahers Lane	1100	Abate	8ha	Fine	Oc. vigilax	8/dip	0
			1.2kg/ha	10kg	12K SE	V. funerea		
27-Feb-04	Charles Bay	1130	Abate	18ha	Fine	Oc. vigilax	4/dip	0
			1.2kg/ha	22kg	15k SE			
10-Mar-04	Charles Bay	500	Abate	20ha	O'cast	Oc. vigilax	>5/dip	0
			1.2kg/ha	24kg	15k SE			
10-Mar-04	N. Tumbulgum	530	Abate	11ha	O'cast	Oc. vigilax	5/dip	0.1
			1.2kg/ha	16kg	15k SE	V. funerea		

\*\*\* Total aerial treatment area for season = 177 ha

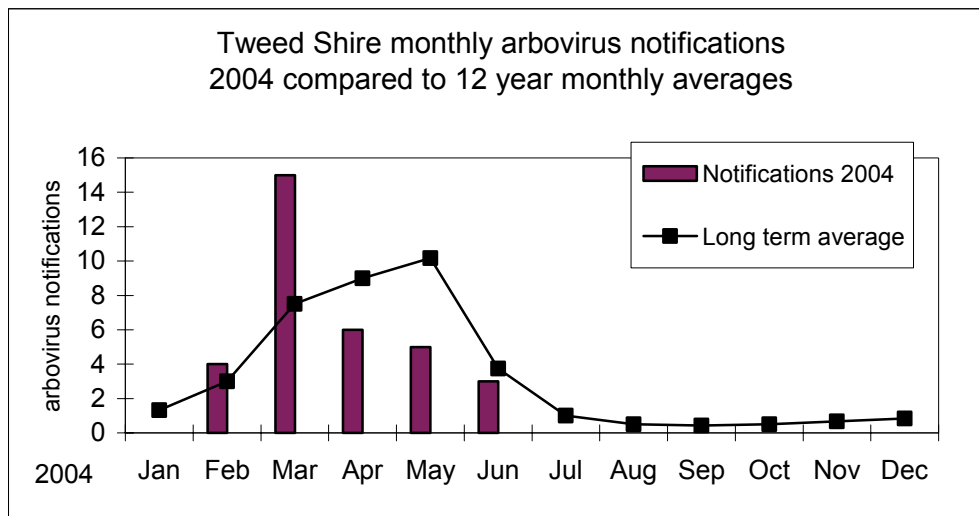
\*\*\* Annual aerial larvicide cost = \$4780

## Arbovirus

With the exception of a spike in RRv notifications around the Murwillumbah area during March, arboviral activity was relatively light this season. March notifications totalled 19.7 arbovirus cases per 100,000 of population.

Total notifications for August 2003 to July 2004 = 26 RRv and 13 BFv.

The following graph depicts arbovirus notifications this year, compared with long-term (12 year) monthly averages.



## Seasonal outlook, biting insects 2004/05

### Biting Midge

Major canal dredging in recent years has left beaches of all canal systems highly receptive to *Culicoides molestus* biting midge breeding. As was the case last season, canal sprays will need to be very effective to curb adult midge emergence this season.

### Mosquitoes

Good numbers of larvivorous fish and other aquatic mosquito predators developed in Tweed's mosquito breeding wetlands through late summer and autumn 2004. The extended dry conditions from April through July unfortunately decimated these populations. Many Tweed wetlands had developed a strong sulfur odour by late July, indicating oxidation of the marsh substrate which will likely lead to some acidity problems in these areas. Careful mosquito larval monitoring will be necessary following next season's summer rains as mosquito larvae will be relatively unchecked by predators.

### Pandanus Planthopper Control

By the end of June 04, all of the Shire's known pandanus planthopper infested pandanus trees had been treated by tree injection or foliar spray with the systemic insecticide imidacloprid. Extensive buffer areas were also treated around the infested sites. These treatments will hopefully eliminate the planthopper pest, or at least provide several years protection. The systemic insecticide protection of coastal pandanus trees on beachside reserves and headlands in non-infested areas is well underway, however, this treatment was halted in July due to the extremely dry conditions which are not conducive to systemic injection control. Treatments will resume when adequate rain falls in coastal areas.

Many pandanus trees in a badly infested section of the Kingscliff Coastal Reserve are showing signs of recovery since injection. Unfortunately, several of the larger trees in a primary infestation site just north of the Kingscliff Bowls Club will probably die due to the heavy pest infestations and slow uptake of systemic chemical caused by the heavy insect infestation and the lack of rain to aid sap movement and insecticide translocation to the leaf heads.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**19 [EC] Multicap Mt Warning Respite House Murwillumbah**

**ORIGIN:**

**Director**

**SUMMARY OF REPORT:**

Council at its meeting held 21 July 2004 resolved as follows:-

*"that Council on behalf of the Tweed Shire Community:*

- i) Seeks discussions with the Board and Management of Multicap with a view to securing equity for the community in the Mt Warning Respite House in the event the future sale of the house and property or in the event of change to a commercial use other than the original stated purpose of use being provision of respite accommodation for people with disabilities in the Tweed Shire and their carers.*
- ii) Requests a detailed breakdown of income received from the Tweed Community in cash and in kind as donations to develop the land and facility and a financial report on the overall expenditure on the project."*

A copy of Council's letter to Multicap regarding this resolution and the Multicap reply are reproduced in the report.

**RECOMMENDATION:**

That this report be received and noted.

**REPORT:**

Council at its meeting held 21 July 2004 resolved as follows:-

*"that Council on behalf of the Tweed Shire Community:*

- i) Seeks discussions with the Board and Management of Multicap with a view to securing equity for the community in the Mt Warning Respite House in the event the future sale of the house and property or in the event of change to a commercial use other than the original stated purpose of use being provision of respite accommodation for people with disabilities in the Tweed Shire and their carers.*
- ii) Requests a detailed breakdown of income received from the Tweed Community in cash and in kind as donations to develop the land and facility and a financial report on the overall expenditure on the project."*

A copy of Council's letter to Multicap regarding this resolution and the Multicap reply are reproduced below:-

22 July 2004

Mr Stephen Horton  
Chief Executive Officer  
Multicap  
PO Box 4013  
EIGHT MILE PLAINS QLD 4113

Dear Stephen

Multicap Respite House, Murwillumbah

I refer to the above and advise that Council at its meeting of 21 July 2004 resolved as follows:

*That Council on behalf of the Tweed Shire Community:*

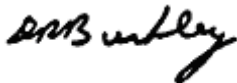
- i) Seeks discussions with the Board and Management of Multicap with a view to securing equity for the community in the Mt Warning Respite House in the event the future sale of the house and property or in the event of change to a commercial use other than the original stated purpose of use being provision of respite accommodation for people with disabilities in the Tweed Shire and their carers.*

*ii) Requests a detailed breakdown of income received from the Tweed Community in cash and in kind as donations to develop the land and facility and a financial report on the overall expenditure on the project.*

Accordingly, I seek discussions with the Board of Management as per part i) of the resolution and request that as soon as they are available the details in part ii) of the resolution be provided to Council.

Your early response to allow finalisation of the matters would be appreciated.

Yours faithfully

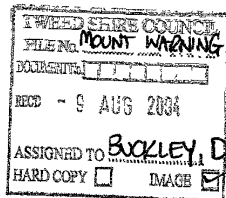


**MR DON BUCKLEY**  
**Acting General Manager**



3<sup>rd</sup> August 2004

Mr Don Buckley  
Acting General Manager  
Tweed Shire Council  
PO Box 816  
Murwillumbah. NSW 2484



LINK TO: 107072

Providing Therapy Support,  
Post-School and Adult  
Services, Community Based  
Accommodation Services,  
Flexible Family and Adult  
Services, Emergency/Crisis  
Support, Small Business  
and Supported Employment  
Services and Respite

Dear Don,

**Multicap Mt Warning Respite House Murwillumbah**

I refer to your letter of 22<sup>nd</sup> July concerning the Multicap Mt warning Respite House which was officially opened by Tweed Shire Council Mayor Warren Polglase on the 29<sup>th</sup> of July.

The specific issues you have raised as a result of the council resolution have been raised with us on a number of occasions and I am more than happy to reaffirm Multicap's position endorsed by of our Board of Management:

- i) The ownership of the house and land is vested in Multicap. Multicap is a non government disability services agency with a successful forty two year track record of working in partnership with governments and communities to deliver service solutions to people with a disability and their families. The Patron of the organisation is Her Excellency the Governor of Queensland Ms Quentin Bryce.

Multicap has committed substantial resources to the Tweed community from the outset of our involvement in this project over five years ago at the original site at Bray Park. Multicap committed to underwriting the construction costs of the house and with its completion continues to commit resources for the purpose of providing respite solutions in the region for the long term.

With demand for respite Australia wide having historically exceeded supply by an unhealthy margin and no end to that conundrum in sight we expect both the house and Multicap to enjoy a lengthy history of adding value to the community. The sale or alternate use of the house has not been and is not on our agenda.

- ii) Whilst it is not obliged to do so Multicap has previously undertaken to provide a summary of income and expenditures of the entire project. I would expect to be in a position to provide that summary in approximately six weeks.

Multicap Mt Warning Respite House – North Arm Road Murwillumbah NSW  
Response to Tweed Shire Council

Web Site  
www.multicap.asn.au  
Email  
info@multicap.asn.au

South East Queensland  
(includes Gold Coast)  
Registered Head Office  
269 Padstow Road  
Eight Mile Plains Q 4113  
PO Box 4013  
Eight Mile Plains Q 4113  
Ph (07) 3341 6644  
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Mackay  
29 Mogford Street  
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South Mackay Q 4740  
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Rockhampton  
355 Farm Street  
North Rockhampton Q 4700  
Ph (07) 4926 5755  
Fax (07) 4926 5766

New South Wales  
138 Marrickville Road  
Marrickville NSW 2204  
PO Box 151  
St Peters NSW 2044  
Ph (02) 9516 1438  
Fax (02) 9516 1367

ABN 65 107 245 816  
www.multicap.asn.au

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Finally Multicap has always recognised the contribution of the local community and business to the project including that of Council as attested to by the focus on this point at the opening, throughout the media and by the permanent plaque on site.

Please feel free to contact me should you require anything further, in the meantime we will continue to work in partnership with the vast majority of the community who support Multicap and the house towards ensuring maximum access by that section of the community we have served for so long with distinction.

We look forward to Council's continued support in that mission.

Yours faithfully



Stephen Horton  
Chief Executive Officer

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Multicap Mt Warning Respite House – North Arm Road Murwillumbah NSW  
Response to Tweed Shire Council

The response has detailed Multicap's position regarding the building rather than taking up the option for discussions with Council.

The letter also advises that while not obliged to do so, Multicap will be providing Council with a summary of income and expenditure of the entire project.

These will be provided to Councillors when they are received.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER:**

Nil.

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**REPORTS FROM SUB-COMMITTEES/WORKING GROUPS**

**Minutes Circulated with this Agenda Not Requiring Council Resolution**

**FOR THE CONSIDERATION OF COUNCIL:**

**UNDER SEPARATE COVER:**

1. Minutes of the Bob Whittle Murwillumbah Airfield Management Committee Meeting held Tuesday, 10 August 2004
  2. Minutes of the Consultative Committee held 15 July 2004
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## **CONFIDENTIAL MATTERS**

### **REPORTS THROUGH GENERAL MANAGER IN COMMITTEE**

#### **REPORTS FROM EXECUTIVE MANAGER - OFFICE OF THE GENERAL MANAGER IN COMMITTEE**

##### **1 [OGM] Sale of Lot 22 DP 617126 No 26 Wollumbin Street, Tyalgum**

#### **REASON FOR CONFIDENTIALITY:**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business
- 

### **REPORTS FROM DIRECTOR ENGINEERING AND OPERATIONS IN COMMITTEE**

##### **2 [ES] Acquisition of Land for Road Purposes - Lot 21 in DP 858801 - Kirkwood Road, Tweed Heads South**

#### **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)
-

**3 [ES] Tweed Shire Council ats Shang**

**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
- 

**4 [ES] Appointment of Consultant to Undertake Wetland Restoration and Environmental Monitoring of 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
-

## REPORTS FROM DIRECTOR ENVIRONMENT & COMMUNITY IN COMMITTEE

### 5 [EC] Cabarita Beach Surf Life Saving Club/Council Land Bogangar

#### 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 [EC] Coaching Rights - Tweed Heads & Murwillumbah Pools

#### REASON FOR CONFIDENTIALITY:

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- (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 [EC] New Waste Infrastructure**

**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
- 

**8 [EC] Council Owned Land at Bogangar used for Parking and Opportunities for Community Coastal Improvements**

**REASON FOR CONFIDENTIALITY:**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business
-

