



# **AGENDA**

## **PLANNING COMMITTEE MEETING Wednesday 14 December 2005**

**Chairman: Ms Lucy Turnbull**

**Administrators: Mr Garry Payne  
Ms Lucy Turnbull  
Mr Max Boyd**

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## ITEMS FOR CONSIDERATION OF THE COMMITTEE:

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2	[PD] S96 Application D87/0874.03 for Amendment to Development Consent D87/0874 for Erection of 6x3 Storey Holiday Resort Buildings Comprising 60x2 Bedroom Units, Sports Complex & Additional 72 Car Parking Spaces - Lot 9 DP238880 Tamarind Avenue, Bogangar	37
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**CONFIRMATION OF MINUTES**

**Minutes of the Planning Committee Meeting held Wednesday 30 November 2005**

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

1. Minutes of the Planning Committee Meeting held Wednesday 30 November 2005 (DW 1306840).
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## REPORTS THROUGH ACTING GENERAL MANAGER

### REPORTS FROM DIRECTOR PLANNING & DEVELOPMENT

#### 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 79(C)(1) 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 [PD] Section 96 Applications D88/0057.02, D87/0618.01 & 1615.01 for Amendments to Development Consents D88/0057, D87/0618 & 1615 which all Granted Approval for Part of the Cabarita Gardens Lakes Resort Motel at Lot 9 DP 238880, Tamarind Avenue, Bogangar

**ORIGIN:**

**Development Assessment**

**FILE NO: PF5370/210 Pt4**

**SUMMARY OF REPORT:**

Council is in receipt of three (3) S96 Applications which all seek to undertake refurbishments to the existing Cabarita Gardens Lakes Resort Motel. The need for the three (3) S96 Applications is a direct result of how the Motel was approved (which was over three separate applications). Subsequently, each consent needs to be amended to reflect the new plans which show a revised parking layout, internal upgrades to all rooms, external refurbishments to balconies and walkways, construction of new walkways, construction of privacy screens, reconfiguration of the access from Willow Avenue and removal of the internal driveways and rehabilitation of disturbed areas.

The following report assesses the proposed amendments having regard to the Act. The report concludes that the amendments will result in substantially the same development as that approved and that all relevant consultations and submissions have been undertaken. The results of such consultations do not warrant refusal of these applications.

The application also originally sought approval for the relocation of the existing pool, pool gazebo and aviary to the Tamarind Avenue frontage. However, a search of Council's records indicated that there was no development consent issued for the current pool only a building permit (No. 1237/81) and therefore this amendment cannot be dealt with via a S96 Application. Subsequently the applicant has deleted the pool, pool gazebo and aviary from the modification.

The application also originally sought approval for a lift and a 20m<sup>2</sup> larger roof level lobby area. However as the lobby area would create an additional storey by definition this element of the application has also been deleted. Approval for the lift is still sought and will result in the lift opening to an uncovered section of the roof which is satisfactory.

Subject to the imposition of additional conditions of consent the three S96 Applications are recommended for approval.

**RECOMMENDATION:**

That:-

- A. The application for the relocation of the pool, pool gazebo, and aviary and the larger roof lobby area is not approved.
- B. Section 96 Applications D88/0057.02, D87/0618.01 & 1615.01 for Amendments to Development Consents D88/0057, D87/0618 & 1615 which all granted approval for part of the Cabarita Gardens Lakes Resort Motel at Lot 9 DP 238880, Tamarind Avenue, Bogangar be approved subject to the following additional conditions of consent being added to each consent (NB Condition No. 3 (as detailed below) replaces condition No. 3 in D87/618 and replaces condition No. 2 in D88/0057) -

**GENERAL**

1. The development shall be completed in accordance with the following amended plans (excluding relocation of pool, pool gazebo, and aviary and the larger roof lobby area):
  - Plan Nos DA/01 Revision B prepared by LVO Architecture and dated 30 September 2005;
  - Plan Nos DA/02 Revision A prepared by LVO Architecture and dated 19 August 2005;
  - Plan Nos DA/03 Revision A prepared by LVO Architecture and dated 19 August 2005;
  - Plan Nos DA/04 Revision A prepared by LVO Architecture and dated 19 August 2005;
  - Plan Nos DA/05 Revision A prepared by LVO Architecture and dated 19 August 2005;
  - Plan Nos DA/06 Revision B prepared by LVO Architecture and dated 30 September 2005;
  - Plan Nos DA/07 Revision B prepared by LVO Architecture and dated 30 September 2005;
  - Plan Nos DA/08 Revision B prepared by LVO Architecture and dated 30 September 2005;
  - Plan Nos DA/09 Revision B prepared by LVO Architecture and dated 30 September 2005;
  - Plan Nos DA/10 Revision B prepared by LVO Architecture and dated 30 September 2005;

except where varied by the conditions of this consent.

[GEN0005]

2. 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.

[GEN0045]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

3. The developer shall provide 53 parking spaces including parking for the disabled in accordance with DCP2, AS 2890 and Austroads Part 11.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0065]

4. Waste material (soil, concrete, timber, masonry, steel and the like) generated by the development shall be disposed of in accordance with a Waste Management Plan which shall be submitted to and approved by the Principal Certifying Authority PRIOR to the issue of a construction certificate.

The Plan shall specify how the waste is to be treated and/or where the waste is to be disposed of.

[PCC1065]

5. 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.

[PCC1145]

6. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".
7. The proposed new entry canopy adjacent to the existing Porte Cochere shall be designed so as not to impact on the proposed access ramp to Unit Block 1 identified in Development Consent 87/0874.03

[PCC1155]

[PCCNS01]

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

8. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act 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.

9. Prior to commencement of work all required sedimentation and siltation control measures are to be installed and operational to the satisfaction of the General Manager or his delegate. Erosion and sedimentation control devices shall be installed in accordance with the publication, "Managing Urban Stormwater - Soil and Construction", prepared by the NSW Department of Housing. All erosion and sedimentation controls shall be maintained throughout the period of construction.

[PCW0985]

[PCWNS01]

#### **DURING CONSTRUCTION**

10. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -

**Monday to Saturday from 7.00am to 7.00pm**

**No work to be carried out on Sundays or Public Holidays**

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

11. 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.

[DUR0215]

12. 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 was made).

[DUR0375]

13. 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.

[DUR0395]

14. 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 in accordance with the WorkCover Authority of NSW Code of Practice and relevant Australian Standards.

Where necessary the provision for lighting in accordance with AS 1158 - Road lighting and provision for vehicular and pedestrian traffic in accordance with AS 1742 shall be provided.

Any such hoarding, fence or awning is to be removed prior to the issue of an occupation certificate/subdivision certificate.

Application shall be made to Tweed Shire Council including associated fees for approval prior to any structure being erected within Councils road reserve.

[DUR0435]

15. 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.

[DUR0645]

16. All demolition works are to observe the guidelines set down under the Environment Protection Authority publication "A Renovators Guide to the Dangers of Lead" and the WorkCover guidelines on working with and handling of asbestos.

[DUR0655]

17. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development.

[DUR1025]

18. An automatic fire detection and alarm system, designed to ensure the occupants are given adequate warning so they can evacuate the building in an emergency, must be installed in Class 2 and 3 buildings and Class 4 part of a building in accordance with the provisions of Specification E2.2a of the Building Code of Australia. Smoke alarms must be installed:

- (a) within each sole occupancy unit, located on or near the ceiling in any storey -

- (i) containing bedrooms -

\* between each part of the sole occupancy unit containing bedrooms and the remainder of the sole occupancy unit; and

\* where bedrooms are served by a hallway, in that hallway; and

- (ii) not containing any bedrooms, in egress paths; and

- (b) in a building not protected with a sprinkler system, in public corridors and other internal public spaces, located in accordance with the requirements for smoke detectors in AS 1670 and connected to activate a building occupant warning system in accordance with Specification 2.2a(6) of the Building Code of Australia which states:

A building occupant warning system must comply with Clause 8.7 of AS 1670 to sound through all occupied areas except-

- (c) in a Class 2 and 3 building or Class 4 part provided with a smoke alarm system:
  - (i) the sound pressure level need not be measured within a sole occupancy unit if a level of not less than 85dB(A) is provided at the door providing access to the sole occupancy unit; and
  - (ii) the inbuilt sounders of the smoke alarms may be used to wholly or partially meet the requirements.

A Certificate of Compliance is to be submitted to the PCA prepared by the licensed Electrical Contractor certifying that the installation complies with the above, prior to occupation of the building.

[DUR1245]

19. All materials used in the building must comply with the smoke developed and spread of flame indices specified in Specification C1.10 of the Building Code of Australia.

Note: Many materials including some timbers such as western red cedar do not comply and it is the applicants responsibility to ensure that all materials to be used are within the criteria specified.

[DUR1275]

20. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary.

[DUR2205]

21. Appropriate measures are to be put in place during the construction period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event.

[DUR2405]

22. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads.

[DUR2415]

23. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

**24. Plumbing**

- (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.

[DUR2495]

**25. 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:-**

- \* 45<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.

[DUR2555]

**26. 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.**

[DURNS01]

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

[DURNS02]

**28. If dewatering is required the applicant is to obtain all the necessary permits from the Department of Natural Resources.**

[DURNS03]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

**29. A person must not commence occupation or use of the whole or any part of a new building or structure (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).**

[POC0205]

**30. 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.**

[POC0225]

**31. All existing essential fire safety measures are to be certified by a qualified person to the effect that each of the fire safety measures has been assessed and were found to be performing to a standard not less than that to which it was originally designed.**

[POC0525]



32. Redundant road pavement, kerb and gutter or foot paving including and existing disused vehicular laybacks/driveways or other special provisions shall be reinstated in accordance with Councils adopted Development Design and Construction Specifications. [POC0755]
33. 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:
- (a) Easements for sewer, water supply and drainage over ALL services on private property.
  - (b) Creation of a right of Carriageway over Lot 618 DP 508200 in favour of Lot 9 DP 238880.

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.

[POCNS01]

## USE

34. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust, fumes or the like. [USE0125]
35. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997. [USE0135]
36. The LA10 noise level emitted from any activity shall not exceed the background noise level (LA90) by more than 5dB(A) at the boundary of any affected residence. [USE0165]
37. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised, notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive noise. [USE0175]

38. All external artificial lighting shall be shielded where required to the satisfaction of Councils General Manager or his delegate to ensure that the spill of light or glare from such lighting does not create a nuisance to any adjoining or neighbouring premises.

[USE0205]

39. All wastes shall be collected, stored and disposed to the satisfaction of the General Manager or his delegate.

[USE0875]

40. 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.

[USE1235]

**REPORT:**

**Applicant:** Mother Earth Developments Pty Ltd  
**Owner:** Mother Earth Developments Pty Ltd  
**Location:** Lot 9 DP 238880 Tamarind Avenue, Bogangar  
**Zoning:** 2(e) Residential Tourist  
**Cost:** \$4,000,000

**BACKGROUND:**

The existing Motel was approved via three separate consents. These are detailed as follows:

- Permit Number 1615 was granted approval on 9 October 1969 for a “motel block and residence”. A subsequent Building Application No. 341/69 detailed motel units and dwelling;
- Development Consent No. 87/0618 was granted approval on 8 September 1987 for the “addition of six motel units, deck to pool, barbeque deck and toilets”. A subsequent Building Application No. 763/87 detailed six new motel units;
- Development Consent No. 88/0057 was granted approval on 28 January 1988 for the “addition of twenty two suites to an existing motel”. This consent was then modified on 9 September 1988 to include another two additional units, and then again on 14 July 2005 for an amended car parking layout. A subsequent Building Application No. 1194/87 detailed twenty two new motel units;

The result of these development and building applications is a motel building comprising 50 units and a manager’s residence.

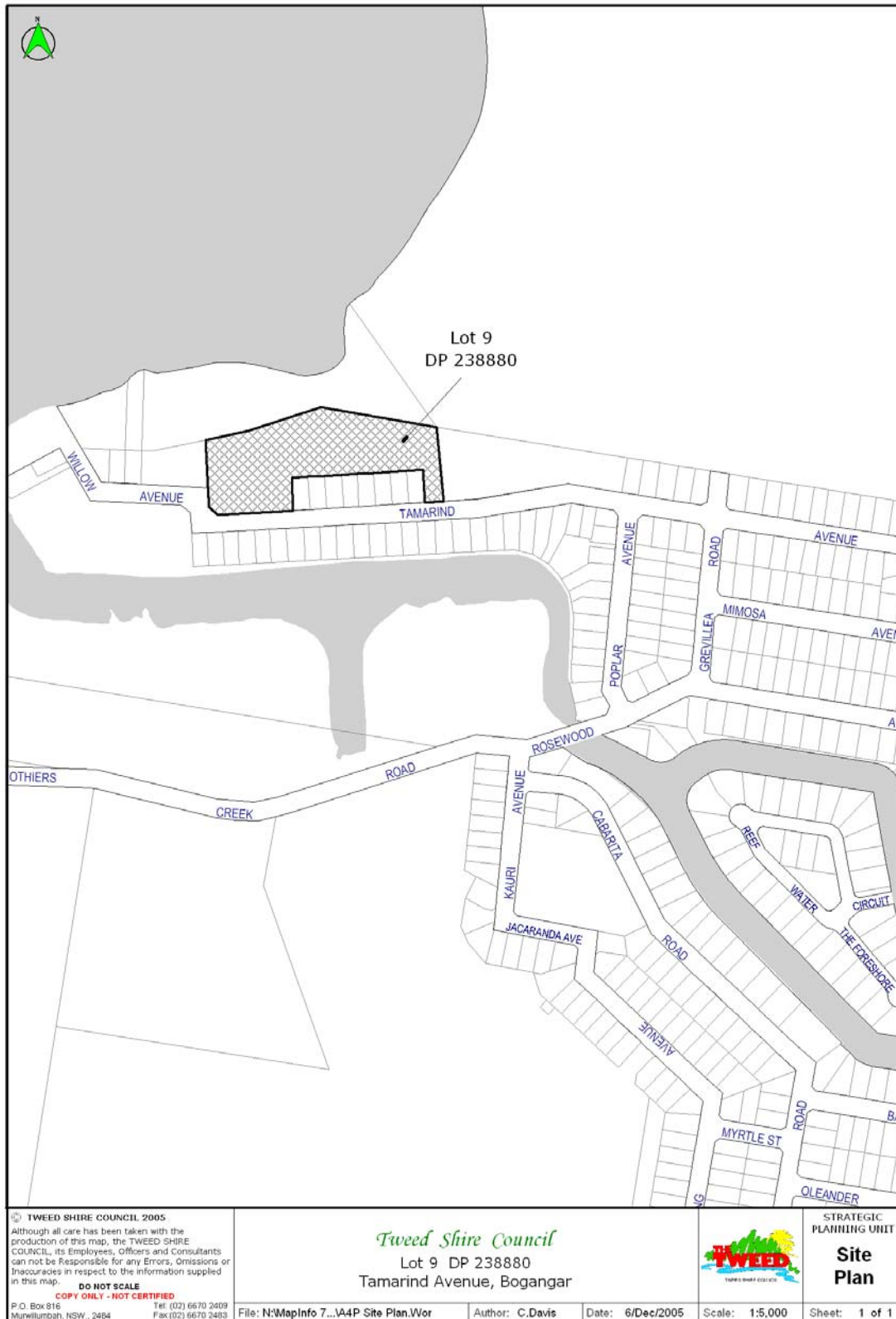
The three S96 Applications now seek the following amendments:

- Reconfiguration of the car parking layout to provide sixty spaces at grade (which will ultimately be within common property);
- Internal upgrading/refurbishments of all rooms and suites;
- External refurbishments to balconies and walkways;
- Construction of a new access walkway to the southern façade at first and second floor levels;
- Provision of privacy screens, sun shading and courtyards;
- Reconfiguration of the access from Willow Avenue; and
- Removal of the internal driveways and rehabilitation of disturbed areas.

The application also originally sought approval for the relocation of the existing pool, pool gazebo and aviary to the Tamarind Avenue frontage. However, a search of Council's records indicated that there was no development consent issued for the current pool only a building permit (No. 1237/81) and therefore this amendment cannot be dealt with via a S96 Application. Subsequently the applicant has deleted the pool, pool gazebo and aviary from the modification.

The application also originally sought approval for a lift and a 20m<sup>2</sup> larger roof level lobby area. However as the lobby area would create an additional storey by definition this element of the application has also been deleted. Approval for the lift is still sought and will result in the lift opening to an uncovered section of the roof which is satisfactory.

**SITE DIAGRAM:**

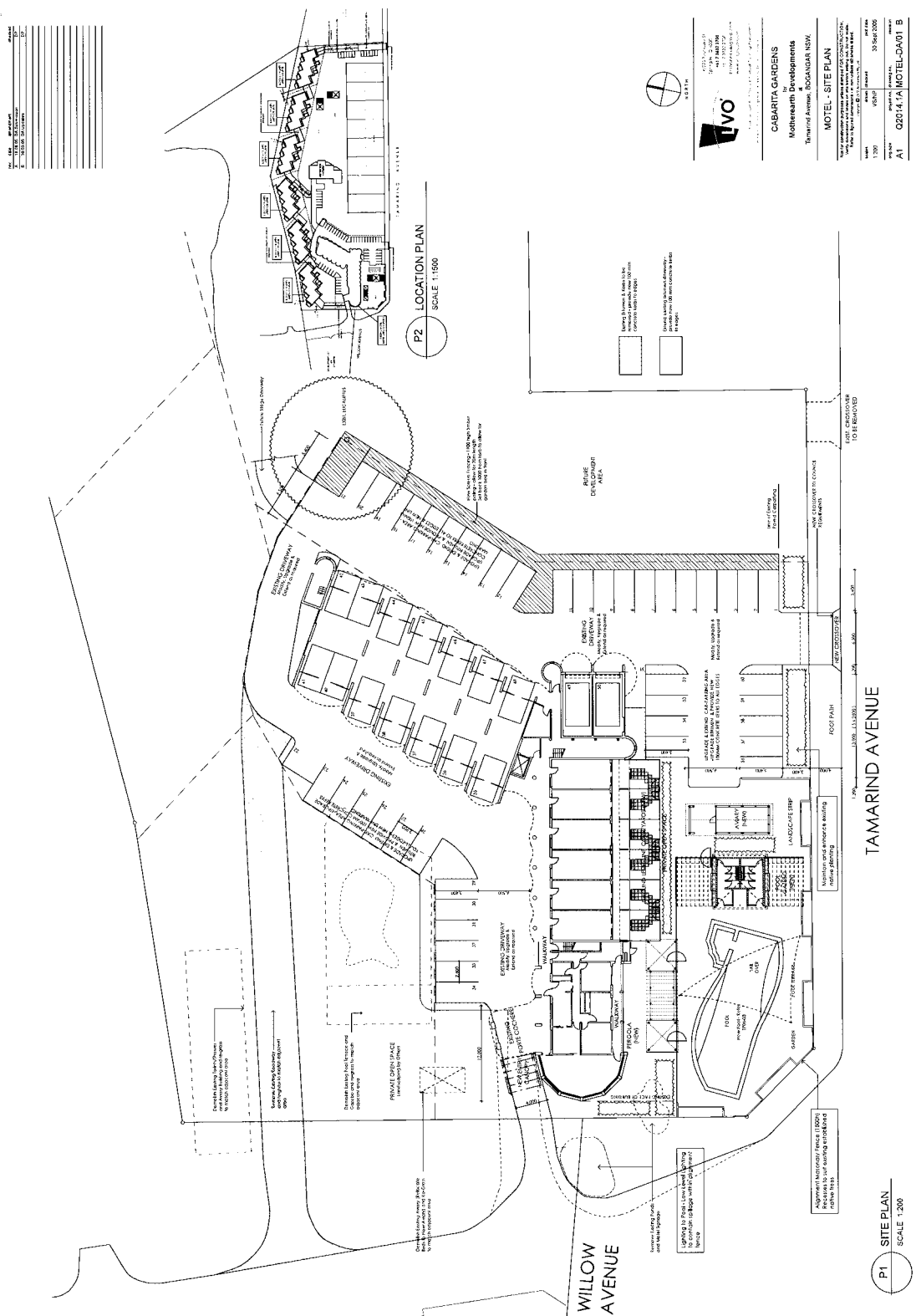


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*Tweed Shire Council*  
 Lot 9 DP 238880  
 Tamarind Avenue, Bogangar  
 File: N:\Mapinfo 7...A4P Site Plan.Wor  
 Author: C.Davis  
 Date: 6/Dec/2005

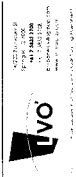
STRATEGIC PLANNING UNIT  
  
**Site Plan**  
 Scale: 1:5,000  
 Sheet: 1 of 1

PROPOSED PLANS





NO.	DATE	REVISION
1	10/10/05	ISSUE FOR TENDERS

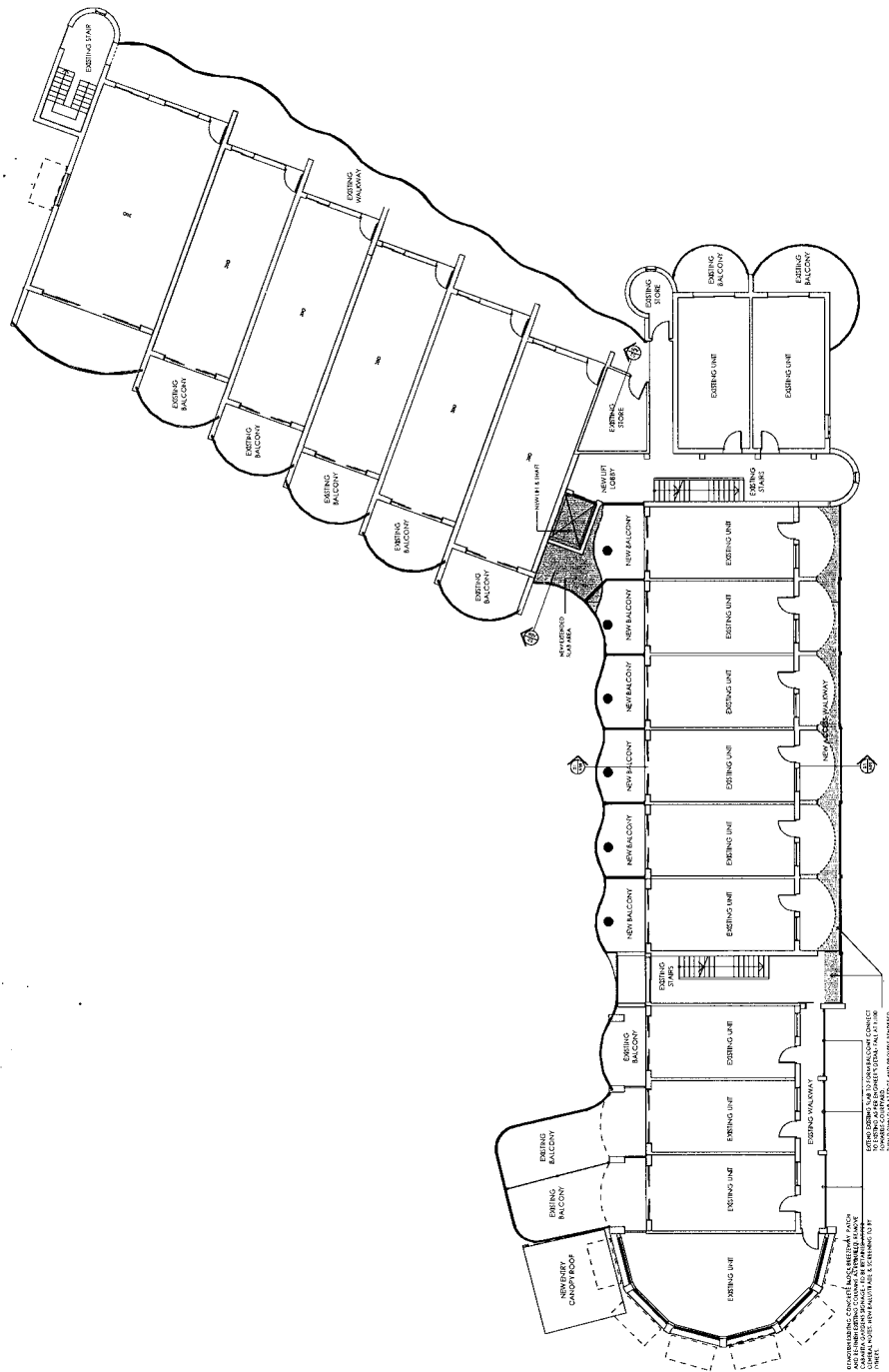


**CABARITA GARDENS**  
Motherearth Developments  
Dammond Avenue, BOONAH NSW

**MOTEL - FIRST FLOOR PLAN**

This is a preliminary drawing. It is not intended for construction. It is subject to change without notice. It is the responsibility of the client to verify all dimensions and details. It is not to be used for any other purpose.

DATE	10/10/05
BY	[Signature]
CHECKED	[Signature]
SCALE	1:100
PROJECT NO.	A1 02014.1A MOTEL-DA03 A



**P2** MOTEL - FIRST FLOOR PLAN  
SCALE 1:100

10/10/05 11:00 AM P2 - MOTEL - FIRST FLOOR PLAN - CABARITA GARDENS - BOONAH NSW - 110/112 MARKET STREET, SYDNEY NSW 2000



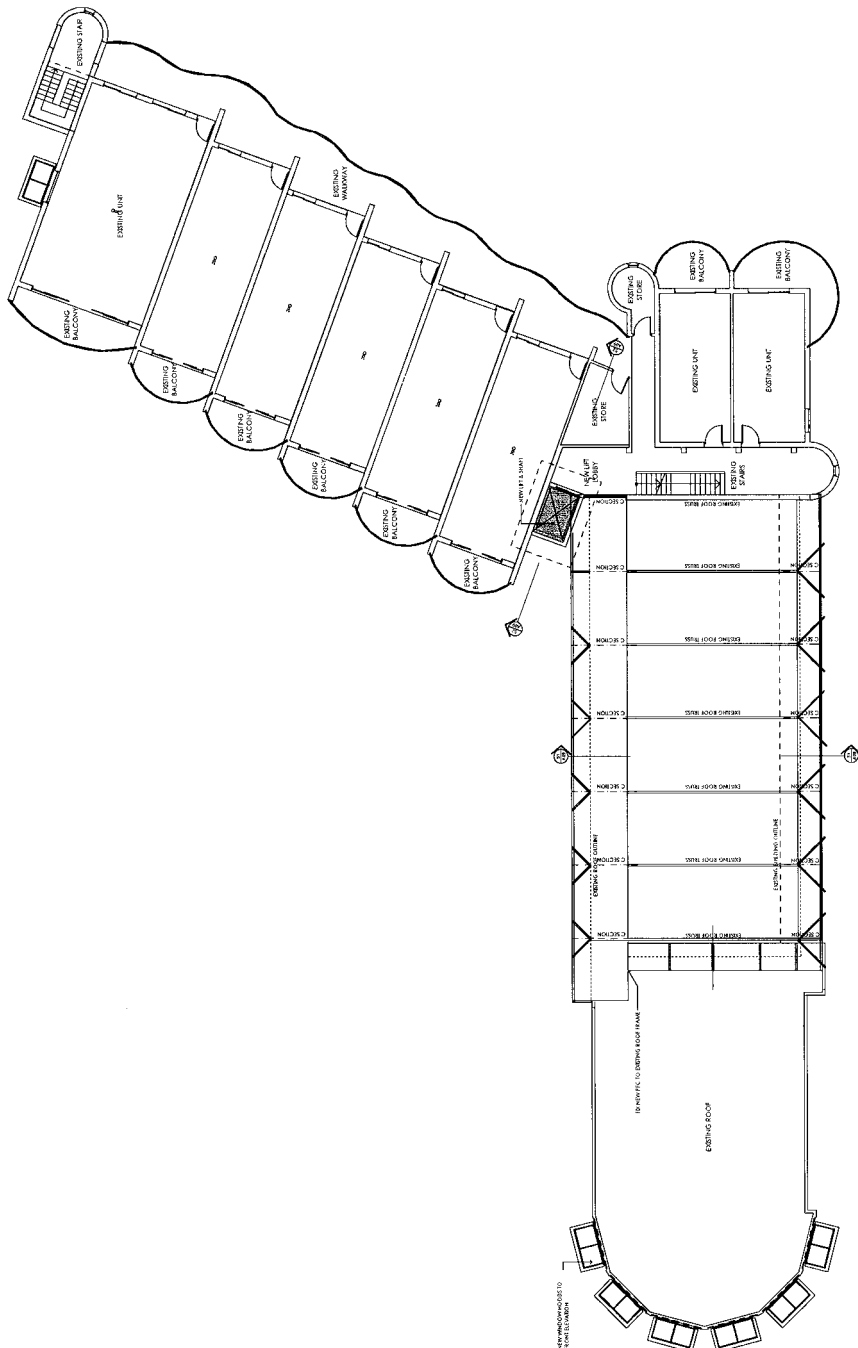


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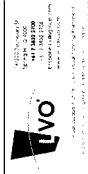
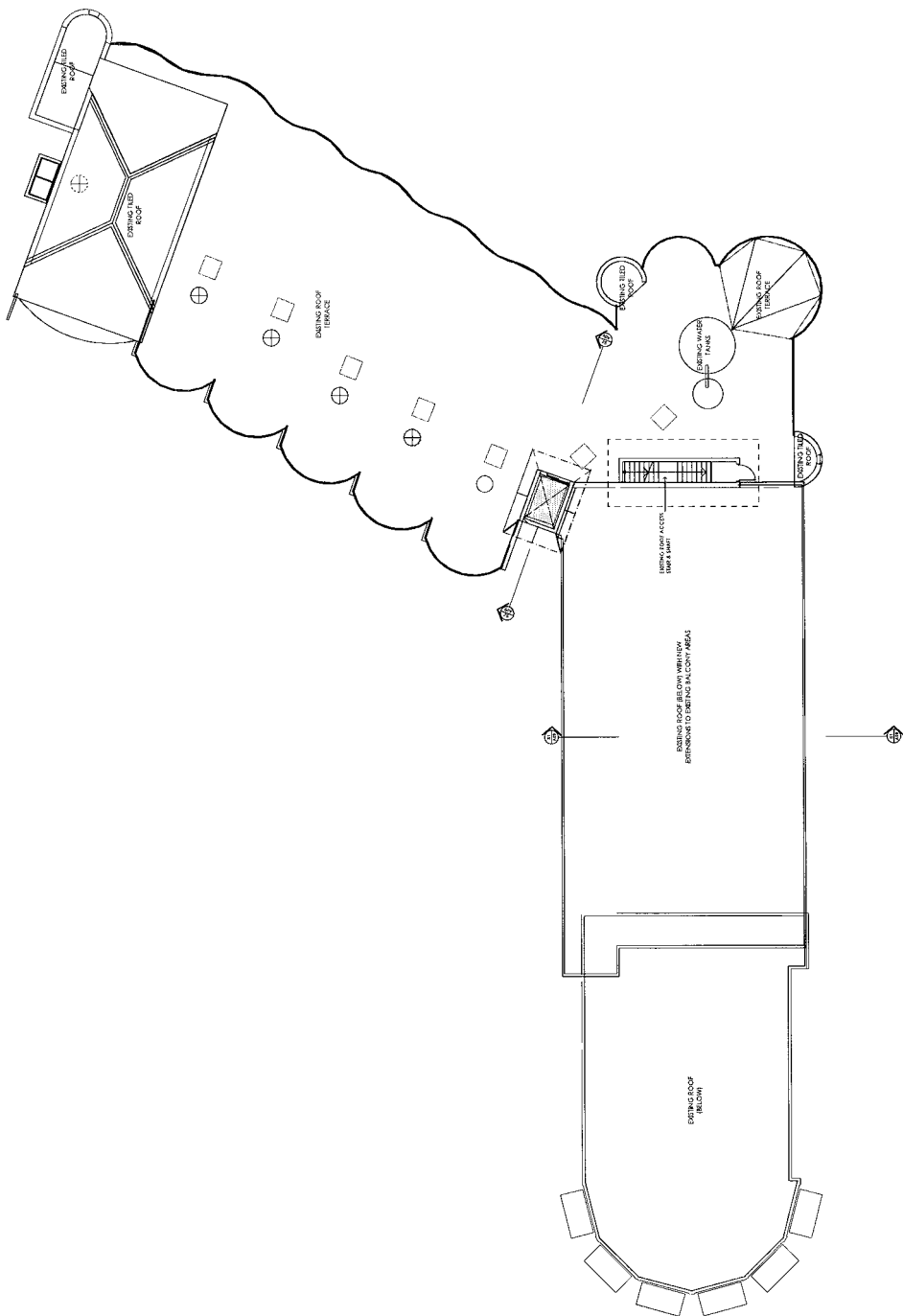
**TWO**  
 ARCHITECTS  
 10/111, 113, 115, 117, 119, 121, 123, 125, 127, 129, 131, 133, 135, 137, 139, 141, 143, 145, 147, 149, 151, 153, 155, 157, 159, 161, 163, 165, 167, 169, 171, 173, 175, 177, 179, 181, 183, 185, 187, 189, 191, 193, 195, 197, 199, 201, 203, 205, 207, 209, 211, 213, 215, 217, 219, 221, 223, 225, 227, 229, 231, 233, 235, 237, 239, 241, 243, 245, 247, 249, 251, 253, 255, 257, 259, 261, 263, 265, 267, 269, 271, 273, 275, 277, 279, 281, 283, 285, 287, 289, 291, 293, 295, 297, 299, 301, 303, 305, 307, 309, 311, 313, 315, 317, 319, 321, 323, 325, 327, 329, 331, 333, 335, 337, 339, 341, 343, 345, 347, 349, 351, 353, 355, 357, 359, 361, 363, 365, 367, 369, 371, 373, 375, 377, 379, 381, 383, 385, 387, 389, 391, 393, 395, 397, 399, 401, 403, 405, 407, 409, 411, 413, 415, 417, 419, 421, 423, 425, 427, 429, 431, 433, 435, 437, 439, 441, 443, 445, 447, 449, 451, 453, 455, 457, 459, 461, 463, 465, 467, 469, 471, 473, 475, 477, 479, 481, 483, 485, 487, 489, 491, 493, 495, 497, 499, 501, 503, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, 525, 527, 529, 531, 533, 535, 537, 539, 541, 543, 545, 547, 549, 551, 553, 555, 557, 559, 561, 563, 565, 567, 569, 571, 573, 575, 577, 579, 581, 583, 585, 587, 589, 591, 593, 595, 597, 599, 601, 603, 605, 607, 609, 611, 613, 615, 617, 619, 621, 623, 625, 627, 629, 631, 633, 635, 637, 639, 641, 643, 645, 647, 649, 651, 653, 655, 657, 659, 661, 663, 665, 667, 669, 671, 673, 675, 677, 679, 681, 683, 685, 687, 689, 691, 693, 695, 697, 699, 701, 703, 705, 707, 709, 711, 713, 715, 717, 719, 721, 723, 725, 727, 729, 731, 733, 735, 737, 739, 741, 743, 745, 747, 749, 751, 753, 755, 757, 759, 761, 763, 765, 767, 769, 771, 773, 775, 777, 779, 781, 783, 785, 787, 789, 791, 793, 795, 797, 799, 801, 803, 805, 807, 809, 811, 813, 815, 817, 819, 821, 823, 825, 827, 829, 831, 833, 835, 837, 839, 841, 843, 845, 847, 849, 851, 853, 855, 857, 859, 861, 863, 865, 867, 869, 871, 873, 875, 877, 879, 881, 883, 885, 887, 889, 891, 893, 895, 897, 899, 901, 903, 905, 907, 909, 911, 913, 915, 917, 919, 921, 923, 925, 927, 929, 931, 933, 935, 937, 939, 941, 943, 945, 947, 949, 951, 953, 955, 957, 959, 961, 963, 965, 967, 969, 971, 973, 975, 977, 979, 981, 983, 985, 987, 989, 991, 993, 995, 997, 999

**CABARITA GARDENS**  
 Moolihearth Developments  
 Timmerd Avenue, SOONSBOERS NSW  
**MOTEL - THIRD FLOOR PLAN**  
 AS SHOWN TO DATE 15/12/05  
 DRAWN BY: [Name], CHECKED BY: [Name], DATE: 15/12/05  
**A1 C2814.A1 (MOTEL-DAS5 A)**



**P4 MOTEL - THIRD FLOOR PLAN**  
 SCALE: 1:100

No.	Date	Author	Comments



**CABARITA GARDENS**  
**Motherearth Developments**  
 Tumband Avenue, BOSSASSA NSW

**MOTEL - ROOF FLOOR PLAN**

Author:	
Checked:	
Date:	
Scale:	
Drawn:	
Project:	
Sheet:	
Project No:	

**P5** **MOTEL - ROOF FLOOR PLAN**  
 SCALE: 1:100

DATE PLOTTED: 11/01/2006 12:00:00 PM







Table with 2 columns: Item No., Description. Contains a list of items for the planning committee meeting.

Access to the Site - Access to the Site

Access to the Site - Access to the Site. Description of site access requirements and parking provisions.

External Works - External Works

External Works - External Works. Description of external works including landscaping and paving.

Level 1 - Level 1

Level 1 - Level 1. Description of Level 1 construction and finishes.

Level 2 - Level 2

Level 2 - Level 2. Description of Level 2 construction and finishes.

Level 3 - Level 3

Level 3 - Level 3. Description of Level 3 construction and finishes.

Level 4 - Level 4

Level 4 - Level 4. Description of Level 4 construction and finishes.

Level 5 - Level 5. Description of Level 5 construction and finishes.

Level 6 - Level 6. Description of Level 6 construction and finishes.

Level 7 - Level 7. Description of Level 7 construction and finishes.

Level 8 - Level 8. Description of Level 8 construction and finishes.

Level 9 - Level 9. Description of Level 9 construction and finishes.

Level 10 - Level 10. Description of Level 10 construction and finishes.

Level 11 - Level 11. Description of Level 11 construction and finishes.

Level 12 - Level 12. Description of Level 12 construction and finishes.

Level 13 - Level 13. Description of Level 13 construction and finishes.

Level 14 - Level 14. Description of Level 14 construction and finishes.

Level 15 - Level 15. Description of Level 15 construction and finishes.

Level 16 - Level 16. Description of Level 16 construction and finishes.

Level 17 - Level 17. Description of Level 17 construction and finishes.

Level 18 - Level 18. Description of Level 18 construction and finishes.

Level 19 - Level 19. Description of Level 19 construction and finishes.

Level 20 - Level 20. Description of Level 20 construction and finishes.

Level 21 - Level 21. Description of Level 21 construction and finishes.

Level 22 - Level 22. Description of Level 22 construction and finishes.

Level 23 - Level 23. Description of Level 23 construction and finishes.

Level 24 - Level 24. Description of Level 24 construction and finishes.

Level 25 - Level 25. Description of Level 25 construction and finishes.

Level 26 - Level 26. Description of Level 26 construction and finishes.

Level 27 - Level 27. Description of Level 27 construction and finishes.

Level 28 - Level 28. Description of Level 28 construction and finishes.

Level 29 - Level 29. Description of Level 29 construction and finishes.

Level 30 - Level 30. Description of Level 30 construction and finishes.

Level 31 - Level 31. Description of Level 31 construction and finishes.

Level 32 - Level 32. Description of Level 32 construction and finishes.

Level 33 - Level 33. Description of Level 33 construction and finishes.

Level 34 - Level 34. Description of Level 34 construction and finishes.

Level 35 - Level 35. Description of Level 35 construction and finishes.

Level 36 - Level 36. Description of Level 36 construction and finishes.

Level 37 - Level 37. Description of Level 37 construction and finishes.

Level 38 - Level 38. Description of Level 38 construction and finishes.

Level 39 - Level 39. Description of Level 39 construction and finishes.

Level 40 - Level 40. Description of Level 40 construction and finishes.

Level 41 - Level 41. Description of Level 41 construction and finishes.

Level 42 - Level 42. Description of Level 42 construction and finishes.

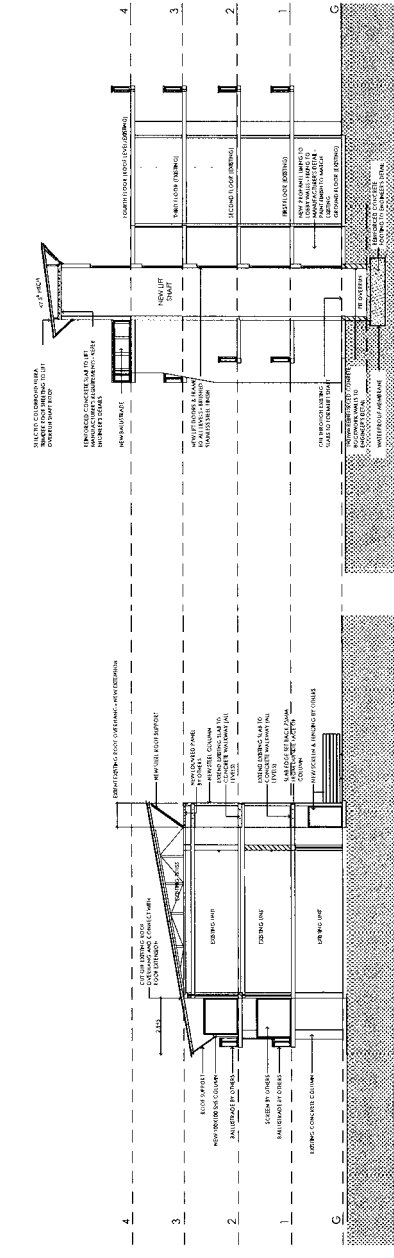
Level 43 - Level 43. Description of Level 43 construction and finishes.

Level 44 - Level 44. Description of Level 44 construction and finishes.

Level 45 - Level 45. Description of Level 45 construction and finishes.

Level 46 - Level 46. Description of Level 46 construction and finishes.

Project information block including 'CABARITA GARDENS Motherearth Developments', 'MOTEL - SECTIONS', and contact details for 'MOTEL-DA10/B'.



**CONSIDERATIONS UNDER SECTION 96 & 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

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

Having regard for this criteria the applicant has provided that the proposed variations result in substantially the same development on the basis that:

- *The proposal as modified is still for a fifty unit motel plus managers residence;*
- *The basic floor layouts have not changed;*
- *The required number of onsite car parks will be provided in an improved configuration;*
- *The height, bulk, scale floor space and siting of the motel remains unchanged;*
- *Upgrading and refurbishment work is essentially cosmetic and in the nature of routine maintenance for a building up to thirty five years old;*
- *The provision of a lift and walkways improves accessibility and feasible disabled access.*

The above comments are concurred with demonstrate that the proposed modifications would result in substantially the same development as that originally approved and can therefore be dealt with via S96 (2) of the Act.

In considering an application to modify a development consent Council must have regard to Section 79C of the Act. The matters of relevance are addressed as follows:

Tweed Local Environmental Plan 2000

The subject site is zoned 2(e) Residential Tourist under the provisions of the plan. Development for the purposes of a motel is permissible with consent and entirely consistent with the zone objectives.

Clause 16 of the Plan provides that a maximum height of three storeys applies in this locality. The existing lawful building comprises a part three storey, a part four storey, and part five-storey building. The five storey element of the building comprises ground level under croft parking, three levels of motel units and a fifth roof level covered roof lobby area adjacent to the proposed lift site.

The proposed modification to incorporate a lift will extend 3.5 metres above the existing roof deck lobby area but will not result in an increase in the number of storeys to the building as a lift with an internal shaft of 15m in height is only defined as a two-storey building.



The visual implications of the lift shaft extending onto the roof deck are considered negligible, as it will not be visible to nearby residences due to the screening already on the roof level.

Clause 35 requires consideration of Acid Sulphate Soils in assessing any application for works that may interfere with contaminated soils. The applicant has subsequently submitted an Acid Sulphate Soils Assessment and Dewatering Management Plan as excavations for the lift may interfere with Class 3 - Acid Sulphate Soils. Subject to the recommended conditions of consent Clause 35 is considered to have been satisfied.

DCP No. 2 – Site Access & Parking Code

Under the provisions of this plan a motel is required to provide half a space per staff member and one space per unit. Subsequently a motel with fifty (50) motel units, three staff members and a manager’s residence will require 52.5 spaces.

The modified plans show a total of fifty six (56) spaces on site. Subsequently the proposed modified plans comply with DCP No. 2.

The applicant has indicated a preference that the three (3) excess parking spaces be credited to Consent No: 87/0874, which is a separate item on this agenda for a modification to a Resort comprising 60 Units. This matter is addressed in D87/0874.03.

**Submissions**

The S96 Applications were jointly advertised and notified to nearby residents between 14 September 2005 and 28 September 2005. During this period Council received four (4) written objections to the proposed motel amendments. One of the written submissions was on behalf of 21 local residents.

The issues raised in the objections to these modifications are detailed as follows:

<b>Issue</b>	<b>Assessment</b>
<i>Relocation of the pool, gazebo and aviary will create excess noise, excess light spillage a reduction in privacy, and will disrupt amenity.</i>	The pool relocation, gazebo relocation and aviary relocation have all been deleted from the proposed modification.  No further assessment is required.
<i>The modification will result in an increase in floor area which exceeds the permitted three storey height limit for the area.</i>	The roof lobby area has been deleted as part of this amendment. The lift shaft will protrude 3.5m above the roof, however, this section by definition is only a two-storey building. The proposed modifications (as amended) do not increase the area of non-compliance with the three-storey height limit.  This objection does not warrant amendment or refusal of the modifications.

<p><i>This application should not restrict access to the lake. No developer should have private access to the lake.</i></p>	<p>The proposed modifications occur on Lot 9 DP 238880. This allotment does not have frontage to Cudgen Lake. Lot 466 DP 755701 is the allotment with frontage to the lake and this allotment does not form part of these modifications.</p> <p>Whilst Lot 9 and Lot 466 have been used by the general public for access to the lake this is private land and is not the formal lake access. Formal lake access is obtained at the end of Willow Avenue where there is a boat ramp, and BBQ facilities.</p> <p>This objection does not warrant amendment or refusal of the modifications.</p>
<p><i>The proposed amendments should not be approved by way of S96 Applications and should be new development applications. To approve these S96 Applications would create a dangerous precedent as the consents which seek amendment are up to thirty six (36) years old which is some ten years prior to the Environmental Planning &amp; Assessment Act 1979 coming in to force.</i></p>	<p>Section 96 (2) of the Act specifies that:</p> <p>“A consent authority may, on application being made by the applicant or any other person entitled to act on a <b>consent granted by the consent authority</b> and subject to and in accordance with the regulations, modify the consent if:</p> <ul style="list-style-type: none"> <li>a) <i>It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</i></li> <li>b) <i>It has consulted with the relevant bodies....</i></li> <li>c) <i>It has notified the application...</i></li> <li>d) <i>It has considered any submissions...</i></li> </ul> <p>Section 96 goes on to say:</p> <p><i>S96 (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in Section 79C(1) as are of <b>relevance</b> to the development the subject of this application.</i></p> <p>As detailed above S96 does not specify a time period to which S96 can relate. Provided the consent that is to be modified was issued by the consent authority and the S96 is assessed against the relevant criteria, no further restrictions apply to Section 96.</p> <p>Subsequently, the S96 is considered to be capable of approval subject to the recommended conditions of consent.</p> <p>This objection does not warrant amendment or refusal of the modifications.</p>

All of the above issues have been considered as part of the assessment of these Section 96 Applications. The issues are not considered to warrant further amendment or refusal and subsequently the current S96 applications are recommended for conditional consent.

**OPTIONS:**

1. Approve the S96 Applications in accordance with the recommended conditions of consent.
2. Refuse the S96 Applications.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination of these applications they have a right to make an appeal to the Land & Environment Court.

Should the objectors be dissatisfied with the statutory assessment of these applications they have a right to make an appeal in accordance with Section 123 of the Environmental Planning & Assessment Act 1979.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

Each proposed amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determinations.

Having assessed the S96 Applications against the current applicable controls, the application is considered to warrant conditional approval.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

- [1. Consent Notices D88/0057 \(as amended 14/7/1995\), D87/0618 \(original 8/9/1987\) and 1615 \(original 9/10/1969\) \(DW 1309760\)](#)
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**2 [PD] S96 Application D87/0874.03 for Amendment to Development Consent D87/0874 for Erection of 6x3 Storey Holiday Resort Buildings Comprising 60x2 Bedroom Units, Sports Complex & Additional 72 Car Parking Spaces - Lot 9 DP238880 Tamarind Avenue, Bogangar**

**ORIGIN:**

**Development Assessment**

**FILE NO: PF5370/210 Pt 4**

**SUMMARY OF REPORT:**

Council is in receipt of a S96 Application that seeks approval for alterations to the approved plans for a "sixty unit tourist resort" at part Lot 9 in DP 238880, Tamarind Avenue, Bogangar.

The consent was originally issued on 14 December 1988 with subsequent amendments being approved by Council in May 1989 and 20 January 1992.

Some work has been done in relation to this approval and Council has acknowledged commencement of the development, however, the main buildings have not been built. Subsequently, the amendments proposed will not require demolition but rather the construction of an amended resort.

The proposed amendments include provision of a lift to Buildings B – F, provision of a rear access walkway, improvements to the façade and internal unit layouts including use of contemporary external cladding materials and colours, reconfiguration of the approved parking to provide an interconnected basement, reconfigure and rationalise the recreational facilities area, and amend the staging plan.

The following report assesses each element of the proposed amendments having regard to S96 of the Act. The report concludes that the amendments will result in substantially the same development as that approved and that all relevant consultations and submissions have been undertaken. The results of such consultations do not warrant refusal of this application.

Subject to the imposition of additional conditions of consent the S96 Application is recommended for approval.

**RECOMMENDATION:**

That Section 96 Application D87/0874.03 for an amendment to Development Consent D87/0874 for the erection of 6 x 3 storey holiday resort buildings comprising 60 x 2 bedroom units, sports complex and additional 72 car parking spaces at Lot 9 DP 238880, Tamarind Avenue, Bogangar be approved subject to the following new conditions (NB New Condition No. 2 replaces old No. 18; New Condition No. 6 replaces old No. 2; New Condition No. 7 replaces old No. 7; New Condition No. 16 replaces old No. 8) and New Condition No. 17 replaces old No. 14).

**GENERAL**

1. The development shall be completed in accordance with the with the following amended plans:

- DA/00 Revision A prepared by LVO Architecture and dated 30/09/2005;
- DA/01 Revision A prepared by LVO Architecture and dated 30/09/2005;
- DA/02 Revision A prepared by LVO Architecture and dated 30/09/2005;
- DA/03 Revision A prepared by LVO Architecture and dated 30/09/2005;
- DA/04 Revision A prepared by LVO Architecture and dated 30/09/2005;
- DA/05 Revision A prepared by LVO Architecture and dated 30/09/2005;
- DA/06 Revision A prepared by LVO Architecture and dated 30/09/2005;
- DA/07 Revision A prepared by LVO Architecture and dated 30/09/2005;
- DA/08 Revision A prepared by LVO Architecture and dated 30/09/2005;
- DA/09 Revision A prepared by LVO Architecture and dated 30/09/2005;

except where varied by the conditions of this consent.

2. The development shall be completed in accordance with the following stage plan: [GEN0005]

- Stage 1 construct Block 6;
- Stage 2 construct Block 5;
- Stage 3 construct Block 4,
- Stage 4 construct Block 3;
- Stage 5 construct Block 2;

- Stage 6 construct Block 1;
- Stage 7 construct recreation area

[GEN0005]  
3. 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.

[GEN0045]

4. Advertising structures/signs to be the subject of a separate development application, where statutorily required.

[GEN0065]

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

5. Any car parking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards. A plan of the lighting shall be approved by the Principal Certifying Authority PRIOR to the issue of a Construction Certificate.

[PCC0055]

6. The developer shall provide 62 parking spaces including parking for the disabled in accordance with DCP2, AS 2890 and Austroads Part 11.

This will necessitate a total of 115 onsite parking spaces including that required for the existing Cabarita Gardens Lakes Motel.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to and approved by the Principal Certifying Authority prior to the issue of a construction certificate.

[PCC0065]

7. A detailed plan of landscaping is to be submitted and approved by Council prior to the issue of a Construction Certificate.

[PCC0585]

8. The basement car parking is to be protected against the inflow of water to a level of 500mm above the design flood level of RL 3.4m AHD in accordance with DCP5 - Development of Flood Liable Land. A detailed design of the basement stormwater pump out system is to be provided designed for a storm event with a 10 year average return interval (ARI 10) and the consequences of pump failure and the 100 year ARI storm event must be addressed and included with the above details prior to the issue of a Construction Certificate.

[PCC0685]

9. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
  - (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
  - (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
  - (d) Specific Requirements to be detailed within the Construction certificate application include:
    - (i) Shake down area along the haul route immediately before the intersection with the road reserve.
    - (ii) All runoff from basement areas and exposed basement driveways must be treated to remove oil and sediment contaminants prior to discharge to an approved drainage system. Permanent quality control devices shall be sized in accordance with Section D7.12 of *Development Design Specification D7 - Stormwater Quality*. Engineering details of treatment devices, including maintenance schedules, must be submitted with a s68 Stormwater Application for Council approval.
    - (iii) Basement car wash bays must be bunded to prevent contamination of basement stormwater. All captured car wash runoff shall be treated to remove oil and sediment contaminants prior to discharge to sewer as trade waste, requiring a Tweed Shire Council Trade Waste Application. [PCC1105]
10. A construction certificate application for works that involve any of the following:-
- connection of a private stormwater drain to a public stormwater drain
  - installation of stormwater quality control devices
-



- erosion and sediment control works

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

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

[PCC1145]

11. Erosion and Sediment Control shall be provided in accordance with the following:

- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.

- (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".

[PCC1155]

12. A construction management plan shall be submitted for the approval of the Director Environment & Community Services prior to issue of a Construction Certificate. All works shall comply with the approved plan.

[PCCNS01]

13. An updated acid sulphate soils management plan shall be submitted for the approval of the Director Environment & Community Services prior to issue of a Construction Certificate. All works shall comply with the approved plan.

[PCCNS01]

14. A dewatering management plan and water quality management plan shall be submitted for the approval of the Director Environment & Community Services prior to issue of a Construction Certificate. All works shall comply with the approved plan.

[PCCNS01]

15. Prior to issue of a Construction Certificate details of a car wash facility shall be submitted for the approval of the Director Environment & Community Services.

[PCCNS01]

16. 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:

**Stage 1**

Water DSP6: 10 ET @ \$4230 \$42,300

Sewer Hastings Point: 10 ET @ \$2634 \$26,340

**Stage 2**

Water DSP6: 10 ET @ \$4230 \$42,300

Sewer Hastings Point: 10 ET @ \$2634 \$26,340

**Stage 3**

Water DSP6: 10 ET @ \$4230 \$42,300

Sewer Hastings Point: 10 ET @ \$2634 \$26,340

**Stage 4**

Water DSP6: 10 ET @ \$4230 \$42,300

Sewer Hastings Point: 10 ET @ \$2634 \$26,340

**Stage 5**

Water DSP6: 10 ET @ \$4230 \$42,300

Sewer Hastings Point: 10 ET @ \$2634 \$26,340

**Stage 6**

Water DSP6: 10 ET @ \$4230 \$42,300

Sewer Hastings Point: 10 ET @ \$2634 \$26,340

These charges are valid for the date of the consent only and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges current at the time of payment.

**A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED 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.

[PCC0265/PSC0165]

**PRIOR TO COMMENCEMENT OF WORK**

17. 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 council and
  - (b) the person having the benefit of the development consent has:
    - (i) appointed Council as the principal certifying authority for the building work.
18. 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. [PCW0215]
19. 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:- [PCW0225]
- (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
- [PCW0245]
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. [PCW1065]
21. Where any pumps used for dewatering operations are proposed to be operated on a 24-hour basis, the owners of adjoining premises shall be notified accordingly prior to commencement of such operations. [PCW0125]
22. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act 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.

[PCW0985]

23. Prior to commencement of work all required sedimentation and siltation control measures are to be installed and operational to the satisfaction of the General Manager or his delegate. Erosion and sedimentation control devices shall be installed in accordance with the publication, "Managing Urban Stormwater - Soil and Construction", prepared by the NSW Department of Housing. All erosion and sedimentation controls shall be maintained throughout the period of construction.

[PCWNS01]

#### **DURING CONSTRUCTION**

24. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -

**Monday to Saturday from 7.00am to 7.00pm**

**No work to be carried out on Sundays or Public Holidays**

**The proponent is responsible to instruct and control subcontractors regarding hours of work.**

[DUR0205]

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 was made).

[DUR0375]

26. 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.

[DUR0395]

27. 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 in accordance with the WorkCover Authority of NSW Code of Practice and relevant Australian Standards.

Where necessary the provision for lighting in accordance with AS 1158 - Road lighting and provision for vehicular and pedestrian traffic in accordance with AS 1742 shall be provided.

Any such hoarding, fence or awning is to be removed prior to the issue of an occupation certificate/subdivision certificate.

Application shall be made to Tweed Shire Council including associated fees for approval prior to any structure being erected within Councils road reserve.

[DUR0435]

28. 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.

[DUR0645]

29. All demolition works are to observe the guidelines set down under the Environment Protection Authority publication "A Renovators Guide to the Dangers of Lead" and the WorkCover guidelines on working with and handling of asbestos.

[DUR0655]

30. An automatic fire detection and alarm system, designed to ensure the occupants are given adequate warning so they can evacuate the building in an emergency, must be installed in Class 2 and 3 buildings and Class 4 part of a building in accordance with the provisions of Specification E2.2a of the Building Code of Australia. Smoke alarms must be installed:

- (a) within each sole occupancy unit, located on or near the ceiling in any storey -

- (i) containing bedrooms -

- \* between each part of the sole occupancy unit containing bedrooms and the remainder of the sole occupancy unit; and
- \* where bedrooms are served by a hallway, in that hallway; and

- (ii) not containing any bedrooms, in egress paths; and

- (b) in a building not protected with a sprinkler system, in public corridors and other internal public spaces, located in accordance with the requirements for smoke detectors in AS 1670 and connected to activate a building occupant warning system in accordance with Specification 2.2a(6) of the Building Code of Australia which states:

A building occupant warning system must comply with Clause 8.7 of AS 1670 to sound through all occupied areas except-

- (c) in a Class 2 and 3 building or Class 4 part provided with a smoke alarm system:

- (i) the sound pressure level need not be measured within a sole occupancy unit if a level of not less than 85dB(A) is provided at the door providing access to the sole occupancy unit; and
- (ii) the inbuilt sounders of the smoke alarms may be used to wholly or partially meet the requirements.

A Certificate of Compliance is to be submitted to the PCA prepared by the licensed Electrical Contractor certifying that the installation complies with the above, prior to occupation of the building.

[DUR1245]

31. All materials used in the building must comply with the smoke developed and spread of flame indices specified in Specification C1.10 of the Building Code of Australia.

Note: Many materials including some timbers such as western red cedar do not comply and it is the applicants responsibility to ensure that all materials to be used are within the criteria specified.

[DUR1275]

32. **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.

[DUR2075]

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

[DUR2085]

34. 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.

[DUR2485]

35. **Plumbing**

- (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.

[DUR2495]

36. 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.

[DUR2535]

37. 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:-

- \* 45<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.

[DUR2555]

38. 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.

[DUR0215]

39. All pumps used for any onsite dewatering operations shall be acoustically shielded to the satisfaction of the General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.

[DUR0235]

40. Pumps used for dewatering operations are to be electrically operated. Diesel pumps are not to be used unless otherwise approved by Tweed Shire Council.

[DUR0255]

41. Practical measures to the satisfaction of the General Manager or his delegate are to be taken to acoustically shield all pumps used for dewatering operations to minimise any noise disturbance to neighbouring or adjacent premises. [DUR0265]
42. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction, operation and, where relevant, the decommissioning of the development. [DUR1025]
43. Landscaping of the site shall be carried out in accordance with the submitted/approved landscaping plans. [DUR1045]
44. All walls in the food preparation and food storage areas shall be of solid construction, easily washable, lightly coloured and tiled to a height of at least 2 metres above floor level, or where not tiled, cement rendered to provide a smooth even finish to ceiling. Note: Stud framed walls will not be acceptable. Intersections of all floors with walls shall be covered to a radius of not less than 25 millimetres. [DUR1495]
45. All flooring materials in the food preparation and storage areas are to be impervious, non slip, non abrasive and capable of withstanding heavy duty operation. Where tiling is to be used epoxy grout finished flush with the floor surface is to be used in joints or alternatively all tiles are to be butt joined and free of cracks or crevices. [DUR1505]
46. All internal fitout is to comply with Australian Standard AS4674 - Design, Construction and Fitout of Food Premises. [DUR1535]
47. Separate hand washing facilities must be provided with warm water and located in a position where it can be easily accessed by food handlers and be of a size that allows easy and effective hand washing to the satisfaction of the General Manager or his delegate. [DUR1545]
48. A garbage storage area shall be provided in accordance with Council's "Code for Storage and Disposal of Garbage and Other Solid Waste". [DUR2195]
49. Appropriate arrangements to the satisfaction of Council's General Manager or his delegate shall be provided for the storage and removal of garbage and other waste materials. A screened, graded and drained garbage storage area shall be provided within the boundary. [DUR2205]
50. Appropriate measures are to be put in place during the construction period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned up prior to cessation of same days work and/or commencement of any rain event. [DUR2405]



51. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads. [DUR2415]
52. All waters that are to be discharged from the site shall a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/kg. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request. [DUR2435]
53. During construction, a "satisfactory inspection report" is required to be issued by Council for all s68h2 permanent stormwater quality control devices, prior to backfilling. The proponent shall liaise with Councils Engineering and Operations Division to arrange a suitable inspection. [DUR2445]
54. A grease arrestor shall be provided to the recreation centre kitchenette where deemed applicable by Council's trade waste officer. The arrestor shall comply with any requirements of the trade waste officer. [DURNS01]
55. All work associated with this approval is to be carried out so as not to cause a nuisance to residents in the locality from noise, water or air pollution. [DURNS02]
56. All necessary precautions shall be taken to minimise impact from dust during filling operations from the site and also from construction vehicles. [DURNS03]
57. If dewatering is required the applicant is to obtain all the necessary permits from the Department of Natural Resources. [DURNS04]

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

58. A person must not commence occupation or use of the whole or any part of a new building or structure (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). [POC0205]
59. 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. [POC0225]
60. All existing essential fire safety measures are to be certified by a qualified person to the effect that each of the fire safety measures has been assessed and were found to be performing to a standard not less than that to which it was originally designed. [POC0525]

61. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building. [POC0475]
62. Prior to the issue of an occupation certificate, the applicant shall produce a copy of the "satisfactory inspection report" issued by Council for all s68h2 permanent stormwater quality control devices. [POC0985]
63. 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:
- (a) Easements for sewer, water supply and drainage over ALL services on private property.
  - (b) Creation of a right of Carriageway over Lot 618 DP 508200 in favour of Lot 9 DP 238880.

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.

[POCNS01]

## USE

64. 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).
- [USE1295]
65. 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. [USE0125]
66. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997. [USE0135]

67. The LA10 noise level emitted from the premises shall not exceed the background noise level (LA90) by more than 5dB(A) at the boundary of any affected residence.  
[USE0165]
68. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised, notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive noise.  
[USE0175]
69. All external artificial lighting shall be shielded where required to the satisfaction of Councils General Manager or his delegate to ensure that the spill of light or glare from such lighting does not create a nuisance to any adjoining or neighbouring premises.  
[USE0205]
70. All wastes shall be collected, stored and disposed to the satisfaction of the General Manager or his delegate.  
[USE0875]
71. 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.  
[USE1235]
72. All chemicals and fuels shall be stored in a flood free location and not permitted to flow or percolate to any watercourse.  
[USENS01]

**REPORT:**

**Applicant:** Mother Earth Developments Pty Ltd  
**Owner:** Mother Earth Developments Pty Ltd  
**Location:** Lot 9 DP 238880 Tamarind Avenue, Bogangar  
**Zoning:** 2(e) Residential Tourist  
**Cost:** \$3,680,000

**BACKGROUND:**

At the Ordinary Meeting of Tweed Shire Council on 7 December 1988 an assessment report was considered on a proposed sixty-unit tourist resort. Following consideration of the report which detailed 6 x 3 storey holiday resort buildings comprising 60 x 2 bedroom units, sports complex and an additional 72 car parking spaces Council voted to approve the application subject to sixteen conditions of consent. The formal determination notice was sent to the applicant on 14 December 1988.

On 11 May 1989 this consent was amended to reflect a revised design flood level. This resulted in amendments to Conditions 9, 11, 12, 13 and the introduction of a new Condition No. 17.

In accordance with the statutory controls in force at this time (1988) the consent would have lapsed on 14 December 1990. However, in October 1990 the applicant requested a one-year extension as permitted under the Act at that time. The request for an extension was reported to Council who resolved that Development Consent No. 87/874 be extended for 12 months in accordance with S99 (3) of the Act. Thus extending the validity of the consent till 14 December 1991.

On 9 December 1991 Council wrote to the applicant detailing that to achieve commencement site works would need to be substantially complete for the proposed entry/exit and major car parking area located between the existing 24 motel suites and proposed pool area in this approval. The letter also provided that these site works would need to include the forming up of the car park including gravel and drainage works and would need to be completed by 14 December 1991.

The applicant responded to Council by stating that the car park and new entry/exit was completed to a gravel surface with drainage lines installed and was in use by the guests by 14 December 1991. Council files have two photographs demonstrating these works were completed.

On 20 January 1992 this consent was amended to allow the development to be completed in stages. Stage 1 comprised 10 x 3 bedroom units and associated parking; Stage 2 comprised a sports complex; Stage 3 comprised 10 x 2 bedroom units and associated parking; & Stage 4 comprised 40 x 2 bedroom units and associated parking.

In March 1996 a concerned resident raised the question as to whether physical commencement had taken place. Council's Director of Development Services responded by detailing the above history and concluding that "*commencement was demonstrated and accepted by officers of my Division at the time and an application for amendment was subsequently approved*".

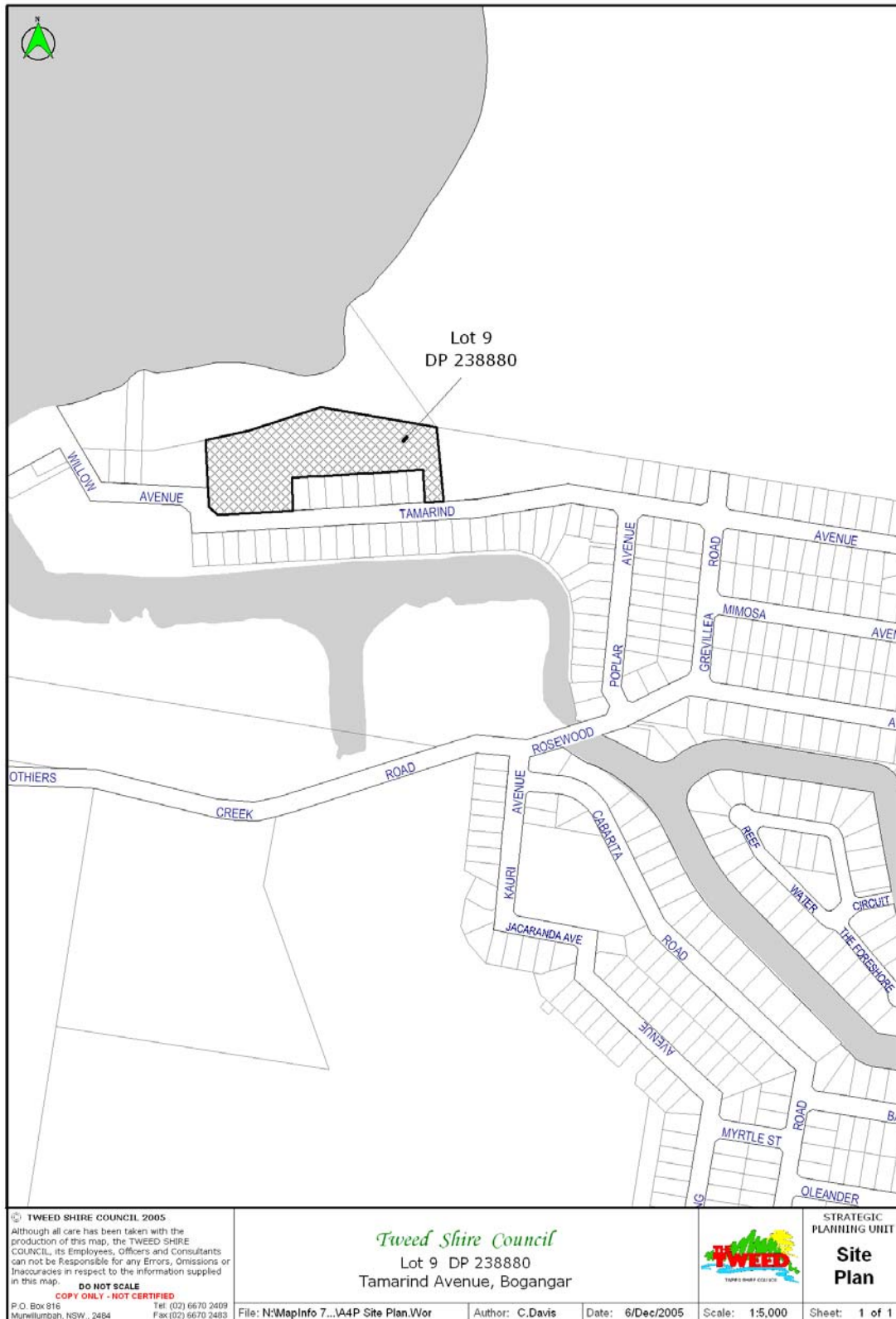
This position was again confirmed by letter in August 1999.

The S96 Application now seeks the following amendments:

- Provision of a lift to Buildings B – F (Blocks 2 to 6);
- Provision of a rear access walkway;
- Improvements to the façade and internal unit layouts including use of contemporary external cladding materials and colours;
- Reconfiguration of the approved parking to provide an interconnected basement, car park (ten space per block) below each of Buildings B to F (Blocks 2 to 6) and fifteen basement spaces below block 1, together with at grade parking for twenty two cars;
- Reconfigure and rationalise the recreational facilities area to include a recreation facility multi purpose building, pool, tennis court and gazebo; and
- Amend the staging plan as follows:
  - Stage 1 construct Block 6;
  - Stage 2 construct Block 5;
  - Stage 3 construct Block 4,
  - Stage 4 construct Block 3;
  - Stage 5 construct Block 2;
  - Stage 6 construct Block 1;
  - Stage 7 construct Recreation Area

The application also originally sought approval for deletion of Building A (Block 1) and replacement of that building with a single storey conference centre building. Council staff advised the applicant that this element of the proposal was not capable of approval via S96 of the Act and therefore the applicant deleted this aspect of the modification.

**SITE DIAGRAM:**

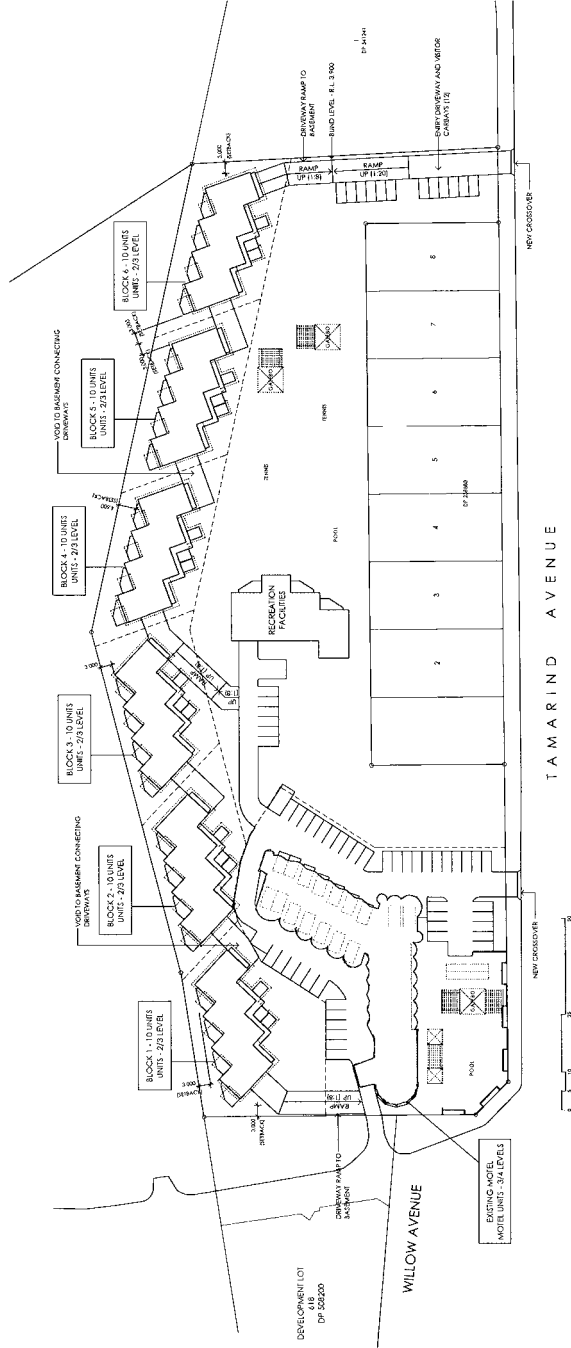


**PROPOSED PLANS:**

NO.	DATE	APPROVED BY
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		



E1 NORTH ELEVATION  
SCALE 1:400



P1 OVERALL SITE AND BUILDING FOOTPRINT  
SCALE 1:500

**IVO**  
ARCHITECTS

15/17-19/19  
CANNING STREET  
MULLUMBOING NSW  
PH: 08 9437 1700  
FAX: 08 9437 1701  
WWW.IVOARCHITECTS.COM.AU

**CABARITA GARDENS**  
Mullermeath Developments  
Tamarind Avenue, BOONAH NSW

**Units - Overall Site and Building Footprint**

This information is provided for general information only. It does not constitute an offer of any financial product. For more information, please contact your financial adviser.

Project Name	CABARITA GARDENS
Project No.	10000000000000000000
Project Date	10/10/2005
Project Status	PROPOSED
Project Type	RESIDENTIAL
Project Location	BOONAH NSW
Project Size	0.20142 UNITS - DATED 14

NO.	NAME	MEMBERSHIP
1.	MR. A. J. JONES	CHAIRMAN
2.	MR. J. W. SMITH	MEMBER
3.	MR. D. BROWN	MEMBER
4.	MR. R. GREEN	MEMBER
5.	MR. T. WHITE	MEMBER
6.	MR. L. BLACK	MEMBER
7.	MR. K. RED	MEMBER
8.	MR. H. BLUE	MEMBER
9.	MR. G. GOLD	MEMBER
10.	MR. F. SILVER	MEMBER
11.	MR. M. BRONZE	MEMBER
12.	MR. N. IRIDIUM	MEMBER

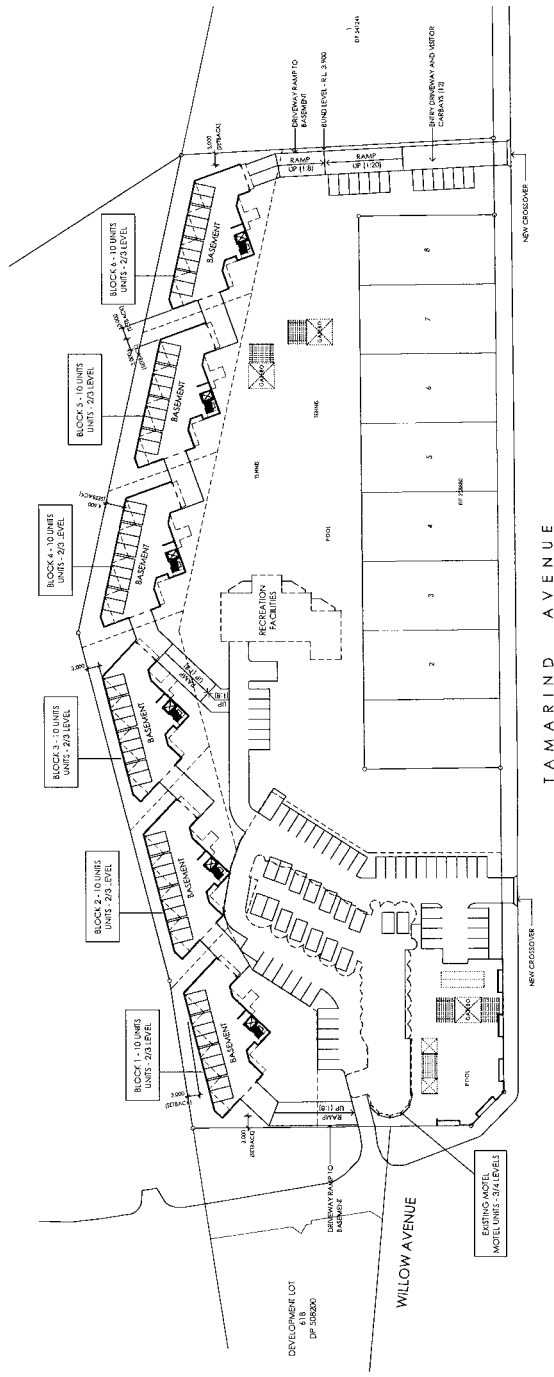
**I.V.O.**  
 CONSULTANTS  
 117-121/130 TWEED STREET  
 TWEED HEAD, NSW 2486  
 PH (07) 4222 8888  
 FAX (07) 4222 8898  
 WWW.IVO.NSW.COM

**CABARITA GARDENS**  
 Mortnearth  
 Cabarita  
 Tamarind Avenue, BOONAH NSW.

**Units - Overall Site Basement Plan**

THIS PLAN IS PREPARED FOR THE CABARITA GARDENS DEVELOPMENT. IT IS THE PROPERTY OF IVO CONSULTANTS AND SHOULD NOT BE REPRODUCED OR USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN PERMISSION OF IVO CONSULTANTS.

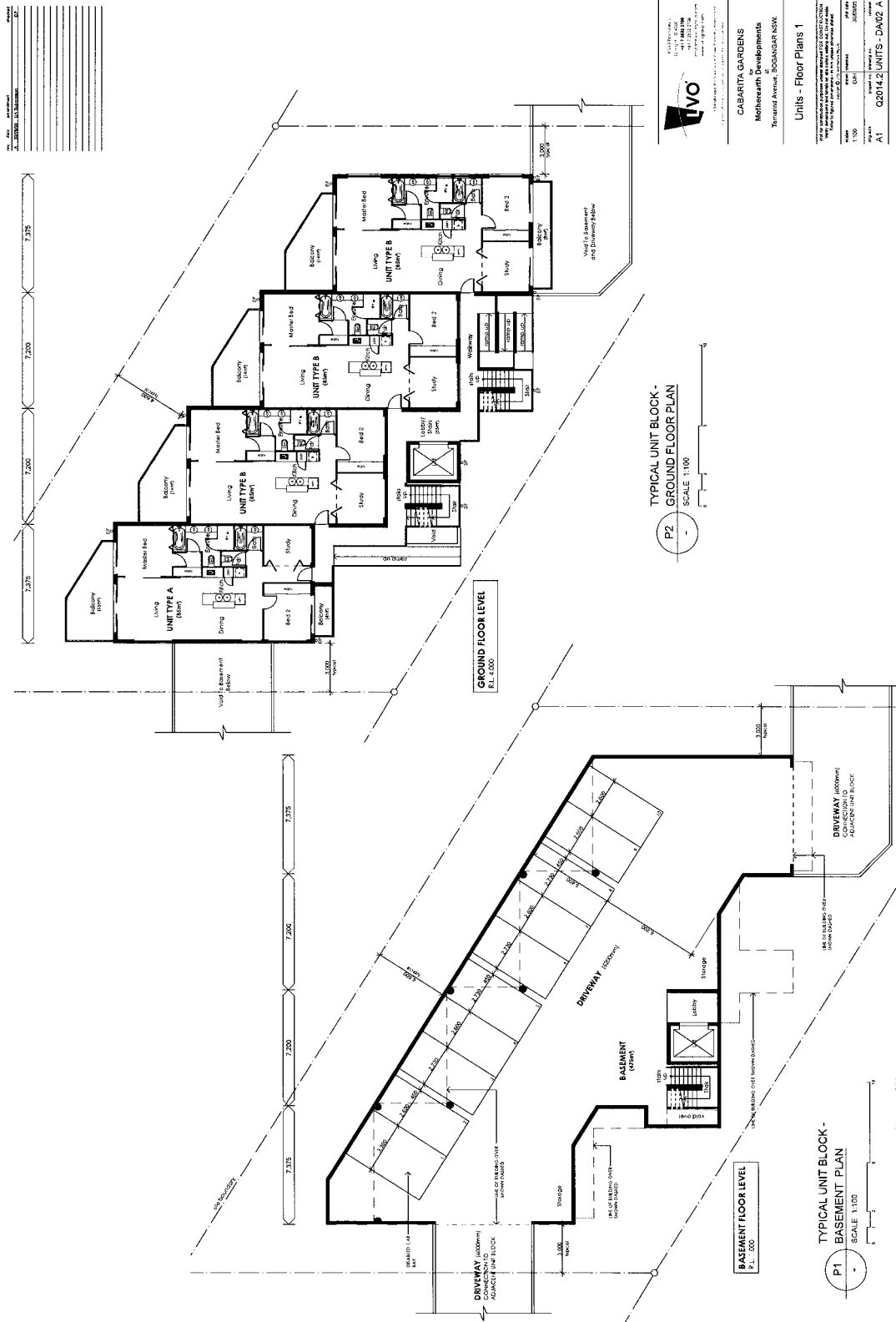
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DRAWN	SI/S
CHECKED	SI/S
PROJECT NO.	305665
SCALE	AS SHOWN
SHEET NO.	AT
TOTAL SHEETS	DA01 A



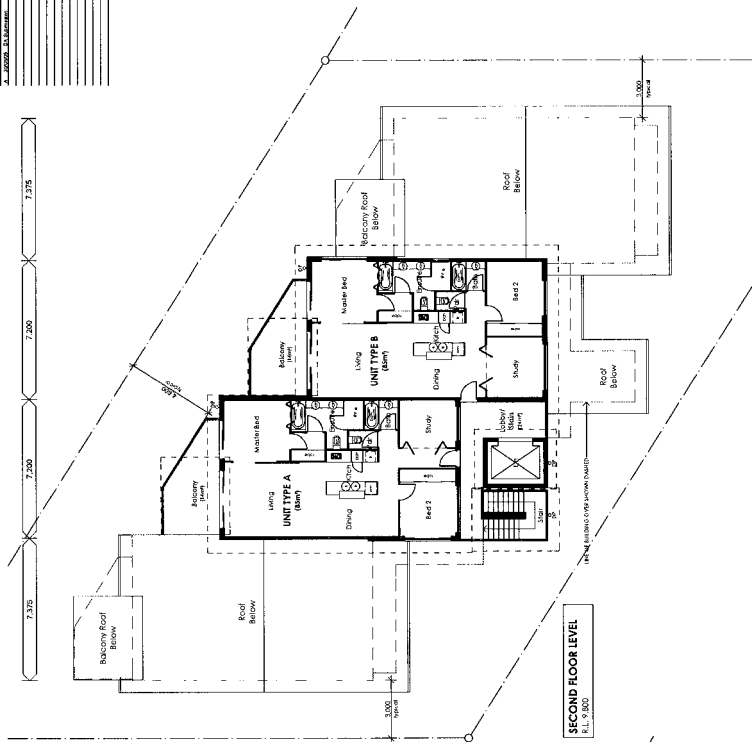
P1 OVERALL SITE BASEMENT PLAN  
 SCALE 1:500

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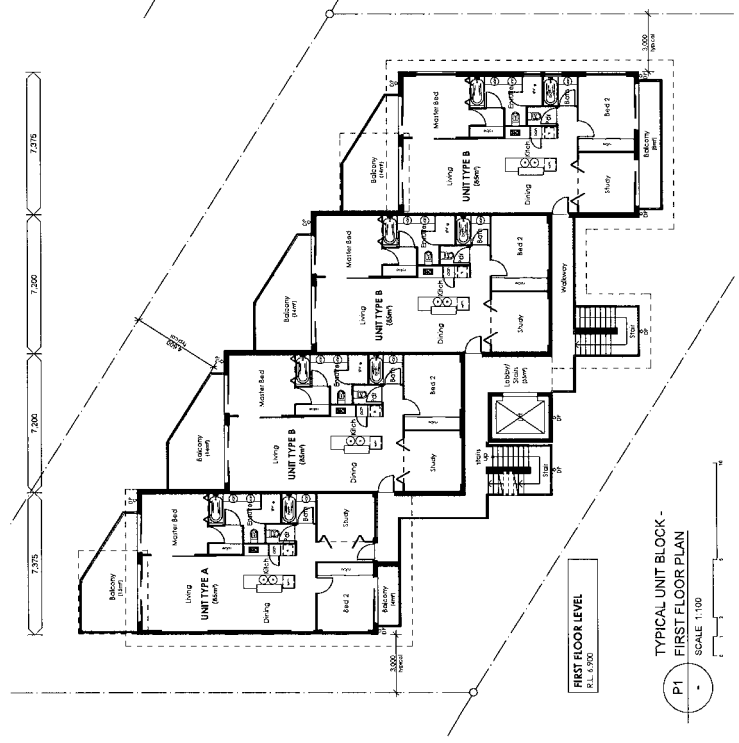
NO.	DATE	BY	REVISIONS



CABARITA GARDENS  
 Motherearth Developments  
 Temmie Avenue, BOONAHUADE RD.,  
 TWEED HEADS, NSW

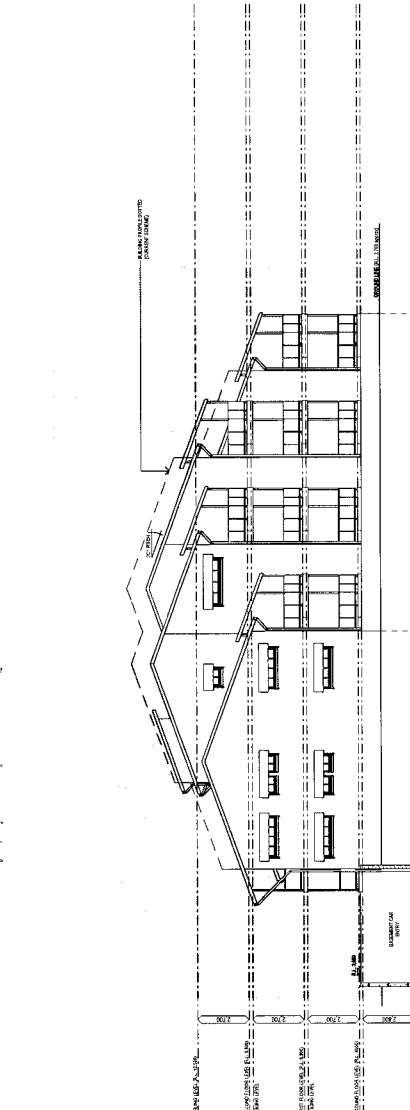
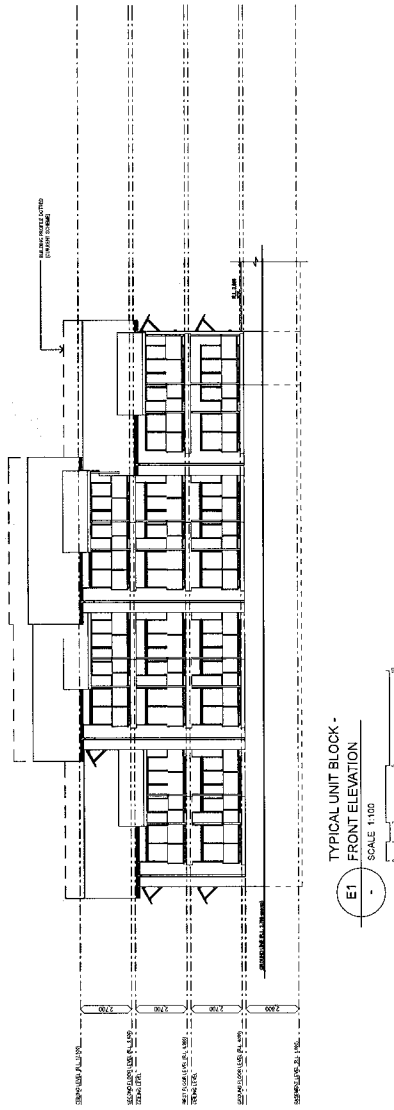
Units - Floor Plans 2  
 P1 - Units A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z  
 P2 - Units A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z  
 AI - Units A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z

TYPICAL UNIT BLOCK -  
**P2**  
 SECOND FLOOR PLAN  
 SCALE 1:100



TYPICAL UNIT BLOCK -  
**P1**  
 FIRST FLOOR PLAN  
 SCALE 1:100

NO.	DATE	REVISION



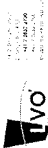
**IVO**  
11/15/16/17/18/19/20/21/22/23/24/25/26/27/28/29/30/31/32/33/34/35/36/37/38/39/40/41/42/43/44/45/46/47/48/49/50/51/52/53/54/55/56/57/58/59/60/61/62/63/64/65/66/67/68/69/70/71/72/73/74/75/76/77/78/79/80/81/82/83/84/85/86/87/88/89/90/91/92/93/94/95/96/97/98/99/100/101/102/103/104/105/106/107/108/109/110/111/112/113/114/115/116/117/118/119/120/121/122/123/124/125/126/127/128/129/130/131/132/133/134/135/136/137/138/139/140/141/142/143/144/145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200

**CASARITY GARDENS**  
Nottingham Developments  
7 Terminal Avenue, BOONAGARR NSW.

Units - Elevations 1

DATE: 10/12/05  
DRAWN BY: IVO  
CHECKED BY: IVO  
SCALE: A1  
PROJECT: CASARITY GARDENS

DATE	REVISION

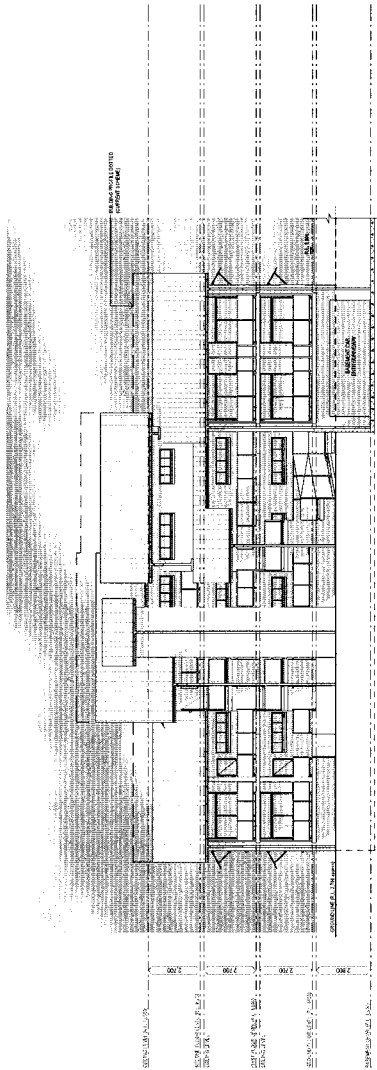

**TVO**  
 TOWN & VILLAGE  
 ORGANISATION  
 CONSULTANTS

**CABARITA GARDENS**  
 Monterey Developments  
 11-13 Mitchell Avenue, BOONAH QLD 4207

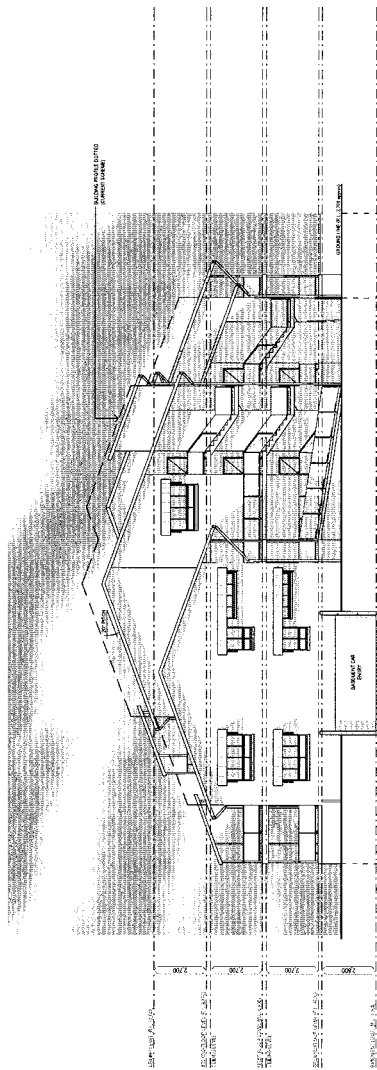
**Units - Elevations 2**

DATE	DESCRIPTION	BY
20/06/05	ISSUED FOR PERMIT	
15/06/05	REVISED	

UNIT NO. **020142** UNITS - DM02 A



TYPICAL UNIT BLOCK -  
 REAR ELEVATION  
 SCALE 1:100



TYPICAL UNIT BLOCK -  
 SIDE ELEVATION  
 SCALE 1:100

PLAN NO. 220142 UNITS - DM02 A

No.	Date	Version	Project
A	20/01/05	AS	DA006

**Wall Blocks - Finished Facades - Finished Facades**  
 All masonry to be finished with concrete or stone finish. The wall finish should be in accordance with the Building Code of Australia (BCA) and the Australian Standard AS 2701. The wall finish should be in accordance with the Building Code of Australia (BCA) and the Australian Standard AS 2701.

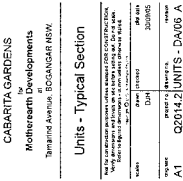
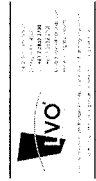
**Roof Details**  
 All roof details to be in accordance with the Building Code of Australia (BCA) and the Australian Standard AS 2701. The roof finish should be in accordance with the Building Code of Australia (BCA) and the Australian Standard AS 2701.

**Windows & Doors**  
 All windows and doors to be in accordance with the Building Code of Australia (BCA) and the Australian Standard AS 2701. The window and door finish should be in accordance with the Building Code of Australia (BCA) and the Australian Standard AS 2701.

**Handrail Type #10**  
 Handrail to be in accordance with the Building Code of Australia (BCA) and the Australian Standard AS 2701. The handrail finish should be in accordance with the Building Code of Australia (BCA) and the Australian Standard AS 2701.

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**Unit - Typical Section**  
 This section shows the typical layout of a unit, including the living area, dining room, kitchen, bathroom, and bedroom. The section is shown at a scale of 1:100.

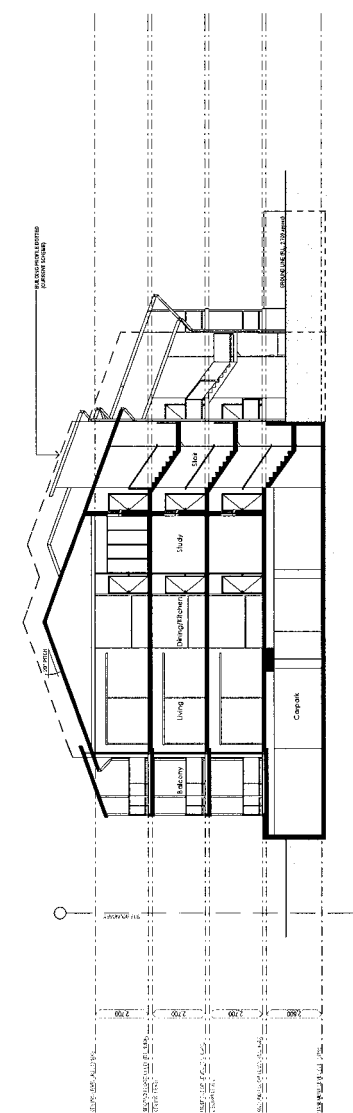
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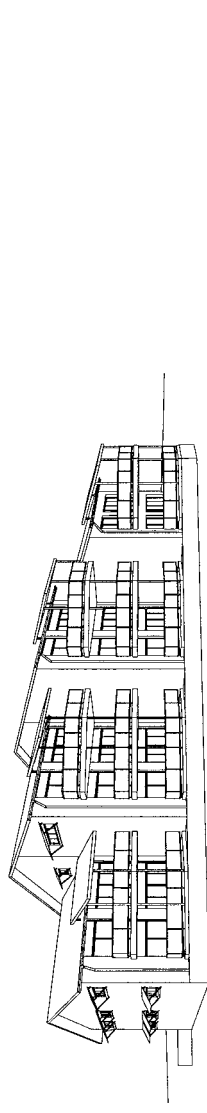
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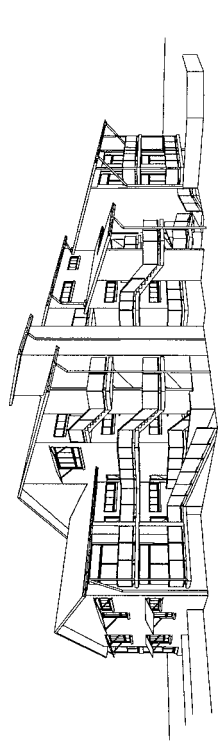
**Roof Details**  
 All roof details to be in accordance with the Building Code of Australia (BCA) and the Australian Standard AS 2701. The roof finish should be in accordance with the Building Code of Australia (BCA) and the Australian Standard AS 2701.



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 SCALE 1:100

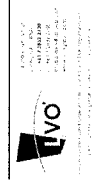


PERSPECTIVE 1



PERSPECTIVE 2

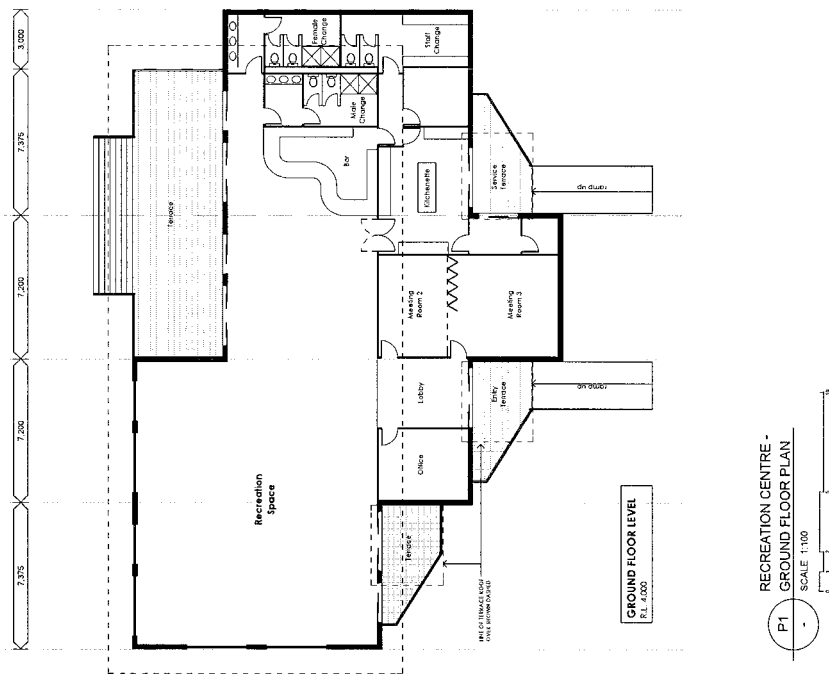
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**LVO**  
 LIVINGSTONE VALLEY ORGANISATION  
 15/1700/05/0000  
 15/1700/05/0000  
 15/1700/05/0000  
 15/1700/05/0000

**CABARITA GARDENS  
 Mohereath Developments  
 Invercree Avenue, ROSSAUCAIR NSW**

**Recreation Centre - Ground  
 Floor Plan**  
 PREPARED BY: LVO  
 DRAWN BY: LVO  
 DATE: 30/09/05  
 SHEET NO: A1  
 PROJECT NO: 02014.2 UNITS - DA07 A



NO.	DATE	APPROVALS
1	20/08/05	DAVID BROWN
2	22/08/05	DAVID BROWN
3	22/08/05	DAVID BROWN
4	22/08/05	DAVID BROWN
5	22/08/05	DAVID BROWN
6	22/08/05	DAVID BROWN
7	22/08/05	DAVID BROWN
8	22/08/05	DAVID BROWN
9	22/08/05	DAVID BROWN
10	22/08/05	DAVID BROWN



**IBO**  
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BOONAH QLD 4282  
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**CABARITA GARDENS**  
by **WebbPembroke**  
Tannier Avenue, BOONAH QLD 4282

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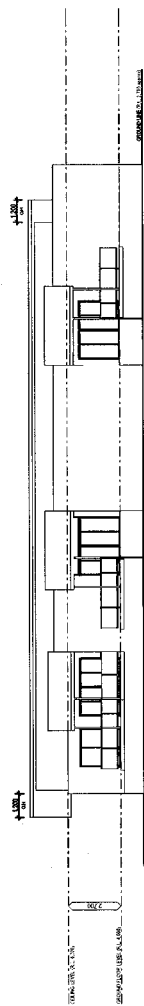
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Elevations 1**

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
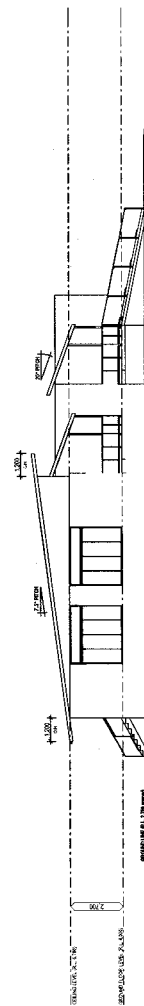
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DATE: 15/08/05  
DRAWN: D.H.  
CHECKED: S.M.  
PROJECT NO: 300000  
JOB NO: 300000

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A1 Q2014.2 UNITS - DA08 A



RECREATION CENTRE -  
FRONT ELEVATION  
SCALE 1:100

RECREATION CENTRE -  
SIDE ELEVATION  
SCALE 1:100



DATE PLOTTED: 22/08/05 11:58 AM PLOTTER: HP DesignJet 5000PS

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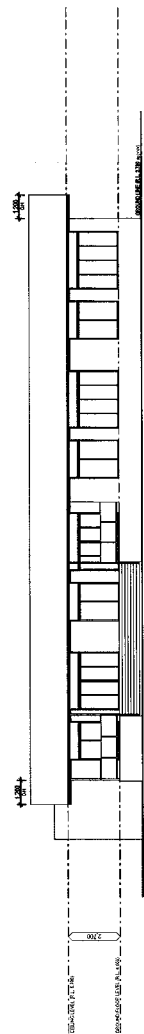
**CABARITA GARDENS**  
 by  
**Northcote Developments**  
 110/112A MILL ST, PORT MACQUARIE NSW

**Recreation Centre -  
 Elevations 2**

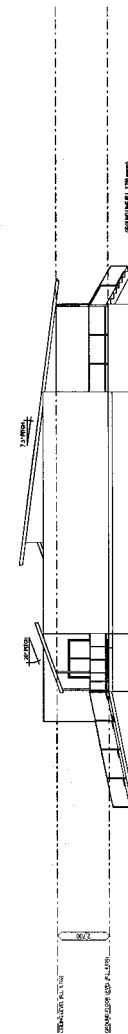
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DATE: 20/05/05  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 PROJECT NO: 300506

SCALE: A1  
 SHEET NO: 02014.2 UNITS - DARG A



RECREATION CENTRE -  
 REAR ELEVATION  
 SCALE 1:100  
 E1



RECREATION CENTRE -  
 SIDE ELEVATION  
 SCALE 1:100  
 E2



**CONSIDERATIONS UNDER SECTION 96 & 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

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

Having regard for this criteria the applicant has provided that the proposed variations result in substantially the same development on the basis that:

- *Proposed onsite parking complies with Development Control Plan No. 2;*
- *The proposal as modified is still for a tourist resort development;*
- *The basic building layouts and locations have not been changed;*
- *The height of the approved buildings will be reduced by up to 1m and will comply with the current three storey height limit;*
- *The changes to the recreational precinct are modest and are essentially the same as those originally approved;*

The above comments are concurred with.

Further to the above comparison between the original determination and the proposed modification the following comments are provided in regards to the proposed basement car park.

The introduction of a basement car park will replace the previously approved at grade parking. This will have the effect of lowering the building by approximately 1m. The basement will still protrude from the ground level by 1.3m however in accordance with the definition of a storey this would not constitute a storey thus reducing the building to a complying three storey building by definition.

The S96 Amendment was forwarded to Council's Infrastructure Engineer who provided the following comments regarding the incorporation of a basement car park;

*The new basement level car parks require stormwater quality treatment, in accordance with Development Design Specification D7 – Stormwater Quality. This requires all basement stormwater and runoff from exposed basement driveways to be treated to remove oil and sediment pollutants. After treatment this stormwater shall be discharged to an approved drainage system via a basement pump, designed to Australian Standards.*

*In accordance with DCP5 – Development of Flood Liable Land, basement car parking is only permissible below the design flood level (3.4m AHD) if it is protected from the inflow of flood water to a level 500mm above the design flood level. It appears that the applicant will create satisfactory bunding of the basements by grading the driveways and building retaining walls to 3.9m AHD.*

*Existing consent conditions relating to habitable floor levels (3.7m AHD) and flood compatible building materials and electricals below design flood level still apply.*

*In relation to the 30 June 2005 storm event, which caused significant flooding in the locality, Council's surveyors recorded a peak water level at the resort of 3.24m AHD, and as such did not reach the adopted flood planning levels prescribed by DCP5. Basement car parking constructed in accordance with Council requirements would have a freeboard of 0.66m in such an event, and the basement catchment would only have received runoff from the exposed driveway areas. This stormwater should be capably handled by a pumped system, once tail water levels in the receiving drainage system recede sufficiently.*

*The S96 application is recommended for approval, subject to additional conditions of consent as recommended.*

Based on this advice of acceptability of the concept of basement car parking it is concluded that a basement car park could be considered to be substantially the same development as the end result is a tourist resort with parking in accordance with DCP No. 2. The incorporation of a basement level also reduces the overall height of the building and thus resulting in a less bulky appearance.

The proposed modifications would result in substantially the same development as that originally approved and can therefore be dealt with via S96 (2) of the Act.

In considering an application to modify a development consent Council must have regard to Section 79C of the Act. The matters of relevance are addressed as follows:

#### Tweed Local Environmental Plan 2000

The subject site is zoned 2(e) Residential Tourist under the provisions of the plan. Development for the purposes of tourist accommodation is permissible with consent and entirely consistent with the zone objectives.

Clause 16 of the Plan provides that a maximum height of three storeys applies in this locality. The existing lawful building comprises a part three storey, and part four storey, building. This comprises ground level under croft parking and three levels of tourist units.

The proposed modification to incorporate a basement will not extend beyond 1.5 from the finished ground level. Therefore this modification will result in a reduction of the number of storeys from four storeys to a compliant three-storey building under current planning provisions.

The reduction in height of all six buildings will reduce visual bulk and will generally assist the application fit in with the existing streetscape.

Clause 35 requires consideration of Acid Sulphate Soils in assessing any application for works that may interfere with contaminated soils. The applicant has subsequently submitted an Acid Sulphate Soils Assessment and Dewatering Management Plan as excavations for the lift may interfere with Class 3 - Acid Sulphate Soils. Subject to the recommended conditions of consent Clause 35 is considered to have been satisfied.

#### DCP No. 2 – Site Access & Parking Code

Under the provisions of this plan a tourist resort is required to provide half a space per staff member and one space per unit. Subsequently a tourist resort with sixty (60) tourist units, and three staff members will require 61.5 spaces.

The modified plans show a total of sixty (60) spaces in the basement, with additional spaces at grade. Subsequently the proposed modified plans comply with DCP No. 2.

The applicant has indicated a preference that the three (3) excess parking spaces from the motel (which is a separate item on this agenda for a modification to an existing Motel containing fifty rooms) be credited to Consent No: 87/0874.

These additional spaces are not required for this application as the development complies with DCP No. 2

#### Submissions

The S96 Application was advertised and notified to nearby residents between 14 September 2005 and 28 September 2005. During this period Council received two (2) written objections to the proposed resort amendments. One of the written submissions was on behalf of 21 local residents.

The issues raised in the objections to these modifications are detailed as follows:

<b>Issue</b>	<b>Assessment</b>
<i>Introduction of a basement car park in a flood area is premature and would constitute unnecessary risks to existing residences.</i>	<p>As detailed in the above report Council's Infrastructure Engineer has reviewed the proposal and provided that subject to the additional recommended conditions of consent the application warrants conditional approval.</p> <p>This objection does not warrant further amendment or refusal of the application.</p>
<i>The relocation of pool facilities, tennis courts and recreational facilities will impact on the peaceful enjoyment for existing property owners.</i>	<p>Council's files demonstrate that D87/0874 approved a recreational facility area immediately north of the existing residences between 75 and 61 Tamarind Avenue (Amended Plan prepared by Summerland Design Architects dated October 1988 No 8735 / 1 of 5).</p> <p>These plans show the following facilities; a pool, gymnasium, squash court, two tennis courts, a squennis court and an area for lawn bowls. These facilities were as close as 3m to the adjoining residential properties.</p> <p>The proposed amendment seeks to modernise and rationalise these facilities with a new recreational building, a pool, two tennis courts and two gazebos. These facilities are considered to be substantially the same as that approved and will have no greater impact on the residents than that previously approved.</p> <p>This amendment has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determinations.</p> <p>This objection does not warrant further amendment or refusal of the application.</p>
<i>The proposed conference centre can not be approved by way of a S96 application</i>	<p>This aspect of the application has been deleted.</p> <p>This objection does not warrant further amendment or refusal of the application.</p>
<i>This consent does not appear to have been commenced and therefore a S96 application can not be considered</i>	<p>As detailed in the above report under the heading Background the following acknowledgements by Council have been made:</p> <p><i>"Commencement was demonstrated and accepted by officers of my Division at the time and an application for amendment was subsequently approved".</i></p> <p>This objection does not warrant further amendment or refusal of the application.</p>

<p><i>The site is bushfire prone and needs a bushfire safety authority from the RFS.</i></p>	<p>A very small section of the northeastern corner of the site is mapped as bushfire prone land. Whilst a tourist development lodged with Council today would require referral to the RFS a S96 is not subject to the same provisions.</p> <p>The proposed amendments do not change the location of the tourist buildings and therefore given the applicant could commence building works at any time there is no obligation to consult RFS.</p> <p>This objection does not warrant further amendment or refusal of the application.</p>
<p><i>Construction noise will impact on local amenity.</i></p>	<p>Standard conditions of consent have been recommended.</p> <p>This objection does not warrant further amendment or refusal of the application.</p>

All of the above issues have been considered as part of the assessment of these Section 96 Applications. The issues are not considered to warrant further amendment or refusal and subsequently the current S96 applications are recommended for conditional consent.

**OPTIONS:**

1. Approve the S96 Application in accordance with the recommended conditions of consent.
2. Refuse the S96 Application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Should the applicant be dissatisfied with the determination of these applications they have a right to make an appeal to the Land & Environment Court.

Should the objectors be dissatisfied with the statutory assessment of these applications they have a right to make an appeal in accordance with Section 123 of the Environmental Planning & Assessment Act 1979.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The proposed amendment has been assessed on its merits and has been assessed in the context of the variation only, as this is not an opportunity to re-visit the original determination.

Having assessed the S96 Application against the current applicable controls, the application is considered to warrant conditional approval.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

- [1. \*Development Consent D87/0874 \(as amended 20 January 1992\) \(DW 1310296\)\*](#)
-

**3 [PD] Section 96 Application DA03/1855.08 for an Amendment to Development Consent DA03/1855 for Twenty-Three (23) Factory/Industrial Units at Lot 130 DP 817783, Traders Way, Tweed Heads South**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA03/1855 Pt3**

**SUMMARY OF REPORT:**

Council is in receipt of an application to amend Condition No. 6 of the abovementioned development consent relating to the industrial complex commonly known as 'Expo Park'.

The condition reads:-

*"6. The units are to provide for light industrial uses only."*

The condition was imposed to address Council's concerns in relation to traffic constraints on the local road network of Tweed Heads South.

The intent of the condition was to ensure that the Industrial zoned part of Expo Park development did not attract any retail or bulky good uses likely to place an unreasonable burden on the already strained local road network.

A consequence of the condition however, is that it prevents uses that would otherwise be permissible in the 4(a) Industrial Zone.

Council's Traffic Engineer has reviewed the application and after negotiation with the applicant has indicated support for an amendment in the following terms:-

*"6. The units are to provide for light industrial uses however Council may consider other uses permissible in the 4(a) Industrial Zone subject to approval of a traffic report that demonstrates that the proposed use does not generate more traffic than the Light Industry Category of Tweed Road Contribution Plan No.4 on the surrounding road network between 8:00am and 6:00pm Monday to Friday."*

The proposed amendment is necessary for allow Council to consider a development application (DA05/0915) for an in-line skating rink in one of the larger tenancies.

The proposed amendment is recommended for approval on the basis that it maintains the intent of the original condition and ensures that traffic concerns remain suitably addressed.

**RECOMMENDATION:**

**That Section 96 Application DA03/1855.08 for an amendment to Development Consent DA03/1855 for twenty-three (23) factory/industrial units at Lot 130 DP 817783 Traders Way, Tweed Heads South be approved subject to the following amendment: -**

**1. Amend Condition No. 6 as follows: -**

6. The units are to provide for light industrial uses however Council may consider other uses permissible in the 4(a) Industrial Zone subject to approval of a traffic report that demonstrates that the proposed use does not generate more traffic than the Light Industry Category of Tweed Road Contribution Plan No.4 on the surrounding road network between 8:00am and 6:00pm Monday to Friday.



**REPORT:**

**Applicant:** Expo Park Traders Way Pty Ltd and Calardu Traders Way Pty Ltd  
**Owner:** Expo Park Traders Way Pty Ltd and Calardu Traders Way Pty Ltd  
**Location:** Lot 130 DP 817783 Traders Way, Tweed Heads South  
**Zoning:** 4(a) Industrial  
**Cost:** Nil

**BACKGROUND:**

On 8<sup>th</sup> April 2004, conditional consent was granted for the abovementioned proposal in the 4(a) Industrial section of Expo Park. All works associated with the development have since been completed with the applicant now seeking tenants to occupy the remaining units.

Expo Park is an industrial complex comprising sixteen (16), strata titled industrial units 131 car parking spaces, signage and associated landscaping in Tweed Heads South.

The development takes the form of 2 x 2 storey (mezzanine level) buildings, with the main car parking area and pedestrian entry provided on the southern side of the building adjacent to Enterprise Avenue.

During assessment of the application, the proposal was the subject of significant media attention with articles appearing in local newspapers and the Sydney Morning Herald suggesting the complex may be intended for bulky goods retailing or similar. As a result, speculation arose regarding the proposed nature of the uses to be contained within the complex.

Council approached the applicant with regard to these matters and advised that traffic constraints in the South Tweed area would prevent the site from accommodating any uses likely to generate a high demand for traffic such as bulky goods retail.

In response to these concerns, the applicant provided assurances to Council that the premises were not to provide for uses other than light industry. In a letter to Council dated 23<sup>rd</sup> March 2004, the applicant advised, "...Council may be assured that despite a number of local media articles to the contrary, it is not anticipated to provide uses other than light industry from the premises."

The result of these discussions saw the consent issued with two (2) conditions seeking to limit the permissible uses on the site.

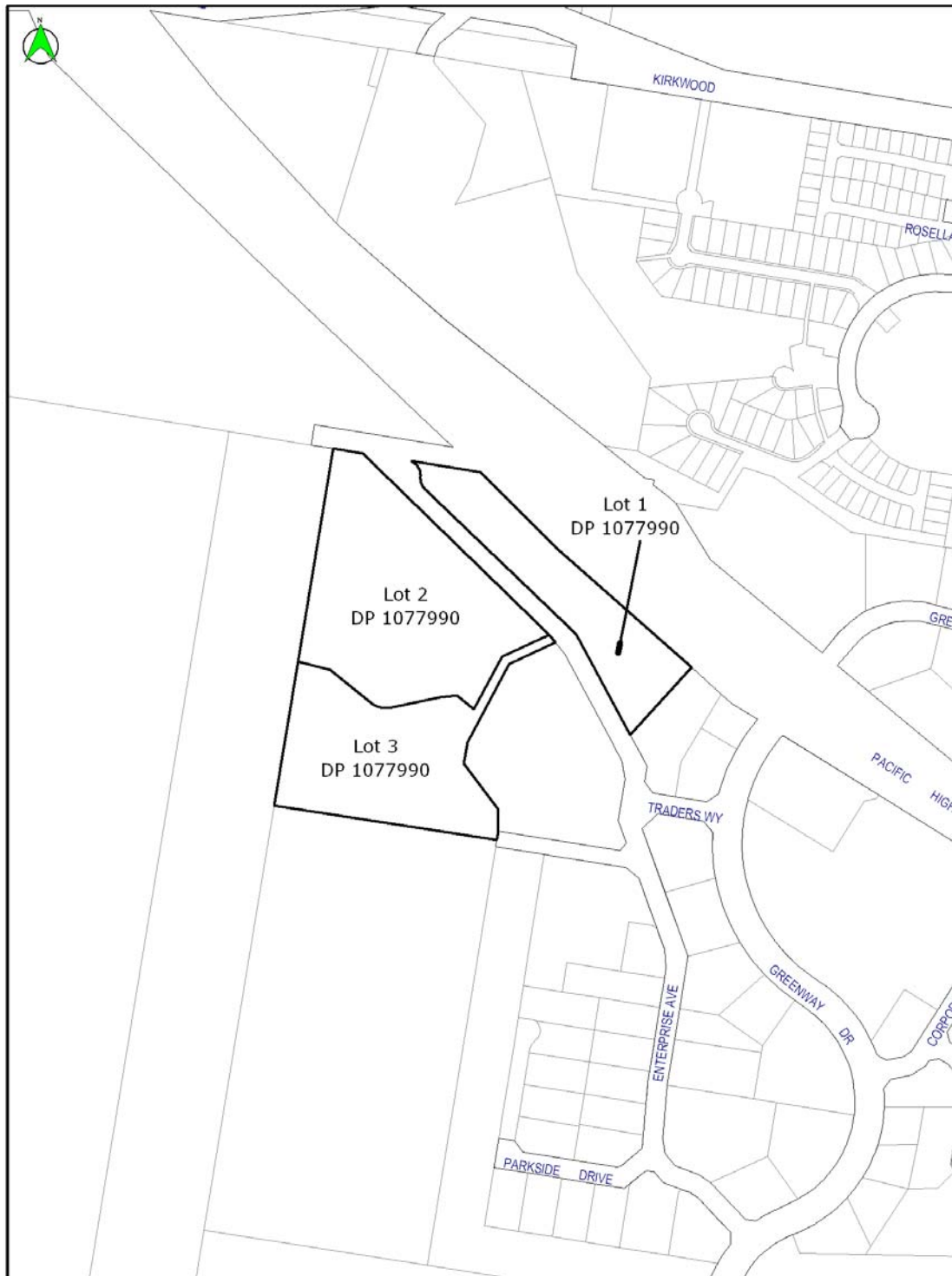
Specifically, Condition No. 6 states:-

*"The units are to provide for light industrial uses only."*

Condition No. 7 states:-

*"Retail uses, including bulky goods retailing, are not permitted in any of the units."*

**SITE DIAGRAM:**



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*Tweed Shire Council*  
 Lots 1, 2 + 3 DP 1077990 (formerly Lot 130 DP 817783)  
 Traders Way, Tweed Heads South



STRATEGIC PLANNING UNIT  
**Site Plan**

File: N:\MapInfo 7...A4P Site Plan.Wor Author: C.Davis Date: 6/Dec/2005 Scale: 1:5,000 Sheet: 1 of 1

## DESCRIPTION AND ASSESSMENT OF PROPOSED AMENDMENT

The Section 96 application before Council seeks to amend Condition No.6 in terms that would allow Council to consider other uses permissible in the 4(a) Industrial zone, that are not 'light industrial' as defined in the Tweed Local Environmental Plan 2000.

Additional uses that fall into this category include, warehouse, industry, place of public worship, public building, public utility undertaking, recreation area, recreation facility, storage unit and telecommunications infrastructure.

To facilitate this, the applicant has proposed modifying Condition No.6 in the following terms:-

- “6. The units are to provide for light industrial uses **however Council may consider other uses permissible within the 4(a) Industrial Zone subject to approval of a traffic report that specifically addresses the current capacity constraints at the intersection of Minjungbal Drive and Machinery Drive.**”*

The primary consideration in these matters relates to traffic issues and the existing traffic constraints burdening the road network in the South Tweed locality.

Council's Traffic and Transport Engineer reviewed the application and advised that certain uses permissible within the 4(a) Industrial Zone have the potential to generate more traffic than can be satisfactorily accommodated on the local road network.

As such, it is not considered appropriate to amend the conditions in the terms above, as sought by the applicant.

After discussions between the applicant and Council's Traffic and Transport Engineer, an amended condition was drafted that reads:-

- “6. The units are to provide for light industrial uses however Council may consider other uses permissible in the 4(a) Industrial Zone subject to approval of a traffic report that demonstrates that the proposed use does not generate more traffic than the Light Industry Category of Tweed Road Contribution Plan No.4 on the surrounding road network between 8:00am and 6:00pm Monday to Friday.”*

Modifying Condition No. 6 in these terms is considered acceptable, as it will require any proposed use within the complex to provide a traffic report demonstrating the traffic impacts are within acceptable limits. Effectively, the amended condition maintains the intent of the original condition whilst removing the blanket limitation for light industrial uses.

### **Case Study - Development Application DA05/0915 - In-line Skate Rink**

Whilst not strictly related to the Section 96 application, it is noted Council is currently processing an application to use one of the larger tenancies in the complex for an in-line skating rink.

The permissibility of this proposed use is dependent on the Section 96 application being approved and provision of a traffic report that satisfies the amended condition.

Two (2) objections have been received to the proposed skate rink on the basis that the development is not 'light industry' as required under Condition No.6. Amending the consent to remove the reference to 'light industry' would make any objection on this basis redundant.

Given the tenants were not required to be notified of the Section 96 application under Council's Notification Policy, there is potential for further objection, should the in-line skating rink be subsequently approved.

The applicant has indicated that the skate rink will trade through the day however, goes onto say that most of the activity is to occur in the evenings – outside the peak traffic hours.

Given the proposed skate rink is seeking to remain open during the day, there remains considerable difficulty in ensuring that traffic volumes to the site are not exceeded during peak periods – even despite the presence of an approved traffic report.

Thus, the question of how to ensure that a proposed use complies with the specific terms of any amendment to Condition No. 6 may require further consideration.

One option in this regard, may be to impose a condition on any consent for the in-line skate rink that limits the hours of operation to non-peak periods. These matters will be considered in more detail once the Section 96 application has been determined.

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

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

All relevant matters discussed above.

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

No draft Environmental Planning Instruments applicable.

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

No Development Control Plans applicable to the proposed amendment.

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

Satisfactory.

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

All relevant matters discussed above.

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

All relevant matters discussed above.

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

The Section 96 application did not require notification therefore no submissions were received.

**(e) Public interest**

The proposed amendment is considered consistent with the public interest.

**OPTIONS:**

1. Resolve to adopt the recommendation made and amend the development consent.
2. Resolve to the refuse the application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The modification sought to the development consent for this site will enable the applicant to source a range of potential tenants – currently restricted from using the premises on the basis of the current condition.

Any potential use will still require development consent and a thorough assessment of the likely traffic generation rates and impacts on Council's roads – particularly in the context of existing traffic constraints at the Minjungbal Drive/Machinery Drive intersection and wider South Tweed road network.

Given Council possesses the opportunity to further review any traffic related issues as part of a separate development application for the use, it is considered reasonable to amend the consent in the terms specified.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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- 4 [PD] Section 96 Application DA02/1983.07 for an Amendment to Development Consent DA02/1983 for the Use of Property for Filming and Producing a Television Program at Part Lot 74 DP755715, Lot 77 DP755715, Lot 93 DP755715, No. 366 Dungay Creek Road, Dungay

**ORIGIN:**

**Development Assessment**

**FILE NO: DA02/1983 Pt2**

**SUMMARY OF REPORT:**

Council is in receipt of an application to amend the subject development consent for the Granada Film Productions site located at Dungay ("I'm a Celebrity Get Me Out of Here").

One of the original conditions was to time limit the development as the applicant at the time foreshadowed the activity would be completed by 1<sup>st</sup> June 2004 and consequently the development consent was time limited to that date.

Due to the success of the programs internationally there has been opportunities for further productions and as such this is the third application that the applicant has submitted for an extension on the time frame. The last of these extensions was until 1 June 2006. The proposed extension is to time limit the consent to 1<sup>st</sup> June 2008, being a further 24-month extension on the previous 24-month extension already granted.

The following report addresses the relevant provisions of the EP&A Act 1979, and the twelve (12) written objections received by Council.

The following report recommends the proposed amendments be adopted.

**RECOMMENDATION:**

**That Section 96 Application DA02/1983.07 for an amendment to Development Consent DA02/1983 for the use of property for filming and producing a television program at Part Lot 74 DP 755715, Lot 77 DP 755715, Lot 93 DP 755715, No. 366 Dungay Creek Road, Dungay be approved subject to the following amendments: -**

1. **Amend the Consent to state at the end:**

**The consent to lapse on 1 June 2008 unless commenced prior to that date.**

**The consent to expire on 1 June 2008**

**REPORT:**

**Applicant:** Granada Productions Pty Ltd  
**Owner:** Mr CD Parker, Mr BW Parker, Mr ID Sharman & Ms LK Brannian  
**Location:** Part Lot 74 DP 755715, Lot 77 DP 755715 & Lot 93 DP 755715 No. 366  
Dungay Creek Road, Dungay  
**Zoning:** 1(a) Rural and 7(d) Environmental Protection (Scenic Escarpment)  
**Cost:** \$125,000

**BACKGROUND:**

Council is in receipt of an application to amend the subject development consent for the Granada Film Productions site located at Dungay ("I'm a Celebrity Get Me Out of Here").

The Development Assessment Panel originally considered a report on the proposed activity on 20<sup>th</sup> December 2002 and approved the activity subject to a number of conditions. One of the conditions was to time limit the development as the applicant at the time foreshadowed the activity would be completed by 1<sup>st</sup> June 2004 and consequently the development consent was time limited to that date.

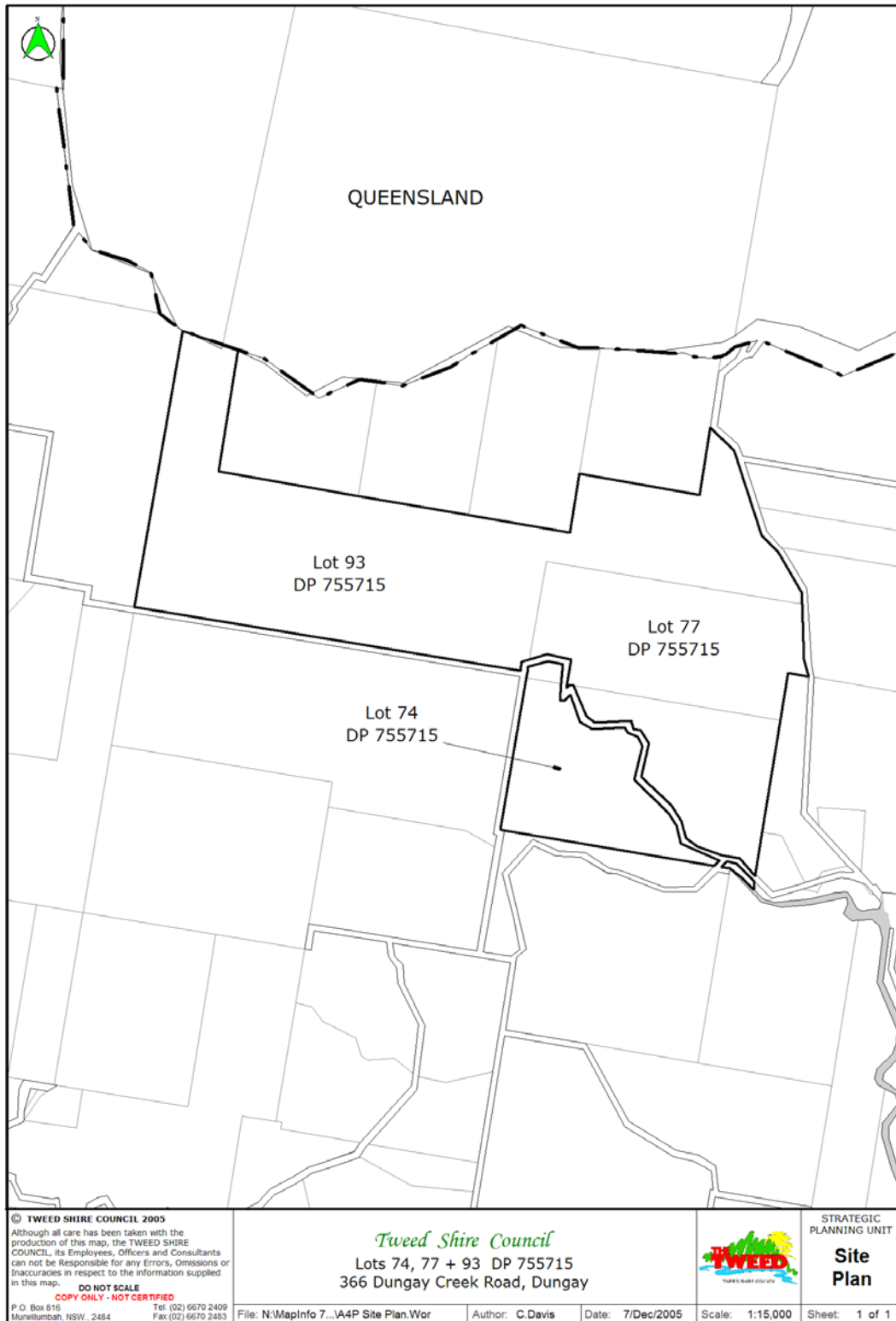
At the time of considering the proposal there was some uncertainty in relation to potential complaints and environmental impacts during operation. As such Council implemented a time limited consent and a requirement for a cash bond to the amount of \$20,000 for the rectification of any non-compliance with the conditions of this consent which may not be addressed upon completion of filming. These conditions have provided Council with an opportunity to review the activity and ensure the site is appropriately remediated.

Due to the success of the programs internationally there has been opportunities for further productions and as such this is the third application that the applicant has submitted for an extension on the time frame. The last extension of the approval lapses on 1 June 2006.

The proposed extension is to time limit the consent to 1<sup>st</sup> June 2008, being a further 24-month extension on the previous 24-month extension already granted.



**SITE DIAGRAM:**



## **CONSIDERATIONS UNDER SECTION 96 & 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:**

### **Minimal Environmental Impact**

The proposed timeframe extension is not considered to result in environmental impacts. The extension of timeframe will result in the need for further permits for the activity and the permit and conditions will ensure that the continued use of the site meets the environmental controls for the activity.

The proposal amendment is not considered to raise any additional environmental impacts.

### **Substantially the Same Development**

The proposed activity is not being modified by the changes. The development will still be temporary in nature and the site will still be required to be remediated. The extension of time means that the remediation will be occurring 24 months later than the current consent permits.

It is not considered that a 24 month extension changes the nature of the development and as such the proposed modifications are considered to be acceptable.

### **Concurrence or Integrated Authority Consultation**

The Act provides for consultation with state government authorities in the event that conditions to be amended are those imposed by or of interest to such agencies.

The activity operates under a Part 3A Permit under the Rivers and Foreshore Improvement Act 1948. The time frame extension does mean that permits will need to be extended for a further year, however, none of the conditions of consent are proposed to be removed and as such formal consultation in relation to the proposed amendment is not required.

However following determination Council is to advise DIPNR of the change to the time frame to enable the provision of further permits.

### **Advertising and Consideration of Submissions**

The proposed amendment was notified for a fourteen-day period, which finished on 7 December 2005. During this period twelve (12) written submissions were received objecting to the proposal.

All the issues raised in these objections are summarised as follows: -

- *Increased traffic including mini bus and crew vehicles*
- *Huge volumes of transport vehicles, cranes, heavy machinery, garbage and gravel trucks*
- *Children have been exposed to an increased risk of collision while travelling on the school bus because of increased traffic flow*

- *Helicopter activity*
- *Increased noise as a result of production activities*
- *Ongoing inconvenience and stress*
- *Adverse affect on the local environment*
- *Change to the nature of a rural environment*
- *This was meant to be a temporary approval*
- *Our lifestyle has been impacted upon*
- *We are unable to take evening walks*
- *Our rural activities such as stock movement has become difficult due to traffic*
- *It is too dangerous to walk on the road*
- *There has been an increase in the number of domestic pets and wildlife killed*
- *There is additional road side rubbish*
- *Whilst the road is being paved or sealed there is no effort to improve the actual safety of the road as it is still narrow and an extension should not be granted unless Council undertake serious upgrade of the road*
- *We have no way of knowing how long they may choose to use this location*
- *24 hour lighting illuminating the valley*
- *Contamination of Dungay Creek*
- *The annoyance of constant requests from the press for interviews*
- *Bore drilling which lasts several days*
- *Noisy generators within ear shot*
- *Visitors and family members stopped and questioned by Granada security*
- *Sleep deprivation*
- *Use of illegal dwellings from the property which should be investigated by Council*
- *The production does not benefit Tweed as most of the production crew use Queensland accommodation and facilities*

It is acknowledged that local residents are impacted during the times of filming (approximately 3 weeks a year during December/January) due to the additional traffic and noise implications. In addition it is also acknowledged that the build up to filming can begin in September resulting in a disturbance to amenity for up to 5 months a year. This loss in amenity for local residents needs to be weighed up against the benefit of the development to the broader community. In this regard the applicant has provided the following detail in regards to the benefits of the filming continuing:

*"I'm a Celebrity – get me out of here!" is a survival reality format programme set in a jungle environment. Five versions have been produced for ITV1 in the UK, two for RTL in Germany and one for ABC in the USA.*

*The program is currently the most popular reality programme in the UK and we are currently in production of the fourth series of the program. The fifth UK Series was the highest rating reality TV show in the UK averaging an audience of 10 million (40%) market share. Series 4 was also ranked in ITV's top ten watched programmes.*

To date, each series has been produced in Australia; the first was produced in north Queensland, near Tully, and each since has been produced in Northern NSW, near the town of Murwillumbah.

**Economic Impact on Australia**

By the end of this calendar year we estimate the total Australian expenditure to date on the programme will have been over A\$70 million.

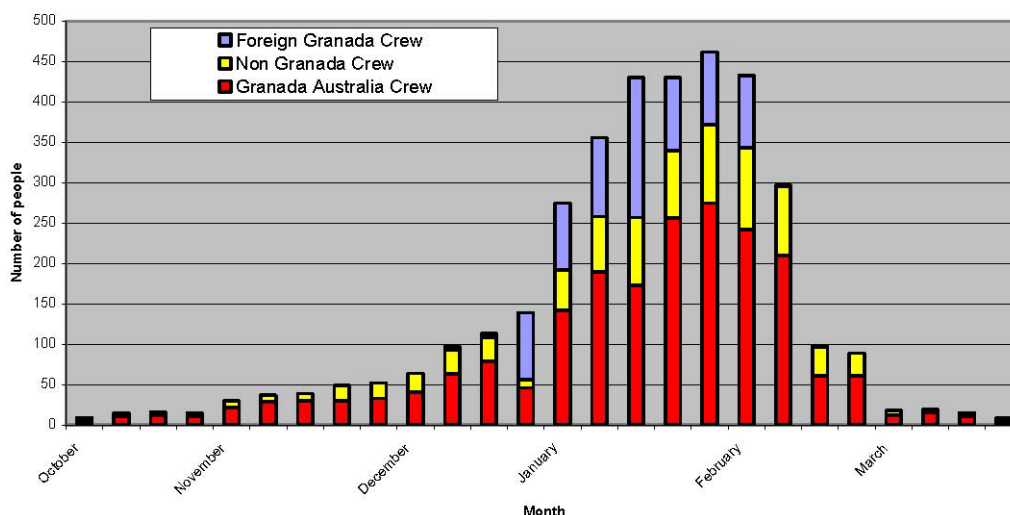
Each series is approximately 15 commercial hours and the total spend varies from A\$10 to A\$20 million per series, most of which is currently spent in Australia.

All the production and post-production takes place on location in regional Australia.

**(a) Labour**

The below graph indicate that levels of employment within a production period.

Series 3: Number of people employed by Granada on "I'm a Celebrity Get Me Out of Here!" from October 2003 until April 2004



Each series directly employs over 300 Australians and we estimate that approximately 20% of these are Australian are local residents living in the Tweed Council area.

**(b) Australian Service Providers**

Each series spends circa A\$4.5 million on Australian service providers. It has engaged and developed sophisticated technical areas of the Australian television industry.

**Local Tweed Shire spend:**

We estimate that on this series of I'm A Celebrity we have spent nearly \$4 million dollars in the Tweed Shire area as below: -

<b><i>Tweed Shire Spend</i></b>	
<i>Art Dept. Materials bought locally</i>	<i>230000</i>
<i>Taylor's Garage</i>	<i>30000</i>
<i>Motor Inn</i>	<i>155000</i>
<i>Estimation of spend in local bars/rest/supermarkets</i>	<i>30000</i>
<i>Local crew employed</i>	<i>3,000,000</i>
<i>Unit hardware and consumables spend</i>	<i>325,000</i>
<i>Crew gifts/alcohol and incidentals</i>	<i>10000</i>
<i>Year round spend during hibernation</i>	<i>100,000</i>
	<i>3,880,000.00</i>
<b><i>All of the above is estimated and based on 1 x UK show, if there were a German/American/French show as well the number would probably be more like \$6m</i></b>	

**OPTIONS:**

1. Approve the S96 Application in accordance with the recommendation
2. Refuse the S96 Application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

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

**POLICY IMPLICATIONS:**

Nil.

**CONCLUSION:**

The original assessment of the application concluded by providing that: -

*"The subject land is considered to be suitable for the proposed development. The environmental attributes of the site have made it desirable as a location for the proposed filming. These attributes are valued by the applicant and as such will be protected through environmental management measures within a plan for the site.*

*The remediation of the land following completion of the development will be of benefit. It is considered that the addition of activity in the Dungay Creek area will be able to be undertaken in a manner to limit nuisance to other residences"*

These comments are still concurred with. Furthermore, the economic impacts to the broader community as a result of the continuation of the production are considered beneficial to the community.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

- [1. Original Development Assessment Panel report dated 20/12/2002 \(DW 713895\)](#)
  - [2. Development Consent DA02/1983 \(as amended 12/8/2005\) \(DW 1250407\)](#)
-

**5 [PD] Development Application DA04/1024 for Multi Dwelling Housing Comprising of Six Dwellings at Lot 1 DP 1058988, No. 70 Adelaide Street, Tweed Heads**

**ORIGIN:**

**Development Assessment**

**FILE NO: DA04/1024 Pt1**

**SUMMARY OF REPORT:**

Council is in receipt of an application for a multi unit development at 70 Adelaide Street, Tweed Heads. The development comprises the construction of a part 2 and 3 storey multi dwelling housing development comprising of 4 detached dwellings and a duplex building, giving a total of 6 units.

The proposed development incorporates Unit 1 as a part two and three storey building. The site is zoned 2(a) Low Density Residential under Tweed Local Environmental Plan 2000 and has a height limit of two storeys. The application is accompanied with a SEPP 1 objection.

The application incorporates minor encroachments into the building envelope, and raises privacy and loss of view concerns for adjoining property to the south. However, despite these issues the application is considered to warrant a recommendation for approval on the architectural merits of the buildings and having regard to the land-use controls in this area. The application attracted three public submissions.

This report concludes that the amended development as proposed is satisfactory for approval and as such the SEPP 1 objection should be supported.

**RECOMMENDATION:**

**That : -**

**A. State Environmental Planning Policy No. 1 objections to Clause 16 of the Tweed Local Environmental Plan 2000 regarding the height of the building be supported and the concurrence of the Director-General of the Department of Planning be assumed for the following reasons: -**

- **The development presents predominantly as two storey to Adelaide Street;**
- **The building retains as far as practical, view sharing with neighbouring properties;**
- **The density of the building is compatible with the existing urban environment;**

- The development attains the objectives of the Residential 2(a) land use zoning under the Tweed Local Environmental Plan 2000; and
  - The development achieves the relevant performance objectives of Development Control Plan No. 6 - Multi-Dwelling Housing and Development Control Plan No. 18 - Tweed Heads.
- B. Development Application DA04/1024 for multi dwelling housing comprising six dwellings at Lot 1 DP 1058988, No. 70 Adelaide Street, Tweed Heads be approved subject to the following conditions: -

**"DEFERRED COMMENCEMENT"**

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

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

**SCHEDULE "A"**

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

- A. All remediation works shall be carried out in accordance with the *Site Remediation & Validation - Removal of Lead-Impacted Soil prepared by HMC Environmental Services dated April 2005 (Report No. 2003.53b)* or to the written satisfaction of a NSW EPA Accredited Site Auditor.

On completion of remediation works and prior to any other works commencing on the site, a Validation Report prepared by a suitably qualified consultant shall be submitted to a NSW EPA Accredited Site Auditor for review prior to a Site Audit Statement being issued. A copy of the report must be made available to Council at this time.

On completion of remediation works and validation testing, and prior to any other works commencing on the site, a Site Audit Statement shall be prepared by a NSW EPA Accredited Site Auditor confirming that the site has been remediated and made suitable for the intended use. A copy of the statement must be made available to Council at this time.

**SCHEDULE B**

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



**GENERAL**

1. The development shall be completed in accordance with the Statement of Environmental Effects and Plan Nos Site 01 - 04; Lot 2&3 01 - 04; Lot 4 01 - 04 prepared by Will Collins Design and dated 1-6-05; and Lot 5&6 01 - 04 prepared by Will Collins Design and dated 19-8-05, except where varied by the conditions of this consent.  
[GEN0005]
2. The development shall be completed in accordance with the plans approved by Council and the Statement of Environmental Effects, except where varied by conditions of this consent.  
[GEN0015]
3. 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.  
[GEN0045]
4. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.  
[GEN0115]
5. Approval is given subject to the location of, protection of, and/or any necessary modifications to any existing public utilities situated within or adjacent to the subject property.  
[GEN0135]

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

6. Any car parking floodlighting shall not spill beyond the boundaries of the site. Lighting shall comply with AS 4282 and other relevant Australian Standards. A plan of the lighting shall be approved by the Principal Certifying Authority PRIOR to the issue of a Construction Certificate.  
[PCC0055]
7. **Section 94 Contributions**  
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.

**A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT**

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) S94 Plan No. 4 (Version 4.0) Sector1_4	\$3,349
(b) Open Space (Structured): S94 Plan No. 5	\$2,280
(c) Open Space (Casual): S94 Plan No. 5	\$487
(d) Shirewide Library Facilities: S94 Plan No. 11	\$2,012
(e) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$409
(f) Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16	\$609
(g) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$3,708.45
(h) Cycleways S94 Plan No. 22	\$1,028
(i) Regional Open Space (Structured) S94 Plan No. 26	\$3,437
(j) Regional Open Space (Casual) S94 Plan No. 26	\$643

[PCC0215]

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

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

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

Water DSP4: 3.6 ET @ \$4230 \$15,228

Sewer Tweed Heads: 4.75 ET @ \$6152 \$29,222

**A CURRENT COPY OF THE CONTRIBUTION FEE SHEET ATTACHED TO THIS CONSENT MUST BE PROVIDED AT THE TIME OF PAYMENT**

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.

[PCC0265]

9. Prior to the issue of a Construction Certificate, the Applicant will submit a detailed Landscape Plan to Council for the approval of the Director Planning and Development in consultation with the Chair of Planning, which will include:
- a) *A 1:100 plan of the exterior area with proposed surfaces, trees, plants and other landscape element;*
  - b) *Details of any proposed earthworks;*
  - c) *Details of the drainage and watering system; and*
  - d) *A Management Plan for the landscaped area post completion of the building.*
  - e) *Wherever possible native or drought tolerant species to be utilised.*

[PCC0585]

10. A traffic control plan in accordance with AS1742 and RTA publication "Traffic Control at Work Sites" Version 2 shall be prepared by an RTA accredited person shall be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate. Safe public access shall be provided at all times.

[PCC0865]

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

[PCC0945]

12. Permanent stormwater quality treatment shall be provided in accordance with the following:
- (a) The Construction Certificate Application shall include a detailed stormwater management plan (SWMP) for the occupational or use stage of the development prepared in accordance with Section D7.07 of Councils *Development Design Specification D7 - Stormwater Quality*.
  - (b) Permanent stormwater quality treatment shall comply with section 5.5.3 of the Tweed Urban Stormwater Quality Management Plan and Councils *Development Design Specification D7 - Stormwater Quality*.
  - (c) The stormwater and site works shall incorporate water sensitive design principles and where practical, integrated water cycle management. Typical water sensitive features include infiltration, maximising permeable/landscaped areas, stormwater retention /detention/reuse, and use of grass swales in preference to hard engineered drainage systems.
  - (d) Specific Requirements to be detailed within the Construction certificate application include:
    - (i) Runoff from driveway, exposed car parking and hardstand landscaping areas must be treated to remove oil and sediment pollutants prior to discharge to the public realm. Permanent treatment devices must be sized in accordance with Section D7.12 of Council's *Development Design Specification D7 - Stormwater Quality*. Full engineering details of all treatment devices, including maintenance schedules, must be submitted with a s68 Stormwater Application for approval prior to the issue of a Construction Certificate.
    - (ii) The dedicated car wash bays shall be constructed of durable permeable material, or be graded to direct runoff to grassed filter strips or pervious landscaping.

[PCC1105]

13. A construction certificate application for works that involve any of the following:-
- connection of a private stormwater drain to a public stormwater drain
  - installation of stormwater quality control devices
  - erosion and sediment control works

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

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

[PCC1145]

14. Erosion and Sediment Control shall be provided in accordance with the following:
- (a) The Construction Certificate Application must include a detailed erosion and sediment control plan prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.
  - (b) Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works".
- [PCC1155]
15. a) All stormwater shall be discharged from the development via connection into the existing field inlet located in the south-western corner of the site.
- b) *The existing earth stormwater diversion bund along the southern boundary of the site shall be replaced with a block and mortar wall. The extension of this bund wall, to contain flows from the drainage corridor between units 5 & 6, shall also be of block and mortar construction. The extended bund wall shall be constructed to appropriate dimensions to convey all overland flow with a freeboard of no less than 300mm*
- c) *Stormwater runoff shall not be discharged onto neighbouring properties.*
16. a) Construction Certificate drawings shall make provisions for the regrading of the subject site in accordance with Council's Development Control Plan 47 "Cut and Fill on residential Land " or to the satisfaction of the Director Engineering and Operations Division.
- b) *The retaining walls proposed along the south western boundary shall be located a minimum offset of 900mm from the property boundary, with appropriately sized drainage contained along the top of the retaining walls.*
- c) *Retaining walls shall not exceed a maximum height of 2.5m.*

17. All retaining walls in excess of 1.2m are to be designed by a suitably qualified geotechnical / structural engineer in accordance with AS4678 - 2002 - Earth Retaining Structures. A report that details compliance with the design provisions of this standard is to accompany the Construction Certificate drawings.
18. Prior to the issuing of a Construction Certificate, a full geotechnical assessment of the site is to be carried out and a report submitted to Council for approval. The report must include recommendations relating to site stability and suitability, proposed on-site excavation works including temporary and permanent retention methods proposed for the protection of adjacent structures, foundation design parameters, construction theories, as well as any other geotechnical matters of relevance relating to the proposed development.
19. Ground anchors to retain sacrificial sheet piling (as required) will not be allowed within Council property without prior approval for installation by the Director Engineering and Operations Division and removal on completion or substantial financial compensation. Council will only allow ground anchors with neighbouring private property if consent by the owners of the property to be burdened is obtained prior to installation.
20. Engineering Plans and specifications to accompany the Construction Certificate application shall provide for a stormwater drainage network that:
  - i. *Incorporates the provisions of the approved Section 68 Application (SWD03/0623) associated with Development Application DA03/0303.*
  - ii. *Provides a V shaped drainage corridor of minimum 4.0m width and 0.2m invert depth, between proposed units 5 & 6. This drainage corridor shall be constructed of concrete and must be void of any obstructions. The concrete shall extend to the southern boundary and along the southern boundary (as required) to ensure appropriate conveyance of stormwater.*
  - iii. *Provides a 3m wide 5% crossfall on the driveway, grading towards the north-eastern property boundary. A wall, minimum height 600mm shall be constructed along the property boundary to direct surcharge flows from the driveway drainage system towards the drainage corridor between units 5 & 6.*

21. Prior to issue of a Construction Certificate a legally binding easement to drain sewer shall be created on Lot 2 on DP 780214, to provide a legal point of sewerage discharge for the subject development.

[PCCNS01]

**PRIOR TO COMMENCEMENT OF WORK**

22. 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
- (c) 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
- (d) 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.

[PCW0215]

23. 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.

[PCW0225]

**24. Residential building work:**

- (a) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:  
in the name and licence number of the principal contractor, and  
the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:  
the name of the owner-builder, and  
if the owner-builder is required to hold an owner builder permit under that Act, the number of the owner-builder permit.
- (b) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (1) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

[PCW0235]

**25. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every twenty (20) persons or part of twenty (20) persons employed at the site. Each toilet provided must be:-**

- (a) a standard flushing toilet connected to a public sewer, or
- (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

**26. 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.

[PCW0255]

27. The building is to be protected from attack by termites by approved methods in accordance with the provisions of Australian Standard AS 3660.1, and:
- (a) Details of the proposed method to be used are to be submitted to and approved by the Principal Certifying Authority prior to start of works; and
  - (b) Certification of the works performed by the person carrying out the works is to be submitted to the PCA; and
  - (c) A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-
    - (i) the method of protection; and
    - (ii) the date of installation of the system; and
    - (iii) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
    - (iv) the need to maintain and inspect the system on a regular basis.

**Note:** Underslab chemical treatment will not be permitted as the only method of treatment unless the area can be retreated without major disruption to the building.

[PCW0775]

28. Prior to commencement of work on the site all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area where required to the satisfaction of the Principal Certifying Authority.

In addition to these measures the core flute sign provided with the stormwater approval under Section 68 of the Local Government Act 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.

- [PCW0985]
29. All roof waters are to be disposed of through properly jointed pipes to the street gutter, interallotment drainage or to the satisfaction of the Principal Certifying Authority. All PVC pipes to have adequate cover and installed in accordance with the provisions of AS/NZS3500.3.2. Note All roof water must be connected to an interallotment drainage system where available. A detailed stormwater and drainage plan is to be submitted to and approved by the Principal Certifying Authority prior to commencement of building works.

[PCW1005]

30. 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.

[PCW1065]

#### **DURING CONSTRUCTION**

31. All proposed works to be undertaken are to be carried out in accordance with the conditions of development consent, approved construction certificate, drawings and specifications.

[DUR0005]

32. 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 General Manager or his delegate.

Such to specifically include the following:

- (a) 150 millimetres thick reinforced with F72 Mesh for residential development or F82 mesh for Commercial/Industrial Development

Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork to be inspected. Failure to do so may result in rejection of the works and its reconstruction.

Paving bricks are not acceptable unless laid on a 100mm thick concrete base.

- [DUR0065]
33. The provision of twelve (12) off street car parking spaces including parking for the disabled where applicable. A minimum of two (2) unburdened spaces shall be marked as visitor spaces and maintained accordingly. The layout and construction standards to be in accordance with Development Control Plan No. 2 - Parking Controls, the Building Code of Australia and AS 2890.

[DUR0085]

34. Construction site work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council: -  
Monday to Saturday from 7.00am to 7.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

35. 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.

[DUR0215]

36. The roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of the buildings with direct line of sight to the proposed building.

[DUR0245]

37. 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 was made).

[DUR0375]

38. Building materials used in the construction of the building are not to be deposited or stored on Council's footpath or road reserve, unless prior approval is obtained from Council. [DUR0395]
39. 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. [DUR0405]
40. The finished floor level of the building should finish not less than 225mm above finished ground level. [DUR0445]
41. No filling to is be placed hydraulically within twenty metres (20m) of any boundary that adjoins private land that is separately owned. Fill adjacent to these boundaries is to be placed mechanically. No filling of any description is to be deposited, or remain deposited, within adjacent properties. [DUR0765]
42. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited. [DUR0815]
43. All cut or fill on the property is to be battered at an angle not greater than 45° within the property boundary, stabilised and provided with a dish drain or similar at the base in accordance with Councils adopted Design and Construction Specifications, DCP16 and DCP47 to the satisfaction of the Principal Certifying Authority. Please note timber retaining walls are not permitted. [DUR0835]
44. All new residential dwellings (and extensions comprising over 50% of the original floor area) are to fully comply with Councils Energy Smart Housing Policy (DCP39). In order to comply with DCP39 consideration must be given to the building envelope, orientation, insulation, ventilation, thermal mass and zoning. [DUR0915]
45. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council. [DUR0985]
46. All work associated with this approval is to be carried out so as not to impact on the environment. All necessary precautions, covering and protection shall be taken to minimise impact from: -
- Noise, water or air pollution

- Minimise impact from dust during filling operations and also from construction vehicles
- No material is removed from the site by wind

[DUR1005]

47. The burning off of trees and associated vegetation felled by clearing operations or builders waste is prohibited without the written approval of the NSW Rural Fire Service or NSW Fire Brigade. A copy of such approval is to be submitted to Council prior to commencing any burning activities.

[DUR1015]

48. Landscaping of the site shall be carried out in accordance with the approved landscaping plans.

[DUR1045]

49. 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 Adelaide Street in accordance with Councils adopted Development Design and Construction Specification.

Twenty four (24) hours notice is to be given to Council's Engineering & Operations Division before placement of concrete to enable formwork to be inspected. Failure to do so may result in rejection of the works and its reconstruction.

[DUR1735]

50. 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 1742.3-2202 (Manual of 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.

[DUR1795]

51. The proponent must not undertake any work within the public road reserve without giving Council's Engineering & Operations Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[DUR1845]

52. 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 in accordance with Councils adopted Design and Construction Specifications prior to any use or occupation of the buildings.

[DUR1875]

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

[DUR1905]

54. 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.

[DUR1955]

55. 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.

[DUR2185]

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

[DUR2195]

57. 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.

[DUR2375]

58. Council is to be given 24 hours notice for any of the following inspections prior to the next stage of construction:

- (a) internal drainage, prior to slab preparation;
- (b) water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (c) external drainage prior to backfilling.
- (d) completion of work and prior to occupation of the building.

[DUR2485]

**59. Plumbing**

- (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.

[DUR2495]

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

[DUR2505]

- 61. 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.**

[DUR2545]

- 62. 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:-**

- \* 45<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.**

[DUR2555]

- 63. Where two (2) or more premises are connected by means of a single water service pipe, individual water meters shall be installed to each premise beyond the single Council water meter (*unless all the premises are occupied by a single household or firm*).**

[DUR2615]

- 64. A Sewer manhole is present on this site. This manhole is not to be covered with soil or other material.**

**Should additional fill be proposed in the area of the sewer manhole application shall be made to Council's Engineering & Operations Division for the raising of the manhole.**

[DUR2655]

- 65. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main.**

[DUR2705]

- 66. The proposed retaining walls along the western boundary shall be located a minimum 500mm off the property boundary.**

- 67. Retaining walls shall be limited to a maximum height of 2.5m.**

[DURNS01]

68. Appropriate measures are to be put in place during the construction period to prevent the transport of sediment from the site. Should any material be transported onto the road or any spills occur it is to be cleaned prior to cessation of same days work and/or commencement of rain event

**PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

69. A person must not commence occupation or use of the whole or any part of a new building or structure (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). [POC0205]
70. All landscaping work is to be completed in accordance with the approved plans prior to any use or occupation of the building. [POC0475]
71. Redundant road pavement, kerb and gutter or foot paving including and existing disused vehicular laybacks/driveways or other special provisions shall be reinstated in accordance with Councils adopted Development Design and Construction Specifications. [POC0755]
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]

**USE**

73. 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. [USE0125]
74. All externally mounted air conditioning units and other mechanical plant or equipment are to be located so that any noise impact due to their operation which may be or is likely to be experienced by any neighbouring premises is minimised, notwithstanding this requirement all air conditioning units and other mechanical plant and or equipment is to be acoustically treated or shielded where considered necessary to the satisfaction of the General Manager or his delegate such that the operation of any air conditioning unit, mechanical plant and or equipment does not result in the emission of offensive noise. [USE0175]
75. All external artificial lighting shall be shielded where required to the satisfaction of Councils General Manager or his delegate to ensure that the spill of light or glare from such lighting does not create a nuisance to any adjoining or neighbouring premises. [USE0205]
76. The use being restricted to the floor area designated on the approved plan. [USE0415]



77. 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. [USE0435]
78. All externally mounted artificial lighting is to be shielded to the satisfaction of Council's Director of Environment and Community Services where necessary or required so as to prevent the spill of light creating a nuisance to adjoining premises.
79. Appropriate arrangements to the satisfaction of Council's Director of Environment and Community Services shall be provided for the storage and removal of garbage and other waste products. [USENS01]

**REPORT:**

**Applicant:** Mr J Grinter  
**Owner:** Shavasan Pty Ltd  
**Location:** Lot 1 DP 1058988, No. 70 Adelaide Street Tweed Heads  
**Zoning:** 2(a) Low Density Residential  
**Cost:** \$1,400,000

**BACKGROUND:**

Council is in receipt of a development application that seeks to construct a multi dwelling housing development at 70 Adelaide Street, Tweed Heads. The development is a part 2 and 3 storey development comprising of 4 detached dwellings and a duplex building, giving a total of 6 units. The proposed development is contemporary in design, incorporating skillion colour-bond roofing, rendered walls as well as feature timber screens and cladding.

The site is described as Lot 1 DP1058988 No. 70 Adelaide Street, Tweed Heads. The total site area is 1531m<sup>2</sup>. The development site is quite irregular in shape, having a distinct "L" shape. Access is provided from Adelaide Street, with the site falling quite steeply from the road frontage boundary to the rear of the site. Vegetation on the site is limited to several semi mature and mature eucalypt trees across the site, some of which are to be retained for the proposed development. There are no existing buildings or structures on the site.

The immediate locality surrounding the subject site is essentially residential in character, with a mixture of older one and two storey residential dwellings. The properties adjoining the northern and eastern boundaries consist of single storey dwellings, whilst the southern adjoining property and property to the west beyond Adelaide Street consisting of part two and three storey dwellings. The local area is undergoing a period of transition, with newer residential projects replacing the older style of development.

**The Proposal**

The following provides a general overview of the components of the proposed development:

Unit 1

Unit 1 is a detached dwelling comprising: three (3) bedrooms; an open living / dining area opening onto a large balcony; media room; and double garage. The unit is part two and three storeys, with the western most portion of the dwelling incorporating the third level. This unit is located at the top of the site, nearest to the road frontage, and is orientated in a north – south direction with a courtyard to the south and the balcony to the north.

### Unit 2 & 3

Units 2 & 3 are incorporated into a two storey duplex style building. Unit 2 comprises: three (3) bedrooms; an open living / dining area opening onto a large balcony; and double garage. Unit 3 is a smaller dwelling comprising: two (2) bedrooms; an open living/dining area opening onto a large balcony; and single car garage. These units are located to the east and at a lower level to Unit 1, as well as being orientated in a north – south direction, with courtyards to the south and the balconies to the north.

### Unit 4

Unit 4 is a detached dwelling comprising: three (3) bedrooms; an open living / dining area opening onto a large balcony; and double garage. This unit is also orientated in a north – south direction with a courtyard to the south and the balcony to the north. The location is on the eastern side of Unit 3, again at a lower level down the subject site.

### Units 5

Unit 5 is a detached dwelling comprising: three (3) bedrooms; a rumpus room; an open living / dining area opening onto a large balcony; and single car garage. This unit is located to the east and at a lower level to Unit 4. However, it is orientated in an east – west direction, with a courtyard to the south and large balconies to the east.

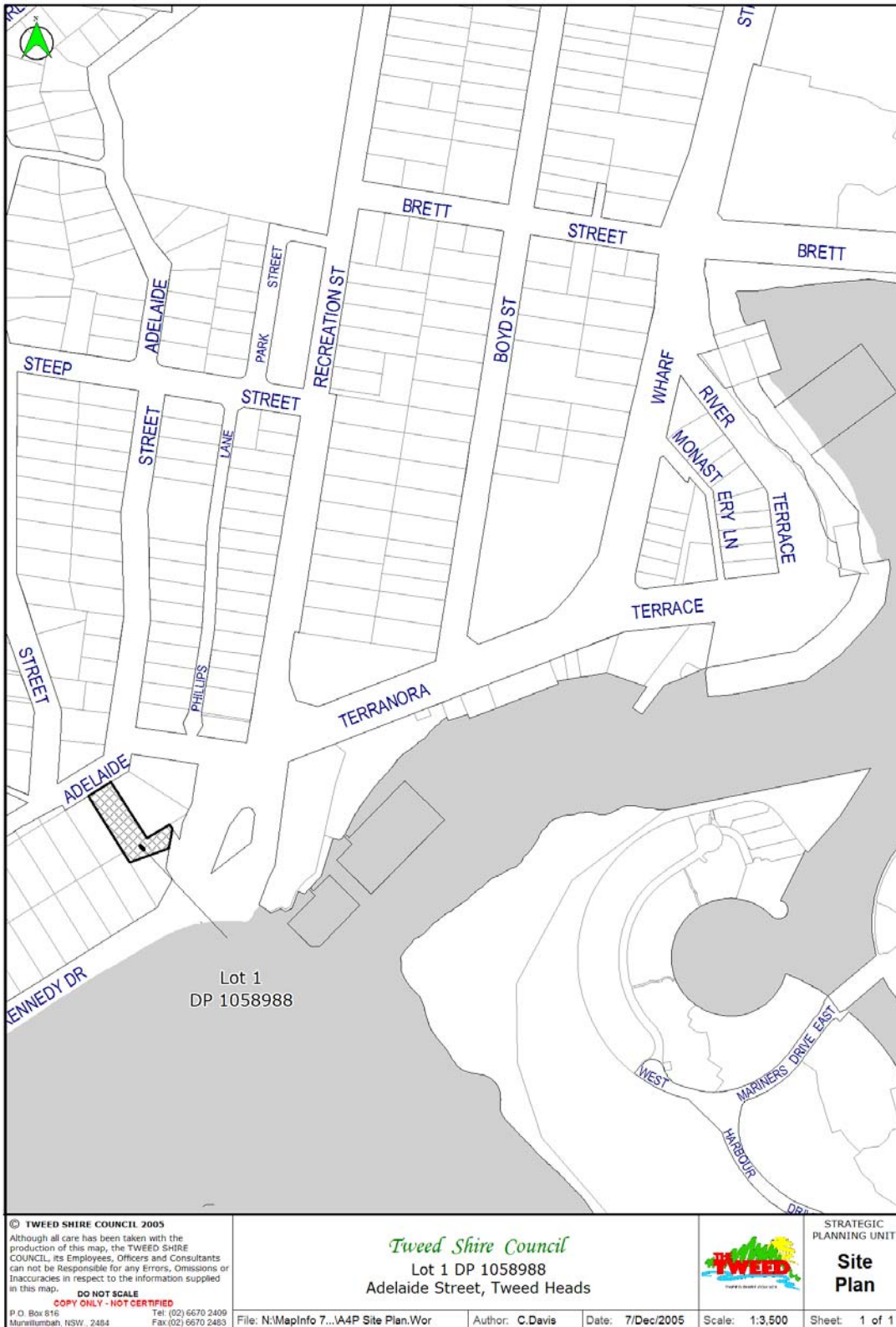
### Unit 6

Unit 6 is a detached dwelling comprising: three (3) bedrooms; a rumpus room; an open living / dining area opening onto a large balcony; and double garage. This unit is located to the north and at the same level to Unit 5. It too is orientated in an east – west direction, with a courtyard to the north and large balconies to the east.

The proposal incorporates quite extensive planting of the open space and common areas, with a variety of trees and shrubs to provide a suitable level of amenity, with an emphasis on the use of natives. Each unit provides access to open space courtyards at the rear of the dwellings.

Building setbacks are designed to be largely compliant. Various sized balconies have been provided to the units. The main balconies for each unit are capable of providing a reasonable level of functionality, with the remainder of balcony areas providing for a more passive and design element role. Visual treatment measures include the use of a variety of textures and colours.

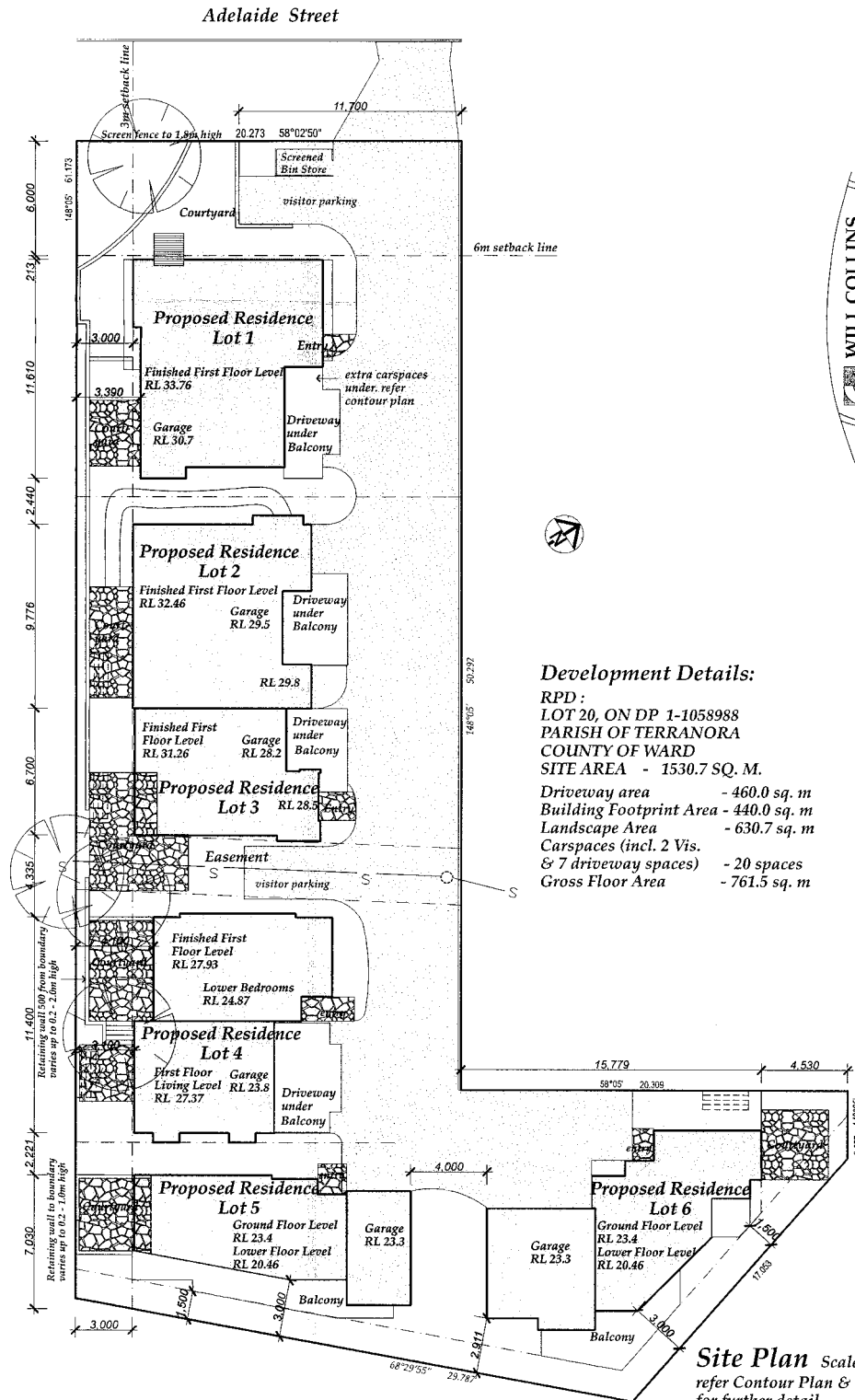
**SITE DIAGRAM:**



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*Tweed Shire Council*  
 Lot 1 DP 1058988  
 Adelaide Street, Tweed Heads  
 File: N:\MapInfo 7...A4P Site Plan.Wor Author: C.Davis Date: 7/Dec/2005

	STRATEGIC PLANNING UNIT
	<b>Site Plan</b>
Scale: 1:3,500	Sheet: 1 of 1



**Development Details:**  
 RPD :  
 LOT 20, ON DP 1-1058988  
 PARISH OF TERRANORA  
 COUNTY OF WARD  
 SITE AREA - 1530.7 SQ. M.  
 Driveway area - 460.0 sq. m  
 Building Footprint Area - 440.0 sq. m  
 Landscape Area - 630.7 sq. m  
 Carspaces (incl. 2 Vis. & 7 driveway spaces) - 20 spaces  
 Gross Floor Area - 761.5 sq. m

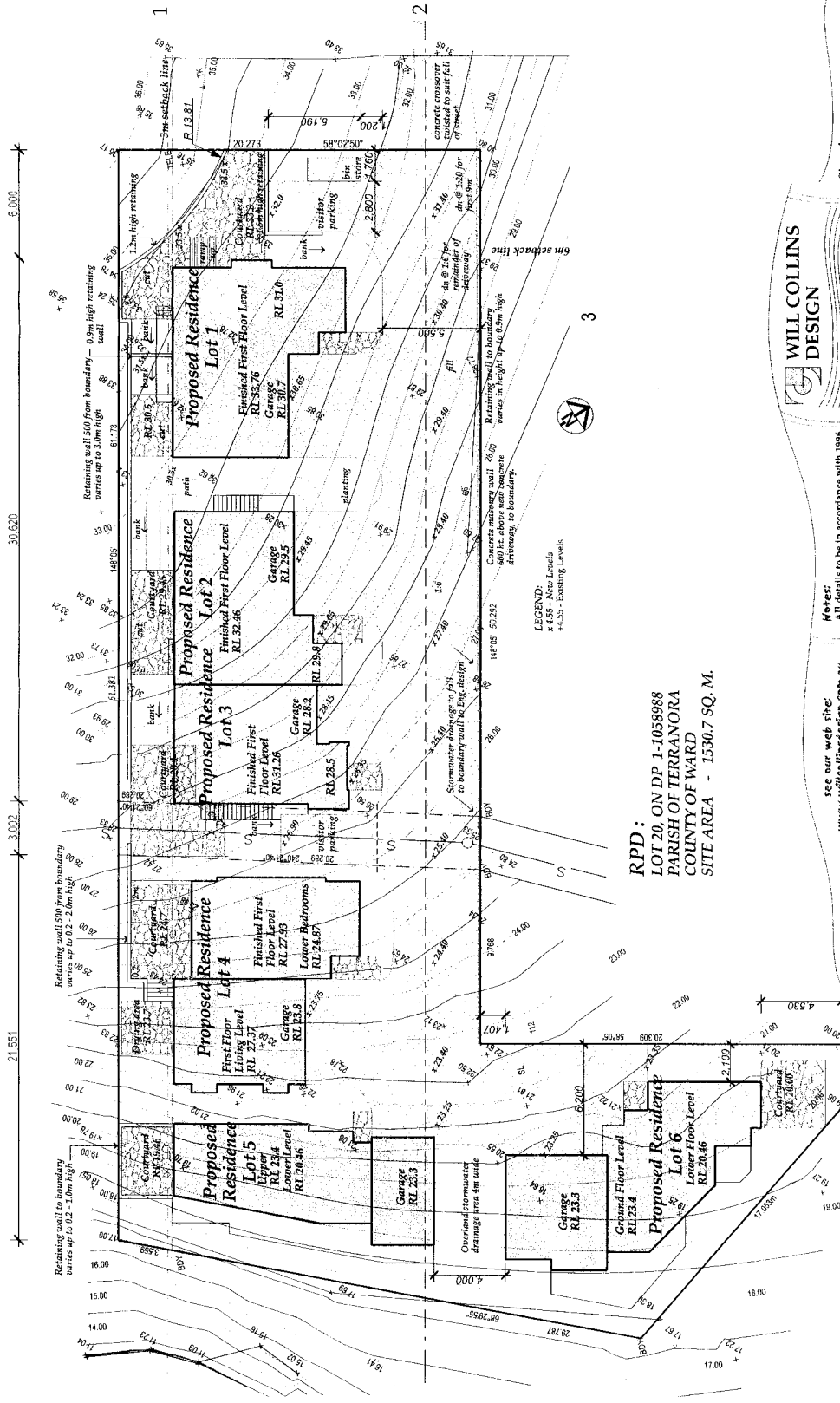
**Site Plan** Scale 1:200  
 refer Contour Plan & Landscape Plans for further detail.  
 Read this way up to match floor plan orientation

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 Curumbin Waters, 4223  
 Ph/Fax (07) 5598737  
 Mobile 0418747630  
 E-mail - will@willcollinsdesign.com.au

Signed: \_\_\_\_\_ Date: April '04  
 Scale: 1:200 or as noted  
 Project No: 20Ade04  
 Drawing: Site 01

**Notes:**  
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 Project Address: Proposed Residential Development at No. 70 Adelaide Street, Tweed Heads, NSW.  
 Client: Shavasan P/L  
 Issue: DA Issue  
 Date: 19/8/05



**RPD:**  
LOT 20, ON DP 1-1058988  
PARISH OF TERRANORA  
COUNTY OF WARD  
SITE AREA - 1530.7 SQ. M.

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Signed: \_\_\_\_\_ Date: April '04  
Scale: 1:200 or as noted  
Project No: 20Ade04  
Drawing: Site 02

**Notes:**  
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Issue: 19/8/05  
Date: 19/8/05

Project Address:  
Proposed Residential Development at  
No. 70 Adelaide Street,  
Tweed Heads, NSW.  
Client: Shivasan P/L  
DA Issue

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Adelaide Street



3.000

Existing Proprietor

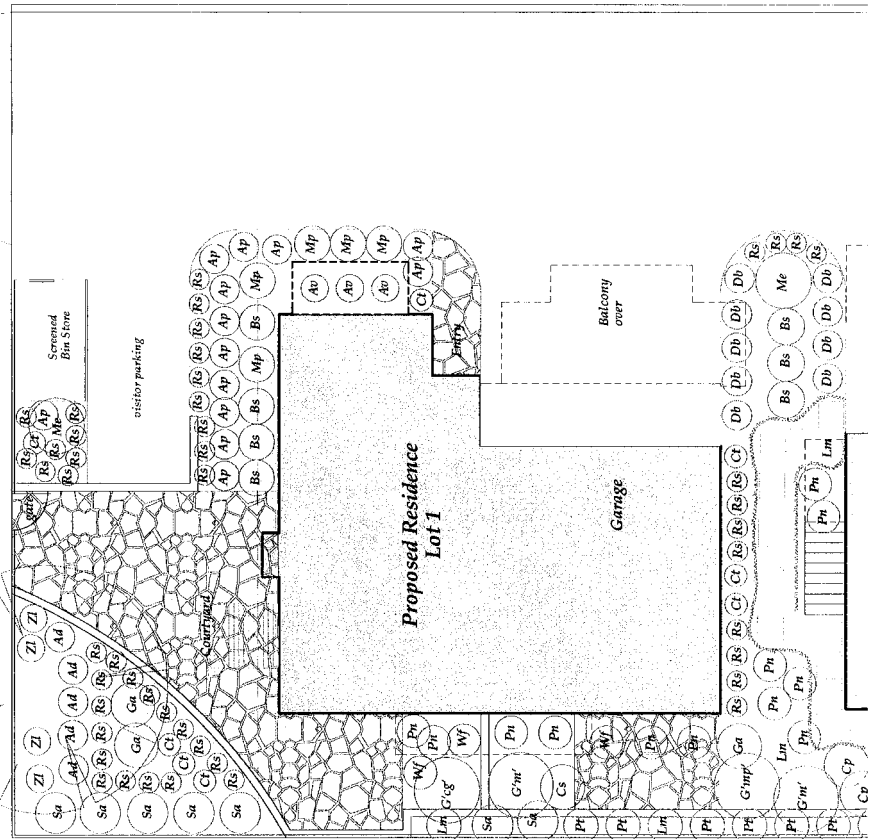
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**PLANTING SCHEDULE :**

Code	Botanical Name	Common Name	Port Size	Ht(m)	Spl(m)	No.
<b>Trees</b>						
Ep	<i>Eucalyptus ptychocarpa</i>	Swamp Bloodwood	300mm	6-8	-	3
Me	<i>Metrosideros excelsa</i>	NZ Xmas Tree	300mm	5	4	4
<b>Shrubs</b>						
Ad	<i>Allocasuarina dentata</i>	Ruby Leaf	200mm	1	1	9
Ap	<i>Agapanthus (white)</i>	Agapanthus	200mm	1	1	71
Av	<i>Arundinaria</i>	Veronica	200mm	2.5-3	0.6	16
Bs	<i>Banksia serrata</i>	Box	200mm	1-2	1-2	18
C	<i>Cycas revoluta</i>	Cycad/Sago Palm	250mm	2	2	5
Cp	<i>Callistemon pinnatifidus</i>	Bottle brush	200mm	2	2	4
Ct	<i>Callistemon rigidus</i>	Stiff Bottle brush	200mm	2	2	6
Cs	<i>Callistemon sibiricus</i>	Alpine Bottle brush	200mm	1	1	8
Ct	<i>Coralyria terminalis</i>	Coralyria (Red)	200mm	1.2-1.8	0.5-1	33
Db	<i>Dryas bicolor</i>	Forgetting Lily	125mm	1	1	21
Ga	<i>Gardenia angustata</i>	Cape Jasmine	200mm	3	3	8
Gg	<i>Grevillea 'Coastal Glow'</i>	Grevillea	200mm	3	3	2
Gm	<i>Grevillea 'Moonlight'</i>	Grevillea	200mm	5	4	3
Gmp	<i>Grevillea 'Misty Pink'</i>	Grevillea	200mm	3	3	6
Mp	<i>Marraya paniculata</i>	Mock Orange	200mm	1.5	1.5	30
Me	<i>Meibomia armillaris</i>	Bractlet Honey Myrtle	250mm	4.5	2.0	25
Pt	<i>Phytolium totti</i>	Pink Pheasant	200mm	1	1.5	16
Pt	<i>Pittosporum tobira</i>	Miss Muffitt	200mm	1-1.2	1.2-1.5	2
Sa	<i>Saxifraga trifasciata</i>	Moisture-in-the-bowl	125mm	1.2	-	4
Wf	<i>Washingtonia frutescens</i>	Coast Rosemary	200mm	2	2	16
Zi	<i>Zieria laurifolia</i>	Angular Zieria	200mm	1	1	7
<b>Ground Covers</b>						
Fp	<i>Fraxinea pauciflora</i>	Sea Heath	125mm	-	1 per 2m <sup>2</sup>	-
Gr	<i>Gardenia radicans</i>	Gardenia	125mm	0.45	0.45	-
Ln	<i>Liriodendron muscari</i>	Clumping Lily turf	125mm	0.2	clump @ 600mm c/s	-
Rs	<i>Rosea spatulata</i>	Moss-in-the-bowl	125mm	0.3	clump	69

Project Address: Proposed Residential Development at No. 70 Adelaide Street, Tweed Heads, NSW, 2330  
Shawman P/L

Drawn: 1/16/05

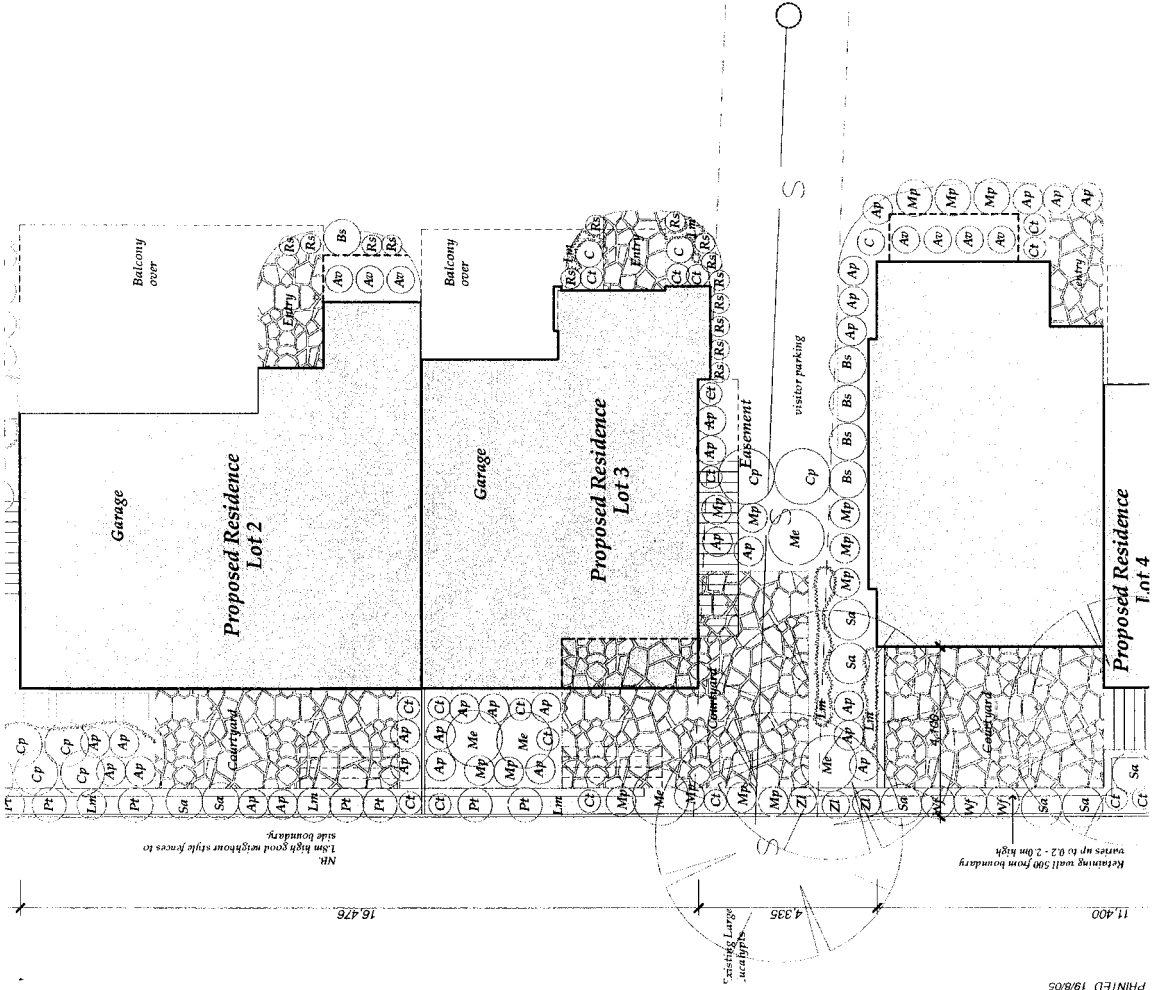
All details to be in accordance with 1996 NSW Building Code of Practice and current Australian Standards. Builders to check plans and dimensions before commencing work. All materials to be supplied and installed in accordance with current Australian Standards. Builders to be supplied with approved drawings. Building Approval by the Council (Approving Authority).

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Fax: 07 5566377  
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Signed: \_\_\_\_\_  
Scale: 1:200 or as noted  
Date: April '04  
Project No: 20AdeW  
Drawing: Site 05

For Remainder of Landscape Plan refer Drawings - Site 05 & 06



NB: 1.5m high good neighbour style fences to side boundary.

**Legend :**

- Planter bed edges
- Planter beds
- Balcony
- Paving

NB: Six stone and old clothes lines to be screened from view with 90x19mm treated timber slatwork horizontally with galv. post vertical supports @ max. spacing of 1.5m

**Planter bed notes:**  
 200mm Compost/soil mixture  
 Organic leaf mulch 75 - 100mm thick.  
 Continuous concrete edging to be installed adjacent to all planter beds adjacent to bay.  
 Note: Provide automatic irrigation system to planter beds.

**MULCH :**

MULCH SHALL BE ORGANIC LEAF OR OTHER APPROVED EQUIVALENT FREE OF ALL EXTRANEOUS MATTER MIN. 75MM THICK. MULCH TO FILL IN ALL AREAS AROUND TREES AND SHRUBS THAT ARE WITHOUT GROUND COVERS.

For Remainder of Landscape Plan refer Drawings - Site 04 & 06

**Project Address:**  
 Proposed Residential Development at No. 70 Adelaide Street, Tweed Heads, NSW.  
 Client: Shavanoan P/L

**Date:** 19/05

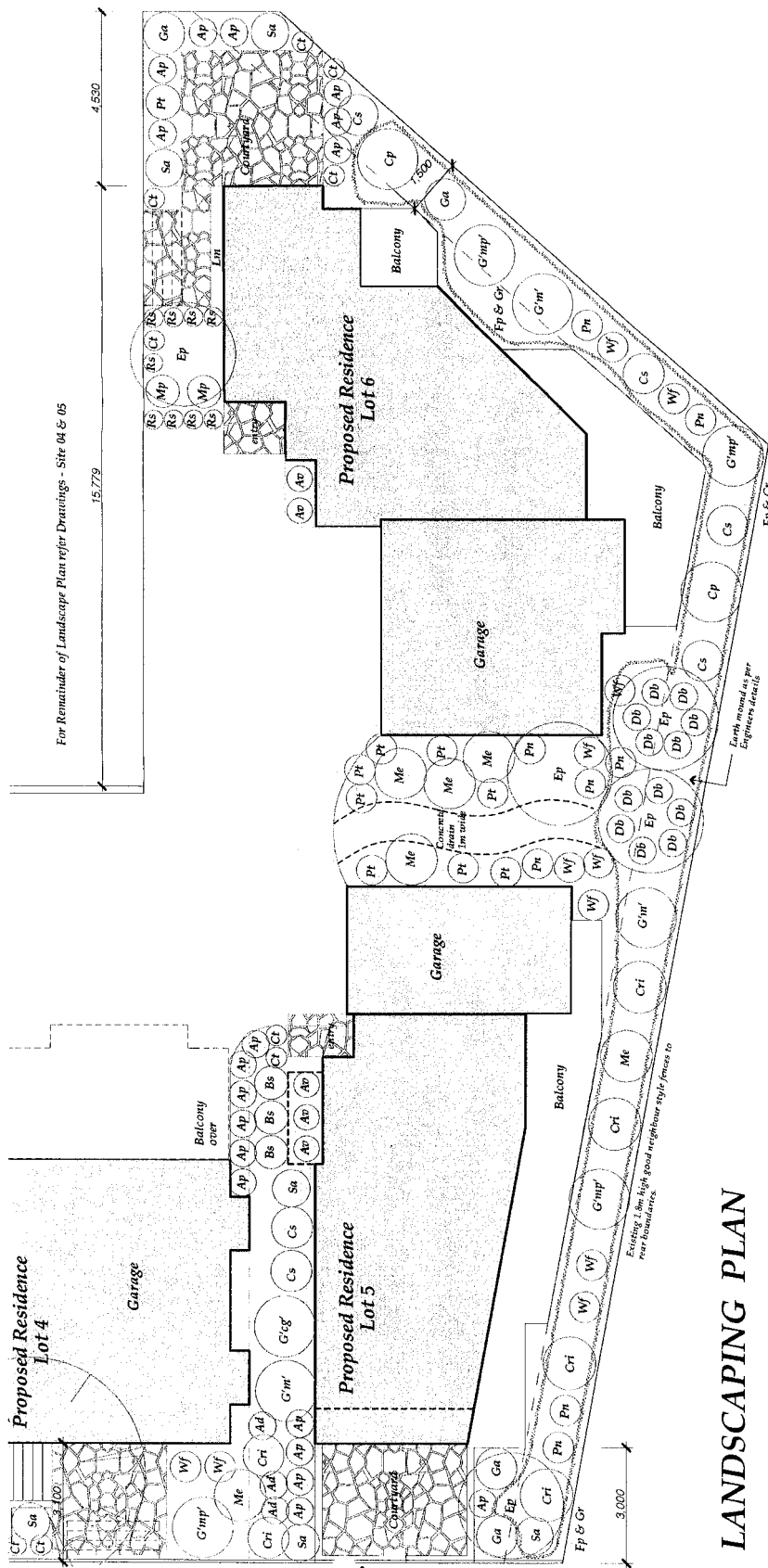
**Drawn by:** [Signature]

**Check by:** [Signature]

**Scale:** 1:500 as noted  
**Date:** April '04  
**Project No:** 20Ade04  
**Drawing:** Site 06

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**LANDSCAPING PLAN**

Signed: \_\_\_\_\_  
 Scale: 1:200 or as noted  
 Date: April '04  
 Project No: 20Ade04  
 Drawing: Site 07

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 ISSUE: 19/8/05  
 DA Issue

Project Address:  
**Proposed Residential Development at No. 70 Adelaide Street, Tweed Heads, NSW.**  
 Client: Shavasan P/L

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**Project Address:**  
Proposed Residential  
Development at  
No. 70 Adelaide Street,  
Tweed Heads, NSW.  
**Client:**  
Shavasan P/L

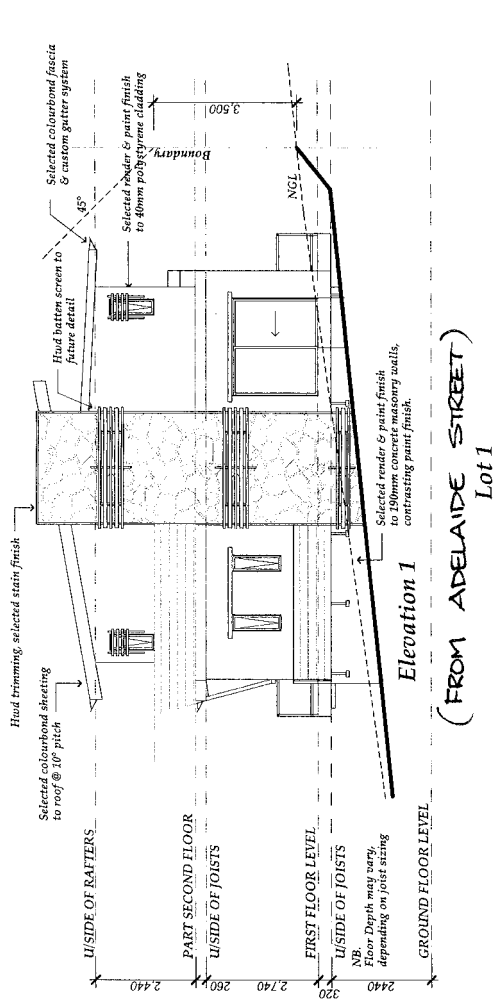
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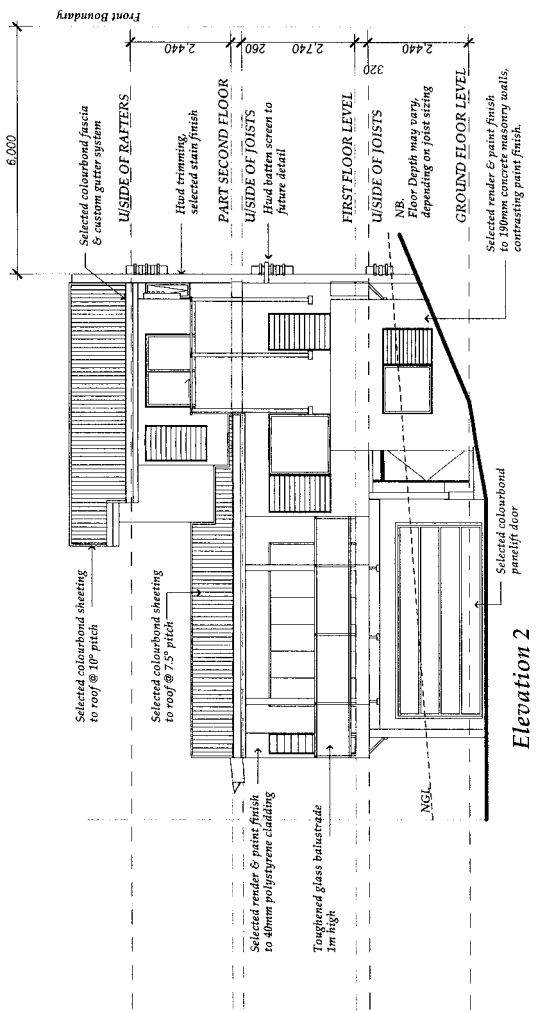
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**Project No:**  
20Ade04  
**Drawing:**  
Site 04



**Elevation 1  
(FROM ADELAIDE STREET)  
Lot 1**



**Elevation 2**

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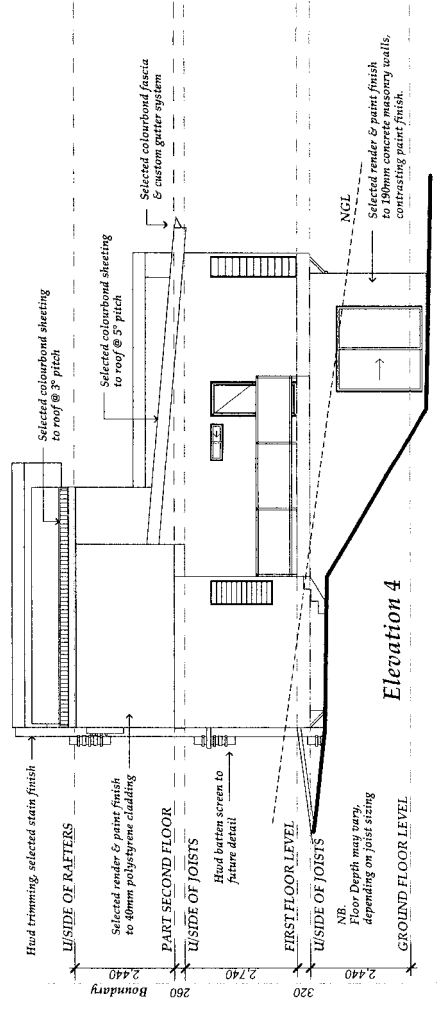
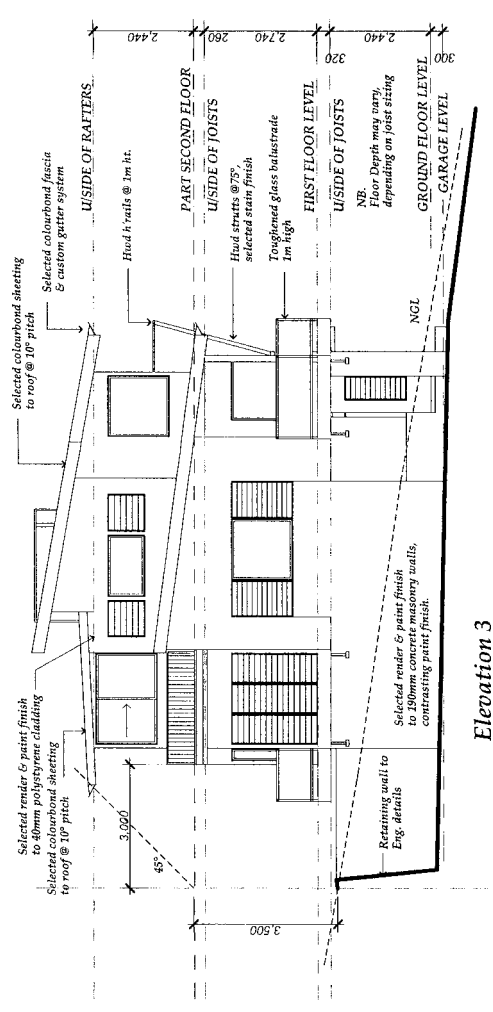
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**Project Address:**  
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**Client:**  
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**Issue:** DA Issue  
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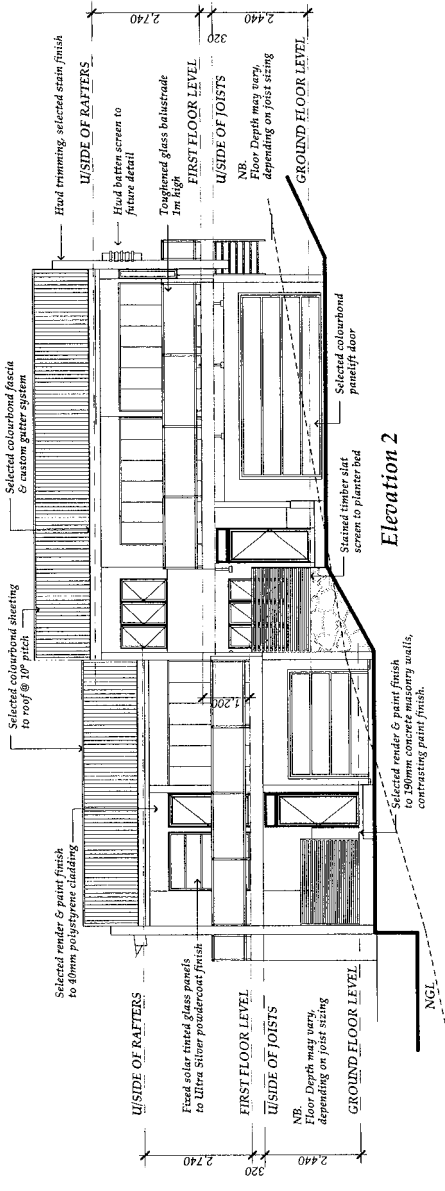
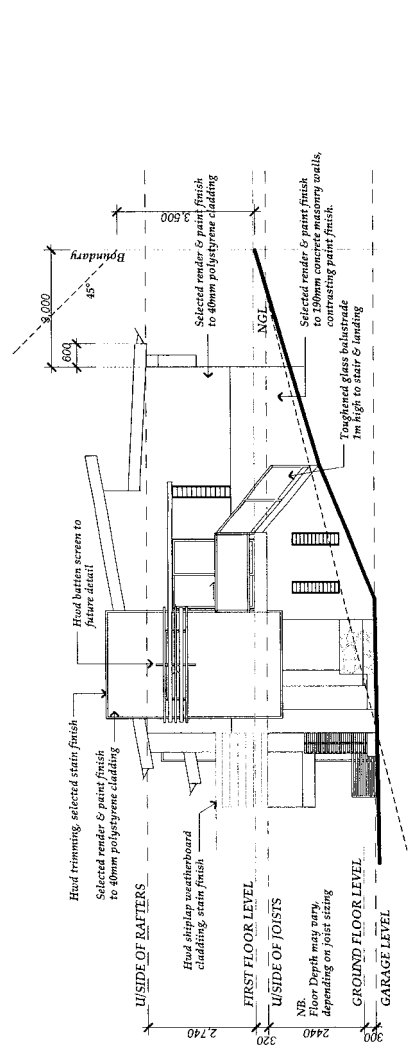
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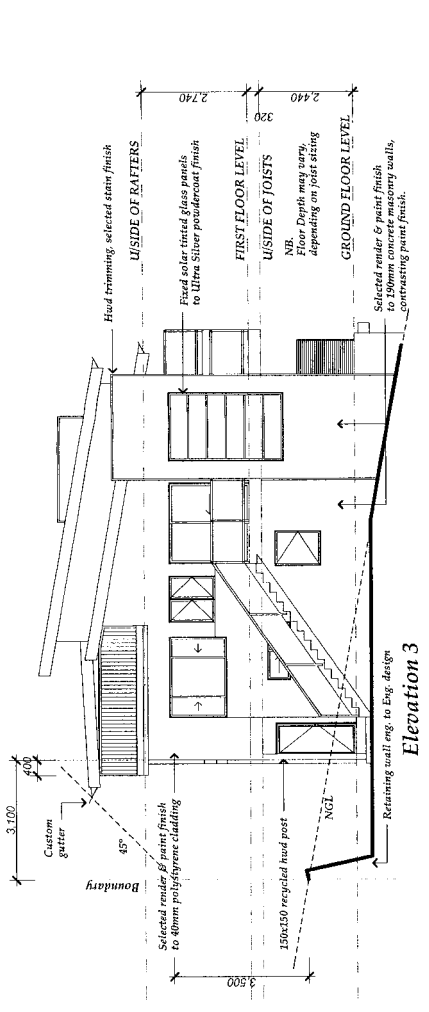
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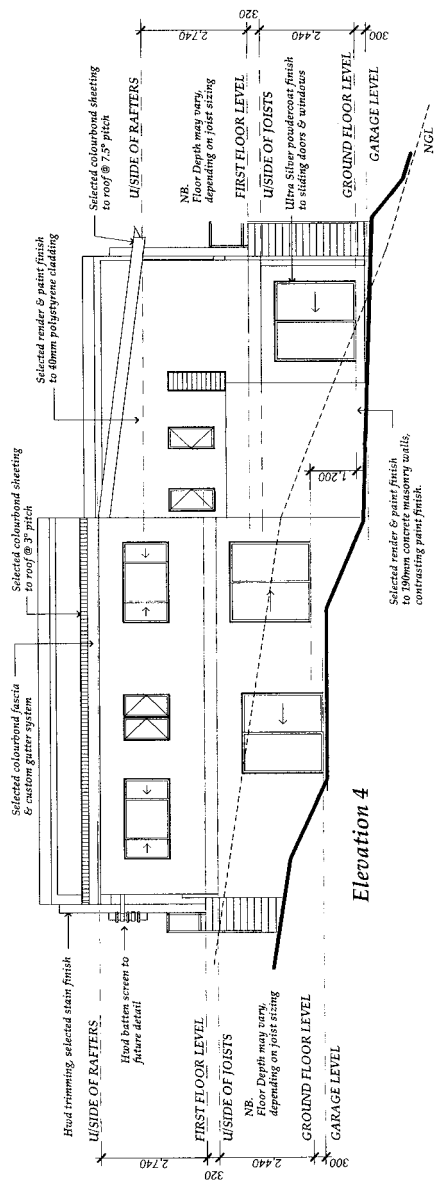
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**Elevation 3**



**Elevation 4**

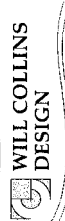
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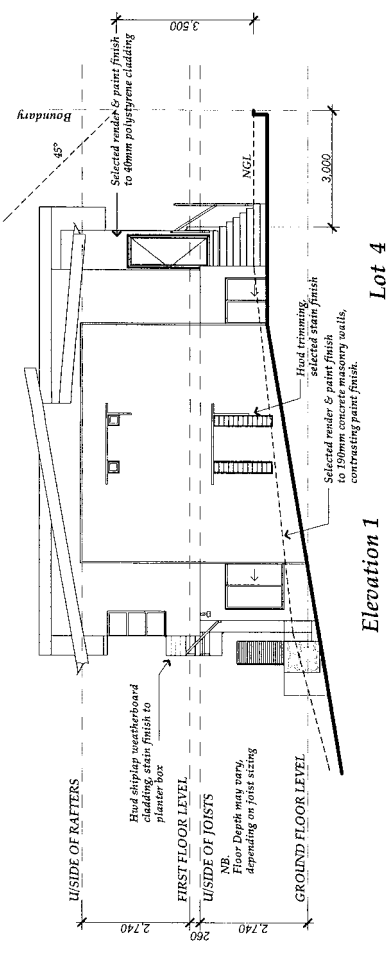
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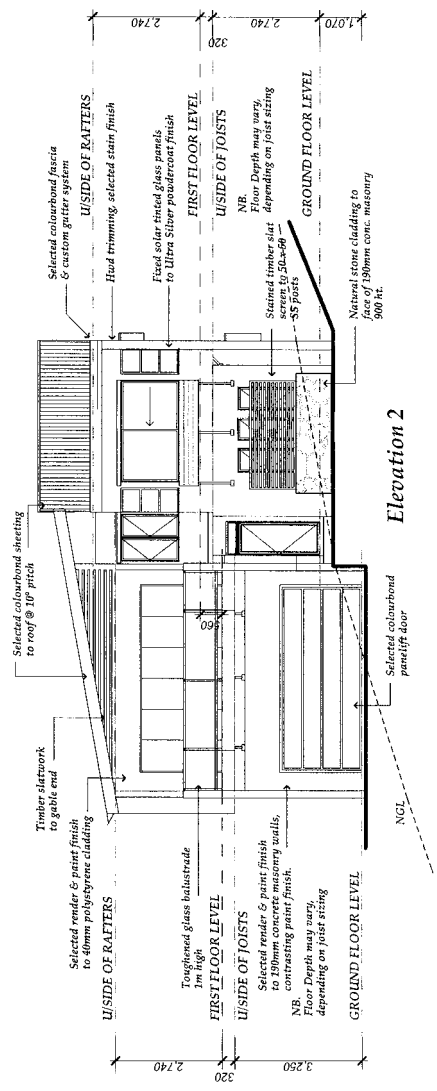


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Lot 4



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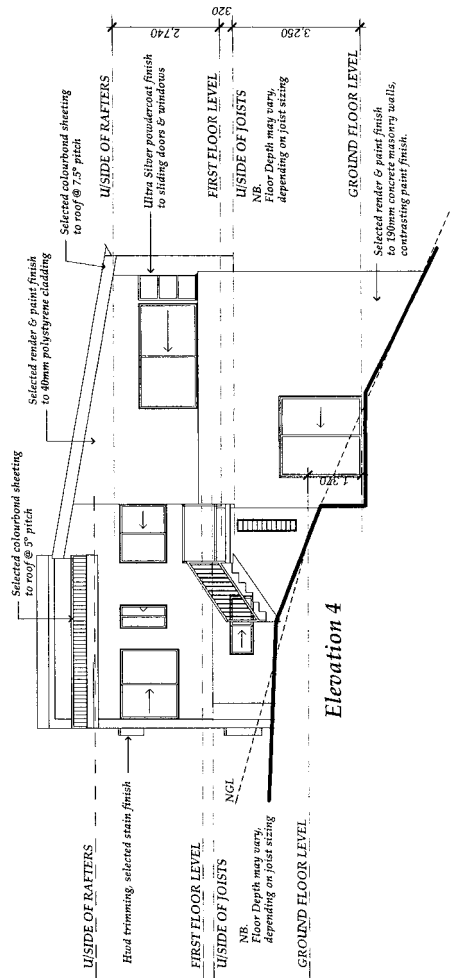
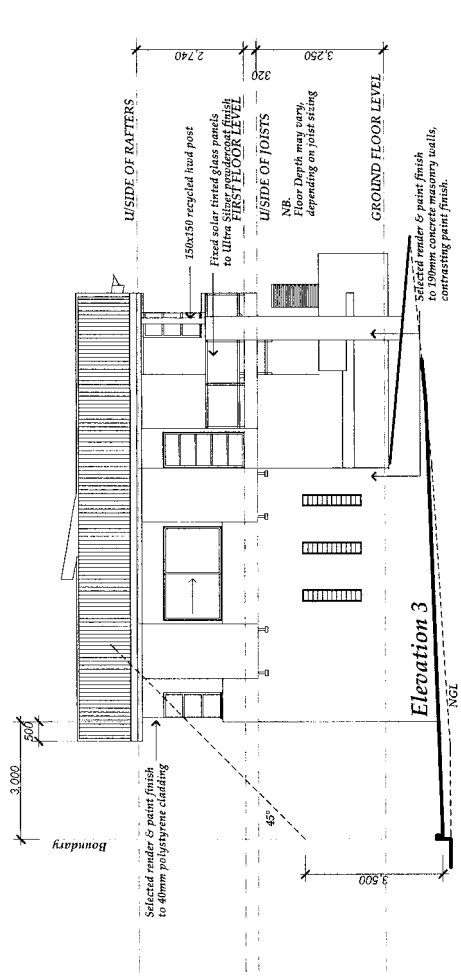
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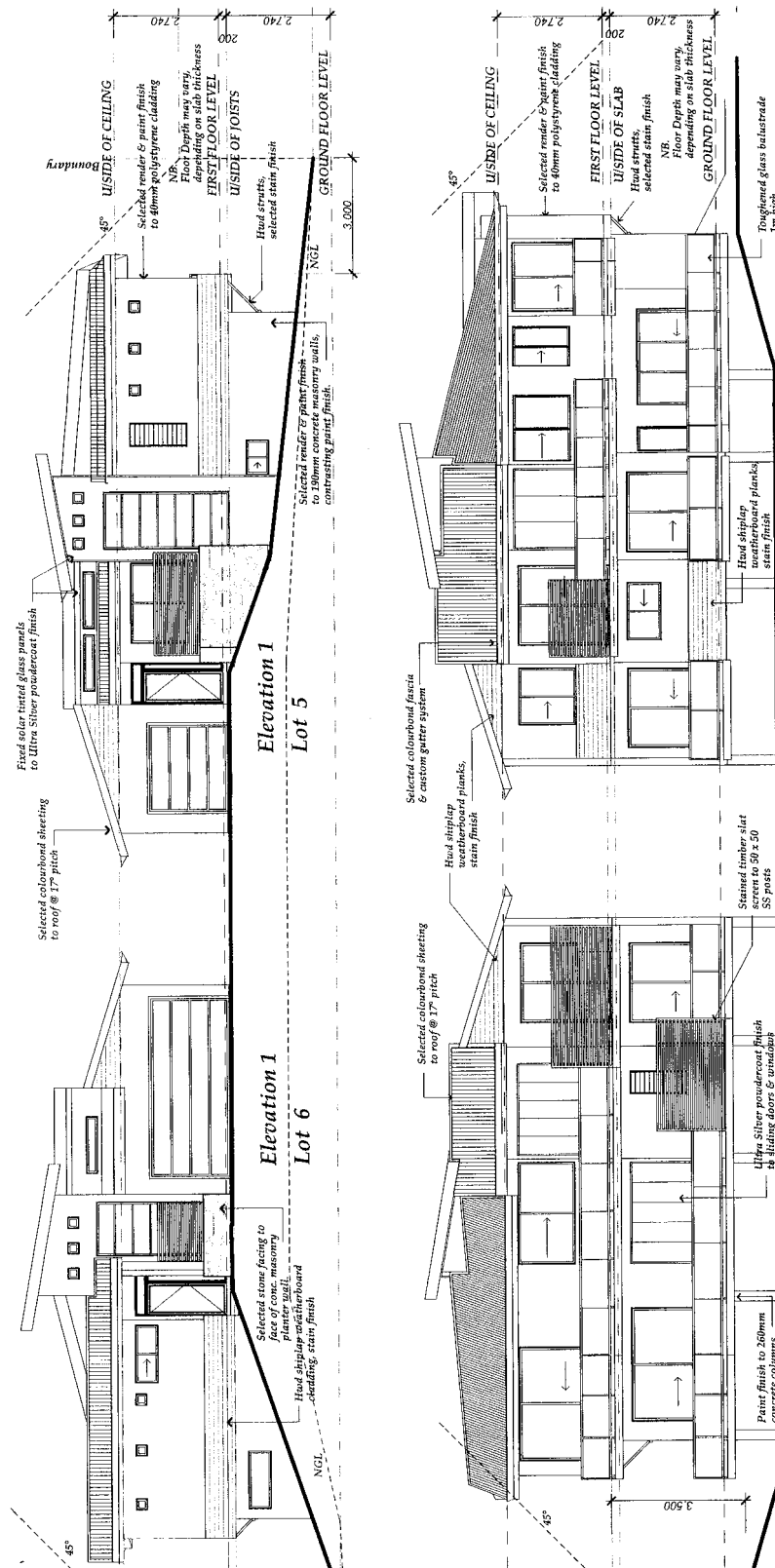
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 Lot 4 04



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Elevation 2 Lot 6

Elevation 2 Lot 5

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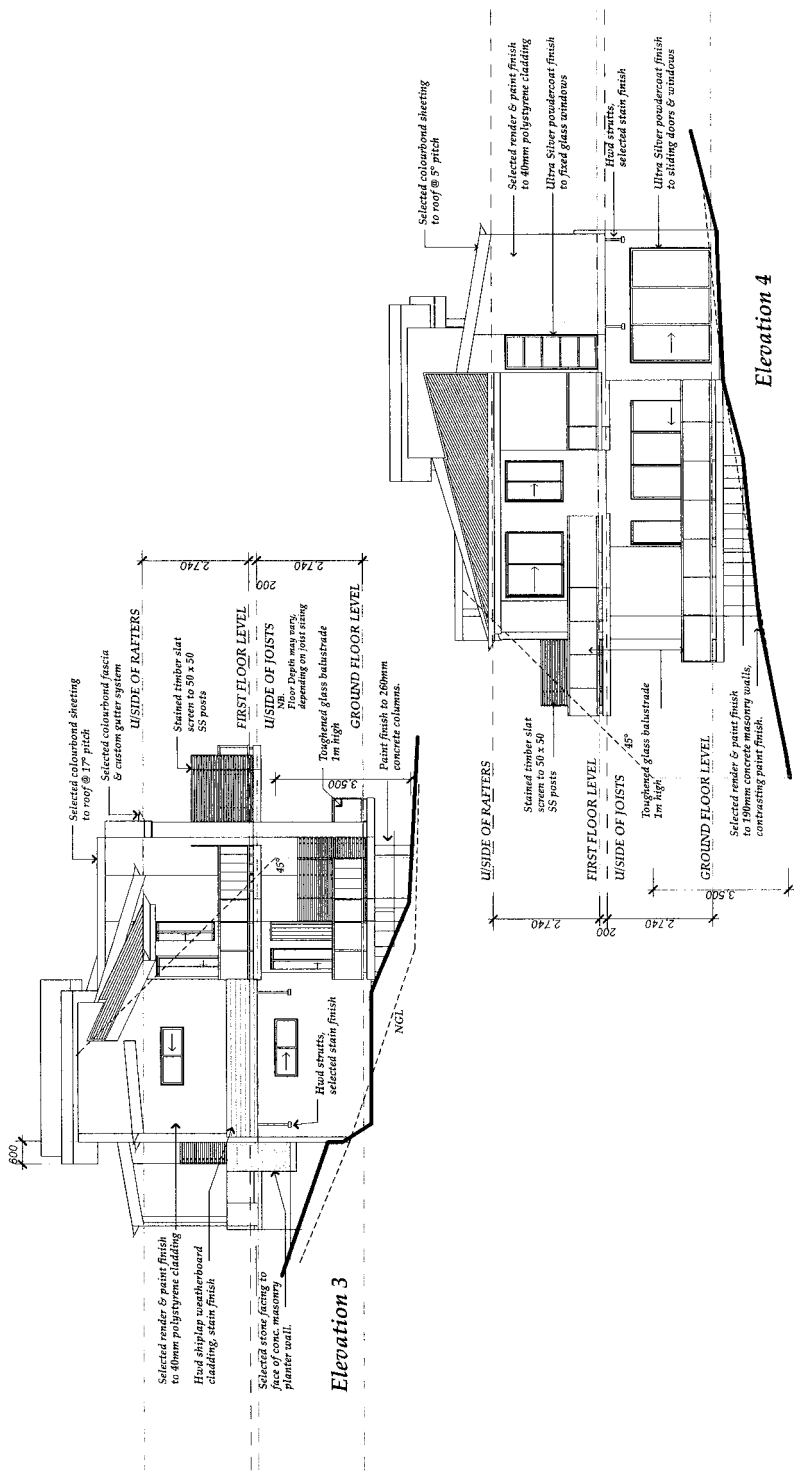
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**Date:**  
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**Date:**  
 April 04  
**Project No:**  
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**Drawing:**  
 Lot 5&6 03





**Elevation 3**

Selected colourbond sheeting to roof @ 17° pitch  
Selected colourbond fascia & custom gutter system  
USIDE OF RAFTERS  
Stained timber slat 20 x 50 SS posts  
FIRST FLOOR LEVEL  
USIDE OF JOISTS  
NB: Floor Dips may vary depending on joist riving  
Toughened glass balustrade 1m high  
GROUND FLOOR LEVEL  
Paint finish to 280mm concrete columns  
Head struts, selected stain finish

**Elevation 4**

Selected colourbond sheeting to roof @ 5° pitch  
Selected render & paint finish to 40mm polystyrene cladding  
Ultra Silver powdercoat finish to fixed glass windows  
Head struts, selected stain finish  
Ultra Silver powdercoat finish to sliding doors & windows  
Stained timber slat 20 x 50 SS posts  
FIRST FLOOR LEVEL  
USIDE OF RAFTERS  
Toughened glass balustrade 1m high  
GROUND FLOOR LEVEL  
Selected render & paint finish to masonry walls, contrasting paint finish

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**Drawing:** Lot 5&6 04

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

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

Tweed Local Environmental Plan 2000

The majority of the subject land is zoned 2(a) Low Density Residential under the Tweed Local Environmental Plan 2000. The primary objective is to:

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

The proposed development is considered to be consistent with the zone objectives. The southern portion of the land is uncoloured land on the zoning map. This has been addressed below.

Clause 13 of the LEP refers to development of uncoloured land. Consideration must be given as to whether the proposed development is compatible with development permissible within the adjoining zone. The zoning of the adjacent and surrounding land is 2(a) Low Density Residential. As noted above, the proposed development is considered to be consistent with the zone objectives.

Clause 15 of the LEP requires essential services to be available to the site prior to consent being granted for the development. The subject land has the essential services.

Clause 16 of the TLEP requires development to be undertaken in accordance with a building height plan, which identifies the site as being limited to two storeys 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. The applicant has acknowledged that the proposed development incorporates elements of three storeys. Subsequently, the applicant has lodged a SEPP 1 Objection to this standard, which is documented below.

Clause 35 of the LEP refers to the management of acid sulfate soils. The subject site is identified as Class 5 land, which requires works within 500m of Class 1, 2, 3 or 4 that are likely to lower the water table below 1m AHD, to have an appropriate ASS Management Plan. The proposed works are not considered to lower the water table in any adjacent class 1, 2, 3 or 4 land, therefore a management plan is not required.

Clause 39 of the TLEP requires contaminated land to be adequately remediated prior to development occurring, in accordance with the provisions of State Environmental Planning Policy No 55 – Remediation of Land. This has been addressed in detail later in this report.

Clause 51A of the TLEP relates to the density of multi dwelling housing in Zone 2(a). As the site is within 300m of a business centre as indicated on the Business Centres Map, a site density of one dwelling per 250 square metres is allowable. As the proposal has a density of 1 residential dwelling per 255.1m<sup>2</sup>, the development is considered to comply with the provisions of Clause 51.

#### North Coast Regional Environmental Plan 1988

In accordance with Clause 32B of the NCREP, the proposal is considered to be generally consistent with the relevant provisions of the NSW Coast Government Policy 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 that the consent authority shall consider density, environmental constraints, and road widths.

The proposed density is considered to be a reasonable response to the existing land use character of the area and will not result in the creation of any adverse physical impacts upon the locality. Further, the existing road widths are satisfactory for the proposal and a detailed sedimentation and erosion control plan will be applied in relation to the construction.

The proposal is considered to be consistent with the relevant provisions of Clause 43 of NCREP 1988.

#### State Environmental Planning Policies

##### **State Environmental Planning Policy No. 1 – Development Standards**

As noted above, a SEPP 1 Objection has been made in relation to the proposed development incorporating elements of three (3) storeys when a height limit of two (2) storeys applies to the site, pursuant to Clause 16 of the Tweed Local Environmental Plan 2000.

The area of non-compliance is the western half of Unit 1, which incorporates a media room, stairs and bathroom in an area of approximately 30m<sup>2</sup>. It is noted that if the area in question was nominated as a basement / workshop / storage area, it would not be considered to be a storey as the area does not exceed more than 1.5m from the natural ground level.

It should also be noted that this application is subject to the Savings and Transitional provisions of Clause 16 (3)(a) & (b) of the TLEP. That is, the definition of storey in this instance includes the measuring of height from natural ground level not as that in the present case under the gazetted LEP 46 amendment, which refers to finished ground level. In this regard, the actual three-storey component of the development, by definition, is relatively small.

Despite this, the proposed development will present as a two-storey development from Adelaide Street. The building is to be setback a minimum of 6.0m from the road frontage and is cut into the site to lower the building itself. The elevation from Adelaide Street indicates that the lower level of Unit 1 is not visible from the street, therefore does not impact upon the visual amenity of the locality.

Having regard for the underlying objective of the development standard, that is to control the height of buildings and ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land, the applicant has submitted the following in support of the SEPP 1 objection:

- *Proposed Dwelling No. 1 presents as a two storey development to the street as the media room is located predominantly underground (See Elevation No.1).*
- *Dwelling no. 1 presents as a two storey development to the adjoining residence at No. 72 Adelaide Street.*
- *No part of the media room or entrance is greater than 1.5m above natural ground level and the building as such is substantially excavated into the site.*
- *The use of the ground floor for the intended purpose will not have an adverse impact upon the neighbourhood and is consistent with the residential use of the locality.*
- *The proposed areas of non-compliance are relatively minor in the context of the overall development, and with regard to the constraints posed by the need to provide internal access and garbage facilities and the slope of the land, is considered to be a reasonable response to the two (2) storey limit.*
- *The surrounding area is clearly characterised by the presence of larger two (2) and three (3) storey buildings due to the topography of the land within the Razorback Hill Precinct. Recent approval of multi dwelling housing developments elsewhere in Charles and Adelaide Street contained far greater variations to the two storey height limit.*

- *The proposed development is generally consistent with the desired future character of the area.*
- *The proposed development has minimal impact upon adjoining properties from overshadowing and loss of views. The proposal does not impact upon any grand vistas or views or heritage or dominant landmarks.*
- *The proposal has been designed to respect the topography of the land and steps down the slope of the property from Adelaide Street towards Kennedy Drive.*
- *The proposed variation does not raise any matters of significance relative to state or regional environmental planning.*

In conclusion, it is considered that the development is of a scale and design that complements the locality without undue or unnecessary impact and that strict compliance with the two-storey height limit is both unreasonable and unnecessary in the circumstances of this case. The Development Assessment Unit recommends that the concurrence of the Minister administering the Environmental Planning and assessment Act, 1979 be assumed in this instance.

#### **State Environmental Planning Policy No. 55 – Remediation of Land**

The development application was accompanied by a Preliminary Site Investigation report, which advised that the subject site was previously utilised by a local taxi service for the storage and maintenance of motor vehicles from the 1940's to 1971 and previously may have been used to grow bananas. The results of soil testing indicated high levels of lead in some areas. As such, Council's Environment and Health Unit required the applicant to have the soil investigations reviewed by a NSW DEC EPA accredited Site Auditor to confirm that the site is suitable for residential purposes, prior to the application being determined.

The subject site is considered to be Category 2 remediation work, pursuant to Clause 14 of SEPP 55. That is, work to remove any contaminated soil from the site does not need consent. However, Clause 16 of the SEPP requires notice to be given to Council of the proposed works at least 30 days prior to the commencement of any remediation work.

The applicant subsequently gave notice that the contaminated soil was to be removed and disposed of at Council's Stott's Creek landfill. Council's Environment and Health Unit determined that the results of the initial soil testing showed unacceptable levels of lead and the material would not be permitted to be disposed of at Council's landfill, until it was shown that the soil was within acceptable levels.

Further soil testing determined that the contaminated soil was within acceptable limits and Council's Environment and Health Unit subsequently agreed that the material was suitable for disposal at Stott's Creek landfill as inert waste. Official interim advise from the accredited site auditor was received, confirming that all information had been considered and the *proposed mediation and validation methodology is suitable for the nature and extent of impact at the site and in accordance with industry standards.*

Appropriate deferred commencement conditions have been applied, regarding remediation works required prior to any other works commencing on the subject site.

### **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.

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

The draft planning instruments that have been advertised do not contain provisions which affect the proposed development. No further assessment is required.

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

The principal development control plans governing the proposed development are DCP 2 & 6. The level of compliance with the design parameters of the DCP's is identified below.

#### Development Control Plan No. 2 – Site Access and Parking Code

Development Control Plan No. 2 is applicable to the proposed development. The following table details the requirements for the proposed development.

Table 1 - Car parking analysis

Standard	Requirement	Complies/variation
On site Car Parking	1.5 per dwelling (25% for visitors) = 9 spaces with 2.25 marked for visitors	<p>The proposed development provides for 12 vehicles spaces, including 2 visitor spaces.</p> <p>This complies with the requirements of DCP 2. However, the two unburdened spaces will need to be marked as visitor car parking spaces and maintained accordingly.</p>

After discussion with the applicant, the proposed development was amended to allow for adequate manoeuvrability in terms entering and exiting the proposed visitor spaces. In addition, access issues were raised with respect to difficulties manoeuvring a vehicle into and out of the garage of Unit 6. The applicant has requested that the Unit 6 garage be considered as a single garage, which will allow adequate room for a vehicle to turn around in the standard number of turning movements. Furthermore, the location of Unit 6 at the end of the driveway will enable additional turning movements without impacting on any other Units or effecting the efficiency of the driveway. Given the proposed development has provided more than the minimum car spaces, the request that the Unit 6 garage be considered as a single garage is considered to be acceptable.

Access to the site has been raised as an issue by surrounding residents. Council's Traffic and Transport Engineer has assessed the proposed development with no objections, noting the objections on traffic grounds. Council's engineer provided the following comment:

- *Adelaide Street would carry less than 1000 vehicles per day (based on Charles Street with 550 vpd) and is therefore well within the road capacity. Vehicle speed at the location is low (observed) due to the geometry but sight distance to the driveway is adequate (40 metres from Charles Street).*
- *The development will generate an additional 33 vehicle trips per day which is relatively low and can be easily catered for on the surrounding road network which is under capacity.*

Development Control Plan No.6 – Multi Dwelling Housing

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

Table 2 – DCP 6 Assessment

<b>Standard</b>	<b>Requirement</b>	<b>Variation/complies</b>
Floor Space Ratio	0.5:1.0	The total floor area of the units is 1530.7m <sup>2</sup> . The site area is 761.5m <sup>2</sup> . The floor space ratio is 0.497:1  <u>Complies</u>
Landscaped Area	80m <sup>2</sup> per unit = 480m <sup>2</sup>	The applicant has noted that the proposed development provides 630m <sup>2</sup> of landscaping. However, this area has been calculated as 490m <sup>2</sup> , which complies with this criterion.  <u>Complies</u>
Setbacks from street boundary	6.0m to Adelaide Street	The main building is setback 6m from Adelaide Street.  <u>Complies.</u>
Side setbacks	3.0m from the side and rear boundaries	The majority of the main building does comply with the 3m setback requirements. However, there are elements of encroachment with Units 5 and 6 along the western boundary.  <u>See further assessment below.</u>
Private Open Space	20% of site area (306.14m <sup>2</sup> ) with minimum dimension of 3m  One part 25m <sup>2</sup> with min dimension of 4m directly accessible from living area	The proposal complies with the minimum site area, however, a variation is sought regarding the minimum dimension for private open space.  <u>See further assessment below.</u>



<b>Standard</b>	<b>Requirement</b>	<b>Variation/complies</b>
Front fences and walls	1.2m max if solid	The proposed development initially proposed a 1.8m high front fence. The proposal has since been amended to comply with Council's 1.2m high fencing policy. Appropriate sight line conditions to apply.  <u>Complies.</u>
Building Envelope	45° from 3.5m high at the boundary	Substantially complies, however there are minor encroachments for proposed Unit 4. A variation has been requested in this regard.  <u>See further assessment below.</u>
Car Wash Areas	1 required per 10 units.	It is proposed that the visitor space between Units 3 & 4 have a dual use as a car wash bay. The space shall have a permeable surface and have a tap provided. A condition shall be imposed to identify the space as a car wash bay.  <u>Complies.</u>

### **Side Setbacks**

The acceptable solutions for residential flat buildings require a minimum of 3m setbacks from side boundaries. Units 1 to 4 comply with these provisions. However, Units 5 and 6 incorporate elements of encroachment into the 3m setback.

Having regard to the performance criteria underpinning the control, the applicant has offered the following in support of the variation:

- *Dwelling 5 and 6 contain balcony areas which are setback only 1.5m from the rear boundary. The majority of dwelling 5 is setback the required 3 metres, with the garage setback approximately 2.2m. The garage of Dwelling 6 is setback 2.911m from the rear boundary and only 2m from the immediate western boundary.*

- *Having regard to the performance criteria Dwelling 6 has no impact upon adjoining residential amenity or creates adverse overshadowing of adjoining properties, as the property to the east comprises road reserve while the property to the west contains a dwelling which is sited some distance to the rear boundary. Furthermore Dwelling 6 on this elevation has been lowered into the site and presents as a single storey building to this property boundary.*
- *In terms of the balcony encroachments of dwelling 5 substantial vegetation on the adjoining property to the south east will screen the dwelling and ensure that the residential amenity this property is not compromised, while the adjacent dwelling itself is orientated to the Terranora Inlet. It is considered the proposal is consistent with the performance criteria in relation to setbacks.*

Although not in strict compliance with the acceptable solutions for side setbacks within DCP6, the proposed development is considered to be satisfactory in terms of the performance criteria for the siting and design of buildings and the potential impact to adjoining residences.

### **Private Open Space**

The proposed development does not strictly comply with the minimum dimension requirements in relation to the acceptable solutions for private open space for Units 2, 3 and 4. Subsequently, the applicant has provided justification to the variation sought, having regard to the performance criteria underpinning the control.

- *The proposed development has been designed with two (2) distinct elements of private open space. These include private courtyards which are located adjacent to the side boundary and elevated balconies directly accessible from the living areas and orientated to the north east to take advantage of limited views of the Tweed River and the Pacific Ocean to the east.*
- *The balconies are located such that they can be directly accessed from the living rooms of each unit.*
- *They are of a suitable dimension and area to ensure the usability and orientated to capture morning sun and cooling afternoon breezes.*
- *Importantly, the balconies overlook the driveway providing a means of casual surveillance for crime prevention, while adequate spatial separation is provided from the adjoining residential property in terms of privacy.*
- *The three balconies have an area of 20m<sup>2</sup>, 16m<sup>2</sup> and 19m<sup>2</sup> respectively and as such are of a suitable area for outdoor entertaining purposes.*

- *Each courtyard is directly and efficiently accessible from the main living areas by way of an external staircase.*
- *In terms of privacy, the courtyards are orientated away from the communal open space and driveway areas of the property.*
- *The courtyards are orientated to the southern boundary providing a cool area that is suitable during the warmer months of the year, when solar access is not a necessity and at times can be overpowering.*
- *The ground level areas of the three units have the following areas of 40.2m<sup>2</sup>, 48.64m<sup>2</sup> and 43.14m<sup>2</sup> respectively. As such, the ground level open space provided is of suitable area and configuration to promote and facilitate outdoor activities in scale with a townhouse development.*

Again, although not in strict compliance with the acceptable solutions for side setbacks within DCP6, the proposed development is considered to be satisfactory in terms of the performance criteria for the siting and design of buildings and the potential impact to adjoining residences.

### **Building Envelope**

The south eastern portion of proposed Unit 4 encroaches the building envelope, largely due to the topography of the site, with the slope of the land falling away quite steeply at this point. The applicant has endeavoured to minimise the level of encroachment by way of incorporating a split-level design into the building. The encroachment relates to the roof over the dining / living area.

Having regard to the performance criteria underpinning the control, the applicant has offered the following in support of the variation:

- *The proposed development where the encroachment occurs has a length of only 5.8 metres, while the building is sited down the slope of the neighbouring dwelling. The encroachment will not create adverse overshadowing of the neighbouring dwelling. Due to the topography of the land on this property and on the adjoining property its useability in terms of open space is severely restricted, and the encroachment in no way impacts upon the privacy or amenity of the adjoining residence. It is considered the proposal is consistent with the performance criteria in relation to the BHP.*

The proposed variation to the building envelope provisions of DCP 6 is considered to be acceptable. The development is considered to be satisfactory in terms of the performance criteria for Amenity & Character and Daylight & Sunlight under Section 3.3.1 Building Envelope and Siting.

## Summary

Although the proposal does not comply with the numerical requirements of DCP No. 6, the merits of this application do warrant approval given the application is considered to adequately satisfy the objectives and performance criteria contained within DCP 6.

### Development Control Plan No. 18 – Tweed Heads

The proposed development is located within the Razorback Precinct of DCP 18. The objectives of the plan are to:

- Facilitate the area south of First Avenue as a low density residential area;
- Encourage development to take advantage of available views and climatic effects;
- Ensure that development on visually prominent sites is relatively unobtrusive; and
- Preserve the traditional leafy character of the precinct.

The proposed development has a site density of 1 dwelling per 255m<sup>2</sup>, which complies with the requirement of 1 per 250m<sup>2</sup> under the TLEP 2000 for sites within 300m of a Business Centre.

The proposal incorporates separate buildings, allowing the development to step down the site. This reduces any impact upon existing views of the adjoining residences, whilst allowing the proposed units to take advantage of the same views.

Existing mature trees on adjacent properties will provide screening of the proposed development when viewed from the east. Stepping the buildings down the slope of the property will ensure that the development does not protrude above the ridgeline. Extensive landscaping proposed for the development as well as non-reflective building materials will assist in the development being unobtrusive, while preserve the leafy character of the surrounding area.

The north western portion of the site is located within an area identified as having geotechnical difficulties. The applicant has provided a geotechnical report in this regard. This issue is discussed in further detail below.

### Development Control Plan No. 39 – Energy Smart Homes Policy

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

Table 3 – Energy Performance Ratings

Standard		Requirement	Proposal	Complies
Unit Energy rating		3.5 stars minimum	Units 1- 6 = 3.5 stars	YES

A condition of consent shall be imposed that the proposed development meets all relevant requirements of DCP 39.

The proposed development was lodged with Council prior to Basix Certification being a requirement.

Development Control Plan No. 47 – Cut and Fill on Residential Land

The applicant has requested a variation to DCP 47 in relation to the height and depths of cut and fill on the site. 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.

Where the retaining walls exceed 1m, a geotechnical assessment has been provided. The proposed cut along the south western boundary exceeds 1m, with a retaining wall up to 3m in height being proposed. In addition, this retaining wall is only setback 500mm from the property boundary, rather than the 900mm specified minimum.

Council’s Engineering Services Unit has assessed the proposed development, noting that the adequate supporting geotechnical and structural details have been provided at this stage. However, further detailed geotechnical design will be required with a construction certificate application. The proposed boundary retaining wall is to be limited to a maximum height of 2.5m, to be consistent with existing subdivision requirements (Development Design Specification D6). Appropriate conditions of consent have been applied.

With regard to the DCP requirement for a 900mm setback from the south western boundary, discussions have been held with Council’s Director Planning and Development, whereby it was agreed that the proposed 500mm setback is acceptable. The 500mm setback will still allow access to the proposed spoon drain at the top of the retaining wall as well as access to the property boundary for the adjoining property. If the retaining wall were setback the required 900mm, the amenity of the rear courtyards would be further impacted, rendering the private open space areas undesirable in terms of usability. The width of the site limits the amount of development down the slope. The driveway width is required in order to allow an acceptable manoeuvrability for vehicles entering and exiting the site.

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

NSW Coastal Policy

The subject land is within the coastal policy area. The proposed development is consistent with the objectives strategies and actions of the policy.

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

Compatibility with Adjoining Land Uses

The immediate locality surrounding the subject site is essentially residential in character, with a mixture of older one and two storey residential dwellings. The properties adjoining the northern and eastern boundaries consist of single storey dwellings, whilst the southern adjoining property and property to the west beyond Adelaide Street consisting of part two and three storey dwellings. Landscaping and screen fencing are proposed in order to minimise any potential amenity / privacy issues with the adjoining properties.

Overshadowing

The applicant has lodged shadow diagrams for the proposed development. The diagrams indicate that the proposal will have minimal impact upon the adjoining residence to the south and no impact upon the residence to the north.

View Loss

Although the main views experienced by the adjoining properties are to the east, the southern adjoining allotment may experience an additional loss of existing views to the north towards Tweed Heads. The proposed development has been designed to step down the slope of the site to limit such impact. Unit 1 is cut into the site and presents as a two-storey development to the street. Therefore, the loss of views is considered to be acceptable, given view sharing will exist. The applicant has provided advice that survey levels taken of the existing balconies on the adjoining residence indicate that the proposed development will not impact upon views to the south-east.

Privacy

Given that the rear courtyards of the proposed units are at a lower level than that of the private open space area for the adjoining property to the south, the level of potential impact upon the privacy of adjoining residences is considered to minimal.

Traffic / Access

Concerned residents in the surrounding area have raised the issue of traffic and access into the subject site. These issues have been addressed by Council's Traffic and Transport Engineer, who has advised that the local road network has the capacity for the additional vehicles involved with the proposal.

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

The site is generally considered to be suitable for the proposed development.

Contaminated Soil

The issue of contaminated soil has been discussed in detail elsewhere. Soil testing has been conducted, confirming that the contaminated material can be removed and disposed of at Council's Stott's Creek landfill, in accordance with the provisions of SEPP 55 – Remediation of Land.

Stormwater Drainage

Prior to the lodgement of an amended stormwater management plan, the proposed development was recommended for refusal on stormwater grounds, as it was not considered that the lower units (Units 5 and 6) were adequately protected from the inflow of stormwater from the steep driveway catchment above.

Subsequent to several meetings between Council staff and the applicant's consultants, an amended stormwater management plan was lodged. The new plans show an increased separation distance between Units 5 and 6 at the bottom of the site for stormwater passage, and regrading of the driveway crossfall to better direct flows towards this flow path. A piped drainage system sized for the ARI 100 year storm has been retained in the latest proposal, including grated driveway drains and a stormwater treatment device. The proposed development incorporates an existing stormwater diversion bund to divert over flow stormwater along the southern boundary into an existing field inlet located in the south western corner of the site.

Council's Engineering Services Unit has no objections to the proposed development , subject to conditions of consent.

Effluent Disposal

Council's sewer main (and easement) bisects the subject site, raising the issue of gravity sewage discharge for Units 4, 5 and 6, which are located below the existing main. The applicant subsequently provided written consent from an adjoining landholder to construct the required gravity sewer connection to the public system, subject to the creation of an appropriate easement. Council's Engineering Services Unit has no objections to the proposal, subject to conditions of consent.

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

The proposed development was advertised for 30 days in accordance with the requirements of the Environmental Planning and Assessment Act 1979. Three submissions by way of objection were received. The following table addressed the issues raised in the submissions.

Table 4 – Public Submission Issues

<b>Issue</b>	<b>Assessment</b>
<i>Site access – conflict with dual property driveway opposite, garbage collection. Hazardous blind access for all vehicles. Poor horizontal and vertical geometry. Lack of adequate assessment of local traffic environment &amp; development impacts.</i>	Council's Transport and Traffic Engineer has assessed the proposed development, and has no objections to access to the site. The proposed development will incorporate a bin storage area at the front of the site, with the bins being placed on the street frontage for collection. Council's Waste Management Co-ordinator has no objections to the proposal.
<i>Kerbing and guttering required in street for vehicle safety and stormwater drainage.</i>	As this issue relates to works outside the subject property, it should be raised with Council's Works Unit for assessment.
<i>Where will services be delivered – Adelaide St or up from Kennedy Dr?</i>	As noted in the report, the site has access to all essential services. The proposed development has addressed all issues in relation to stormwater drainage and effluent disposal.
<i>Stormwater runoff, no continuous paved surfaces.</i>	Council's Engineering services has assessed the proposed development and provided applicable conditions of consent in terms of stormwater issues. It should be noted that the overland flow path between Units 5 & 6 is a sloping grassed area leading to a bund, which will divert any runoff to an existing stormwater inlet.
<i>Noise – impact from air conditioning units.</i>	The applicant has advised that the proposed development will not incorporate any air conditioning units.
<i>Visual amenity – blend into hillside so that it is unobtrusive when viewed from Boyd's Bay Bridge.</i>	The proposed development has been designed to step down the slope of the property. This will help to ensure that the development will not become obtrusive when viewed from the south east.
<i>Wildlife – fencing to have 300mm ground clearance, no cat or dog kept on any lot, all trees on site to remain.</i>	The proposed development incorporates a 1.2m fence along the front boundary. A 300mm clearance is not considered to necessary. The restriction of cats and dogs within the development is considered to be unreasonable. The keeping of such animals is regulated by the body corporate within a townhouse development under the Strata Plan. The proposed landscaping plan has nominated the majority of the large mature trees existing on the site to remain.
<i>Landscaping – plantings to be solely of native plants and grasses for native animals inhabiting the area.</i>	The applicant has provided a detailed landscaping plan. A condition of consent will require that wherever possible, native or drought tolerant species be utilised.



<b>Issue</b>	<b>Assessment</b>
<i>Lighting – external lighting to be contained within the allotment.</i>	Council's Environment & Health Unit has assessed the proposed development. Appropriate conditions of consent have been applied in relation to external lighting not impacting upon any neighbouring properties.
<i>Fire flies / glow bugs – asks that the developer investigate and plant appropriately.</i>	The applicant has advised that neither the firefly nor the glowworms are listed as endangered or vulnerable, therefore an eight-part test is not required.
<i>Views – reduction of views to the north due to proposed 3 storey building (Unit 1).</i>	The proposed development has been designed to step down the slope. Due to the topography of the area, the proposed development will not have an adverse impact upon neighbours views to the east and south. Survey levels have indicated that the proposed development will not affect views to the south east from either balcony of the adjoining residence to the south. View sharing will exist.
<i>Amenity – noise and privacy issues due to rear courtyards along southern boundary.</i>	As noted above, the proposed rear courtyards are not considered to impact upon the amenity of adjoining residents. The lower levels of the courtyards will minimise any noise / privacy issues.
<i>Height – non-compliance with Cl 16 of TLEP due to 3 storeys in height.</i>	The applicant has provided a SEPP 1 objection to the development standard in relation to the 3 storeys for Unit 1. The SEPP1 is considered to be warranted in this instance.
<i>Neighbourhood context &amp; zone objectives – proposal is out of context with low-density character of area.</i>	The proposed development is considered to comply with the zone objectives. The Tweed LEP 2000 allows development within 300m of a Business Centre to increase the site density to 1 per 250sqm. The proposal complies with this requirement.

**(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 proposed development in accordance with the recommended conditions.
2. Refuse the development application.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

The applicant has the right of appeal to the Land and Environment Court should they be dissatisfied with the determination.

**POLICY IMPLICATIONS:**

Support for the SEPP 1 objection on the proposed format of the development is not considered likely to have adverse policy implications.

**CONCLUSION:**

The proposed development is of a high standard of design and has achieved the intentions of Council's development control plans for the area. Having had regard for all of the matters relevant to the proposal it is considered that the proposal warrants conditional consent. Therefore, the SEPP 1 objection should be supported and the application approved, subject to conditions of consent.

A number of the conditions are imposed to ensure the development does not adversely impact on the locality during construction.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

1. Confidential Floor Plans (DW 1311089)
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**6 [PD] Review of Tweed Local Environmental Plan 2000**

**ORIGIN:**

**Strategic Town Planning**

**SUMMARY OF REPORT:**

On 29 October 2005 Council resolved, inter alia, to Complete by December 2006 a review of Tweed Local Environmental Plan 2000 based on Tweed Futures, the Council's Strategic Plan, the NSW Far North Coast Strategy and the requirements of Planning NSW in developing a new Local Environmental Plan.

If the nominated timeframe to have a draft Plan ready for exhibition is to be met the necessary resources must be provided now.

The equivalent of two experienced planners is considered to be necessary, plus support. A total of \$400,000 over 2 years is the estimated required funds.

The options available to Council may be summarised as follows:

1. Redirect existing planning staff from current duties and projects.
2. Engage additional staff on a contract basis.
3. Engage in house or external consultants.

To accompany the prioritisation of resources for the project a Council resolution to formally commence a review of the Tweed LEP 2000 is also required.

**RECOMMENDATION:**

**That:**

1. **Council informs the Director-General of the Department of Planning that, pursuant to Section 54 of the Environmental Planning & Assessment Act, it intends to prepare a draft Local Environmental Plan to review Tweed Local Environmental Plan 2000. To accompany the draft Local Environmental Plan Council intends to prepare an Integrated Land Use Strategy.**
2. **Council seeks funding of \$200,000 from the Department of Planning for the Local Environmental Plan Review process.**

3. The estimated cost of completing the Local Environmental Plan Review be considered in the 2006/07 Budget and the 7 Year Infrastructure Plan.
4. Council notes that the anticipated programme for the completion of the review of the Tweed Local Environmental Plan is 2 years.

**REPORT:**

On 29 October 2005 Council considered a report in respect of a Liveable Communities Action Plan, and resolved, inter alia, that:

"2. Council will investigate the resources required to undertake the following priorities for the Strategic Town Planning Unit for the next 3 years (2005-2008):

- Complete by December 2006 a review of Tweed Local Environmental Plan 2000 based on Tweed Futures, the Council's Strategic Plan, the NSW Far North Coast Strategy and the requirements of Planning NSW in developing a new Local Environmental Plan;"

The necessary investigation is currently underway, in particular through the preparation of the Long Term Financial Plan. There is one element of the resolution that cannot wait for the finalisation of that Plan, namely the review of the Tweed Local Environmental Plan. If the nominated timeframe is to be met the necessary resources must be provided now.

Wherever possible the review will rely on existing completed studies and strategies; and the completion of those underway. In particular this will include:

- Retail Strategy;
- Community Based Heritage Study;
- Vegetation Management Strategy;
- Social Plan;
- Industrial Land Investigation;
- Locality Plans.

The intention is that these various elements will be brought together in an Integrated Land Use Plan to provide the basis for the review.

Resources will be required to undertake the project. The options available to Council may be summarised as follows:

1. Redirect existing planning staff from current duties and projects.
2. Engage additional staff on a contract basis.
3. Engage in house or external consultants.

The equivalent of two experienced planners is considered to be necessary, plus support. Option 1 is not considered to be realistic to meet this requirement as this would mean current projects being put on hold, many of which will be essential to the LEP review itself.

In addition resources of \$200,000 will be required for such items as printing, consultation, incidental consultant reports.

The issue of available resources for this and other high priority strategic planning projects was reported in the Liveable Communities Action Plan.

In identifying the resources required to review the Tweed Local Environmental Plan, the nominated time frame has been reviewed. It is assumed that the resolution requires the finalised LEP Review to be submitted to the Minister by December 2006.

This date is not considered to be possible, even if the necessary resources and staff were available now. The Integrated Land Use Plan, and draft LEP review would have to be prepared (with community consultation along the way), the drafts agreed by Council and exhibited again with a programme of community consultation), submissions reviewed, administered by Council and reported to the Minister.

It is more likely that by the nominated date draft plans could be ready for exhibition. A two year programme for completion is the more realistic.

To accompany the prioritisation of resources for the project a Council resolution to formally commence a review of the Tweed LEP 2000 is also required.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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**7 [PD] Tweed Local Environmental Plan 2000, Amendment No 70 (Exempt and Complying Development) and Accompanying Amendment No 4 to Development Control Plan No 40**

**ORIGIN:**

**Strategic Town Planning**

**FILE NO: GT1/LEP/2000/70; GT1/DCP/40**

**SUMMARY OF REPORT:**

On 2 February 2005 Council resolved, inter alia, to:

*"Prepare an amendment to Development Control Plan No 40 - Exempt and Complying Development in respect of the following additional categories of complying development:*

- *To expand the categories for the erection of single dwelling houses and ancillary development;*
- *The use of Council land for the purposes of filming".*

DCP 40 Amendment No 4 was prepared in respect of these additional categories of complying development. On 3 August 2005 Council considered that amendment and resolved to defer it pending further redrafting. That work has been completed and further amendments included.

**RECOMMENDATION:**

**That Tweed Local Environmental Plan No. 70 (Exempt and Complying Development) and accompanying Amendment No 4 to Development Control Plan No 40 be exhibited in accordance with statutory requirements.**

## REPORT:

On 2 February 2005 Council resolved:

- "1. Pursuant to Section 54 of the Environmental Planning & Assessment Act, informs the Director-General of the Department of Infrastructure, Planning & Natural Resources of its intention to prepare a draft Local Environmental Plan to bring into effect an amendment to Development Control Plan 40 Exempt and Complying Development.*
- 2. Prepares an amendment to Development Control Plan No 40 - Exempt and Complying Development in respect of the following additional categories of complying development:*
  - To expand the categories for the erection of single dwelling houses and ancillary development;*
  - The use of Council land for the purposes of filming.*
- 3. A report be prepared on the Draft LEP and DCP for Council's consideration prior to exhibition".*

Subsequently, a report was submitted to the Planning Committee on 20 July 2005 setting out the details of the proposed amendments. The report highlighted that DCP 40 Amendment No 4 had been prepared in respect of the nominated additional categories of complying development. A draft DCP amendment was attached to the report which highlighted deletions in ~~strike-out~~ and additions in black.

In addition to those nominated items, following the Council resolution a number of other issues concerning DCP 40 had been identified which required attention. These were as follows:

### **1. Tweed LEP 2000, Amendment 21 - Vegetation Management Plan**

This Amendment included DCP 40 (Amendment No 3), which were primarily concerned with creating a regime for the clearing of land and associated issues. However, it also included:

- A clearer explanatory statement of what is exempt development.
- An amendment to Tweed LEP to bring the categories of exempt and complying development in line with the adopted DCP 40.

To avoid any confusion those elements of LEP Amendment No 21 and DCP 40 Amendment No 3 that did not relate to the clearing of land and associated issues were also included in this Amendment.

Those elements were highlighted with deletions in ~~strike-out~~ and additions underlined.



## 2. Engineering Services Division Amendments

The Director of Engineering & Operations also sought amendments to DCP 40 to improve the efficiency of the approvals process for public works. These were highlighted with deletions in ~~strike-out~~ and additions double underlined.

On 3 August 2005 Council resolved that:

*"consideration of the Tweed Local Environmental Plan 2000, Amendment No 70 (Exempt and Complying Development) and Accompanying Amendment No 4 to Development Control Plan No. 40 be deferred pending further redrafting of the report".*

A number of issues have been examined and set out in Table 1 are further suggested inclusions in the draft amendment.

**Table 1**  
**Draft Development Control Plan No 40 - Exempt & Complying Development**  
**Issues Reviewed following Council Resolution 3 August 2005**

Provision	Reason for Review	Response/Recommendation
<b>Schedule 1 - Exempt Development Requirements</b>		
Change of Use	Change of use from Commercial premises to commercial premises-should not allow extended trading hours.	This is covered by existing consent for the use, including trading hours. To create greater certainty a requirement that trading hours are not to be extended is recommended to be added to the draft DCP.
Change of Use	Must not involve food <b>or licensed</b> premises.	No problem to add licensed.
Cut and Fill	... any other work which will <b>materially (not substantially)</b> alter	The suggestion is agreed
Hoardings	No damage to trees in public domain.	Only applies to hoardings on private land and therefore no need to amend. However, the item could be <b>clarified to make it clear it only applies to private land.</b>
Minor Council Road Works	Include best practice stormwater management. Include swales, water	The suggestion is agreed.

Provision	Reason for Review	Response/Recommendation
	retention.	
Minor Maintenance and Repair of Other Council Assets	Include responsible officer to make statement that all relevant standards and best practice work process complied with.	The suggestion is agreed.
<b>Schedule 2 - Complying Development Requirements</b>		
Single dwelling houses and ancillary development on lots more than 450m2 and less than 5000 square metres	In "General requirement": include requirement to comply with any relevant planning policies.	Agreed.
Single dwelling houses and ancillary development on lots of more than 5000 square metres	In "Streetscape" include requirement to comply with relevant Council policies.  In "Energy efficiency" include Basix requirements for stormwater.	Agreed.  Agreed.
<b>Schedule 3 - Complying Development Conditions</b>		
Single Dwelling houses	19.1 - Water sensitive design practices shall be adopted which should include, where <b>possible</b> (instead of practical).	Agreed.

Attached is an annotated copy of Amendment No 4 which includes those items nominated in Table 1 for inclusion.

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

Nil.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

[1. A copy of draft Development Control Plan No 40 - Amendment No 4 \(DW 1310302\).](#)

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**8 [PD] Kingscliff Locality Plan - Community Values**

**ORIGIN:**

**Strategic Town Planning**

**SUMMARY OF REPORT:**

A major project for the Strategic Town Planning Unit is the preparation of a comprehensive plan for Kingscliff. A great deal of work has been undertaken to date dealing with an extensive range of social, economic and environmental issues. Moreover, the community has taken a great deal of interest in the resolution of these issues in a comprehensive plan.

A request has been received from the Kingscliff Chamber of Commerce to co-fund a best practice planning model for the Tweed Coast. The purpose of the model is to:

1. identify a clear set of community values and guiding principles.
2. be based upon the communities own values and vision for their future.
3. be integrated with and complemented by the community and other stakeholders action plans.
4. streamline these into an efficient statutory regulation system

The cost of the project is \$57,200 with Council requested to contribute \$25,000 in cash and \$8,700 in kind.

**RECOMMENDATION:**

**That due to funding not being available, that this project not proceed in the 2005/2006 financial period.**

## REPORT:

A major project for the Strategic Town Planning Unit is the preparation of a comprehensive plan for Kingscliff. A great deal of work has been undertaken to date dealing with an extensive range of social, economic and environmental issues. Moreover, the community has taken a great deal of interest in the resolution of these issues in such a comprehensive plan.

The following request has been received from the Kingscliff & District Chamber of Commerce:

*"As you are aware, the Kingscliff Chamber has been working closely with Douglas Jardine, Council Manager of Strategic Planning, to develop a best practise planning model for the Tweed Coastal Villages from Kingscliff to Cabarita Bogangar.*

*These discussions have resulted in a process that we believe will produce an outcomes based locality plan that will;*

- 1. identify a clear set of community values and guiding principles.*
- 2. be based upon the communities own values and vision for their future.*
- 3. be integrated with and complimented by the community and other stakeholders action plans.*
- 4. streamline these into an efficient statutory regulation system*

*By undertaking this process it will ensure that for the first time the community and Council will be working and planning together to achieve a common goal. We believe it will also create some clarity for investors and the community alike, which we hope will reduce conflict between these two groups in the future.*

*One of the key outcomes from this process will be to ensure that these communities will continue to be an attractive place to live, work, play and do business well into the future.*

*To do this we need Councils partnership and support in the following way.*

- 1. We need Council to resolve to undertake an **"outcomes based locality plan, based on the values and guiding principles of the community"** and **"to integrate the consultation undertaken through the community action planning process into Councils statutory planning process"** to ensure that there is no overlap or duplication of consultation.*
- 2. We need Council to assist with funding and resources to allow us to undertake the community consultation and action planning process.*

*In return we will provide Council with a community consultation process that is required to complete its statutory planning documents for both Cabarita/Bogangar and Kingscliff. We will also be asking other Government agencies to assist with the funding of this extensive and detailed process. The contribution we are requesting from Council is \$20,000 (+GST) for the consultation process and \$5000 (+GST) for the production of information for the community.*

*We hope that by undertaking this process as a community we can ensure that all stakeholders such as residents, local business, developers, Council, sporting and various other community groups can be actively involved in planning a future of our communities.*

*We trust you will support our requests and commit to making this process happen".*

## Response to Request

It is essential that Council itself manages the process of completing a Locality Plan for Kingscliff. Within that context there is value in the project nominated by the Chamber to identify a clear set of community values for the coastal villages. Not only will these assist in the identification of appropriate outcomes for the Kingscliff Plan; but also tie in with Tweed Futures, which similarly was based on a set of community values, albeit for the Shire as a whole.

The immediate issue facing Council is whether it should support the proposed project with the requested resources. A great deal of in-kind support has already been given through staff time; and this support would no doubt continue through the project.

The Chamber has valued the overall cost of the project at \$57,200, and has nominated the following budget:

Item Description	COSTS			SOURCES			
	Cost Item	TSC Cash	In Kind	DSRD Cash	In Kind	KCC Cash	In Kind
Consultancy Fees							
Professional Fees	\$ 32,000	\$20,000	\$ -	\$12,000	\$ -	\$ -	\$ -
Project Coordination	\$ 10,000	\$ -	\$ -	\$ 6,000		\$ -	\$4,000
Communication - printing	\$ 5,000	\$ 5,000					
<b>Subtotal - Consultancy Fees</b>	<b>\$ 47,000</b>	<b>\$25,000</b>	<b>\$ -</b>	<b>\$18,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$4,000</b>
Project Support							
Forums - Venue Hire	\$ 1,200	\$ -	\$1,200	\$ -	\$ -	\$ -	\$ -
Forums - Catering	\$ 1,500	\$ -	\$ -	\$ -	\$ -		\$1,500
Forums - Advertising	\$ 1,500	\$ -	\$1,500	\$ -	\$ -	\$ -	\$ -
Printing	\$ 1,000	\$ -	\$1,000	\$ -	\$ -	\$ -	\$ -
Staff & Admin Support	\$ 5,000	\$ -	\$5,000	\$ -	\$ -	\$ -	\$ -
<b>Subtotal - Project Support</b>	<b>\$ 10,200</b>	<b>\$ -</b>	<b>\$8,700</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$1,500</b>
<b>TOTAL</b>	<b>\$ 57,200</b>	<b>\$25,000</b>	<b>\$8,700</b>	<b>\$18,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$5,500</b>

**LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:**

No specific allocation has been included in the 2005/06 Budget. Whilst community consultation will be an integral part of the finalisation of a plan for Kingscliff, this project would add considerably to that consultation and is worthy of support.

**POLICY IMPLICATIONS:**

Nil.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

Nil.

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