



AGENDA

PLANNING COMMITTEE MEETING Wednesday 16 November 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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CONFIRMATION OF MINUTES

Minutes of the Planning Committee Meeting held 2 November 2005

UNDER SEPARATE COVER/FURTHER INFORMATION:

1. Minutes of the Planning Committee Meeting held 2 November 2005 (DW 1291252)
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REPORTS THROUGH 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] Development Application DA05/0737 for Demolition of Existing Structures and the Erection of a Six (6) Storey Multi Dwelling Housing Development at Lot 4 DP 10007, No. 32 Boundary Street Tweed Heads

ORIGIN:

Development Assessment

FILE NO: DA05/0737 Pt1

SUMMARY OF REPORT:

The proposed multi dwelling housing development is consistent with State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development, the Tweed Local Environmental Plan 2000, the Tweed Heads Master Plan, Development Control Plan No. 2 – Site Access and Parking Code (DCP No. 2) and is generally consistent with DCP No. 18 – Tweed Heads. The proposed development has minor encroachments into the building envelope at the top level of the proposed building, however these are regarded as being acceptable.

Seven (7) submissions have been received to date objecting to the proposed development. The main issue raised in the submissions was the loss of views. The view impact diagrams used in the assessment of the application, conclude that the loss of views that will result from the construction of the proposed building is not unreasonable.

RECOMMENDATION:

That:-

- 1. Council utilises its concurrence in relation to the North Coast Regional Environmental Plan 1988 Clause 51 – Tall Buildings.**
- 2. Council supports the application and refers it to the Director Planning & Development to negotiate a contribution based on the draft Section 94 Plan No. 26 and 27 under a voluntary agreement for public infrastructure identified in the Tweed Heads Master Plan.**
- 3. Development Application DA05/0737 for the demolition of all existing structures and the erection of a six (6) storey multi dwelling housing development at Lot 4 DP 10007, No. 32 Boundary Street Tweed Heads be approved subject to the following conditions:**

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and Sheet Nos:
1 of 13 prepared by Trapp Architects and dated 24/05/05
2 of 13 prepared by Trapp Architects and dated 24/05/05
3 of 13 prepared by Trapp Architects and dated 25/05/05
4 of 13 prepared by Trapp Architects and dated 31/05/05
5 of 13 prepared by Trapp Architects and dated 31/05/05
6 of 13 prepared by Trapp Architects and dated 22/06/05
7 of 13 prepared by Trapp Architects and dated 22/06/05
8 of 13 prepared by Trapp Architects and dated 01/06/05
9 of 13 prepared by Trapp Architects and dated 22/06/05
10 of 13 prepared by Trapp Architects and dated 21/06/05
11 of 13 prepared by Trapp Architects and dated 21/06/05
12 of 13 prepared by Trapp Architects and dated 01/06/05
13 of 13 prepared by Trapp Architects and dated 01/06/05
except where varied by the conditions of this consent. [GEN0005]

2. 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]

3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia. [GEN0115]

4. All mechanical ventilation, other plant and associated equipment shall be acoustically treated where required to the satisfaction of Council's Director of Environment and Community Services so as to avoid the creation of intrusive or unreasonable noise to any occupant of neighbouring or adjacent premises. [GENNS01]

5. Prior to the installation of any air conditioning systems, details of the units and locations proposed shall be supplied to Council's Environment and Health Unit for review and approval. [GENNS02]

6. 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

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 authorized 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) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0)	\$2,576
Sector1_4	
(b) Open Space (Structured): S94 Plan No. 5	\$1,770
(c) Open Space (Casual): S94 Plan No. 5	\$378
(d) Shirewide Library Facilities: S94 Plan No. 11	\$1,562
(e) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$319
(f) Emergency Facilities (Surf Lifesaving) (REMSHIRE)	\$473
S94 Plan No. 16	
(g) Extensions to Council Administration Offices & Technical Support Facilities	\$2,878.91
S94 Plan No. 18	
(h) Cycleways S94 Plan No. 22	\$798

[PCC0215/PSC0175]

8. In accordance with s80A(1) (d) of the Environmental Planning & Assessment Act 1979, the period during which the development, being the subject of this consent may be carried out is limited as follows:
- (a) If the Tweed Road Contribution Plan contribution is paid in full prior to the commencement of the use stage of development, the period during which the development may be carried out is not limited by this condition.
 - (b) If an amount being, the Tweed Road Contribution Plan contribution divided by 10 is paid prior to the commencement of the use stage of development, the period during which the development may be carried out shall be for one year from the date of such payment.
 - (c) The period referred to in (b) above may be extended year by year by the payment (prior to the expiration of the previous period) of the Tweed Road Contribution Plan contribution divided by 10, with each such payment extending the period during which the development may be carried out by one year.
 - (d) The consent for the use stage of this development will not commence until payment has been made in accordance with (a) or (b) above.
 - (e) The consent for the use stage of this development will cease to operate (and the use stage of the development must cease) within a period of 90 days after the expiration of the annual period for which payment has been made under b. or c. above unless payment has been made under (c) for the following year.
 - (f) If 9 additional consecutive annual payments have been made in accordance with (c) the TRCP payment will be considered to be paid in full and the period during which the development may be carried out will not be further limited by this condition.

[PCC0255]

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

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

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

Water DSP4: 2.35 ET @ \$4230	\$9,941
Sewer Tweed Heads: 4 ET @ \$6152	\$24,608

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.

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]

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. 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]

12. Where any existing sewer junctions are to be disused on the site, the connection point shall be capped off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Councils adopted fees and charges.

[PCC1235]

13. Permanent Stormwater Quality Treatment

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

- (iv) 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.
- (v) 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.
- (vi) 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, 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.
- (vii) Ground anchors to retain sacrificial sheet piling or the like (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.

(viii) An on site detention (OSD) system shall be provided to mitigate peak stormwater discharge up to the ARI 100 year design storm event for the development to pre development rates. This may be achieved by on site detention (OSD), on site retention or a combination of both. Detention storage may be incorporated into surface depressions in landscaping, however ponding in basement car parking areas is not accepted. OSD devices including discharge control pits (DCP) are to comply with standards in The Upper Parramatta River Catchment Trust "On-Site Stormwater Detention Handbook, Third Edition, December 1999" except that permissible site discharge (PSD) and site storage requirements (SSR) in the handbook do not apply to Tweed Shire. All these works and the connection to Councils drainage system shall be constructed in accordance with design calculations, plans and specifications to be submitted with the construction certificate application and approved by the Director, Engineering & Operations.

[PCCNS02]

14. Erosion and Sediment Control During the Construction Phase of Development

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

15. 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.
- [PCC1105]
16. 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.

PRIOR TO COMMENCEMENT OF WORK

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

[PCW0080]

18. 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]
19. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.
- [PCW0225]
20. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every twenty (20) persons or part of twenty (20) persons employed at the site. Each toilet provided must be:-
- (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

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

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

[PCW0255]

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. 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]

24. Prior to commencement of works all required sedimentation and siltation control measures are to be installed and operational to the satisfaction of the Principal Certifying Authority.

Erosion and sediment control shall be in accordance with *the Tweed Urban Stormwater Quality Management Plan* (adopted by Council 19 April 2000) section 5.5.2 Stormwater Objectives During the Construction Phase of New Development. This section requires all new development to comply with Appendix E of the Plan *Tweed Shire Council Aus-Spec D7 - Stormwater Quality* and its Annexure A - Code of Practice for Soil and Water Management on Construction Works. Erosion and sediment controls shall remain in place until final approval is given and the maintenance bond has been released.

[PCWNS01]

DURING CONSTRUCTION

25. 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]

26. The provision of nine (9) off street car parking spaces including parking for the disabled where applicable is required. 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]

27. 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]

28. 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]

29. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).

[DUR0375]

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

[DUR0395]

31. 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]

32. It is the responsibility of the applicant to restrict public access to the building site, building works or materials or equipment on the site when building work is not in progress or the site is otherwise unoccupied in accordance with WorkCover 2000 Regulations.

[DUR0415]

- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.
- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

[DUR0425]

33. 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]

34. 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]

35. 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]

36. All battered areas are to be topsoiled and grassed, or other suitable protection provided as soon as filling is placed adjacent to neighbouring properties.

[DUR0805]

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

[DUR0815]

38. Provision of an adequate turfed area, or other suitable media, is incorporated and maintained into the proposed landscape of the property for use as a car wash-down area.

[DUR0965]

39. 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]

40. 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]

- 41. 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]

- 42. All fire service connections are to be compatible with those of the NSW Fire Brigade.**

[DUR1325]

- 43. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742.3-2202 (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]

- 44. 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 the occupation of the buildings.**

[DUR1875]

- 45. 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]

- 46. 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]

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

[DUR2195]

- 48. 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]
- 49. 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]
- 50. 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]
- 51. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position.**
- [DUR2505]
- 52. Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.**
- [DUR2515]
- 53. Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur. The type of device shall be determined in accordance with AS 3500.1 and shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of this Standard.**
- [DUR2535]
- 54. 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]

55. 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:-

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

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

[DUR2555]

56. 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]

57. 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.

[DURNS01]

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

[DURNS03]

59. A concrete ribbon footpath 1.2m wide and 100 millimeters thick is to be constructed on a compacted base along the entire frontage of the site to Boundary Street and Little Hill Street in accordance with Council's adopted Development Design and Construction Specifications.

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.

[DURNS04]

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

- i. All required erosion and sedimentation control devices have been installed and are operational.**
- ii. Required toilet facilities have been provided on the site.**

iii. A sign has been erected on the site identifying:

Lot number

Builder

Phone number of builder or person responsible for site.

iv. All conditions of consent required to be complied with prior to work commencing on the site have been satisfied.

[DURNS02]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

61. 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.

[POCNS01]

62. 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.

[POCNS02]

63. In the event that Council is not utilised as the inspection/certifying authority, prior to occupation of the building a Compliance Certificate in the prescribed form is to be submitted to Council from the nominated principal certifying authority, together with the prescribed fee, to certify that all work has been completed in accordance with the approved plans and specifications and conditions of Consent.

[POCNS03]

64. 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]

65. 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]

66. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate, a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

USE

67. All landscaping work is to be completed in accordance with the approved plans prior to any occupation of the building.

[USE0735]

68. A backflow containment device will be installed adjacent to Councils water meter installation at the property boundary in accordance with AS3500. The device is to be maintained in accordance with the provisions of AS3500 by the owner of the property at the owners expense.

[USE1455]

69. All externally mounted artificial lighting shall 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 neighbouring or adjacent products.

[USENS01]

REPORT:

Applicant: Mr P Ring
Owner: Rainbow Bay Developments Pty Ltd
Location: Lot 4 DP 10007, No. 32 Boundary Street Tweed Heads
Zoning: 2(b) Medium Density Residential
Cost: \$2300000

BACKGROUND:

The subject site is presently occupied by a 2 storey fibro dwelling known as 32 Boundary Street.

The land has a total area of 768.42m² with a Boundary Street road frontage of 15.088m, Little Lane road frontage of 50.9m and Boundary Lane road frontage 15.088m. The site slopes from the southern boundary at approximately RL 13.69 downward to the northern boundary at approximately RL 4.49m.

Vegetation on site includes various species of trees and shrubs. The information available indicates that this vegetation is not of ecological significance and does not contain rare or threatened species.

The application currently before Council seeks consent for the erection of a multi dwelling housing development comprising of five (5) units within a six (6) storey building. Three (3) of these units contain a potential three (3) bedrooms and the remaining two (2) units contain the potential of five (5) bedrooms.

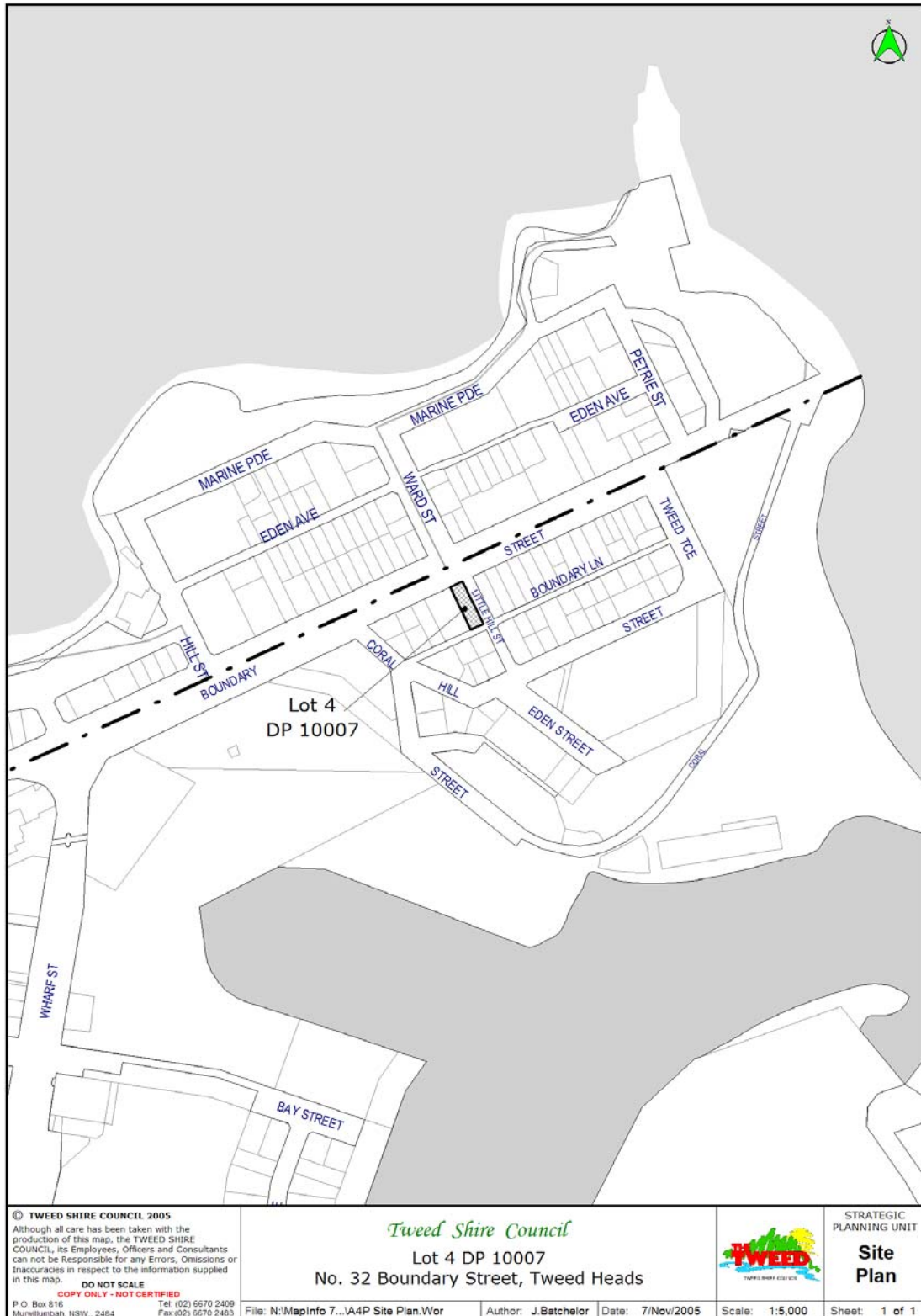
The proposal will largely appear as a seven (7) storey development from Boundary Street and a five (5) storey development from Boundary Lane. In accordance with the definition of a storey, for the purposes of Tweed Local Environmental Plan 2000, the development is regarded as being a six (6) storey development.

The application also involves the demolition of all existing structures on site.

Vehicular access to the site is via a driveway off Boundary Street. The driveway leads to a partially excavated basement car park, which accommodates nine (9) spaces in total. A car wash bay is situated within the front setback of the proposed development.

The proposal incorporates balconies for each unit, with the exception of Unit two (2) which also has access to a ground level landscaped area. Unit five (5) has access to the roof terrace.

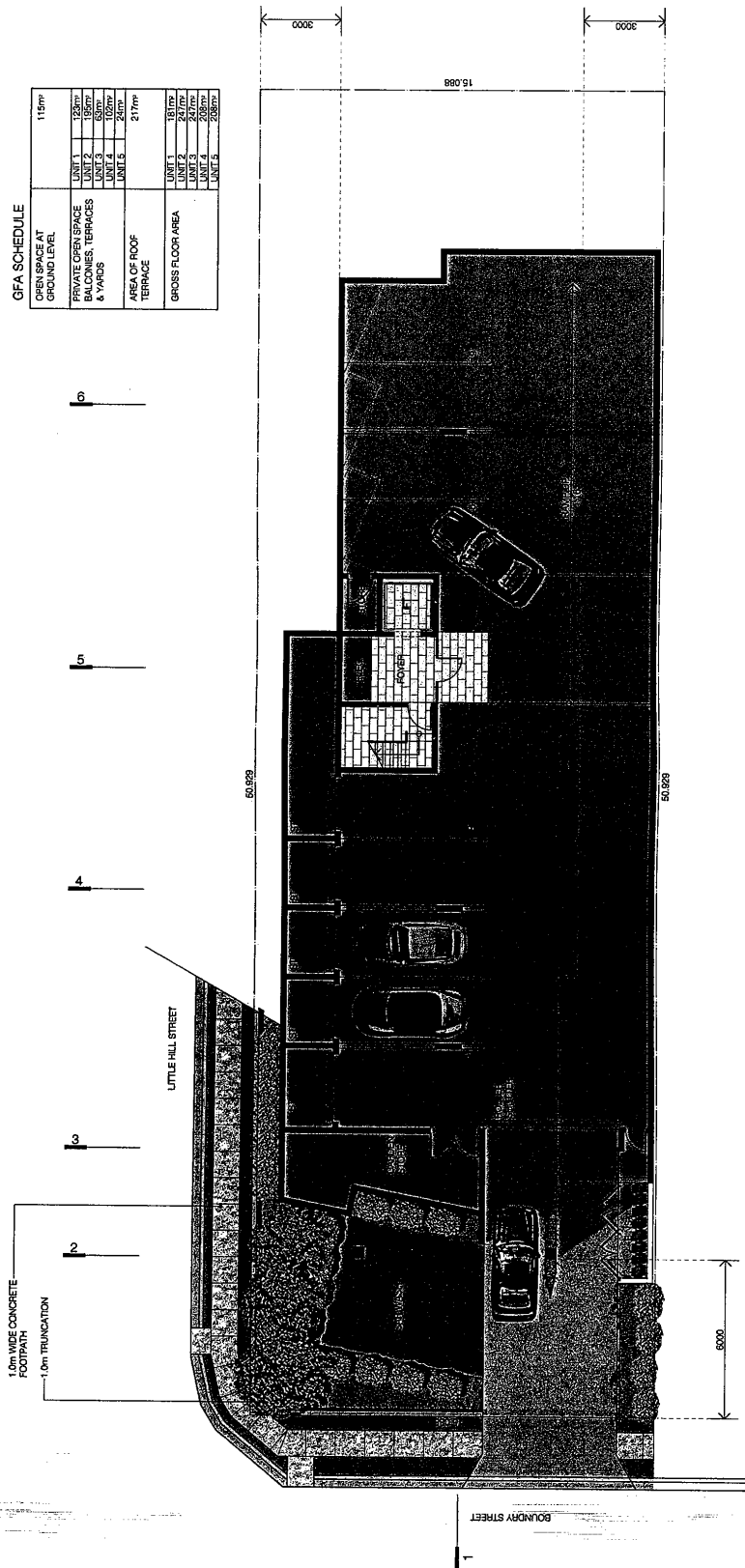
SITE DIAGRAM:



PLANS OF THE DEVELOPMENT

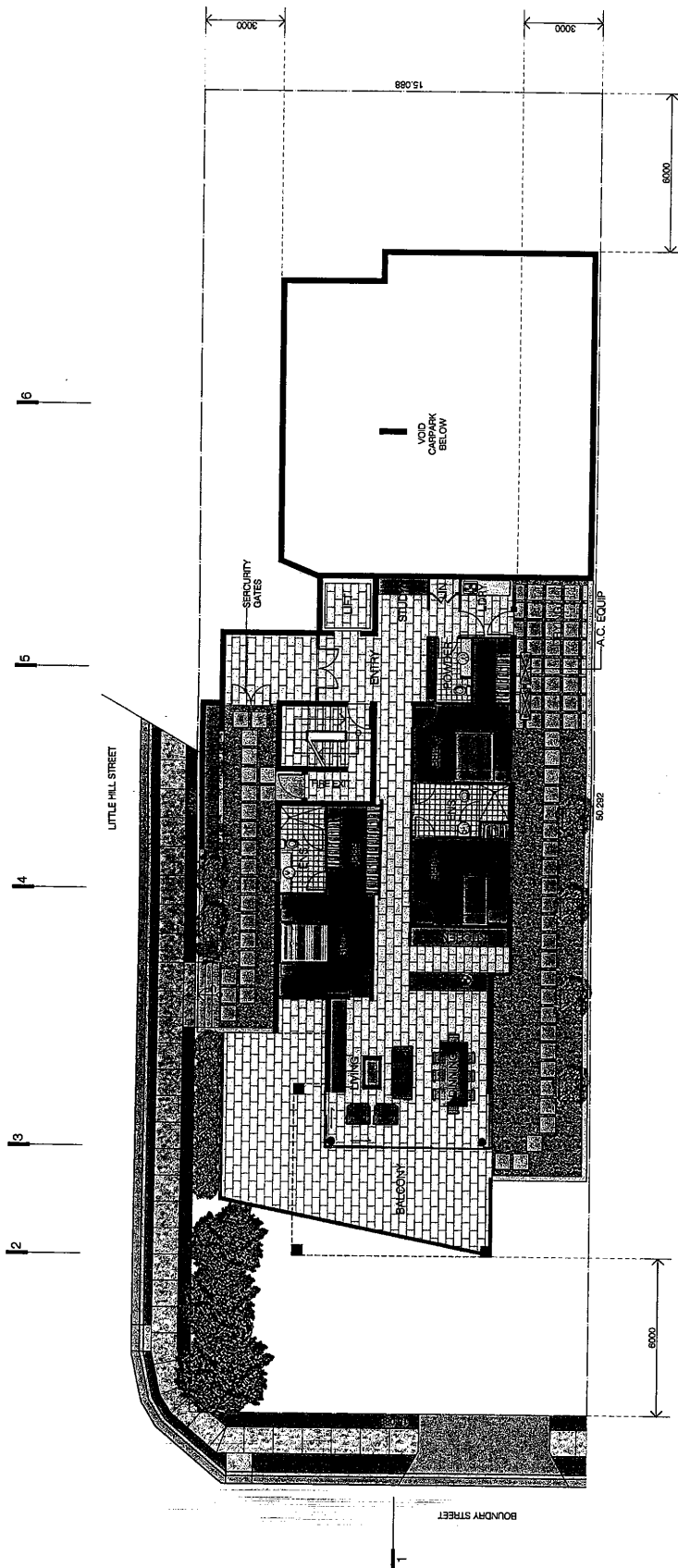


GFA SCHEDULE	115pp
OPEN SPACE AT GROUND LEVEL	125sqm
PRIVATE OPEN SPACE	50sqm
BALCONIES, TERRACES & PATIOS	102sqm
AREA OF ROOF TERRACE	25sqm
GROSS FLOOR AREA	217pp
UNIT 1	181sqm
UNIT 2	247sqm
UNIT 3	209sqm
UNIT 4	209sqm
UNIT 5	209sqm



PLAN
GROUND FLOOR
CARPARK
 SCALE 1:150@A3

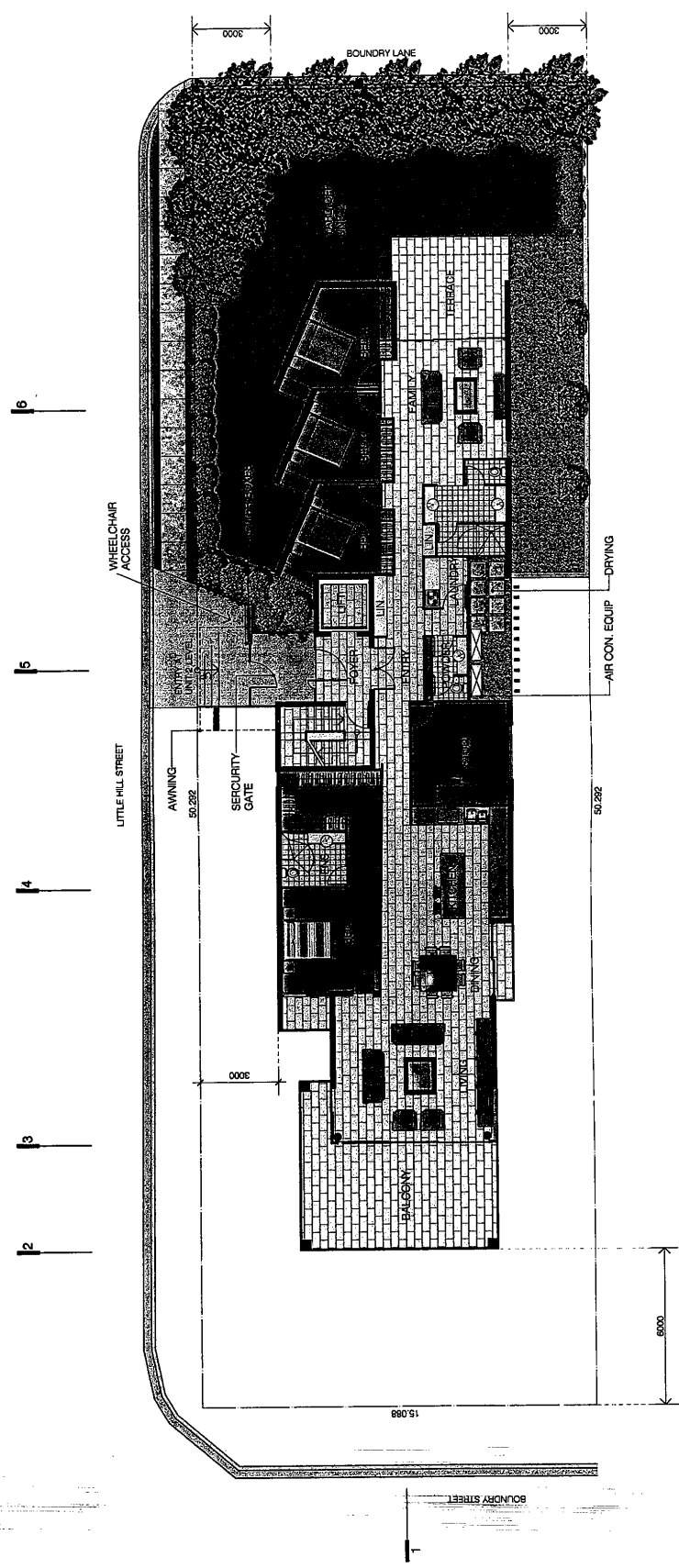
DEVELOPMENT APPLICATION
 RAINBOW BAY DEVELOPMENTS PTY LTD
 UNIT DEVELOPMENT
 32 BOUNDRY STREET TWEED HEADS
 24.03.05
 J.P.P.



PLAN
FIRST FLOOR
UNIT 1
SCALE: 1:150@A1

DEVELOPMENT APPLICATION
RAINBOW BAY DEVELOPMENTS PTY LTD
UNIT DEVELOPMENT
32 BOUNDARY STREET TWEED HEADS
24.06.05
JOB#7004

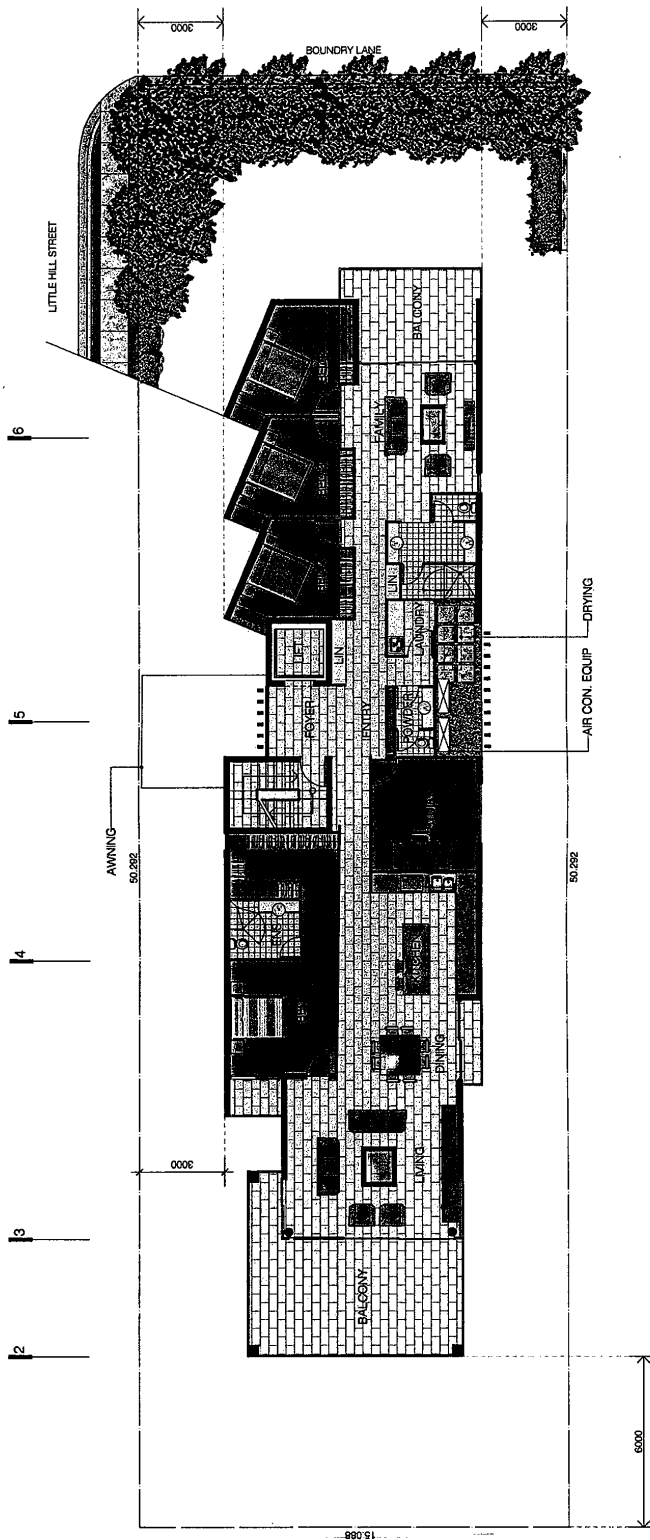




DEVELOPMENT APPLICATION
 RAINBOW BAY DEVELOPMENTS PTY LTD
 UNIT DEVELOPMENT
 22 BOUNDARY STREET TWEED HEADS
 28.05.05
 J.P.H.P./PAC

PLAN
 SECOND FLOOR
 UNIT 2
 SCALE 1:150@A1





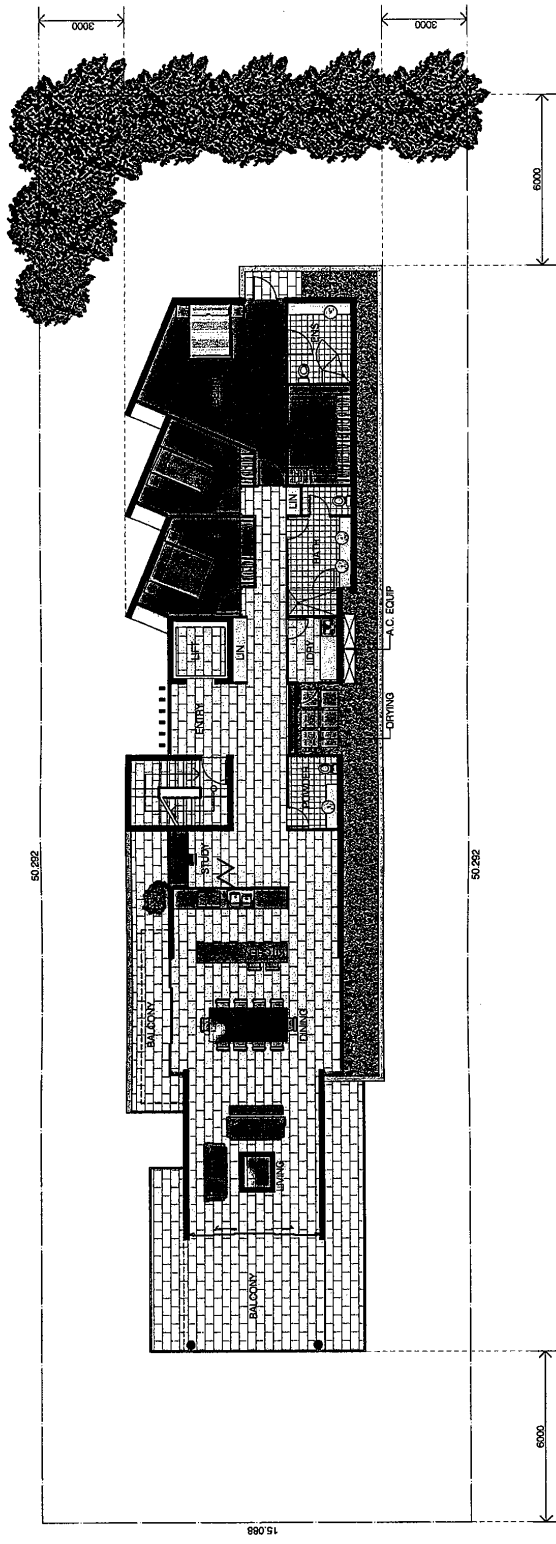
DEVELOPMENT APPLICATION
 RAINBOW BAY DEVELOPMENTS PTY LTD
 UNIT DEVELOPMENT
 32 BOUNDARY STREET TWEED HEADS
 J0577013

PLAN
 THIRD FLOOR
 UNIT 3
 SCALE 1:100@A1





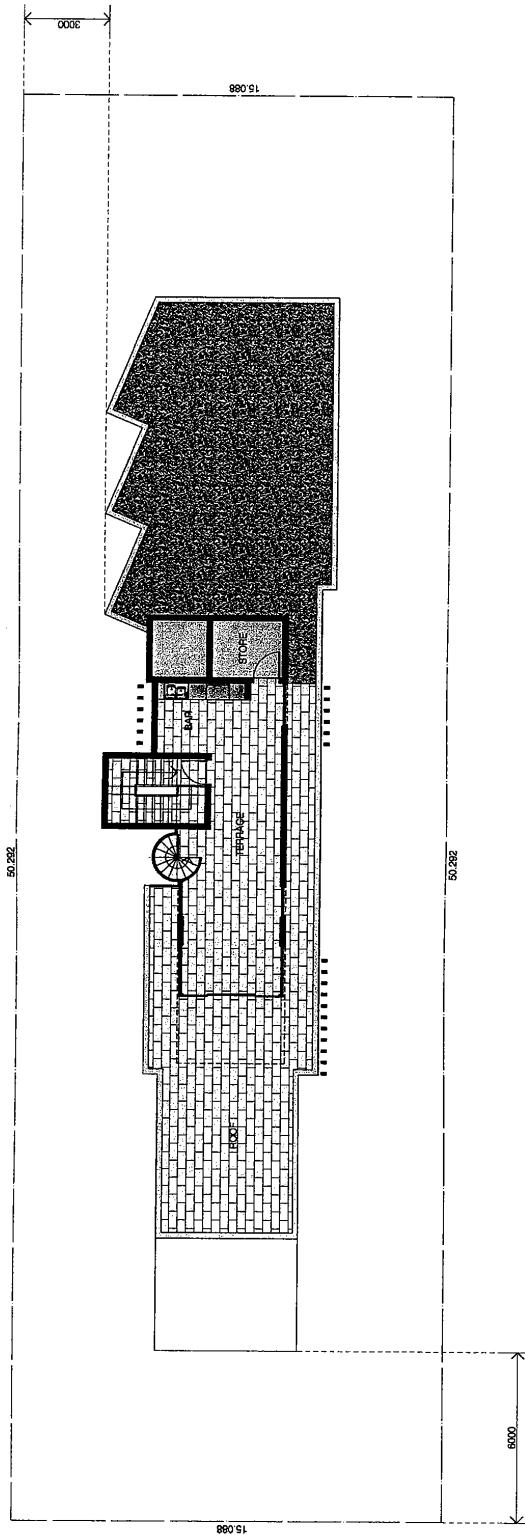
6
5
4
3
2



PLAN
FOURTH FLOOR
UNIT 4
SCALE 1:150@A3

DEVELOPMENT APPLICATION
RAINBOW BAY DEVELOPMENTS PTY LTD
UNIT DEVELOPMENT
32 BOUNDARY STREET, TWEED HEADS
31.05.05





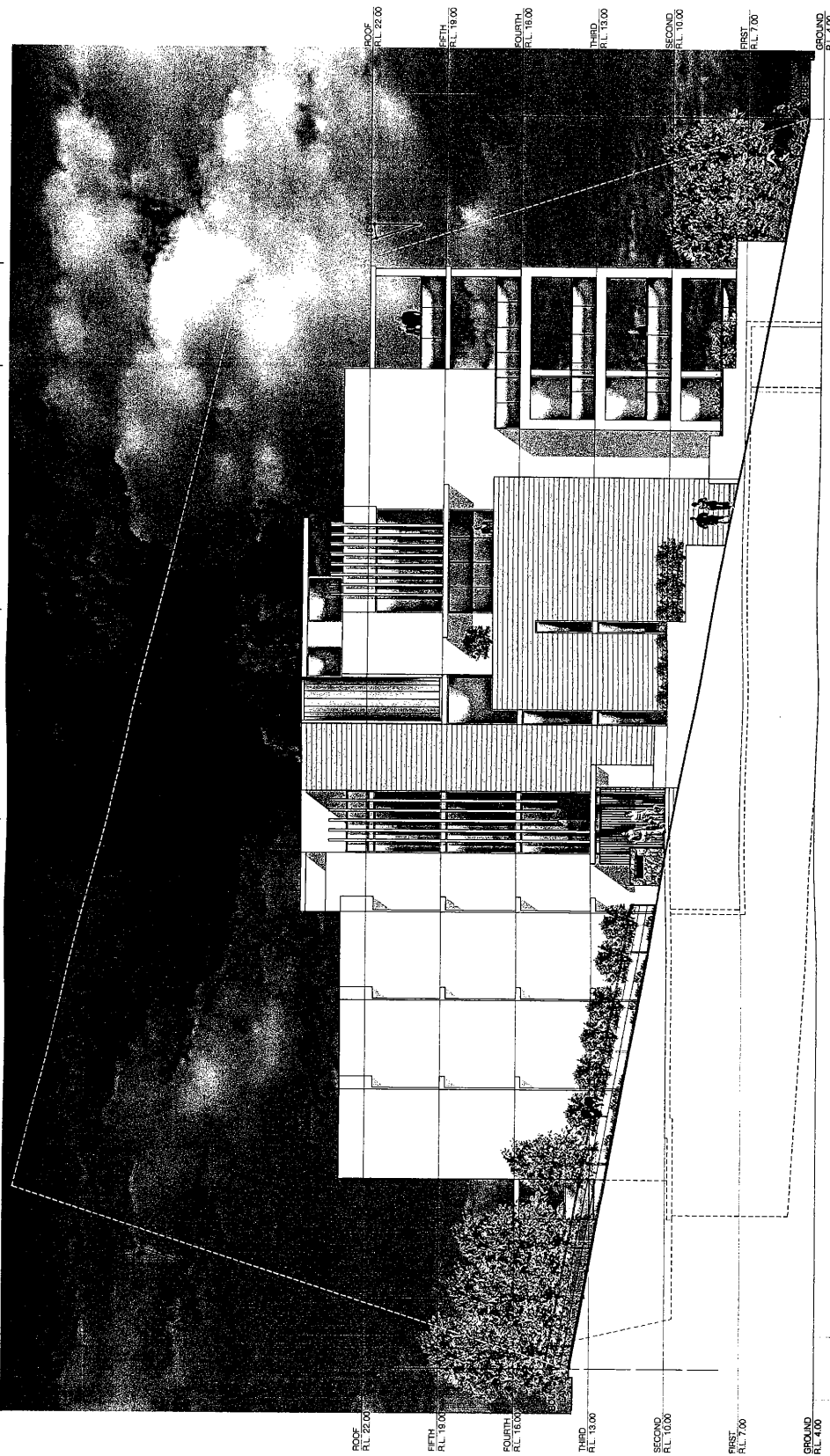
PLAN
ROOF
ROOF LEVEL
SCALE 1:150 @A3

DEVELOPMENT APPLICATION
RAINBOW BAY DEVELOPMENTS PTY LTD
UNIT DEVELOPMENT
32 BOUNDARY STREET, TWEED HEADS
22.06.05



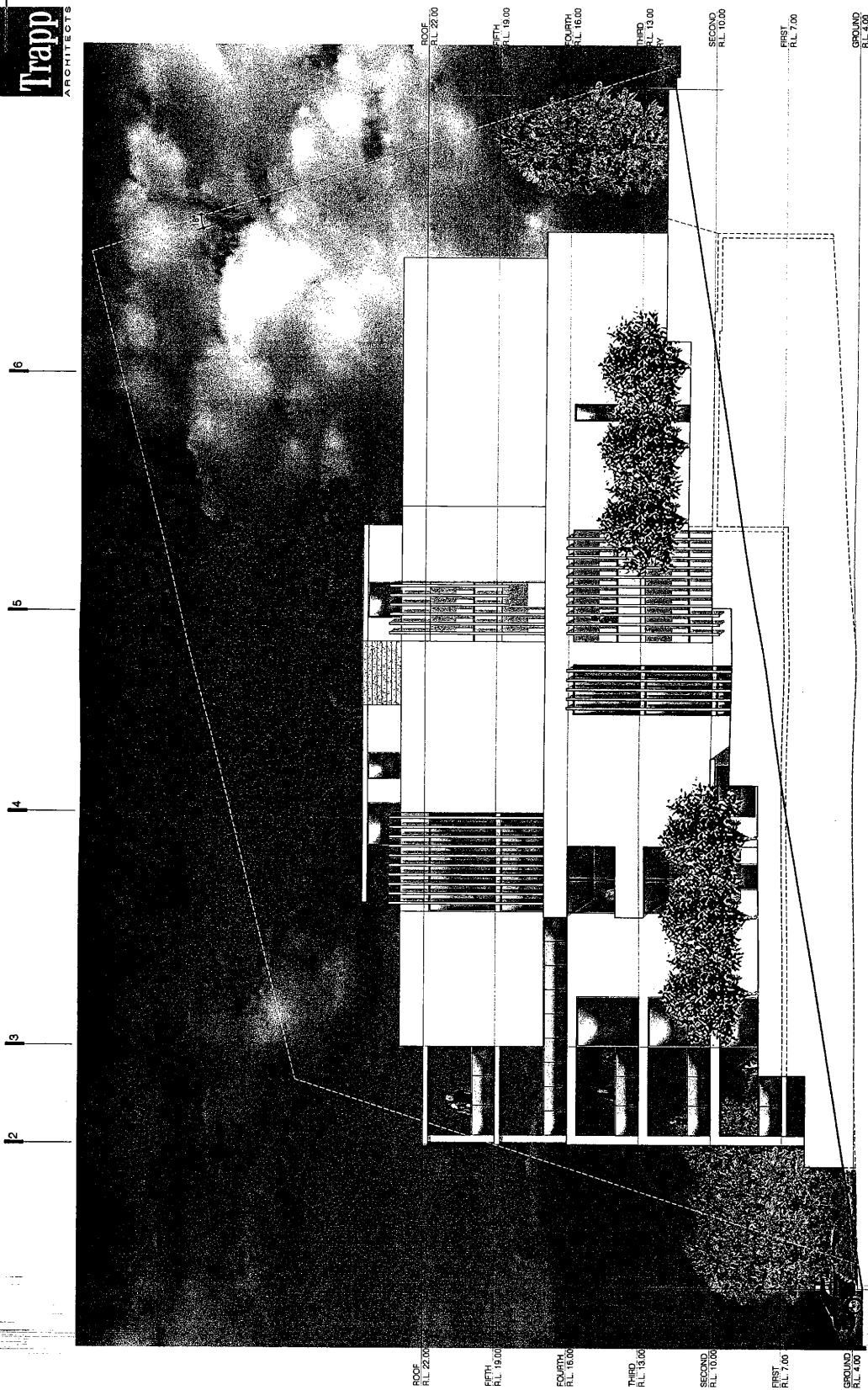


2
3
4
5
6



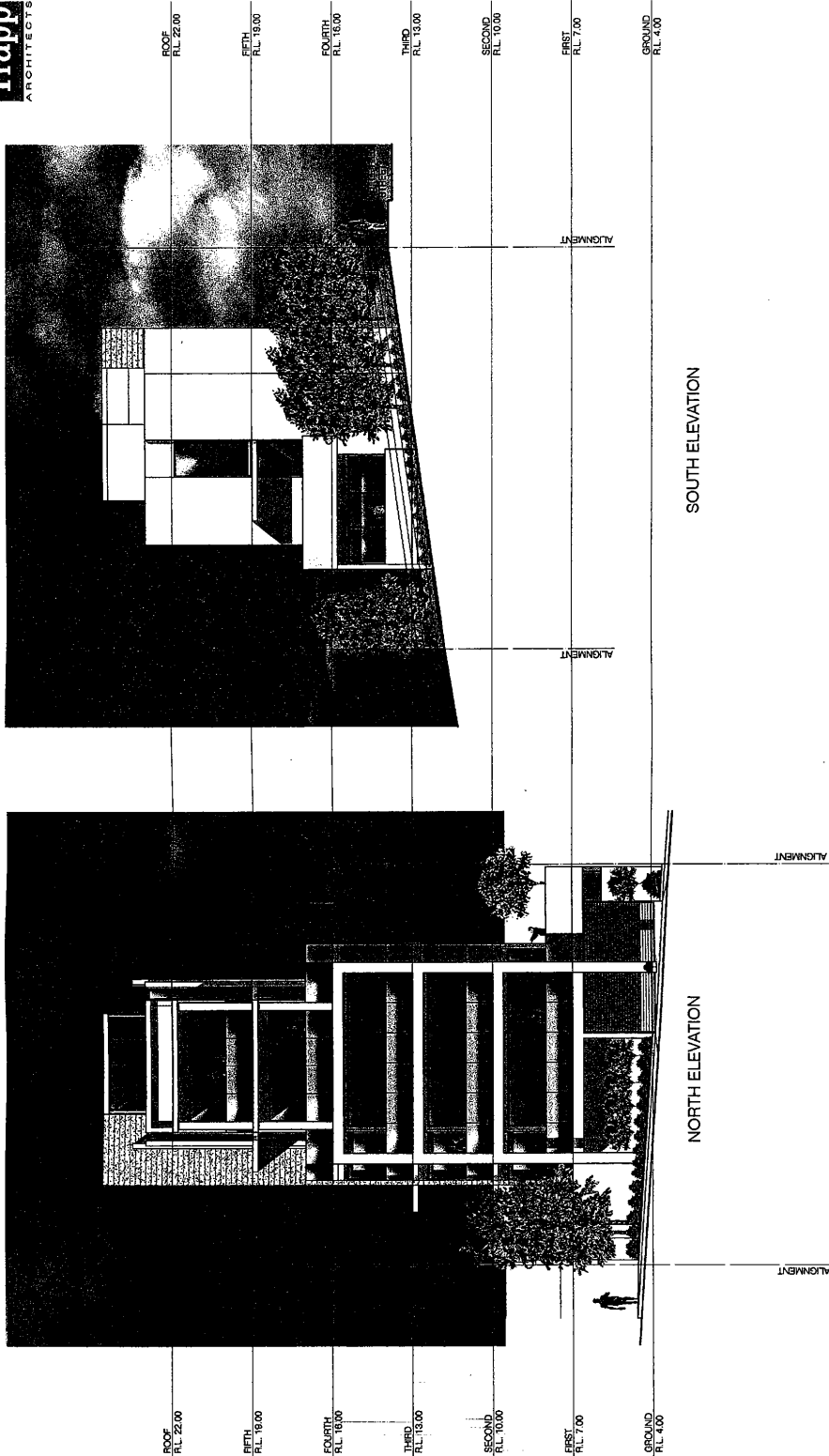
ELEVATION EAST
SCALE 1:150 @ A3

DEVELOPMENT APPLICATION
RAINBOW BAY DEVELOPMENTS PTY LTD
UNIT DEVELOPMENT
32 BOUNDARY STREET, TWEED HEADS
01/06/05



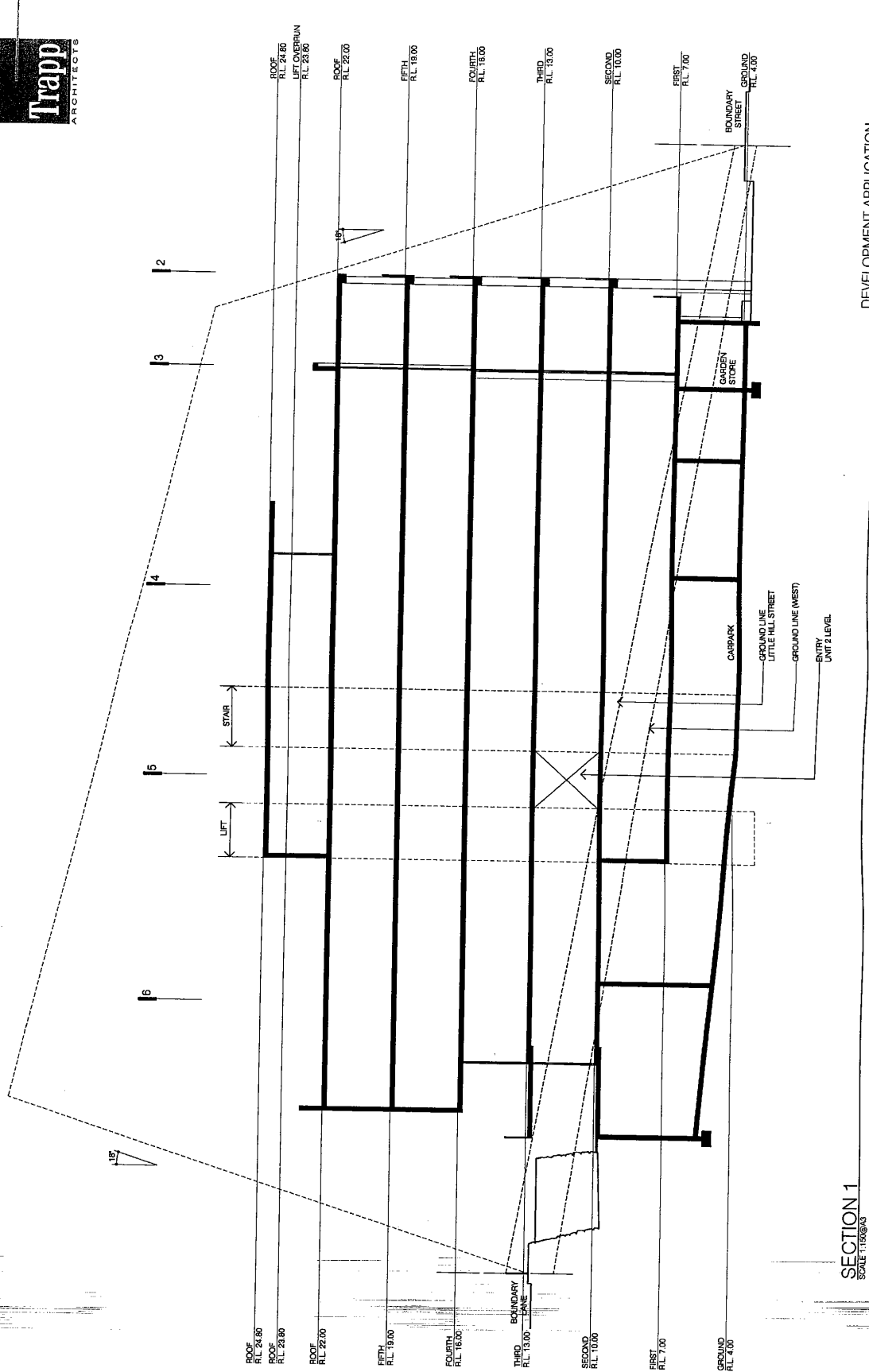
ELEVATION WEST
SCALE 1:100/3/3

DEVELOPMENT APPLICATION
RAINBOW BAY DEVELOPMENTS PTY LTD
UNIT DEVELOPMENT
32 BOUNDARY STREET, TWEED HEADS
22/04/05



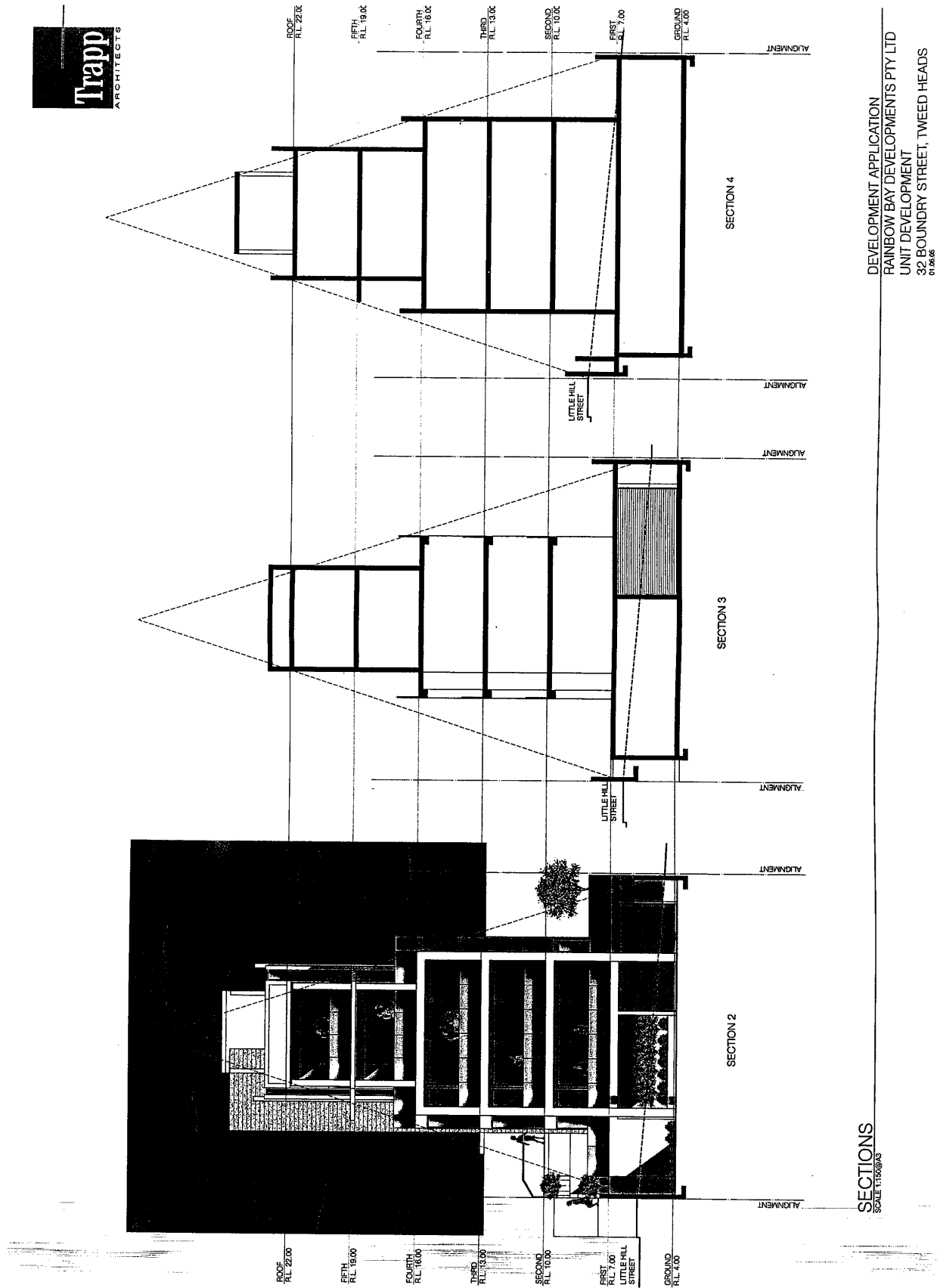
DEVELOPMENT APPLICATION
 RAINBOW BAY DEVELOPMENTS PTY LTD
 UNIT DEVELOPMENT
 32 BOUNDARY STREET, TWEED HEADS
 2/10/05

ELEVATIONS
 SCALE 1:100 @ A3



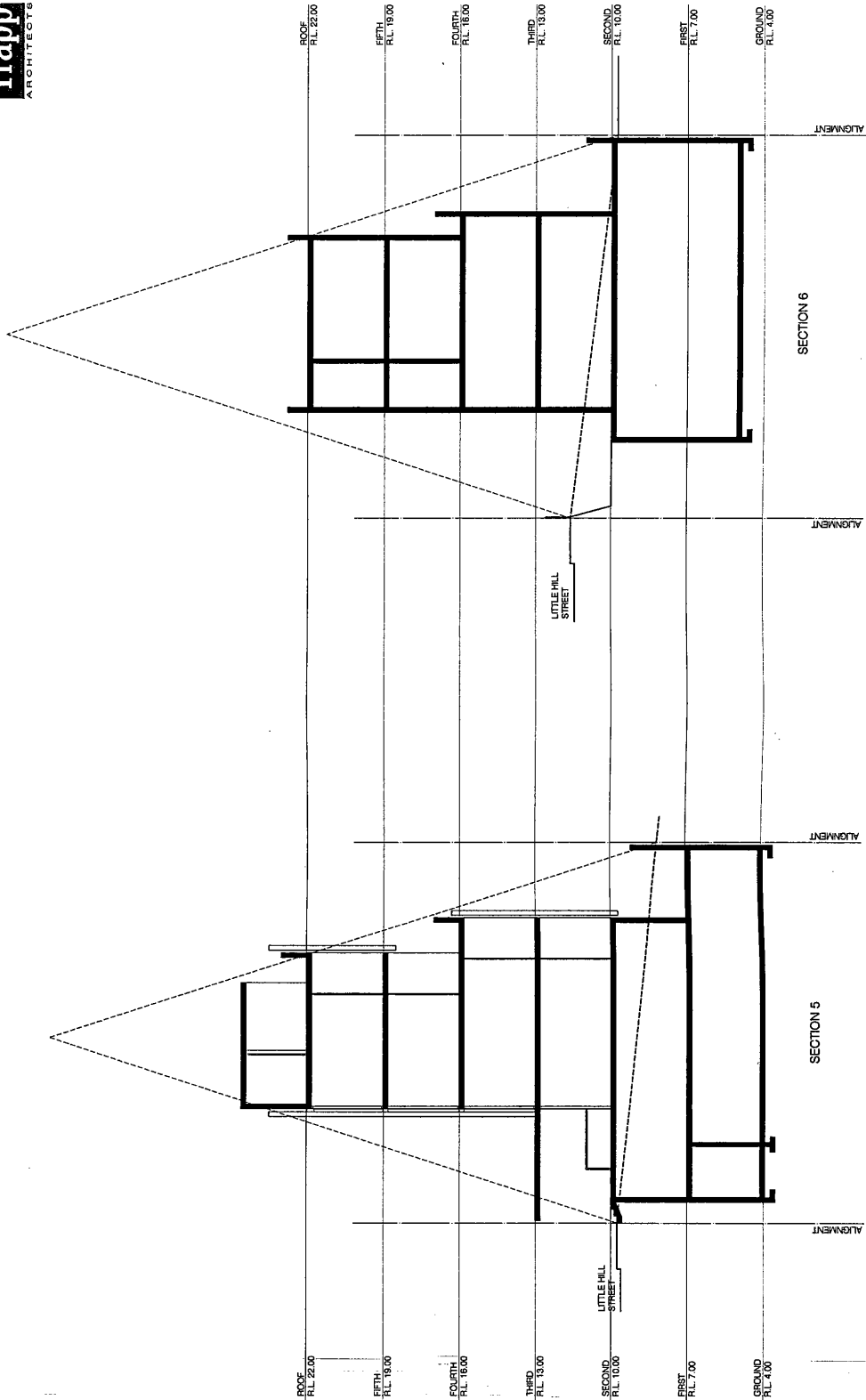
SECTION 1
SCALE 1:150 @ A3

DEVELOPMENT APPLICATION
RAINBOW BAY DEVELOPMENTS PTY LTD
UNIT DEVELOPMENT
32 BOUNDARY STREET, TWEED HEADS



DEVELOPMENT APPLICATION
 RAINBOW BAY DEVELOPMENTS PTY LTD
 UNIT DEVELOPMENT
 322 BOUNDARY STREET, TWEED HEADS
 24/04/05

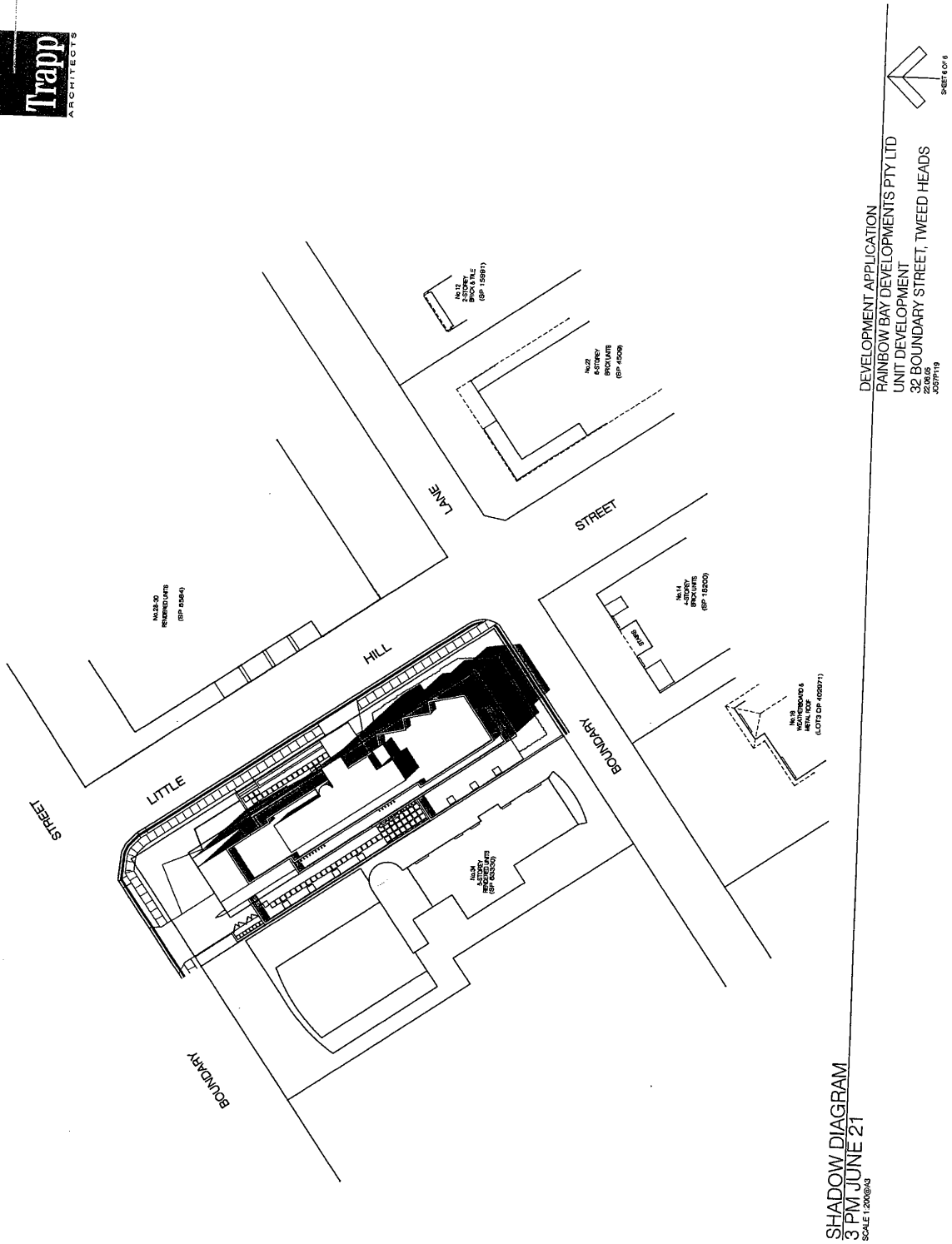
SECTIONS
 SCALE 1:50 @ A3



DEVELOPMENT APPLICATION
 RAINBOW BAY DEVELOPMENTS PTY LTD
 UNIT DEVELOPMENT
 32 BOUNDARY STREET, TWEED HEADS
 01/06/05

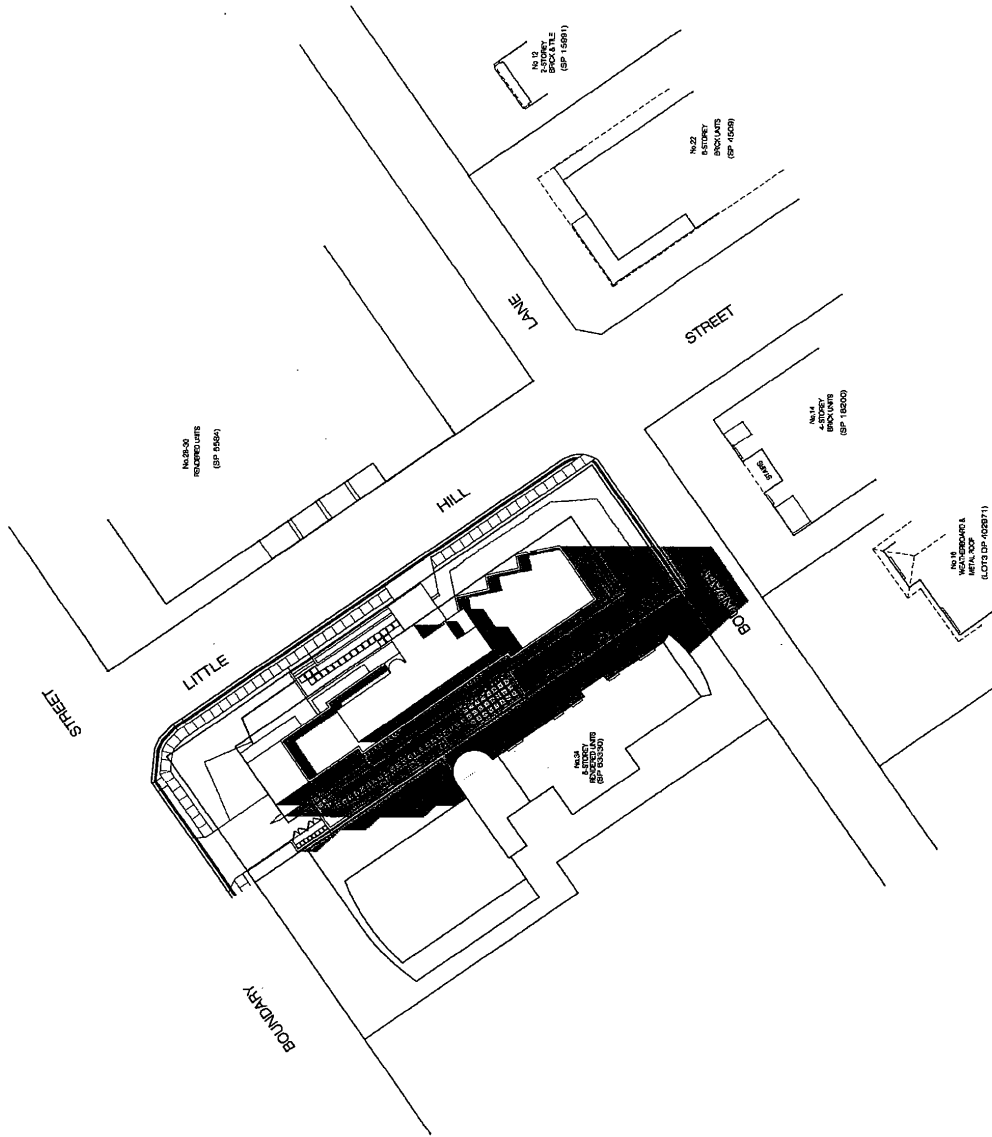
SECTIONS
 SCALE 1:150 @ A1

SHADOW DIAGRAMS



SHADOW DIAGRAM
3 PM JUNE 21
SCALE 1:200@A3

DEVELOPMENT APPLICATION
RAINBOW BAY DEVELOPMENTS PTY LTD
UNIT DEVELOPMENT
32 BOUNDARY STREET, TWEED HEADS
DATE: 15/06/05
JOB# 719

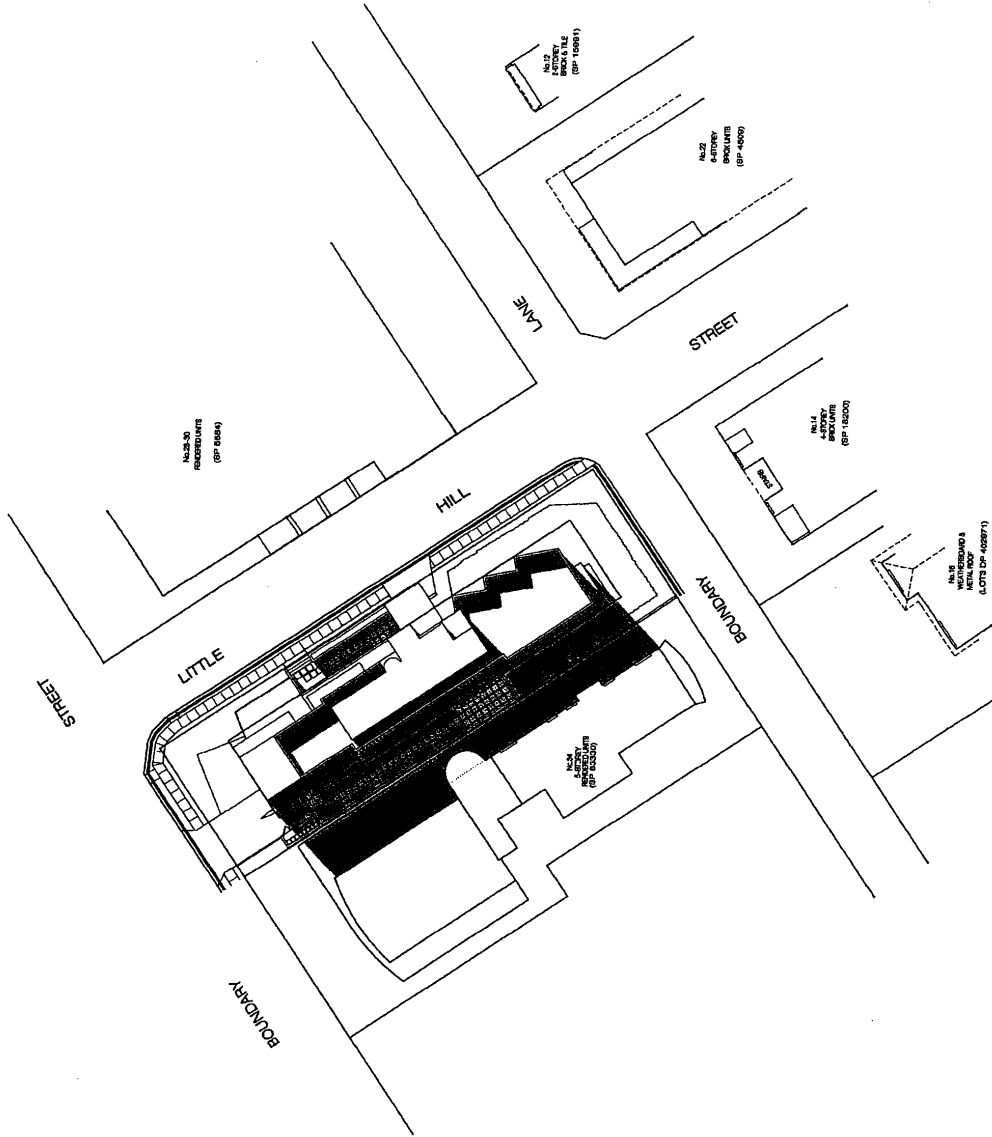


SHADOW DIAGRAM
12 NOON JUNE 21
SCALE 1:2000/4

DEVELOPMENT APPLICATION
RAINBOW BAY DEVELOPMENTS PTY LTD
UNIT DEVELOPMENT
32 BOUNDARY STREET, TWEED HEADS
DRAWN BY
20/06/05
20/06/05



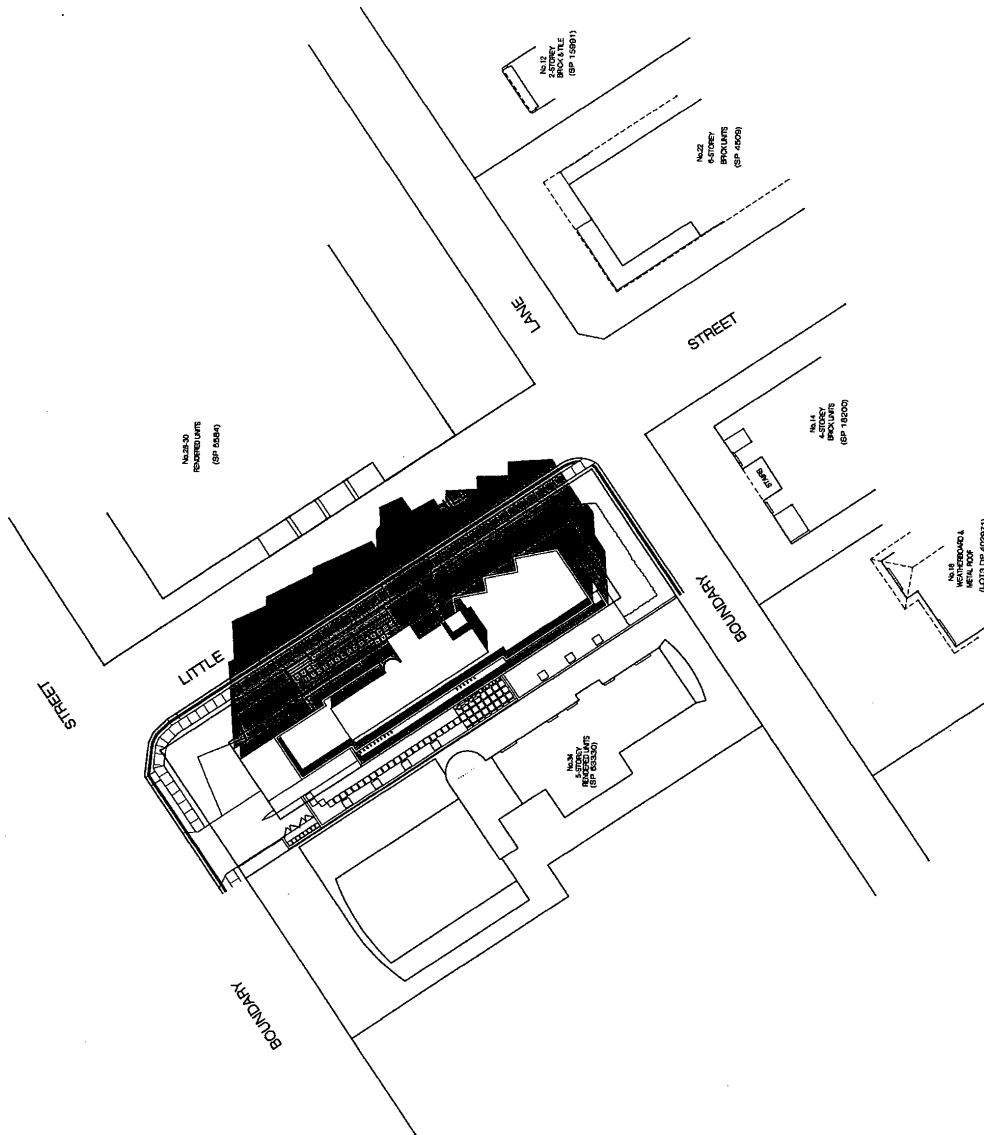
SHEET 5 OF 6



SHADOW DIAGRAM
9 AM JUNE 21
SCALE: 1:200@A3

DEVELOPMENT APPLICATION
RAINBOW BAY DEVELOPMENTS PTY LTD
UNIT DEVELOPMENT
32 BOUNDARY STREET, TWEED HEADS
DRAWING NUMBER
2005/117

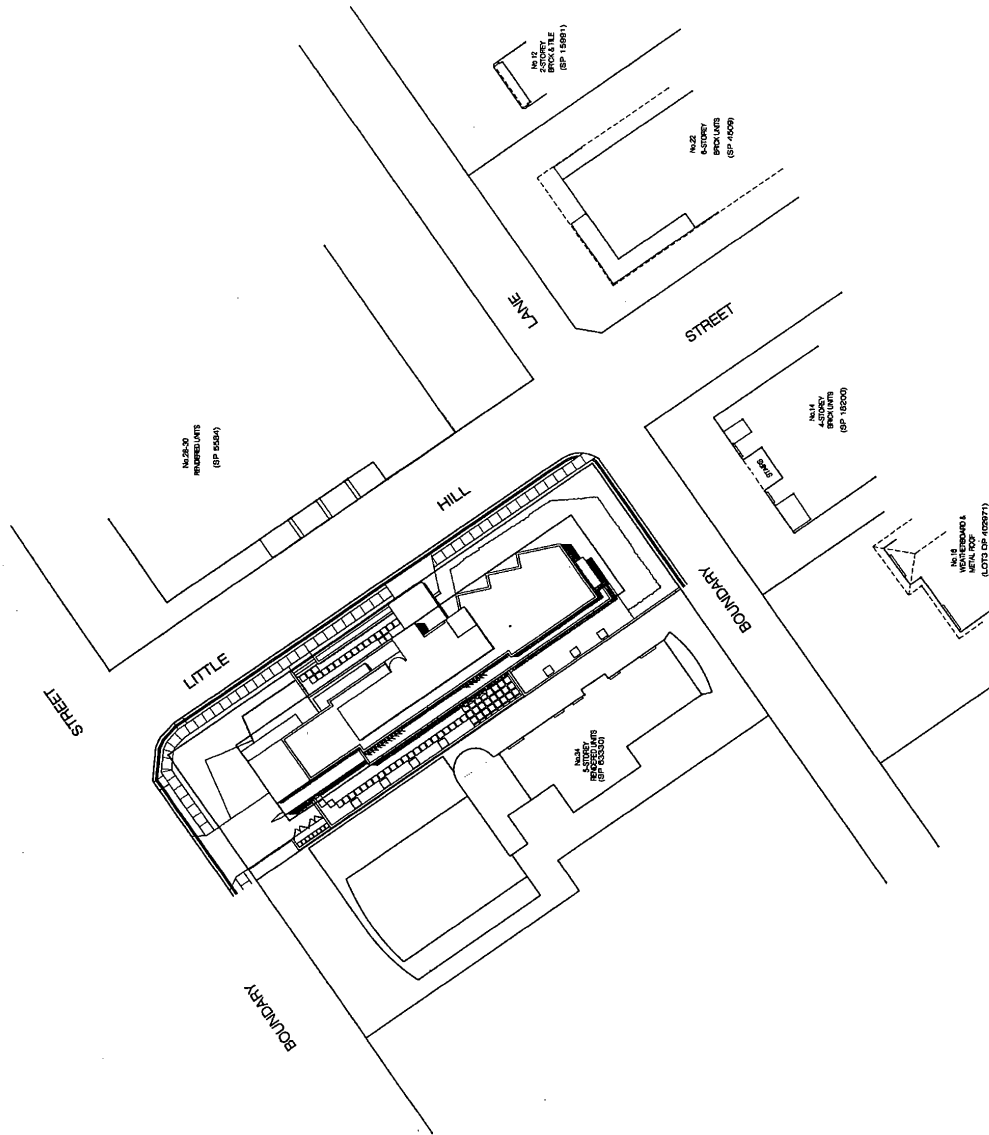




SHADOW DIAGRAM
3 PM DECEMBER 21
SCALE 1:300@A3

DEVELOPMENT APPLICATION
RAINBOW BAY DEVELOPMENTS PTY LTD
UNIT DEVELOPMENT
32 BOUNDARY STREET, TWEED HEADS
DATE: 10/11/05
JOB# 7116

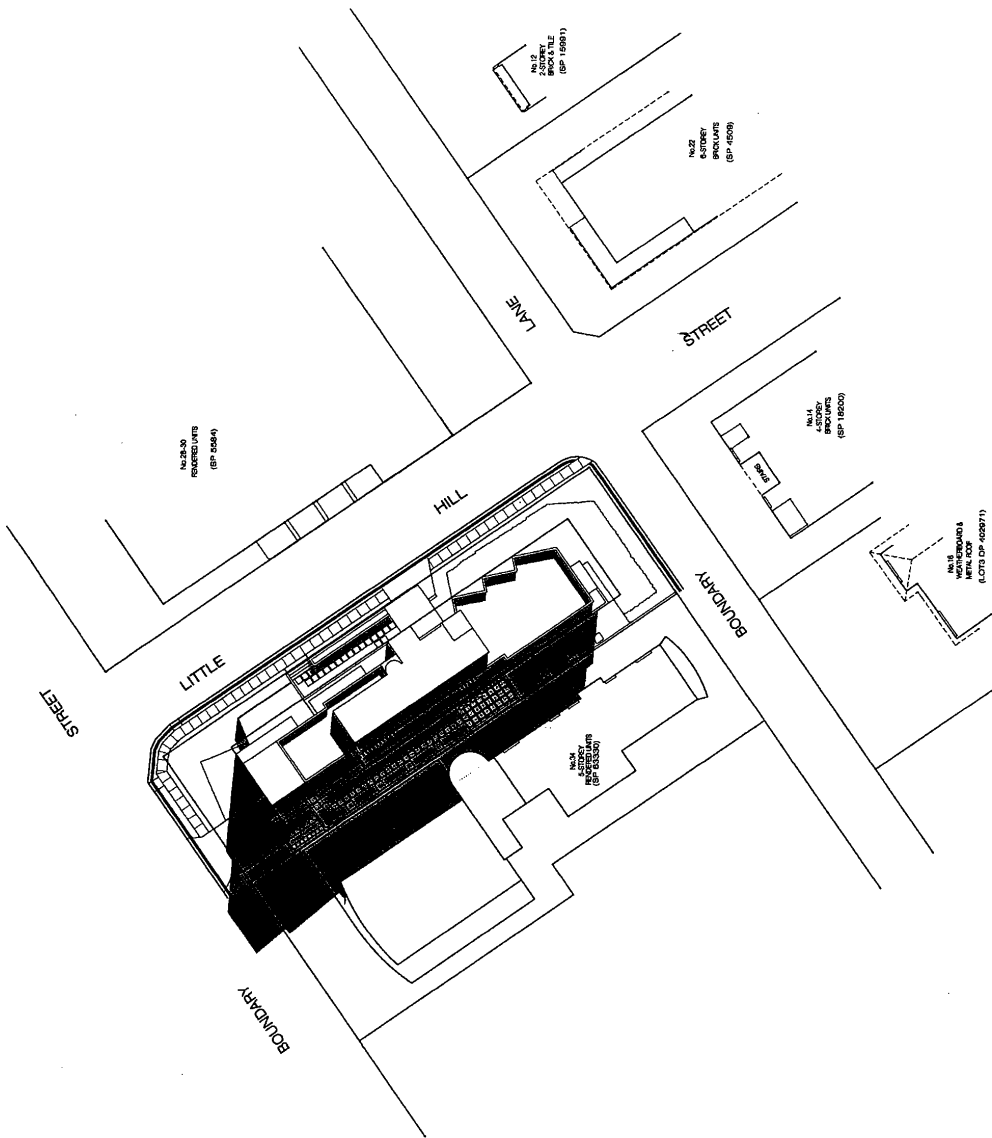




SHADOW DIAGRAM
12 NOON DECEMBER 21
SCALE 1:200@A3

DEVELOPMENT APPLICATION
RAINBOW BAY DEVELOPMENTS PTY LTD
UNIT DEVELOPMENT
32 BOUNDARY STREET, TWEED HEADS
DATE: 11/11/05
JOB: 07115





SHADOW DIAGRAM
9 AM DECEMBER 21
SCALE 1:200 @/03

DEVELOPMENT APPLICATION
RAINBOW BAY DEVELOPMENTS PTY LTD
UNIT DEVELOPMENT
32 BOUNDARY STREET, TWEED HEADS
22.08.05
JOSPH14



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

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

Tweed Local Environmental Plan 2000

The subject site is located within the 2(b) Medium Density Residential zone. Multi Dwelling Housing is permissible within the zone with consent.

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

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

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

The proposed six (6) storey development is considered to be a high density development as permitted by the zone.

The site is within close proximity to the Tweed Heads sub regional centre and the development is of a scale, which utilises the land appropriately for residential purposes. The proposed development is consistent with the desired future character of the precinct, which is discussed later in this report.

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

Clause 15 of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. All essential services are available to the site. An adequate existing water services is available to the site from Boundary Street or Little Hill Street. The sewer main is of adequate capacity and is available for connection along the sites' frontage to Boundary Street. Council's Waste Management Co-ordinator has approved the collection of the bin storage area situated within the basement car park of the proposal.

Clause 16 of the TLEP requires development to be carried out in accordance with the height limitation plan. The site has an allowable height limit of RL 50 AHD. The proposed development is RL 24.80m AHD. The proposed building height is consistent with the allowable height limit for the site.

It is acknowledged that the development will impact upon adjoining developments principally through view loss. The precinct is undergoing a change in its development nature to accommodate the intent of the Tweed Heads Master Plan (THMP). The THMP nominates the site as high-density residential development with a maximum height of six (6) storeys. Given that the existing development on the subject site is two (2) storeys, and the adjoining developments range from four (4) to six (6) storeys, the proposed development will result in a loss of view, overshadowing and a possible sense of enclosure for adjoining residents. These impacts are considered to be unavoidable as a result of redeveloping land within a high-density area. These issues are discussed in detail later in this report.

The proposed development complies with the numerical height requirements and exhibits sound urban design principles, and therefore satisfies Clause 16 of the TLEP 2000.

Clause 35 of the TLEP requires an acid sulfate soils management plan be assessed where the proposed development is likely to interfere with acid sulfate soils. The subject site is identified as possessing Class 5 acid sulfate soil levels. Council's Environment and Community Services Division has advised that the proposed development is not constrained by acid sulfate soils and a management plan is not required in this instance.

North Coast Regional Environmental Plan 1988

Clause 43 of the North Coast Regional Environmental Plan 1988 (NCREP) provides guidelines for Council when considering residential development. These controls include density, the environmental constraints on the land and road widths. The density of the proposed development has been maximised without adversely affecting the environmental features of the land. The proposal is also consistent with the allowable building height for the site.

Clause 51 of the NCREP relates to building heights greater than 14m and requires buildings of such height to obtain concurrence from the Director General of the Department of Planning. Council has been given authority to assume the Directors concurrence.

Clause 51 states that in deciding whether or not to grant concurrence to an application the Director (or Council due to its assumed concurrence) shall take into consideration the likely regional implications of the development as regards to its social, economic and visual effect and the effect, which it will or is likely to have on the amenity of the area.

It is considered that the proposal will not have an adverse social, economic or visual impact regionally, and in local terms, the proposal will not have an adverse impact upon the amenity of the area. The issues considered include overshadowing, privacy, loss of view, traffic impacts, bulk and scale and the objectives of the area. These are discussed later in this report. The proposal is considered to be consistent with the NCREP and as such Council can assume the Directors' concurrence in this instance.

State Environmental Planning Policies

SEPP No. 65 – Design Quality of Residential Flat Development

SEPP No. 65 applies to the development application as the proposed building is considered to be a residential flat building as it is greater than three (3) storeys in height and contains more than four (4) self-contained dwellings. As such an assessment in accordance with the design quality principles as detailed in Part 2 of the SEPP is required.

The design quality principles of SEPP No. 65 provide a guide to achieving good design and the means of evaluating the merit of proposed solutions.

Context

The proposed development responds to the desired future character of Tweed Heads as per DCP No. 18 and the Tweed Heads Master Plan (THMP). The area is characterised by older style residential flat buildings. However, this character is likely to change as a result of the THMP. The proposal is contemporary in design and utilises a variety of finishes. The use of light colours on the buildings' exterior are complementary to the coastal environment. The development is considered to contribute to the quality and identity of the area.

Scale and Density

The proposed development is consistent with the allowable building height of RL 50m AHD for the site in accordance with the TLEP 2000. The east and west elevations of the proposed building have been articulated, creating features of the building. The design elements utilised in the proposal including large balconies, screening devices, various building materials and finishes and roof forms result in a building which is consistent with the high density planning controls applicable to the site. The proposed development is consistent with the scale of the desired future character of the area.

Built form

The proposed development clearly defines the public domain. The proposal contributes to the character of the streetscape and provides views northern to Coolangatta Beach, and north eastern and north western views to Kirra Beach and along Boundary Street. The deep balconies enable privacy while using balconies and physical separation between the street and internal living areas. The proposed development has been designed to prevent direct overlooking into main living areas and bedrooms of the adjoining multi dwelling housing development (34 Boundary Street) through the use of a combination of window sizes and their location, landscaping and privacy screening devices.

Resource, energy and water efficiency

The proposed development is orientated north-south, with the main living areas orientated north. A NatHERS assessment was submitted with the development application demonstrating that the proposal achieves the minimum of 3.5 stars.

Landscape

The landscaping plan submitted with the development application proposes landscaping at ground level and on the podium level. An appropriate condition of consent has been imposed to ensure that landscaping will be completed prior to the occupation of the development.

Amenity

Neighbouring residences have raised concern that the proposal will adversely overshadow adjoining properties to the west (34 Boundary Street, Lot 1 DP 371296). Due to the north south orientation of the site the applicants shadow diagrams depict limited shadow on the immediately adjoining development to the subject sites' west. No other development is affected by overshadowing. The shadow diagrams show that at 9am and 12 noon in mid winter part of the adjoining development is shadowed. By 3pm mid winter no overshadowing occurs. In mid summer, the impact of overshadowing is far less. The adjoining development would be overshadowed at 9am, and by 12 noon receive full sun. Therefore it is considered that the adjoining property receives adequate solar access as the day progresses.

In determining whether the current application unreasonably impacts upon the amenity of the adjoining properties the intended character of the area must be considered. The area is nominated as a high density area with a height limit of RL 50m AHD. The amenity of the adjoining developments and the desired future character of the area must be considered. Having regard to the applicable planning controls and the desired future urban form of the area it is considered that the proposal does not unreasonably detract from the amenity of the area, nor restrict the ability of adjoining parcels to be re-developed.

The proposed units are considered to be functional. Some of the bedrooms proposed are irregular in shape, however the submitted plans demonstrate that each of these rooms can adequately accommodate furniture. These bedrooms each contain a north facing window, which optimises their access to sunlight and provides an outlook.

Each unit contains at least one large balcony. The primary balconies situated on the northern elevation generally regular in shape and are considered to be functional. These primary balconies and the secondary balconies provide a northern, northeast and northwest outlook. The depth of the balconies situated on the northern elevation of each of the units provides visual privacy between the public and the private domain. The balconies are also stepped back off the street to further increase the spatial separation between the private and public domain. The windows of bedrooms and primary living spaces are screened with either vegetation or screening devices or are staggered to prevent direct views into and from these rooms.

Adequate storage is provided in six (6) of the car spaces in the basement car park.

The proposal is equipped with a lift servicing all units. The lift may be accessed from the car park and also from Little Hill Street. Wheelchair access is available from Little Hill Street.

Safety and security

The use of balconies on all elevations ensures casual surveillance of entries and open space areas. As previously stated the depth of the balconies ensures that there is a physical separation between the public and private domain. The building provides clear and direct paths to entries and lift areas within the building. The entry points into the building are proposed to be protected with security gates and are clearly visible from Boundary Street and Little Hill Street. Vegetation, fencing and security gates have been implemented to provide a clear division between public and private spaces.

Social dimensions

The proposal contains a mix of three (3) bedroom and five (5) bedroom units. The site is situated within close proximity to public open space areas; the shopping precinct; recreational facilities such as cinemas and professional services such as medical practitioners.

Aesthetics

The light colours utilised in the proposed building are consistent with the coastal environment. The design and variety of materials used in the building's façade are consistent with the desired future character of the area. The contemporary design of the development will make a positive contribution to the streetscape.

State Environmental Planning Policy No. 71 – Coastal Protection

The site is not located in a sensitive coastal location. Clause 8 of the policy details sixteen matters for consideration for land situated within the coastal zone. The application is considered to adequately satisfy the matters for consideration. Specifically the proposed development is considered to be compatible with the intent for the development of the locality.

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

Council has resolved to amend the Tweed Heads building heights within the Tweed Local Environmental Plan 2000 to adopt the building heights as contained in the Tweed Heads Master Plan. The proposed development is consistent with the maximum building height in the Master Plan.

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

Tweed Heads Master Plan

The primary objective of the building height strategy relevant to this application is: 'The objective on Flagstaff Hill is to integrate building height with the existing land form whilst placing significant visual importance on the height of the Norfolk Island Pine plantings. The purpose is to ensure the new built form responds to the headland character and steps along Boundary Street. A six (6) storey height limit provides the best outcome to achieve these objectives'. The proposal is consistent with the THMP Building Height Strategy as it is six storeys in height. The proposal is consistent with the urban design principles for the subject site.

DCP No. 2 – Site Access and Parking Code

Standard	Requirement	Proposed	Complies
Multi Dwelling Housing	1.5 per dwelling = 7.5 on-site spaces 25% of above spaces must be available for visitors = 1.88 = 2 on-site spaces Total = 8 spaces	9 on-site car spaces and car wash bay. Six (6) storage areas are available in the car park area.	Yes

DCP No. 18 – Tweed Heads

The subject site is situated within Precinct 4C – Flagstaff Hill Precinct which is a high density residential precinct. The proposed multi dwelling housing development is consistent with the precinct objectives and vision for Tweed Heads.

Section 2.4.3 – View Corridors

The proposal would not intercept the horizon or impact on views to the ocean. The proposed building will be concealed below higher surrounding buildings when viewed from the nominated features.

Section 9.0 - Building Envelope

The proposed building does not comply with the required building envelope. The areas, which encroach into this envelope, are predominately sections of the upper floor sections of the stairwell, the balconies on the northern elevation and the roof terrace area. The encroachments do not add significantly to the bulk of the building. The balconies, which wrap around the north eastern elevation of the building are a design element implemented to reinforce the corner of Boundary Street/Little Hill Street. The encroachments also assist in articulating the building especially when viewed from Boundary Street. The encroachments do not result in adjoining development being overshadowed or loss of views for surrounding developments.

Section 11.0 - Residential Design Guidelines

Building Mass

The proposed building utilises varied setbacks, windows, balconies, bedroom dimensions and shade and privacy screening which assist in dividing the building into smaller components. All continuous unbroken lengths do not exceed 15m.

Ventilation

The units extend the full depth and contain at least one major balcony. The flowing design of the units and secondary balconies enables air movement throughout the apartment.

Daylight Access

The main living areas of the proposal are orientated north. The habitable rooms within the development contain at least one (1) window providing daylight access. The width of the units enable daylight to penetrate through each unit. The primary balconies are glazed and are orientated north.

Wind Mitigation

Due to the open nature of the surrounding area, the proposed building is considered unlikely to create any adverse wind effects at ground level.

Overshadowing

The proposed development will partly overshadow one adjoining building being most affected at 9am mid winter. The impact of overshadowing has been detailed previously in this report.

Rooflines

The roof structure creates a visually interesting skyline and retains important view corridors as detailed in DCP No. 18.

Privacy

The proposed development has been designed to prevent direct overlooking into main living areas and bedrooms of the adjoining multi dwelling housing development (34 Boundary Street) through the use of a combination of window sizes and their location, landscaping and privacy screening devices.

The adjoining development is gradually staggered from the adjoining eastern boundary, which assists in creating physical separation between itself and any new development.

Security and Surveillance

The building provides clear and direct paths to entries and lift areas to the building. Direct and well lit accesses between the car park and units are provided. Shared entries into the building exist in the car park and along Little Hill Street. The entry points into the building are proposed to be protected with security gates and are clearly visible from the street. Public open space areas surround the site. Vegetation, fencing and security gates have been implemented to provide a clear division between public and private spaces. The balconies on all elevations ensures casual surveillance of entries and open space areas.

Materials and Colours

The building is proposed to be finished to a high standard using cement rendered finish. The white external colour used is consistent with the coastal environment.

Access, Parking and car wash bays

An assessment of the car parking requirements is detailed in the DCP No. 2 – Site Access and Parking Code assessment table. The proposed car parking and car wash bay is consistent with DCP No. 18.

Open Space and Balconies

A total of 347m² of private open space is attached to the proposed units. In addition to this 92m² is provided in a shared roof terrace area. All open space zones meet the minimum dimensions and areas and are accessible from main living areas.

DCP No. 39 – Energy Smart Homes

A NatHERS assessment has been submitted with the development application stating the proposal will achieve the required minimum of 3.5 stars.

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

Clause 92(a) Government Coastal Policy

The land is identified under the Coastal Policy. The site is not affected by the Coastal Erosion Zones, is unlikely to be affected by the coastal processes, will not overshadow foreshore reserves and does not restrict public access to the coast. Therefore the proposed development is not in conflict with the policies and strategies contained within the coastal policy.

Clause 92(b) Applications for Demolition

The proposal requires the demolition of the dwelling and all ancillary structures on site. Appropriate conditions of consent have been recommended to control demolition activities.

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

View Impact

The Senior Commissioner in the Land and Environment Court in *Tenacity Consulting Pty Ltd v Warringah Council* adopted the four-staged test to assess the reasonableness of view sharing.

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

This test has been implemented in the assessment of this application.

The proposed development will primarily affect views from 14 Boundary Lane (Lot 1 on DP 355906), which is situated immediately south of the subject site. The proposed development will also affect other surrounding developments such as those from 22 Little Hill Street.

14 Boundary Lane contains a (4) storey multi storey housing development, it should be noted that the development is situated at a higher level than that of 32 Boundary Street. 14 Boundary Lane currently enjoys northern views to Coolangatta Beach and distant north western views to Kirra Beach. The view of Coolangatta Beach is largely uninterrupted due to the view incorporating part of a road and pedestrian access path to Coolangatta Beach in Queensland (QLD). The views include foreshore, sand, the ocean and Duranbah Hill. View corridors are also present between existing developments both in New South Wales (NSW) and QLD.

These views are obtained through a combination of sitting and standing positions. A site inspection of the units in 14 Boundary Lane revealed that the lower floor units can view the abovementioned from the main internal living areas and balconies situated in the northern section of the units and bathroom areas which are situated at the most southern section of the units, while standing. The upper floor units' views are evident while being seated in the main internal living areas and northern balconies. The ocean views are obtained while standing from the bathrooms, situated in the southern section of the units.

The proposed development will appear as a five (5) storey development from Boundary Lane. Should the development application be approved and constructed, northern views of Coolangatta Beach from 14 Boundary Lane would be significantly reduced. View sharing would occur as corridors in between the proposed development and adjoining sites would be retained to enable north and north east views of Coolangatta Beach. The upper eastern unit (Unit No. 3) would be the worst affected should the proposed development be approved, the unit would lose its northern view of Coolangatta Beach. A (7) storey Multi Dwelling Housing Development (DA04/0653) is currently under construction on 42 Boundary Street. This development will result in north western views to Kirra Beach from the upper floor units of 14 Boundary Lane being reduced. View corridors in between this development (DA04/0653) and other existing development within QLD would be retained.

From 14 Boundary Street at the northern balcony of Unit 1 the fourth and fifth floor of the proposed development would be visible. From the northern balconies, Unit 2 and 3 would look at the fifth and roof floors of the proposed development. From the northern balconies, Unit 4 and 5 would look at the roof terrace area and over the proposed development.

The upper floor units of 14 Boundary Lane will retain northern views of the sky/horizon. The immediate northern view of Coolangatta Beach will not be retained for all other units. If the subject site (32 Boundary Street) was only redeveloped to two (2) storeys, the immediate northern view of the beach would still be lost and therefore any re-design would not achieve any significant benefit.

Should the proposed development be approved and constructed, the northern views of Coolangatta Beach, which are currently enjoyed from 14 Boundary Street, would be significantly reduced. However, the proposed development would enable view sharing by providing corridors between itself and adjoining development. View corridors are also present between existing developments within QLD. It is unrealistic to expect that the immediate northern view of Coolangatta Beach to be retained given the subject site is situated within a re-developing high density precinct of Tweed Heads. The precinct is likely to undergo redevelopment as documented within the Tweed Heads Master Plan. All sites within close proximity to the subject site also have an allowable building height limit of RL 50m AHD, the proposed building complies with this criteria with a top height of RL 24.80m AHD.

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

(c) Suitability of the site for the development

The proposed development is to be erected on land that is zoned for high density housing in proximity to the Tweed Heads sub-regional centre under the Tweed Local Environmental Plan 2000.

The proposed design and configuration of the development is considered consistent with the desired land use character and pattern. The suitability of the site for the purposes of the proposed development has been demonstrated by way of general consistency with the relevant statutory and non-statutory guidelines applying to the site.

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

In accordance with DCP No. 42 – Public Notification Policy the development application was advertised for a period of fourteen (14) days. During this time seven (7) submissions were received. These are outlined below.

Issue	Comment	Assessment
Building Form	Existing developments in the area are tiered back. If this development were tiered the building would comply with the building zone and aesthetically complement and suit the fall of the land. The tiering would also reduce the amount of shade on adjoining development.	It is unclear what this submission is referring to. The building is stepped back progressively as the building height increases, in line with the required building envelope control. Given the scale of the development, the proposed overshadowing is considered to be reasonable.
	The building does not conform with the building envelope control. The surrounding buildings do conform in that they are terraced/stepped back from the street.	The encroachments regarding the building envelope have been assessed as detailed in the DCP No. 18 assessment. It is considered that these encroachments are acceptable.
	The application states it substantially conforms. Has it achieved the 1 metre setback for every 3m of building height taking into consideration the 72° angle requirements?	The building envelope requirement has been considered in the assessment of this application. As previously stated, the proposed development does encroach into the building envelope in some sections of the building.

<p>Building Height</p>	<p><i>“Clause 57 - states 14m maximum height of building to the natural ground level immediately below that point from anywhere on the building: 22m appears on the plans for height – if tiered, the building would comply”.</i></p>	<p>It is unclear what the objection is referring to, however it appears that reference is made to the North Coast Regional Environmental Plan 1988. Clause 51 of the North Coast Regional Environmental Plan 1988, refers to development, being over 14 meters in height requiring the concurrence of the Director General. In this instance Council can assume this concurrence as the proposal is consistent with the allowable height limit as specified in the Tweed Local Environmental Plan 2000.</p>
	<p>It appears a building height of 50m is allowable with a maximum of 15 storeys. A six storey development which achieves a height of 25m would be less imposing if the original ratios were achieved.</p>	<p>The proposed building is RL 24.8m AHD in height and a total of 6 storeys. The proposal is consistent with the Tweed Local Environmental Plan 2000.</p>
	<p>We accept that any reasonable development such as 3-4 storeys would impede our current ocean views, we are not objecting on those grounds. However, we do believe extra floors would dominate our outlook to an unacceptable extent and represent an unreasonable impact upon our and other adjacent resident’s living space.</p>	<p>The subject site and surrounding sites have an allowable building height of RL50m AHD. As previously stated, the proposed development has a height of RL 24.80m AHD and is consistent with the Local Environmental Plan 2000. Existing development to the south of the site will lose part of the uninterrupted view that exists currently towards the ocean. The submitted plans demonstrating the extent of overshadowing indicate that the site referred to in the submission is not affected by the proposals’ shadow.</p>

	I object to the height of the building. When I purchased my property I was assured that the height limit was to be no more than a three storey walk up to be built on that site.	As previously stated, the proposed building is RL 24.8m AHD in height and a total of 6 storeys. The proposal is consistent with the Tweed Local Environmental Plan 2000.
	I object to anything over three (3) storeys in height in Boundary Lane.	As previously stated, the proposed building is RL 24.8m AHD in height and a total of 6 storeys. The proposal is consistent with the Tweed Local Environmental Plan 2000.
Overshadowing	The shadowing plans are dated 21 st July they should be dated 21 st June. Have the hours before 9am and after 3pm in relation to overshadowing been taken into consideration?	The applicant advised that this was a typing error on the plans, the shadowing plans submitted have been calculated based on the 21 st June. Amended plans using the correct date have been submitted.
	The shadow plan contained in the application appears to be significantly understating the impact of the proposed building.	No evidence has been submitted to substantiate this claim. The assessing officer contacted the objector regarding this issue.
	My unit faces east, as such it will be in the shade from early morning to mid afternoon.	The proposed overshadowing impact has been assessed in a previous section of this report.
Contamination on the Site	<i>"Nowhere in the submission is demolition, removal, dumping of the asbestos roof materials mentioned: State Environmental Planning Policy No. 55 Remediation of Land. As neighbours in very close proximity this impinges on our clean air spaces and health. Occupational Health and Safety – again no mention of asbestos handling"</i> .	It is unclear what this objection refers to. Council officers have assessed the presence of asbestos on the site and relevant conditions have been imposed in the consent regarding the handling and demolition of the dwelling.

	<p>The existing building to be demolished mainly comprises fibrous cement and asbestos – the plan did not mention the special provisions for removal of asbestos.</p>	<p>Council officers have assessed the presence of asbestos on the site and relevant conditions have been imposed in the consent regarding the handling and demolition of the dwelling.</p>
<p>Pedestrian and Vehicular Traffic</p>	<p><i>“Pedestrian and motor traffic in Little Hill Street will increase drastically. No parking signs anywhere in Little Hill Street would need to be erected to help prevent accidents occurring and some type of pedestrian footpath would be needed as none is available at the moment – especially as pedestrian access to present plans is in Little Hill Street”.</i></p>	<p>The entry/exit into the proposed car park is accessed from Boundary Street. The majority of vehicular movements associated with this development will be experienced within Boundary Street. Some additional vehicular movements will be experienced in Little Boundary Street.</p>
	<p>Vehicular traffic will increase as a result of the proposed development. Little Hill Street and Boundary Lane are only the equivalent of laneways, and as such they will become hazardous.</p>	<p>Entry/exit for the proposed car park is via Boundary Street. The majority of vehicular movements will be experienced in this street. Secondary access lanes will experience some increase traffic, however it is considered to be acceptable.</p>
	<p>Visitors will park in Little Hill Street to use the lift to access the units as the basement will be guarded by a security gate. It is difficult to see how 25% of visitors car parking standard will be achieved (25% of 9 spaces = at least 2). The plans do not indicate how the car wash area can be accessed for visitor parking.</p>	<p>The proposed development complies with the required number of car spaces on-site (refer to DCP No. 2 assessment). The car wash area can be accessed from the proposed driveway, however this space is not to be used for visitor parking.</p>

Context/Surrounding Development	<i>“Recent developments near Ward/Boundary Street have complied with low rise, tiered style development keeping that open, sunny environment. It would be appreciated if this development complements, not detracted, our living space”.</i>	It is unclear what this submission is referring to. It appears that the objection is referring to the building envelope requirement, which has been considered in the assessment of this application.
Loss of Views	Instead of enjoying openness the proposed development will result in adjacent residents being hemmed-in and have an outlook only of other units. Existing residents currently enjoy an unobstructed outlook to the north and north-west.	Loss of views have been discussed in detail previously in this report. The loss of view that will result from the construction of the proposed building is not unreasonable despite the impact it will have on surrounding properties.
	My property has a view from Rainbow Bay to Greenmount and across to Burleigh Heads, Southport and South Stradbroke Island. If this development goes ahead I will lose this view completely.	Loss of views have been discussed in detail previously in this report. The loss of view that will result from the construction of the proposed building is not unreasonable despite the impact it will have on surrounding properties.
	If the proposed building is approved I will lose my view of the beach and instead look at a brick wall.	Loss of views have been discussed in detail previously in this report. The loss of view that will result from the construction of the proposed building is not unreasonable despite the impact it will have on surrounding properties.
Loss of Value	The loss of outlook and hemming-in, which the proposed development will cause, will result in a drastic loss in the value of adjacent property/development.	Loss of property value cannot be considered in the assessment of a development application in accordance with the Environmental Planning and Assessment Act 1979.

	<p>The development will overshadow my property and I will lose regular tenants. This will also decrease the value of my unit.</p>	<p>Loss of property value cannot be considered in the assessment of a development application in accordance with the Environmental Planning and Assessment Act 1979.</p>
Site Suitability	<p>The proposal is situated within a 2(b) Medium Density Zone. The proposal on exhibition states that the building would conform to the requirements of a development in a High Density Area.</p>	<p>The primary objective of the 2(b) Medium Density Zone states: <i>“to provide for and encourage development for the purpose of medium density housing (and high density housing in proximity to the Tweed Heads sub-regional centre) that achieves good urban design outcomes”</i>. It is considered that the proposed development meets the primary objective of the zone.</p>
	<p>The application states the development is consistent with the High Density character of the locality – whilst in isolation the building is attractive I believe it is not consistent with the requirements for this area.</p>	<p>The precinct is an area likely to undergo redevelopment. The proposal is consistent with DCP No.18 and DCP No. 2. Also site is opposite Queensland border, which is outside Tweed Council’s control.</p>
	<p>The 6-storey height of the proposed building is inconsistent with the prevailing built form of the adjacent buildings. The application cites larger nearby long established buildings over 6 storeys as comparative developments without acknowledging these buildings would not be approved today. The application also ignores current buildings in the proposed development’s immediate precinct bounded by Little Hill Street, Boundary Street, Coral Street and Boundary Lane.</p>	<p>The proposal is consistent with the allowable building height for the site. The proposed development has been assessed with regards to the existing surrounding development.</p>

Measurements used in the applicant's report	The proposal states that all measurements are accurate to 0.5 of 1 metre. This would appear to allow an excessive amount of discretionary conforming with setbacks eg does a dimension of 6 metres in fact mean that the true dimension lies within the range of 5.51m to 6.49m? If so this would appear to be unacceptable. A 0.5m variation in 3m would introduce a relative error of approximately 17%.	The application was submitted with accompanying scaled plans. The scaled plans have been used to assess this application.
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(e) Public interest

The applicant has provided Council with sufficient information in which to determine the development application. It is considered that the proposed development is not contrary to the wider public's interests, despite the issues raised in the submissions.

OPTIONS:

1. Resolve to adopt the recommendation and approve the development application subject to conditions.
2. Resolve to refuse the development application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

It is recommended that the proposed multi dwelling housing development be approved subject to the attached conditions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- [1. Views from 14 Boundary Lane, Tweed Heads. \(DW 1293953\)](#)
-

2 [PD] Development Application DA05/0006 for the Demolition of an Existing Dwelling and Erection of 4 Residential Apartments and Associated Car Parking at Lot 5 Sec 3 DP 9453, No. 2 Sutherland Street Kingscliff

ORIGIN:

Development Assessment

FILE NO: DA05/0006 Pt1

SUMMARY OF REPORT:

Council is in receipt of a development application for the demolition of an existing dwelling and the erection of 4 residential apartments within two separate buildings each containing two units with associated sub basement parking.

Since initial lodgement the applicant has submitted amended plans to reduce the overall height of the building and reduce the number of storeys in the building. These changes have had better regard for the slope of the land by stepping the building down the site.

As the application was lodged on the 4 January 2005 the application has to be assessed against the definitions of height and storey as at the date of lodgement of the application. Based on these definitions as detailed in the following report the proposed building represents a complying two-storey building and therefore there is **no need** for a SEPP 1 – Development Standard Objection.

The application is considered to be of a high design quality with stepped roof lines, open space areas in the form of balconies and courtyards and has responded to the sites constraints and the changing character of the area. The application is therefore recommended for conditional consent.

RECOMMENDATION:

That Development Application DA05/0006 for the demolition of an existing dwelling and erection of 4 residential apartments and associated car parking at Lot 5 Sec 3 DP 9453, No. 2 Sutherland Street Kingscliff be approved subject to the following conditions: -

GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and the following plans:
 - Plan No DA-03 Issue B prepared by Sean Gartner Architects and dated July 2005 (plot date 26/07/2005);
 - Plan No DA-04 prepared by Sean Gartner Architects and dated July 2005 (plot date 26/07/2005);
 - Plan No DA-05 prepared by Sean Gartner Architects and dated July 2005 (plot date 26/07/2005);
 - Plan No DA-06 prepared by Sean Gartner Architects and dated July 2005 (plot date 26/07/2005);
 - Plan No DA-07 Issue B prepared by Sean Gartner Architects and dated July 2005 (plot date 11/1/2005);
 - Plan No DA-08 Issue B prepared by Sean Gartner Architects and dated July 2005 (plot date 11/01/2005);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]

3. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia. [GEN0115]

4. The development is to be carried out in accordance with Development Control Plan No. 16 - Subdivisions Manual and Councils adopted Development Design and Construction Specifications. [GEN0125]

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]

6. Fencing to Hungerford Lane and Sutherland Street shall not exceed 1.2m in height unless otherwise approved by Council.

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0)	\$2,548
Sector6_4	
(b) Open Space (Structured): S94 Plan No. 5	\$1,260
(c) Open Space (Casual): S94 Plan No. 5	\$269
(d) Shirewide Library Facilities: S94 Plan No. 11	\$1,112
(e) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$229
(f) Community Facilities (Tweed Coast - North) S94 Plan No. 15	\$1,476
North Coast	
(g) Emergency Facilities (Surf Lifesaving) (REMSHIRE)	\$337
S94 Plan No. 16	
(h) Extensions to Council Administration Offices & Technical Support Facilities	\$2,049.37
S94 Plan No. 18	
(i) Cycleways S94 Plan No. 22	\$568
(j) Regional Open Space (Structured) S94 Plan No. 26	\$1,899
(k) Regional Open Space (Casual) S94 Plan No. 26	\$355

[PCC0215/PSC0175]

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 DSP5: 2 ET @ \$4230	\$8,460
Sewer Kingscliff: 2.75 ET @ \$6152	\$16,918

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.

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]

9. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for the removal and or construction of any retaining wall adjacent to public land or supporting public land prior to the issue of a construction certificate.

[PCC0935]

10. Prior to the issue of a Construction Certificate the following detail in accordance with Councils adopted Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
(b) four (4) copies of detailed engineering plans and specifications.
The detailed plans shall include but are not limited to the following:
- earthworks
 - stormwater drainage
 - water supply works
 - sewerage works
 - landscaping works

- sedimentation and erosion management plans
- location of all service conduits (water, sewer, Country Energy and Telstra)

· Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

[PCC0985]

11. 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]

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) Shake down area along the haul route immediately before the intersection with the road reserve.
 - (ii) All runoff from driveway and undercover car parking areas shall be treated to remove oil and sediment contaminants prior to the public realm. Treatment devices shall be sized in accordance with Section D7.12 of Councils *Development Design Specification D7 - Stormwater Quality*, with full engineering details, including maintenance schedules, to be submitted with a S68 Stormwater Application for approval prior to the release of a Construction Certificate.

[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. Where any existing sewer junctions are to be disused on the site, the connection point shall be capped off by Council staff. Applications shall be made to Tweed Shire Council and include the payment of fees in accordance with Councils adopted fees and charges.

[PCC1235]

15. 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 & 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.

[PCCNS04]

16. Prior to the issue of a Construction Certificate, the following details shall be provided for approval by the Applicant to the Director Planning & Development in consultation with the Chair of Planning:
- a) Details of all external materials and finishes to be used on the building exterior, including glazing material; and
 - b) Details at a scale of 1:100 illustrating the design of all decorative elements and details, windows, louvers and any other details.

[PCCNS05]

17. 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]

PRIOR TO COMMENCEMENT OF WORK

18. 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]

19. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.

[PCW0225]

20. 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]

21. A temporary builder's toilet is to be provided prior to commencement of work at the rate of one (1) closet for every twenty (20) persons or part of twenty (20) persons employed at the site. Each toilet provided must be:-
- (a) a standard flushing toilet connected to a public sewer, or
 - (b) if that is not practicable, an accredited sewage management facility approved by the council

[PCW0245]

22. 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]

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

[PCW0665]

24. Prior to start of building works provide a certificate of adequacy of design, signed by a practising Structural Engineer on the proposed retaining wall. The certificate must also address any loads or possible loads on the wall from structures adjacent to the wall and be supported by Geotechnical assessment of the founding material.

[PCW0745]

25. Prior to the commencement of building work, a certificate signed by a registered professional engineer is to be submitted to the Principal Certifying Authority to certify that adequate consolidation of foundation material has been achieved to support the proposed structure.

[PCW0755]

26. 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]

27. 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.

28. 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.

[PCW0985]

[PCW1065]

29. Prior to commencement of works sedimentation and erosion control measures shall be installed to the satisfaction of the Director Environment & Community Services.

[PCWNS02]

30. Prior to commencement of works all required sedimentation and siltation control measures are to be installed and operational to the satisfaction of the Principal Certifying Authority.

Erosion and sediment control shall be in accordance with *the "Tweed Urban Stormwater Quality Management Plan"* (adopted by Council 19 April 2000) section 5.5.2 "Stormwater Objectives During the Construction Phase of New Development". This section requires all new development to comply with Appendix E of the Plan *"Tweed Shire Council Aus-Spec D7 - Stormwater Quality"* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works". Erosion and sediment controls shall remain in place until final approval is given and the maintenance bond has been released.

[PCWNS03]

31. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like, shall be installed/operated in accordance with those conditions or plans.

[PCW0015]

32. An Engineers Certificate of structural adequacy is to be submitted to Council within seven days of the site being excavated certifying the adequacy of the sheet piling or other method used to support the adjoining properties.

[DURNS01]

DURING CONSTRUCTION

33. 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]

34. 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]

35. The provision of 10 off street car parking spaces (comprising 4 tandem resident spaces and two dedicated visitor spaces, one of which is to double as a car wash bay) including parking for the disabled where applicable. 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]

36. 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]

37. 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]
- 38. The wall and roof cladding is to have low reflectivity where they would otherwise cause nuisance to the occupants of the buildings with direct line of sight to the proposed building.**
- [DUR0245]
- 39. All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate was made).**
- [DUR0375]
- 40. 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]
- 41. 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]
- 42. It is the responsibility of the applicant to restrict public access to the building site, building works or materials or equipment on the site when building work is not in progress or the site is otherwise unoccupied in accordance with WorkCover 2000 Regulations.**
- [DUR0415]
- (a) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with WorkCover 2000 Regulations.
- (b) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- [DUR0425]
- 43. If the work involved in the erection or demolition of a building:**
- (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
- (b) building involves the enclosure of a public place,
- a hoarding or fence must be erected between the work site and the public place 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]

44. 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]

45. 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]

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

[DUR0815]

47. 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]

48. 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]

49. Provision to be made for the designation of one durable and impervious car wash-down area/s. The area must be identified for that specific purpose and be supplied with an adequate water supply for use within the area. Any surface run-off from the area must not discharge directly to the stormwater system.

[DUR0975]

50. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate. [DUR0995]
51. 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]
52. 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]
53. 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]
54. Landscaping of the site shall be carried out in accordance with the landscaping plans as approved prior to issue of a Construction Certificate. [DUR1045]
55. A concrete ribbon footpath 1.2 metres wide and 100 millimetres thick is to be constructed on a compacted base along the entire frontage of the site to Sutherland 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]
56. 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]

57. 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]
58. 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 the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings. [DUR1875]
59. 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]
60. 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]
61. 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]
62. Hazardous or industrial waste must be stored and disposed of in a manner to minimise its impact on the environment including appropriate segregation for storage and separate disposal a waste transporter licensed by the EPA. [DUR2215]
63. 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]
64. 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]

65. An isolation cock is to be provided to the water services for each unit in a readily accessible and identifiable position. [DUR2505]
66. 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]
67. 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:-
- * 45⁰C for childhood centres, primary and secondary schools and nursing homes or similar facilities for aged, sick or disabled persons; and
 - * 50⁰C in all other classes of buildings.
- A certificate certifying compliance with the above is to be submitted by the licensed plumber on completion of works. [DUR2555]
68. 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]
69. No retaining walls or similar structures are to be constructed over or within the zone of influence of Council's sewer main. [DUR2705]
70. All surface waters other than stormwater shall be directed to Council approved pre-treatment facilities before discharge to sewer. Details are to be submitted to and approved by Tweed Shire Council prior to installation. [DUR2725]
71. All surface water collected from hard stand parking areas to be directed to Council approved pre-treatment facilities before discharge to approved discharge locations. Stormwater from covered or enclosed carpark areas shall not be discharged to the public sewer unless approved treatment facilities have been provided. Details are to be submitted to and approved by Tweed Shire Council prior to installation [DUR2735]
72. Lighting, plant and equipment shall not be permitted to impact the amenity of any premise. [DURNS02]
73. All residential units shall be provided with access to clothes washing facilities within the premise. [DURNS03]
74. All necessary precautions shall be taken to minimise impact from dust from construction vehicles. [DURNS04]
75. Acid sulphate soils shall not be exposed or disturbed. [DURNS05]
-

76. The applicant shall remove the existing vehicular access laybacks located in Sutherland Street and Hungerford Lane and reinstate the kerb and gutter in accordance with Councils adopted Development Design and Construction Specifications. In addition the brick paving along the frontage of the land in Sutherland Street shall be removed and a concrete paved path provided in accordance with Council standards.

[DURNS06]

PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

77. 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]

78. Prior to occupation of the building the property street number is to be clearly identified on the site by way of painted numbering on the street gutter within 1 metre of the access point to the property. The street number is to be on a white reflective background professional painted in black numbers 100mm high.

On rural properties or where street guttering is not provided the street number is to be readily identifiable on or near the front entrance to the site.

For multiple allotments having single access points, or other difficult to identify properties, specific arrangements should first be made with Council and emergency services before street number identification is provided.

The above requirement is to assist in property identification by emergency services and the like. Any variations to the above are to be approved by Council prior to the carrying out of the work.

[POC0265]

79. Prior to the occupation or use of any building and prior to the issue of any occupation certificate, including an interim occupation certificate, a final inspection report is to be obtained from Council in relation to the plumbing and drainage works.

[POC1045]

80. Prior to the issue of an Occupation Certificate, a satisfactory inspection report issued by Council must be produced for s68h2 storm water quality control devices. This inspection report must be obtained from Council prior to backfilling of any of the s68h2 approved devices.

[POCNS01]

81. Prior to the issue of an Occupation Certificate under Environmental Planning & Assessment Act 1979, a registered surveyor shall provide certification of the height of the building, to the satisfaction of Council's Director of Planning & Development. The height of the building as defined by Tweed LEP 2000 shall not exceed 2 storeys.

[POCNS02]

USE

82. 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]
83. All activities associated with the occupancy of the building are to comply with the Protection of the Environment Operations Act, 1997.
[USE0135]
84. 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]
85. The terraces and courtyards are not to be roofed by any means unless prior consent is obtained from Council.
[USE0495]
86. 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]
87. A backflow containment device will be installed adjacent to Councils water meter installation at the property boundary in accordance with AS3500. The device is to be maintained in accordance with the provisions of AS3500 by the owner of the property at the owner's expense.
[USE1455]
88. The wastes shall be collected, stored, and disposed to the satisfaction of the Director Environment & Community Services. A screened, graded and drained drainage garbage storage area shall be provided within the boundary of the site. Wastes shall be presented at the kerb in a Council approved wheelie bin for collection.
[USENS01]

REPORT:

Applicant: Sean Gartner Architects
Owner: Mr DJ Graham, Mr PA Graham and Ms JC Norrie
Location: Lot 5 Sec 3 DP 9453, No. 2 Sutherland Street Kingscliff
Zoning: 2(b) Medium Density Residential
Cost: \$1,200,000

BACKGROUND:

Council is in receipt of a development application for the demolition of an existing dwelling and the erection of 4 residential apartments within two separate buildings each containing two units with associated sub basement parking.

The subject site is regular in shape and is bounded by three road frontages being Sutherland Street, Hungerford Lane, and an unnamed lane. The site has an approximate 15m frontage to both Sutherland Street & Hungerford Lane and an approximate depth of 47m to create a total site area of 695m². The site levels vary between AHD 13.68m to Sutherland Street and AHD 5.6m to Hungerford Lane. The surrounding development is characterised by a combination of detached dwelling houses of up to two storeys in height with scattered residential flat buildings varying in height.

The development proposes a parking level at AHD 6.5m, one building to Hungerford Lane starting at AHD 7m and a rear building to Sutherland Street starting at AHD 9.5m.

The front building facing Hungerford Lane contains Units 1 & 2 and starts at AHD 7m with only one upper level commencing at AHD 9.8m. The upper level is immediately above the lower level and reaches a top height of AHD 13.9m. This is equivalent to the level of the Sutherland Street frontage.

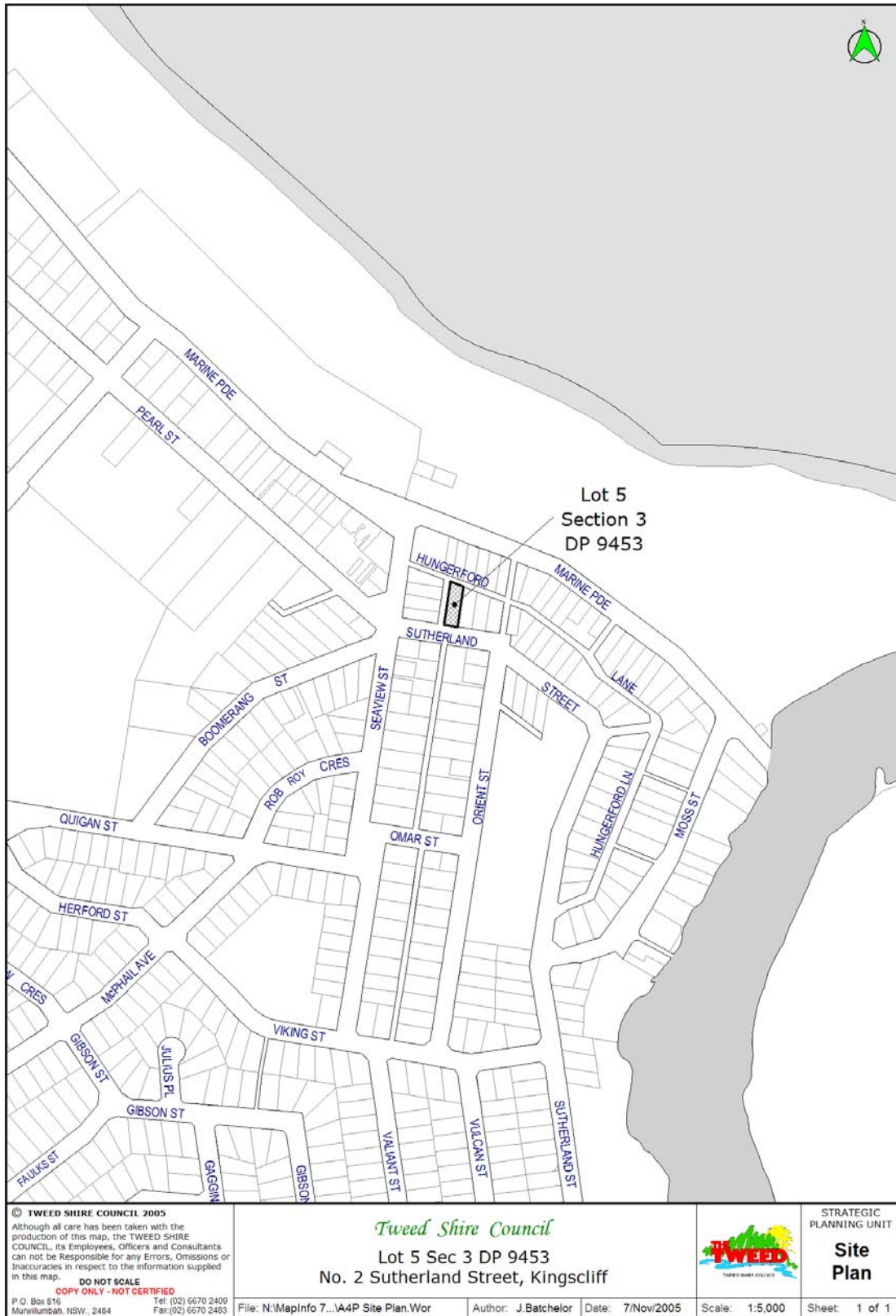
The parking level can accommodate 10 cars, four of which are in tandem. This allows for each unit to have a dedicated tandem parking space with a further two spaces being available for visitors (one of which can double as a car wash bay). The car parking level is accessed from the side property boundary off the unnamed lane. Above this section of car parking is the rear building containing Units 3 & 4. This building has three stepped levels at AHD 9.5m, 12.6m & 15.6m. However, it is important to note that the upper level AHD 15.6m does not at any point overlap the lowest level at AHD 9.5m. Therefore, this building is by definition a complying two storey building.

Due to the stepped nature of the finished ground level this design allows for multiple areas of courtyards, balconies and garden beds. There will be two points of pedestrian access from the two main road frontages. At these points there are clear entry paths that lead to each of the four units. The development also incorporates appropriately located windows that allow casual surveillance of all streets.

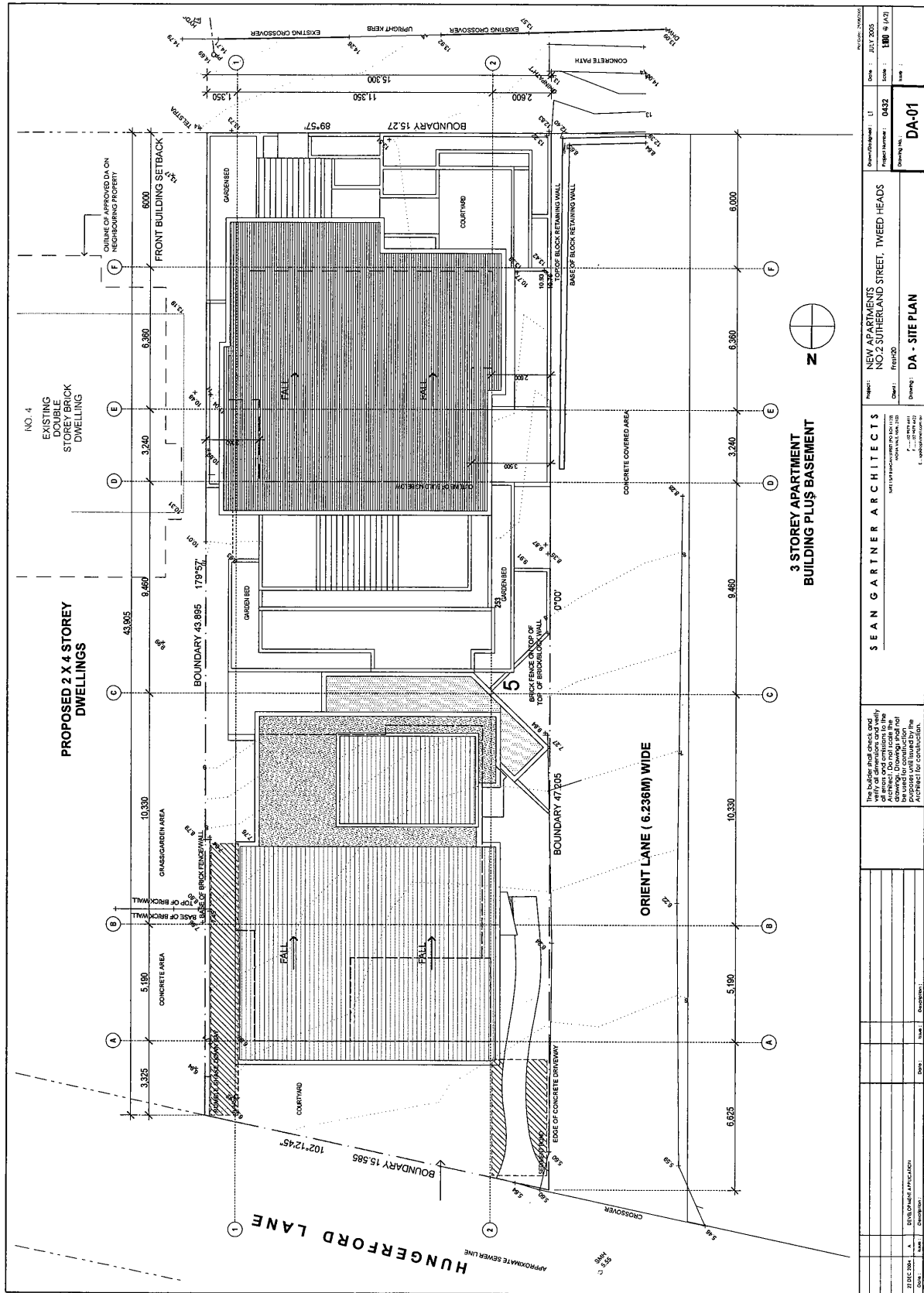
The proposed unit development is to be constructed from rendered and painted masonry with lightweight clad walls, metal roof decks and powder coated aluminium windows to create a contemporary building form.

The applicant has accompanied the application with written justification to support the proposed design that specifically addresses the performance criteria contained within the applicable plans. Based on the assessment of all the applicable controls the proposed development is considered suitable for conditional consent.

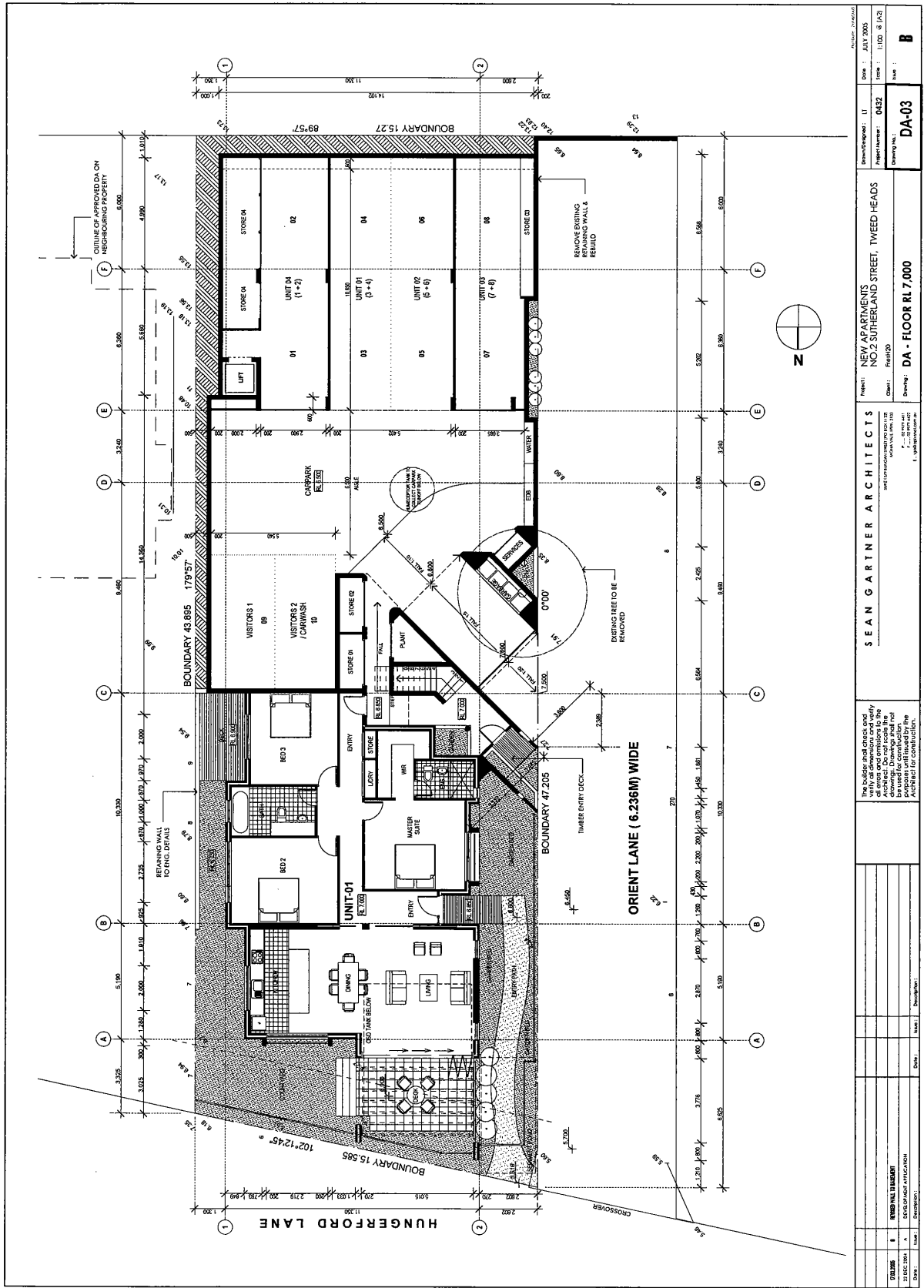
SITE DIAGRAM:

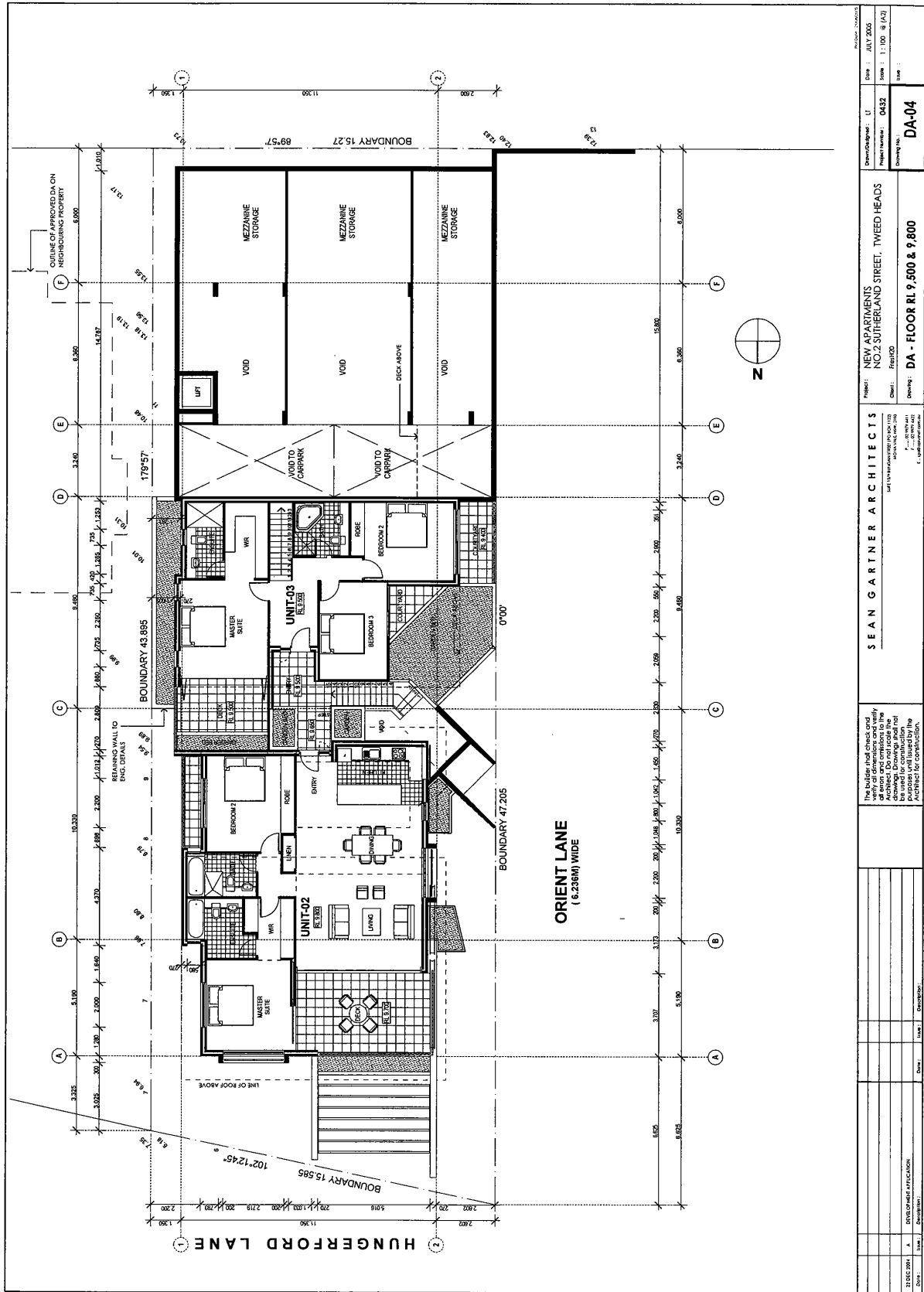


PLANS OF THE DEVELOPMENT:

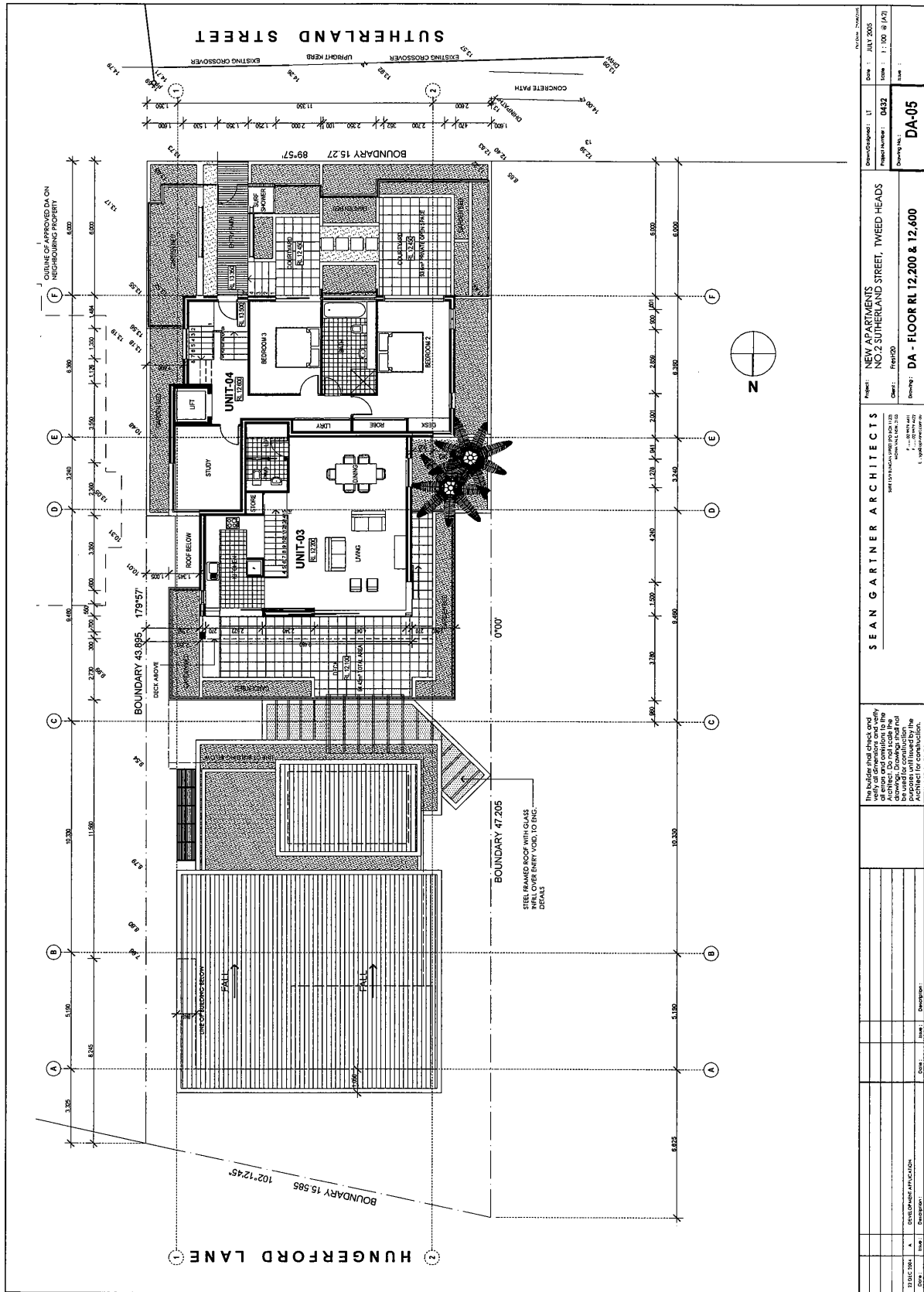


PROJECT: NEW APARTMENTS NO.2 SUPERLAND STREET, TWEED HEADS DRAWN: [Signature] CHECKED: [Signature]		DATE: JULY 2005 SCALE: 1:500
CLIENT: SEAN GARTNER ARCHITECTS 10/11 SPYGLASS DRIVE, TWEED HEADS, NSW 2486 TEL: (07) 5533 1111 FAX: (07) 5533 1112 EMAIL: sean@gartner.com.au WWW: www.gartner.com.au		DA-01
The builder shall check and verify all dimensions and levels of the site and structures to the accuracy of the drawings. The architect shall not be liable for any errors or omissions in the drawings or for any consequences that may arise therefrom. The architect shall be used for construction purposes only.		
DATE: [] DRAWN: [] CHECKED: []	DATE: [] DRAWN: [] CHECKED: []	DATE: [] DRAWN: [] CHECKED: []

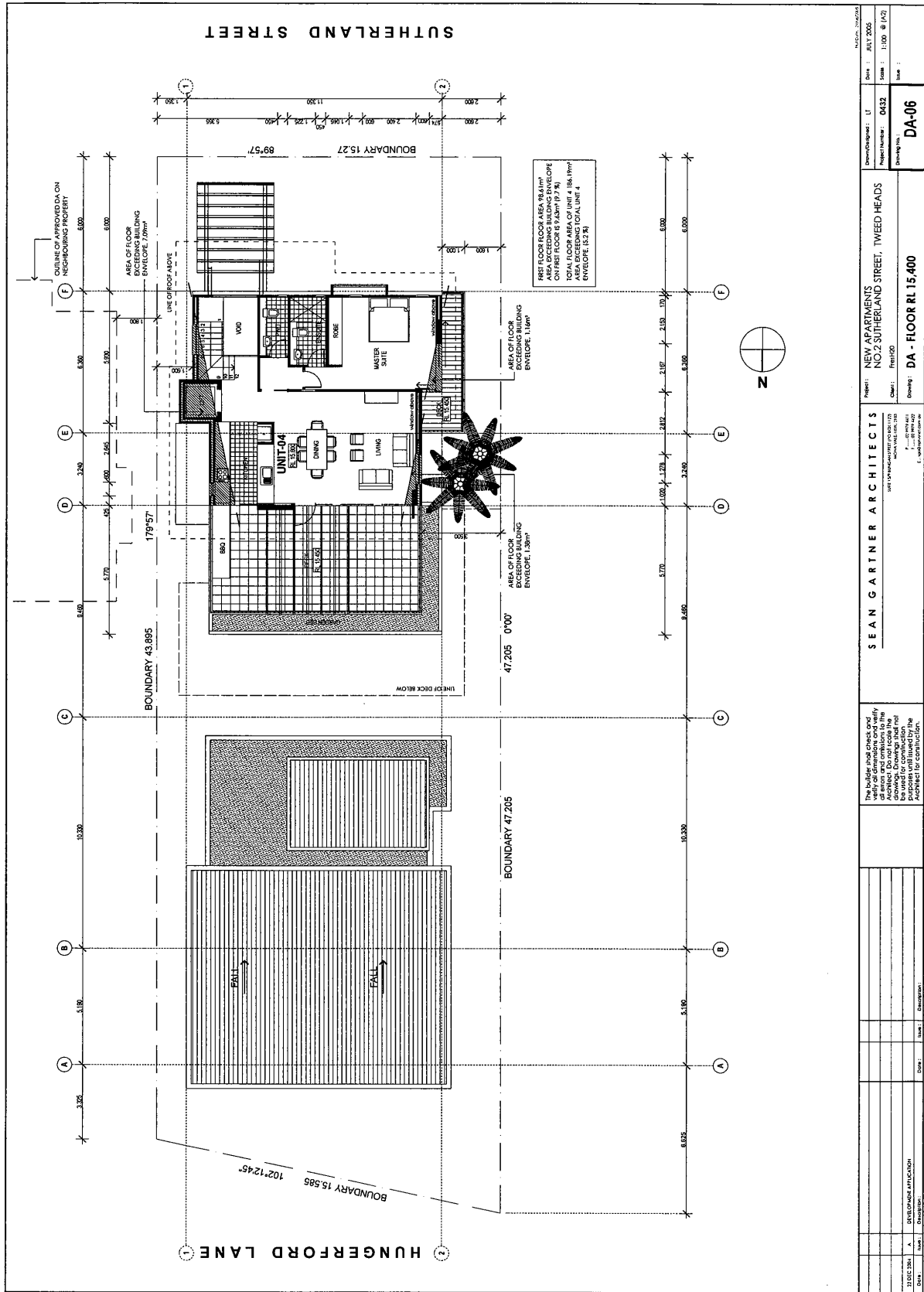




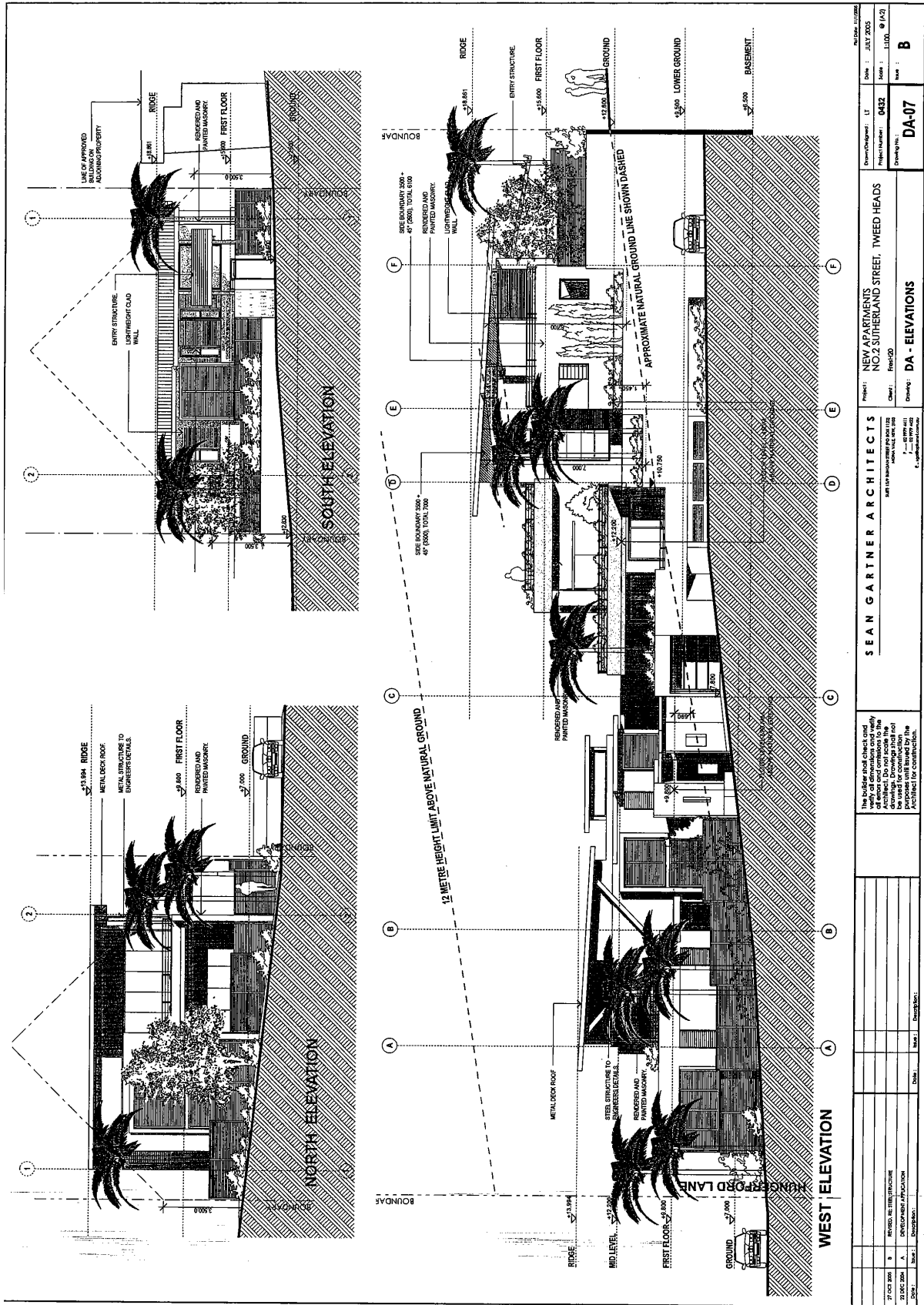
Drawn/Designed: LT Project: NEW APARTMENTS Project Number: 0432 Scale: 1:100 @ (A2)	
Checked: RPH/BD Drawing No: DA-04	
Project: NEW APARTMENTS NO.2 SUTHERLAND STREET, TWEED HEADS Client: RPH/BD Drawing: DA - FLOOR RL 9,500 & 9,800	
SEAN GARTNER ARCHITECTS Unit 15 Hungerford Street, Tweed Heads NSW 2486 Tel: (07) 4282 3333 Fax: (07) 4282 3334 E: sean@sean-gartner.com.au	
The Engineer and Architect have prepared this drawing and omissions to the drawings, drawings that are not shown and drawings that are not shown are not shown for the purposes of construction.	
Date: _____ Issue: _____ Description: _____	Date: _____ Issue: _____ Description: _____

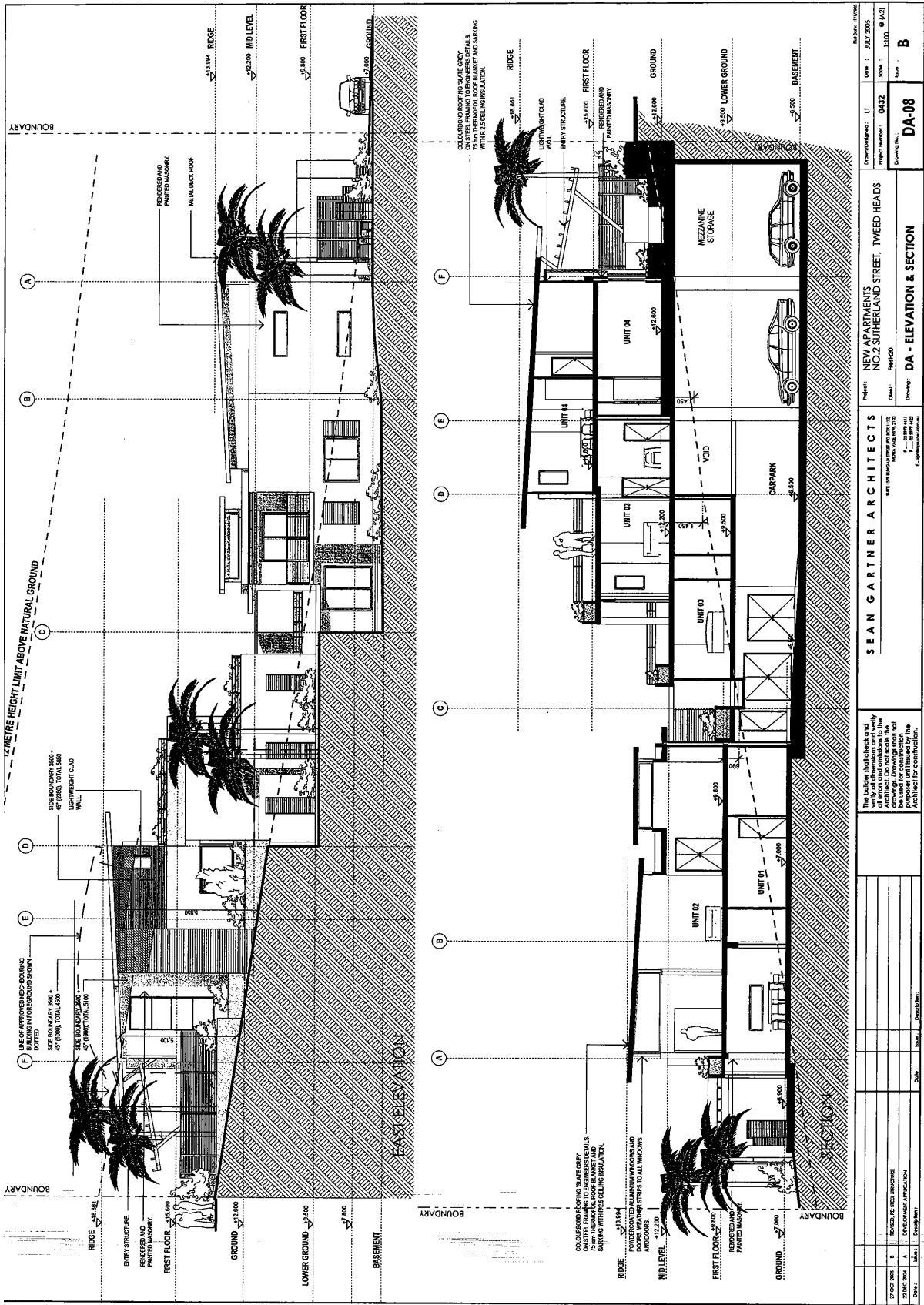


Project: NEW APARTMENTS NO.2 SUTHERLAND STREET, TWEED HEADS Date: JULY 2005 Scale: 1:100 (A2)	
Drawing No.: DA-05	
Project: SEAN GARTNER ARCHITECTS 111 SUTHERLAND STREET, TWEED HEADS TWEED SHIRE COUNCIL DISTRICT Phone: (0755) 411 111 Fax: (0755) 411 112 Email: sg@sean-gartner.com.au Website: www.sean-gartner.com.au	
The builder shall check and certify the accuracy of the drawings and any amendments to the drawings. Do not commence construction until the drawings have been checked and certified for construction by the Architect for construction.	
DATE: _____ DRAWN BY: _____ CHECKED BY: _____ DATE: _____	DATE: _____ ISSUED BY: _____ DATE: _____



Project: NEW APARTMENTS NO.2 SUTHERLAND STREET, TWEED HEADS Project Number: 0432 Date: JULY 2005 Scale: 1:100 @ A3 Drawing No: DA-06	
Designer: SEAN GARTNER ARCHITECTS 1011 SYDNEY ROAD, TWEED HEADS NSW 2486 Phone: (07) 9621 1111 Fax: (07) 9621 1112 Email: info@seangartner.com.au Website: www.seangartner.com.au	
The building, final sheets and any other documents submitted for approval are the property of the Architect and shall not be used for construction without the written consent of the Architect for construction.	
DATE: _____ DRAWN BY: _____ CHECKED BY: _____ APPROVED BY: _____	DATE: _____ DRAWN BY: _____ CHECKED BY: _____ APPROVED BY: _____





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

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

Tweed Local Environmental Plan 2000

The subject land is zoned 2 (b) under the Tweed Local Environmental Plan 2000. The proposed development is permissible with consent of Council in the subject zone. The primary objective of the zone is:

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

The proposed development is consistent with the primary objective of the zone, as the building will provide medium density housing in a zone nominated for such a use. Most of the living areas are designed to the North to capitalize the ocean views and solar access. The development is also designed in a way that the building steps down the slope of the land to soften the affect of the development.

Clause 15 of the TLEP requires Council to be satisfied that the subject land has the benefit of essential services prior to issuing consent. The subject land has the benefit of services and is considered able to support the proposed development.

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

The application was lodged on the 4 January 2005, which was prior to the Tweed LEP Amendment No 46 being gazetted. In accordance with Clause 16 of the Tweed LEP 2000 any application not determined by 7 January 2005 must be determined as if those amendments had not been made (that is, having regard to the definitions of **height** in relation to a building and **storey** in force under this plan immediately before the amendment).

On 4 January 2005 the definition of **height** was:

“the greatest distance measured vertically from any point on the building to the natural ground level immediately below that point”.

On 4 January 2005 the definition of **storey** was:

- (a) The space between two floors, or*
- (b) The space between a floor and any ceiling or roof immediately above it, or*

- (c) *Foundation areas, garages, workshops, storerooms and the like, excluding access paths to basement areas, where the height between natural ground level and the top of the floor immediately above them exceeds 1.5 metres or more.*

For the purpose of counting the number of storeys in a building, the number is to be the maximum number of storeys of the building which may be intersected by the same vertical line, not being a line which passes through any wall of the building.

The primary change to the definitions was the introduction of the words *finished ground level* as opposed to *natural ground level*.

In accordance with Clause 16 of the Tweed LEP 2000 this application must be assessed against the definitions as detailed above which rely on natural ground level.

The level of natural ground on the site has been altered over time to accommodate the unnamed lane, the existing dwelling the existing pool and existing deck area. Due to this change the applicant has undertaken extensive studies to try and determine as close as possible the pre-existing natural ground level. The applicant has taken into consideration Council's sewer contour maps, cross sections through the site at the centre, the subject site levels, the natural landscape and the roadway levels. Based on all of these factors the applicant has concluded that:

- *The road levels at Sutherland Street and Hungerford Lane are the most accurate levels surrounding the site to establish natural ground along the western boundary;*
- *The historical maps provide that the land sloped gradually from Sutherland Street to Hungerford Lane and therefore support the establishment of the natural ground level from the roadways.*
- *The analysis of levels on the subject site determines an approximate level about RL 9.50 at the southern end of the basement entry from the western boundary off Orient Lane. If anything, the road levels lower the natural ground, and as they have been proven to be the most accurate, they comply.*
- *The cross sectional levels through Orient Lane are inconclusive due to the vast number of level changes within and adjoining the lane boundary.*
- *In conclusion we submit that the levels shown as natural ground on the drawing DA07 are therefore accurate and true representations of the natural ground on the site prior to any retaining of the site or the Lane.*

On review of the above investigations and Council's own data for the area the applicants version of natural ground level is considered to be a true and accurate representation.

Based on the established natural ground level the building to Hungerford Lane will be viewed as a two-storey building and satisfies the criteria for a complying two-storey building by definition.

The building to Sutherland Street will be viewed from Sutherland Street itself as a two-storey building but will appear as a three-storey building when viewed from The unnamed lane, as the basement will be partially exposed. This occurs due to the slope of the land and directly as a result of unnamed lane having been excavated to allow access to adjoining properties. Had the laneway been in its natural state the basement level would not be exposed. However, the basement does **not** protrude beyond natural ground by more than 1.5m and **no** vertical intersection creates a three-storey component. Therefore, despite the appearance of a three-storey building the rear building steps down the site to achieve a complying two-storey building by definition.

The proposed height is considered to comply with the nominated height control of two storeys and satisfies the objectives of the height control itself.

The proposed development is considered to generally comply with all of the relevant provisions of the TLEP.

North Coast Regional Environmental Plan 1988 (NCREP 1988)

Clause 32B of the NCREP provides that in determining an application the consent authority should have consideration for documents such as the NSW Coast Government Policy and further should consider the impact that potential shadow may have on open space before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time).

The proposed development is generally consistent with the design guidelines contained in the documents listed in subclause (2), many of which have been incorporated into the Tweed Heads 2000+ Strategy and DCP 6. The development has been designed having regard to these requirements. The proposed development does not result in the overshadowing of any foreshore reserve.

Clause 43 of NCREP 1988 provides that the consent authority shall consider among other things 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 not excessive for the function of the proposal and a detailed sedimentation and erosion control plan will be enforced in relation to the construction.

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

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

For an application to be affected by the provisions of SEPP 65 the residential flat building must be 3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and have 4 or more self contained dwellings.

Based on Tweed Shire Council's definition of a storey the building is a complying two storey building however based on the definition of a storey in SEPP 65 there is a small section of the Sutherland Street building (2.1m in length) which would constitute a third storey and therefore require assessment against SEPP 65.

In accordance with the provisions of the SEPP the applicant has provided a detailed Design Quality Statement addressing context, scale, built form, density, resource energy and water efficiency, landscaping amenity, safety and security, social dimensions and aesthetics.

The statement concludes by acknowledging that the building will contribute positively to the medium density residential development within the Kingscliff locality and has been designed to respect the characteristics of the site and locality.

Having regard to SEPP 65 the proposed development is considered to satisfy the objectives of the Plan.

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

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

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

Development Control Plan No.2 – Access and Car Parking

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

Standard	Requirement	Complies/variation
On site car parking	1.5 per dwelling with 25% for visitors = 6 spaces with 1.5 spaces marked for visitors	<p>10 spaces are proposed within the basement. However, this comprises two dedicated visitor spaces (one of which is to double as a car wash bay) and then 4 tandem spaces.</p> <p>The applicant has argued that this will allow each unit to have two dedicated parking bays each in addition to having two dedicated visitor spaces.</p> <p>This complies with the required number of car parking spaces.</p>

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

Development Control Plan No.6 – Multi Dwelling Housing

DCP 6 nominates performance criteria for design elements such as (but not limited to) site density, setbacks, fencing and walls, building envelope an siting, views, visual and acoustic privacy, open space, and landscape design.

The requirements for the proposed development in relation to DCP 6 are assessed as follows:

Standard	Requirement	Variation/complies
Floor Space Ratio	0.5:1.0	<p>The total floor space ratio is approximately 0.93:1.</p> <p>While this exceeds the allowable floor space ratio it is considered that in the medium density zone the proposed development is reasonable.</p>
Landscaped Area	80m ² per unit = 320m ²	<p>The applicant has calculated total landscaping as 352m² via planter beds, decks and terraces.</p> <p>However, in accordance with the definition of landscaping in DCP 6 it is estimated that the proposed landscaping equates to 295m².</p> <p>Therefore, this aspect needs to be assessed against the performance criteria contained within DCP 6.</p> <p>See Assessment Below</p>
Private Open Space	20% of site area (139m ²) 25m ² with minimum 4m dimension	<p>The proposed development provides 296m² of private open space with acceptable dimensions.</p> <p>Complies</p>
Setbacks from street boundary	6.0m to Sutherland Street 3.0m to Hungerford Lane	<p>Complies</p> <p>Complies</p>
Side setbacks	3.0m	<p>The proposed building is not set back three metres from the side boundaries and has been assessed against the performance criteria.</p> <p>See Assessment below.</p>

Standard	Requirement	Variation/complies
Front fences and walls	1.2m max if solid	The proposal will be conditioned accordingly.
Building Envelope	45° from 3.5m high at the boundary	Generally complies See Assessment Below.
Car Wash Areas	1 required per 10 units.	One car wash bay in the basement. Complies

Landscaping

The existing development of the land has no soft landscaping and comprises 100% hardstand area.

The proposed development accommodates approximately 295m² of landscaping. This includes all ground level open space to Hungerford Lane, all open space areas to Sutherland Street, and all planter and garden beds at various levels. Private decks at upper levels have not been included in landscaping.

This does not comply with one of the acceptable solutions however, the performance criteria specifies that the scale of new development is compatible with and sympathetic to the scale and bulk of existing development.

The streetscape and building appearance is considered satisfactory, as it will present a positive contribution to the existing and desired future character of the area. Furthermore, the proposed landscaping represents an improvement to the extent of hardstand areas on the site presently.

Each unit will have access to private open space by balconies with adequate communal open space provided around the building. In any case should additional open space be required the site is within five minutes walking distance of the foreshore open space area and beach.

It is considered that the landscaping is acceptable in this instance due to the practical open space areas and having regard to the scale of the development in comparison with the scale and bulk of existing development in the locality and the desired future character of the street.

Whilst the original development application was accompanied by a landscape plan, an amended plan will need to reflect the revised footprint as a result of the amended plans.

Subsequently the following condition of consent is recommended:

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 & 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.*

Setbacks

The proposed development satisfies both the 6m setback to the primary road frontage (Sutherland Street), and the 3m setback to the secondary frontage (Hungerford Lane).

One of the acceptable solutions is for side boundary setbacks to 3m, however, the application seeks a variation to this acceptable solution and seeks approval based on the performance criteria.

The western boundary setback (to the Unnamed Lane) varies from 1.5m to 3.3m (with the upper levels being setback further again). The majority of the building is setback 2.6m with only 4m of the building having the minimum setback of 1.5m. As the western boundary adjoins a laneway measuring 6.2metres the reduced setbacks are considered acceptable.

The eastern boundary setbacks vary between 1.05m to 2.4m. In this regard the applicant has presented the following arguments to substantiate how the building satisfies the performance criteria for setbacks:

“The varying setbacks do achieve and utilise flexibility in the siting of the buildings to ensure the amenity of the surrounding properties is well considered. The setbacks also increase progressively with increased wall height. In that regard there is no impact of overshadowing, loss of views or bulk and scale due to the minor breach of the building envelope. The design provides building heights that match those on adjoining boundaries, specifically the shop-top apartments adjoining the western boundary, and the public streetscape with two-storey elevation of the DA approved development on the eastern boundary. The higher parts of the building are sited behind the frontage and out of direct view from the street. The proposal therefore complies with the side setbacks requirement by satisfying the objectives and performance criteria.”

The performance criteria focus on compatibility between new and existing developments, setbacks relative to height, an adequate sense of privacy and limited overlooking.

The applicant has provided above that the proposed development is sympathetic to the character of the area and the heights of adjoining development. The applicant has even had regard to approved DA's that have not yet been acted upon such as DA03/00638, which approved a dual occupancy to RL 18m over No. 4 Sutherland Street.

Having regard to the performance criteria, the setback objectives and the design of the proposed building the proposed variations to the eastern setbacks are considered acceptable. The design of the building has focused

all decks to the north where views to the Pacific Ocean exist, and therefore a variation to the eastern setback is considered satisfactory.

Building Envelope

The revised plans show minor encroachments to the upper levels for the areas of the roof structure and small sections of the main building itself. These minor encroachments are not considered to adversely impact on overshadowing, and are considered acceptable having regard to the performance criteria in DCP 6.

Summary

In all other aspects the proposed multi dwelling housing development is considered to have adequately considered and addressed the objectives and performance criteria contained within DCP 6.

Development Control Plan No.39 – Energy Efficient Housing

The applicant has advised that the proposed development will have a complying 3.5 star system. One of the units has a 5 star rating, with the remaining units having a complying 3.5 star rating. The proposed development complies with the requirements of DCP39.

Development Control Plan No.43 - Kingscliff

The subject site is in the Kingscliff North Precinct and is identified as requiring Type 5 Buildings.

The amended plans better represent a Type 5 building as required by the policy as the building now steps down the site. However the amended plans do not strictly comply with the building type as the building incorporates basement car parking. However, a basement is considered favourable to enable better urban design in the development, and sufficient onsite parking to cater for the development.

The objectives of the Kingscliff Hill precinct are to:

- Facilitate the development of the precinct as a predominantly low density residential area;
- Develop the Kingscliff Hill medium density zone as an attractive residential area, with buildings that respect the slope of the land and allow for the retention of views available from adjoining land
- Encourage development to take advantage of available views and climatic effects;
- Ensure that development on visually prominent sites is relatively unobtrusive;
- Preserve the traditional character of existing laneways.

The proposed development is not in conflict with the objectives of the precinct. It provides medium density housing that is considered aesthetically pleasing, reflective of the coastal location and improves the streetscape.

In all other regards it is considered that the proposed development generally complies with the provisions of DCP43.

Development Control Plan No. 47 – Cut & Fill

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

The proposed development involves excavation and fill for the basement and will extend beyond 1 metre, however this is considered consistent with recently approved developments. Council's Environmental Health Officer, Council's Infrastructure Engineers and Council's Building Surveyor have all reviewed these plans, with no objections raised subject to the recommended conditions of consent.

In all other regards the applicant provides that appropriate measures will be in place to ensure that the proposal is consistent with the objectives of the plan.

DCP No. 48 – Tweed Coast Building Heights

The objectives behind the DCP are to:

- Protect the Region's public amenity by enhancing its diverse and unique built environment through qualitative urban design; and
- Protect the community with a pre-determined maximum height in relation to a building.

The plan focuses on development context, building height, building setbacks, and roof design.

The surrounding development varies between three-storey commercial developments, single storey dwellings and residential flat buildings up to three storeys in height. The area is experiencing change as more properties are re-developed.

The proposed style of the development is consistent with the changing nature of Kingscliff.

In terms of building height the Plan specifies that development along the Tweed Coast should minimise visual and physical impact and apparent bulk. It goes on to provide that new development should also equitably share identified important view corridors and provide a positive contribution to the streetscape.

One of the acceptable solutions is for two-storey residential to have a maximum height of 8 metres. This is measured from finished ground level as opposed to the number of stories, which is measured from natural ground level.

The height of the proposed development steps down with the sites topography and therefore has varying heights across the site.

At Sutherland Street the rear building has a maximum height of 4.5m. As the rear building steps down the site (over the section of the sub basement) the building has a maximum height of 10.2m. This is due to the excavated nature of the Unnamed Lane. If this Lane was in its natural state the basement would not be exposed and therefore the height of this section would only be 6m. Therefore this non-compliance is not considered to be unreasonable and is more of a technicality due to the definition referring to finished ground level rather natural ground level.

At Hungerford Lane the building has a maximum height of 8m in accordance with DCP 48.

The building is considered to satisfy the objectives of the DCP in regard to height despite any non-compliance with one of the acceptable solutions.

Section 2.3 of the Policy focuses on building setbacks and aims to ensure view corridors between buildings, access to adequate sun light on adjoining properties, and privacy between developments.

As detailed above in Setbacks for DCP 6 the application seeks a variation to one of the acceptable solutions but is considered to satisfy the performance criteria

Having regard to the performance criteria, the setback objectives and the design of the proposed building the proposed variations to the eastern setbacks are considered acceptable. The design of the building has focused all decks to the north where views to the Pacific Ocean exist, and therefore a variation to the eastern setback is considered satisfactory.

Clause 2.4 refers to roof design and aims to ensure diversity in roof form. The proposed development has broken rooflines consisting of relatively flat roofs to ensure minimal view loss for those properties behind. This is considered to satisfy the objectives of the plan.

The application is therefore considered acceptable having regard to objectives and performance criteria contained in DCP 48.

DCP No 51 – Tweed Coast Strategy

The Development Control Plan relates to the northern end of the Tweed Coast, which includes the:

- The town of Kingscliff;
- West Kingscliff;
- Cudgen Village;
- The Casuarina locality (including the Casuarina Beach development); and
- The future development area of Kings Forest.

The Plan sets objectives for future development concentrating on public services and design principals. This application does not contradict the objectives of this plan and actually adds to the streetscape through design.

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

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

Over Shadowing

The applicant has supplied shadow diagrams, demonstrating that the overshadowing from the proposed development will be evenly shared between adjoining land throughout the day both in winter and summer. It is considered that the aspect of the subject land is such that the adjoining developments would not be wholly affected by the overshadowing from the development and that a reasonable level of residential amenity could be afforded to all adjoining properties following the construction of the proposal.

Privacy

The proposed development incorporates several balconies and courtyards, most of which are oriented towards the north and east. The properties to the north are commercial with some residential above. All views from adjoining properties are also oriented to the north therefore no private open spaces areas are unreasonably overlooked or compromised.

View Loss

Views provide a sense of place and identity, and key view corridors should be retained. The Senior Commissioner in the Land & Environment Court in Tenacity Consulting Pty Ltd v Warringah Council adopted the following four-stage test to assess the reasonableness of view sharing:

1. The first step is the assessment of views to be affected;
2. The second step is to consider from what part of the of the property are the views obtained (an expectation to retain side views and sitting views would be unreasonable);
3. The third step is to assess the extent of the impact (the extent of the impact should be assessed for the whole of the property not just for the view that is affected. This could be done by ranking the affect from negligible to devastating); and

4. The fourth step is to assess the reasonableness of the proposal that is causing the impact (it may be unreasonable if it comes about as a result of non compliance with planning standards).

The proposed development will affect part of the northern views from properties higher up the hill in Sutherland Street for example No. 3 Sutherland Street.

The views are obtained from the lower and upper floors of buildings (maximum three stories). The view from these units is obtained from primary living and deck areas when standing, and sitting.

The impact on these properties would be a minor loss in an immediate view of the main Kingscliff strip and the more distant Pacific Ocean. Sutherland Street itself separates the affected properties from the proposed development and therefore the development could not be said to create any sense of enclosure. The impact on these properties is acceptable given the remaining views available to these properties. The view to the north is only one aspect of their view and could therefore allow for a reasonable sharing of views.

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

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

Schedule of Colours & Materials

The applicant has provided a coloured perspective of the proposed development however, no schedule of colours and materials has been provided. Subsequently the following condition of consent is recommended:

Prior to the issue of a Construction Certificate, the following details shall be provided by the applicant for approval by the Director Planning & Development in consultation with the Chair of Planning:

- a) *Details of all external materials and finishes to be used on the building exterior, including glazing material; and*
- b) *Details at a scale of 1:100 illustrating the design of all decorative elements and details, windows, louvers and any other details.*

(c) Suitability of the site for the development

The zoning of the land and the changing nature of the Kingscliff area indicates that the site is capable of accommodating a multi dwelling housing development. The amended design of the building utilises the existing site attributes effectively and appropriately which results in a satisfactory development for the site, which has also had adequate consideration for the numerical requirements of Council's plans.

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

The development application was advertised and notified to surrounding properties for a period of two weeks closing on 23 February 2005. During this period two written submissions were received. The issues raised in the submissions are addressed in the following table.

Issue	Comment
Some of the expected drawings are not available	Due to privacy provisions Council cannot advertise internal floor plans. The advertised plans incorporated elevations sections and a site plan. This objection is not considered grounds for amendment or refusal of this application.
The applicants argument that an adjoining three storey building was approved in a two storey limited area is irrelevant as it involves a car park underneath and was prior to current regulations	Through the lodgement of amended plans the development now represents a complying two-storey development, which based on the individual merits of the application, warrants conditional consent. This objection is not considered grounds for amendment or refusal of this application.
The applicants statement is deceptive and is trying to rely on an adjoining sites controls rather than its own.	The DA has been assessed against the provisions applicable to the subject site, having regard to the character of the area as a whole. Based on this assessment the application is recommended for approval. This objection is not considered grounds for amendment or refusal of this application.
The applicant's argument that views will be retained is not grounds to approve the application.	View loss is only one consideration as part of the assessment. Having regard to the application as whole the application warrants conditional consent. This objection is not considered grounds for amendment or refusal of this application.

Issue	Comment
<p>The application does not comply with the height controls. It represents a four storey building in a two storey height limited area</p>	<p>Based on the applicable definitions as detailed in the above report the <u>amended plans</u> show a complying two-storey building with no need for a SEPP 1 – Development Standard Objection.</p> <p>This objection is not considered grounds for amendment or refusal of this application.</p>
<p>Any building envelope encroachment is unacceptable even if it is minor</p>	<p>Development Control Plan No. 6 is set up to enable assessments against performance criteria. The building envelope is only one acceptable solution. The proposed setbacks are considered acceptable having regard to the performance criteria.</p> <p>This objection is not considered grounds for amendment or refusal of this application.</p>
<p>The DA does not comply with the LEP or relevant DCP's and should be refused.</p>	<p>As can be seen in the above report the application satisfactorily meets the requirements of all the applicable plans and is subsequently recommended for conditional consent.</p> <p>This objection is not considered grounds for amendment or refusal of this application.</p>
<p>The application does not comply with the required Type 5 building in DCP 43 – Kingscliff.</p>	<p>Through the lodgement of amended plans the development now represents a complying two-storey development, which steps down the site. Based on the individual merits of the application, the DA warrants conditional consent.</p> <p>This objection is not considered grounds for amendment or refusal of this application.</p>
<p>The application does not comply with the required precinct objectives as detailed in DCP 43 – Kingscliff, as the building does not respect the slope and will interrupt my properties current enjoyment of panoramic views.</p>	<p>As detailed in the above report the amended application does not strictly satisfy DCP 43 however the building was re-designed to ensure it does step down the site, which better reflects a Type 5 Building.</p> <p>In regards to loss of view the above report details the extent of view loss that will be experienced. This view loss is considered minor and would not warrant refusal of the application as significant view sharing opportunities remain.</p> <p>This objection is not considered grounds for amendment or refusal of this application.</p>

Issue	Comment
The application is inconsistent with DCP 6 in regards to views, visual and acoustic privacy.	The above report details the impact from the proposed development on adjoining properties. Based on this assessment the proposed application is not going to unreasonably burden any adjoining property owner. This objection is not considered grounds for amendment or refusal of this application.
The application is inconsistent with objectives of DCP 48, which aim to protect amenity and views.	As detailed in the above report the amended application does satisfy DCP 48 both in terms of the numerical requirements and objectives. This objection is not considered grounds for amendment or refusal of this application.

The lodgement of amended plans has specifically addressed the majority of issues raised in the submissions and therefore many of the above points are no longer applicable. Having regard to the above submissions the application is considered capable of a recommendation for conditional consent.

(e) Public interest

The proposal it is not considered to be in conflict with the general public interest in the locality. The proposed development adequately reflects the provisions of the development control plan and intended development for the locality.

OPTIONS:

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

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

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

POLICY IMPLICATIONS:

There are no policy implications associated with this application.

CONCLUSION:

The proposed application is the result of amended plans and negotiation. Whilst the original application did not conform to the height limitation the proposed development has been down sized to ensure a fully complying two storey building which is capable of a recommendation for conditional consent.

The local road network surrounding the site is capable of accommodating the development especially when access is diverted to the side lane where adequate on site car parking is provided. Furthermore, the development has responded to the slope of the land to ensure that there is no over development of the site.

Having had regard to the controls provided for the site it is considered that conditional consent is warranted.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- [1. A3 Colour Perspective \(DW 1290655\)](#)
 - [2. Views from lower level unit & upper level unit, No. 3 Sutherland Street looking down at development site \(DW 1293349\)](#)
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3 [PD] Development Application DA04/1591 for a 65 lot subdivision at Lot 4 DP 1074167, No. 137 Old Lismore Road Murwillumbah

ORIGIN:

Development Assessment

FILE NO: DA04/1591 Pt1

SUMMARY OF REPORT:

This application is subject to a Class 1 Deemed Refusal Appeal in the NSW Land & Environment Court. Council's Solicitor has been engaged to defend the Appeal. In recent weeks a conference attended by both parties with negotiations on draft consent conditions has been held with significant amendments to the original proposal.

The amended development has been assessed as satisfactory and is recommended for approval in a Consent Order.

RECOMMENDATION:

That Development Application DA04/1591 for a 65 lot subdivision at Lot 4 DP 1074167, No. 137 Old Lismore Road Murwillumbah and the associated SEPP 1 objection relating to Clause 14 of TLEP 2000 be supported and the following conditions be used as a basis for a Consent Order in the Land and Environment Court: -

"DEFERRED COMMENCEMENT"

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

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

SCHEDULE "A"

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

- i. Adjoining owners' consent for Lot 132 DP 1057733, for the creation of an easement for sewerage for a proposed sewer rising main on that property, or**
- ii. An acceptable alternative sewer disposal design for the development.**

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 all addendums thereto prepared by Darryl Anderson Consulting listed in the table below and the subdivision development plans prepared by Richard Harry & Associates referred in the table below, except where varied by the conditions of this consent.

Description	Identification	Date
Statement of Environmental Effects		
<i>Main document</i>		<i>November 2004</i>
<i>Addendum</i>	<i>Response to issues raised by DIPNR comprising environmental consultancy advices prepared by HMC Pty Ltd dated 24 March 2005.</i>	<i>31 March 2005</i>
<i>Addendum</i>	<i>Response to issues raised by Council prepared by DAC Pty Ltd.</i>	<i>16 September 2005</i>
Subdivision Plans		
<i>Concept Layout Plan</i>	<i>35058 - A</i>	<i>25 October 2005</i>

[GEN0005]

2. Threatened species shall be managed in accordance with the recommendation(s) provided in the Environmental Consultants (Gary Opit Environmental Consultant Chary Pty Ltd) advices dated March 2004 and 29 July 2005. In addition, no translocation, removal, lopping or alteration is permitted without the prior written approval of the Director of the NSW Department of Environment and Conservation (National Parks and Wildlife Service).

[GENNS01]

3. The subdivision is to be carried out in accordance with Development Control Plan No. 16 - Subdivisions Manual and Councils adopted Development Design and Construction Specifications.

[GEN0125]

4. 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]

5. The road corridor for the future extension and realignment of Road No.1 in the north-western corner of the site, as depicted on the plans, is to be dedicated as public road in Stage 1 of the development. The corridor width must account for all required stormwater drainage infrastructure, road batters and ancillary works. No road construction works are required within this corridor as part of this approval, however filling of land within this corridor is approved, provided that it is compatible with any filling works on Lot 62 being on the western side of the corridor. It is acknowledged that this portion of land (Lot 62) is intended to be created as a fully serviced lot as part of the Stage 4 works. This lot will be required to have a minimum finished ground level of RL 10.0m AHD.
6. Lot 60, being the freshwater wetlands, is required to be dedicated as Drainage Reserve as part of the Stage 1 works. [GENNS02]
7. Prior to commencement of work pursuant to each relevant stage of work as proposed by this consent, a Construction Certificate shall be obtained for all such relevant work. [GENNS03]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

8. Erosion and Sediment Control During the Construction Phase of Development
 - (a) Construction phase stormwater quality treatment (erosion and sediment control) shall be designed and constructed in accordance with detailed engineering plans to be submitted and approved with the Construction Certificate. Erosion and sediment control shall be in accordance with *the Tweed Urban Stormwater Quality Management Plan* (adopted by Council 19 April 2000) section 5.5.2 Stormwater Objectives During the Construction Phase of New Development. This section requires all new development to comply with Appendix E of the Plan *Tweed Shire Council Aus-Spec D7 - Stormwater Quality* and its Annexure A - Code of Practice for Soil and Water Management on Construction Works. Erosion and sediment controls shall remain in place until final approval is given and the maintenance bond (if required) has been released.
 - (b) The Construction Certificate Application must include a detailed erosion and sediment control plan (ESCP) for the construction phase of development, prepared in accordance with Section D7.07 of *Tweed Shire Council Aus-Spec D7 - Stormwater Quality*. [PCC0320]
9. Prior to the issue of a Construction Certificate, a wetland management plan shall be submitted and approved by the General Manager or his Delegate. The plan shall provide for the enhancement and encouragement of regeneration of natural vegetation to ensure buffer viability, wetland integrity and downstream water quality improvement. [PCCNS02]

10. Proposed lot 61 shall be dedicated as passive open space and suitably embellished at no cost to Council including grassing, landscaping, seating, playground equipment and shade cover in accordance with detailed plans to accompany the Construction Certificate application. Where play equipment is installed a minimum area of 10m around the equipment is to be turfed and the remaining area seeded. Where a developer pays Council to acquire and install play equipment, Council will NOT install the equipment until a minimum of 20% of the lots in that stage of the development are occupied. The embellishment shall be completed prior to the issue of a Subdivision Certificate.

[PCC0235]

11. Prior to the issue of a Construction Certificate, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works (minimum \$1,000). The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

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

[PCC0275]

12. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a construction certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by installments, the first installment of the levy) has been paid. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

13. Where earthworks result in the creation of embankments and/or cuttings greater than 1m high and/or slopes within allotments 17° or steeper, such slopes shall be densely planted in accordance with a detailed landscaping plan. Such plan to accompany the Construction Certificate application.

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

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with sub-tropical (rainforest) native and exotic species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.

- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision. [PCC0455]
14. All imported fill material shall be from an approved source. Prior to the issue of a construction certificate details of the source of fill, documentary evidence that the fill material is free of any contaminants and haul route shall be submitted to Tweed Shire Council for approval. [PCC0465]
15. Submission for approval by the Principal Certifying Authority design detail including surcharge loads for any retaining walls to be erected on the site in accordance with AS 4678, DCP47 and Councils adopted Design and Construction Specifications. Design detail is to be supported by certification of adequacy of design from a suitably qualified structural engineer.
Please note timber retaining walls are not permitted. [PCC0475]
16. A detailed plan of landscaping is to be submitted and approved by the Principal Certifying Authority prior to the issue of a Construction Certificate. [PCC0585]
17. 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]
18. The applicant shall submit plans and specifications with an application for a construction certificate for the following roadworks with associated subsurface overland flow and piped stormwater drainage structures designed in accordance with Councils adopted Design and Construction specifications:
- (a) Road 1 shall have an 11m carriageway width with upright kerbs, as well as a 2.5m wide cycleway, within a 20m road reserve. The proposed retaining wall on the eastern side of Road 1 must also be fully contained within the road reserve.
 - (b) Roads 2, 3 and 4 shall generally have a 7.5m carriageway width with upright kerbs, as well as path paving, within a 14.5m road reserve.
 - (c) All footpath areas to have a 2.5% crossfall for the full width of the footpath area.
 - (d) Road 1 shall be designed in consideration as it being a bus route, and provisions made for bus stops and shelters along it's length.

- (e) The construction certificate for Stage 1 of the development shall include a design for the future extension of Road 1 into the north-western corner of the site. This design shall incorporate;
- (i) An alignment that merges smoothly with the proposed road layout of the adjoining residential subdivision to the north, currently under consideration by Council and referenced as DA04/1618.
 - (ii) A minimum finished level of RL10.0m AHD, with all required road batters clearly depicted. This will determine the required road corridor width that is to be dedicated.
 - (iii) An intersection design with Old Lismore Road, in consideration of the required reconstruction of that section of Old Lismore Road nominated elsewhere in this condition. Road batters are to be clearly depicted, to enable the extent of corner splays to be determined.
 - (iv) An intersection design for the junction of the current Road 1 and future Road 1 alignments. A "T" intersection will be required at this point. Any reconfiguration of future access requirements for Lots 55 to 59 inclusive, when Road 1 is extended, must also be included.
 - (v) The intersections of Road 1 with Tyalgum Road, and Road 1 with Old Lismore Road, are to be designed and constructed to Austroads Standards Type C intersections. This shall include protected right turn bays, left turn acceleration lanes, and street lighting to V4 (AS) standard.
 - (vi) Old Lismore Road is to be reconstructed and realigned, generally in accordance with Plan 221-RD sheet 3, and in particular;
 - To have a minimum finished level of RL 10.0m AHD,
 - To provide a minimum 6m center seal, for the full northern frontage of Lot 60 and Lot 62 up to and including the current proposed intersection with Road 1.
 - The existing culvert is to be upgraded to a minimum of a Q100 capacity. The catchment analysis must cater for a fully developed upstream catchment. Full details are to be provided with the engineering plans, including all required road signage and warnings.
 - (vii) All roads and residential lots are to have a minimum finished surface level of RL 10.0m AHD, except Lots 1 to 5, which shall only require provision for an area of not less than 450m².

- (viii) Provision of a constructed wetland within Lot 60, generally in accordance with plans 221-SW sheets 18 and 19 and Council's Development Design Specification D7. Full design details are to be provided with the engineering plans, and are to include;
- A structure at the base of the wetland to allow manipulation of water levels to enable control of macrophytic and insect populations, and to facilitate dredging.
 - The proposed constructed wetland will require "protection buffers". These buffers stop the mobilisation of sediments within the wetland when inundated during a Q100 flood.
- (ix) Provision of a concrete access driveway within the reciprocal Rights of Carriageway serving Lots 19 and 20, in accordance with the provisions of DCP16.
- (x) All cut and fill batters are to be wholly contained within the subject property.
- (xi) Stormwater discharge from the existing culvert across Old Lismore Road, as well as any other concentrated discharge, is to be captured, piped and conveyed through the site via a concrete pathway/cycleway, to connect to the internal stormwater drainage system.
- (xii) Stormwater discharge from the end of Road 4, being conveyed through private property, shall be designed for Q100 pipe flows, as well as provision for a relief overland flowpath. The trap low point in the cul-de-sac shall also be provided with reverse footpath crossfall.
- (xiii) Provision of pedestrian/cycle path links to Old Lismore Road, including an address of the safety and general amenity of such links. Any required improvements to Old Lismore Road to enhance pedestrian and cyclist safety, such as widening, linemarking, signposting for shared use, speed reduction etc, are to be separately addressed and resolved with Council, prior to issue of the construction certificate.
- (xiv) The public reserve shall have a minimum finished ground level of RL 9.0m AHD.

[PCC0875]

19. Individual driveways to dwelling sites within all proposed lots, where resulting site gradients exceed Council's maximum driveway gradients, are to be specifically addressed with the Construction Certificate.
20. The Engineering Plans to accompany the Construction Certificate application shall restrict earthworks adjacent to the identified wetland within the subject site to the following:-

- (a) A minimum offset of 20.0m must be provided between the boundary of all residential lots and the edge of the identified wetland.
 - (b) A buffer zone, void of any disturbance must be provided from the edge of the identified wetland to the existing contour of RL 6.0m, with a minimum width of 10.0m imposed.
 - (c) A 3m wide, all weather maintenance track to allow servicing of the wetland, must be provided between the buffer zone (defined in point (b) above) and any associated earthworks for the development.
 - (d) Stormwater runoff from any proposed batter adjacent to the wetlands must be captured and treated to remove pollutants in accordance with Council's Development Design Specification D7 requirements, before discharging into the wetlands.
 - (e) Outflow from the wetland is to be maintained at existing levels.
 - (f) Construction of the artificial wetland.
 - (g) It is acknowledged that the two notes depicting "Proposed culvert for access" shown on the Concept Layout referred to in Condition No.1 are not required to be constructed.
- [PCCNS03]
21. If Option 1 of Schedule 'A' is pursued the documentary evidence of creation of an Easement to Drain Sewerage over the adjoining land is to be submitted to the Principal Certifying Authority, prior to issue of the construction certificate.
22. The applicant shall provide documentary evidence that a permit has been issued by the Department of Natural Resources under Part 3A of the Rivers and Foreshores Improvement Act 1948, for works within 40m of the natural watercourse.
- [PCCNS04]
23. Details from a Structural Engineer are to be submitted to the Principal Certifying Authority for approval for all retaining walls, including a certificate of sufficiency of design prior to the issue of a construction certificate.
- [PCC0935]
24. Prior to the issue of a Construction Certificate the following detail in accordance with Councils adopted Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.
- (a) copies of compliance certificates relied upon

- (b) four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:
- earthworks
 - roadworks/pavement design/furnishings
 - stormwater drainage
 - water supply works
 - sewerage works
 - landscaping works
 - sedimentation and erosion management plans
 - location of all service conduits (water, sewer, Country Energy and Telstra)

Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

- [PCC0985]
25. 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.

[PCC1105]

26. 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

is not be issued 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.

Where Council is requested to issue a Construction Certificate for civil works associated with this consent, the above-mentioned works can be incorporated as part of the Construction Certificate application, to enable a single approval to be issued. Separate approval under Section 68 of the Local Government Act would not then be required.

[PCC1145]

27. Where water is to be drawn from Councils reticulated system, the proponent shall: -
- Make application for the hire of a Tweed Shire Council metered standpipe including Councils nomination of point of extraction.
 - Where a current standpipe approval has been issued application must be made for Councils nomination of a point of extraction specific to the development.
 - Payment of relevant fees in accordance with Councils adopted fees and charges.

[PCC1205]

28. Prior to commencement of work, the applicant shall submit to Council evidence that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared in accordance with either:-
- (a) Occupation Health and Safety and Rehabilitation Management systems Guidelines, 3rd Edition, NSW Government, or
 - (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
 - (c) WorkCover Regulations 2000.

[PCC0015]

PRIOR TO COMMENCEMENT OF WORK

29. Prior to commencement of works all required sedimentation and siltation control measures are to be installed and operational to the satisfaction of the Principal Certifying Authority.

Erosion and sediment control shall be in accordance with *the Tweed Urban Stormwater Quality Management Plan* (adopted by Council 19 April 2000) section 5.5.2 Stormwater Objectives During the Construction Phase of New Development. This section requires all new development to comply with Appendix E of the Plan *Tweed Shire Council Aus-Spec D7 - Stormwater Quality* and its Annexure A - Code of Practice for Soil and Water Management on Construction Works. Erosion and sediment controls shall remain in place until final approval is given and the maintenance bond has been released.

[PCW0190]

30. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until the completion of the defects liability period.

[PCW0835]

31. The proponent shall locate and identify all existing underground services prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure including areas external to the development site where works are proposed.

[PCW0005]

32. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least 2 days prior to work commencing.

[PCW0225]

33. Written approval for any application under Section 138 of the Roads Act 1993 is required prior to commencing works within the road reserve.

[PCW0705]

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

- (a) a construction certificate for the subdivision work has been issued in accordance with Councils adopted Development Design and Construction Specification C101 by:

- (i) the consent authority, or
- (ii) an accredited certifier, and

- (b) the person having the benefit of the development consent:

- (i) has appointed a principal certifying authority,
- (ii) has appointed a Subdivision Works Accredited Certifier in accordance with Development Control Plan No. 16, Appendix C, and
- (iii) has notified the consent authority and the council (if the council is not the consent authority) of the appointment, and

- (c) the person having the benefit of the development consent has given at least 2 days' notice to the council of the person's intention to commence the subdivision work. [PCW0815]
35. Prior to commencement of work, a sign detailing the project and containing the names and contact numbers of the Developer, Principal Certifying Authority, Contractor and Subdivision Works Accredited Certifier, shall be erected and maintained in a prominent position at the entry to the site in accordance with Councils adopted Development Design and Construction Specifications. The sign must also state that unauthorized entry to the site is prohibited. The sign is to be maintained and must remain in place until the Subdivision Certificate is issued. [PCW0825]
36. 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. [PCW0985]
37. The proponent shall notify Councils Engineering & Operations Division of intention to commence drawing water in accordance with the requirements of the approval to draw water. [PCW1045]

DURING CONSTRUCTION

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. 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]

40. 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]

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

[DUR0880]

42. Any watercourse crossing is to be in compliance with current NSW Fisheries Policy and Guidelines for Bridges, Roads, Causeways, Culverts and Similar Structures.

[DUR1205]

43. Any pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring residential areas. Such location is to be to the satisfaction of the General Manager or his delegate.

[DUR0225]

44. 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]

45. All stormwater discharged from the site including dewatering discharge is to be directed to a sediment pond prior to final discharge into any waterway in accordance with Council adopted Design and Construction Specifications.

[DUR2365]

46. The site shall not be dewatered in accordance with the approved Stormwater Management Plan and any General Terms of Approval and Licence issued by Department of Natural Resources.

[DUR2425]

47. Inter allotment drainage shall be provided to all lots where roof water for dwellings cannot be conveyed to the street gutter by gravitational means.

[DUR2285]

48. 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]

49. All imported fill material shall be from an approved source. Prior to commencement of filling operations details of the source of fill shall be submitted to the satisfaction of the General Manager of his delegate. Once the approved haul route (if applicable) has been identified, payment of the Heavy Haulage Contribution calculated in accordance with Section 94 Plan No 4 will be required prior to commencement of works.
[DUR0725]
50. All lots must be graded to prevent the ponding of surface water and be adequately vegetated to prevent erosion from wind and/or water to the satisfaction of the Principal Certifying Authority..
[DUR0745]
51. On completion of the filling work, all topsoil to be respread and the site to be grassed and landscaped.
[DUR0755]
52. 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]
53. The proposed earthworks program shall be monitored by a Registered Geotechnical Testing Consultant to a level 1 standard in accordance with AS 3798. A certificate from a registered Geotechnical Engineer certifying that the filling operations comply with AS3798 shall be submitted to the Principal Certifying Authority upon completion.
[DUR0795]
54. All battered areas are to be topsoiled and grassed, or other suitable protection provided as soon as filling is placed adjacent to neighbouring properties.
[DUR0805]
55. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house is strictly prohibited.
[DUR0815]
56. All fill and cut batters shall be contained wholly within the subject land
[DUR0825]
57. 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]
58. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of a Subdivision Certificate/Occupation Certificate.
[DUR0995]

59. 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]

60. Before the commencement of the relevant stages of road construction;
- (a) Reports shall be submitted to the PCA from a Registered NATA Consultant demonstrating: -
- (i) That the pavement has been designed in accordance with Tweed Shire Councils adopted Design Specification, D2.
 - (ii) That the pavement materials to be used comply with the specifications tabled in Tweed Shire Councils adopted Design and Construction Specifications, C242-C245, C247, C248 and C255.
 - (iii) That site fill areas have been compacted to the specified standard.
 - (iv) That supervision of Bulk Earthworks has been to Level 1 and frequency of field density testing has been completed in accordance with Table 8.1 of AS 3798-1996.
- (b) The required pavement design has been approved by the Principal Certifying Authority.

[DUR1805]

61. All proposed road/streets, drainage and associated works within the development shall be designed and constructed in accordance with the development consent plans AND the relevant provision of DCP No. 16 - Subdivisions Manual and Development Design and Construction Specifications, except where varied by the conditions of this consent.

[DUR1815]

62. During the relevant stages of road construction, reports shall be submitted to the PCA by a Registered NATA Geotechnical firm demonstrating.
- (a) That the pavement layers have been compacted in accordance with Councils adopted Design and Construction Specifications.
- (b) That pavement testing has been completed in accordance with Table 8.1 of AS 3798 including the provision of a core profile for the full depth of the pavement.

[DUR1825]

63. Pram ramps are to be constructed at road intersections in accordance with Council's Standard Drawing No. SD 014 within all kerb types including roll top kerb.

[DUR1855]

64. 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 the issue of a Subdivision Certificate and/or prior to any use or occupation of the buildings.

[DUR1875]

65. If Tweed Shire Council is the Certifying Authority it shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with Appendix D, DCP16 - Subdivisions Manual based on the rates contained in Council's current Fees and Charges:-

Roadworks

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

Water Reticulation, Sewer Reticulation, Drainage

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

Sewer Pump Station

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

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

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

[DUR1895]

66. 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]

67. The contractor is to maintain a copy of the development consent and Construction Certificate approval including plans and specifications on the site at all times.

[DUR2015]

68. The applicant shall obtain the written approval of Council to the proposed road/street names. Approved names are to be in accordance with Council's Road Naming Policy adopted on 7 August 1996 and are to be shown on the Plan of Subdivision accompanying the application for a Subdivision Certificate.

To avoid confusion resulting from duplication of private driveway/accessway name and public road/street names, the applicant shall submit to Council for approval the proposed name(s) of any private driveway/accessways.

[DUR2035]

69. Drainage Reserve

- (a) Dedication of the proposed drainage reserve at no cost to Council.
(b) An accurate plan of the proposed drainage reserve shall be submitted to Council 60 days prior to lodgement of Application for Subdivision Certificate (form 13) to allow the land to be classified. Failure to comply with this condition may result in delays in the issue of the Subdivision Certificate.

[DUR2295]

70. All stormwater gully lintels shall have the following notice cast into the top of the lintel: 'DUMP NO RUBBISH, FLOWS INTO CREEK' or similar wording in accordance with Councils adopted Design and Construction Specification.

[DUR2355]

71. 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]

72. The water quality control pond shall be fully fenced in accordance with the requirements of AS1926 for children less than five (5) years of age.
[DUR2385]
73. 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]
74. Vehicles leaving the premises shall be sufficiently free from dirt, aggregate or other materials such that materials are not transported onto public roads.
[DUR2415]
75. An accurate plan of the sewage pumping station site shall be submitted to Council 60 days prior to lodgement of the Application for Subdivision Certificate to allow the land to be classified.
Note: The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Supplies Authorities Act, 1987 to be certified by an Accredited Certifier.
[DUR2635]
76. 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 1742.3-2002 (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]

PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

77. Section 94 Contributions

Payment of the following contributions pursuant to Section 94 of the Act and the relevant Section 94 Plan.

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

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.

Stage 1 (10 Lots)

- (a) **Tweed Road Contribution Plan: \$19,360**
S94 Plan No. 4 (Version 4.0)

Sector9_4

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 4.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. The contribution shall be based on the following formula:-

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

where:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.5

- (b) **Open Space (Structured): \$7,800**
S94 Plan No. 5
- (c) **Street Trees: \$2,970.00**
S94 Plan No. 6
- (d) **Shirewide Library Facilities: \$6,880**
S94 Plan No. 11
- (e) **Bus Shelters: \$260**
S94 Plan No. 12
- (f) **Eviron Cemetery/Crematorium Facilities: \$1,310**
S94 Plan No. 13

(g)	Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16	\$2,070
(h)	Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$12,688.00
(i)	Cycleways S94 Plan No. 22	\$3,520
(j)	Regional Open Space (Structured) S94 Plan No. 26	\$11,770
(k)	Regional Open Space (Casual) S94 Plan No. 26	\$2,210
Stage 2 (18 Lots)		
(a)	Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector9_4 Heavy Haulage Component Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 4.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. The contribution shall be based on the following formula:- $\text{\$Con}_{\text{TRCP - Heavy}} = \text{Prod.} \times \text{Dist} \times \text{\$Unit} \times (1 + \text{Admin.})$ where: $\text{\$Con}_{\text{TRCP - Heavy}} \quad \quad \quad \text{heavy haulage contribution}$ and: Prod. Projected demand for extractive material to be hauled to the site over life of project in ilom Dist. Average haulage distance of product on Shire roads (trip one way) \\$Unit the unit cost attributed to maintaining a road as set out in Section 6.4 (currently 2.5c per tonne per ilometer) Admin. Administration component - 5% - see Section 6.5	\$34,848
(b)	Open Space (Structured): S94 Plan No. 5	\$14,040

(c) Street Trees: S94 Plan No. 6	\$5,346.00
(d) Shirewide Library Facilities: S94 Plan No. 11	\$12,384
(e) Bus Shelters: S94 Plan No. 12	\$468
(f) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13	\$2,358
(g) Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16	\$3,726
(h) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18	\$22,838.40
(i) Cycleways S94 Plan No. 22	\$6,336
(j) Regional Open Space (Structured) S94 Plan No. 26	\$21,186
(k) Regional Open Space (Casual) S94 Plan No. 26	\$3,978
Stage 3 (11 Lots)	
(a) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0)	\$21,296

Sector9_4

Heavy Haulage Component

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 4.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. The contribution shall be based on the following formula:-

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

where:

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

and:

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

Dist.	Average haulage distance of product on Shire roads (trip one way)	
\$Unit	the unit cost attributed to maintaining a road as set out in Section 6.4 (currently 2.5c per tonne per kilometer)	
Admin.	Administration component - 5% - see Section 6.5	
(b) Open Space (Structured): S94 Plan No. 5		\$8,580
(c) Street Trees: S94 Plan No. 6		\$3,267.00
(d) Shirewide Library Facilities: S94 Plan No. 11		\$7,568
(e) Bus Shelters: S94 Plan No. 12		\$286
(f) Eviron Cemetery/Crematorium Facilities: S94 Plan No. 13		\$1,441
(g) Emergency Facilities (Surf Lifesaving) (REMSHIRE) S94 Plan No. 16		\$2,277
(h) Extensions to Council Administration Offices & Technical Support Facilities S94 Plan No. 18		\$13,956.80
(i) Cycleways S94 Plan No. 22		\$3,872
(j) Regional Open Space (Structured) S94 Plan No. 26		\$12,947
(k) Regional Open Space (Casual) S94 Plan No. 26		\$2,431
Stage 4 (20 Lots)		
(a) Tweed Road Contribution Plan: S94 Plan No. 4 (Version 4.0) Sector9_4 Heavy Haulage Component		\$38,721

Payment of a contribution pursuant to Section 94 of the Act and the Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No. 4 - Version 4.1 prior to the issue of a construction certificate or subdivision certificate, whichever occurs first. The contribution shall be based on the following formula:-

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

where:

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

and:

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

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

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

Admin. Administration component - 5% - see Section 6.5

- | | | |
|-----|---|-------------|
| (b) | Open Space (Structured):
S94 Plan No. 5 | \$15,600 |
| (c) | Street Trees:
S94 Plan No. 6 | \$5,940.00 |
| (d) | Shirewide Library Facilities:
S94 Plan No. 11 | \$13,760 |
| (e) | Bus Shelters:
S94 Plan No. 12 | \$520 |
| (f) | Eviron Cemetery/Crematorium Facilities:
S94 Plan No. 13 | \$2,620 |
| (g) | Emergency Facilities (Surf Lifesaving)
(REMSHIRE)

S94 Plan No. 16 | \$4,140 |
| (h) | Extensions to Council Administration Offices
& Technical Support Facilities

S94 Plan No. 18 | \$25,376.00 |
| (i) | Cycleways
S94 Plan No. 22 | \$7,040 |

(j) Regional Open Space (Structured) S94 Plan No. 26	\$23,540
(k) Regional Open Space (Casual) S94 Plan No. 26	\$4,420

[PCC0215/PSC0175]

78. A certificate of compliance (CC) under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with the Tweed Shire Council. Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979 a Subdivision Certificate shall NOT be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the Certifying Authority has sighted Council's "Contribution Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

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

Stage 1

Water DSP2: 10 ET @ \$4230 \$42,300

Sewer Murwillumbah: 10 ET @ \$2634 \$26,340

Stage 2

Water DSP2: 18 ET @ \$4230 \$76,140

Sewer Murwillumbah: 18 ET @ \$2634 \$47,412

Stage 3

Water DSP2: 11 ET @ \$4230 \$46,530

Sewer Murwillumbah: 11 ET @ \$2634 \$28,974

Stage 4

Water DSP2: 20.2 ET @ \$4230 \$85,446

Sewer Murwillumbah: 20 ET @ \$2634 \$52,680

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.

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]

- 79. 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) A restriction as to user is to be created over the overland flowpath corresponding with the drainage easement over the stormwater line, that caters for the discharge from the end of Road 4. This restriction is to ensure the overland flowpath remains clear and unencumbered, retains it's shape, and maintains a clear passage for overland flows across any boundary or internal fencing. Furthermore, a restriction is to be created over all adjoining lots to the above-mentioned overland flowpath, requiring floor levels of any adjoining dwelling to be a minimum of 300mm above the design top water level in the flowpath.**
 - (c) In accordance with the recommendations nominated within the Soil Surveys Engineering Pty Ltd Geotechnical Investigation and Stability Assessment report dated 13.10.04, the following restriction is to be imposed on all lots with ground slopes in excess of 18 degrees: Slab on ground construction is not recommended in areas with slopes in excess of 18 degrees.**
 - (d) Direct vehicle access to and from all lots that have a secondary frontage to Old Lismore Road or Tyalgum Road, except Lot 22, is not permitted.**

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.

[PSC0835]

80. Pursuant to the provisions of S94 Plan 5 proposed lot 61 shall be dedicated as passive open space and suitably embellished at no cost to Council including grassing, landscaping, seating, playground equipment and shade cover in accordance with detailed plans to accompany the Construction Certificate application. Where play equipment is installed a minimum area of 10m around the equipment is to be turfed and the remaining area seeded.

Where a developer pays Council to acquire and install play equipment, Council will NOT install the equipment until a minimum of 20% of the lots in that stage of the development are occupied. The embellishment shall be completed prior to the issue of a Subdivision Certificate.

[PSC0195]

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

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

[PSC0215]

82. A bond shall be lodged prior to the issue of the subdivision certificate to ensure that the landscaping is maintained by the developer for a period of 6 months from the date of issue of a Subdivision Certificate. The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.

[PSC0235]

83. All landscaping requirements shall be completed to the satisfaction of the Certifying Authority PRIOR to the issue of a Subdivision Certificate.

[PSC0485]

84. Prior to the issue of a Subdivision Certificate, Works as Executed Plans shall be submitted in accordance with the provisions of DCP16 - Subdivisions Manual and Councils adopted Design and Construction Specification.

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

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

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

[PSC0735]

85. All retaining walls are to be certified by a suitably qualified geotechnical/structural engineer. The certification is to be submitted with the subdivision certificate application and shall state that the retaining walls have been designed and constructed in accordance with AS4678-2002 Earth Retaining Structures and are structurally sound. In addition to the above certification, the following is to be included in the Section 88B Instrument to accompany the final plan of subdivision.
- (a) A restriction to user for each lot that has the benefit of a retaining wall that prevents any cut or fill greater than 0.3m in vertical height within a zone adjacent to the wall that is equal to the height of the wall.
- (b) Each lot burdened and or benefited by a Type 1 wall as defined in AS4678-2002 Earth Retaining Structures, shall contain a restriction to user advising the landowner of the need to maintain the wall in accordance with that standard.
Tweed Shire Council is to be nominated as the authority empowered to release, vary or modify the restrictions.
86. A Subdivision Certificate will not be issued by the General Manager until such time as all conditions of this Development Consent have been complied with. [PSC0785]
87. Council's standard "Asset Creation Form" shall be completed (including all quantities and unit rates) and submitted to Council with the application for Subdivision Certificate. [PSC0825]
88. Where new state survey marks and/or permanent marks are placed a copy of the locality sketch relating to the marks shall be submitted to Council within three months of registration of the Subdivision Certificate in accordance with the Survey Practices Regulation. [PSC0855]
89. Prior to registration of the plan of subdivision, a Subdivision Certificate shall be obtained.
The following information must accompany an application:
- (a) original plan of subdivision prepared by a registered surveyor and 7 copies of the original plan together with any applicable 88B Instrument and application fees in accordance with the current Fees and Charges applicable at the time of lodgement.
- (b) all detail as tabled within DCP16, CL 7.6 and Councils Application for Subdivision Certificate including the attached notes.

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

[PSC0885]

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

- (a) Compliance Certificate - Roads**
- (b) Compliance Certificate - Water Reticulation**
- (c) Compliance Certificate - Sewerage Reticulation**
- (d) Compliance Certificate - Sewerage Pump Station**
- (e) Compliance Certificate - Drainage**

Note:

- i) All compliance certificate applications must be accompanied by documentary evidence from the developers Subdivision Works Accredited Certifier (SWAC) certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the construction certificate, DCP16 - Subdivision Manual and Councils adopted Design and Construction Specifications.**
- ii) The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "accredited certifier".**

[PSC0915]

91. The six (6) months Defects Liability Period commences upon the registration of the Plan of Subdivision.

[PSC0925]

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

This includes dedication of all splay corners indicated on plan 221DA-SITE (sheet 2), and all other splays, road corridors and road widening as nominated within this consent.

[PSC0945]

93. Prior to the issue of a Subdivision Certificate and also prior to the end of defects liability period, a CCTV inspection of the stormwater pipes and sewerage system including joints and junctions will be required to demonstrate that the standard of the stormwater system is acceptable to Council.

Any defects identified by the inspection are to be repaired in accordance with Councils adopted Development Design and Construction Specification.

All costs associated with the CCTV inspection and repairs shall be borne by the applicants.

[PSC1065]

94. Prior to issuing a Subdivision Certificate, reticulated water supply and outfall sewerage reticulation shall be provided to all lots within the subdivision in accordance with DCP16 - Subdivisions Manual, Councils adopted Development Design and Construction Specifications and the Construction Certificate approval.

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.

[PSC1115]

95. The site of the sewage pumping station shall be transferred to Council in fee simple, at no cost to Council within 28 days of the date of registration of the plan of subdivision.

[PSC1125]

96. The production of written evidence from the local telecommunications supply authority certifying that satisfactory arrangements have been made for the provision of underground telephone supply.

[PSC1165]

97. Electricity

- (a) The production of written evidence from the local electricity supply authority certifying that reticulation of underground electricity (residential and rural residential) has been completed; and
- (b) The reticulation to include the provision of fully installed electric street lights to the relevant Australian standard. Such lights to be capable of being energised following a formal request by Council.

[PSC1185]

REPORT:

Applicant: Mr RB Turner and Mrs LJ Turner
Owner: Mr RB Turner and Mrs LJ Turner
Location: Lot 4 DP 1074167, No. 137 Old Lismore Road Murwillumbah
Zoning: 2(c) Urban Expansion & 6(b) Recreation
Cost: \$1700000

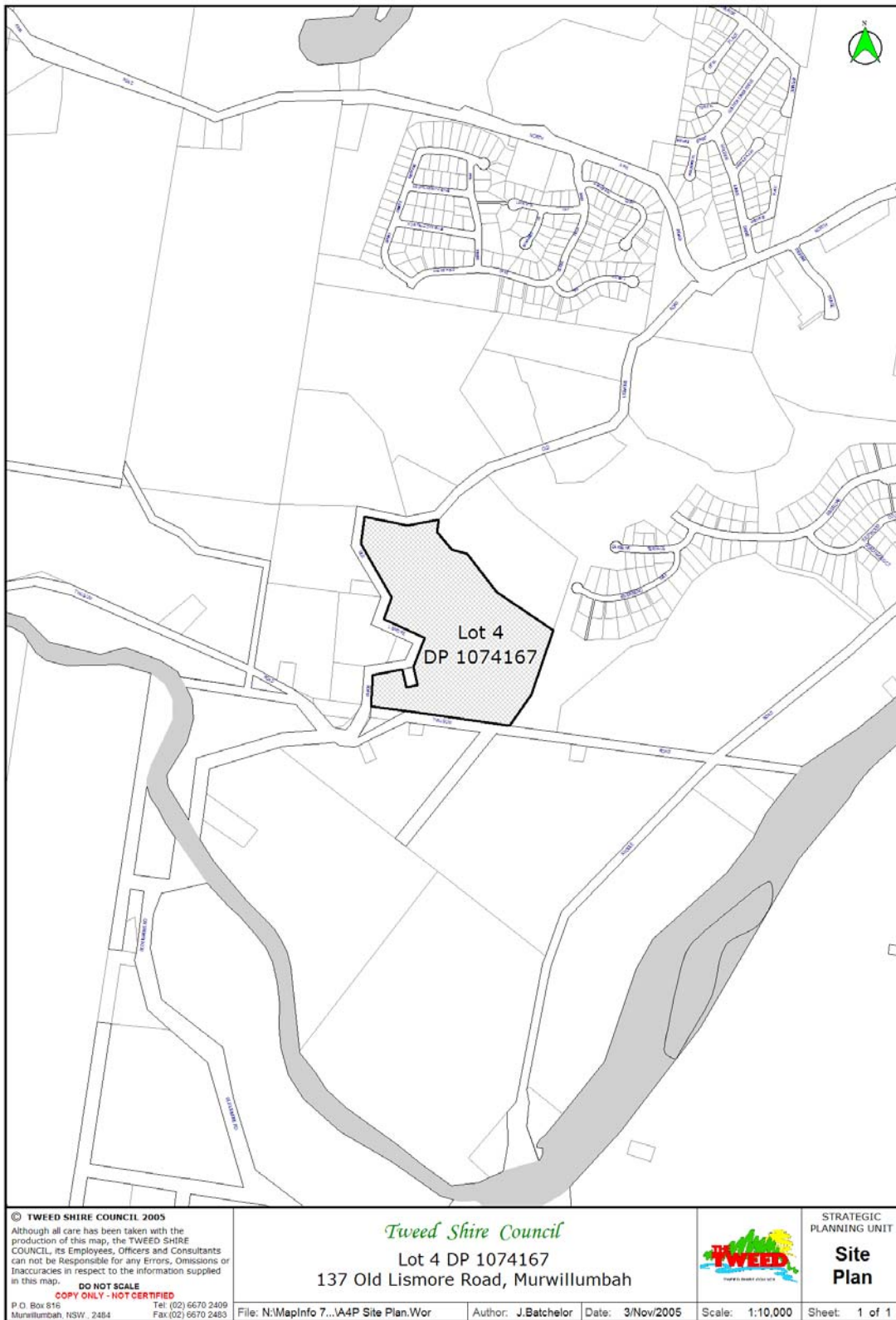
BACKGROUND:

Council received an application for a staged 65 lot residential and public dedication subdivision on 8 December 2004. During the course of assessment several issues arose and the applicant was advised. Council was subsequently served notice of a Class 1 Deemed Refusal Appeal. In accordance with the resolution of the meeting of 17 August 2005 Council's Solicitor has been engaged to defend the Appeal and has attended telephone call-over twice so far.

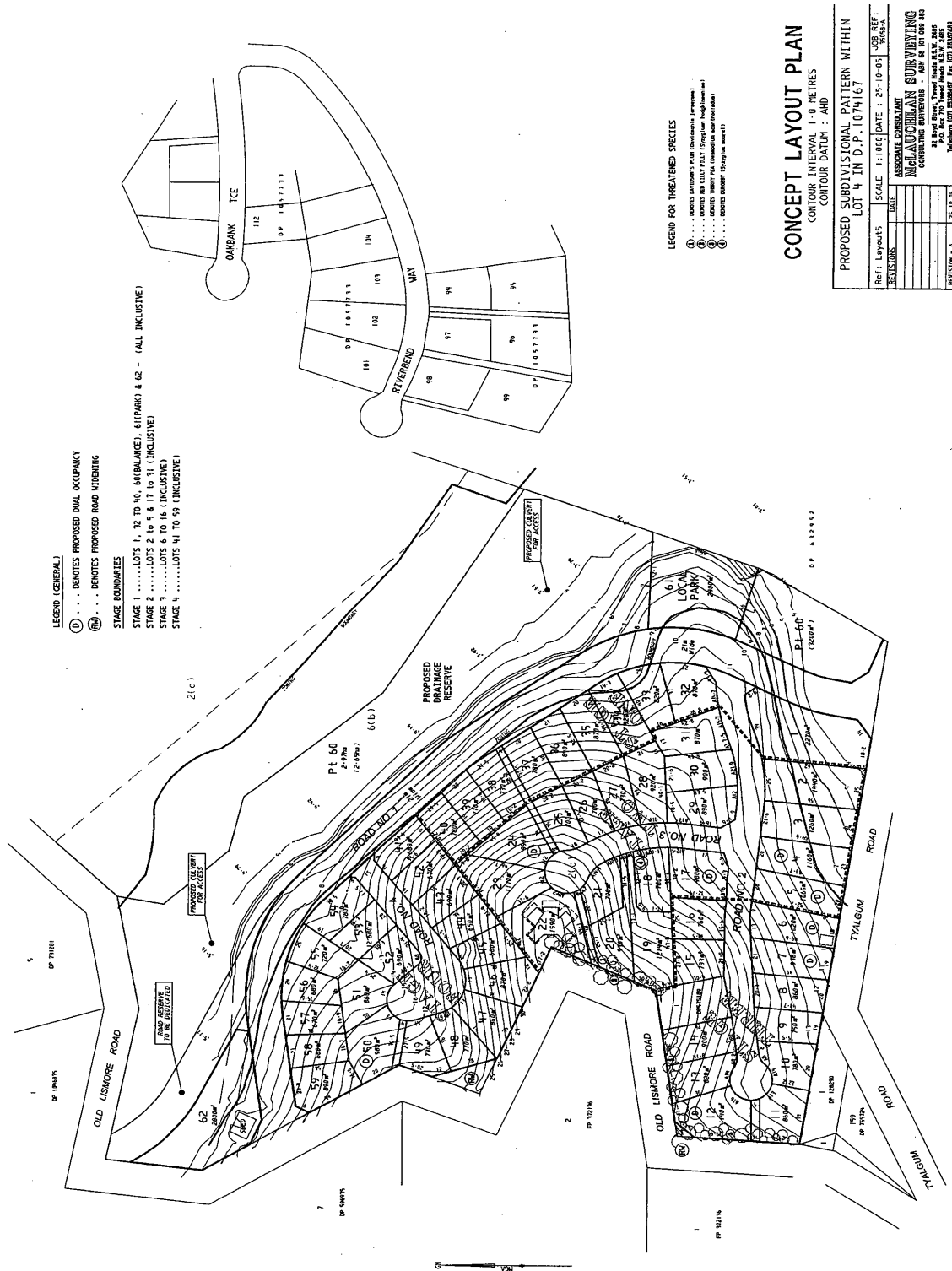
Both parties have attended a without prejudice conference and amended plans have been submitted. Conditions have been prepared to permit approval via a Court Order based on the amended design. Further minor amendment and negotiation may still be required as matters arise leading to the Court's determination.

The amended plans have addressed the issues raised by Council, and have resulted in a reduction in allotments to sixty residential lots, one wetland drainage reserve and one park. The latter two are to be dedicated to Council. The amended development design is satisfactory and is generally in accordance with Council's adopted planning and engineering requirements. The development is recommended for approval by the Land and Environment Court with the consent of both parties.

SITE DIAGRAM:



CONCEPT LAYOUT PLAN



SITE CHARACTERISTICS

The site has an approximate area of 12-hectares and has frontage to Old Lismore Road and Tyalgum Road, West Murwillumbah. The land slopes from Old Lismore Road to a freshwater drainage wetland to the east. Land elevation ranges between RL 5m AHD to RL 30m AHD. The site has a recently constructed single dwelling house (to be sited in proposed Lot 22), and is generally denuded of vegetation. Access to the existing dwelling is off Old Lismore Road.

PROPOSED DEVELOPMENT (AS AMENDED)

The development comprises of sixty (60) residential lots, one (1) wetland and one (1) park, the latter two are to be dedicated to Council as public land. The residential component of the subdivision is to be carried out in four-stages, as follows:

Stage	No. of Lots
1	10
2	19
3	11
4	20
Total	60

In accordance with the concept design in Development Control Plan No.14 - Murwillumbah West, s.5, the road layout will link Old Lismore Road with Tyalgum Road running parallel to the eastern residential allotment property boundary and acting as an interface to the wetland. This road will service two internal roads. All properties, except existing Lot 22, will be accessed off the new road layout and not from Old Lismore or Tyalgum Roads.

As a consequence of the sites elevation the new link road will require 'lifting' so that the design flood level can be achieved. Earthworks are proposed at a minimum, and no significant adverse impacts are likely to occur to the wetland. The new link road will return to intersect Old Lismore Road south of proposed Lot 62, and provision in the conditions has been made for two bus shelters. An area of road reserve dedication is proposed to the north-northwest of proposed Lot 62 to enable the future extension of the link road to align with any future road extension created in the subdivision of the land to the north. It should be noted that a subdivision application has been lodged with Council for the adjoining northern land, and it is also under a deemed refusal Appeal in the NSW Land and Environment Court. However the level of acceptance of that development, unlike this application, has not progressed to a satisfactory position, in particular on the extent of the proposed land reforming. The subject application however has been designed to minimise the impact on the natural landform and consequently the land slope of the allotments approximates to a general range of 5 to 18 degrees. This is within Council's adopted engineering parameters.

In addition to the residential allotments the development includes the provision and dedication to Council of a park (Lot 61). The park is located on the eastern side of the new link road and has an area of 2800m². In accordance with the proposed draft Condition No.10 the park will need to be suitably embellished with seating, playground equipment and landscaping at no cost to Council. The wetland drainage area will also be dedicated to Council. In accordance with draft Condition No.9 a wetland management plan providing for the enhancement, encouragement of regeneration, wetland and buffer viability for the wetland drainage area will be required.

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 land is zoned 2(c) Urban Expansion and part 6(b) Recreation. The subdivision is permissible with consent in each zone. The residential allotments are zoned wholly 2(c), with exception to Lots 1 to 5 which comprise of a part 6(b). The dwelling envelope for each of these allotments is contained principally within the 2(c) component with only minor overlap of the 6(b).

The objectives of the 2(c) and 6(b) zones are set out below:-

**Zone 2 (c) Urban Expansion
Zone objectives**

Primary objectives

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

Secondary objectives

- *to allow associated non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents.*
- *to ensure that sensitive environmental areas within and outside the zone are protected from any adverse impacts of development*

**Zone 6 (b) Recreation
Zone objectives**

Primary objective

- *to designate land, whether in public or private ownership, which is or may be used primarily for recreational purposes.*

Secondary objective

- *to allow for other development that is compatible with the primary function of the zone.*

Under Development Control Plan No.14 - Murwillumbah West, the 6(b) zoned land is identified for dedication to Council at the time of subdivision. However, assessment of the 6(b) land has concluded that the nature of the land would yield limited public benefit. Maintaining the land in isolation would be impractical and render it sterile. Practical resolution is found in the development proposal by absorbing the 6(b) land into the rear of several residential allotments. This land is generally quite steep and generally not suitable for residential development. Tweed LEP 2000 cl.14 permits flexibility where investigation of a site reveals that a use permitted on the other side of the zone boundary would enable a more logical and appropriate development of the site, it includes abutting zones 2(c) and 6(b). However, the flexibility is constrained. The standard provides for a 20m transition zone, whereas 50m is sought in the application. Consequently, a State Environmental Planning Policy No.1 - Development Standards variation assessment is provided. In the present circumstances the variation is considered practical and logical as it would permit the orderly and economic utilisation of the land and ensure that accountability for maintenance is local. The SEPP 1 variation is concurred with.

Clause 14 of the Tweed LEP 2000 is in the following terms:-

14 Development near zone boundaries

(1) Objective

- *to provide flexibility where detailed investigation of a site and its surroundings reveals that a use allowed on the other side of a zone boundary would enable a more logical and appropriate development of the site.*
- (2) *This clause applies to land which is:*
- (a) *within 20 metres of a boundary between any two of Zones 1 (c), 2 (a), 2 (b), 2 (c), 2(d), 2 (e), 2 (f), 3 (a), 3 (b), 3 (c), 3 (d), 3 (e), 4 (a), 5 (a), 6 (a) and 6 (b), or*
 - (b) *within 50 metres of a boundary between Zones 1 (a) and 1 (b), or*
 - (c) *within 50 metres of a boundary between any zone referred to in paragraph (a) and any zone referred to in paragraph (b).*
- (3) *Development that would otherwise be prohibited may, with consent, be carried out on land to which this clause applies if the development may be carried out (with or without consent) in the adjoining zone.*
- (4) *Consent may be granted to development referred to in subclause (3) only if the consent authority is satisfied that the proposed development is more appropriate, due to planning, design, ownership, servicing or similar criteria, than the development that would otherwise be allowed.*

North Coast Regional Environmental Plan 1988

Division 2 - Urban Housing, cl.43, is of relevance to the proposed development as it relates to maximisation of dwelling density relative to environmental site constraints, provision of appropriate roads and impacts of sedimentation and erosion. The development has been designed to achieve orderly and economic land utilisation having regard to the sites environmental constraints, particularly elevation and slope. This is reflected in the lot sizes, which are generally larger than that achievable on less constrained land. Road design is in accordance with Council's requirements. Sedimentation and erosion control is managed through appropriate conditions of consent, which includes the requirement for a detailed management plan.

The development is consistent with the aims and objectives of the Policy.

State Environmental Planning Policies

The application is accompanied with a State Planning Policy No.1 - Development Standards variation assessment as it relates to cl.14 of the Tweed LEP 2000. The reason for the variation is set out previously in this report. The variation assessment report submitted with the application demonstrates that the variation is warranted in the circumstances, and the findings are concurred with.

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

There are no draft environmental planning instruments affecting the application assessment or recommendation.

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

The application is generally in accordance with the relevant Development Control Plans, in particular No.14 - West Murwillumbah and No.16 - Subdivision Manual.

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

The application has been prepared and assessment executed in accordance with the Regulations.

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

The development has been designed as far as practical to achieve the objectives of the Residential 2(c) zone objectives and provisions of DCP 14 - Murwillumbah West, without adversely or unnecessarily impacting on the natural landform and fresh water wetland. This has been achieved to varying degrees by compromising the maximum achievable density pattern in favour of a more sensitive urban design layout that largely retains the sites natural landform. The development design having respected the environmental constraints and opportunities provides a development that is balanced and that will integrate unobtrusively into the area. No long term, permanent or significant impacts are considered likely to occur on the built and natural environment, socially or economically in the locality.

(c) Suitability of the site for the development

Council's Planning, Environment and Engineering Units have assessed the development proposal. No issues arise that would indicate the unsuitability of the site for the proposed subdivision.

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

The application was publicly notified from 12 January to 14 February 2005. Six submissions were received and forwarded to the applicant for reference. The issues raised in the submissions included: -

- character of development,
- sterilisation of agricultural land,
- location of proposed roads,
- traffic impact,
- impact on wetland
- loss of vegetation
- location of sewer pump
- impact on threatened species.

The issues raised in the public submissions have been considered in the assessment of the application and where appropriate conditions of consent have been proposed to mitigate or control specified activities. In addition, the applicant provided a response to the issue in their letter of 27 April 2005, and the responses are generally concurred with.

The land is zoned for urban expansion. Development Control Plan No.14 - Murwillumbah West was adopted, after public consultation, specifically to guide the development of the west Murwillumbah urban release area. The development is in accordance with Council's planning policy for the release area. Although, it is noted that the development does not, because of the responsiveness to the environmental constraints of the land, maximise residential density as envisaged. This is a trade off in providing larger lots to accommodate retention of natural landform features. Providing the development works are carried out in accordance with the proposed conditions of approval and best practice principles are employed, the impact of the development during and post construction work is likely to be minimal.

It is accepted that the issues raised in respect of the application have varying levels of credence and as such must be weighted accordingly. On merit it is considered that the development is acceptable and that appropriate mechanisms exist through a conditional approval to mitigate against adverse impacts, in this instance. The issues raised do not warrant the refusal or modification of the application.

(e) Public interest

The development seeks to utilise designated urban release land in an orderly and economic development pattern that will accommodate, in part, the Shires increasing population in a way that retains, as far as practical, the natural features of the land and the semi-rural character of the area. The development is not contrary to the public interest.

OPTIONS:

1. Resolve to support the approval of the application subject to appropriate (negotiated) conditions of approval.
2. Resolve not to support the application.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The application is on a deemed refusal appeal to the NSW Land and Environment Court. Council is incurring legal costs that will substantially increase should the matter proceed to be set down for hearing. This matter may be resolved by Court Orders, based on negotiated conditions of approval, minimising legal and resource costs.

POLICY IMPLICATIONS:

Nil.

CONCLUSION:

The application has amended to a stage where it is recommended for support. The amended proposal provides an acceptable design response to the land use issues and is generally consistent with Council's planning controls. Without prejudice conditions have been formulated and negotiated and agreement has been obtained to proceed to a Consent Order. This matter should be expedited to the NSW Land and Environment Court for approval by Court Orders. This will produce a satisfactory resolution to the determining of the application and minimise expensive Court hearing costs.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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4 [PD] Standard Local Environmental Plan (LEP) Template

ORIGIN:

Strategic Town Planning

FILE NO: GT1/LEP/2000 Pt2

SUMMARY OF REPORT:

The NSW Government has embarked on a major overhaul of the planning system, to eliminate unnecessary and complicated red tape. A government review of 'statutory and strategic plan making' in NSW said it was necessary to simplify and improve planning by introducing a set of common provisions and terminology so government, industry and the community can better understand the plans.

To simplify the planning system, the Department of Planning has prepared a draft standard local environmental plan (LEP), which it argues will streamline the planning system, making it easier to do business in NSW and achieve better community outcomes.

The State Government placed on exhibition a standard LEP for all LEPs in NSW. Comments were required by 30 October 2005.

The Standard has far-reaching implications for Council. All Councils will have to prepare LEPs in accordance with this template. A submission has been prepared and lodged with the Department. It was concluded that the Standard had some deficiencies in relation to coastal development and in areas already zoned for urban development.

RECOMMENDATION:

That Council endorses the submission lodged with the Department of Planning in respect of the exhibited draft Standard Local Environmental Plan.

REPORT:

The NSW Government has embarked on a major overhaul of the planning system, to eliminate unnecessary and complicated red tape. A government review of 'statutory and strategic plan making' in NSW said it was necessary to simplify and improve planning by introducing a set of common provisions and terminology so government, industry and the community can better understand the plans.

To simplify the planning system, the Department of Planning has prepared a draft standard local environmental plan (LEP), which it argues will streamline the planning system, making it easier to do business in NSW and achieve better community outcomes.

The State Government placed on exhibition a standard LEP for all LEPs in NSW. Comments were required by 30 October 2005.

The Standard has far-reaching implications for Council. All Councils will have to prepare LEPs in accordance with this template. A submission has been prepared and lodged with the Department. It was concluded that the Standard will not provide Council with a rigorous vehicle for providing the planning outcomes contained in current strategic policies; and managing the growth of the Tweed. The principal concerns are:

- The Standard does not provide a user-friendly document for the community.
- The Standard provides no articulation of any bigger regional or state picture, particularly in economic or social terms.
- The objectives for development in each zone are weak and do not provide any strategic direction on the part of the State government.
- The Standard zones do not reflect local planning issues and preferred outcomes for the Tweed. Their adoption may prejudice some of those outcomes. The critical issues are:
 - Tourism is a critical component of the economic development of the Tweed. Council must have the ability to include tourist zones and related land use definitions in its LEP to ensure appropriate controls to avoid unacceptable impacts of tourism development in existing urban areas.
 - The urban expansion zone provides clarity and transparency to the general community and an efficient mechanism to the state government for delivering essential and integrated development to accommodate high population growth. A general residential zone would not achieve this.
 - To protect the character of Tweed villages the retention of the village zone is essential.

- Only one Environmental Protection zone addresses general conservation scenarios. There are scant objectives on which to mount an argument for or against a given proposal in this zone
- The Investigation zone has the dual purpose of identifying land for further natural resource management investigation and also development. These zones should be clearly separated to avoid any ambiguity.
- Many definitions are vague, or simply repeat the word being defined, and will lead to many loopholes for exploitation. In particular 'Ground level' requires further consideration and analysis of the outcomes of to ensure it provides clarity, certainty and ease of application for all parties.
- The Standard will result in additional categories of development requiring Council consent in the Exempt and Complying Development and the Acid Sulfate Soils provisions, which would add to existing workloads.
- The Exceptions to Development Standard provisions will result in a loss of flexibility by Council in the administration of the Plan and may lead to the need for minor LEP amendments. If clause 54(10) does not apply to Coastal Land then it will not apply to most of Tweed Shire's urban areas.
- Subdivision Controls and Dwelling Entitlements are critical to Council's planning activities particularly in rural areas. There is confusion and contradiction between clauses 19, 24 and 54. It is essential that 'rural dwelling entitlements' and 'appointed day' provisions are included to prevent proliferation of dwelling expectations. In Tweed Shire dwelling entitlements rely heavily on such provisions when the lot was created and under what circumstances.
- If the Standard is adopted a plethora of existing uses will be created which will undermine certainty in zones and land use tables. The recommended approach is that the existing use rights clauses in the Regulations be altered to prevent enlargement and changes to 'existing uses'. The alternative, that Council identify each potential 'existing use' and allocate to Schedule 3 or 4 will require significant resourcing.
- The suspension of laws by environmental planning instrument is required to over-ride covenants from S28 of Act.

The full text of the submission is attached.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- [1. Response to the exhibition of the draft Standard LEP \(DW 1293741\)](#)
-

5 [PD] Draft Tweed Local Environmental Plan 2000, Amendment No 10 - Urban Release Area E

ORIGIN:

Strategic Town Planning

FILE NO: GT1/LEP/2000/10 Pt5

SUMMARY OF REPORT:

Consideration of this report was deferred pending a Public Workshop on the proposed draft Plan. A Public Workshop was held on Wednesday, 16 November 2005.

This report is now tabled again for Council's consideration. The content of the original report remains the same. The recommendation of the original report has been amended to make it obvious that development of the site cannot occur without a Council approved Development Control Plan for the site.

Draft LEP Amendment No 10 - Terranora Urban Release Area (Area E) and the accompanying Environmental Study were placed on public exhibition between Wednesday, 17 March 2004 and Friday, 7 May 2004. A total of 138 submissions were received from various sectors including state agencies, private entities and community members.

A summary and discussion of the submissions received with respect to the exhibited draft Plan are provided within this report. The overriding issues identified from the submissions include protection of the natural environment (wetlands and significant flora/fauna), provision of appropriate infrastructure such as water, sewerage, stormwater, traffic and transport etc, contaminated lands, agricultural land, conflicting land uses, suitable density and lot size issues, master planning, amenity and aesthetic issues.

As a result of the submissions received it is recommended the draft Plan be amended from that which was exhibited. The recommended changes are discussed within this Report and are included in the amended draft Plan in Appendix B. In principle these changes involve:

- Amending the zoning map of the exhibited draft Plan by increasing the area of the 7(a) and 7(d) Environmental Protection Zones in response to the DEC's concerns. This reduces the extent of the proposed 2(c) Urban Expansion Zone.
- Amending the zoning map of the exhibited draft Plan by deleting the proposed alignment of the Mahers Lane extension.

No submissions received prevent the rezoning of Area E in the manner stipulated in Appendix B. Significant issues raised through submissions can be comprehensively addressed through a Development Control Plan, and at the Masterplan and development assessment stages of the project.

It is recommended that Council resolve to adopt the recommended changes to the exhibited draft Plan (as per Appendix B to this Report), and in doing so, the amendment would be ready to be made by the Minister for Department of Infrastructure, Planning and Natural Resources. This action would be succeeded by the preparation of a statutory Development Control Plan.

RECOMMENDATION:

That Council:

- 1. Pursuant to Section 68 of the Act, forwards the draft Local Environmental Plan Amendment No 10 – Terranora Urban Release Area (Area E), as per Appendix B, to the Department of Infrastructure, Planning and Natural Resources and requests the Department to forward the Plan to the Minister so the Plan can be made in accordance with the provisions of the Environmental Planning and Assessment Act 1979.**
- 2. Enters into a Deed of Agreement with the relevant landowner to enable Lot 227, DP 755740, Fraser Drive, Terranora to be transferred to Council prior to the Plan being forwarded to the Minister.**
- 3. Prepares a Development Control Plan (in accordance with the provisions of the *Environmental Planning and Assessment Act 1979*) to manage future development of the site.**
- 4. Council shall not consent to development on the site known as Area E unless a Development Control Plan has been approved for the land.**

REPORT:

BACKGROUND

It is intended to provide a thorough and integrated planning framework by which to appropriately manage Area E. Parsons Brinckerhoff were engaged to prepare a comprehensive planning framework for the development of Area E which includes preparation of a:

- Local Environmental Study and Draft LEP;
- Development Control Plan and Structure Plan;
- Section 94 Contributions Plan.

The first stage of the project, preparation of an LES and draft LEP, to determine the capability of the site to be developed for urban purposes has been finalised. A copy of the draft LEP, as exhibited, is provided as Appendix A.

The other stages of the project, DCP, Structure Plan and S94 Plan, planning tools by which to manage development of the land, are currently being prepared. A copy of the first draft of the DCP is provided for Councillor information as Attachment C.

Area E is generally bound by Mahers Lane, Terranora Road, Fraser Drive and the Terranora Broadwater (Trutes Bay), Terranora (Refer to Figure 1 'Locality Plan'). It is approximately 297 ha in area and comprises fifty-seven cadastral allotments in seven consolidated or amalgamated property holdings and thirty-three allotments in individual ownership (Refer to Figure 2 'Area E Study Area Boundaries').

Area E is principally comprised of the following uses:

- the Lindisfarne Anglican Secondary School, on an approximately eight hectare site (Zoned 5(a) Special Use (School))
- approximately 52 hectares of SEPP-14 wetlands at the northern interface with Trutes Bay (currently zoned 1(b1) Agricultural Protection)
- approximately 237 hectares of rural lands (zoned 1(b1) Agricultural Protection) of which the major resource is 73 ha of Class 6 Specialist Use Agricultural lands, the majority of which are lying fallow.

Area E has historically been utilised for intensive agriculture, being row cropping and plantations. However, there has been a sustained long-term reduction of intensive agriculture within Area E due to urban development encroachments and pressures, limited financial return from produce, and biophysical limitations (requiring mechanised farming which is otherwise precluded by surrounding urban development), amongst others.

The purpose of the LES and draft LEP was to investigate Area E and determine the values of the agricultural land and its suitability for urban development, as per the *Tweed Residential Development Strategy 1991*. The LES identified a number of constraints and issues that require further management and consideration in the development of Area E for urban purposes. Of these, the management of traffic impacts, infrastructure provision and rehabilitation of environmentally sensitive areas are paramount.

The LES found that although there were issues which require further management and control, there were generally no constraints and issues to urban development of Area E that could not be resolved through the implementation of specific control provisions, design criteria, management measures, through amendments to the exhibited draft Plan, a future Development Control Plan or master plan for the site.

The draft LEP generally involves rezoning Area E from the predominant 1(b1) Agricultural Protection Zone, by excluding it from this Zone and including it in:

- approximately 187 hectares of 2(c) Urban Expansion zoned land (which includes area for the development of residential, commercial, recreational and community facilities, together with infrastructure provision) ;
- approximately 88 hectares of 7(a) Environmental Protection (Wetlands and Littoral Rainforests), particularly protecting the SEPP 14 wetlands (as rehabilitated);
- approximately 17 hectares of 7(d) Environmental Protection (Scenic/ Escarpment) in particular protecting the visual qualities and environmental significance of the central drainage channel;
- approximately 1.5 hectares of 5(a) Special Use (School) for the Lindisfarne Anglican Secondary School.

This Report identifies the nature of the submissions received, the recommendations with regards to amendments to the exhibited LES and draft Plan and a final draft Plan (including Clauses and a Zoning Map) Amendment 10.

Figure 1 **Locality Plan**

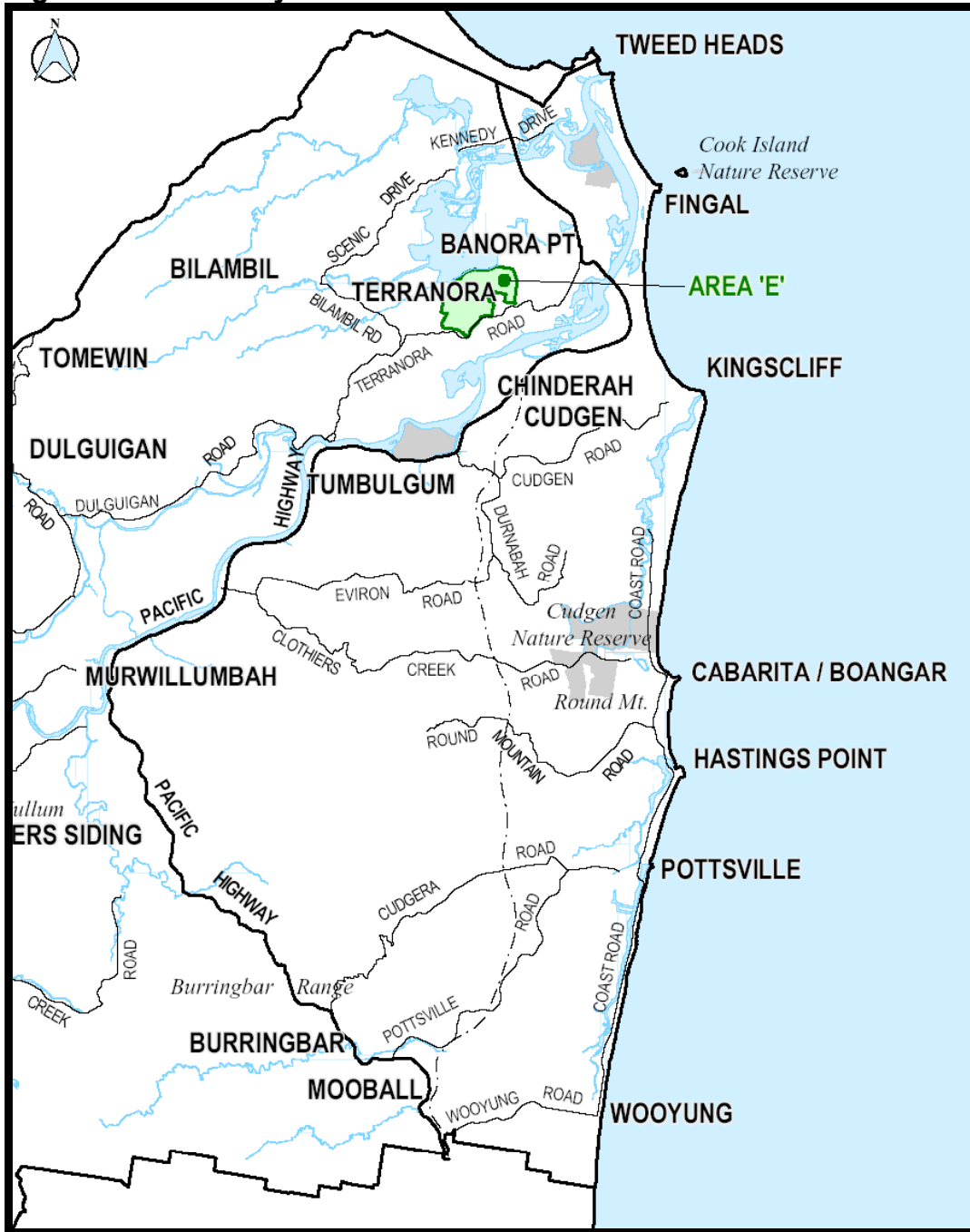
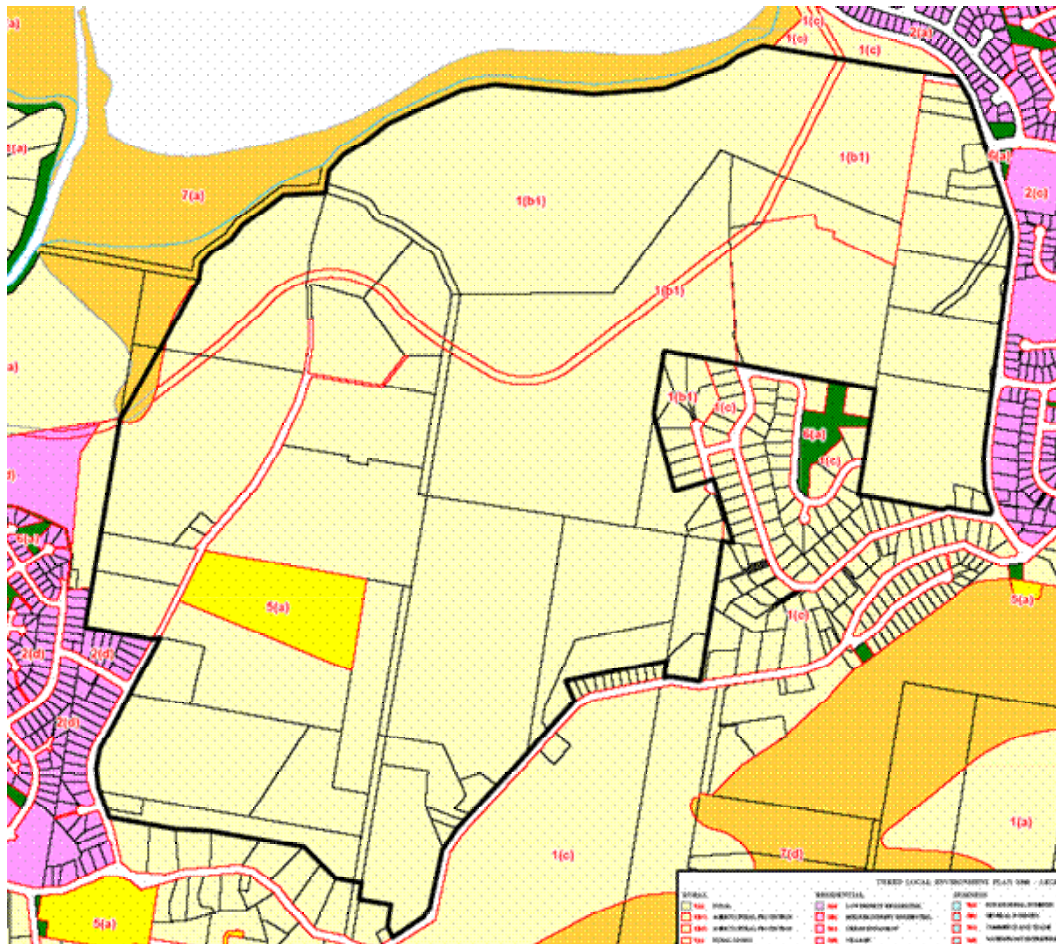


Figure 2: Area E Study Area Boundaries (as indicated by the bold outline)



Figure 3: Current Zoning of Area E (Source: Tweed LEP 2000)



PUBLIC EXHIBITION OF STUDY AND DRAFT PLAN

Pursuant to Section 66 of the *Environmental Planning & Assessment Act 1979*, the draft LEP and LES were placed on public exhibition from 17 March 2004 through to 7 May 2004. A public meeting was held on 29 April 2004 at the Terranora Community Hall. Council received a total of 138 submissions from State Agencies, Council itself, commercial and environmental entities and residents during the period of public exhibition.

Council received a total of seven (7) submissions from the following State Government Agencies:

- Department of Primary Industries (DPI) NSW Agriculture
- NSW Department of Infrastructure, Planning and Natural Resources
- Department of Environment and Conservation
- Mineral Resources NSW
- NSW Rural Fire Service
- Roads & Traffic Authority
- Department of Education and Training

Tweed Shire Council (Traffic and Transport Engineering Section) made one submission

Council received a total of six submissions from the following entities:

- Lindisfarne Anglican Secondary School
- Friends of Terranora
- Caldera Environment Centre
- Tweed Heads Environment Group Inc
- Tweed District Residents & Ratepayers Association
- Banora Point Residents Association

The remaining 124 submissions were received from community members, including residents and business owners.

A Submissions Matrix has been prepared providing comments on the grounds of the submissions (refer to Attachment A). A number of common issues were identified, and which overlap but are presented separately to ensure a complete picture is presented, have been addressed in the body of this report.

The submissions can be generally classified into one of the following three types:

- Submissions opposing the proposed development on a number of grounds
- Submissions objecting to the development proposal in its current form, with suggested development parameters for further consideration
- Submissions supporting the proposal on a number of grounds

STATE GOVERNMENT SUBMISSIONS

1. Department of Primary Industries DPI (NSW Agriculture)

DPI acknowledged that the use of this area for urban development would seem inevitable. However, they noted that the Study did not adequately record or assess cultural significance and landscape values of Area E, nor did it identify areas of higher agricultural land resources that may be retained as community gardens. Similarly no transitional arrangements to avoid conflicts between agricultural and urban uses were outlined.

Comment: The LES includes a critical evaluation of the ability of Area E to support continued agricultural practices, including historical recognition of the agricultural practices that occurred. The evaluation included the identification of 'Class 6 Specialist Use' Agricultural Land. The retention of a portion of land for community gardens hasn't previously been undertaken in other urban residential estates and the need, suitability and the success of such a venture in this locality is questionable. Community gardens are generally situated in high/medium density locations where residents don't normally have access to a yard. Area E is envisaged to have a median lot size of 800m² which invariably provides enough land to site a house and still have room for a yard to pursue leisure pursuits such as gardening.

It is envisaged the majority of existing farmland will be developed for urban housing. This will inevitably result in the loss of the rural landscape. However, the scenic landscape of the area is addressed through the preservation and rehabilitation of significant environmental corridors, through the provision of vegetated ridgelines and through the vegetated buffers to existing rural residential areas. Other design characteristics such as streetscape, built form etc, should be addressed through a DCP and masterplan (refer to Attachment C - draft DCP, for an indication of how these design issues can be implemented).

The remaining agricultural practices are located at the eastern and southern periphery of Area E, in areas that would be generally developed first due to existing and proposed infrastructure sequencing and provision. As a result there is little requirement for transitional arrangements to be adopted in this instance.

Recommended Action: No change to the draft LEP as a result of the issues raised by NSW Agriculture.

2. NSW Department of Infrastructure, Planning and Natural Resources (DIPNR)

DIPNR supports the proposed 50 metre buffer around wetland in area zoned 7(a), and considers that the south-east corner of the area mapped as 7(a) should include wetland that is currently being drained. If it is not included, then this land should be retained as open space parkland and not be filled. Further, DIPNR indicate that no development should intrude into areas zoned as 7(a) and 7(d).

Comment: DIPNR's support of the wetland buffer is noted. The area referred to as 'draining wetland' has been identified to be a low-lying area into which water 'ponds' from elevated areas of Area E. Hence, the minimal ecological significance of this area does not merit any protective zoning.

The intrusion of any development into areas zoned as 7(a) and 7(d) will be regulated under the *Tweed LEP 2000*, through existing planning controls and land use zoning tables.

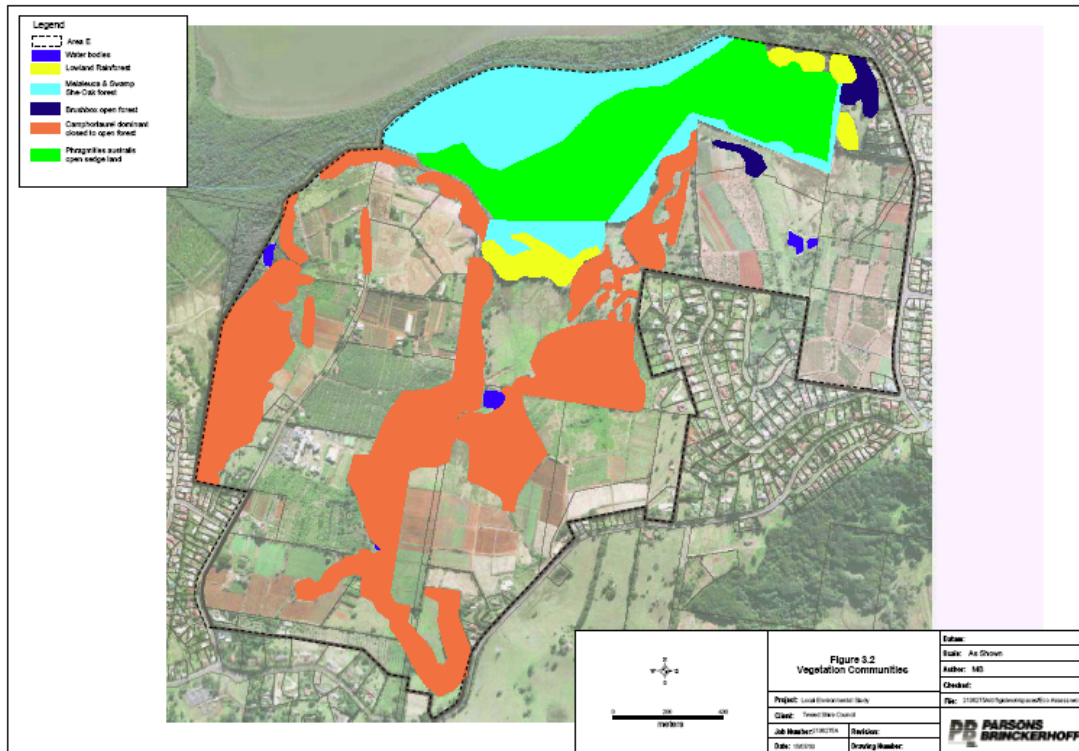
Recommended Action: No change to the draft LEP as a result of the issues raised by DIPNR.

3. Department of Environment and Conservation

The Department of Environment and Conservation (DEC) submission comprehensively outlines a number of concerns regarding the proposed LES and draft LEP. The main grounds of the submissions were in the following areas:

- Flora and Fauna (including SEPP14 wetland, remnant vegetation protection and rehabilitation). Figure 4 provides a map illustrating vegetation communities on site.
- Buffering of drainage lines and waterways.
- Biting Insects (salt marsh mosquito).
- Aboriginal Cultural Heritage.
- Stormwater Management.
- Contaminated Land.
- Sewerage Management.

Figure 4



Concerns with Flora and Fauna/ Buffering of Drainage Lines and Waterways:

- The DEC supports the exhibited draft LEP identifying the SEPP 14 wetland as an Environment Protection (7a) Zone. However, due to the steepness of the site and an increase in quantity and speed of stormwater runoff as a result of increased development, the proposed 50m buffer is considered inadequate. DEC recommended that a minimum of 100m in vegetated buffer between urban development or infrastructure and the prescribed boundary of the wetland be included in the LEP.
- The camphor laurel remnant on the western boundary has been Zoned 2(c) Urban Expansion. The central camphor laurel remnant is proposed to be Zoned (7d) Environmental Protection and, south of the school, it is proposed to be Zoned 2(c) Urban Expansion. Restoration and rehabilitation of these areas, including removal of camphor laurel, under a bush regeneration plan is recommended to increase biodiversity values and assist in improving the Terranora Broadwater water quality.
- The remnant vegetation may be utilised as a corridor for movement between areas of suitable habitat. The proposed 7(d) Environmental Protection Zone includes only part of the central drainage line, and should be extended to encompass the full extent to the southern study area boundary. Similar provision should be made for inclusion in the bush regeneration plan.
- The Swamp Sclerophyll Forest identified in the north-western boundary of the site is recognised as a significant community in the NSW North East Regional Forest Agreement and the Tweed Vegetation Management Plan 2003. The proposed 2(c) Urban Expansion Zoning is not supported. It is recommended that this community be Zoned 7(a) Environmental Protection with a minimum 50m vegetated buffer.

- The Brush Box remnant in the north-eastern portion of the site has been identified as supporting threatened species and hollow-bearing trees. The draft LEP includes these areas in the 2(c) Urban Expansion Zone and within designated road corridors which is not supported. Instead, these communities should be incorporated into the 7(a) Environmental Protection Zone with a minimum 50m vegetated buffer.
- The LES identified Closed Forest or Swamp Forest communities which are endangered under the *Threatened Species Conservation Act 1995* and provide potential habitat for the threatened Mitchell's Rainforest Snail. The approved Mitchell's Rainforest Snail Recovery Plan 2001 states that 'all lowland rainforest and swamp sclerophyll forest remnants and vegetated areas within 50m of SEPP 14 Coastal Wetlands in Tweed, Byron and Ballina Shires be protected from clearing or development in relevant Local Environmental Plans'. Therefore, to protect this type of vegetation community and potential snail habitat, all Lowland Floodplain Rainforest should be Zoned Environmental Protection with a minimum 50m vegetated buffer.
- The integrity of riparian buffers should not be compromised by positioning of stormwater treatment infrastructure or recreational facilities of a significant nature such as car parks, access roads, buildings or toilet facilities. A minimum buffer of 50m is required adjacent to areas of national, regional and local significance (e.g. wetlands, native vegetation). Infrastructure (such as roads) should not be included in the buffer.

Comments regarding Flora and Fauna/ Buffering of Drainage Lines and Waterways:

Verbal discussions were had with DEC officers to discuss the issue of the buffer to the wetlands. It was agreed that the proposed 100m buffer could be made up of 50m of vegetation and fifty metres of other non vegetated land, which can include infrastructure such as roads.

Extension of the 7(a) Environmental Protection Zone will ensure that other areas of SEPP 14 or adjoining areas are better protected from upstream impacts. These include:

- Melaleuca Forest in the north-west corner of the site
- Mangrove Shrubland in the north of the site (incorrectly mapped in the LES and which requires this updated level of protection)
- Phragmites Open Sedgeland in the north-east of the site

Further, inconsistencies between the vegetation communities identified in the field and those mapped in Figure 3.2 of the LES, require additional areas, referred to by DEC, to be protected because of their recognised local and State conservation values. These areas will be included in either the 7(a) or 7(d) Environmental Protection Zones. This extension of the Environmental Protection Zone will provide for the increased protection of potential habitat (ie Lowland Rainforest) for the Mitchell's Rainforest Snail, although it is not expected that the site supports a population of this species as outlined in Section 3.1.3.2 of the LES.

As a result of the DEC submission, a review of the vegetation community descriptions in the LES was undertaken. DEC advised that the original description in the LES does not adequately describe the variation in composition, habitat and biodiversity values of the various areas of Camphor Laurel Dominant Closed to Open Forest on the site. The Camphor Laurel community on the western boundary of the site is low in species diversity and structural diversity and almost solely comprises Camphor Laurel. While this community provides important bird habitat (particularly for pigeons and fruit doves), it does not provide the same level of ecological values as the Camphor Laurel community that runs from south to north in the centre of the site. This community has an emergent canopy of predominantly Camphor Laurel, but is much more diverse in the understorey, comprising predominantly Lowland Rainforest. Therefore, while some of the Camphor Laurel community (and avian habitat) in the west of the site will be retained as part of the extension of the Environmental Protection Zone outlined above, not all of this community warrants protection as significant vegetation in the area.

The proposed LEP amendment includes Clause 53A(3) which requires a Wetlands Rehabilitation and Management Plan to be prepared and must be complied with prior to Council giving consideration to the Consent to such development. Further, given that the wetland is designated as a SEPP 14 wetland an EIS will need to be prepared by the proponent.

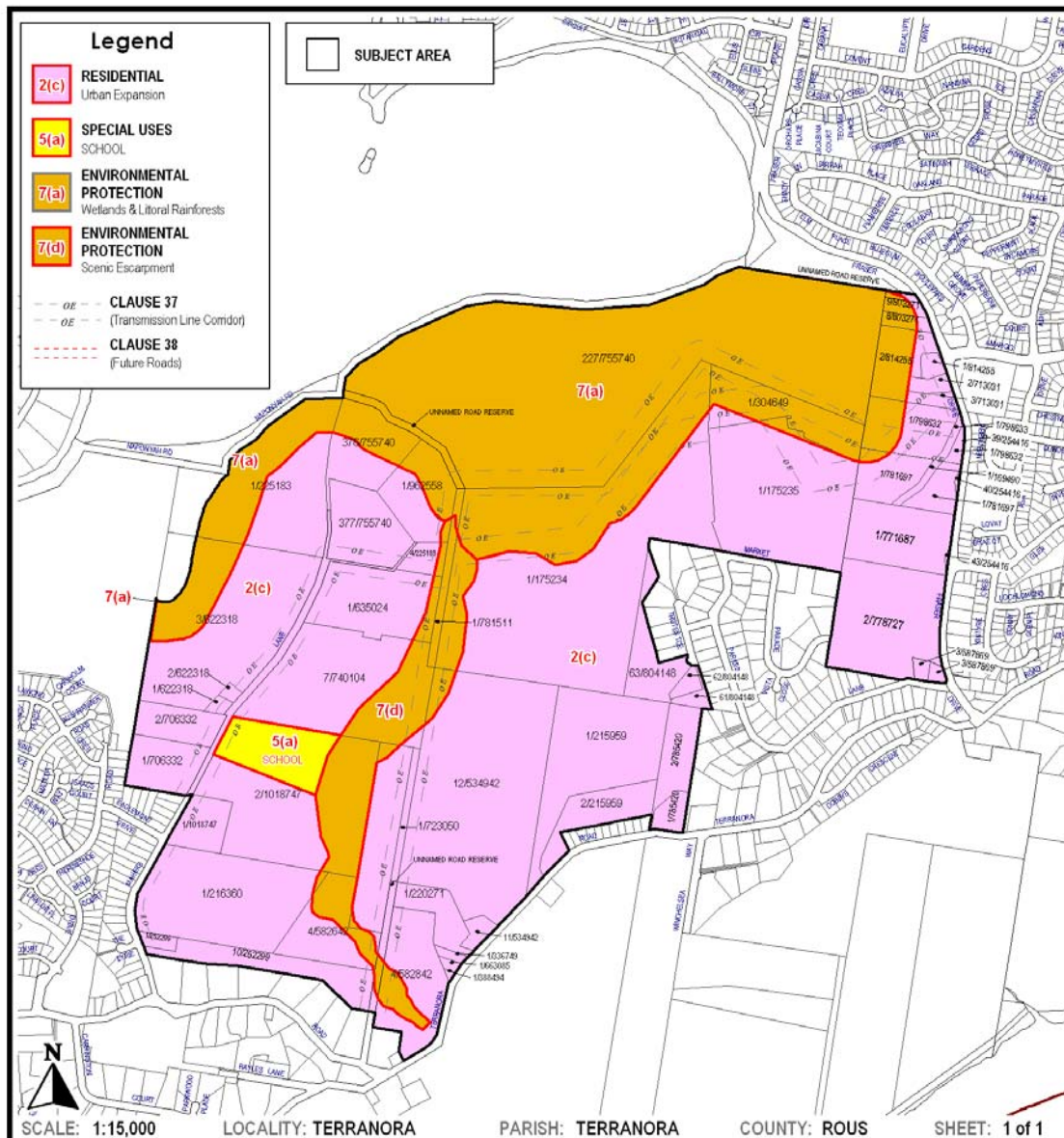
Some infrastructure, such as a water pipeline and associated access tracks, already exists within areas of the proposed 7(a) or 7(d) Environmental Protection Zone. These are not proposed to be removed as a result. Development of such infrastructure can sensitively occur to minimise disruption to habitat integrity, via the preparation of relevant management plans.

Recommended Environmental Actions:

As a result of the issues raised by the DEC, changes to the extent of the 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and the 7(d) Environmental Protection (Scenic/ Escarpments) are required to the zoning map. Refer to Figure 5 and Appendix B, which provides an illustration of the change in zone boundaries as a result of DEC's submission

NOTE: A copy of the amended draft LEP map was forwarded to DEC for their comment. DEC responded in a letter dated 29 October 2004 DEC confirming their support for the suggested amended LEP map shown in Figure 5 and Appendix B.

Figure 5



ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979		TWEED	
DRAFT LOCAL ENVIRONMENTAL PLAN 2000 AMENDMENT No. 10			
DRAWN BY: J. Batchelor	DATE: 07/10/2004	STATEMENT OF RELATIONSHIP WITH OTHER PLANS	
SUPERVISING DRAFTER:		AMENDS: TWEED LOCAL ENVIRONMENTAL PLAN 2000	
PLANNING OFFICER: Eber Butron			
COUNCIL FILE No. GTI/LEP/2000/10			
DEPT. FILE No.: G94/00396	CERTIFIED IN ACCORDANCE WITH		
GOVT. GAZETTE OF:	THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979, AND REGULATIONS		GENERAL MANAGER DATE

Biting Insects (Saltmarsh Mosquito) Concerns:

The LES states that parts of the Terranora Broadwater SEPP 14 wetlands have been '*previously modified with the resulting effect being a change from a largely freshwater to a saline hydraulic system*'. Consequently there has been an increase in the populations of the Saltmarsh Mosquitos. The LES recommends the alteration of the wetland saline hydrology to a freshwater regime which would reduce the mosquito problem. DEC requires further evidence supporting the justification to alter the wetland hydrology to a freshwater regime for the purpose of reducing the mosquito problem.

Any clearing, levee construction, drainage work or filling within a SEPP 14 wetland is listed as 'Designated Development', requiring the preparation of an Environmental Impact Statement (EIS) and the approval of the DIPNR.

Biting Insects (Saltmarsh Mosquito) Comments:

Section 3.1.3.6 of the LES includes anecdotal evidence from Council Entomologist testifying to the ability of the wetland hydrology to be altered to a freshwater regime. Further studies are required to determine appropriate measures for the rehabilitation of the wetland areas and feasibility of mosquito management in the SEPP 14 wetland area.

Proposed Clause 53A(3)(b) includes specific provisions for a Wetland Rehabilitation and Management Plan. This Plan is to identify the way in which the wetland is to be restored and managed, to restore freshwater wetland values and minimise breeding habitat for saltwater mosquitoes and biting midges. Proposed development must comply with this Plan for Council to give consent.

The requirement for the preparation of an EIS and subsequent approval of the DIPNR is noted. However, such a process would be conducted external to the proposed LEP amendment.

Recommended Actions

No change to the draft LEP as a result of this issue raised by DEC.

Aboriginal Cultural Heritage Concerns:

The LES has not adequately addressed Aboriginal archaeological heritage. This assessment must include a search of the DEC's Aboriginal Heritage Management Information System (AHIMS) to ascertain whether any objects or places occur within or surrounding the study area, and undertake consultation with the local Aboriginal community and Land Council.

It is noted that comment was sought from the Tweed Byron Local Aboriginal Land Council with no response. The local Aboriginal community was not consulted. It is recommended that written advice from both these entities be sought.

Aboriginal Cultural Heritage Comments: NSW National Parks and Wildlife's (NPWS) correspondence dated 15 June 2004 contains the results of an AHIMS search for Area E. The AHIMS search identified that no Aboriginal objects or places occur within Area E. A number of sites occur outside the boundaries of Area E and would not be directly impacted by the development of Area E.

No response from the Tweed Byron Local Aboriginal Land Council to the Section 62 Consultation (under the *Environmental Planning and Assessment Act 1979*) was received. Further telephone calls, messages and facsimile messages were made to the Land Council on 3 and 4 June 2003 for which no response was received.

Significant ground disturbance from previous intensive agricultural practices has substantially altered the natural Area E landscape, decreasing any potential presence of Aboriginal artefacts. Aboriginal sites (including places and objects) are protected under the *National Parks and Wildlife Act 1974*.

Tweed LEP 2000 currently contains "Clause 44 – Development of Land within likely or known archaeological sites" which provides for the protection of aboriginal archaeological sites. As a consequence, future development proponents will be required to address this issue as part of any development application process.

Recommended Actions

No change to the draft LEP as a result of this issue raised by DEC.

Stormwater Management Concerns:

The DEC supports the preferred treatment Strategy Mitigation Option 4 (treatment train approach) in the LES which recommends the use of rainwater tanks for laundry, hot water, toilets and external uses grassed swales, amongst others. DEC also states that these stormwater management strategies should be a mandatory component of the Stormwater Management Plan to be developed and should be detailed in the draft LEP.

The DEC also ventured further comments regarding the proposed Stormwater Management Plan in the LES, including:

- Complimenting the 'redundancy concept' which builds a contingency to ensure that necessary performance is achieved.
- The stormwater management system costings assessment also fails to account for the financial benefits accruing from rainwater tanks by reduced demand on existing infrastructure and deferring the need for augmentation of the water supply system.
- The proposed low flow pipes from the wetlands appear to significantly improve the ability of the stormwater management system to mimic flows downstream of the site and should be a mandatory component of the Stormwater Management Plan.
- The assessment of stormwater quantity impacts does not appear to address the impacts of rainwater tanks in detaining stormwater flows. This issue should be addressed and the need for detention basins reconsidered.

- Slightly larger tanks (ie. 10000L) more effectively meet the demands of residents on the North Coast. It is therefore recommend that a 10,000L tank be considered as the minimum size to optimise the reduction in potable water demands.

Stormwater Management Comments:

A water quality assessment was undertaken for the urbanisation of Area E. The assessment included the estimation of expected stormwater pollutant loads and the performance and cost of various stormwater management strategies to meet Council's *Urban Stormwater Management Plan*. The estimated capital and maintenance costs provided in the LES were for the entire system and were not categorised as Council, developer or resident costs. It is a requirement that the developer provides all capital costs for the stormwater management infrastructure with the exception of the rainwater tanks. Residents typically meet rainwater tank installation and maintenance costs. Some Councils provide cash incentive to encourage their use.

It is expected that the demand for potable water would be lower for residents with rainwater tanks, resulting in lower water rates for residents. The installation of rainwater tanks may have additional cost benefits as the lower demand for reticulated water may defer the upgrade of existing potable water systems, but a total cost benefit analysis was not required as part of the LES and will not be undertaken at this time.

In response to DEC, Parsons Brinckerhoff have suggested that the low flow environmental pipe option be adopted for any stormwater treatment wetlands within Area E to better mimic natural flows. A long term water balance would be required to confirm the size of any low flow pipes to ensure that the wetlands do not drain and impact the health of wetland plants. These stormwater management plan provisions are to be included as part of the DCP for Area E.

The draft LEP (Appendix 1) currently requires a Stormwater Management Plan to be prepared for the site to the satisfaction of Council, and in accordance with the Tweed Urban Stormwater Quality Management Plan. It is considered that this, in conjunction with a DCP, provides Council with adequate statutory management of this issue.

Rainwater tanks will provide some benefit in reducing stormwater runoff volumes by retaining rainwater for household use. The MUSIC model used in the assessment of stormwater treatment strategies accounted for this on a regional scale by representing the rainwater tanks as a pond which could retain stormwater for meeting typical urban non-potable water demands. When the tanks (ponds) were full, excess flows were directed to the stormwater treatment system of grassed swales, bio-retention trenches and wetlands. As the model was run on a daily timestep over an average year, the annual stormwater volumes retained and used by residents could be estimated. The model estimated that the developed unmitigated average annual flow of 3722 ML/yr could be reduced to around 3300ML/yr with the treatment train stormwater management strategy that includes rainwater tanks, and wetlands.

The water quality modelling assumed each allotment would have a 7,500 litre rainwater tank. The tanks were assumed to have a low flow bypass of 1l/s to allow for the bypass of first flush. Once the tanks are full, any excess water will overtop the storage and be directed towards the swales and bio-retention trenches. The size of the rainwater tanks was based on a typical household tank size, however a long term daily water balance could be undertaken to determine the optimum size for the Tweed Area E.

The requirement for the stormwater management strategy identified as Stormwater Mitigation 4 Option (treatment train approach) and the undertaking of long-term water balance modelling to determine the low flow bypass requirements of stormwater treatment wetlands and the optimum rainwater tank size to ensure the maximum capture and re-use of rainwater should be included within the management guidelines of the DCP for the area.

Recommended Actions: No change to the draft LEP as a result of this issue raised by DEC.

Contaminated Land Concerns:

The DEC supports the proposed conditions contained in Section 4 of the LES requiring a proponent to undertake detailed contamination assessments and necessary remedial works at the development application stage. DEC recommend that these assessments be undertaken as early as possible so that Council can ensure the land is suitable for its intended use.

Contaminated Land Comments:

Council engaged the services of Mr Marc Salmon (JBS Environmental), a New South Wales EPA accredited site auditor (for contaminated land) to further investigate contamination within Area E. In correspondence dated 15 March 2004, JBS Environmental's interim audit advice stated *'no information was revealed during the review of (relevant) documents or a site inspection which would preclude the rezoning of the site to a residential with accessible soil landuse provided measures are in place to ensure that the potential for contamination and the suitability of the land for any proposed use are assessed once detailed proposals are made'*.

Clause 53A(2)(b) in the draft LEP amendment requires that the extent of contamination be known prior to development consent. This will ensure that an area can be remediated to the required EPA Standard to enable the desired use.

Further to the general assessment for sensitive land uses, prior to any works occurring, it is recommended that a statutory Site Audit Statement approving the proposed land use be secured from a NSW accredited site auditor for each prospective allotment, infrastructure areas, and all proposed public access areas.

Recommended Actions:

No action required to draft LEP as a result of this issue raised by DEC.

Sewerage Management Concerns:

The DEC noted that the proposed Area E development (and its predicted population) will be serviced by the Banora Point Sewerage Treatment Plant, bringing it very close to its maximum capacity. DEC also noted that the consent to upgrade the plant has been granted, but it is understood works have not yet commenced.

Sewerage Management Comments:

The existing Banora Point sewage treatment plant has existing capacity for the Area E population, but would need upgrading to support all proposed developments within its catchment. Council is currently reviewing what options they have to upgrade the treatment capacity and identify what effluent discharge and reuse options are available to meet current environmental discharge standards.

Recommended Actions:

No changes to the draft LEP are required as a result of this issue raised by DEC.

4. Mineral Resources NSW

Mineral Resources NSW is satisfied that proposal will not adversely impact on potential or existing mineralisation or extractive resources.

Comment: Mineral Resources NSW comments are noted.

Recommended Action: No change to the draft LEP as a result of the issues raised by Mineral Resources NSW.

5. NSW Rural Fire Service (RFS)

The NSW RFS support the proposed draft LEP Amendment, however indicated the LES does not adequately address bushfire issues, with the need for residential development to comply with *Planning for Bushfire Protection 2001*. In particular access/egress, water for fire fighting activities and provision of Asset Protection Zones.

Comment: Clause 39A "Bushfire Protection" of TLEP 2000 also provides for bushfire issues to be addressed at the development application stage. The *Planning for Bushfire Protection 2001* requirements for access/ egress, provision of Asset Protection Zones and water provision for fire fighting can be dealt with through a specific Development Control Plan objectives (which will subsequently need to be considered by the developer when they formulate the Master plan) at the development application stage. Clause 39A "Bushfire Protection" of TLEP 2000 also provides for bushfire issues to be addressed at the development application stage.

It is considered that the NSW Rural Fire Service State interests are a consideration in the preparation of the Development Control Plan.

Recommended Action: No change to the draft LEP required.

6. Tweed Shire Council

Council's Traffic and Transport Engineer raised nine issues from Section 3.8 (Traffic and Access) of the LES that required clarification. Attachment B provides an amended Section 3.8 (Traffic and Access) reflecting issues raised by Council's Traffic and Transport Engineering section as well as anomalies identified during the public exhibition of the LES and draft LEP. These issues are discussed below.

External Trip Concerns: Section 3.8.2.1 of the LES claims most external trips are to the Pacific Highway. Assuming 'external' means outside Area E, Council traffic data indicates that only 50% of traffic access the highway, the remainder accessing Tweed Heads and Tweed South.

External Trip Comments: Section 3.8 shown as Attachment B reflects the information supplied by Council indicating about 50% of the traffic associated with Area E is likely to access the Pacific Highway. This information supersedes the previous conceptual work undertaken by PB in the LES. This information also reflects the work undertaken by Vietch Lister Consulting (VLC) whose Strategy was adopted by Council at its Ordinary Meeting of 2 March 2005.

Recommended Action: No change to draft LEP as a result of this issue.

Public Transport Concerns: Section 3.8.2.4 of the LES states that the bus routes need to be amended to serve Area E from early in its development. This is considered essential and for this to occur effectively and efficiently, the Mahers Lane extension needs to be completed at Stage 1. It is recommended that this is a condition of the LES and should be referred to the Public Transport Group for comment.

Public Transport Comments: This requirement is identified within the draft LES in Section 3.8.2.4 and Section 3.8.7.4. This issue can be addressed through the draft DCP for the study area.

Recommended Action: No change to the draft LEP as a result of this issue.

Traffic Volume Concerns: Table 3.4.2 of the LES appears to be incorrect stating an existing capacity of only 9000vpd which then causes volume/capacity ratios to be well over capacity (ie Terranora Road v/c = 1.61 or 61% over capacity). If in fact this table is not corrected then the LES should not be considered. The data in the table does not reflect the dialogue in Section 3.8.5.2 which claims to have a highest v/c of 1.16.

Traffic Volume Comments: Table 3.4.2 as exhibited is erroneous. The correct Table 3.4.2 is shown in Attachment B. This Table illustrates the current estimated traffic carrying capacity and also the remaining available capacity on the adjoining road network. This traffic analysis reflects the findings of the work undertaken by Vietch Lister and adopted by Council. Council adopted the work undertaken by Vietch Lister for Banora Point and Tweed Road Development Strategy at its Ordinary Meeting of 2 March 2005.

Recommended Action: No change to the draft LEP required.

'Traffic Volume Split' Concerns: Section 3.8.5.2 of the LES assumes certain traffic volumes splits. It is not indicated where from or why these were chosen, together with the accuracy of the comments and tables. However the Veitch Lister Consulting (VLC) review of the TRDS indicates through Council's model that traffic from Area E can be accommodated provided the TRCP works program is implemented.

The LES allocates many pages to reproducing VLC's findings and Council's works program but insufficient space to assessing the unacceptable impact of Area E traffic 'short cutting' through Amaroo Drive and other local roads.

'Traffic Volume Split' Comments: Attachment B now reflects the result of the work undertaken by VLC on behalf of Council (only recently made available by Council) as this work supersedes the previous conceptual work undertaken by PB in the draft LES. In this regard Section 3.8.5.2 of the LES now highlights the likely distribution of traffic given the road network structure and likely directional distribution of traffic. In particular, the report now illustrates the likely dissipation of Area E traffic through the adjoining road network.

Attachment B includes comments in relation to the potential 'rat running' through the adjoining local road network. In addition, it indicates that further investigations are required as part of more detailed Local Area Traffic Management (LATM) treatments in response to the development of Area E. These studies would need to be undertaken prior to the development of Area E and would require significant community input in relation to the proposed LATM treatments. These requirements can be imposed through the draft DCP, requiring these works to be undertaken at the cost of the developer and approved by Council Engineers.

Further, draft DCP (Attachment C) illustrates 3 alternate potential routes for the Mahers Lane extension. If the preferred route (Option A) is implemented the issue of the potential "rat-runs" through Amaroo Drive could possibly be reduced or eliminated. This option would also alleviate further traffic pressures on Terranora Road.

Recommended Action: No specific amendments to the draft LEP are required as a result of this issue.

Intersection Design Concerns: Section 3.8.6 of the LES proposes a cross roads intersection with Fraser Drive and Amaroo Drive via traffic signals or a roundabout.

Both treatments are not considered satisfactory, as they would facilitate Area E through traffic onto Amaroo Drive identified by VLC as undesirable and clearly it will be a community concern. Traffic signals require RTA NSW approval which is unlikely in any case as they would be relatively isolated. The signals and roundabout have excessive queue lengths for the scenario modelled and are considered unacceptable. Council is concerned how the intersections' worst level of service (LOS) is 'B' & 'D' respectively. The full AASIDRA results for each intersection should be included as they would enable proper scrutiny and allow the approaches to be assessed.

This section needs to be reviewed with a more acceptable intersection treatment that is separated from Amaroo Drive and including physical traffic control devices to restrict 'rat running' through Amaroo Drive.

Intersection Design Comments: Attachment B now reflects Council's requirements. It is noted that the proposed intersection arrangements are 'schematic concepts'. As the intersection concepts are not final designs they will be subject to further investigation at later stages, particularly in the detailed planning for the development of Area E. The required intersection analysis results (AASIDRA) have also been provided as an attachment to the LES.

Attachment B indicates that Council's preferred level of performance for intersections during peak periods is a LOS 'C' to 'D'. These requirements can be imposed on developers through the DCP. These works would need to be undertaken at the cost of the developer and approved by Council Engineers.

Recommended Action: No require specific amendments to the draft LEP required as a result of this issue.

General Proposal Concerns: The proposals included in Section 3.8.6.2 of the LES are not considered appropriate and are too vague, including simply stating LATM is required in conjunction with public consultation. The LES needs to recommend a solid outcome such as a condition of any development that this will be required. Vertical displacement devices will not be approved due to noise issues and similarly single lane slow points are not acceptable and should be removed from the LES.

Much more detailed work is required on the Fraser Drive - Mahers Lane intersection and all AASIDRA input and output data is to be included in an Annexure.

General Proposal Comments: Attachment B reflects Council's requirements in relation to the LATM treatments. It is also noted that potential LATM concepts can only be nominated at this stage of the LES as further work is required to determine the most appropriate LATM treatments. These requirements can be imposed on developers through the DCP. These works would need to be undertaken at the cost of the developer and approved by Council Engineers. These works are to be included as part of a S94 Plan specific for the study area.

Attachment B indicates that the Fraser Drive-Mahers Lane intersection is only a conceptual intersection arrangement as the location and route of the Maher's Lane extension (particularly where intersecting with Fraser Drive) is yet to be finalised. The intersection concept is not a final design and thus it will be subject to further investigation at later stages of the process (DCP, S94 Plan and development applications) and prior to the development of Area E. The required AASIDRA intersection analysis results have been included as Annexure B of this Report.

Recommended Action: No specific amendments to the draft LEP required as a result of this issue.

7. Roads & Traffic Authority

The RTA lodged an objection to the draft Plan. The report presented to Council at its ordinary meeting of the 16 February 2005 detailed the grounds of the objection and provided a summary of the issues. At the time it was reported that Council officers have been meeting and trying to negotiate an outcome with the RTA over the last 8+ months. These discussions have proven unsuccessful. Councils Traffic and transport engineers advised the impact of Area E are relatively small and that the RTA would need to upgrade that section of the Pacific Highway and its interchanges at some time in the future regardless of Area E.

Notably, whilst a State Agency objection remains over the proposed LEP Amendment Council is unable to use its S69 Delegation to forward the Plan to the Minister. It will be necessary for Council to forward the Plan to DIPNR pursuant to S68 and request they forward the Plan to the Minister. It will be DIPNR's responsibility to assess the unresolved objection presented by the RTA.

Recommended Action: No change to the draft LEP as a result of this issue raised by the RTA.

8. Department of Education and Training (DET)

The DET did not make a formal written submission during the public exhibition period. However, on 16 June 2003 the Department indicated the need for a primary school, aligned with the development of Area E. They stated that if new major residential areas proceeded, further government school provision would be required as part of the necessary human services infrastructure to cater for the population, potential a new primary school in Terranora. This position was reflected in the local environmental study prepared to support the draft LEP.

During and after the exhibition period discussions were held with DET to confirm their position and to clarify their requirements. On 27 October 2004 DET advised that their general advice on 16 June 2003 was based on a potential 8000 person population as per Council's Residential Development Strategy 1991. As the LES forecasts a much less lot yield and consequently total population for the study area, as well as having considered other demographic, geographic and logistical factors the Department is of the opinion that future government primary school enrolments likely to be generated from the new development will be able to be accommodated within the Department's existing local primary school infrastructure.

Recommendation Action: No change to the draft LEP as a result of the issues raised.

PUBLIC SUBMISSIONS

The remaining 124 submissions were received from community members, including residents and businesses. A Submissions Matrix has been prepared providing comments on the grounds of the submissions (refer to Annexure B).

A number of common grounds of objection were identified against which a number of submissions were received. The following is a summary of these grounds together with recommended actions.

9. Lindisfarne Anglican Secondary School

Lindisfarne School outline that the school site is only Zoned in part 5(a) Special Use (School) in the current *Tweed LEP 2000*. The current extent of the 5(a) Zone is also replicated in the proposed LEP Zone map and does not reflect the entire school site holding.

Lindisfarne School submit that the proposed 7(d) zoning on their site extends onto land that has no environmental significance and request that it be changed to 2(c). Further, the proposed 2(c) zoning will place a financial burden on the school as regards rates imposed on the land which would be higher than under a 5(a) Zone.

Comment: The proposed 7(d) Zone over the eastern portion of the Lindisfarne School site covers a section of Camphor laurel 'dominant closed to open forest' that includes at least 11 *Macadamia tetraphylla* species. This species has 'Vulnerable' status under the *Environmental Protection and Biodiversity Conservation Act 1999* and *Threatened Species Conservation Act 1995* (amongst others) and as such this area should be conserved through the retention of the existing 7(d) Environmental Protection (Scenic/ Escarpment) Zone. Further the Department of Environment and Conservation has recommended that environmental protections Zones should encompass the full extent of the drainage lines, including any required buffers.

The 2(c) Urban Expansion zoning proposed on the balance of the school site provides flexibility in choice as to whether it used for expansion of the education premises or a non-educational use (eg residential development). Internal Council advice determined that the school property is not rateable. On this basis the school confirmed in correspondence dated 24 May 2004 that they accepted the 2(c) Urban Expansion zoning.

Recommended Action: As a result of issues raised by the Lindisfarne School, it is recommended that:

- On the proposed LEP Zone map, the 7(d) Environmental Protection (Scenic/ Escarpment) Zone is extended to include buffers to the ecologically significant habitat in the channel located near the eastern property boundary of Lot 2 on DP 1018747, but not so as to encroach on the proposed extents of the 5(a) Special Use (School) zone. (Refer to Appendix B).
- On the proposed LEP Zone map, the 2(c) Urban Expansion Zone is retained for the balance of the school site (Refer to Appendix B).

10. Agricultural Land Viability

Nineteen (19) submissions were received objecting to the proposal, generally on the following basis:

- Area E contains prime agricultural land and is a highly valuable resource in the Shire. Retain the present agricultural protection zoning
- Guidance from NSW Coastal Council & Department of Agriculture is ignored regarding recognition of the agricultural land value
- Land use conflict will continue between farming practices and urban uses (including existing subdivisions)

Two submissions were received supporting the proposed development with the main grounds raised generally being that:

- Proposed residential development will reduce impacts from existing farming activities
- Fragmented farmland is out-competed by larger enterprises and thus no longer viable

Comment: The LES includes a comprehensive analysis of the viability of the productivity of agricultural land in Area E. The long-term productivity of traditional row cropping in Area E is significantly curtailed because it can only be sustained in very limited areas. The agricultural land is well suited to intensive production of the chosen row crop, typically ladyfinger bananas. However, the economic viability of Area E for such crop production is marginal.

Section 3.9 of the LES identifies that there is a long, sustained trend away from intensive use of agricultural land in Area E, resulting from:

- limited farming returns;
- the potential conflict with encroaching development and development pressures;
- soil and organic matter decline;
- continued risk of soil erosion and environmental impacts;

The Northern Rivers Farmland Protection Project (Lismore Living Centres, 2003) aims to support agriculture by identifying the most important lands for agriculture and protecting such land from the encroachment of urban development. This Project categorises and maps agricultural lands, as either 'State' or 'Regional' importance. Area E is not included as Significant Farmland Protection Areas. Area E's omission from these maps is a reflection of the lands reduced agricultural significance to the regions farming economy.

The *Draft Interim Strategic Plan- Cobaki/ Bilambil Heights/ Terranora 1995* indicates that the market advantage of Area E to main southern markets is diminished from post-harvest storage and transportation systems from Queensland horticultural districts. (p.35). Area E properties are therefore exposed to the effects of low sustainability of production caused by '*severe physical shortcomings of the land*', particularly with regard to the inability to use significant agricultural mechanisation.

Further, the *Draft Interim Strategic Plan* indicates that of the 164.4 hectares of row crop land, '*78.7% comprises land ranked (as) Class 3, 4 and 5 reflecting major physical constraints to continuous cultivation*'. Production systems in the row crops on the cross slope rock terraces are consequently labour intensive. Further, the '*farms are now closely surrounded by residences, resulting in conflict with farming operations. Broadscale approaches to pest and disease control are precluded by the proximity of houses*' (p.36).

With regard to Area E, the *Draft Interim Strategic Plan* concludes by stating that the approval of the NSW Department of Agriculture (DPI) must be sought if Council supports rezoning applications for this land.

NSW Agriculture (DPI) previously stated in correspondence dated 10 February 1995 to previous consultants dealing with the site, that it will not oppose the rezoning of lands adjoining Mahers Lane providing that it goes to a residential zoning.

The Department of Primary Industries (DPI) submission during the public exhibition period acknowledges and concedes the inevitability of the subject land being developed for urban purposes. Their submission is discussed in item 1.

The change in zoning from 'Agricultural Protection' to 'Urban' is in accordance with Clause 7 of the *North Coast Regional Environmental Plan* and Clause 122 of the *Strategic Plan 1996*. The subject site is also identified as an urban release area within Tweed Futures – Tweed Strategic Plan 2004-2024.

Rezoning the land from a rural use to urban development is supported by the findings of the LES, compliance with past reports and strategies, and acknowledgement received from the State in the form of the Department of Primary Industries.

Recommended Action: No change to the draft LEP as a result of the issues raised

11. Appropriateness of the 1(c) Rural Living zoning

Twelve (12) submissions were received objecting to the proposal on the basis of this issue. The main grounds raised were generally:

- The 1(c) Rural Living zoning is more appropriate to Area E (similar to Terranora Ridge).
- Suggestion of rezoning to 1(c) Rural Living will minimise any habitat changes.
- Area E is an environmentally sensitive area and should be Zoned 1(c) Rural Living
- The 1(c) Rural Living Zone together with extensions to existing roads (eg Parkes Lane, Market Parade) will promote the 'garden suburb' concept

Comment

The *Tweed Residential Development Strategy 1991* historically recognised Area E as a potential urban growth area for residential development (as opposed to recognition in a Rural Residential Strategy). The Residential Development Strategy provides for urban growth in key locations, of which Area E is '*the logical extension of urban development within... the Shire*' (p. 31). As such, allotment densities at a residential or urban scale within the suite of Residential Zones are intimated at by the Strategy to 'accommodate an additional 8,000 persons' (p. 31).

The LES has revaluated the potential population forecast estimating only approximately 3,500 persons population for Area E. Rezoning the land to 1(c) Rural Living Zone instead of an urban zoning would result in a population considerably less than that envisaged by the Residential Development Strategy in an area targeted for urban growth. The resultant low density population may lead to inefficient and increased costs for infrastructure provision or services delivery. Rural living development would be an impediment to urban growth and the population densities recognised in the *Tweed Residential Development Strategy 1991*.

The issues raised in the *NCUPS 1995* is a State Government Planning policy to manage residential land on the North Coast. With respect to rural living areas, it is notable that the then Department of Planning concluded in the *North Coast Urban Planning Strategy 1995* (NCUPS 1995) that *'current rates and forms of rural residential development are not sustainable in the longer term in respect of environmental, economic and social needs. They use large areas of land solely for the purpose of housing and lead to additional energy use, mainly for transportation. They can sterilise the use of... land resources. They often degrade the environment by... (polluting) waterways and aquifers and reduce flora and fauna habitat areas. They create social needs and demand which cannot be met without significant costs to the wider community'* (p.9). The Strategy proceeds to say that *'in areas near the coastal towns, where urban land is at a premium, rural residential development can significantly impede future urban growth'* (p. 15).

Given the above criteria stipulated by NCUPS above, it is considered that the location of Area E lends itself more toward urban development rather than rural residential development. Further, Area E is a pocket of land situated between Banora Point and Terranora Village. From a planning perspective the development of Area E for urban purposes appears a logical progression/infill of urban development subject to urban design considerations. Developing a pocket of rural residential land between two existing significant urban residential areas would not be considered sound planning.

Submissions indicate zoning the land to 1(c) would minimise the impact on environmental habitats. Irrespective of the use of 1(c) Rural Living or 2(c) Urban Expansion Zone, areas of significant habitat have been identified in the LES, and these environmental values will be safeguarded through Zones 7(a) Environmental Protection (Wetlands and Littoral Rainforest) and 7(d) Environmental Protection (Scenic / Escarpment). As a result of the Department of Environment and Conservation's submission, increased habitat buffer areas and inclusion of other significant habitat areas will further facilitate habitat conservation (this issue is discussed in more detail in Submission 3).

It is acknowledged that the development of larger lots commensurate with the 1(c) Rural Living Zone may result in lower densities that generally facilitate protection of the Area E scenic environment. However, transitional 'zones' comprising larger lots (ie potentially in the order of 1200m²+) can be provided to habitat areas, ridgelines and existing rural living areas in the vicinity of Parkes Lane/ Market Parade, as a buffer. Refer to Item 22 and Appendix C which provides a proposed transitional precinct.

Detailed investigations undertaken during the LES process have found that there is no planning impediment to zoning the land 2(c) Urban Expansion. The analysis has determined the site is suitable to accommodating a 2(c) urban environment.

Utilisation of the 1(c) Zone together with connections of proposed roads into Parkes Lane and Market Parade (for example) raises concerns of 'rat running', safety and potentially associated amenity impacts. The draft DCP for Area E acknowledges the potential rat running and restricts the traffic movements through Parkes Land and Market Parade (refer to Attachment C).

In summary a combination of detailed analysis and assessment and compliance with State Government policy, Council's Residential Development Strategy, Strategic Plan 2000, Tweed Futures - Tweed Strategic Plan 2004-2024, and the LES demonstrate the site can support an urban designation rather than a rural residential zoning.

Recommended Action

No change to the draft LEP as a result of the issues raised.

12. Appropriateness of the 2(c) Urban Expansion zoning

Twelve (12) submissions were received objecting to the proposal on the basis of the above issue. The main grounds raised were generally:

- The 2(c) Urban Expansion zoning would not reflect the urban character of the area, and would not allow Area E to be a logical extension to Banora Point
- The 2(c) Urban Expansion zoning will allow forms of development, including residential development forms (eg cluster houses) that are not foreseen for the area
- The LEP should allow for other suitable development needs, including shops, community infrastructure, schools and recreational areas, as a result of the future residential development

Comment

Within the suite of Residential Zones, the 2(c) Urban Expansion Zone allows for a range of uses generally commensurate with an urban setting. The utilisation of the 2(c) Urban Expansion Zone is consistent with the identification of Area E within the *Tweed Residential Development Strategy 1991* as a major residential release area. The foreseen ultimate development of Area E is aligned with the objectives of the 2(c) Zone including:

- "... *mainly residential development focused on multi-use neighbourhood centres*" and "*optimum utilisation consistent with environmental constraints*" (primary objectives)
- allowance of "*associated non-residential development which meets the recreation, shopping, commercial, employment and social needs of future residents*" (secondary objective)
- "*to ensure that sensitive environmental areas... are protected*" (secondary objective)

- *“to enable planning flexibility to achieve the other objectives of the zone by providing detailed guidelines through development control plans”* (secondary objective)

A range of non-residential development (eg commercial, community facilities, open space etc) is required for Area E to support the residential component of the development to create a sustainable liveable community. The proposed 2(c) Urban Expansion Zone provides flexibility in the planning approach supplemented by a DCP and Masterplan, allowing for this through the completion of the associated supporting planning documents such as a Development Control Plan. Refer to Attachment C for a draft copy of the proposed DCP for Area E. The draft DCP provides a structure plan outlining the proposed land uses on site. These provide for a Residential Precinct (average allotments of 800m²), Residential Transition Precinct (minimum lot size of 1200m²), Village Centre Precinct (provides for retail, commercial activities, community facilities and medium density development), and an Environmental Precinct which reflects the proposed Environmental Protection Zones.

The 2(a) Zone, pursuant to LEP 2000, is more restrictive and does not provide for uses such as retail shops, commercial uses, refreshment premises, markets etc. The 2(a) Zone does not afford the same flexibility as that provided by the 2(c) Zone. The 2(c) Zone also provides for a greater variety of residential development whereas the 2(a) Zone generally restricts development to single detached housing and lower density residential development.

The use of the 2(c) Urban Expansion Zone for the Area E residential component is consistent in approach with the development of other broad hectare residential areas which also include associated non-residential development, but are supported by a DCP.

Area E is affected by SEPP 71 – Coastal Protection. This invariably means that zoning boundaries are not flexible and Council is unable to utilise the flexibility clauses provided for within TLEP 2000 at the development application stage. This clause can prove helpful at the development application stage when as a result of more detailed on-site field surveys and changing circumstances the zoning of the land may not necessarily reflect the topography of the land or the ultimate potential of the land. The ability to employ flexibility clauses of the LEP are considered useful. If the proposed draft LEP identified zones such as 2(a) Low Density Residential Zone, 2(c) Urban Expansion Zone, 3(b) General Business Zone, and 6(a) 6(b) Open Spaces zones, 5(a) Special Uses Zone a degree of certainty would be provided. However, if at a latter date through detailed field survey it is found that there is an anomaly to a zoning boundary or if a subdivision plan doesn't not fully conform with the exact zoning boundaries it would be necessary to amend the LEP and once again go through the entire LEP amendment process, a long process that would be avoided if more flexible provisions were employed. It is proposed to zone urban land 2(c) Urban Expansion and manage the urban uses on site through a proposed DCP for the area. This would provide for a degree of certainty of the land uses to be provided on site, the scale/density of these uses, and where these uses are to be located. It is considered this implementation process would provide for enough certainty and flexibility to ensure appropriate management of the site.

The DCP can be prepared to ensure future development on site will be integrated with the existing surrounding community and responsive to the topography and environmental attributes of the area.

Recommended Action

No change to the draft LEP as a result of the issues raised.

13. Lot Sizes

Thirty one (31) submissions received objected to the draft LEP on the basis of the current proposed lot sizes:

- The LES outlines an average not minimum allotment area of 800m², as outlined in the *Draft Interim Strategic Plan 1996* or *Strategic Plan 2000+*.
- Allotments of 800m² or less would degrade visual amenity and result in greater stormwater run off due to increased hardstand.
- The subsequent Development Control Plan needs to outline minimum allotment areas of 1000m² - 2000m² particularly for steep slopes and visually prominent areas and where adjoining ridgelines or existing Park Living areas.
- Without the certainty of an approved masterplan proposed allotments 800m² or greater will be subdivided in future.

Some submissions supported the draft LEP, advising the proposed average 800m² allotment area is consistent with existing allotment areas in Terranora, including the Terranora Ridgeline.

Comment

Policy and Action Item 122 of the *Strategic Plan 2000+* identified Area E should contain 'a relatively high proportion of large residential lots (ie minimum size 800m²) because of existing development and scenic values'. The Strategic Plan is a broad Shire-wide planning instrument. An LES undertakes a more detailed examination of the subject site. It is not until a local environmental study is undertaken that a more detailed assessment is undertaken and a determination of appropriate allotment sizes is made. In this instance the LES has determined the site is capable of sustaining a variety of different sized allotments averaging 800m². This provides for lots less than and greater than 800m² depending on the topography of the area. Further, Strategic Plan 2000+ also provided for the definition of areas of potential dual occupancy and medium density development. The draft DCP in Attachment C provides for the proposed Village Centre Precinct.

It is recognised that allotment sizes have to be sympathetic to the topography of Area E and as such, larger allotments are appropriate as a transition to existing rural residential allotments; adjoining ridgelines; visually prominent areas; and potentially environmentally significant areas. A transition precinct is illustrated in the draft DCP (Attachment C) and provides for minimum size allotments of 1200m². Council has previously adopted a minimum allotment size of 1,200m² in similar circumstances in the Black Rocks urban release area.

The transitional allotment size to external 1(c) Rural Living zone and rural residential development is of importance if Area E is to achieve seamless visual integration with surrounding development. The residential transition precinct achieves this through the provision of large allotments and through the requirement of vegetated buffers.

Recommended Action: No change to the draft LEP as a result of the issues raised.

14. Planning Framework

Thirty-two (32) submissions were received regarding the statutory process for the LEP amendment and development of Area E. Thirty-one submissions objected to the proposal on the basis that:

- It was not supported by a Master Plan to provide certainty of the final development form and outcomes. In particular, aspects such as allotment size, location of open space, and transport planning considerations should be defined and identified in the Master Plan.

One submission was received supporting the current statutory process.

Comment

From the grounds of the submissions there appears to be a general misunderstanding of the statutory process for the development of Area E, including the role and timing of a Master Plan.

- The term 'Master Plan' is defined in Section 17, Part 5 of *SEPP 71 – Coastal Protection* as '*a document consisting of written information, maps and diagrams that outlines proposals for development of the land to which the master plan applies*'. A Master Plan is usually required to be prepared by the developer under SEPP 71 at the development application stage in accordance with the site provisions in the LEP amendment and Development Control Plan Guidelines. It will provide certainty of the final development form.

The LES and proposed LEP amendment have been prepared in accordance with the statutory process outlined under Division 4, Part 3 of the *Environmental Planning and Assessment Act 1979* respectively. The Consultant's Brief includes preparation of a DCP to support the proposed LEP Amendment. The LEP amendment process for Area E has not included the preparation of a Master Plan because this has been undertaken at the development application stage and has been the responsibility of the developer. The developer will be required to prepare a Master Plan in accordance with Part 5 'Master Plans' of *SEPP 71 – Coastal Protection*. The Master Plan will provide final certainty of development form. It is to be prepared in accordance with the criteria identified in Section 20 of Part 5 and the broad concepts in the DCP.

Verbal advice from DIPNR has confirmed the DCP could form a statutory component of the LEP amendment, if it is gazetted (and dated) at the same time as the proposed LEP amendment. In this way it would form the basis for regulating the final subdivision pattern in the Master Plan. Council has not previously required the preparation of a DCP to accompany amendments to the *Tweed Local Environmental Plan 2000*. Similarly, the preparation of a DCP is not a statutory or State Agency requirement at this stage of the LEP amendment process.

Despite this, implementation of a DCP is considered appropriate, and a draft DCP has been prepared for the site to manage future developments of the site. Refer to Item 22 for further discussion of this issue.

In consideration of whether the preparation of a Master Plan is required at this point in the LEP amendment process, it is significant to note that DIPNR has not identified a requirement for same or recommended a departure from the statutory process outlined in the *Environmental Planning and Assessment Act 1979*. On this basis, there does not appear to be a significant reason to depart past Council practice and from the statutory process for the preparation of the LEP amendment (and associated documents) set down in the Act.

It is considered that the traditional approach adopted by Council in the past of effecting the LEP Amendment, followed by the management of the land through a DCP and assessing development through a Master Plan at the DA stage is adequate and appropriate for the development of this land. The draft DCP is nearing completion, and a S94 Contribution Plan for the site will be finalised providing Council with adequate statutory planning controls to manage development of Area E. The comprehensive planning framework of an LEP supported by a DCP is considered resilient enough to appropriately manage Area E.

Recommended Action

No change to the draft LEP as a result of the issues raised.

15. Compensation

Two submissions were received objecting to the proposal raising issues of compensation. The main grounds raised were generally that a reduction in property values would occur as a result of inclusion of the 7(d) Environmental Protection (Wetlands and Littoral Rainforests) Zone on their property.

Comment

Section 24 of the *Environmental Planning and Assessment Act 1979* allows the draft LEP to make provision for protecting the environment; protecting or preserving trees or vegetation; and protecting and conserving native animals and plants (including threatened species, populations and ecological communities, and their habitats). Zoning land for Environmental Protection purposes does not trigger compensatory provisions in accordance with the Act.

The *Environmental Planning and Assessment Act 1979* only includes compensatory provisions under Section 27 for open space or a public school (as appropriate to Area E), but not for environmental protection. Where the future Structure Plan or Master Plan supporting the LEP amendment reserves land for use exclusively as open space or a public school, Council may acquire that subject land under Section 27 of the *Environmental Planning and Assessment Act 1979*.

Further, owners of allotments currently identified as 1(b1) Agricultural Protection Zone in the LEP have the right to develop one dwelling on their property. Irrespective of the inclusion of the property in the 7(d) Environmental Protection Zone, the land use rights are protected and the entitlement to develop a dwelling on their property still remains.

Recommended Action

No change to the draft LEP as a result of the issues raised.

16. Consultation in preparation of the LES and LEP

Twelve (12) submissions were received objecting to the proposal with regard to the lack of consultation in the preparation of the LES and LEP. The main grounds raised were:

- There was an inadequate, inappropriate or lack of community consultation in the preparation of the LES/ LEP
- No community consultation was undertaken prior to the LES and hence further consultation should be undertaken
- Consultation is requested/ recommended in the preparation of any Master Plan and Development Control Plan for the development of Area E.

Comment

The draft LEP and LES were exhibited between 17 March and 7 May 2004 for 52 days, clearly exceeding the minimum statutory requirement of 28 days.

A community information forum was also held on 29 April 2004 at the Terranora Community Hall. This forum presented a further opportunity for the community and interested persons to be updated on the LES and Draft LEP and to talk to technical staff in a small group setting.

There were no additional requirements for community consultation notified to Council by the Director-General, DIPNR.

Council has complied with, and exceeded the minimum consultation requirements under the *Environmental Planning and Assessment Act 1979* and associated Regulation for the preparation of a LES and draft LEP for Area E.

Recommended Action

No change is recommended to the LEP as a result of this issue.

17. Transmission Lines

Twenty four (24) submissions were received objecting to the proposal with regard to the above issue. The main grounds raised were that the 66kV electricity lines should not be erected 'overhead' but instead that all electricity lines should be placed underground for the purposes of visual amenity.

There were no submissions made supporting the current proposal of above-ground power reticulation.

Comment

The proposed mapping for the LEP Amendment includes both the existing registered easement and the corridor included in the current *Tweed LEP 2000* mapping. It is noted from correspondence dated 16 June 2003 that Country Energy have a requirement for an electricity transmission corridor. This correspondence indicates that the potential to reduce operational 'clearances exists (to the electricity line) *should the developers fund an underground proposal*'.

Verbal confirmation from Country Energy was obtained on 18 May 2004 that 'undergrounding' the electricity infrastructure **may** be possible, subject to:

- The mutual agreement and satisfaction of the provider, Council, community and potentially the developer (particularly funding)
- The undertaking of further environmental studies by a consultant commissioned by Country Energy
- A decision not in-line with the existing Country Energy policy stance (overhead powerlines). A 66kV line is not for household supply but for greater network reticulation.

The requirement of underground power will be included and implemented through the DCP.

Recommended Action

No change is recommended to the LEP as a result of this issue.

18. Visual Quality

Twenty six (26) submissions were received objecting to the proposal, generally on the basis that the urban development of Area E, the visual amenity of the area would be reduced or lost by:

- The effect of impervious surfaces such as rooves, roads, buildings and other infrastructure
- The need for retaining walls to afford development due to the slope of the land

- The subdivision of allotments into areas cited as '450m²-700m²', '400m² - 600m²' or 'blocks less than 800m²'
- Non-compliance with the Integrated Local Area Plan which outlined that only 'pockets' of houses should be developed

Two submissions were received supporting the proposed development with the main grounds generally being that the proposed development would:

- Retain the wetlands and rehabilitate habitat areas, thus having the affect of preserving or improving aesthetic values.
- Provide scope for coordinated development taking advantage of quality vistas for public areas and residential development.

Comment

The visual impacts resulting from development would include loss of open/ rural character through the transformation of the site from a rural to a residential area, together with associated cut and fill.

The visual impact of cut and fill, and associated retaining walls, has been discussed in Item 19 of this report. The visual impact from such structures, if not adequately regulated or controlled, would have the potential to be significant. The need for additional guidelines or provisions in the Development Control Plan regulating design parameters for retaining walls and cut and fill is considered important.

The open/rural characteristics of Terranora and Area E have been eroded due to urbanisation on the western and eastern boundaries, and ribbon residential development along Terranora Road. It is considered the impact of urban development on landscape values will be lessened by the preservation and rehabilitation of wetlands and other vegetation fringing Terranora Broadwater, together with the retention of vegetation along waterways and steeper slopes. This will break up the urban form of development thus preserving some characteristics of the current views to the site. To soften the impact of the built environment it is also proposed to provide vegetated buffers to ridgelines and adjoining rural residential properties. Provision of larger allotments (greater than 1200m²) along ridgelines will also provide opportunity for vegetation on site and greater spatial distribution between built structures. This is to be implemented through specific provisions within the DCP.

The Draft Interim Strategic Plan recognised that diversity of landscape elements is a key to the area's visual quality. This includes both vegetation and land use diversity and the need to ensure that no one particular land use dominates in any one or all areas. It is acknowledged that the existing rural landscape will be lost. The draft DCP (Attachment C) provides a series of development controls including rehabilitation of environmentally significant areas, open space areas, building design guidelines, cut and fill development controls, provision of larger lots, and the provision of vegetated buffers to help soften the impact of a built environment.

Preservation and rehabilitation of environmentally significant areas is an integral element to the development of Area E. To ensure this is effected, relevant provisions have been incorporated in the draft LEP, which are to be supported by a DCP. A S94 Plan is to be prepared for the site which will address the issue of financing the cost of the required EIS and rehabilitation plans and the necessary works, as well as the transfer of these lands to public ownership.

The potential impact of allotment size on visual amenity is discussed in Item 13.

Recommended Action

No change is recommended to the LEP as a result of this issue.

19. Cut and Fill

Twenty three (23) submissions were received objecting to the proposal with regard to the potential impact from resultant cut and fill of the site to facilitate development. The main grounds raised were that:

- Cut and fill should be minimised so that there is consistency between the existing rural environment and future urban development and to minimise the extent of retaining walls required (and their associated visual impacts)
- Limit the amount of cut and fill required through the use of appropriate allotment sizes and movement networks, commensurate with the topography.

Comment

The Area E topography will require some cutting and filling to afford development. However, this must be sympathetic to the existing topography to minimise impacts on visual amenity and the potential loss in character through transition from a rural to urban environment.

Council's requirements for cut and fill are regulated by Tweed *DCP No 47 Cut and Fill on Residential Land* and DCP 16 Subdivision Manual. Additional requirements, guidelines or provisions for maximum vertical retaining walls heights will be placed in the Area E DCP. (Refer to Attachment C). Also the provision of internal access roads will be planned 'along' contours. Refer to the draft DCP in Attachment C which provides cut and fill guidelines specific to Area E.

DCP 16 Subdivision Manual contains *Development Construction Specification C211 Control of Erosion and Sedimentation* which applies to cut and fill, including measures to prevent sedimentation, and erosion and sediment control.

Recommended Action

Cut and fill design guidelines are provided within the draft Development Control Plan for Area E (Attachment C). As this issue can be addressed by the DCP no change is considered necessary for the draft LEP.

20. Stormwater Discharge and Water Quality

Nineteen submissions were received regarding the potential stormwater and water quality impacts arising from the development of Area E. Seventeen submissions objected to the proposal on the basis that:

- Stormwater runoff has the potential to increase the siltation of Trutes Bay during heavy rainfall events
- Stormwater runoff has the potential to adversely impact on waterways, including the SEPP 14 wetlands, that are already under threat

Two submissions were received supporting the proposed development of Area E, on the basis that formalisation of stormwater management infrastructure would reduce the current water quality and siltation impacts to Trutes Bay (particularly from agricultural activities).

Comment

The stormwater and water quality analysis was undertaken with a high level of rigour in consultation with the DEC (former EPA). It included a greater degree of detail than is otherwise required by the EPA to facilitate 'rezonings'. It is noted that the high level of analysis exhibited for this project will be adopted by the EPA for future LEP rezoning amendments. Verbal discussions with DEC representatives praised Parsons Brinckerhoff's and Council's efforts in the analysis and assessment of the stormwater and water quality issues for Area E. They complimented the redundancy concept outlined in the LES. It is proposed to implement this stormwater management technique through the DCP.

The sedimentation of Trutes Bay is linked to a much larger catchment of which Area E is only a part. A review of the entire catchment and potential sediment sources would be required to identify what treatment measures are required to limit sediment loads entering Trutes Bay. The Area E development will potentially increase the volume of stormwater and stormwater pollutants, including Total Suspended Solids (TSS), entering Trutes Bay from the Area E catchment. Water quality modelling indicates that a fully urban developed Area E would increase annual TSS loads by around 80% from existing levels. The modelling also indicates that if suitable stormwater management treatment measures such as grassed swales and wetlands are used to treat stormwater runoff, that the TSS loads will be less than current levels. Trutes Bay will still receive relatively high sediment loads from other catchments, but the input from a developed Area E, with the right stormwater treatment measures, will be reduced by around 60% from current levels.

The earthworks associated with development (cutting and filling) usually causes the highest concentration of Total Suspended Solids (TSS) in urban stormwater runoff. The impact of development earthworks can be minimised by ensuring that best management practices are adopted and maintained during the construction period.

An Erosion and Sediment Control Plan should be required to identify what additional treatment measures are required to limit scour and erosion during the construction period. Erosion and sediment control measures during construction should also be provided by the developer in accordance with Council's *Code of Practice for Soil and Water Management on Construction Works* (Annexure A, Development Design Specification D7 - Stormwater Quality).

As noted previously within this report the DEC submission supports the preferred treatment Strategy Mitigation Option 4 (treatment train approach) in the LES which recommends the use of rainwater tanks for laundry, hot water, toilets and external uses grassed swales, amongst others. DEC also states that these stormwater management strategies should be a mandatory component of the Stormwater Management Plan to be developed and should be detailed in the draft LEP.

Recommended Action

As a result of issues raised by the DEC, it is recommended that a drafting change to the existing 53A(4) of the draft LEP amendment be made to include a requirement for:

- The stormwater management strategy identified as Stormwater Mitigation 4 Option (treatment train approach) in the LES to be mandatory (which by its nature includes the concept of 'redundancy'). Refer to Appendix B

21. Water and Sewer Infrastructure

Twenty-seven submissions were received regarding the provision of water and sewerage infrastructure for the development of Area E. Sixteen submissions objected to the proposal on the basis that:

- Current sewer and water infrastructure servicing Area E is not adequate to cater for large scale development
- An alternate site should be identified for the 3ML water reservoir required to service the site

Eleven submissions were received supporting the proposed development on the basis that:

- The development will improve infrastructure in the area and provide greater development opportunities
- The costs of implementing infrastructure upgrades could be borne by the residential expansion

Comment

The existing water and sewerage infrastructure for Area E is inadequate to cater for the proposed population. Previous Council studies and investigations have identified that a new 3ML water supply reservoir is required to store water and provide sufficient water pressure for supply to the residents of Area E. Attachment C provides a draft DCP for the area and identifies an alternate location for the reservoir.

The existing sewerage rising mains and pump stations do not have sufficient capacity to cater for the expected sewage flows from the fully developed Area E. A new rising main and three pump stations (for each sub-catchment) will be required to direct sewage to the Banora Point sewerage treatment plant.

The existing Banora Point sewage treatment plant has capacity for the Area E population, but it would need upgrading to support all proposed developments within its catchment. Council is currently reviewing what options they have to upgrade the treatment capacity and identify what effluent discharge and reuse options are available to meet current environmental discharge standards.

Recommended Action: No change is recommended to the LEP as a result of this issue.

22. Development Control Plan

The DCP is intended to be a statutory planning document that supports the aims and objectives of the draft LEP and is implemented to manage development of the area through design/development guidelines. The LES and draft LEP is generally a broad assessment of the capabilities of the site to support urban development. The LES identifies issues requiring detailed controls and considerations to be applied through a DCP and consequently assessment of development. The DCP is intended to provide detailed development controls specific to the site to ensure development is consistent with the character of the area and responsive to the topography and environmental qualities of the site and is integrated with surrounding land uses.

One of the issues raised by the community during the course of public exhibition has been certainty. The LEP is a planning instrument that has greater weighting than the DCP. It is considered that there is greater likelihood to vary from development guidelines stipulated within a DCP rather than those identified in an LEP. Hence, there is public perception that the development parameters identified in the DCP may not necessarily be adhered to resulting in development that may not necessarily have been originally envisaged. One manner in which to provide greater certainty is to incorporate the draft DCP as part of the proposed LEP in much the same manner that DCP 40 - Exempt and Complying Development is applied.

This option would provide a greater degree of certainty than a stand alone DCP. However, it would also mean that the DCP would be very inflexible. Any time the DCP would need to be amended Council would be required to follow the entire LEP amendment process, regardless of how minor the DCP amendment is. These timing and resource issues are currently being experienced with DCP 40 amendments.

Aside from DCP40, no other DCP's are implemented in this manner. Similarly other urban release areas such as Cobaki Lakes, Banora Point, Seabreeze Estate, Black Rocks Estate, Casuarina, Salt, Koala Beach were undertaken without a DCP or with a DCP implemented in the traditional manner as a stand alone document.

As referenced through parts of this report a preliminary draft DCP has been provided for Area E. A copy of this document is provided as Attachment C. Please note that this document is still a draft document and subject to further amendments before being formally presented to Council and placed on exhibition for public comment. The purpose of providing this draft DCP at this stage is to support the draft LEP. The draft DCP has been referenced through this report to demonstrate how some of the issues raised during the public exhibition process can be addressed by the DCP rather than through the proposed LEP document. The draft DCP addresses issues such as:

- Broad land use allocations (including general locations of the commercial facilities and community facilities, note that details as to the constituent tenancies would be subject to commercial demand and further investigation)
- Design Philosophy and Development Principles (including 'sense of place' and 'character' and overriding lot layout principles)
- Land Use and Plan Components (including densities and intents for the land uses identified in the Structure Plan, also includes Guidelines for large allotment transition areas)
- Utility Requirements (including water and sewerage headworks requirements water requirements for fire fighting, and design Guidelines for the provision of underground electricity transmission and distribution infrastructure)
- Commercial Requirements (identification of role and intent of the proposed commercial facilities in the overall hierarchy)
- Housing Requirements (including building heights for ridgelines, building forms, sympathetic colours, housing diversity, and additional cut and fill requirements supporting DCP No. 47 Cut and Fill on Residential Land)
- Community Facilities (identification of final facility requirements and threshold targets for provision, together with any Section 94 Contribution requirements thereof)
- Stormwater Management (further guidance on Stormwater Management plan requirements)
- Major Open Space System (including Guidelines for Structured and Casual Open Space and any unique Contribution requirements for Area E identified thereof)
- Environmental Protection (includes Guidelines and measures for the protection of significant environmental areas, together with bush regeneration plan requirements)
- Indicative residential densities (based on desired allotment sizes and transitional areas to ridgelines, existing rural living allotments and significant environmental areas)
- Bushfire management controls
- Indicative locations of open space and environmental areas for conservation
- High-level movement corridors (including the indicative route of the Mahers Lane extension and its intersection with Fraser Drive) but not detailed road layouts
- Bicycle and pedestrian networks, together with likely stops ('end of destination') for public transport

- Indicative locations for community facilities
- Indicative infrastructure locations for stormwater management and water reticulation (including the 3Ml water reservoir and rehabilitated/artificial wetlands for stormwater management purposes)

If Council were to implement the DCP in conjunction with the LEP, in the same manner as DCP 40, it would invariably mean the LEP process would need to be placed on hold pending the finalisation of the DCP, exhibition of the DCP and adoption by Council. This would delay the process for approximately 2-3 months. It is not considered necessary that the DCP needs to be rigid and restrictive by tying it to the LEP in the same manner as DCP 40. Development Control Plans are generally meant to be documents with development guidelines and controls that enable developments to be assessed on its merits. If a DCP is applied correctly by Council its development controls are effective and resilient when assessing development applications. Tying the DCP to the LEP, although providing certainty, may prove too restrictive and may lead to an inefficient use of time and resources if the document needs to be amended.

The statutory planning framework when implemented accordingly has generally proven resilient and rigorous. It is considered that if Council's LEP provisions are implemented appropriately in conjunction with the DCP then development of Area E can be managed appropriately and accordingly.

Recommended Action: No change to draft LEP required.

23. Traffic

There were approximately 57 submissions received concerning traffic issues. The main grounds raised included:

- Development will increase traffic on Terranora Road and streets around Banora Point.
- Development will further exacerbate existing traffic issues in the area (Terranora Road and Banora Point) creating safety concerns and traffic congestion.
- Objection to the path of the proposed Mahers Lane Extension.
- Provision of public transport (bus routes).
- Increase in traffic noise.
- Traffic impacts to existing 1(c) enclave (Parkes Lane).
- Proposed extension of Mahers Lane will reduce traffic impacts on Terranora Road.
- Development of key infrastructure needs to be in place prior to the development of Area E.

Many of the submissions received related to the potential impact of the additional traffic generated by Area E on the current traffic network and the ability of the traffic infrastructure to cope with the additional traffic volumes. The LES stipulates that certain external traffic infrastructure improvements need to be undertaken prior to the development of Area E. These include:

- Kirkwood Road extension;
- Upgrading of Fraser Drive;
- Upgrading of Leisure Drive;
- Upgrading of parts of Terranora Road
(Refer to Attachment B for a more detailed description of these future proposed transport improvements)

The LES concludes that the traffic impacts of the potential development of Area E are likely to be accommodated within the future road network proposed for the locality.

At its Ordinary Meeting of 2 March 2004 Council adopted the work undertaken by Vietch Lister Consulting (VLC) for the Banora Point and Tweed Road Development Strategy. As part of this Strategy VLC were requested to specifically investigate the impact of potential traffic generation on the local traffic network and the Pacific Highway for Area E. VLC found that Area E will produce increased traffic on the local road network, and to a lesser extent, on the Pacific Highway. "Area E" is expected to have some reasonably significant impacts on the road network in South Tweed Heads/Banora Point. However, the more significant impacts are on Shire roads which would be capable of absorbing them, or for which improvements are contemplated. VLC's only concern, in respect of the local area network, is the potential 'rat-run' through Amaroo Drive-Darlington Drive-Banora Hills Drive. While it appears that adequate capacity exists for the demands forecast on this route, VLC suggest that more detailed planning of Area E should aim to encourage greater use of Terranora Road.

The engineering analysis (VLC and PB) for the traffic issues pertaining to Area E concludes that the additional traffic generated by Area E can be readily supported by the future local traffic network. This invariably suggests that local roads will be operating at various capacities and standards considered acceptable from a traffic engineering perspective.

Although the traffic engineering standards are met, this does not necessarily mean that the social/community concerns expressed by the submissions are addressed. The submissions received relate mainly to the loss in amenity as a result of the extra traffic generated by Area E traffic. It is suggested, by the submissions received, that traffic congestion, noise and safety concerns are currently being experienced on the road network and Area E will further exacerbate the current problems being experienced.

Assessing the issue of amenity is invariably a difficult task because it is a subjective issue. The engineering standards are uniform nationally, and hence the road standards/capacities applied to Banora Point/Terranora are the same as that applied to other urbanised localities. Hence, what is considered acceptable to one urban community may not necessarily be acceptable to another community not used to "urban" traffic movement and flows. This appears to be the situation facing residents of Banora Point and Terranora, whose objection is based on the potential impact of Area E and the corresponding decline in the traffic amenity of the locality.

It can be argued that future road upgrades as detailed previously will partially help to address these concerns, however the current amenity of the local area will be affected.

The loss in traffic amenity is inevitably a product of urban growth. Increase in residents leads to an increase in traffic which will impact on existing local traffic patterns. As with other factors such as infrastructure, landscape character and amenity considerations, existing situations will always change and it is impossible to retain the status quo. The most important consideration is effectively managing these changes.

Future road upgrades, currently being investigated by the RTA of the Pacific Highway, will also contribute significantly to addressing local traffic movements and flows.

VLC found the impacts of Area E on the strategic road network will be small, relative to the future base volumes and conditions. Any improvements which address the forecast base conditions should be capable of handling the additional impacts of Area E.

VLC's findings support those of the LES prepared by Parsons Brinckerhoff.

Certain submissions raised the issue of potential rat runs through local streets. It is important to note that Attachment C provide a draft DCP for Area E. This draft document stipulates three (3) alternate routes for the extension of Mahers Lane with the preferred option running through part of the wetland and connecting with Fraser Drive north of Amaroo Drive. If this proposed route is implemented the potential issue of "rat-running" through Amaroo Drive would be avoided/decreased. This preferred option should also address the concerns of those people affected by the route illustrated in the LES during the public exhibition period. The potential alignment of the Mahers Lane extension does not need to be illustrated through the draft Plan and is addressed through the draft DCP. This issue can be deleted from the exhibited draft Plan (map).

Other issues raised during the exhibition period related to the potential impacts to the existing 1((c) Zone and Parkes Lane. Attachment C, draft DCP, provides for controls that restricts the movement of vehicles from Area E through to Parkes Lane. This provision should maintain the traffic concerns and amenity of residents within Parkes Lane.

The issue of public transport has also been addressed through the draft DCP provided in Attachment C.

Recommended Action: Amend the exhibited draft Plan by deleting the proposed alignment of the Mahers Lane extension in accordance with the map illustrated in Appendix 3.

24. Section 94 Contribution Plan

As part of the project Parsons Brinckerhoff have also been requested to prepare a S94 Contributions Plan for the site. This process has commenced, but has not yet progressed to a draft stage. The S94 Plan is envisaged to include:

- Preparation of an EIS and rehabilitation plan for the SEPP 14 Wetland and environmentally significant areas;
- Dedication of these environmentally significant lands to Council;

- Traffic issues - extension of Mahers Lane and intersection to Terranora Road and Fraser Drive;
- Cycleways;
- Open Space;
- Community Facilities;
- Stormwater Infrastructure.

This report has identified a number of infrastructure requirements for Area E. The proposed S94 Plan is intended to fund the provision of this infrastructure.

Recommended Action: No change to the draft Plan as a result of this issue.

25. Transfer of Land

As stipulated within this report and the draft Plan it is proposed to rehabilitate the SEPP 14 Wetland designated over Lot 22, DP 755740, Fraser Drive, Terranora. It is also proposed to have this land transferred into public ownership (Council). Discussions with landowners have demonstrated their agreement to enable this to occur. The draft DCP includes provisions requiring this transfer of land to occur, however it is considered that a legal Deed of Agreement be entered into between Council and the landowner to ensure this occurs. It is also considered that such a Deed of Agreement be entered into prior to the draft Plan being gazetted by the Minister.

Recommended Action: No change to the draft LEP required as a result of this issue. However, it is necessary that a legal Deed of Agreement be entered into that will realise the transfer of Lot 22, DP 755740 into Council's ownership. This Deed of Agreement is to be entered into prior to gazettal of the LEP.

CONCLUSION

A number of constraints and issues were identified from the exhibition of the LES and the draft LEP. These constraints and issues can be resolved through the implementation of current and proposed planning provisions, design criteria, management measures, or amendments to the exhibited draft Plan, the future accompanying Development Control Plan and through the assessment of a masterplan (SEPP 71) and a development application.

In conclusion, no submissions received prevent the rezoning of the subject land in the form stipulated in Appendix B. Significant issues raised by the submissions can be comprehensively addressed through a DCP.

It is recommended the draft Plan be amended from that which was exhibited. The recommended changes are discussed within this Report and are included in the amended draft Plan in Annexure B. In principle they involve:

- Amendments to the zoning map of the exhibited draft Plan as a result of increasing the area of the 7(a) and 7(d) Environmental Protection Zones in response to the DEC's concerns. This reduces the extent of the proposed 2(c) Urban Expansion Zone.

The statutory options available to Council with regard to the further consideration of the LES and draft LEP include:

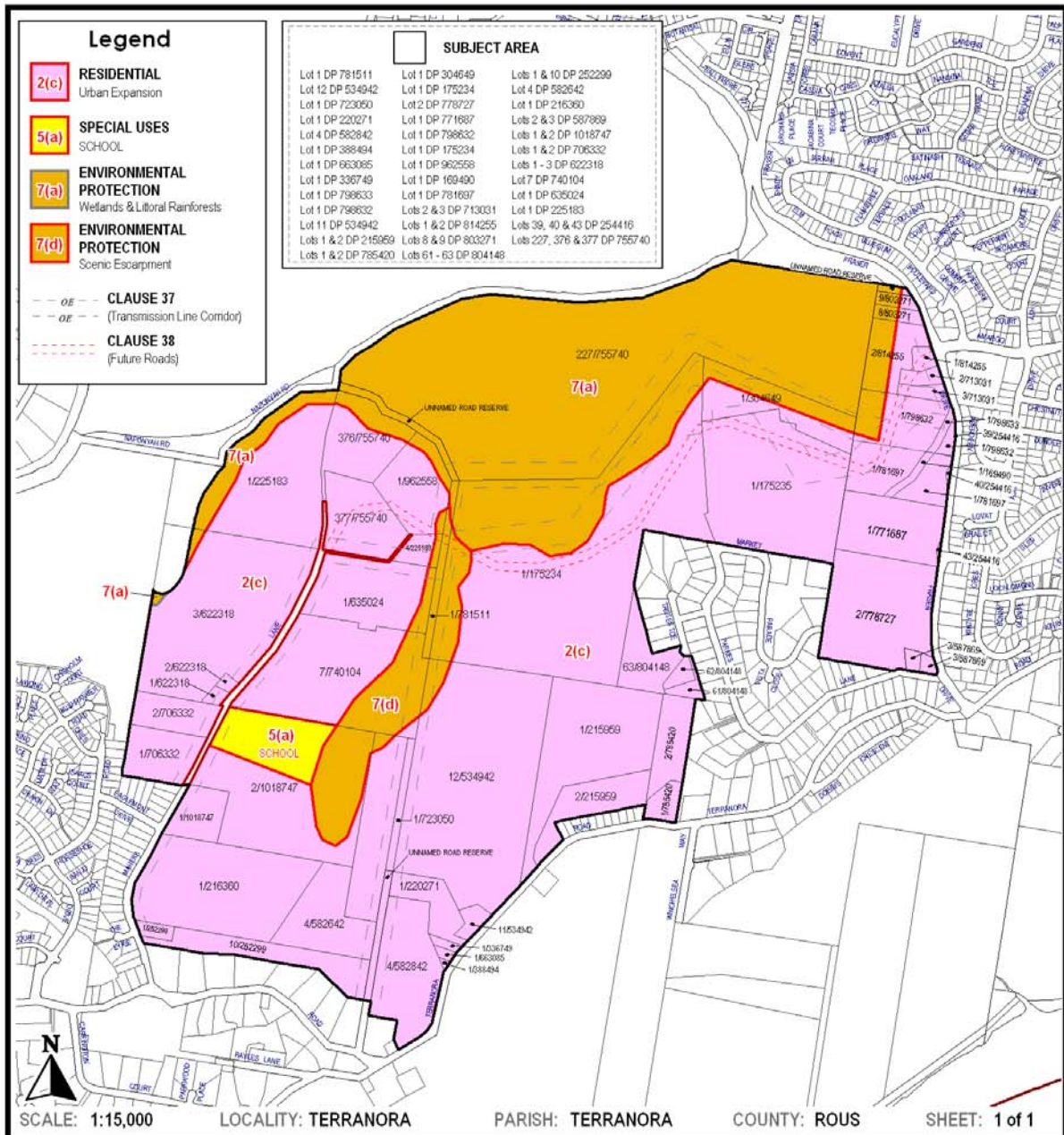
- A. Adopt the draft LEP as exhibited (Appendix A), or
- B. Adopt the draft LEP as amended in accordance with the recommendations in this Report (Appendix B), or
- C. Place the statutory process in abeyance until such time as a Development Control Plan has been prepared and finalised, to support the draft LEP, or
- D. Refuse to adopt the draft LEP, either as exhibited or as amended in accordance with the recommendations in this Report.

RECOMMENDATION

It is recommended that Council resolve to adopt Option B above and amend the draft Plan as per Appendix B. The draft Plan should then be forwarded to the Department requesting it be forwarded on to the Minister for Department of Infrastructure, Planning and Natural Resources so that the Plan can be made.

This action would be followed by the preparation and finalisation of a statutory Development Control Plan (Attachment C).

APPENDIX A



ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 TWEED DRAFT LOCAL ENVIRONMENTAL PLAN 2000 AMENDMENT No. 10		
DRAWN BY: J. Batchelor SUPERVISING DRAFTER: PLANNING OFFICER: Eber Butron COUNCIL FILE No. GTI/LEP/2000/10 DEPT. FILE No.: G94/00396 GOVT. GAZETTE OF:	DATE: 16/03/2004	STATEMENT OF RELATIONSHIP WITH OTHER PLANS AMENDS: TWEED LOCAL ENVIRONMENTAL PLAN 2000 CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979, AND REGULATIONS
		16/03/2004 GENERAL MANAGER DATE

draft

Tweed Local Environmental Plan 2000 (Amendment No 10)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Urban Affairs and Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979* (.....)

Minister for Urban Affairs and Planning

Page 1

draft

Tweed Local Environmental Plan 2000 (Amendment No 10)

1. Name of plan

This plan is the *Tweed Local Environmental Plan 2000 (Amendment No 10)*.

2. Aims, objectives etc

This plan aims to:

- Zone certain land at Terranora Urban Release Area (Area E) 2(c) Urban Expansion, 7(d) Environmental Protection (Scenic/Escarpment), 7(a) Environmental Protection (Wetland and Littoral Rainforest), and 5(a) School, to reflect the land's capability, suitability and characteristics.
- Amend provisions of Tweed Local Environmental Plan 2000 as they relate to the subject land to reflect changes and standards for urban design and environmental impact;
- Provide for efficient and consolidated urban growth;
- Protect local environmental and landscape values of wetlands, remnant vegetation and Terranora Broadwater; and
- Protect urban development from environmental hazards.

3. Land to which plan applies

This plan applies to land known as Terranora Urban Release Area (Area E) as shown edged heavy black on the map marked Tweed Local Environmental Plan 2000 (Amendment No. 10) deposited in the office of Tweed Shire Council.

4. Amendment of Tweed Local Environmental Plan 2000

Tweed Local Environmental Plan 2000 is amended by

- a) By inserting in appropriate order, in Part 2 of Schedule 6, the words: Tweed Local Environmental Plan 2000 (Amendment No. 10);
- b) By inserting after clause 39(2) the following sub-clauses:-
 - (3) When preparing a development application for use of the land to which this plan applies, the applicant shall clearly demonstrate:-
 - (i) the likely contaminants within the soil, surface water and groundwater as a result of previous land uses;
 - (ii) that an effective testing regime has been implemented to identify hotspots of contamination pursuant to current EPA guidelines including a consideration of the hydrogeology of the land;
 - (iii) that appropriate thresholds and criteria have been used in the assessment of potential contamination;
 - (iv) that the land does not pose a significant threat to human health or the environment;

- (v) that if contamination has been identified that an appropriate remedial action plan can be developed to demonstrate how identified risks can be reduced to acceptable levels and that remediation is practical;
 - (vi) that an adequate monitoring program can be implemented.
- c) By inserting after clause 53 the following clause:-

53A – Specific Provisions for Terranora Urban Release Area (Area E)

- (1) This clause applies to land known as Terranora Urban Release Area (Area E) as shown edged heavy black and coloured on the map marked "Tweed Local Environmental Plan 2000 (Amendment No.10)";
- (2) Preliminary Planning
 - (a) Objectives
 - To ensure a development control plan, developer contribution plan and master plan has been developed for the entire site to avoid ad hoc development and ensure equitable cost sharing in the provision of public amenities and services
 - To ensure that issues relating to contaminated land are dealt with to a sufficient level to meet the requirements of State Environmental Planning Policy No 55—Remediation of Land
 - (b) Pursuant to the Environmental Planning and Assessment Amendment (Preliminary Planning) Regulation 2000, Council shall not consent to development on land to which this clause applies unless:
 - (i) a development control plan has been approved for the land, and
 - (ii) a contributions plan has been approved for the land, and
 - (iii) the development application makes comprehensive proposals for development of the land or consent has already been granted to such a development application, and
 - (iv) there is a master plan for the land, and the consent authority has taken the master plan into consideration, and
 - (v) that the extent of any contaminated land is known to an extent necessary to allow the location of sensitive land uses at both the development control plan and master plan preparation stage.
- (3) Wetlands Rehabilitation and Management
 - (a) Objective
 - To restore and protect freshwater wetland values and minimise breeding habitat for salt water mosquitoes and biting midges;
 - (b) The Council shall not consent to development on land to which this Clause applies unless the applicant demonstrates to the satisfaction of Council that the development complies with a Wetlands Rehabilitation and Management Plan which has been prepared for wetlands within the area. Such a Wetlands Rehabilitation and

Management Plan shall identify the way in which the wetland is to be restored and managed to restore freshwater wetland values and minimise breeding habitat for saltwater mosquitoes and biting midges. The plan will also include details of costs and works required to undertake this rehabilitation.

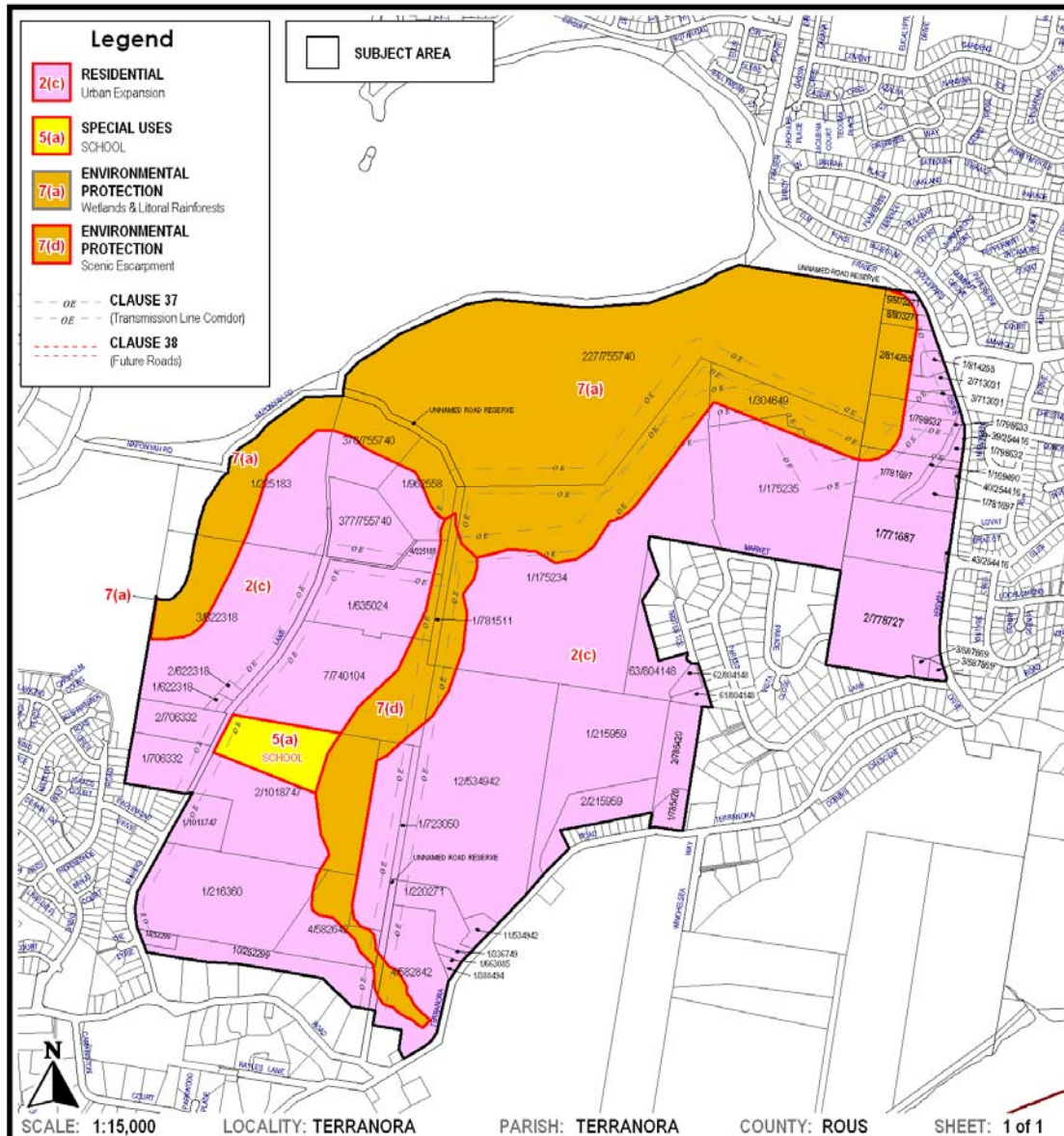
(4) Stormwater Management

(a) Objective

- Ensure that the management of urban stormwater is consistent with the 'Tweed Urban Stormwater Quality Management Plan' adopted by Council;

(b) The Council shall not consent to development on land to which this Clause applies, unless a Stormwater Management Plan has prepared by the applicant that demonstrates to the satisfaction of Council that the development generally complies with the "Tweed Urban Stormwater Quality Management Plan" adopted by Council.

APPENDIX B



ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 TWEED DRAFT LOCAL ENVIRONMENTAL PLAN 2000 AMENDMENT No. 10	
DRAWN BY: J. Batchelor DATE: 07/10/2004	STATEMENT OF RELATIONSHIP WITH OTHER PLANS
SUPERVISING DRAFTER:	AMENDS: TWEED LOCAL ENVIRONMENTAL PLAN 2000
PLANNING OFFICER: Eber Butron	
COUNCIL FILE No.: GTI/LEP/2000/10	
DEPT. FILE No.: G94/00396	CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979, AND REGULATIONS
GOVT. GAZETTE OF:	GENERAL MANAGER DATE

draft

**Tweed Local Environmental Plan 2000 (Amendment
No 10)**

under the

Environmental Planning and Assessment Act 1979

I, the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), make the following local environmental plan under the *Environmental Planning and Assessment Act 1979* (.....)

Minister Assisting the Minister for Infrastructure and Planning (Planning Administration)

draft

Tweed Local Environmental Plan 2000 (Amendment No 10)

1. Name of plan

This plan is the *Tweed Local Environmental Plan 2000 (Amendment No 10)*.

2. Aims, objectives etc

This plan aims to:

- a) Zone certain land at Terranora Urban Release Area (Area E) 2(c) Urban Expansion, 7(d) Environmental Protection (Scenic/Escarpment), 7(a) Environmental Protection (Wetlands and Littoral Rainforests), and 5(a) Special Uses (School), to reflect the land's capability, suitability and characteristics.
- b) Amend provisions of *Tweed Local Environmental Plan 2000* as they relate to the subject land to reflect changes and standards for urban design and environmental impact;
- c) Provide for efficient and consolidated urban growth;
- d) Protect local environmental and landscape values of wetlands, remnant vegetation and Terranora Broadwater; and
- e) Protect urban development from environmental hazards.

3. Land to which plan applies

This plan applies to land known as Terranora Urban Release Area (Area E) as shown edged heavy black on the map marked Tweed Local Environmental Plan 2000 (Amendment No 10) deposited in the office of Tweed Shire Council.

4. Amendment of Tweed Local Environmental Plan 2000

Tweed Local Environmental Plan 2000 is amended by

- a) inserting in appropriate order in Part 2 of Schedule 6 the words:
Tweed Local Environmental Plan 2000 (Amendment No 10).
- b) By inserting after clause 39(2) the following sub-clauses:-
 - (3) When preparing a development application for use of the land to which this plan applies, the applicant shall clearly demonstrate:-
 - i. the likely contaminants within the soil, surface water and groundwater as a result of previous land uses;
 - ii. that an effective testing regime has been implemented to identify hotspots of contamination pursuant to current EPA guidelines including a consideration of the hydrogeology of the land;

- iii. that appropriate thresholds and criteria have been used in the assessment of potential contamination;
- iv. that the land does not pose a significant threat to human health or the environment;
- v. that if contamination has been identified that an appropriate remedial action plan can be developed to demonstrate how identified risks can be reduced to acceptable levels and that remediation is practical;
- vi. that an adequate monitoring program can be implemented.

c) By inserting after clause 39(2) the following sub-clauses:-

53A – Specific Provisions for Terranora Urban Release Area E

1. This clause applies to land known as Terranora Urban Release Area (Area E) as shown edged heavy black and coloured on the map marked "Tweed Local Environmental Plan 2000 (Amendment No.10)";
2. Preliminary Planning
 - (a) Objectives
 - i. To ensure a development control plan, developer contribution plan and master plan has been developed for the entire site to avoid ad hoc development and ensure equitable cost sharing in the provision of public amenities and services
 - ii. To ensure that issues relating to contaminated land are dealt with to a sufficient level to meet the requirements of State Environmental Planning Policy No 55—Remediation of Land
 - (b) Pursuant to the *Environmental Planning and Assessment Amendment (Preliminary Planning) Regulation 2000*, Council shall not consent to development on land to which this clause applies unless:
 - i. a development control plan has been approved for the land, and
 - ii. a contributions plan has been approved for the land, and
 - iii. the development application makes comprehensive proposals for development of the land or consent has already been granted to such a development application, and
 - iv. there is a master plan for the land, and the consent authority has taken the master plan into consideration, and
 - v. that the extent of any contaminated land is known to an extent necessary to allow the location of sensitive land uses at both the structure plan and master plan preparation stage.
3. Wetlands Rehabilitation and Management
 - (a) Objective
 - i. To restore and protect freshwater wetland values and minimise breeding habitat for salt water mosquitoes and biting midges;
 - (b) The Council shall not consent to development on land to which this Clause applies unless the applicant demonstrates to the satisfaction of Council that the development complies with a Wetlands Rehabilitation and Management Plan which has been prepared for wetlands

within the area. Such a Wetlands Rehabilitation and Management Plan shall identify the way in which the wetland is to be restored and managed to restore freshwater wetland values and minimise breeding habitat for saltwater mosquitoes and biting midges. The plan will also include details of costs and works required to undertake this rehabilitation.

4. Stormwater Management

(a) Objective

i. Ensure that the management of urban stormwater is consistent with the 'Tweed Urban Stormwater Quality Management Plan' adopted by Council;

(b) The Council shall not consent to development on land to which this Clause applies, unless a Stormwater Management Plan has prepared by the applicant that demonstrates to the satisfaction of Council that the development generally complies with the "Tweed Urban Stormwater Quality Management Plan" adopted by Council.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- [1. Attachment A - Public Exhibition Submissions \(DW 1279106\)](#)
 - [2. Attachment B - Traffic & Transport LES Update \(DW 1279330\)](#)
 - [3. Attachment C - Draft DCP Area E \(DW 1279098\)](#)
-

6 [PD] Tweed Local Environmental Plan 2000, Amendment No 3 - Seaside City - Environmental Study and Draft Local Environmental Plan

ORIGIN:

Strategic Town Planning

FILE NO: GT1/LEP/2000/3

SUMMARY OF REPORT:

At the Council meeting held on 3 August 2005 Council resolved that:

"Council notes the report and environmental statement and indicates that the Planning Committee will consider a proposed rezoning application from 2(f) Tourist Zone to the 2(e) Residential Tourist Zone at Seaside City only after the following has been provided.

1. *A master plan/proposed development control plan setting out
 - a) *the proposed urban form addressing traffic plans, car parking and road layout;*
 - b) *proposed densities of development;*
 - c) *site coverage;*
 - d) *building heights;*
 - e) *landscape plans for private and public domain including appropriate environmental buffers and access points to the beach;*
 - f) *best practice for stormwater retention and recycling within the subdivision; and*
 - g) *best practice for promoting a sustainable built form within the subdivision.**

2. *Council looks forward to a resolution of this long outstanding issue.*

Following that decision a draft Masterplan has been prepared by Richtech, the major landowner, in conjunction with Council's Urban Design Consultants. This draft Masterplan formed the basis of a Workshop held on 2 November 2005 to which all landowners were invited. It was agreed that a second Workshop would be held in four weeks, hopefully to finalise the Masterplan. Council would also work with the landowners at the southern end of Lorna Street to ensure a dwelling house can be erected on the available zoned land in each lot.

Subsequent to the Workshop Council has been informed that Richtech will be proceeding with the current 2(f) zone and the latest draft Masterplan as the basis for a d/a for the development of its land at Seaside city. Richtech have agreed to reduce the width of Lorna Street from Ocean Street south to 16m, which they argue is sufficient to provide other landowners with an additional 4m as already discussed to achieve a useable building envelope.

The land would still need to be rezoned 2(e) to provide for the remainder of the landowners who are wanting to be able to erect a dwelling on their individual lots which is prohibited under the 2(f) zone.

Connell Wagner, on behalf of Council, have completed a draft Environmental Study for Seaside City. It concluded that: -

"The majority of the Seaside City study area has capacity for urban development for residential and tourism purposes and there are no significant impediments to the proposal to rezone the area from 2(f) Tourism to 2(e) Residential Tourist. Land on the western side of Casuarina Way along Cudgen Creek should be excluded from the development area for environmental reasons and incorporated within an environmental protection zone."

The Consultants have recommended that the draft instrument include provisions to control outstanding environmental issues with regard to the development of Seaside City. In particular these include: -

- The preparation of a Master Plan, Development Control Plan and Section 94 Plan
- Detailed controls for acid sulfate soils, contaminated land remediation, bushfire protection and stormwater.

RECOMMENDATION:

That Council: -

- 1. Exhibits the Environmental Study and draft Local Environmental Plan, Amendment No 3, prepared by Connell Wagner, subject to the following adjustments:**
 - **The land to be zoned Environmental Protection to exclude land within the subdivided lots on the western side of Catherine Street.**
 - **The rewording of the nominated controls in the Written Instrument.**
 - **The inclusion of additional controls in respect of the service road and cycle way within the riparian buffer to Cudgen Creek.**

2. **Adopts the current road layout for Seaside City as the basis for future planning.**
3. **Prepares a Development Control Plan for Seaside City for detailed development and built form controls, in particular:**
 - **Stormwater management and infrastructure provision;**
 - **Land form and drainage;**
 - **Urban design at the southern end of Lorna Street;**
 - **Integration with existing development to the north and south;**
 - **Location and integration of public parking;**
 - **Provision of open space;**
 - **Bushfire management;**
 - **Provision of a service road and cycleway west of Catherine Street.**
4. **Council shall not consent to development at Seaside City unless a Development Control Plan has been approved by Council for the land.**
5. **Council defers the determination of any Development Application for land within Seaside City until Council has submitted Tweed Local Environmental Plan 2000, Amendment No 3 to the Minister for approval; and has adopted the Development Control Plan detailed in Item 3 above.**
6. **Prepares a Section 94 Contributions Plan for Seaside City.**

REPORT:

Background

Seaside City is an approved subdivision "on paper only" dating from the 1930s. It comprises 240 lots and associated roads and laneways in a rectilinear pattern. The majority of the lots are owned by the one landowner, and the remainder in 15 other ownerships. The Study Area also includes land to be rehabilitated with Banksia as compensatory blossom bat habitat; and dedicated to Council. The subdivision and ownership pattern are illustrated by Figure 1.

In May 2000 Council resolved to prepare a draft Local Environmental Plan to rezone land at Seaside City from 2(f) Tourist to 2(e) Residential (Tourist). Connell Wagner were engaged by Council to complete an Environmental Study (ES) and draft LEP for the Amendment.

Study Findings

The consultants have completed the draft ES, and concluded as follows: -

"The majority of the Seaside City study area has capacity for urban development for residential and tourism purposes and there are no significant impediments to the proposal to rezone the area from 2(f) Tourism to 2(e) Residential Tourist. Land on the western side of Casuarina Way along Cudgen Creek should be excluded from the development area for environmental reasons and incorporated within an environmental protection zone.

The form of future development requires further consideration by Tweed Shire Council in consultation with landowners. The ultimate decision to proceed with a development based on the current subdivision or an alternative design needs to balance environmental and urban design outcomes with the financial implications for landowners and desired development timeframes. The final development design will need to address several critical planning and environmental issues. These include:

- *Integration with Salt and Casuarina Beach and possible road connections into these developments*
- *The road safety problems associated with direct vehicle access from lots along Casuarina Way and traffic congestion problems associated with a single access from Casuarina Way*
- *Provision of 225 public car spaces within the development area*
- *The provision of a 50 metre wide asset protection zone from riparian vegetation along Cudgen Creek and a 35-50 metre asset protection zone from the coastal reserve*
- *No development east of the 100 year coastal erosion hazard line*
- *Stormwater management and potential water quality impacts on Cudgen Creek and associated SEPP14 wetlands*

- *The provision of a neighbourhood centre and local open space to cater for the needs of residents*
- *Continuous coastal foreshore access including extension of the dual use pedestrian and cycle path between Casuarina and Salt*

To progress the development of Seaside City we recommend the actions set out below be completed prior to the determination of development applications for the site:

- *Tweed Shire Council further consider and determine in consultation with landowners the preferred form of future site development ie whether to proceed with the current subdivision in some modified form or with an alternative design.*
- *Tweed Shire Council prepare a draft local environmental plan to amend Tweed Local Environmental Plan 2000 and rezone the Seaside City area to 2(e) Residential Tourist and 7(l) Environmental Protection (Habitat) based on Figure 3.12. The local environmental plan should incorporate provisions that set out the specific planning and development requirements for the site.*
- *A detailed master plan be prepared for the land within the 2(e) Residential Tourist zone to guide the future development of the site and address the planning and environmental issues identified within the local environmental study. The master plan should also incorporate a stormwater management plan for the site and a servicing strategy.*
- *Plans of management be prepared for land within the coastal reserve and the environmental protection zone on the eastern side of the development area and for the Cudgen Creek riparian corridor on the western side of the development area.*
- *A detailed site radiation investigation be undertaken in consultation with the Department of Environment and Conservation and remediation undertaken to a suitable standard of residential development to proceed.*
- *A site specific development control plan be prepared for the site that sets out the detailed development and built form controls for the site.*
- *Appropriate amendments be made to Section 94 Contributions Plan No. 19 - Kings Beach/Kings Forest".*

Whilst Connell Wagner have supported the rezoning of Seaside City they have raised a number of design and management issues which will require resolution:

- Existing subdivision pattern;
- Cudgen Creek Riparian Buffer;
- Detailed urban design and management issues;
- Appropriate controls to ensure that these issues are adequately met and dealt with at the development stage;
- The determination of Development Applications currently lodged with Council.

Existing Subdivision Pattern

Many of the nominated issues arise from the existing subdivision pattern for Seaside City. One of the specifications for preparation of the ES was a review of that pattern, for which Richtech have prepared a draft Master Plan. The Consultants have reviewed this and identified the following issues: -

- *"The very large lots could be capable of dual occupancy or multi-unit development and the urban design outcomes of these forms of development cannot be predicted.*
- *No increased density of development is proposed around the village centre and there is no provision for tourist accommodation or medium density residential development within the village centre.*
- *The relationship between the lots and proposed open space areas is poor.*
- *The pedestrian walkways are a poor urban design solution for safe pedestrian access and crime prevention. A better solution would be to create a more permeable subdivision with smaller street blocks.*
- *The proposed centre aisle car parking creates potential traffic flow and road safety issues. 90 degree angle parking on both sides of the road would be preferable.*
- *The public car parking would be better located closer to the key attractions ie the village centre and coastal foreshore*
- *The asset protection zone from the coastal reserve is inadequate. A 50 metre asset protection zone is required where tourism uses are proposed while a 35 metre zone is required where development is restricted to residential uses.*
- *Direct vehicle access from lots to Casuarina Way creates traffic flow and road safety problems and should be avoided.*
- *There is insufficient provision for a riparian corridor along Cudgen Creek and no asset protection zone from riparian vegetation.*
- *There are too many beach access points which creates environmental disturbance within the coastal reserve. The landscaped cycleway is proposed to be constructed within the coastal reserve.*
- *Lots back on to the coastal reserve. Best practice is to have road separation to avoid privatisation of public space and for vegetation management.*
- *The proposal to narrow Lorna Street is a poor access and streetscape solution.*
- *The proposal provided poor connectivity to the adjoining Salt and Casuarina Beach developments.*
- *The long street blocks result in poor east-west permeability through the area.*
- *Lot sizes are large and homogenous and inconsistent with surrounding development.*
- *The proposal provides only one access point from Casuarina Way. Additional access points would be preferable to distribute traffic and avoid intersection congestion."*

Most of the nominated deficiencies relate to the Masterplan prepared by Richtech. They are therefore not relevant to the rezoning. However, it is acknowledged that the subdivision pattern does place a significant constraint on the options for the development of the land - as does the ownership pattern also. Connell Wagner have concluded that whether or not that pattern should be altered is a decision for Council.

Notwithstanding these deficiencies there are significant obstacles in the way of any complete re-subdivision of Seaside City. Not the least of these is the reluctance of some owners to agree to resubdivision; and financial implications of GST and capital gains tax for landowners. Consequently, it is considered that Council has little option but to accept that the current subdivision of Seaside City will remain as the basis of planning for the area.

Nevertheless, the deficiencies identified by Connell Wagner must still be addressed. The major landowner is prepared to amalgamate lots into large parcels so that a high standard of urban design can be achieved with the existing road layout. This will go some way to meeting the deficiencies identified by Connell Wagner. These and other issues should be resolved through the preparation and adoption of a Master Plan/Development Control Plan.

One particularly sensitive issue concerns the smaller landowners on the eastern side of the southern end of Lorna Street. As indicated by Figure 2, 12 Lots have less than 450m² of zoned land for the erection of a dwelling, which is the prescribed minimum for the erection of a dwelling. To address this issue the following option has been discussed with landowners of the affected lots:

- Reduce the width of Lorna Street road reserve by 4m;
- Allow the affected landowners to exchange that land for a similar amount of land at the rear of their land which is to be amalgamated into the coastal reserve.
- Allow the erection of a dwelling on the affected Lots with a "zero lot line" set back from Lorna Street.

The amount of zoned land in the affected lots would still be below 450m². The option raises significant urban design issues which would have to be dealt with by a Development Control Plan.

Cudgen Creek Riparian Area

The Consultants have highlighted the need for the protection of water quality in Cudgen Creek, which borders the western boundary of Seaside City.

The Consultants concluded that:

“The water quality monitoring undertaken within Cudgen Creek indicates that water quality is relatively good but has elevated nitrogen and faecal coliform levels. Agricultural and urban stormwater are the dominant influence on pollutant inputs to the estuary. Strategies for the protection of the environmental values of Cudgen Creek including water quality should be implemented including water sensitive urban design approach to stormwater management and adherence to a minimum 50 metre buffer zone of riparian vegetation within new development sites. This is consistent with the guidelines for riparian corridors adopted by DIPNR as best practice for riparian conservation. DIPNR has adopted these guidelines from the Riparian Corridor Management Study (DIPNR 2005) prepared for the Wollongong local government area. The guidelines recommend that to maintain bank stability and water quality and provide biodiversity linkages a riparian corridor should be a minimum of 50 metres wide. This distance includes a 40 metre core corridor plus a 10 metre buffer on either side of the river”.

Fifty metres is the nominated riparian buffer to Cudgen Creek in DCP 16 Subdivision Manual.

As a consequence the Consultants have recommended that land indicated by Figure 3 be zoned Environmental Protection. This area includes the amelioration land to be dedicated to Council as well as a strip of land and laneway at the rear of the lots on the western side of Catherine Street.

Also superimposed on Figure 3 is the actual buffer which indicates that the extent of land to be rezoned Environmental Protection goes beyond the nominated 50m buffers.

Richtech currently has a Development Application lodged with Council for clearing and vegetation management of this area to accommodate a 30m service lane and cycleway corridor at the rear of Catherine Street. However, this would take the cycleway close to Cudgen Creek.

Whilst this degree of detail is not ordinarily a matter for a matter for a rezoning, the Consultant's recommendation needs to be considered in the light of this proposal and:

- The objectives for the riparian buffer;
- The existing subdivision and the need to accommodate a rear service land and cycleway within the buffer areas;
- The need for an APZ at the rear of the lots.

Figure 3 indicates that it is not possible to provide a 50m buffer along the entire length of the Seaside City Subdivision which fronts Cudgen Creek. Where this cannot be achieved it is recommended that a minimum buffer of 25m is acceptable with a 6m service road and a 2.5m cycleway accommodated in an 11.5m reserve. The resultant buffer should be revegetated in accordance with an approved rehabilitation plan.

The remaining issue with respect to the service road reservation is the zoning of the land. A road is permissible in an Environmental Protection Zone but subject to the provisions of Clause 8(2) of the LEP. Whilst this does not preclude the approval of the service road and cycleway any residual ambiguity in Council's intention could be dealt with by either:

- Zoning the land as road; or
- Including the road as a Schedule 3 item.

On balance it is considered that the provisions of Clause 8(2) are adequate for this situation, if supplemented by controls to ensure a minimum buffer of 25m as set out above. The land to be zoned Environmental Protection should exclude land within the subdivided lots on the western side of Catherine Street.

Draft Local Environmental Plan

Connell Wagner have prepared a draft Local Environmental Plan which incorporates the following elements:

1. Zoning: the land rezoned from 2(f) Tourism to 2(e) Residential Tourist, except the land west of Catherine Street which is rezoned to Environmental Protection (Figure 3).
2. Preliminary Planning Requirements: Before Council consents to any development at Seaside City the following must be approved by Council:

Master Plan
Development Control Plan
Section 94 Plan

3. Development Requirements:

(a) Council must be satisfied any development meets the requirements:

- Acid sulphate soils;
- Contaminated lands remediation;
- Bushfire protection;
- Erosion and sediment control plan;
- Stormwater management plan.

(b) Development of each lot located within 50m of the coastal reserve boundary must be limited to a single dwelling house.

Adjustments have been made to the draft prepared by the Consultants to improve the rigour of the recommended instrument, together with the additional controls in respect of the riparian buffer detailed in the report. A copy of the adjusted LEP is Annexure 1.

Development Applications

A number of Development Applications for land within the Seaside City Subdivision have been lodged with Council, and which have yet to be determined. These are summarised in Table 1. Council has the following options to deal with these Development Applications:

1. Defer the determination of all applications until the rezoning has been completed, together with a Master Plan/Development Control Plan.
2. Determine each application as it is lodged on its individual merits, including the provision of landowners' consent to the lodgement when it involves land in Council's ownership or control.
3. Nominate those applications which would not prejudice the completion of a Master Plan for Seaside City, and therefore could be determined in advance of such a Plan.

Option 1 is preferred. A DCP/Master Plan could be prepared whilst the draft LEP is being exhibited.

Table 1 - Current Development Applications in Seaside City

DA Reference	Proposal	Consent Authority
DA 02/2086	19 Tourist Accommodation Units	Minister
DA 02/2088	19 Tourist Accommodation Units and retail	Minister
DA 04/0691	Precinct plan for tourism development and road and infrastructure construction and bulk earthworks	Minister
DA 05/0274 and Part V REF	Construction of roads, carparks, walkways/cycleways, landscaping and identification of open space areas	Council
DA 05/0775	Clearing and replanting vegetation (Lot 500)	Council
DA05/0793	Clearing and replanting vegetation (Creekside)	Council

CONCLUSION:

On the basis of the consultants findings the draft Local Environmental Plan should be exhibited for public comment.



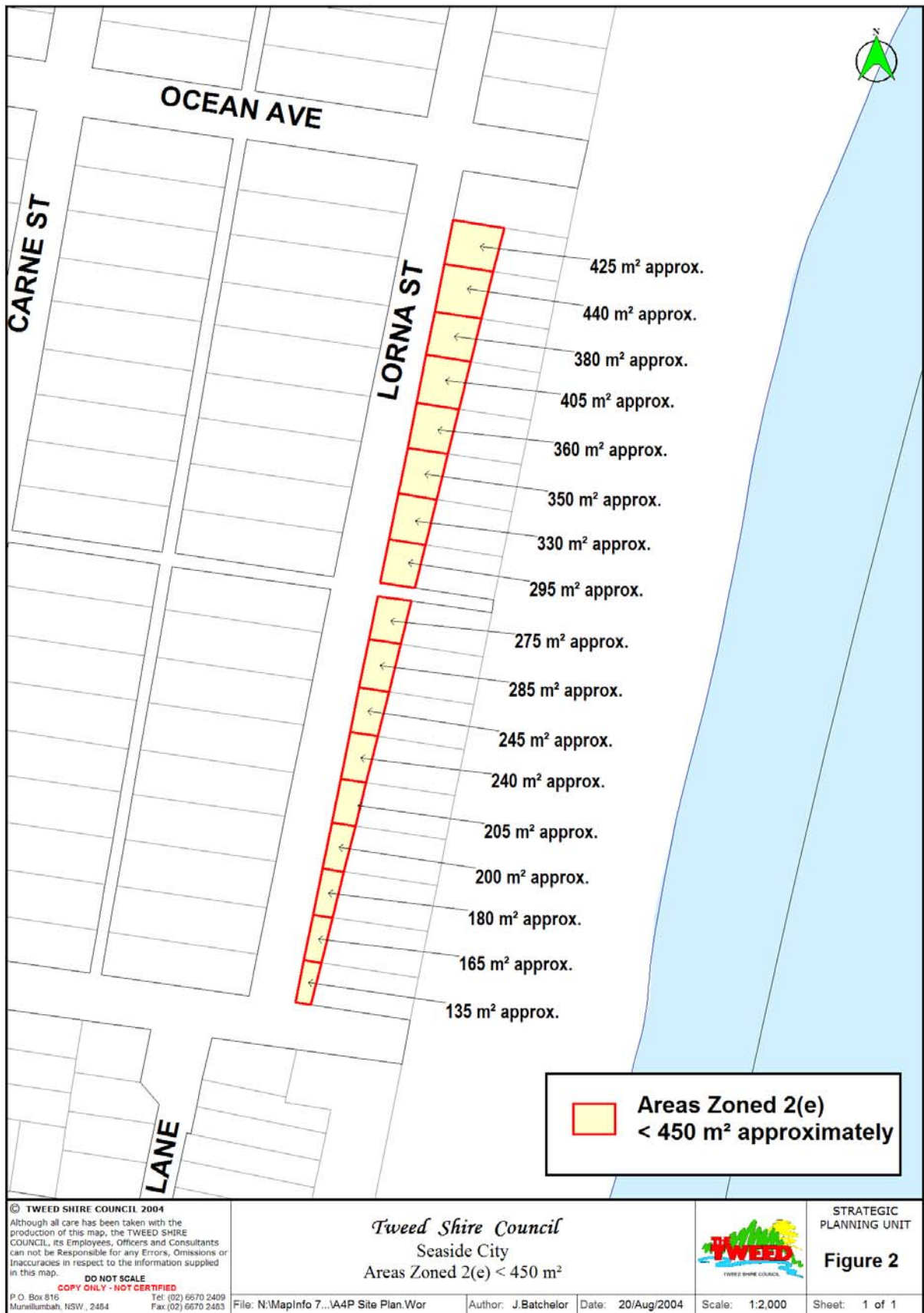


Figure 3



ANNEXURE 1

Draft Tweed Local Environmental Plan 2000, Amendment No 3

Note: ~~strikethrough~~ denotes text to be deleted and underline denotes text to be included.

draft

Tweed Local Environmental Plan 2000 (Amendment No 3)

Under the

Environmental Planning and Assessment Act 1979

I, the Minister for Assisting the Minister for Infrastructure and Planning (Planning Administration), make the following local environmental plan under the *Environmental Planning and Assessment Act 1979* (.....)

Minister Assisting the Minister for Infrastructure and Planning (Planning Administration)

draft

Tweed Local Environmental Plan 2000 (Amendment No 3)

1. Name of plan

This plan is *Tweed Local Environmental Plan 2000 (Amendment No 3)*

2. Aims, objectives etc

- (a) To zone the land to 2(e) Residential Toursit to permit residential and tourism uses.
- (b) To protect areas of environmental significance by zoning land 7(l) Environmental Protection (Habitat).
- (c) To protect development from environmental hazards.

3. Land to which plan applies

This plan applies to land known as Seaside City as shown edged heavy black and coloured on the map marked *Tweed Local Environmental Plan 2000 (Amendment No 3)*.

4. Amendment of Tweed Local Environmental Plan 2000

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

draft

Tweed Local Environmental Plan 2000 (Amendment No 3)

Schedule 1 Amendments

[1] Amend Clause 53 by inserting the following new objective:

~~To set out specific requirements for development on certain land.~~

[2] Insert the following new Clause after Clause 53A:

53B Seaside City

(1) Aims

This Clause aims to:

- (a) ensure that development of the land is undertaken within an appropriate planning framework.
- (b) ensure that development of the land considers relevant environmental issues.

(2) Land to which this clause applies

This Clause applies to land known as Seaside City as shown edged heavy black and coloured on the map marked *Tweed Local Environmental Plan 2000 (Amendment No 3)*.

(3) Preliminary planning requirements

Pursuant to Section 92A of the *Environmental Planning and Assessment (Preliminary Planning) Regulation 2000*, the Council shall not consent to development on land to which this clause applies unless:

- (a) a master plan has been prepared for the development of the land and endorsed by Council and the Council consent authority has taken the master plan into consideration; and
- (b) a specific development control plan has been approved for the land. The development control plan shall include provisions that establishes location, sizing, standards and design criteria for provisions of subdivision infrastructure (including external connections), the detailed development, land use and built forms and controls for the site; and
- (c) a contributions plan has been approved for the land.

(4) Development requirements

(a) ~~The Council shall not consent to development endorse the master plan referred to in subsection 3(a) on the land to which this Clause applies unless the following have been prepared by a suitably qualified person and approved by Council:~~

- (i) ~~the development satisfies the requirements of Clause 35 relating to Aa acid sulfate soils management plan has been prepared by a suitably qualified person and approved by Council; and~~
- (ii) Aa contaminated land assessment and remediation plan has been prepared by a suitably qualified person and approved by Council the development satisfies the requirements of Clause 30 relating to the remediation of contaminated land. This assessment which must include a detailed site radiation investigation that includes depth monitoring and remediation plan for the land to a suitable standard for residential development; and

draft

- (iii) ~~Aa bushfire management plan has been prepared in accordance with the requirements of Clause 39A by a suitably qualified person and approved by Council the development satisfies the requirements of Clause 39A relating to bushfire protection; and~~
- (iv) ~~Aan erosion and sediment control plan has been prepared by a suitably qualified person and approved by Council to the satisfaction of Council; and~~
- (v) ~~(v) Aa stormwater management plan has been prepared by a suitably qualified person and which demonstrates any impacts on Cudgen Creek and SEPP 14 Wetlands to the satisfaction of Council and that the development complies with the Tweed Urban Stormwater Quality Management Plan.~~
- (vi) ~~A Traffic Management Plan has been prepared, demonstrating traffic safety and road linkages to adjoining properties, by a suitably qualified person and approved by Council; and~~
- (vii) ~~Preparation of Aa Plan of Management for land within the coastal reserve and the environmental protection zone and for the Cudgen Creek riparian corridor. The buffer shall be 50m in width measured from the creek, excluding the area of the existing lots on the western side of Catherine Street. A cycleway and service road at the rear of those lots may be located within the buffer if those items are a minimum of 25m from the creek. The Plan of Management shall include the rehabilitation of the remainder of the buffer.~~

(4) Master Plan and DCP requirements

The Mmaster Pplan and DCP referred to in subsections 3 3(a) and 4 above shall consider include the following provisions:

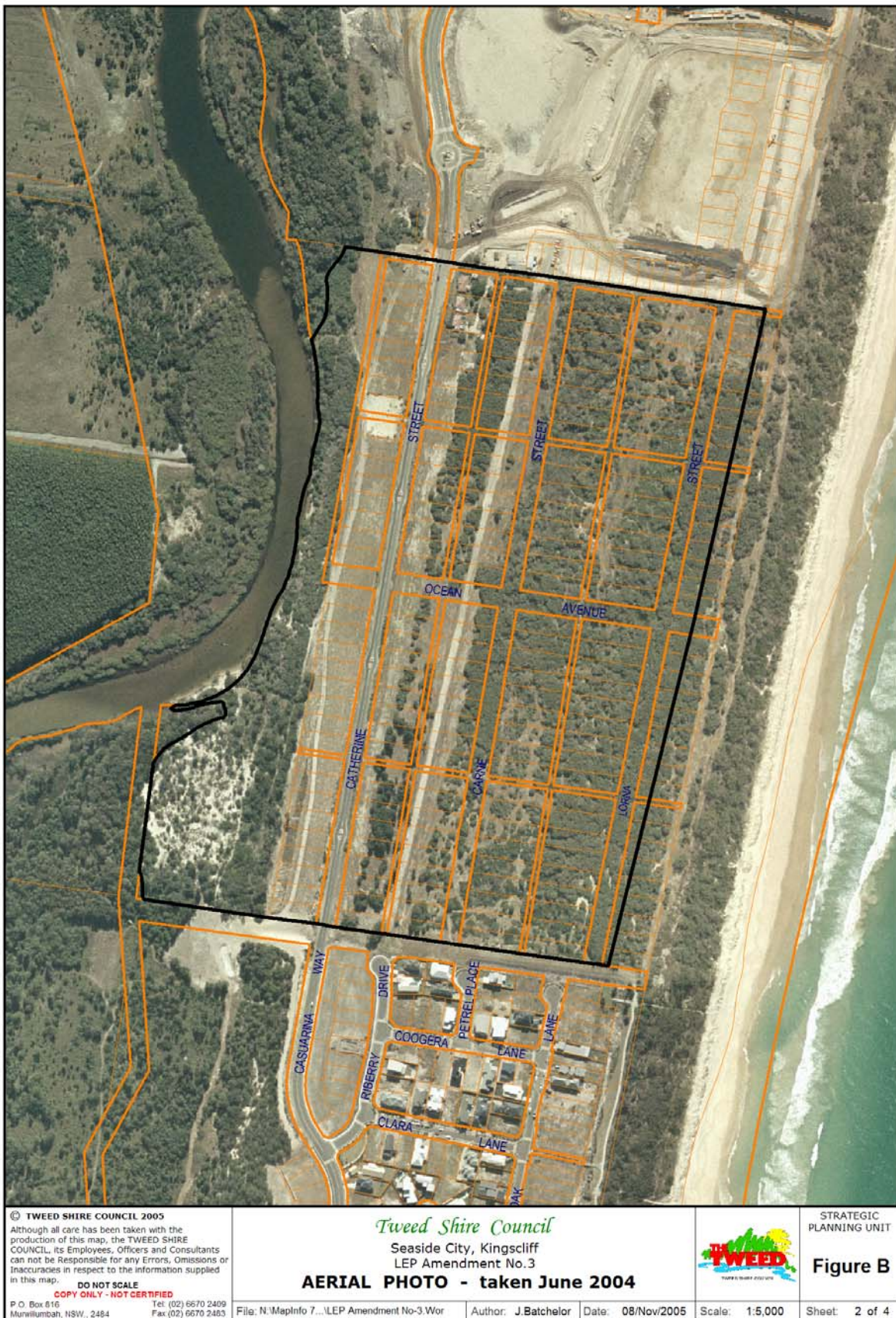
- (a) ~~Noa urban development east of the 100 metre Coastal Erosion Hazard Line; and~~
 - (b) ~~The development of each allotment located outside the environmental protection zone and within 50 metres from the coastal reserve boundary is to be limited to a single dwelling house; and~~
 - (c) ~~Environmental buffer of 50 metres to SEPP 14; and~~
 - (d) ~~Environmental buffer of 50 metres to Cudgen Creek; and~~
 - (e) ~~Proposed road corridors and road connection to adjoining properties; and~~
 - (f) ~~Bbroad land use allocations (including locations of environmental areas, tourist facilities, residential uses, commercial facilities, recreation facilities and community facilities); and~~
 - (g) ~~demonstrates Cecontinuous coastal foreshore access; and~~
 - (h) ~~Pprovisioin of public car spaces within the 2(e) Zone; and~~
 - (i) ~~Llocation of bushfire hazard protection areas; and~~
 - (j) ~~Bbicycle and pedestrian networks consistent with adjoining dual use pedestrian and cycle path on neighbouring properties; and~~
 - (k) ~~Indicative public transport routes; and~~
 - (l) ~~Indicative infrastructure provisions (water, sewer, stormwater); and~~
 - (m) ~~Design Philosophy and Development Principles (including 'sense of place' and 'character', and overriding lot layout principles).~~
 - (n) ~~Land from frem and associated trunk drainage.~~
- (b) ~~The development of each allotment located outside the environmental protection zone and within 50 metres from the coastal reserve boundary is to be limited to a single dwelling house.~~

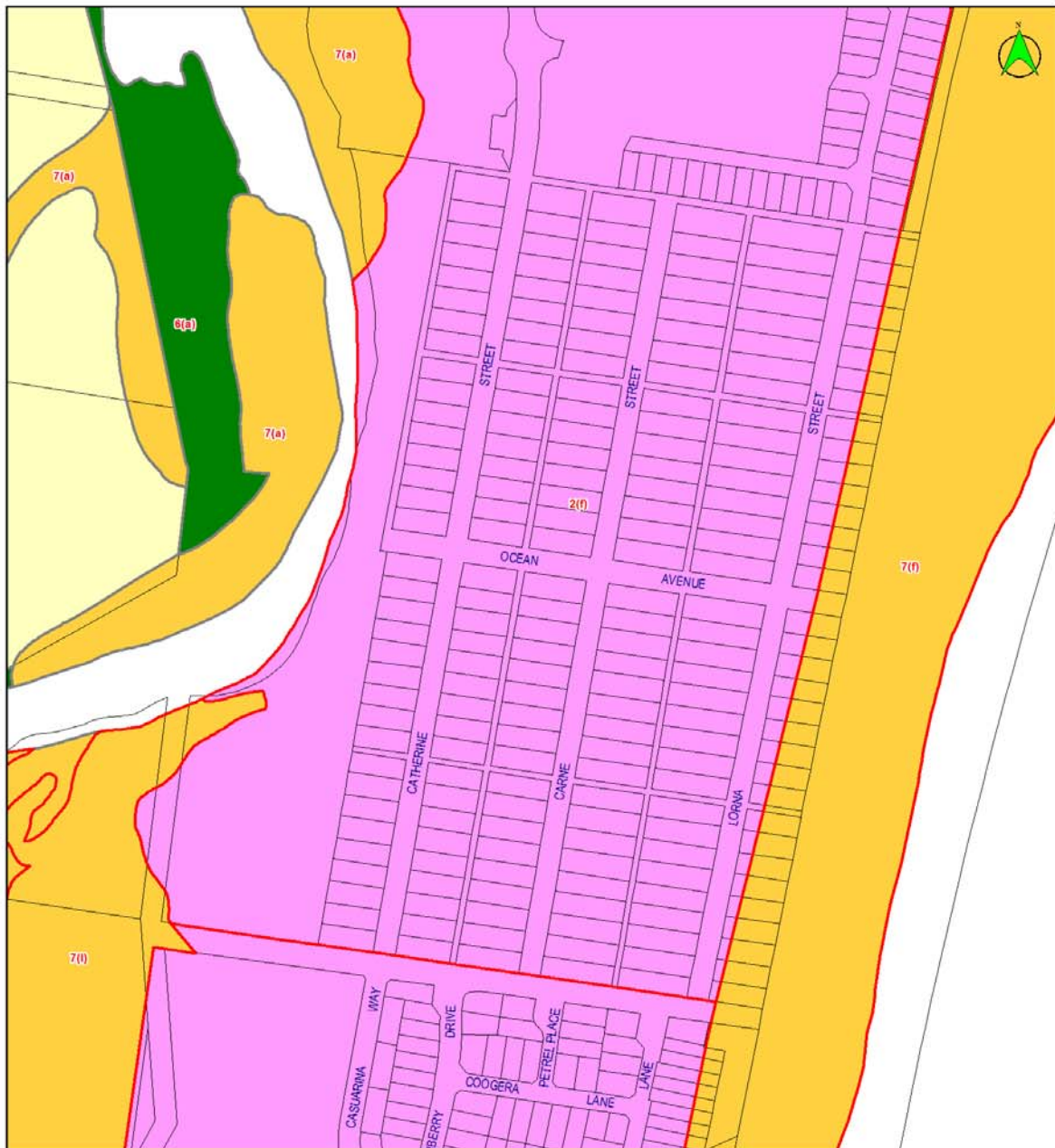
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**Tweed Local Environmental Plan 2000 (Amendment
No 3)**

- [3] In Part 2 of Schedule 6 insert in numerical order the following:
Tweed Local Environmental Plan 2000 (Amendment No 3);
- [4] Amend the contents page as required to incorporate the above amendments.

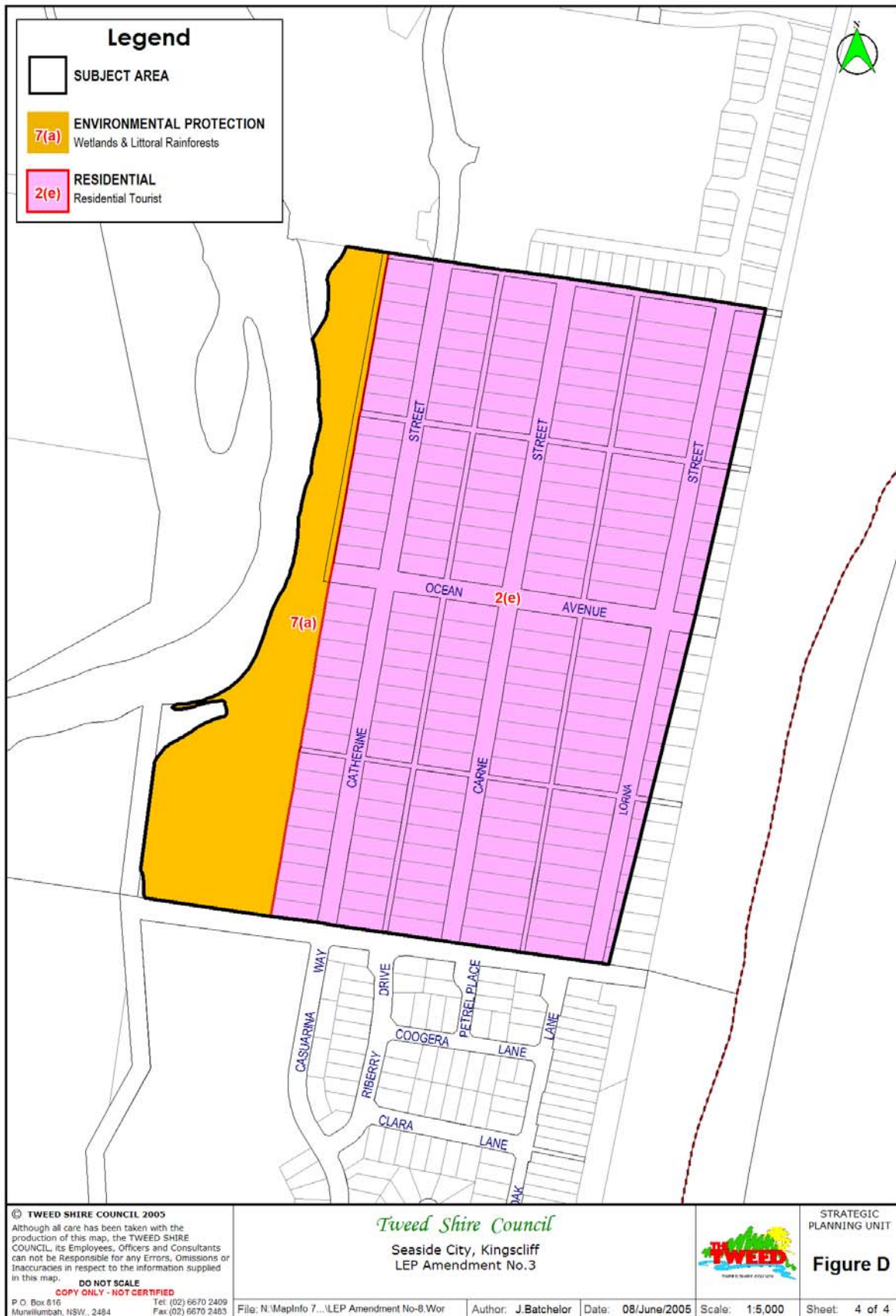






LEGEND - TWEED LOCAL ENVIRONMENT PLAN 2000			
RURAL 1(a) Rural 1(b1) Agricultural Protection 1(b2) Agricultural Protection 1(c) Rural Living	BUSINESS 3(a) Sub - Regional Business 3(b) General Business 3(c) Commerce and Trade 3(d) Waterfront Enterprise 3(e) Special Tourist (Jack Evans Boat Harbour)	ENVIRONMENTAL PROTECTION 7(a) Environmental Protection (Wetlands & Littoral Rainforests) 7(d) Environmental Protection (Scenic / Escarpment) 7(f) Environmental Protection (Coastal Lands) 7(i) Environmental Protection (Habitat)	ADDITIONAL CONTROLS Clause 37 (Transmission Line Corridor) Clause 38 (Future Roads) Clause 41 (Heritage Conservation Area) Clause 52 (Kings Beach / Kings Forest / Osprey Nest) Clause 52 (Pottsville) Clause 52 (Stormwater and Fill) Clause 52 (Minimum Lot Sizes) Clause 52 (Cobaki Lakes) Clause 52 (Existing and Future Dam Areas) Clause 53 (Schedule 3 Item)
RESIDENTIAL 2(a) Low Density Residential 2(b) Medium Density Residential 2(c) Urban Expansion 2(d) Village 2(e) Residential Tourist 2(f) Tourism	INDUSTRIAL 4(a) Industrial	NATIONAL PARKS & NATURE RESERVES 8(a) National Parks and Nature Reserves	
SPECIAL USES 5(a) Special Uses	OPEN SPACE 6(a) Open Space 6(b) Recreation		

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File: N:\MapInfo 7. \LEP Amendment No-3 Wor	Author: J.Batchelor	Date: 08/Nov/2005	Scale: 1:5,000 Sheet: 3 of 4



LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil

7 [PD] Amendment to Section 94 Contribution Plan No 1 - Banora Point/Tweed Heads West Open Space

ORIGIN:

Strategic Town Planning

FILE NO: GT1/S94/1

SUMMARY OF REPORT:

Section 94 Contribution Plan No. 1 - Banora Point/ Tweed Heads West Open Space requires amending for the following reasons:

Area 3 – Sullivan’s land

- The cost of the amenities blocks have increased from \$681,450 to \$1,115,100 due to the increase in construction costs;
- The car park costs have increased from \$336,000 to \$630,000 due to construction cost increases;

Area 5 – Banora Green

- The costs for the lights, carparking and amenities upgrade have increased from \$75,000 to \$120,000.

The contribution rate has increased from \$2,075 per single residential lot to \$2,433 per lot and the medium density rate has increased from \$1,356 per lot to \$1,591 per lot.

RECOMMENDATION:

That the draft Amendment of Section 94 Contribution Plan No. 1 – Banora Point/Tweed Heads West Open Space be placed on public exhibition for 28 days in accordance with Clause 28(a) of the Environmental Planning and Assessment Regulations.

REPORT:

Section 94 Contribution Plan No. 1 - Banora Point/ Tweed Heads West Open Space requires amending for the following reasons:

Area 3 – Sullivan’s land

- The cost of the amenities blocks have increased from \$681,450 to \$1,115,100 due to the increase in construction costs;
- The car park costs have increased from \$336,000 to \$630,000 due to construction cost increases;

Area 5 – Banora Green

- The costs for the lights, carparking and amenities upgrade have increased from \$75,000 to \$120,000

The contribution rate has increased from \$2,075 per single residential lot to \$2,433 per lot and the medium density rate has increased from \$1,356 per lot to \$1,591 per lot.

Draft Amendment of Section 94 Contribution Plan No. 1 – Banora Point/ Tweed Heads West Open Space is required to be placed on public exhibition for 28 days in accordance with Clause 28(a) of the Environmental Planning and Assessment Regulations

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

- [1. Draft amended Section 94 Plan No 1 - Banora Point/Tweed Heads West Open Space \(DW 1294608\)](#)
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CONFIDENTIAL MATTERS

Nil.

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